



Brussels, 03/07/2013
COMP/E3/H3/IA/jf/2013/68609

Permanent Representations of all the
Member States

Subject: HT 3989: State Aid – Questionnaire on the functioning and the taxation of ports

Dear Madam/Sir,

The purpose of this letter is to get an overview of the functioning of publicly-funded commercial ports in the Member States with a view of clarifying the possible impact of the State aid rules applicable to ports.

The Commission has engaged in a process of modernisation of State aid rules. On 8 May 2012 it adopted a Communication in this respect.¹ In this context, the Commission is revising several State aid Guidelines and Frameworks and it is also re-assessing the State aid approach to the public financing of infrastructure in several areas.²

On 23 May 2013 the Commission adopted an action plan on ports,³ where it indicated that it intended to clarify the notion of aid as regards the financing of infrastructure, including in the port sector (Action 5). The Commission has also recently carried out an impact assessment,⁴ in view of the adoption of the Regulation on market access to port services and financial

¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions: EU State Aid Modernisation (SAM), COM(2012) 209 final of 8.5.2012, available at <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0209:FIN:EN:PDF>.

² For instance, on 03.07.2013 the Commission launched a public consultation on the revision of the EU Guidelines on state aid to airports and airlines – further information is available at http://ec.europa.eu/competition/consultations/2013_aviation_guidelines/index_en.html.

³ Communication from the Commission: Ports, and engine for Growth, COM(2013)295 of 23.5.2013, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0295:FIN:EN:PDF>.

⁴ Commission Staff Working Document: Implementation Plan Accompanying the document Proposal for a Regulation of the European Parliament and of the Council establishing a framework on the market access to port services and the financial transparency of ports, SWD(2013)0183) of 23.5.2013, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2013:0183:FIN:EN:PDF>.

Please specify the name of the case and the case number in all correspondence.

transparency of ports.⁵ The information collected in this context has shed light on the need for more transparency in the sector.

In order to better inform the enforcement of state aid rules to the ports sector, the Commission would need additional information. In this context, the Commission services would like to gather information on 1) port infrastructure issues and 2) the corporate taxation regime applicable to the bodies responsible for managing ports in the different Member States. In the context of this letter, references to 'ports' should be understood to cover both sea and inland ports, as well as intermodal platforms.⁶

Under Article 107(1) of the Treaty on the Functioning of the European Union (TFEU) any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market. Article 107(3) TFEU lays down several exceptions from this prohibition principle. Notably, Article 107(3)(c) lays down that aid to facilitate the development of certain economic activities or of certain economic areas may be considered to be compatible with the internal market, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

1. Infrastructure

Following the *Leipzig/Halle* judgment of the European Court of Justice⁷ the European Commission received an increasing number of notifications of port infrastructure investment projects involving public support.

In this context, the purpose of the first part of the questionnaire is to collect information on ports which will enable the Commission to better understand the sector as far as the state aid policy is concerned and to reflect on how to deal with the public financing of port infrastructure from a State aid perspective.

2. Corporate taxation and State aid

While direct taxation, such as corporate taxation, is a matter exclusively for the Member States, it is established case law that in the exercise of their powers, Member States have to comply with the TFEU, and in particular with the State aid rules. Thus, the power of direct

⁵ Proposal for a Regulation of the European Parliament and of the Council establishing a framework on market access to port services and financial transparency, COM(2013)296 final of 23.5.2013, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0296:FIN:EN:PDF>.

⁶ Intermodal platforms offer the infrastructure and logistics necessary for switching among three types of freight transport: road, rail and water.

⁷ Joint Cases T-455/08 *Flughafen Leipzig-Halle GmbH and Mitteldeutsche Flughafen AG c/ Commission* and T-443/08 *Freistaat Sachsen and Land Sachsen-Anhalt c/ Commission* [2011] ECR II-1311 - confirmed on appeal by the Court of Justice with judgment of 19.12.2012 in Case C-288-11 P - *Mitteldeutsche Flughafen AG et al. v Commission*.

taxation remains a domestic right of Member States, which may choose the tax systems most suited to their preferences, provided they comply with European Law.

A total or partial exemption of corporate tax or a similar tax relief may raise State aid issues in so far as the managing bodies of ports and providers of port services are engaged in economic activities, regardless of their legal status and the way they are financed. The European Courts have consistently held that any activity consisting in offering goods and services on a market is an economic activity.

It is also established case law that the concept of State aid includes not only positive benefits such as subsidies but also State measures which mitigate the charges which are normally included in the budget of an undertaking and which are similar in character and effect to subsidies, such as tax advantages.

From the perspective of State aid, differential taxation has to be examined in light of the case law on the notion of selectivity. Differential taxation would be *prima facie* selective if it constitutes a departure from the general (or "reference") tax framework. In this regard, it needs to be assessed whether the measure favours certain undertakings in comparison with other undertakings, which are in a comparable legal and factual situation in light of the objective pursued by the tax reference system. According to the Court's case law a *prima facie* selective measure can be justified by the logic of the tax system. However, if not, it would amount to a selective advantage and, if all other conditions are fulfilled, it would be State aid within the meaning of Article 107(1) TFEU.

3. Request for information

In this context, the Commission services have prepared a questionnaire to collect information from Member States on ports. Although most of the questions can probably be answered by the national level of administration, we would also encourage you to disseminate this questionnaire to the level of your administrations which might be competent on port issues.

In your reply you are kindly requested to inform the Commission services whether or not any of the information is confidential⁸. Otherwise, the Commission services will consider that none of the information provided in your reply contains professional or business secrets.

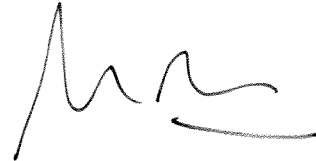
Your reply should reach the Commission within two months from the date of the present letter. Please send your reply to the State aid registry's mail address Stateaidgreffe@ec.europa.eu. The attached questionnaire is the English version. If you wish to receive the questionnaire in the national language of your Member State, please let us know within 5 working days after receipt of this communication.

⁸ Commission Communication on professional secrecy of 1 December 2003 – Official Journal C 297 of 9 December 2003, p. 6-9.

Yours faithfully,



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In attachment:

- Questionnaire
- List of ports

Questionnaire for Member States

A. General

Ownership and operation

1. Please provide the following information for each core port identified in Annexe II of the draft Regulation on the guidelines for the development of the trans-European network (the list is attached) and for each of the 5 largest intermodal platforms in your country in terms of annual throughput (uploaded and downloaded) or traffic volume: a) whether ownership is public or private (where mixed, please also indicate percentages); b) the legal status of the port owner and of the port manager; c) whether the port manager also operates the infrastructure, or the operation is entrusted to separate entities; d) whether it is a freight, passenger or mixed port; e) the annual throughput (cargo and/or passengers); f) whether the port manager has financial autonomy, i.e. capacity to raise and use its own resources independently of the public budget.
2. Please provide a separate list of the private-owned ports in your country (in case of mixed ownership, those ports where the private owners have control).
3. Are there regulatory barriers to private investment in port infrastructures in your country?
4. Are intermodal platforms different from sea and inland ports in terms of ownership and operation models? If so, are there any economic reasons for the differences?
5. Which port services are provided in your country by port management bodies,⁹ and which port services are provided by other public or private operators?¹⁰
6. Please indicate which port services can typically be offered on a profitable basis. Accordingly, which port services cannot be offered without state support? Clarify what port services are considered as a part of a public service required by the State.
7. Please detail the revenue sources of the management bodies of ports in your country and the typical share that port infrastructure charges¹¹ represent in the revenues of ports in your country.
8. List the types of fees/dues/taxes which are charged by the port managing bodies in your country, indicating how these fees/dues/taxes are set and changed/updated. Are there any

⁹ "Managing body of the port" means any public or private body which, whether or not in conjunction with other activities, has as its objective under national law or instruments the administration and management of the port infrastructures, port traffic, the coordination and, where appropriate, the control of the activities of the operators present in the port concerned (definition in the Commission Proposal for a Regulation on the market access of port services and the financial transparency of ports – see fn.5 above).

¹⁰ Typical port services include bunkering, cargo handling, dredging, mooring, passenger services, port reception facilities, pilotage and towage.

¹¹ "Port infrastructure charge" means a fee collected for the direct or indirect benefit of the managing body of the port and paid by the operators of waterborne vessels or cargo owners for the use of facilities and services that allow vessels entry and exit in and out of the port, including the waterways giving access to those ports, as well as access to the processing of passengers and cargo. Handling charges levied by terminal operators are not considered port infrastructure charges.

derogations from port fees/charges available in your jurisdiction? If so, please list the applicable derogations, and explain their rationale.

9. Please provide a concise explanation of the procedures for the conclusion of concession or other type of contracts (e.g. land lease contracts) with port service providers (such as terminal operators) and the method for establishing the concession/contract fees. Are concession/contract fees linked to traffic volume indicators? If so, are there any penalties applied for not meeting the agreed traffic volume indicators? Please give examples.
10. Please explain whether it is common practice for port service providers to negotiate prices with individual users or to apply uniform (list) charges.

Market developments and the approach to infrastructure investments

11. Where do you see the major competition challenges for ports in the medium-term (in the next 5 years) and long-term (after the next 5 years)?
12. Please explain the extent to which port users are able to and do switch between ports. Please explain which types of trade/port users are particularly "mobile". Please indicate, for the three largest ports in your country, the main users who have switched away to other ports in the past 5 years and explain why they have switched. Please indicate the volume that these users represented and, if known, the port to which they switched.

B. Public funding of infrastructure investments

13. Do you consider that the application of criteria similar to the approach set out for public investment in airport infrastructures in the draft EU Aviation Guidelines¹² would be suitable for port investments? Please provide reasons for your answer.
14. Please indicate what port services are considered to be within the public remit in your country. How are these activities defined and regulated in your country? Please differentiate if necessary between ports and intermodal platforms.
15. Do ports in your country keep separate accounts for services within the public remit?
16. Please indicate the usual sources of funding for each type of port infrastructure. Which types of infrastructure normally require state support for their construction, replacement and/or maintenance? Please, explain why.
17. Does the need for public funding of new port infrastructure or replacement and maintenance of existing port infrastructure vary according to the size of the port?
18. Please explain whether in your view the investment in, and operation of ports is associated with market failures, which prevent an efficient level of port services to be provided by private operators, without state support.

¹² See the text of the draft Aviation Guidelines, available at http://ec.europa.eu/competition/consultations/2013_aviation_guidelines/aviation_guidelines_en.pdf.

19. Based on your experience, please indicate whether there are wider benefits, i.e. positive externalities, to the region associated with the presence and the operation of a port. Which are the main entities that benefit from such externalities? Accordingly, are there negative externalities stemming from the presence and operations of a port and which are the affected entities?
20. Please indicate the level of capacity utilisation at ports in your country for the different types of trade (containers, bulk-carriers, oil, gas and chemicals tankers, car and special cargoes, ferry passengers, cruise-ship passengers). In your opinion, is there a problem/possible problem of overcapacity and/or congestion in the ports sector? Please explain your answer. Please also describe any major future developments in terms of port capacity in your country.
21. Would you find necessary/appropriate an approach looking at the impact of a new investment on existing capacities, such as the one developed in recitals 81 and 82 of the draft Aviation Guidelines?
22. How could maximum aid intensities based on traffic volume/ throughput thresholds, similar to those specified in recital 92 of the draft Aviation Guidelines, be defined for ports? Which metrics should be used for defining similar traffic volume thresholds for ports (for example tonnes of cargo, perhaps also differentiating by types of cargo, number of passengers, etc.)?
23. What would be, in your view, the period over which infrastructure investments of commercial nature become profitable? Are there differences in this respect to be made between the types of cargo transport hosted/number of passengers transported, and by traffic volumes?
24. In your experience, in the absence of state support, do investments to expand existing port capacities have a negative present value? (i.e. the discounted revenue flow during the lifetime of the investment is not sufficient to cover the cost of the investment) If so, please briefly explain the economic reasons.
25. To what extent there is a requirement or common practice among port authorities in your country to base their investment decisions on a business plan, i.e. an assessment of the expected profitability of the investment project relative to its costs over the lifetime of the investment.
26. Please indicate, for the different types of port infrastructure, the usual amortisation period and the required rate of return on the investment.
27. Do you consider that a discount rate of 5% is appropriate for calculating the funding gap of an infrastructure investment project?¹³ If not, how would you choose the discount rate for the purposes of calculating the funding gap for such investments, and why?
28. Please explain to what extent the port infrastructure is substitutable between the different types of cargo (containers, bulk cargo, oil, etc.)

¹³ The 'funding gap' is defined as the difference between the discounted eligible investment costs and the discounted revenues to be obtained by the owner of the infrastructure from the commercial exploitation of the infrastructure over a reference period of 25 years.

C. Operating costs

29. Are the revenues of port service providers in your country generally sufficient to cover their operating costs (including the cost of depreciation and their cost of finance (e.g. interest on debt)? Are the revenues of port service providers generally sufficient to cover operating costs excluding the cost of depreciation and the cost of finance? If not, please explain why and how they finance the continuation of their activity. In particular, please indicate if any port service providers in your country receive public funding in order to cover their operating costs? If so, please list the cases and explain. If so, do port service providers typically operate under fixed funding (e.g. specifying the amount of public funding for a certain number of years) or under flexible budgets (e.g. where the public funding is increased in function of the losses incurred)?
30. Do you consider that there is any need to allow operating aid for port service providers on a limited and transitional basis, e.g. for a maximum duration of 10 years? If so, please explain for what type of services.

D. Services of general economic interest

31. Please indicate if in your country there are cases of public compensation being paid to port managers and/or to port service providers for services of general economic interest. If so, please list the cases, and indicate if the compensation is provided on the basis of the 2005 SGEI Decision¹⁴ or on the basis of the 2012 SGEI package.¹⁵

E. Corporate taxation of ports

Overview of the corporate income taxation system applicable to the managing bodies of the port and to providers of port services (e.g. holders of terminal concession or lease contracts)

32. Please provide a comprehensive description of the corporate income tax regime in your Member State (including tax base, tax rate, taxable entities, main objective, etc.). Please provide a copy of the relevant laws, regulations, guidelines or implementing rules, or a link to the institutional website that provides direct access to the relevant documents.
33. Are the managing bodies of the ports and the providers of port services in your Member State subject to the general corporate income tax regime or is there a specific corporate tax regime for ports (either for all or for certain ports)? Please provide a comprehensive description of this specific regime and provide a copy of the relevant supporting documents containing the corporate tax provisions applicable to ports.
34. In case that there is a specific corporate tax regime for ports, does it apply equally to all ports or are there differences in its application? If so, please specify which are the differences.

¹⁴ Commission Decision of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest, Official Journal L 312, 29.11.2005, p. 67-73.

¹⁵ The legislation in the package is available at http://ec.europa.eu/competition/state_aid/legislation/sgel.html.

35. In case there is a specific corporate tax regime for ports, please explain which authorities at national, federal, regional or local level hold the competence on enacting the corporate tax regime applicable to ports.

Individual tax situation of a port

36. Corporate tax exemption applicable to managing bodies of ports and the providers of port services

- a) Do ports benefit from a total or partial corporate tax exemption? Please specify which ports benefit from the exemption.
- b) If so, who is the beneficiary of the tax exemption? Is it the owner of the port or the operator of the port activities?
- c) If so, since when is the corporate tax exemption in place?
- d) Has the corporate tax exemption been subject to amendments since its entering into force? If so, please describe the amendments, indicating since when they are in place?

37. Tax rulings applicable to ports

- a) Do tax rulings exist laying down the individual tax situation of a certain port?
- b) If so, for which ports?
- c) Since when do the tax rulings apply?
- d) Please provide a copy of the tax rulings.

38. Corporate tax rate

- a) What is the corporate income tax rate applicable to ports?
- b) Can the applicable tax rate be reduced in specific circumstances? If so, please provide an example of a possible scenario where the tax reduction might be applied.
- c) Can the effective tax rate vary in practice from the statutory tax rate due to other factors than those based on accounting requirements? If so, what is the estimated range of the effective tax rate?

39. Other corporate tax reliefs

- a) Are there any other corporate tax allowances such as bonuses, tax deductible expenses, etc. that are/can be granted to ports in your Member States?
- b) Can the taxable base be reduced for corporate tax purposes specifically for ports in your Member State? Please provide an example how the taxable base is calculated.

40. Justifications

- a) If there are any corporate tax advantages for ports please explain what you consider to be the main justification for such advantages.

Seaports and inland ports of the core network

MS	NODE NAME	SEAPORT	INLAND PORT
BE	Albertkanaal		Core
	Antwerpen	Core	Core
	Bruxelles/Brussel		Core
	Gent	Core	Core
	Kortrijk		Core (Bossuit)
	Liège		Core (Can Albert)
	Namur		Core (Meuse)
	Oostende, Zeebrugge	Core (Oostende)	Core (Meuse)
		Core (Zeebrugge)	
BG	Burgas	Core	
	Ruse		Core
	Vidin		Core
CZ	Decin		Core
	Mělník		Core
	Pardubice		Core
	Praha		Core (P. Holesovice)
DK	Aarhus	Core	
	København	Core	
DE	Berlin		Core
	Braunschweig		Core
	Bremen, Bremerhaven	Core (Bremen)	Core (Bremen)
		Core (Bremerhaven)	Core (Bremerhaven)
	Dortmund		Core
	Duisburg		Core
	Düsseldorf		Core (Neuss)
	Frankfurt/Main		Core
	Hamburg	Core	Core
	Hamm		Core

	Hannover			Core	
	Karlsruhe			Core	
	Koblenz			Core	
	Köln			Core	
	Lübeck		Core	Core	
	Magdeburg			Core	
	Mainz			Core	
	Mannheim			Core	
	Nürnberg			Core	
	Regensburg			Core	
	Rostock		Core		
	Stuttgart			Core	
	Wilhelmshaven		Core		
EE	Tallinn		Core (Old City Harbour)		
			Core (Muuga Harbour)		
			Core (Paljassaare Harbour)		
IE	Cork		Core		
	Dublin		Core		
	Limerick		Core (Shannon-Foynes)		
EL	Athens		Core (Piraeus)		
	Igoumenitsa		Core		
	Iraklion		Core		
	Patras		Core		
	Thessaloniki		Core		
ES	A Coruña		Core		
	Algeciras		Core (Bahía de Algeciras)		
	Barcelona		Core		
	Bilbao		Core		
	Cartagena		Core		
	Gijón		Core		
	Huelva		Core		
	Las Palmas		Core		
	Palma de Mallorca		Core		

	Sevilla	Core	Core	Core
	Tarragona	Core		
	Tenerife	Core (Santa Cruz)		
	Valencia	Core		
FR	Bordeaux	Core		
	Calais	Core		
	Chalon-sur-Saône		Core	
	Dunkerque	Core		Core
	Le Havre	Core		Core
	Lille			Core
	Lyon			Core
	Marseille	Core (Marseille)		
		Core (Fos-sur-Mer)		Core (Fos-sur-Mer)
	Metz			Core
	Mulhouse			Core (Ottmarsheim)
	Nantes Saint-Nazaire	Core		
	Paris			Core
	Rouen	Core		Core
	Strasbourg			Core
HR	Rijeka	Core		
	Slavonski Brod			Core
	Vukovar			Core
IT	Ancona	Core		
	Augusta	Core		
	Bari	Core		
	Cagliari	Core (P. Foxi)		
		Core (Cagliari)		
	Cremona			Core
	Genova	Core		
	Gioia Tauro	Core		
	La Spezia	Core		
	Livorno	Core		
	Mantova			Core

	Napoli	Core		
	Palermo	Core (Palermo)		
		Core (Termini Imerese terminal)		
	Taranto	Core		
	Venezia	Core		Core
LV	Rīga	Core		
	Ventspils	Core		
LT	Klaipėda	Core		
LU	Luxembourg			Core (Mertert)
HU	Budapest			Core (Csepel)
	Komárom			Core
MT	Marsaxlokk	Core		
	Valletta	Core		
NL	Almelo			Core
	Amsterdam	Core		Core
	Bergen op Zoom			Core
	Deventer			Core
	Hengelo			Core
	Moerdijk	Core		Core
	Nijmegen			Core
	Rotterdam	Core		Core
	Terneuzen, Vlissingen	Core (Terneuzen)		Core (Terneuzen)
		Core (Vlissingen)		Core (Vlissingen)
	Utrecht			Core
AT	Linz - Wels			Core (Enns),
	Wien			Core
PL	Gdąnsk, Gdynia	Core (Gdąnsk)		
		Core (Gdynia)		
	Szczecin, Świnoujście	Core (Szczecin)		Core (Szczecin)
		Core (Świnoujście)		Core (Świnoujście)
PT	Lisboa	Core		
	Porto	Core (Leixões)		Core

	Sines	Core	
RO	Calafat		Core
	Cernavodă		Core
	Constanța	Core	Core
	Drobeta Turnu Severin		Core
	Galați	Core	Core
SI	Giurgiu		Core
	Koper	Core	
	Bratislava		Core
	Komárno		Core
	Helsinki	Core	
FI	Kotka-Hamina	Core (Hamina)	
		Core (Kotka)	
	Turku-Naantali	Core (Turku)	
		Core (Naantali)	
SE	Göteborg	Core	
	Luleå	Core	
	Malmö	Core	
	Stockholm	Core (Stockholm)	
	Trelleborg	Core	
UK	Belfast	Core	
	Bristol	Core	
	Cardiff-Newport	Core (Cardiff)	
		Core (Newport)	
	Dover/Folkestone	Core	
	Edinburgh	Core (Forth, Grangemouth, Rosyth and Leith)	
	Felixstowe-Harwich	Core (Felixstowe)	
		Core (Harwich)	
	Glasgow	Core (Clydeport, King George V dock, Hunterston and Greenock)	
	Grimsby/Immingham	Core (Grimsby and Immingham)	
	Liverpool	Core	
	London	Core (London, London Gateway, Tilbury)	

	Milford Haven	Core		
	Southampton, Portsmouth	Core (Southampton)		
	Teesport	Core		