TARGETED REVIEW OF THE GENERAL BLOCK EXEMPTION REGULATION (STATE AID)

SEA EUROPE RESPONSE TO STAKEHOLDER CONSULTATION

Brussels, 6 December 2021

EXECUTIVE SUMMARY

1. SEA Europe, in principle, supports the European Commission's intended goal of reviewing EU state aid rules to "*promote the green and digital transition*", including by exempting certain state aid categories from the notification requirements.

2. At the same time, SEA Europe has strong concerns that the proposed definitions of "*clean*" and "*zero emission"* vessels will adversely impact the legal certainty and consistency that is key for the innovation and investment decisions needed for the green transition.

3. SEA Europe is worried about the European Commission's apparent practice of prematurely importing, and mis-using, definitions from the EU Sustainable Finance Taxonomy initiative (which is still in its infancy) into EU state aid rules before the criteria underlying such definitions within the Taxonomy are adequately refined, adjusted to the right purpose, fully developed and tested.

4. Such worrying tendency, compounded by inconsistent and conflicting provisions, is evident in the ***draft "Climate, Environment and Energy State Aid Guidelines" (CEEAG)*** published in July, on which SEA Europe submitted detailed comments (here), as well as in the ***current proposal to revise the State Aid General Block Exemption Regulation (GBER)*** as submitted for public feedback.

5. **SEA Europe urges the European Commission to - first and foremost - fully ensure consistency and a better structured process by following the next steps:**
    a. ***First, the European Commission should wait for the Taxonomy criteria for the maritime sector to be reviewed, modified and (in case of climate protection) based on a Life-cycle approach to emissions to bring them in line with the IMO and Fuel EU Maritime Regulation's benchmarks once these are finalized.***
    b. ***Only then, the European Commission could consider using such criteria into state aid rules such as CEEAG and GBER.***
    c. ***Any potential "export" has to be performed consistently, avoiding conflicting definitions and provisions between CEEAG and GBER.***
    d. ***In the meantime, EU state aid initiatives should support, and not penalise, the scale-up of sustainable solutions in the waterborne sector that will contribute to significant GHG emission decreases, such as renewable, low carbon and e-fuels.***

6. Failure to do so will only aggravate the regulatory uncertainty, resulting in severe damages to the innovation and competitiveness of the European maritime industry and thus on Europe's global lead in the transformation of shipping into a climate neutral mode of transport.

TARGETED REVIEW OF THE STATE AID GENERAL BLOCK EXEMPTION REGULATION (GBER)

SEA EUROPE RESPONSE TO STAKEHOLDER CONSULTATION

1. Introduction

SEA Europe, representing the European maritime technology sector (i.e. European shipyards and maritime equipment manufacturers), welcomes the opportunity to contribute to the ongoing targeted review of the EU State Aid Block Exemption Regulation (thereafter 'GBER').

By declaring specific categories of State aid compatible with Article 107 and 108 of the Treaty on the Functioning of the EU (TFEU), and thus exempting such aids from the requirement of prior notification, the GBER can have a considerable impact on national support schemes for the green and digital transition of the waterborne sector which are relevant for the European maritime technology sector.

European maritime technology manufacturers offer innovative technology solutions with enormous potential to help the global shipping industry becoming greener and climate neutral, in line with the European Green Deal ambitions. Yet, massive investments are needed to scale up existing technologies into mature ones and to deploy and integrate them onboard ships in accordance with the ship's specific operational profile and the customer's needs and purposes (in addition to RDI investments). To this end, instruments appropriate for the maritime sector as well as investment aid for fleet renewal and retrofitting open to various technological and alternative fuel options are crucial.

It is against this background, that SEA Europe wishes to share the following comments and recommendations on the draft GBER as submitted for public feedback.

2. SEA Europe comments[1]

SEA Europe in principle supports the European Commission's intended goal of reviewing state aid rules to "*promote the green and digital transition*", including by exempting certain state aid categories from the notification requirements. At the same time, **SEA Europe has strong concerns that the proposed definitions of "*clean*" and "*zero emission*" vessels will adversely impact the legal certainty and consistency that is key for the innovation and investment decisions needed for the green transition.**

In particular, SEA Europe is worried about an apparent practice of prematurely importing, and mis-using, definitions from the EU Sustainable Finance Taxonomy initiative (which is still in its infancy) into EU state aid rules before the criteria underlying such definitions within the Taxonomy are adequately refined, adjusted to the right purpose, fully developed and tested. Such worrying tendency, compounded by inconsistent and conflicting provisions, is evident in the draft "*Climate, Environment and Energy State Aid Guidelines*" (CEEAG) published in July, on which SEA Europe submitted its comments (*here*), and in the current proposal to revise the State Aid GBER.

The draft GBER indeed distinguishes, for the purpose of **investment aid**[2], between "***clean***" and "***zero-emission*" vehicles (including vessels)**, by means of the definitions largely derived from the Taxonomy in par. (102g) and (102f) respectively, and allocate different max. aid intensities to these categories (Art. 36b 6. (a) and (b)). In SEA Europe's view, **the current use of the Taxonomy climate mitigation criteria for defining "*clean*" and "*zero emission*" vessels is highly problematic for various reasons :**

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[1] The **Annex** outlinees the relevant paragraphs of the draft GBER that SEA Europe's comments refer to.

[2] Article 36b of the draft GBER '***Investment aid for the acquisition of clean vehicles or zero-emission vehicles and for the retrofitting of vehicles***"

i. ***The proposed definitions of "clean" and "zero emission" vessels, largely derived from the Taxonomy climate mitigation criteria, is exclusively based on CO2 emissions.*** However, under the Taxonomy framework an investment can be considered as sustainable if it can contribute substantially to (at least) one, or more, of the six environmental objectives laid down in Art 9 of EU Regulation 2020/852[3] without creating a significant harm to any other objective. Hence, if e.g. a newbuilding investment could in principle "significantly contribute" to one or more environmental objectives (other than the climate mitigation objective) it would not qualify as a "clean vessel" investment eligible for investment aid as a result of the currently drafted GBER and CEEAG definitions.

ii. ***The Taxonomy climate mitigation criteria for the maritime sector were meant to be temporary and to be reviewed in view of the post-2025 period*** pursuant to Recital 34 of the Taxonomy Delegated Act[4]. In this respect, there is now a firm recognition at Member States and industry level as well as within the European Commission that **the approach of assessing ship emissions exclusively at the funnel ("*tailpipe approach*"), as embedded in the current Taxonomy maritime climate mitigation criteria, is inappropriate for the maritime sector and inconsistent with other EU regulatory initiatives.** As highlighted in its most recent SEA Europe submission (*here*), a "*tailpipe approach*" would indeed penalize technologies that can have a lower impact on the basis of a life cycle approach and strongly penalize the scale-up of several sustainable and promising solutions in maritime transport such as use of renewable and low carbon fuels (e.g. biofuels and climate neutral e-fuels, such as synthetic methanol) which will provide a drastic decrease of GHG emissions during the transition. A tailpipe approach fall shorts in recognizing the specificities of the waterborne transport sector compared to other transport modes (e.g. diversity of ship types/sizes/range of operations/ *modi operandi*), notably the need for a broad fuel portfolio offering a sufficient energy density necessary at least for long distance ship-types. It is furthermore inconsistent with other regulatory initiatives such as the **Fuel EU Maritime Regulation proposal**, which correctly implements a technology-open assessment of life-cycle emissions, and the position advocated by the EU at IMO level.

iii. **It should be recalled that the Taxonomy has been made for a specific purpose, namely to channel private capital towards sustainable investments. Mis-using Taxonomy criteria that are still in their infancy for other purposes (state aid rules), without adjustments, will result in unintended consequences,** such as the risk of stopping new demonstration projects and the development and deployment of new ship technologies to meet the Sustainable and Smart Mobility Strategy as well as the Fit for 55 objectives.

SEA Europe does not question the need for consistent sustainability proofing across policy and funding instruments and the potential role that a meaningful, technically sound, and workable finalized taxonomy framework could play to this end in the future. The Maritime Energy Transition does, indeed, require a holistic climate protection strategy based on uniform technical assessment

[3] The six environmental objectives of the Taxonomy Regulation are: *1) Climate change mitigation, 2) Climate change adaptation, 3) Sustainable use and protection of water and marine resources, 4) Transition to a circular economy, 5) Pollution prevention and control and 6) Protection and restoration of biodiversity and ecosystems*. The technical screening criteria for the first two objectives (*climate mitigation* and *climate adaptation*) were adopted in April 2021. The technical screening criteria under the remaining environmental objectives are expected to be defined in 2022.

[4] Recital 34 of the Taxonomy Climate Delegated Act states that "*To ensure equal treatment of shipping in comparison with other modes of transport, technical screening criteria for maritime transport should be established and should be applicable until the end of 2025. It will however be necessary to further assess maritime shipping and, where appropriate, to establish technical screening criteria for maritime shipping applicable as of 2026'*.

criteria for the design, production, financing, state aid, certification and operation of vessels. However, this should be done only once proper technical screening criteria applicable to the maritime sector are fully developed based on the life-cycle approach to emissions (in case of climate protection), in line and consistently with relevant IMO and EU regulatory initiatives. **In the meantime, to stimulate the significant investments needed to eventually lead to zero-emission technologies and vessels, it is essential to ensure that any revision of existing state rules does not lead to regulatory uncertainty,** which is detrimental to investment and innovation strategies and to the scale up of sustainable solutions such as renewable, low carbon and e-fuels, which are essential for the green transition of the waterborne sector.

Finally, it is unclear to which extent the proposed vessel types definitions, limited to a simplistic distinction between "*passenger*", *"freight*" and *"port* and *auxiliary vessels*", does adequately capture the variety of specialized vessel types, namely non-cargo carrying vessels (e.g. fishing, research, offshore support vessels dredgers, etc) which are important for European shipyards and maritime equipment manufacturers. This important flaw need to be urgently addressed both in the draft CEAG, GBER and future Taxonomy revisions, by a more explicit reference to the internationally well-established and non-exhaustive category of "***other non-cargo carrying vessels***".

3. SEA Europe recommendations

Against this background, SEA Europe urges the European Commission to – first and foremost- fully ensure consistency and a better structured process by following the next steps:

- ***First, the European Commission should wait for the Taxonomy criteria for the maritime sector to be reviewed, modified and (in case of climate protection) based on a LCA approach in line with the IMO and Fuel EU Maritime Regulation's benchmarks once these are finalized***
- ***Only then, the Commission could consider using such criteria into state aid rules such as CEEAG and GBER.***
- ***Any potential "export" has to be performed consistently, avoiding conflicting definitions and provisions between CEEAG and GBER.***
- ***In the meantime, EU state aid initiatives should support, and not penalise, the scale-up of sustainable solutions in the waterborne sector that will contribute to significant GHG emission decreases, such as renewable, low carbon and e-fuels.***

Failure to do so will only aggravate the regulatory uncertainty, resulting in severe damages to the innovation and competitiveness of the European maritime industry which is paramount for Europe's global lead in the transformation of shipping into a climate neutral mode of transport.

SEA Europe trusts that all the above comments will be taken duly into account and remains available to provide any further clarification that may be required.

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Info about SEA Europe

SEA Europe represents close to 100% of the European shipbuilding industry in 16 nations, encompassing the production, maintenance, repair and conversion of all types of ships and floating structures, commercial as well as naval, including the full supply chain with the various producers of maritime systems, equipment material, and services. For further information please visit www.seaeurope.eu

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"*CLEAN*" AND "*ZERO EMISSION*" VEHICLE (VESSEL) DEFINITIONS IN THE DRAFT STATE AID GENERAL BLOCK EXEMPTION REGULATION (GBER)

DRAFT GBER PARAGRAPHS	**COMMENTS**
(102f) '*clean vehicle' means*:	
(f) a sea and coastal vessel for port operations or for auxiliary activities that has zero direct (tailpipe) CO2 emissions	It is totally unclear why "*zero direct (tailpipe) CO2 emission port and auxiliary vessels*" are included among the "clean vehicle" definitions (para 102f), rather than under the "*zero emission vehicle*" definition (para 102g), not least because: • all other entries clearly derive from the interim criteria applicable until end of 2025. • if "*zero direct (tailpipe) CO2 emission*" is considered as the best option that can be achieved, pursuant to the current Taxonomy approach, it would make sense that all the vessels meeting such criterion receive the highest possible state aid intensity (as opposed to limiting what is considered the "best option" to lower aid intensities for an undefined period, as currently envisaged in the draft GBER for vessels for port operations or auxiliary activity). *For background's sake: the draft GBER distinguishes between clean and zero-emission vehicles by means of par. (102g) and (102f) respectively and allocate different max. aid intensities to these categories (Art. 36b 6. (a) and (b)).*
(g) until 31 December 2025, a sea and coastal vessel for passenger, freight transport, for port operations or for auxiliary activities that has a hybrid or dual fuel engine deriving at least 25 % of its energy from zero direct (tailpipe) CO2 emission fuels or plug-in power for its normal operation at sea and in ports, or that has an attained EEOI value 10 % below the EEOI requirements applicable on 1 April 2022 and the vessel is able to run on zero direct (tailpipe) CO2 emission fuels or on fuels from renewable sources;	The wording "*until 31 December 2025*" would imply that as from 1 January 2026 only zero direct (tailpipe) CO2 emission vessels would qualify as clean vehicle investment. The following should be also noted (also in relation to Para 102g on "*zero emission vessels*"): • A "*zero direct (tailpipe) CO2 emission*" approach would restrict the range of solutions only to hydrogen, batteries and ammonia, which are not suitable for all maritime applications, and would penalize other promising solutions, such as e-fuels (e.g. green methanol). • Besides, it is highly unlikely that sufficient quantities of green hydrogen and ammonia will become available, as well as the associated logistics and supply infrastructure, can be built by the end of 2025. • In addition to the availability of fuels, infrastructure, and safety regulations, long project development intervals of ships, the incremental innovation process for the design of commercially utilized prototypes do not allow for revolutionary changes in ship propulsion technology in less than five years.

	The current "*tailpipe"* approach is also inconsistent with the life-cycle (*well to wake*) approach being pursued in IMO and EU regulatory initiatives (i.e. Fuel EU Maritime). Furthermore: - How would **vessels using only fuels from renewable sources [as defined under RED II]** with the aim of net zero CO2 emissions operation of the vessel be considered? - How would ***non-cargo carrying vessels*** that do not fall under the categories of "*freight*", *"passenger*" or "*port*" and "*auxiliary activities*", (e.g. specialized vessel units such as dredging fishing, research; offshore support vessels, etc), be considered "?
(102g) '*zero-emission vehicle' means:*	
(d) an inland or sea and coastal vessel for passenger or freight transport with zero direct (tailpipe/exhaust) CO2 emissions;	See comments above both, on the zero emission "*port*" and "*auxiliary*" vessels not being referred here and on the "*zero direct (tailpipe) CO2 emissions* "approach
(102h) '*vehicle' means any of the following:* *(a) a road vehicle of category M1, M2, N1, M3, N2, N3 or L;* *(b) an inland or a sea and coastal vessel for passenger or freight transport* *(c) rolling stock;*	This definition does not fully capture the wide range of "other non-cargo carrying vessels" that do not fall under the category of freight, passenger or port and auxiliary activities (e.g. specialized dredging fishing, research; offshore support vessels, etc). Besides, the category of "port" and "auxiliary" vessels is not mentioned either in this definition of vehicle, although it is referred to in other paragraphs.