

1. Programme:

ECJ 2021-2027

2. Title of aid Measure:

Provision of onshore power supply in the Freeport Terminals (Ten-T port) – *Ad hoc* aid to Malta Freeport Corporation

3. Organisation/entity administering the Measure:

Planning and Priorities Coordination Division (PPCD)

4. Description

This ad hoc aid measure will provide assistance in the form of a grant and will be implemented under the Just Transition Fund, specifically under Priority 8 Specific Objective JS08.1 "Provision of onshore power supply within the two TEN-T CORE ports of Malta."

This ad hoc aid measure will focus on the provision of high voltage shore connections system in the Freeport Terminal. The terminals are located within the peripheral area of the small coastal village of Birzebbuga located at the southernmost tip of the Maltese Islands, and within the TEN-T Core port of Marsaxlokk. The investment will take place in North Quay Terminal 1 (NQT1) and North Quay Terminal 2 (NQT2).

The proposed measure is intended to enable regions and people to address the social, employment, economic and environmental impacts of the transition towards the Union's 2030 targets for energy and climate and a climate-neutral economy of the Union by 2050, based on the Paris Agreement.

More specifically, the measure is expected to result in a substantial reduction in GHG emissions in the maritime sector and to a decrease in pollution of the marine environment, air emissions as well as noise.

Overall, such investment is conducive to sustainable operations which are expected to have a direct impact on the quality of life.

The ad hoc aid measure will be implemented in line with all the conditions of the applicable provisions of the General Block Exemption Regulation.

5. The applicable State aid regime (regulations, guidelines, frameworks) in line with which the measure will be implemented

This ad hoc aid measure will be implemented in line with Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, as amended by Commission Regulation (EU) No 2017/1084 of 14 June 2017 amending Regulation (EU) No 651/2014 as regards aid for port and airport infrastructure, notification thresholds for aid for culture and heritage conservation and for aid for sport and multi-functional recreational infrastructures, and regional operating aid schemes for outermost regions and amending Regulation (EU) No 702/2014 as regards the calculation of eligible costs, by Commission Regulation (EU) 2020/972 of 2 July 2020 amending Regulation (EU) No 1407/2013 as regards its prolongation and amending Regulation (EU) No 651/2014 as regards its prolongation and relevant adjustments, and by Commission Regulation (EU) 2021/1237 of 23 July 2021 amending Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, particularly Article 56b thereof.

6. Target Beneficiary

The intended beneficiary under this ad hoc aid measure is the Malta Freeport Corporation, which qualifies as a large undertaking.

The targeted beneficiary does not fall under any of the excluded sectors listed in Article 1 of the General Block Exemption Regulation (GBER).

Assistance under this ad hoc aid measure will not be paid in favour of an undertaking which is subject to an outstanding recovery order following a previous Commission decision declaring an aid granted by Malta illegal and incompatible with the internal market.

7. Budget and date of granting of the measure

The overall amount of the ad hoc aid measure is € 12,000,000 The date of granting of the ad hoc aid measure is 1st August 2022.

8. Maximum applicable aid intensity

The amount of State aid shall not exceed 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 through a claw-back mechanism.

The applicable aid intensity for investments for the construction, replacement or upgrade of port infrastructure is based on the relevant criteria of Article 56b(5) of the General Block Exemption Regulation. The project being proposed by the Malta Freeport Corporation shall benefit from an aid intensity of 100 % of the eligible costs, since the total eligible costs of the project will not exceed €20 million.

9. Eligible costs and eligible expenses to be covered by the State aid measure

Costs under this ad hoc aid measure shall be deemed eligible unless deemed ineligible in accordance with the National Eligibility Rules for the 2021-2027 Programming Period, available at: https://fondi.eu/wp-content/uploads/2023/09/2021_2027_National-Eligibility-Rules.pdf.

The aid will take the form of investment aid, where the eligible costs shall be the costs, including planning costs, of:

- (a) investments for the provision of construction, replacement or upgrade of port infrastructures;
- (b) investments for the investments for the provision of high voltage shore connection systems including ancillary equipment;
- (c) project management costs related to the said investments.

Costs relating to non-transport related activities, including industrial production facilities in a port, offices, or shops, as well as for port superstructures shall not be eligible.

The eligible costs of this project will not exceed €130 million per project, and shall be supported by clear, specific, and contemporary documentary evidence.

For the purposes of calculating the aid intensity and eligible costs, all figures used shall be taken before any deduction of tax or other charge. Value added tax charged on eligible costs or expenses that is refundable under the applicable national tax law shall, however, not be taken into account for calculating the aid intensity and eligible costs.

The amounts of eligible costs may be calculated in accordance with the simplified cost options set out in Regulation (EU) 2021/1060 of the European Parliament and of the Council, or Regulation (EU) 2021/1060 of the European Parliament and of the Council, whichever is applicable, since the operation is partly financed through a Union fund that allows the use of simplified cost options, and the category of costs is eligible according to Article 56b GBER.

The eligible costs shall be discounted to their value at the moment the aid is granted. The interest rate to be used for discounting purposes shall be the discount rate applicable at the moment the aid is granted.

The Application Form also clearly states that if State Aid rules are breached, even following the conclusion of the project, any grant may have to be recovered, even if already paid.

10. Conditions to be fulfilled for eligibility of aid under this State aid measure

The eligibility criteria as established by the Monitoring Committee for the ERDF/CF/JTF Programme for project selection are the following:

- Submission of a complete project application as published in the call
- Applicant organisation is an eligible Applicant as outlined in the call
- Applicant is not in an exclusion situation in accordance with Art 136(1) and Art 141(1) of 2018/1046 Financial Regulation, CPR Art 73(2)(i), and the relevant applicable provisions of Article 1 of the GBER
- Applicant organisation has remit to implement the project within its mandate
- Project to be implemented within the eligible territory or for its direct benefit
- Proof of co-financing (where applicable)
- Selection of a relevant Specific Objective as published in the call
- Selection of at least one output indicator and one result indicator linked to a relevant Specific Objective as published in the call
- Status of operation is either ongoing or not yet started unless otherwise allowed by the specific applicable regulations
- Compliance with Climate Proofing requirements (where relevant)
- Compliance with the DNSH principle

The proposal should pass all the eligibility criteria mentioned above and obtain at least 50% marks allocated to the Selection Criteria during the project selection process.

The Selection Criteria are as follows:

- Capacity of the organisation
- Contribution of the project to the relevant Development Needs
- Potential of the project to contribute to the achievement of the Expected Results
- Contribution towards indicators
- Readiness
- Project Sustainability
- Horizontal principles – Equal opportunities and non-discrimination
- Horizontal principles - Sustainable Development
- Quality of application form

The aid is considered to have an incentive effect since the beneficiary has submitted an application for the aid, prior to the start of works, i.e. before work on the project or activity starts.

Furthermore, in view of this being an ad hoc aid measure to a large undertaking, PPCD shall also verify before granting the aid concerned, that documentation prepared by the beneficiary establishes that the aid will result in one or more of the following:

- a material increase in the scope of the project/activity due to the aid, or
- a material increase in the total amount spent by the beneficiary on the project/activity due to the aid, or
- a material increase in the speed of completion of the project/ activity concerned.

Any concession or other entrustment to a third party to construct, upgrade, operate or rent aided port infrastructure shall be assigned on a competitive, transparent, non-discriminatory and unconditional basis.

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

Assistance under this ad hoc aid measure will not be awarded in favour of a beneficiary which is subject to an outstanding recovery order following a previous Commission decision declaring an aid granted by Malta illegal and incompatible with the internal market.

Furthermore, it shall be ascertained that the beneficiary is not an undertaking in difficulty as defined in terms of the GBER. However, aid may be granted should the undertaking not have been in difficulty on 31 December 2019 but became an undertaking in difficulty in the period from 1 January 2020 to 31 December 2021.

The Application Form also clearly states that if State Aid rules are breached, even following the conclusion of the project, any grant may have to be recovered, even if already paid.

Moreover, it will be ensured that this measure will not entail, by itself, by the conditions attached to it, or by its financing method, a non-severable violation of European Union law, in particular:

- a) the granting of aid is not subject to the obligation for the beneficiary to have its headquarters in Malta or to be predominantly established in Malta; However, the requirement to have an establishment or branch in Malta at the moment of payment of the aid, is allowed.
- b) the granting of aid is not subject to the obligation for the beneficiary to use nationally produced goods or national services;
- c) the measure will not restrict the possibility for the beneficiary to exploit any research, development and innovation results in other Member States.

11. Provisions limiting the cumulation of State aid

In determining whether notification thresholds and maximum aid intensities are respected, the total amount of State aid for the aided activity or project shall be taken into account.

Where Union funding centrally managed by the institutions, agencies, joint undertakings or other bodies of the Union that is not directly or indirectly under the control of the Member State is combined with State aid, only the latter shall be considered for determining whether notification thresholds and maximum aid intensities or maximum aid amounts are respected, provided that the total amount of public funding granted in relation to the same eligible costs does not exceed the most favourable funding rate laid down in the applicable rules of Union law.

Aid granted under this *ad hoc* aid measure may be cumulated with:

- a) any other State aid, as long as those measures concern different identifiable eligible costs,
- b) any other State aid, in relation to the same eligible costs, partly or fully overlapping, only if such cumulation does not result in exceeding the highest aid intensity or aid amount applicable to this aid under the GBER.

State aid awarded under this *ad hoc* aid measure shall not be cumulated with any de minimis aid in respect of the same eligible costs if such cumulation would result in an aid intensity exceeding those laid down in the GBER.

12. Obligation on the State aid grantor and the beneficiary to retain records

Records on State aid awarded under this *ad hoc* aid measure will be maintained by PPCD for 10 years from the date on which the *ad hoc* aid was granted, in accordance with Article 12 GBER.

The beneficiary must ensure that all supporting documents related to Project are retained for five years from 31 December of the year in which the final payment to the beneficiary is made. This retention period may be interrupted in the event of legal proceedings or upon a request from the European Commission.

13. Transparency and Reporting obligations

In line with Article 9(1)(c) of the General Block Exemption Regulation, information regarding any individual aid awards that exceed €500,000 are to be made publicly available on the Commission's transparency award module within six months from the date when the aid was granted.

In line with Article 11(1)(b) of the General Block Exemption Regulation, an annual report, as referred to in Commission Regulation (EC) No 794/2004, will be submitted to the European Commission in electronic form, on the application of the GBER, containing the information indicated in that Regulation, in respect of each whole year or each part of the year during which this Regulation applies.