

Proposed amendments to draft EU-ETS directive

The EU Parliament Rapporteur recently submitted proposed amendments to the current draft EU-ETS Directive.

The main proposed amendments relate to the phase-in period of the EU-ETS requirements and the amount of emissions to be reported in those periods, the scope of the EU-ETS requirements post 2028, an expansion of the definition of "shipping company" and the establishment of an Ocean Fund.

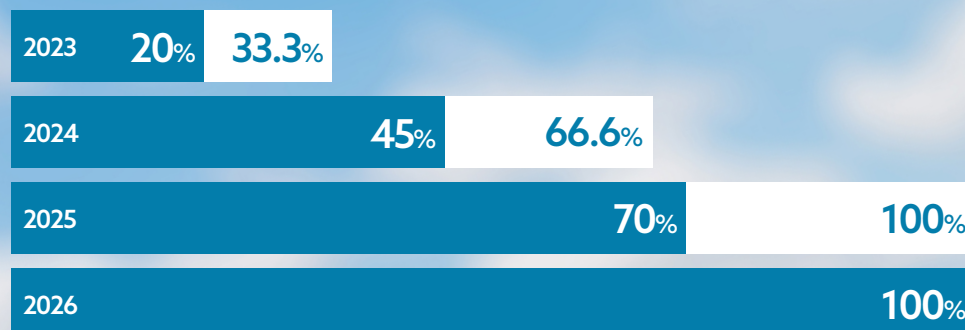
Phase-in period

If accepted, the proposed amendments would advance the phase-in period for reporting of emissions by 1 year and increase the amount of emissions to be reported within that phase-in period. The new proposals are that 33.3% of emissions are to be reported in 2023, 66.6% in 2024 and 100% by 2025.

Submitting EUA (carbon-credits)

Surrender enough EUA to cover % percentage of emissions

■ Current ■ Proposed



Possible Reduction/Expansion of EU-ETS post 2028

It is proposed that 100% of non-EU emissions from ships calling at EU ports will be caught by the EU-ETS if the IMO fails to introduce comparable global measures by 2028.

The proposed amendments also envisage a proportionate reduction in the scope of the EU-ETS if the IMO adopts a global market-based measure to reduce greenhouse gas emissions comparable to the EU-ETS no later than September 2028.

Definition of “shipping company”

It has been proposed that the current draft definition of “shipping company” be revised to include a time charterer within the range of entities capable of being the “shipping company”. If the amendment is accepted, the definition will be as follows:



“the shipowner or any other organisation or person, such as the manager, **the time charterer** or the bareboat charterer, that has assumed responsibility for the operation of the ship from the shipowner and that, on assuming such responsibility, has agreed to take over all the duties and responsibilities imposed by the International Management Code for the Safe Operation of Ships and for Pollution Prevention...” (amendment in **bold**).

Under the proposed wording, it seems that the time charterer will not automatically become the shipping company. It will only become so if it has agreed to take over the duties and responsibilities imposed by the ISM Code and which will rarely, if ever, be the case. In reality, responsibility for compliance will lie with the Document of Compliance holder for the purposes of the ISM Code.

Nonetheless, the EU is keen to implement the principle of “the polluter pays”. To that end, the Rapporteur has recognised that the “shipping company” is not always responsible for the purchase of fuel or taking decisions that affect the CO₂ emissions of the ship.

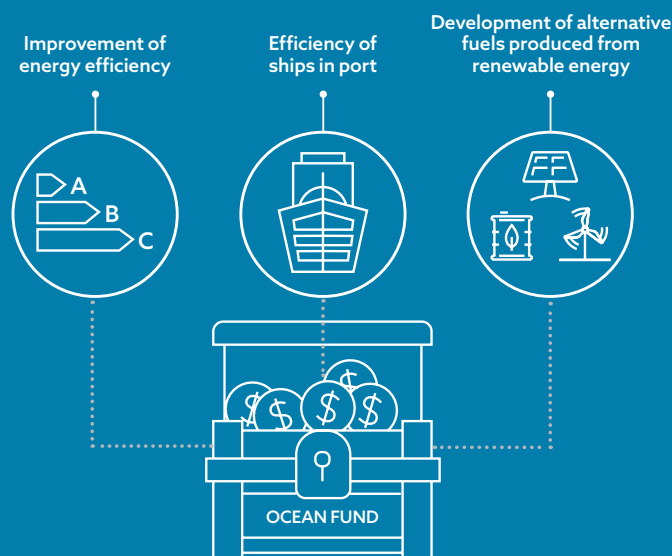
The Rapporteur has suggested inclusion of provisions whereby the party contractually responsible for the purchase of the fuel or the operation of the ship (defined as “determining the cargo carried by, or the route and speed of the ship”) will bear ultimate responsibility for the cost of compliance with the EU-ETS. Needless to say, this will include a time charterer.

It is proposed that Member States shall ensure that it is the time charterer (or other party responsible for the purchase of fuel/operation of the ship) who is responsible under the contract with the shipping company for covering the costs of compliance with the EU-ETS. However, it is not clear how this would be implemented in practice and could result in different legislation across the different EU Member States.

BIMCO are currently working on a draft ETS Clause for Time Charters albeit that this has not as yet been finalised/published. It is thought likely that this clause will achieve what appears to be intended by the draft ETS directive and proposals such that the time charterer will be liable for the costs (and possibly the provision) of the ETS allowances.

Establishment of Ocean Fund

It is proposed that at least 75% of the revenues generated by the sale of allowances shall be paid into an Ocean Fund and the fund used for a variety of purposes including improvement of the energy efficiency of ships and ports, development of alternative fuels produced from renewable energy, zero emission propulsion technologies and development of technologies and fuels for ice-class ships and navigation in ice.



Conclusion

It remains to be seen whether the proposed amendments to the current draft EU ETS will be adopted by the EU Parliament or whether further amendments will be made. It is hoped that this will become clearer over the coming months given that the inclusion of shipping into the EU ETS is expected to start from 1 January 2023.

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