

Aid to port infrastructures in the GBER

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DISCLAIMER

"The views expressed are purely those of the speaker and may not in any circumstances be regarded as stating an official position of the European Commission."

Notion of State aid

Through the **GBER**, the Commission **can** define ex-ante **compatibility criteria** for unproblematic categories of aid.

The Commission **cannot** use the **GBER** to **define** whether certain types of measures constitute **State aid** or not.

Clarifications on the **scope** of State aid rules for infrastructure financing needs to come from other sources:

- Notice on the notion of State Aid ("**NoA**")
- **Analytical Grids** (updated following adoption of NoA)

Analytical Grids for Ports

Existence of State aid is excluded:

- **Public remit** activities (for example traffic control, protection against extreme weather conditions, police, customs, antipollution surveillance, control and security of navigation)
- Certain **access infrastructures**
- Measures with **no effect on trade**, purely local impact (for example small inland ports without connection to other MS)
- Operators/users pay **market fees**

After two public consultations, the new GBER provisions on ports were adopted on **14 June 2017** and published in the EU Official Journal on 20 June 2017.

GBER – OBJECTIVES

- Spell out compatibility criteria for unproblematic public measures that MS can **grant without notification**
- **Focus** on measures with big market impact / high potential of distorting competition

Some definitions

PORT – an area of land and water made up of such infrastructure and equipment, so as to permit the reception of waterborne vessels, their loading and unloading, the storage of goods, receipt and delivery of those goods and the embarkation and disembarkation of passengers, crew and other persons and any other infrastructure necessary for transport operations in the port

PORT INFRASTRUCTURE – infrastructure and facilities for the provision of transport related port services, for example berths used for the mooring of ships, quay walls, jetties and floating pantoon ramps in tidal areas, internal basins, backfills and land reclamation, alternative fuel infrastructure and infrastructure for the collection of ship-generated waste and cargo residues

PORT SUPERSTRUCTURE – surface arrangement (such as for storage), fixed equipment (such as warehouses and terminal buildings) as well as mobile equipment (such as cranes) located in a port for the provision of transport related port services

DREDGING – removal of sediments from the bottom of the waterway access to a port, or in a port.

Eligible costs + concept of a project

Eligible costs: *all investments costs*, including planning costs, for transport-related port infrastructure, access infrastructure and *all types of dredging (also maintenance dredging)*

NOT eligible: **superstructures** (surface arrangements, fixed equipment, mobile equipment, such as cranes), **industrial production facilities, offices, shops** in a port

Concept of "project" for the purpose of notification thresholds:

No definition of the notion of "project" in the GBER

- Functional / structural links, coherence
- Always defined per port, even if a given port authority controls several ports
- Further clarifications through interpretation questions

GBER includes safeguard against an artificial splitting of projects (Article 4(2)).

Aid intensities and notification thresholds



Port infrastructures:

Up to EUR 20m :	100%
Between EUR 20m and EUR 50m :	80%
Between EUR 50m and EUR 130m	60%
TEN-T core EUR 150m	60%

Access infrastructure:

Up to EUR 130m	100%
TEN-T core network up to EUR 150m :	100%

Dredging:

Up to EUR 130m (150m TEN-T core) per calendar year:	100%
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Port infrastructures:

Up to EUR 40m :	100%
TEN-T core network up to EUR 50m :	100%

Access infrastructure:

Up to EUR 40m :	100%
TEN-T core network up to EUR 50m :	100%

Dredging:

Up to EUR 40m (50m TEN-T core) per calendar year:	100%
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In any event, the aid amount shall not exceed
the so-called **funding gap**

Funding gap: the difference between the eligible costs and the operating profit of the investment.

The operating profit shall be deducted from the eligible costs:

- *Ex ante*, on the basis of reasonable projections, or
- *Ex post*, through a claw-back mechanism

Possibility to apply fixed aid intensity of 80% of eligible costs, instead of calculating the funding gap:

- Maritime ports – for aid not exceeding **EUR 5 mio**,
- Inland ports – for aid not exceeding **EUR 2 mio**

Port operators and port users

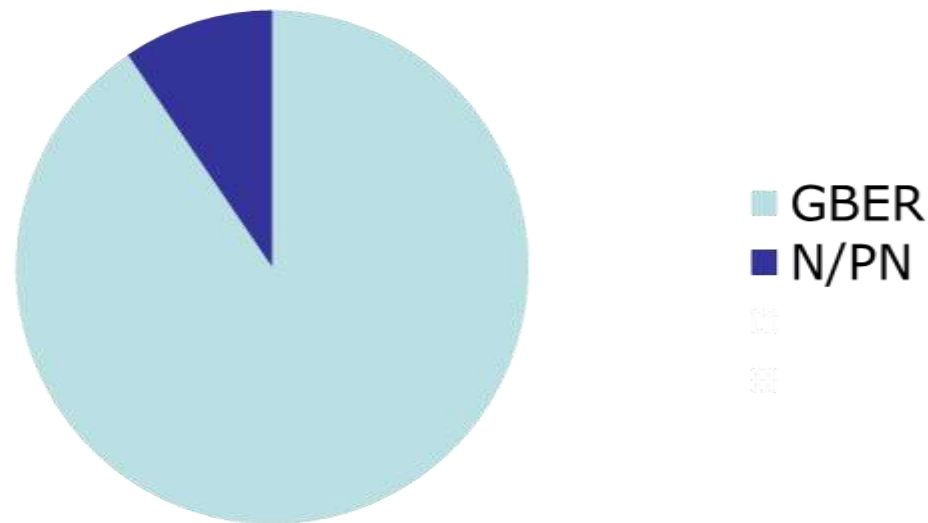
Port operators must be **selected** on **a competitive, transparent, non-discriminatory and unconditional basis**

Duration of concession – no limits (without prejudice to the EU law on public procurement and concessions, if applicable)

The aided port infrastructure shall be made available to interested users on an **equal and non-discriminatory basis** on **market terms**

GBER – EFFECTS

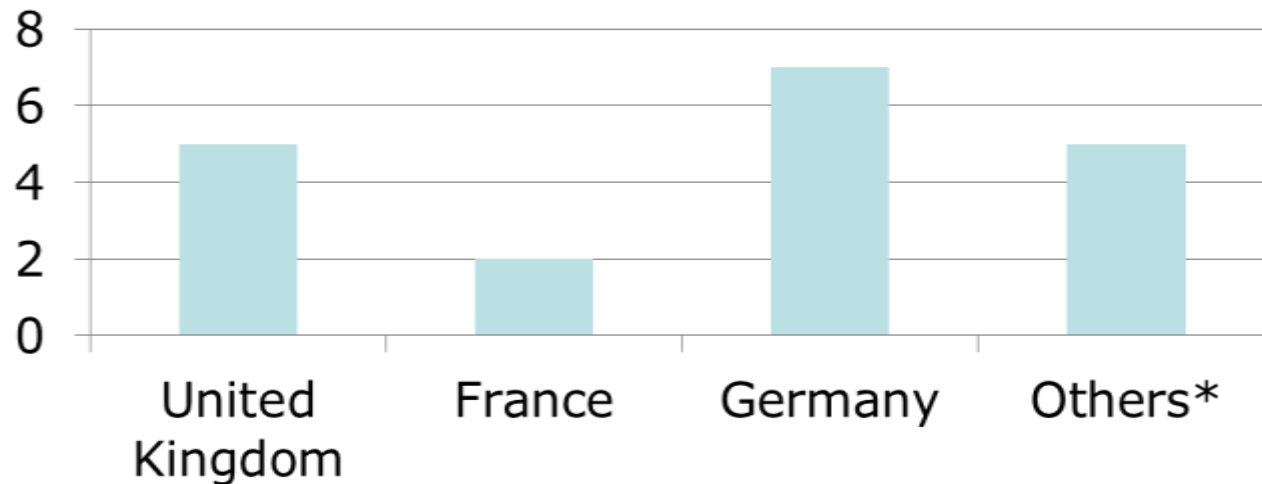
State aid to ports since July 2017



Since adoption of the GBER provisions on ports, out of 21 State aid measures, 19 were based on the GBER and only two were notified (N) / pre-notified (PN) to the Commission for assessment.

GBER – EFFECTS

8 Member States have already used GBER



* Romania, The Netherlands, Estonia, Latvia, Croatia

Back-up slides

Analytical Grid for Ports: Access infrastructures

E.g. public roads, rail, locks, rivers, access routes and channels

- **Outside the area of a port:** If available free of charge and on equal and non-discriminatory terms to all users, such infrastructures are normally considered to benefit society at large and their funding, therefore, does not constitute State aid.
- **Inside the area of a port:** Such infrastructures are normally considered to benefit the economic exploitation of that port. Their funding, therefore, normally constitute State aid.
Exception: an access infrastructure crossing a port and serving also other destinations (such as a river crossing a port and leading also to other ports).

GBER interpretation questions – notion of "project"

Several interventions conducted in **different ports** under the supervision of the same Port Authority count as **separate projects** for defining aid intensity thresholds under the GBER

Several interventions conducted in **different areas** of the **same port** can **either** be

- **related** (building a new quay and dredging in order to allow vessels to reach the new quay) → **1 project**; or
- **unrelated** (building a new quay and routine maintenance dredging) → **2 projects**