



**Contribution of the European Sea Ports Organisation (ESPO)
to the Call for evidence for the evaluation of the Consortia Block Exemption
Regulation**

October 2022

The European Sea ports Organisation welcomes the opportunity to contribute to the call for evidence for the evaluation of the Consortia Block Exemption Regulation (hereafter “Consortia Regulation”), which is due to expire on 25 April 2024.

ESPO recognises that cooperation agreements are current and common practice in liner shipping and are set up for shipping companies in view of optimising utilisation of vessels and to increase the competitiveness of the sector.

ESPO acknowledges the high level of concentration in the shipping sector and deems that alliances are to be considered as a preferred alternative to further consolidation in the sector.

ESPO realises that both the alliances under the Consortia Regulation and outside the Consortia Regulation can be lawful on the basis of article 101, paragraph 3 TFEU. The extension or expiration of the current Consortia Regulation will in that respect not dramatically change the current practice of concluding consortia agreements, but will oblige all shipping lines to comply with the self-assessment procedures that apply to agreements falling outside the scope of the current Consortia Regulation. Moreover, the absence of the Consortia Regulation could mean the absence of guidance that is given in the current regulation - guidance that is helpful for members of all alliances, as well as for the other stakeholders.

ESPO has therefore as such no observations to make on the extension or expiration of the current Consortia Block Exemption Regulation. However, ESPO strongly calls for clear guidance and rules for consortia agreements and increased monitoring:

1. ESPO believes that conditions and guidance, as given in the Consortia Regulation should exist for all consortia agreements. The conditions should be continuously further developed based on the experience gained from the implementation of the Consortia Regulation.
2. ESPO stresses the need to ensure that the benefits of any shipping consortia are shared by all, end-consumers and stakeholders in the logistics chain alike. These benefits should not only be considered in monetary terms, but also in the quality of the service. Increased monitoring by the European Commission is needed to that end.
3. ESPO deplores that the reliability of maritime services has decreased dramatically over the past three years, which negatively impacts the whole logistics chain, but especially poses challenges to European ports for handling the transport flows. Reliability, which was about 75-80% before the Covid-19 pandemic, has plummeted to about 35%. This development together with rising service costs has caused some large distributors to attempt to set up and organize their own maritime services, and in some cases even to a modal shift to alternative transport modes.
4. ESPO would moreover welcome more transparency on the current state of alliances and consortia and encourages the Commission to keep a closer eye on the rapidly changing market. ESPO understands that Europe's antitrust policy has changed in 2004 from an ex-ante notification system to a self-assessment system, but considers it unfit for ensuring compliance in the maritime shipping sector. The Commission should set up a trustworthy body equipped with effective tools to monitor the market very closely, consider the current cooperation agreements – whether under the CBER or falling outside the CBER - ex officio, follow new developments and report on them. To this end, the Commission should foresee the staff needed to monitor the performance of containerised transport and to detect any disruptive behavior of current and future alliances. ESPO remains at the disposal of the Commission to provide information, if relevant and needed, for fulfilling its task.
5. When monitoring the current practices and agreements in the market, the Commission should in particular:
 - Evaluate whether the allowed maximum market share percentage should be lowered;
 - Monitor if the impact of the negotiating power of the consortia towards the port authorities, when negotiating charging and/or services in the ports, is becoming excessive;
 - Monitor if the pressure on the ports' infrastructure investment policy is becoming excessive;
 - Consider both the horizontal and vertical integration (landside, supply chain) and monitor the impact on the entire logistics chain (door-to-door transport). The Commission should closely evaluate the relevant vertical integration agreements before allowing such integration;
 - Not only monitor the traditional alliances between carriers but also look at the new players in the market;
 - Monitor benefits in a comprehensive way, including the sustainability of the logistics chain and not only whether the monetary benefits are passed to the user. It should further consider the benefits in terms of service quality, especially the reliability of the service. The Commission should take action in cases where it finds that the benefits are not shared;
 - Establish clear rules on data sharing and closely monitor the compliance of horizontally or vertically integrated alliances;

- Introduce an effective sanction system for breaches to the CBER rules or other future sector guidance.
6. ESPO would encourage the consortia with a market share exceeding the scope of the Consortia Regulation to actively engage in a dialogue with the Commission when establishing agreements.
 7. Overall, European ports believe that it is extremely important for shipping lines, considering the high level of concentration and cooperation in the market, to consult in good time with the port authorities to establish functioning supply chains and to avoid inefficient investments or stranded assets.
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