



Financing of infrastructure and State aid rules

JASPERS Networking Platform

**State Aid Legal Framework for the 2014-2020 programming
period**

8 July 2014

Types of Infrastructure

Airports

Ports

Motorways

Broadband

Culture (museums, operas, etc.)

Sport stadiums

Energy

Water

Research

Key questions

Does the use of infrastructure constitute an “economic activity”?

Would a market investor have financed the infrastructure?

Who are the potential aid beneficiaries?

Does the support affect trade and distort competition?

Is the aid compatible/does it fall under the GBER?

Undertaking/economic activity

Undertaking = engaged in economic activity, regardless of the legal status and the way in which it is financed

Economic activity = offering goods or services on the market

Status of the entity under national law not decisive → association/sports club can be an undertaking

Irrelevant whether entity is non-profit

Wide interpretation by EU Courts (C 276/97)

Economic activity/infrastructure (1)

- T-128/98 *Aéroports de Paris*: operation of an airport constitutes an economic activity
- T-433/08 & C-288/11 *Leipzig/Halle*: construction of infrastructure that is inseparably linked to its economic exploitation (e.g. commercial airport runway) constitutes an economic activity

Economic activity/infrastructure (2)

- Excluded are non-economic activities
 - Public remit activities such as security, safety, police, customs
 - Not commercially exploited infrastructure such as public roads, parks, canals
 - Not liberalised activities such as management of railway infrastructure

Infrastructure levels for State aid analysis

Owner of the infrastructure
(e.g. port/airport authority)



**Concession holder/
Operator** of the infrastructure



User
(e.g. shipping lines/airlines/consumers, passengers)



Aid for the infrastructure owner/operator

MEO conform investment if investor (regional authority) recovers the investment costs plus a reasonable profit from the owner

If investment is not MEO conform, owner/operator is State aid beneficiary

Aid for the infrastructure operator

advantage to operator excluded if the price paid for managing the infrastructure is market conform (ex: established on the basis of a competitive tender)

- creates a level playing field and eliminates any residual advantage that benefited the construction of the infrastructure
 - establishes the market value of the use of the infrastructure
 - See recent *Port of Salerno Decision* (SA.38302)
- ≠ tendering of aid (broadband, energy: operator usually also builds the infrastructure)

Aid for the infrastructure user

Open, non-discriminatory access

Payment of market prices

- Benchmarking
- Incremental cost approach (Aviation Guidelines)

Dedicated/user-specific infrastructure =
full cost recovery

Effect on trade

Infrastructure with limited effect on trade:

- swimming pools and other leisure facilities intended predominantly for a local catchment area;
- museums or other cultural infrastructure unlikely to attract visitors from other Member States;
- hospitals and other health care facilities aimed at a local population;
- a conference centre, where the location and the potential effect of the aid on prices is unlikely to divert users from other centres in other Member States.

Compatibility

Compatibility of the infrastructure investment:

- GBER (broadband, energy, research, culture, sport, local infrastructures)
- Guidelines (e.g. Aviation Guidelines)
- Case-by-case assessment based on Art. 107(3)(c) TFEU (ports)
- SGEI rules

Thank you for your
attention!

Questions?



For info or further questions on this presentation, or on the activities of the JASPERS Networking Platform please contact:

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