



EUROPEAN UNION

State aid: the Commission aims the stevedoring sector

⑦ Decision SA.25338 of the European Commission, Netherlands, January 21, 2016

⑦ Decision SA.38393 of the European Commission, Belgium, January 21, 2016

⑦ Decision SA.38398 of the European Commission, France, January 21, 2016

⑦ Decision SA.35905 of the European Commission, Port of Antwerp, January 15, 2016

On January 21, 2016, the Commission adopted three decisions concerning exemptions on corporate tax applying to certain ports in the Netherlands, France and Belgium.

The Commission found that those tax exemptions are likely to infringe EU state aid rules: the Commission considered that ports conduct economic activities different from those related to infrastructure operations involving the exercise of the essential responsibilities of the State that are essential government functions (e.g. safety, surveillance, traffic control), i.e. public service obligations, which are

beyond the control of state aid. Conversely, the profits generated in the context of these activities must be subject to the general corporate tax system in order to avoid any distortion of competition.

The exemptions targeted by the Commission constitute “existing aid”—in other words, aid granted prior to the entry into force of the Treaty of Rome. This type of aid is subject to a special regime of cooperation under which the concerned Member States must align their legislation to the EU state aid rules.

Each Member State has two months to comply with the Commission's requirements or the Commission will be allowed to open formal in-depth investigations.

In another decision relating to container terminals, the Commission opened an in-depth probe into alleged aid given by the public port of Antwerp (Belgium) to container-terminal operators. The investigations focus on reductions of compensation granted to SA Antwerp NV and Antwerp Gateway NV that might constitute an undue advantage over competitors, infringing the EU State aid rules.

In the present case, the public authority responsible for the management of the port of Antwerp had signed two concession agreements with two operators concerning the provision of land for carrying out their activities within the port of Antwerp.

These agreements contain minimum tonnage requirements pursuant to which the two operators committed to handle

a minimum number of containers in the port each year. If the operators failed to comply with this condition, they were required to pay compensation to the port authority. However, during the period between 2009 and 2012, the tonnage requirements were not met and the port authority did not collect the compensation fee due by both operators and retroactively reduced the minimum tonnage requirements for March 2013 (by approx. 80%).

Following a complaint from a competitor, the Commission opened an in-depth investigation to assess whether the fact that the port authority reduced the compensation fee constitutes a State aid, and if so, whether this aid complies with EU State aid rules. The Commission officially published its formal letter on March 18, 2016, thereby giving a month to interested third parties to comment on its preliminary findings.