

## European Federation of Inland Ports

### Position on

## State Aid in the Inland Ports Sector

### Background

The European Union's approach to inland ports has been laid out in a number of policy documents and legal acts, such as the Transport White Paper, the revised Trans-European Transport Network policy, the Combined Transport Directive and the Naiades Programme. These policies highlight the potential of inland waterway transport and combined transport as a more sustainable alternative to pure road transport. The EU aims to support and develop these forms of transport with a view to reducing the Union's CO<sup>2</sup> emissions from transport. The European Commission's approach to state aid for inland ports should be seen in this general framework.

In July 2013, the European Commission sent a questionnaire to member states with the aim of assessing the situation of state aid and its possible effect on competition in the sea and inland ports sector. The Commission sees this consultation in connection with the review of state aid guidelines for airports. Part of the questionnaire is aimed at assessing in how far these guidelines could serve as a model for the sea and inland ports.

### Competition in the inland ports sector

The Commission questionnaire does not differentiate between sea and inland ports. It is important to understand, though, that competition in the two sectors follows a different logic.

Inland ports are multi-modal hubs where goods can be transshipped from one mode of transport to another. They are thus the place where combined transport competes with pure road transport. Almost by definition, they therefore serve the coordination of transport. Whilst inter-modal competition is an important factor, competition between individual inland ports is much less relevant.

In the aviation sector, new regional airports have been constructed in the last decades with the aim of attracting businesses and passengers to the surrounding region. Passengers could often also use other airports in the vicinity without this being an impediment to them travelling by plane.

Inland ports typically have a much longer history and have developed along historic trading routes. They often serve industries that are dependent on large flows of raw materials. Such industries cannot easily re-locate to other ports and the closure of their port would lead to very high

additional costs for transport of these materials by rail or road that would call into question the financial viability of the company. This explains the importance of inland ports, including smaller ports and ports that are located in relative proximity to another port for the economy in their region. For container traffic, customers can switch ports more easily, which leads to increased competition in this area.

## **Modal shift – an EU policy**

The European Commission's Transport White Paper sets the goal to shift long distance freight flows from road to the more sustainable modes rail and inland waterways.

Combined transport, i.e. transport combining rail, inland waterway or maritime services with last mile road delivery, needs state support to be able to compete with pure road transport. Additional transshipment and storage of containers make combined transport comparatively expensive. The share of terminal costs in total costs of intermodal transport is up to 20%. Without state aid these costs would be even higher and the overall cost of combined transport would increase, thus weakening the competitive position of combined transport and potentially leading to a reverse modal shift. The Commission has therefore always deemed these aids compatible with the Treaties in accordance with Art. 93 TFEU.

## **Practice of Notification**

Before 2000, the Commission received no notifications from Member States about the public financing of port infrastructure. Member States considered that these investments amounted to general infrastructure that fell outside of State aid rules – open to all citizens and market players, under State sovereignty, etc. The port authorities were not seen as exercising an economic activity.

After 2000, the Commission approach changed, namely with the *Aéroports de Paris* judgement (T-128/98), which considered that the management and operation of airport infrastructure constitutes an economic activity. This judgement influenced the whole State aid approach to the public financing of transport (and other) infrastructure.

After 2011, Notifications of port infrastructure projects involving public funding increased since the *Leipzig-Halle* airport judgment (Case T-455/08) ruled that the construction of an airport is an inseparable part of the operation of an airport, and thus an economic activity (in line with the *Aéroports de Paris* judgement).

## **Existing Commission decisions on state aid to inland ports**

When notified, the Commission assesses the possible existence of state aid (Art. 107 TFEU) and the possible compatibility of this aid with the Treaties (Art. 93 TFEU). Art. 93 TFEU provides that an aid is compatible with the Treaties if it

- meets the needs of coordination of transport
- or it represents reimbursement for the costs the undertaking has to bear because of a public service obligation.

There have been a number of Commission decisions on state aid related to inland navigation and

to inland ports.<sup>1</sup> As far as EFIP is aware, these decisions were positive as to the compatibility of the aid granted. An analysis of these decisions does not suggest that there has so far been a problem with regard to state aid provided to inland ports.

## Benefits to the region

The existence of an inland port has positive effects on the region, as it provides sustainable transport options and attracts industries that are dependent on the transport infrastructure. Ports thus stimulate economic growth and create jobs. Equally, the closure of a port or the decline of its infrastructure due to a lack of investment would have a serious impact on the economic functioning of the entire region. Inland ports typically serve a broad range of companies, sometimes as far away as 100km.<sup>2</sup>

## Utilisation of existing capacity

EFIP is not aware of exact data on capacity utilisation in European inland ports. However, for liquid and dry bulk and for general cargo this seems to be largely in line with demand.

For container transport, forecasts generally predict an increase in volumes. This will require the creation of additional capacity, in particular in view of the above mentioned modal shift strategy of the EU.

## Impact of new investments on existing capacities

The creation of entirely new inland ports is, for the large part, not a likely development in the coming years. However, the existing ports will have to develop their infrastructure for combined transport in order to be able to deal with the forecast increase in volumes.

EFIP believes that in the case of such investments, which will most likely require state support, it makes sense to assess the effect on existing infrastructure. Some of the national laws implementing the Combined Transport Directive (e.g. in Germany) already require an assessment of the impact of aid on existing infrastructure, which is in fact similar to that proposed in the draft aviation guidelines. Should the Commission wish to further clarify this issue, this could be addressed in the next revision of the Combined Transport Directive.

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<sup>1</sup> These include, for example:

- N 159/2008 – FR – Aid to combined transport other than road
- N 678/2009 – BE – Aid to inland navigation in Brussels region
- SA.32224 – NDL – Alblasserdam Container Transferium
- SA.31825 – BE - Contaneirtransferium Beverdonk
- SA-33669 (2011/N) – AUT – Third Prolongation of the ERP Transport Programme
- SA.33434 (2011/N) – FR – Aid to Le Havre for the multimodal yard
- SA-34501 (2012/N) – DE – Extension of Konigs Wusterhausen/Wildau
- SA-35575 (2012/N) – FR – Modal shift to IWW

<sup>2</sup> EC decision COMP/M.2632 Bonn-Wesel-Range

## Conclusion

Competition in the inland ports sector is primarily inter-modal. Inland ports serve a broad range of industries both in the port and in the surrounding region, which depend on the existence of good transport infrastructure. Transport volumes are expected to increase in the coming years and the European Commission aims to shift long distance freight transport to sustainable forms of transport. Combined transport needs state aid to be able to compete with pure road transport. Such aid has so far been seen as compatible with the Treaties, in accordance with Art. 93 TFEU. An analysis of existing state aid cases does not indicate the existence of any specific problem or a need for further clarification or guidelines for inland ports.

In view of this finding and taking into consideration the considerable administrative burden linked to the obligation to notify, in particular where local and regional public entities are concerned, EFIP would welcome if the Commission developed pragmatic criteria for the inclusion of inland ports infrastructure in the scope of the General Block Exemption Regulation.