

SHOC Conference:  
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contracts in context

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Port State Control as possible mechanism for  
ensuring compliance with green requirements

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# Introduction

The Port State Control is expressed in the **power/duty** to subject to inspection foreign ships in national port, in order to establish the compliance with international law provisions to defend the safety of navigation, the marine environment and the living and working condition on board of the vessel.

## Research questions

1. Can a Port State detain a ship if failing to comply with the Energy Efficiency Certification (International Energy Efficiency Certificate -IEE) ?
2. Can a Port State decide to detain a ship that does have a poor Carbon Intensity Indicator (CII) rating (D or E) ?

# International Legal Framework

- Resolution MEPC. 328(76) «Amendments to the annex of the protocol of 1997 to amend the international convention for the prevention of pollution from ships, as modified by the protocol of 1978 relating thereto». 2021 Revised MARPOL Annex VI entered into force November 1st 2022.
- Resolution A.1155 (31) - Procedures for Port State Control, 2021.

## International Legal Framework

2022 - The Intersessional Working Group on Reduction of GHG (Greenhouse gas) Emissions from Ships (ISWG-GHG 12), draft amendments to the Procedures for port State control 2021 related to enforcement of the short-term GHG reduction measure by Port State Control authorities.

In particular, the III Sub-Committee is requested to consider the issue of what is regarded as a **detainable deficiency** in relation to the Carbon Intensity Indicator (CII) rating and to advise MEPC 79 accordingly.

# International Legal Framework

## MARPOL Convention 1973/78 – ANNEX VI

2011 MARPOL amendments, introduced two mandatory measures in Annex VI:

- 1) The Energy Efficiency Design Index (EEDI)
- 2) Ship Energy Efficiency Management Plan (SEEMP).

# International Legal Framework

## MARPOL Convention 1973/78 – ANNEX VI

### Law of *dedoublement fonctionnel* theory

According to the law of *dedoublement fonctionnel* theory, the port State can require foreign vessels to comply with the Energy Efficiency Measures to reduce greenhouse gas emissions as an advocate of the international community.

In this sense, the port State jurisdiction in this matter can be thought to be an example of the protection of community interests by the individual application of the law of *dedoublement fonctionnel* theory.

# International Legal Framework

## MARPOL Convention 1973/78 – ANNEX VI

Resolution MEPC.328(76)

Regulation 10 « Port State Control on operational requirements»

Paragraph 5. «In relation to chapter four of this Annex - Regulations on the Carbon Intensity of International Shipping - , any port State inspection may verify, when appropriate, that there is a valid Statement of Compliance related to fuel oil consumption reporting and operational carbon intensity rating, an International Energy Efficiency Certificate (IEEC) and a Ship Energy Efficiency Management Plan (SEEMP) on board, in accordance with article 5 of the present Convention».



# International Legal Framework

## MARPOL Convention 1973/78 – ANNEX VI

Paragraph 6 of Regulations 10 «Notwithstanding the requirements in paragraph 5 of this regulations, any port State inspection may inspect whether the Ship Energy Efficiency Management Plan (SEEMP) is duly implemented by the ship in accordance with Regulations 28 of this Annex».

Regulation 28 - Operational Carbon Intensity.

## Concluding Remarks

Can a Port State decide to detain a ship that does have a poor Carbon Intensity Indicator (CII) rating (D or E) ?

Regulation 28 provides that: «After the end of calendar year 2023 and after the end of each calendar year each ship» [...] «shall calculate the attained annual operational carbon intensity indicator (CII)» according to the required annual operational (CII).

Review the Ship Energy Efficiency Management Plan (SEEMP) in case of rate D or E. A ship shall develop a plan of corrective actions to achieve the required annual operational CII – Regulations 28.

## Concluding Remarks

Can a Port State detain a ship if failing to comply with the Energy Efficiency Certification (International Energy Efficiency Certificate -IEE) ?

From January 1, 2023, vessels registered in MARPOL signatory countries will have to meet the targets set out in the EEXI (Energy Efficiency Existing Ship Index) at testing, in order for it to receive International Energy Efficiency Certificate (IEEC).

Failure to obtain an IEEC “may” be viewed as a breach of the MARPOL convention and, as such, may render the vessel technically “unseaworthy” and permit detention.



**Thank you for your attention**

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