

# 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

Armateurs de France

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

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*

Armateurs de France is the business organisation representing the French shipowners. Our members are active in all sectors of the shipping sector, including liner shipping.

## Section 1: Effectiveness

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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*

The BER is perfectly known by shipowners (and by competition authorities). Its implementation is therefore very easy, and VSA agreements can be relatively standard. The BER is clear and adapted to the liner operational context. It guides self assessment in the EU but also in third countries. It is the only framework that carriers have know for over 20 years. Its end would lead to legal uncertainty , in the absence of relevant guidance/jurisprudence.

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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Market share calculation	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Exchange of information	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Capacity adjustments in response to fluctuations in supply and demand	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The concept of highly integrated consortia	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Overall compliance with competition law	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The right to withdraw and notice period for members' exit from consortia	<input checked="" type="radio"/>	<input 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*

for two elements, we consider that legal certainty is high rather than very high :  
- exchange of information : it is not covered by the BER. However, it is very clear that these exchanges can only cover operational aspects  
- highly integrated consortia : the BER doesn't provide a quantified threshold. However, carriers are easily able to make the distinction  
these comments do not call into question our response to question 10.

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*

this question is unclear. We suggest to make the distinction between  
- the evaluation of consortia fulfilling the conditions set by the BER, which is based on the BER  
- the evaluation of the other consortia (in particular those with a market share above 30%). In this case, it is a self assessment. Even if the BER isn't applicable, its principles serve as guidance. However, it may also happen that, in order to avoid legal risks, the carriers decide to not proceed with the agreement.

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 problems raised by the customers (blank sailings, surcharges) are not linked with the BER. on the contrary, the BER gives customers a wider choice of providers, since it lowers market access barriers.

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*

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*

They compete both on prices and on services (documentation, quality of pre and post carriage, commercial policy)

## 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 are minor but it's not possible to give a figure as it varies from one company to another, mainly depending on whether the company has external legal advice.

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*

Again, it is not possible to give a figure as the cost will vary (mainly depending on the number of agreements involved). However, since these instruments are very generic, the increased legal uncertainty would have to be compensated by additional legal costs.

## 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*

- changes in freight rates and oil prices
- changes in trade (volumes and flows, growing threats on free trade, strenghtened restrictives measures)
- growing competition from non EU carriers, especially Asians, which benefit from state support
- growing environmental pressure : sulphur and GHG emissions
- increasing bargaining power of customers

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 type="radio"/>	<input type="radio"/>	<input checked="" 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 type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Capacity deployed by individual consortia	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Number of ports served by consortia	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>



19. b) Please explain.

1000 character(s) maximum

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 type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Choice of services	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Quality of services	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

20. b) Please explain.

1000 character(s) maximum

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

☒ Yes

☐ No

21. b) If yes, please describe them and assess how prevalent they are.

250 character(s) maximum

- agreements that do not meet the conditions set by the BER, such as market share
- 'thematic' fora : business associations, Trident Alliance, CTS...

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

☒ Yes

☐ No

22. b) If yes, is such cooperation prevalent? Please explain

*1000 character(s) maximum*

Some agreements provide for this option, in compliance with the BER, but it is marginal.

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*

not applicable

23. b) Global or industry effects

*1000 character(s) maximum*

it is a very theoretical question as the liner sector has always operated under the BER. While the end of the regulation would not automatically mean the end of consortia, their number and/or size would certainly go down. In addition, it would be a strong signal for non EU jurisdictions.

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*

AdF believes that the number of industries benefiting from a BER is irrelevant in this discussion, as it can't be the basis of the Commission's decision.

## 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*

the BER follows the same objectives, in a manner that is adapted to the sector.

## 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 existence of a sector specific framework is much safer.

## 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*

AdF strongly suggests that the burden of proof shouldn't lie on carriers. In a changing context, shipowners are been able to adapt and innovate in order to enavble trade. Why jeopardize a system which has demonstrated its usefulness?

We also subscribe to the submission of ECSA, WSC, ICS and ASA.

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

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