

# Public questionnaire for 2018 Evaluation of Consortia Block Exemption Regulation

Fields marked with \* are mandatory.

## Introduction

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### Background and aim of questionnaire

Consortia are agreements between liner shipping carriers for the joint operation of maritime transport service. The Consortia Block Exemption Regulation, Commission Regulation 906/2009 ("Consortia BER"), sets the specific conditions under which certain consortia agreements can benefit from exemption to Article 101(1) of the Treaty on the Functioning of the European Union ("TFEU") in accordance with Article 101(3) TFEU. These conditions aim at ensuring that consumers enjoy a fair share of the resulting benefits. The current Consortia BER will expire on 25 April 2020.

The current Consortia BER is based on the enabling Council Regulation 246/2009 which provides that, in accordance with the provisions of Article 101(3) TFEU, the Commission may, by way of Regulation, exempt consortia agreements from the application of Article 101(1) TFEU, for a period limited to five years but with the possibility of prolongation.

This public questionnaire represents one of the methods of information gathering in the evaluation of the Consortia BER, which started in May 2018. In order to assess the impact and relevance of Consortia BER, the specific purpose of this questionnaire is to collect views and evidence from the public and the stakeholders on the following criteria: Effectiveness, Efficiency, Relevance, Coherence and EU added value. The collected information will provide part of the evidence base for determining whether the Consortia BER should be left to expire or prolonged (and if so, under which conditions).

The responses from this consultation will be analysed and the summary of the main points and conclusions will be made public on the [consultation website](#).

Nothing in this questionnaire may be interpreted as stating an official position of the European Commission.

### Submission of your contribution

You are invited to reply to this public consultation preferably by answering the questionnaire online. To facilitate the analysis of your replies we would kindly ask you to keep your answers concise and to the point. You may include documents and URLs for relevant online content in your replies.

Alternatively, you can send your contribution by email to the following functional mailbox: [COMP-CONSORTIA-EVALUATION-2018@ec.europa.eu](mailto:COMP-CONSORTIA-EVALUATION-2018@ec.europa.eu).

For your information, you have the possibility to save your questionnaire as "draft" and continue replying later. In order to do this you have to click on "Save as Draft" and save the new link that you will receive from the EUSurvey tool on your computer. Please note that without this new link you will not be able to access again and continue replying to your questionnaire.

## Duration of the consultation

The consultation on this questionnaire will be open for 12 weeks from 27/09/2018 to 20/12/2018.

## Privacy and Confidentiality

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In the responses to this questionnaire the identity of the stakeholder should be clearly indicated in the section "Stakeholder's profile". If available, the ID number of the EU [Transparency Register](#) should also be provided.

### \* Publication Privacy Setting

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

- ☐ **Anonymous** - Only your type, country of origin and contribution will be published. All other personal details (name, organisation name and size, transparency register number) will not be published.
- ☒ **Public** - Your personal details (name, organisation name and size, transparency register number, country of origin) will be published with your contribution.

☒ \* I agree with the [personal data protection provisions](#).

## Stakeholder's profile

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1. You are replying:

- ☐ As an individual in your personal capacity
- ☒ In your professional capacity on behalf of an organisation

4. a) Country of residence

- ☐ Austria
- ☐ Belgium
- ☐ Bulgaria
- ☐ Croatia
- ☐ Cyprus
- ☐ Czech Republic
- ☐ Denmark
- ☐ Estonia
- ☐ Finland
- ☐ France
- ☐ Germany
- ☐ Greece

- ☐ Hungary
- ☐ Ireland
- ☐ Italy
- ☐ Latvia
- ☐ Lithuania
- ☐ Luxembourg
- ☐ Malta
- ☐ Netherlands
- ☐ Other
- ☐ Poland
- ☐ Portugal
- ☐ Romania
- ☐ Slovak Republic
- ☐ Slovenia
- ☐ Spain
- ☐ Sweden
- ☒ United Kingdom

5. Name of organization

Global Shippers Forum

6. a) Type of organization:

- ☐ Company
- ☐ Professional consultancy, law firm, self-employed lawyer/consultant
- ☐ Research and academia
- ☒ Nongovernmental organisation or association
- ☐ International, national, regional or local public authority
- ☐ Other

7. a) Type of company:

- ☐ Carrier
- ☐ Shipper
- ☐ Freight-forwarding company
- ☐ Logistics company
- ☐ Port authority or port services provider
- ☒ Other

7. b) If Other, please specify which type of company:

Non-Governmental organisation representing shippers

8. Is your organisation included in the Transparency Register?

- ☒ Yes
- ☐ No

If your organisation is not registered, we invite you to register here, although it is not compulsory to be registered to reply to this consultation. [Why a transparency register?](#)

9. Please describe the activities of your organisation.

*250 character(s) maximum*

The Global Shippers Forum represents the collective interests of businesses who are shippers of cargo in all modes but largely deep sea container shipping and air freight services.

## Section 1: Effectiveness

Consortia are cooperation agreements between carriers and, where concluded between competitors, may potentially fall under Article 101 TFEU. Carriers are therefore required to assess whether their cooperation agreements are compliant with Article 101 TFEU. For that purpose the Consortia BER may provide guidance.

10. a) Do you consider that the Consortia BER provides high level of legal certainty?

☐ Yes

☒ No

10. b) Please explain.

*1000 character(s) maximum*

There is little or no legal certainty for shippers as the self-assessments of compliance made by shipping lines are not made public. Shippers have no means of assessing the degree of legal certainty the BER affords shippers. There remains suspicion that the coincidence of timings and magnitude of surcharge announcements between shipping lines demonstrates confidence in patterns of behaviour that would otherwise suggest collusion. In general, shippers question the grounds for shipping lines to be granted exemptions from normal competition law not available in other economic sectors

11. a) Please estimate the level of legal certainty provided by the Consortia BER on the following issues:

|   | Very high             | High                  | Intermediate                     | Low                              | Very low              | I don't know          |
|---|-----------------------|-----------------------|----------------------------------|----------------------------------|-----------------------|-----------------------|
| Market definition   | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/> |
| Market share calculation  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Exchange of information   | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/> |
| Capacity adjustments in response to fluctuations in supply and demand | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| The concept of highly integrated consortia                            | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/> |
| Overall compliance with competition law                               | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |

|  |                       |                                  |                       |                       |                       |                       |
|--|-----------------------|----------------------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| The right to withdraw and notice period for members' exit from consortia | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
|--|-----------------------|----------------------------------|-----------------------|-----------------------|-----------------------|-----------------------|

11. b) Please explain the reasons for your rating.

*1000 character(s) maximum*

GSF considers this to an unreasonable question for the Commission ask of shippers because the definition of certainty is not given and there is no reference point or benchmark behaviour against which to assess shippers' experiences in the shipping market, since the shipping industry has acted under legal protections (e.g. Block Exemptions) for so long there is no reliable corporate memory of conditions under normal competition rules.

12. a) Based on your experience, to what extent does self-assessment of a consortium's compliance with EU competition law rely on instruments other than Consortia BER that provide guidance on the interpretation of Article 101 TFEU (for example: the Horizontal Guidelines, Article 101(3) Guidelines, the Specialisation BER and EC decisional practice)?

|                                 | Very high             | High                  | Intermediate          | Low                   | Very low              | I don't know                     |
|---------------------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|----------------------------------|
| Horizontal Guidelines           | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| Article 101 (3) TFEU Guidelines | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| Specialisation BER              | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| EC decisional practice          | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| Other                           | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |

12. b) Please explain the reasons for your rating.

*1000 character(s) maximum*

Neither the Global Shippers Forum nor its member associations or shippers have any means of answering this question as it assumes experience in conducting a self-assessment under the Consortia BER, which is a practice required only of shipping lines co-operating in Consortia.

13. a) Does the Consortia BER encourage types of cooperation that are not efficient or do not benefit customers?

- ☐ Yes  
☒ No

13. b) Please provide examples and explain how prevalent they are.

*1000 character(s) maximum*

The types of behaviour that would be of most concern to shippers are price-fixing and capacity management. There is little evidence to suggest that either of these practices are engaged in by shipping lines co-operating in Consortia. Market rates are currently at historic lows, as evidenced by the current low market rates and surplus capacity on vessels. Of course the same outcome could also be explained by exchange of pricing information between shipping lines acting in Consortia, with individual lines using such information to price competitively against their Consortia partners to preserve market share. The protection afforded by Block Exemptions make this pattern of behaviour difficult for market authorities to detect and act upon.

14. a) Conversely, does the Consortia BER discourage any practices that would be efficient and benefit customers?

☒ Yes

☐ No

14. b) Please provide examples and explain how prevalent such types of cooperation could be.

*1000 character(s) maximum*

Shippers have reported a reduction in the number of port calls made by vessels operated in some Consortia in the past two to three years and a reduction in the number of sailings operated a week. Shippers persistent criticism of the market has been the deterioration of service standards in many Consortia, with the inability to secure reliable performance against agreed contract terms. There is a widespread belief that Block Exemption discourages innovation and experimentation as the unity of the Consortia seems to be more highly prized than the distinctiveness of the service offered by individual members.

15. a) In your experience, do members of the same consortium compete between themselves in terms of prices or certain types of services?

☒ Yes

☐ No

15. b) Please explain.

*1000 character(s) maximum*

This is a default assumption as there is little reliable evidence to suggest otherwise.

## Section 2: Efficiency

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16. Does the compliance with Consortia BER generate costs? Would you be able to quantify them (in absolute value as well as relative value, i.e. percentage of your annual turnover)? Please explain.

*1000 character(s) maximum*

Costs of compliance with the BER fall to individual shipping lines and are not directly incurred by shippers.

17. a) In your view, if the Consortia BER were not prolonged and self-assessment would rely on other instruments that provide guidance on the interpretation of Article 101 TFEU (for example: the Horizontal Guidelines, Article 101 (3) Guidelines, the Specialisation BER and EC decisional practice) would the costs of compliance increase?

☐ Yes

☒ No

17. b) Please explain and provide estimate of the change in compliance costs.

*1000 character(s) maximum*

In these circumstances the costs of compliance for shipping lines should be no greater than incurred by entities in any other sector of commerce subject to those rules. There may be a one off change in costs upon commencement but there should be no reason why in the long run these costs should be above the average incurred in commerce, unless shipping lines engage in practices that require higher than average compliance assessment, in which case the higher costs would be justified.

## Section 3: Relevance

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18. What were the major trends and changes in the liner shipping industry in the past 5 years?

*1000 character(s) maximum*

An increase in average vessel size with the introduction of 17,000+ teu vessels on Asia-Europe trades and consequent cascading of vessels into quieter trades; the establishment of shipping Alliances on the major trades offering uniformity of service and loss of service differentiation; a substantial change in the market shares on these trades controlled by the members of these Consortia, compared to 5 years ago; a collapse in shipping rates and seemingly greater reliance by shipping lines on surcharges to recover revenue, the emergence of environmental regulation and the holding of the shipping industry to higher environmental and safety standards affecting operating costs and changed capital investment profiles; and a persistence in the belief that sustainable profitability lies in the procuring and deployment of larger vessels that runs counter to the trends in world trade and the expectations of the market.

19. a) Have you noticed any or more of the following changes to the consortia landscape in the past 5 years:

|  | Significant increase             | Moderate Increase                | Stable                | Moderate decrease                | Significant decrease  | Don't know                       |
|--|----------------------------------|----------------------------------|-----------------------|----------------------------------|-----------------------|----------------------------------|
| Number of consortia                            | <input type="radio"/>            | <input type="radio"/>            | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/>            |
| Number of carriers operating outside consortia | <input type="radio"/>            | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/> | <input checked="" type="radio"/> |
| Number of members in individual consortium     | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>            |
| Capacity deployed by individual consortia      | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>            | <input type="radio"/> | <input type="radio"/>            |
| Number of ports served by consortia            | <input type="radio"/>            | <input type="radio"/>            | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/>            |



19. b) Please explain.

1000 character(s) maximum

Responses are based on publicly available data and shipping industry reports. GSF is surprised by the inclusion of this question and that the Commission is seeking the qualitative views of respondents on these matters, as it considers it a primary responsibility of the market regulator to independently and accurately establish the trends and patterns of behaviour in the market under review and hence the efficacy of its own Block Exemption instrument. Is the Commission indicating that it has lost sight of the changes in this market by virtue of the protections afforded to the participants by the Consortia BER?

20. a) What were the effects of the developments you identified in response to 3.1 and 3.2 on competition in the liner shipping sector on:

|                     | Significant increase  | Moderate Increase     | Stable                | Moderate decrease                | Significant decrease             | Don't know            |
|---------------------|-----------------------|-----------------------|-----------------------|----------------------------------|----------------------------------|-----------------------|
| Prices              | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/> |
| Choice of services  | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/> |
| Quality of services | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/> |

20. b) Please explain.

1000 character(s) maximum

Persistent and excessive over capacity relative to demand is believed to be a primary factor in the fall in quoted shipping rates. The greater 'lumpiness' of services - bigger vessels, less often, between fewer ports - has resulted in a reduced level of service, choice of carrier and number of ports served. Again, these developments should be apparent from published analyses allowing the Commission to come to an independent assessment of market conditions.

21. a) Are you aware of types of cooperation between carriers that are not covered by the Consortia BER?

☐ Yes

☒ No

22. a) Do carriers cooperate in joint purchasing (e.g. port services, inland transport, feeder transport)?

☐ Yes

☒ No

23. What would you expect to be the effects in case the Consortia BER would not be prolonged? Please illustrate with concrete examples.

23. a) Effects on your organisation

1000 character(s) maximum

There would be no direct commercial effects on the Global Shippers Forum, other than a expectation that shippers would continue to expect the GSF to articulate their interests during a time of significant change. in the liner shipping industry.

23. b) Global or industry effects

*1000 character(s) maximum*

This would depend on the speed and time period over which the current provisions were removed and whether other measures were introduced to mitigate any undesired effects of non-renewal. GSF members have no desire to see disruptive and chaotic change in a vital industry that supports the trade in goods that they are responsible for. However, change is considered inevitable and desirable given the incompatible trends outlined above and there is a concern that the effects of legal protections such as the Consortia BER are masking inherent instabilities in the sector that could produce sudden, catastrophic and disruptive change that is not in shippers interests. In the long run the impact of reversion to normal competition rules should be no more disruptive to the liner shipping industry than any other commercial sector

24. a) BERs are exceptional instruments. Considering that only very few industries have a sector-specific BER applying to them, do you consider that liner shipping presents such unique characteristics that require a sector-specific BER?

- ☐ Yes  
☒ No

24. b) Please explain.

*1000 character(s) maximum*

Shippers generally remain to be convinced that such exceptional circumstances exist and see the current consultation as an opportunity for the liner shipping industry to set out its case to its customers and the market regulator.

## Section 4: Coherence

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25. a) Based on your experience, is the Consortia BER coherent with other instruments that provide guidance on the interpretation of Article 101 TFEU (for example: the Horizontal Guidelines, Article 101(3) Guidelines, the Specialisation BER and EC decisional practice)?

- ☐ Yes  
☒ No

25. b) Please explain.

*1000 character(s) maximum*

Similar co-operative conditions are achieved with sufficient legal certainty to the parties involved without the need for Block Exemption entitlements.

## Section 5: EU added value

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26. a) Does the Consortia BER have added value in the assessment of the compatibility of consortia with Article 101 TFEU compared to, in its absence, self-assessment based on other instruments that provide guidance on the interpretation of Article 101 TFEU?

☐ Yes

☒ No

26. b) Please explain.

*1000 character(s) maximum*

The ability of consortia to be formed and operate successfully without a Block Exemption provision is entirely feasible and indeed achieved in other economic sectors, most notably the airline industry. The remedies of shippers and other customers for alleged breaches of these rules could be improved, especially as the liner shipping industry transitions from the current regime.

## Final comments and document upload

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27. If there anything else you would like to say which may be relevant for the evaluation of the Consortia BER, feel free to do so.

*1000 character(s) maximum*

The Global Shippers Forum calls on the Commission NOT TO RENEW the Consortia Block Exemption but to signal the ending of these special privileges and an eventual return to normal competition conditions for the liner shipping industry. There is scope for the existing legal instruments to be REPLACED by modified or augmented arrangements where the impact of this transition could cause dis benefits that it is not in the interests of any party to incur. The parameters of any replacement regime should be discussed and consulted upon by the Commission with the representatives of the stakeholders. This would have the additional benefit of engendering a much needed consensus on the future of a vital industry.

28. If you wish to attach relevant supporting documents for any of your replies to the questions above, feel free to do so.

The maximum file size is 1 MB

## Contact

COMP-CONSORTIA-EVALUATION-2018@ec.europa.eu

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