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Shipping and its entry into the EU ETS. Contractual implications for shipping contracts



1. EU Parliament's initial proposal. September 2020.

Amend MRV Regulation 2015/757.

Shipowner, demise charterer, and time charterer responsible.

2. The Commission response. 14.7.2021

— the inclusion of maritime transport in the ETS;

More limited. Only 50% for emissions on a voyage from a Port outside the EU to/from one in EU.

Phase in period for surrender of allowances.

Shipowner and demise charterer responsible

Other legislative proposals. “Fit for Fifty Five”.

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the use of renewable and lowcarbon fuels in maritime transport and amending Directive 2009/16/EC. Brussels, 14.7.2021 COM(2021) 562 final 2021/0210 (COD).

Brussels, 14.7.2021 COM(2021) 563 final 2021/0213 (CNS) Proposal for a COUNCIL DIRECTIVE restructuring the Union framework for the taxation of energy products and electricity (recast)

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the deployment of alternative fuels infrastructure, and repealing Directive 2014/94/EU of the European Parliament and of the Council. Brussels, 14.7.2021 COM(2021) 559 final 2021/0223(COD)

3. Parliament's counter amendments of June 2022

coverage of 100% of emissions from intra-European routes as of 2024 and 50% of emissions from extra-European routes from and to the EU as of 2024 until the end of 2026.

From 2027, emissions from all trips in and out of the EU should be covered 100% with possible derogations for non-EU countries where coverage could be reduced to 50% subject to certain conditions.

75% of the revenues generated from auctioning maritime allowances should be put into an Ocean Fund to support the transition to an energy-efficient and climate-resilient EU maritime sector.

from 1 January 2024 and each year thereafter, shipping companies shall be liable to surrender allowances corresponding to one hundred percent (100 %) of verified emissions reported for each respective year.

Mandatory pass through to time charterers of ETS costs borne by shipowners/demise charterers

3. Parliament's counter amendments of June 2022

Shipping Company

a binding clause should be included in contractual arrangements with the shipping company so that the entity that is ultimately responsible for the decisions affecting the greenhouse gas emissions of the ship is held accountable for covering the compliance costs paid by the shipping company under this Directive.

That entity would normally be the entity that is responsible for the choice and purchase of the fuel used by the ship, or for the operation of the ship, as regards, for example, the choice of the cargo carried by, or the route and speed of, the ship – in other words, the time charterer.

4. The cost.

<https://safety4sea.com/prepare-for-higher-shipping-costs-but-the-eu-ets-should-be-a-manageable-change/#:~:text=Career%20Paths-,Prepare%20for%20higher%20shipping%20costs%20but%20the,should%20be%20a%20manageable%20change&text=The%20inclusion%20of%20shipping,a%20source%20of%20serious%20disruption.>

50% allowance for a voyage from a non EU port to an EU port. 20% covered for 2023.

Current carbon price in late September 2022 of \$85 per tonne,

Example. A Capesize dry bulk voyage carrying iron ore from Ponta da Madeira in Brazil to Rotterdam (4,100 nm). Assuming a Capesize speed of 14 knots this would take around 12 days: at 62 tonnes per day this corresponds to 744 tonnes of fuel consumed, emitting 2,300 tonnes of CO₂. As the voyage starts outside Europe, only half of the emissions qualify for allowances – 1,150 tonnes.

20% of this is required to be covered for 2023 – 230 tonnes. Therefore, at EUR 85/T, the total cost for the carbon allowance would be EUR 19,550, plus a small addition for consumption in port. This compares with a fuel cost for the voyage of around EUR 520,000 (equivalent to 4%).

But three years later, in 2026, the cost for the carbon allowance would rise to almost EUR 100,000 – equivalent to 20% of the total fuel bill for the voyage

5. The contractual position.

Emissions come from burning of fuel. Who is responsible for the fuel under a charter?

- Voyage charter, Bill of lading. Shipowner
- Time charter. Time charterer. Demise charterer.

Ways to reduce emissions.

Efficiency measures.- alterations to vessel's engines.

Slow steaming – effect on utmost despatch obligation

Re routing.- effect on obligation not to deviate/ follow charterer's orders as regards voyage route.

Alternative fuels.

Impact on B/L contracts?

6. The BIMCO ETSA clause

Not limited to time charters, but language is that of time charter with references to off hire and redelivery. With voyage charters you can calculate emissions costs in advance and take that into account in the freight rate.

- “Emission Scheme” means a greenhouse gas emissions trading scheme which for the purposes of this Clause shall include the European Union Emissions Trading System and any other similar systems imposed by applicable lawful authorities that regulate the issuance, allocation, trading or surrendering of Emission Allowances.

6. The BIMCO ETSA clause

(a) Owners and charterers to co-operate and exchange all relevant data and information in a timely manner to facilitate compliance with any applicable Emission Scheme and enable the Parties to calculate the amount of Emission Allowances in respect of the Vessel that must be surrendered to the authorities of the applicable Emission Scheme for the period of the Charter Party.

(b) The Owners shall monitor and report the relevant greenhouse gas emissions of the Vessel for verification by an independent verifier in accordance with the applicable Emission Scheme.

6. The BIMCO ETSA clause

(c) (i) Charterers to provide and pay for emission allowances

- 1) Within the first seven (7) days of each month, the Owners shall notify the Charterers in writing of the quantity of Emission Allowances for the previous month; and
- 2) No later than fourteen (14) days prior to the expected date of redelivery the Owners shall notify the Charterers in writing of the estimated quantity of Emission Allowances for the final month or part thereof.

6. The BIMCO ETSA clause

(ii) The Owners' notifications in subclause (c)(i) shall include the relevant calculations and the data used to establish the quantities.

(iii) Within seven (7) days of notification under subclause (c)(i), the quantity of Emission Allowances notified by the Owners above shall be transferred by the Charterers and received into the Owners' nominated Emission Scheme account. If the estimated quantity of Emission Allowances for the final month or part thereof is higher or lower than the actual quantity calculated by the Owners as at the time and date of redelivery, any difference in Emission Allowances shall be transferred by the Charterers or returned by the Owners, as the case may be, and received into the nominated account of the receiving Party within seven (7) days of written notification from that Party.

(iv) During any period of off-hire, the Charterers shall have the right to offset against any Emission Allowances due or require the Owners to return a quantity of Emission Allowances equivalent to the emissions that the Charterers would otherwise have been responsible for, had the Vessel remained on hire.

(d) If the Charterers fail to transfer any of the Emission Allowances in accordance with subclause (c), the Owners shall, by giving the Charterers' five (5) days' notice, have the right to suspend the performance of any or all of their obligations under this Charter Party until such time as the Emission Allowances are received in full by the Owners.

Throughout any period of suspended performance under this subclause, the Vessel shall remain on hire and the Owners shall have no responsibility whatsoever for any consequences arising out of the valid exercise of this right. The Owners' right to suspend performance under this Clause shall be without prejudice to any other rights or claims they may have against the Charterers under this Charter Party.

7. Concluding thoughts.

6 ways to reduce **Shipping emissions**

Using
cleaner
fuels such
as LNG

Slow
steaming and
route
optimization
will consume
less fuel

Using
renewable
energy

Modifying
parts of the
ship to
increase
energy
efficiency

Utilizing
battery-
stored
energy

Avoiding
empty
container
repositioning

BIMCO clause on its own is not enough for charters for trading within the EU.

Ways to reduce emissions.

Efficiency measures.- alterations to vessel's engines.

Slow steaming – effect on utmost despatch obligation

Re routing.- effect on obligation not to deviate/ follow charterer's orders as regards voyage route.

Sails

Alternative fuels. Is it fair to put this all on time charterers? The fuel supplied depends on the fuel which the vessel runs on. Bunkering facilities for alternative fuels?

Impact on B/L contracts? Incorporate slow steaming clauses into b/l?



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The end.

Thankyou for your attention.