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INSTRUCTION N° 02/25

RELATIVE TO THE BERTH ALLOCATION PLANNING PROCEDURE FOR SCHEDULED SERVICE CABOTAGE VESSELS AND CRUISE SHIPS IN THE PORT OF EIVISSA (WITH THE EXCEPTION OF THOSE SERVICING THE EIVISSA-LA SAVINA ROUTE).

Statement of reason

The busy port of Eivissa is well-known for its year-round activity, particularly during the mid and high seasons, which have recently experienced a remarkable increase in cruise ship traffic. Consequently, there is a need for improved and timely berth allocation planning that takes into account both the operational requirements of the port and safety.

It is, therefore, incumbent upon the APB to review the current berth organisation and planning system and, through this Instruction, set out revised criteria for berth allocation. These criteria must take into account the limited infrastructural capacity of the port of Eivissa, the high demand for services and the increase in traffic at the port, particularly as regards cruise ships, so as to ensure that the different operations can be logically coordinated and made compatible with one another, while simultaneously guaranteeing that the necessary safety measures are in place. They must also allow sufficient time for planning and forecasting, which, while it must retain some flexibility, is essential for providing certainty both to the operators involved and to the Port Authority itself, especially in the summer season.

This berth planning process, which is inherently conditioned by the limited infrastructural capacity, must be carried out taking into account that freedom in relation to transport services and the right of shipping companies to provide the service under the requested conditions may be limited for duly justified reasons, as reflected in the Judgment of 17 March 2011 of the Eighth Chamber of the CJEU, C-128/2011.

Article 149.1.20 of the Spanish Constitution states that merchant shipping and ports of general interest, among other areas, fall under the exclusive competence of the State. Within this competency framework, the Consolidated Text of the Law on State Ports and the Merchant Navy, approved by Royal Legislative Decree 2/2011 of 5 September (hereinafter “TRLPEMM”), establishes, in turn, a division of competencies between the Directorate General of the Merchant Navy, which is responsible for the safety of navigation and human life at sea, and the port authorities. The latter’s responsibilities include, among others, the provision of general management and coordination and control services for maritime port traffic, as well as the



coordination and control of operations associated with the port, commercial and other services within their jurisdiction.

Therefore, the Port Authority of the Balearic Islands (hereinafter APB) is responsible for managing and allocating berths in the ports within its jurisdiction, including that of Eivissa, in accordance with the provisions of Articles 25(h), 106(a)(b) and 107 of the TRLPMM. Article 107 of the TRLPMM provides that the general services provided by the Port Authority must comply with the technical standards and criteria laid down in the Operating and Policing Regulation, as well as in the port's own bylaws.

For its part, Art. 19 of the Regulation on the Services, Policing and Regimes of ports of the C.A.G.P. (Port Group Administrative Committee), approved by the M.O. of 12 June 1976, , establishes the instructions for entry and berthing requests. Article 20 of the same Regulation provides that port operations shall be scheduled as far in advance as possible and Article 23 sets out the rules for the designation of berths.

Order FOM/1194/2011, of 29 April, which regulates the integrated procedure for the stopover of vessels in ports of general interest aims to integrate the procedures for the stopover request, berth allocation and vessel clearance in Spanish ports of general interest. It also regulates the management of the single stopover document (DUE) and the information contained therein, in accordance with the provisions of Article 1. Article 10 of Order FOM/1194/2011 provides that the port authority shall assign the port stopover number and Article 12 provides that *“The port authority shall allocate berthing or anchorage, where applicable, at any time after the request for a port stopover has been made, but not before the port stopover number has been granted, except in exceptional circumstances”*.

However, this regulation needs further development to facilitate the work of the APB's managers and technicians in regard to berth assignment processes at ports like Eivissa, which have limited infrastructure and face a high level of demand. Article 6 of Law 40/2015, of 1 October, of the Public Sector Legal Framework provides that *“Administrative bodies may direct the activities of their hierarchically dependent bodies by means of instructions and service orders”*. In this context, the APB is issuing this Instruction to set out an internal berth planning procedure for the vessels indicated in section 1 at the port of Eivissa. This procedure aims to provide a transparent model that clarifies the application process and priority criteria of the berth planning and allocation system in order to allow forecasting to be carried out as far in advance as possible while ensuring safety and transparency are maintained.



Section 1.- Purpose and scope.

The purpose of this Instruction is to outline the application procedure and priority criteria applied to the planning and allocation of berths for scheduled service cabotage vessels and cruise ships in the Botafoc area of the Port of Eivissa. It does not apply to traffic regulated by the APB's Resolution of 20 April 2022, which approves the Port bylaw that governs the organisation and allocation of berths in the ports of Eivissa and La Savina for specific vessels.

Section 2.- Berth planning or forecasting.

The Port Authority of the Balearic Islands will prioritise requests for berths that are recognised in the approved forecast berth planning and recognition agreement.

For the planning or forecasting of berths, the deadline for the submission of expressions of interest in stopovers will vary depending on the type of traffic for which the vessel is intended and shall be as follows¹:

1. Ships engaged in scheduled cabotage traffic: expressions of interest in stopovers (pre-applications) must be submitted by the shipping agencies concerned no later than 1 October for the period from 1 January to 31 December of the following year.
2. Ships engaged in the carriage of passengers on board cruise ships: expressions of interest in stopovers (pre-applications) must be submitted by the shipping agencies 16 months in advance, and in all cases before 1 September for the period between 1 January and 31 December of the year being applied for.

In both cases, the pre-applications must include, as a minimum, the following details:

- Vessel IMO number.
- Vessel name.
- Length, breadth and draught.
- Maximum passenger capacity (pax) in lower beds.
- Maximum cargo capacity (ml).
- Estimated minimum duration of the stopover at the Port of Eivissa for safe embarkation and disembarkation operations (and, where appropriate, the time between them) with a passenger and cargo occupancy rate of 75% (min.).

The APB's Port Operations and Services Department and Eivissa-la Savina Delegation will jointly analyse the pre-applications submitted and, if any errors are detected, will ask the party concerned

¹NOTE: For the scheduling of cruise ships for the year 2026, interested shipping agencies must submit pre-applications no later than 11 April 2025, and the final forecast planning and recognition of cruise ship berths will be agreed by 15 May 2025.



to rectify them in accordance with the provisions of Article 68 of Law 39/2015, of 1 October, on the Common Administrative Procedure of the Public Authorities.

Upon correction of the error, the APB will notify each of the applicants of the provisional forecast planning for the submitted pre-applications for berths. The interested parties will then have ten working days to submit any allegations they deem appropriate in response, in accordance with the provisions of Law 39/ 2015 of 1 October.

Following a report from the Departments of Port Operations and Services and the Eivissa-la Savina Delegation on the allegations submitted, the Director of the APB will agree the definitive forecast berth planning and recognition, before 1 December prior to the period foreseen for scheduled service cabotage vessels, and before 20 October prior to the period foreseen for cruise ships.

Once the forecast berth planning and recognition agreement has been issued, the shipping agents will be able to make their berth requests using the single stopover document (DUE). The forecast recognition of berthing detailed this agreement will not, under any circumstances, imply the granting of a berth authorisation, which must be requested in accordance with the provisions of Order FOM/1194/2011.

Berthing requests that are not recognised in the forecast planning and recognition agreement will be resolved on the basis of berth availability.

Section 3.- Berth planning criteria.

1. General criteria.

Berths will be assigned based on the ship's specific requirements and operational needs, along with the availability of infrastructure, to ensure sustainable mobility.

The established criteria for berth planning may be exempted for specific reasons. In particular, companies that have repeatedly failed to implement accepted and recognised pre-applications from the previous year, as outlined in Section 2 of this Instruction, will automatically be exempt from these criteria. Additionally, exemptions will apply to companies that have modified or failed to comply with their previous applications.

Any request to change the vessel's timetable or characteristics after the deadlines specified in Section 2 of this Instruction will be treated as standard requests. As a result, these requests will depend on berth availability, unless the change involves a vessel with the same berthing requirements and operational purpose.

In any case, while the planning established in accordance with this Instruction will generally be followed, berthing authorisations will depend on their compatibility with specific essential needs



that may not have been anticipated in the initial planning. This includes the supply of certain types of goods to the islands.

2. Scheduled service cabotage vessels

A maximum of six (6) berths will be available at any one time for allocation to scheduled service cabotage vessels. However, depending on the characteristics of the vessels, the APB may provide an additional (1) berth.

In general, and provided that their pre-applications and applications comply with the provisions of this Instruction and other applicable regulations, scheduled service cabotage vessels will be given priority over other traffic in berth planning.

Similarly, priority will be given to the requirements of vessels transporting hazardous goods.

In the event that the expressions of interest in a particular slot exceed the berths available for this type of traffic at that time, any conflict between the two scheduled cabotage companies competing for the slot will be resolved in accordance with the following prioritisation criteria in the order set out below:

- The vessels operated by the company that has the longest history of berthing traffic in that time slot.
- The vessels operating connecting routes to/from other APB ports.
- The vessels operated by the company that uses the port more frequently.
- The vessels that can reliably demonstrate better environmental performance during their stay in port.

If there are applications from several companies for the same time slot, an additional berth will not be granted until all companies have the same number of berths.

If, after applying the above criteria, priority still cannot be determined, the order of receipt of expressions of interest recorded in any electronic register established under Law 39/2015, of 1 October 2015, will be taken into consideration.

3. Cruise ships.

A maximum of three (3) berths will be available at any one time for cruise ships in the Botafoc area.



The berth planning for cruise ships will start at 11:30 h and end at 03:00 h the following day so as to be compatible with the regular operation of scheduled cabotage services, barring exceptions authorised by the APB.

The APB will space the arrival of these vessels to ensure that no more than 3,000 passengers per hour need to disembark.

When determining how to allocate berths to cruise ships, we will consider the forecasts and applications from each company. Our goal will be to maximise the overall daily use of the port while ensuring safety and providing a satisfactory service. While this may require some flexibility when resolving conflicts between applications, we will generally apply the following prioritisation criteria:

- Vessels operated by a "regular" company, that calls at Eivissa at least eight (8) times a year during the course of the planning.
- In cases where the number of stopovers in the previous point is equal, the same criteria will be applied to the number of stopovers made the year before.
- Vessels powered by non-fossil fuels or LNG or which can reliably demonstrate better environmental performance during their stay in port.

If, after applying the above criteria, priority still cannot be determined, the order of receipt of expressions of interest recorded in any electronic register established under Law 39/2015, of 1 October 2015, will be taken into consideration.

Final Provision. Entry into force.

This Instruction shall enter into force on the day following its publication on the website of the Port Authority of the Balearic Islands, replacing and rendering null and void Instruction no. 01/22.

The Director,

Antonio Ginard López.