

State aid rules for port infrastructures

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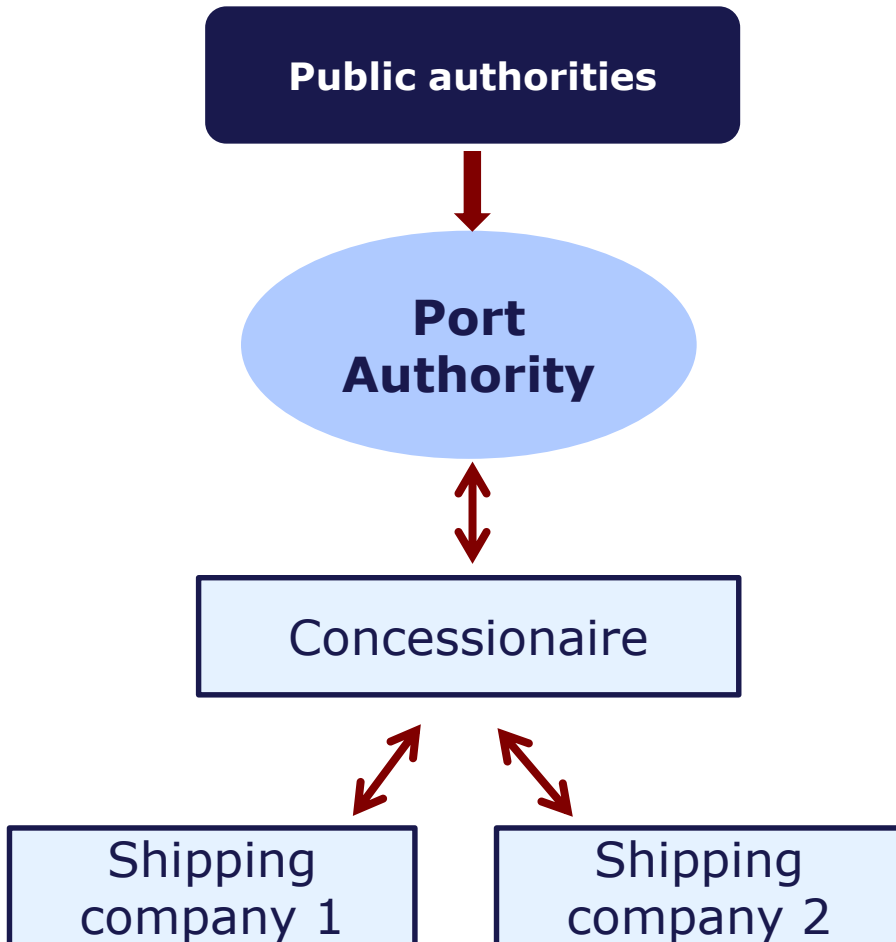
State aid and infrastructure funding

- Evolution: from "general measures of public policy" to measures subject to State aid control (Aéroports de Paris; Leipzig/Halle)
- Economic exploitation = economic activity (Leipzig/Halle)
- No economic exploitation = no economic activity
 - Exercise of public powers (public remit = police, military, customs,...)
 - Not used for offering goods/services on a market (roads for free public use)

Building blocks for State aid assessment

- *Individual cases*
- *Commission Notice on the notion of State aid ("NoA")*
- *Analytical Grid for Ports*
- *General Block Exemption Regulation (GBER)*
 - The updated GBER has been formally adopted on 14 June 2017 and published in the Official Journal under the following references: OJ L 156, 20.6.2017, p. 1–18

State aid: which level?

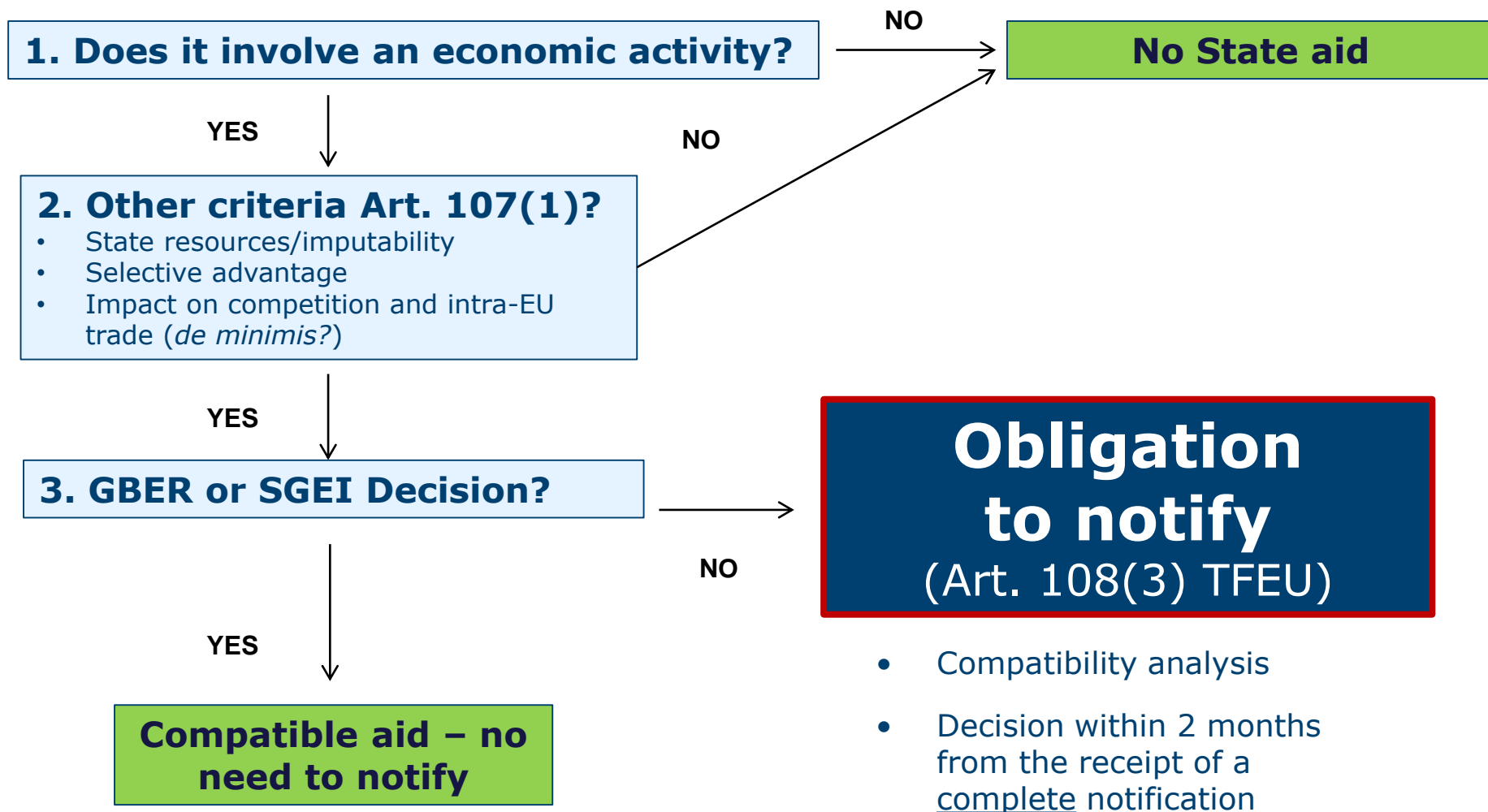


Existence of aid at the level of the owner/manager

Tender avoids State aid issues

Advantage excluded if market fees

Procedural steps



Analytical Grid for ports

- Updated version following the adoption of the NoA has been published on COMP website:

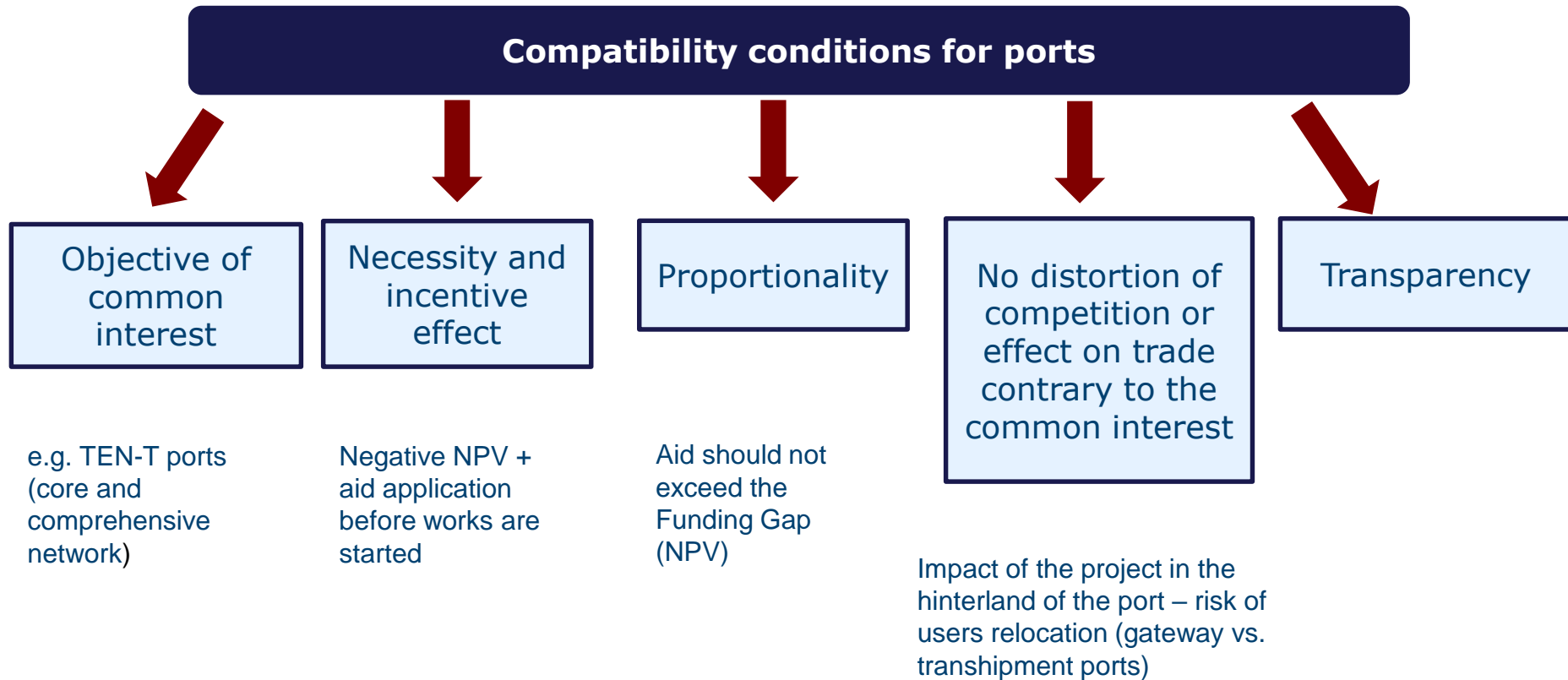
http://ec.europa.eu/competition/state_aid/modernisation/grid_ports_en.pdf

- Most important clarifications of when existence of State aid is excluded:

- **Public remit activities** (e.g. traffic control; protection and resilience against extreme weather conditions)
- **Certain access infrastructures**
- Measures with **no effect on trade**
- Operator/users pay **market fees**

Notification: compatibility

Article 107(3)(c) TFEU - aid to certain economic activities



GBER revision - 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)*

With the exception of all superstructures (e.g. surface arrangements, fixed equipment as well as mobile equipment, such as cranes)

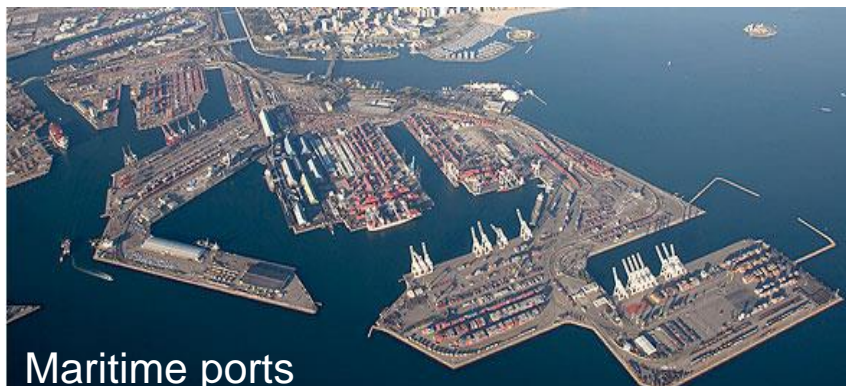
With the exception of industrial production facilities, offices, shops in a port

Concept of a project for the purpose of notification thresholds:

The notion of a **single investment project removed** because:

- it was leading to artificially grouping unrelated projects;
- practical problems for the calculation of aid intensities and quick excess of thresholds;
- the GBER already includes safeguards against an artificial splitting of projects (Article 4(7)).

Increased aid intensities and notification thresholds



Port infrastructures:

Up to EUR 20m :	Final 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 :	Final 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 use 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**

Selection of port operators, duration of concessions and conditions for access to 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**

Example – no aid (Case SA.44692 - Investment for the Port of Wyk on Föhr)

- EUR 10.9 million for a project which consists of three different parts: the renovation of one quay for ferries and the renovation of two piers.
 - Based on the following:
 - the geographical location of the Port on a small island in the North Friesian Sea that can only accommodate small ships not requiring a large depth and the fact that the project will not increase this depth;
 - the ships actually calling at the Port are almost exclusively local ships owned by local shipping companies;
 - the port is almost exclusively used to supply the island;
 - the pleasure trips for touristic purposes are limited to a local area (tourists are almost exclusively of German nationality);
- the Commission concluded that the competition for the services offered in connection with the notified project occurs at a purely local level (**no effect on trade**) → **NO AID**

Example – no aid (Case SA.35720 - Liverpool City Council Cruise Liner Terminal)

- Grant amounting to GBP 35 million to the Liverpool Port authority for the capital costs of dredging in the River Mersey estuary.
- Based on the fact that dredging in that estuary would improve access to the river and benefit indistinctly all the operators located in the estuary and along a further inland waterway, the Manchester Ship Canal,
- the Commission concluded that in this case dredging is a public work aimed at maintaining access to maritime routes for the benefit of the maritime community as a whole. As such it appears to be expenditure incurred by the State in the framework of its responsibilities for planning and developing a maritime transport system **in the interest of the general public and hence does not benefit a particular → NO AID**

GBER – interpretation questions – selected examples

1) If similar (or different) projects are undertaken in different ports of the same country and are under the supervision of the same Port Authority, should they be considered as the same project (and as such should be cumulated and one threshold should apply)?

→ The GBER defines exemption criteria for projects per port. As such, if similar (or different) projects are conducted in different ports of a country, even if these ports are under the supervision of the same Port Authority, the thresholds of aid intensity should be applied per port and per project.

2) If several projects in different areas of the same port are undertaken (for example the building of a new terminal and dredging works which are not related to the new terminal), should they be considered as the same project (and as such should be cumulated and one threshold should apply)?

→ On a case-by case basis, if the Member State can prove with convincing arguments that the projects are not related to each other, they should be treated separately and they should not be cumulated for the purpose of calculating the aid intensity under the relevant thresholds.

GBER – interpretation questions – selected examples

3) Can a harbour building (storage room, shower,...) be block-exempted under new Article 56b or 56c?

→ Potentially yes provided that it is exclusively dedicated to the staff of the port for providing transport related services.

4) Can a car park in a port be block-exempted under new Article 56b or 56c?

→ Potentially yes depending on the specificities of the case. A car park can be part of road access infrastructure facilities, in particular if it is accessible to all port users free of charge. However, it can also be considered as part of the superstructure (and consequently excluded from GBER), for example if it is rented to a concessionaire as storage space for cars before being shipped.

Thank you for your attention!