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Danish Ports concerning the GBER hearing

With great interest Danish Ports has read the European Commission's draft regulation of the General Block Exemption Regulation with a common interpretation of state aid, and when port infrastructure investments are exempted from the general state aid rules.

This response builds on the concerns already shared by Danish Ports and the European Sea Port Organisation (ESPO) in the first round of consultation on the GBER proposal.[1]

Danish Ports gives it's full support to the reply from ESPO on the second round of the consultation.

Challenges of the proposal

Danish Ports believes that the proposal content should be explored to ensure a sound implementation and consistency with the current practice:

1. make sure that the proposal does not open for more state aid and speculation in loss-making activities,
2. maintenance and dredging are integral parts of ports infrastructure. The government has certain obligations in particular transit and entry waters. It should be as natural that the state maintains and expands both the blue motorways of the sea as the grey roads on land, as this is in line with fair competition for all modes of transport,
3. the proposal should not hinder current and possible future funding mechanisms for the development of port infrastructure in relation to the current Danish municipal funding guarantee to the municipality owned ports,

Re 1 – More state aid and speculation in loss-making activities

From recital 7: "…, in particular by ensuring the proportionality. In order to be proportionate, the aid should not exceed the maximum permissible aid intensity provided for in this Regulation, which for maritime ports varies according to the size of the investment project. The aid amount should not go beyond the difference between the eligible costs and the operating profit of the investment ..."

[1] http://www.danskehavne.dk/wp-content/uploads/2016/05/Danish-Ports-GBER-state-aid-hearing-2016.pdf

Danish Ports raises the question whether the proposal (recital 7 and Article 56b paragraph 4-5) might be opening for speculation in infrastructure investment with operating loss. The aid is limited to the funding gap. But the aid intensity creates an incentive to calculate the maximum possible funding gap and thus the minimum private financing. A lower intensity and threshold would increase the requirements for notification of an investment project and opportunity to assess and analyse the economic sustainability of the proposed investment.

Article 56b paragraph 7, in conjunction with the intensity of the paragraph 4 (a) - (d) seeks to limit the splitting up of projects into smaller parts to utilize maximum state aid. The so-called salami method. Danish Ports sees a flaw in this method as ports' development projects are not necessarily linked, although they might be performed at the same time. It is important to prevent fraud in relation to investment aid, and therefore Danish Ports recognizes the purpose of the clause but it needs to take account of projects, which are not intrinsically linked to each other.

Danish Ports welcomes the proposal to ease the assessment of the needed aid intensities in case of very small projects as laid down in article 56b paragraph 10 and refers to the rewording suggested by ESPO.

Re 2 – dredging
According to Danish Ports, the proposal's definition of dredging is a challenge for current practice in Denmark.

Dredging associated with access to the port can be regarded as a non-economic activity - also with regard to ongoing maintenance to keep waterways accessible, why Danish Ports sees a lack of clarity in the proposal. Maintenance and deepening are integral parts of ports infrastructure. The government has certain obligations in particular transit and entry waters. It should be as natural that the state maintains and expands both the blue motorways of the sea as the grey roads on land, as this is in line with fair competition for all modes of transport.

Re 3 – Ensuring the Danish funding model
Modernisation of state aid rules for ports should take into account current national access for public investment funding and guarantees - not operational support.

Danish Ports considers it essential to emphasize that the Danish ports are large capital and employment-intensive companies that regardless of organizational form is predominantly owned by local authorities. Commercial ports expand and maintain complex infrastructure and therefore have an ongoing need for funding, which to a certain extent is financed through KommuneKredit (the Credit Institution for Local and Regional Authorities in Denmark).

Danish Ports presumes that the proposal will not affect the financing of Danish ports' current funding options via KommuneKredit. This needs confirming of the Danish Ministry of Business and Growth.

Danish Ports is a private association for commercial ports in Denmark, established in 1917. Member of European Sea Ports' Organisation (ESPO) with EU transparency register ID no. 040632614929-26. For more information: http://www.danskehavne.dk/?lang=en

Danish Ports can contribute to a more detailed discussion. For further information please contact Danish Ports on:

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