



Council of the European Union
General Secretariat

Brussels, 11 March 2022

WK 3591/2022 INIT

LIMITE

TRANS
MAR
ENV
ENER

IND
COMPET
ECO
RECH
CODEC

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Shipping
N° Cion doc.:	10327/21 ADD 1-3
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the use of renewable and low-carbon fuels in maritime transport and amending Directive 2009/16/EC - Comments from Member States - Spain

Delegations will find, attached, comments from **Spain** on the above subject.



COMMENTS TO DOCUMENT WK3260/2022 BY SPAIN.

General

ES has a general question to COM which has previously been raised in the GHG expert group. Could COM elaborate on how we are dealing with FUEL EU which is based on the RED directive and at the same time we are probably departing from RED in our IMO submissions and using IPPC methodology? We can see that some of the questions by the presidency go in this direction. Does COM intend MMSS to have two separate regimes applicable to ships calling in Europe being the IMO

Specific comments to the document WK 3620/2022

- **Part I**

- Article 9.

ES doesn't understand very well why the article refers to fuel and doesn't include any reference to fossil fuels. It should contain a reference to fossil fuels if the regulation is supposed to be flag neutral. Furthermore, we oppose to the deletion of a) and b). Needs references for the maritime sector which is not so familiar with the RED II directive.

In relation to the new para 3 MS should allow for other certification schemes. ES has indicated that the regulation should be able to be applied globally. We still do not understand how voluntary schemes of Directive 2018/2001 are going to be used in other world regions neither the capacity for the companies to get these certificates.

ES wants to recall our comments in document WK 14698-Ad 1 in relation to this article. We support further alignment with RED II but not an oversimplification and to include text so that the companies are not the only responsible body to get the bunker certificate.

Amendments to art. 9 and new subparagraph 3:

1. (...)

- (a) *greenhouse gas emission factors of biofuels and biogas that comply with the sustainability and greenhouse gas saving criteria set out in Article 29 of Directive (EU) 2018/2001 shall be determined according to the methodologies set out in that Directive;*
- (b) *greenhouse gas emissions factors of renewable fuels of non-biological origin and recycled carbon fuel that comply with the greenhouse gas emission savings thresholds **[and further criteria for the production]** set out in ~~Article 27(3)~~ of Directive (EU) 2018/2001 shall be determined according to the methodologies set out in that Directive;*



Representación Permanente de España ante la Unión Europea

- *Note: ES may support DE (14174 ad 2) in this insertion but it needs to be noted that IMO may go in a very different direction. Presidency proposed to delete article 27(3) in rev 1 and we agree with it.*
- (c) *biofuels and biogas that do not comply with point (a) [or that are produced from food and feed crops]-shall be considered to have the same emission factors as the least favourable fossil fuel pathway for this type of fuel [as defined in Annex n.n];*
 - *Note: ES supports FI (13311, 14174) in order to ensure a uniform approach to the sustainability of feedstock for biofuels, there should be no sustainability criteria in FuelEU Maritime that are additional to the those of RED II (Directive (EU) 2018/2001). Should such a criterion be set, it should be done in RED II. Taking into account the mix that is being done it needs to be very clear what is going to be done. We could not identify criteria for BIOGAS in RED II.*
 - *Note ES supports the concerns raised by SE(14698) and the text “or that are produced from food and feed crops” is in brackets, which goes along with the comments made by FI(13311, 14174). We agree with SE in the patwork of sustainability criteria that is making us difficult to understand where items come from (WtT and TtW)*
 - *Note: ES can support to clarify as suggested by DE (13553 and 14174 ad 2) regarding the least favourable pathways for fossil fules but we would rather see this in a delegated act.*
- d) *renewable fuels of non-biological origin and recycled carbon fuels that do not comply with point (b) shall be considered to have the same emission factors as the least favourable fossil fuel pathway for this type of fuels [as defined in Annex n.n].*
 - *Note: ES can support to clarify as suggested by DE (13553 and 14174 ad2) regarding the least favourable pathways for renewable fuel of non biological origin but we would rather see this in a delegated act.*
- e) *Companies shall provide accurate and reliable data on the GHG emission intensity and the sustainability characteristics of biofuels, biogas, renewable fuels of non-biological origin and recycled carbon fuel [on the bunker delivery note] ~~as~~ or verified by a scheme that is recognised by the Commission in accordance with Article 30(5) and (6) of the Directive (EU) 2018/2001. The reliability of the data falls under the responsibility of the producers and the data will have to be registered on the bunker delivery notes.*
 - *Notes. ES agrees with MT (13405 14174 ad4). The responsibility is not of the Companies only and provides a text in red that may need further amendments; however, this is linked to the negotiations on Fuel Std at IMO. DE has proposed some amendments here, first add “or”. ES supports this, but ES suggests moving [on the bunker delivery note] to the end so that the producers provide the data.*
 - *Note. ES agrees with EL (14174 ad 3) in relation to the architecture of the regulation in terms of bunker supplies and the responsibility and burden placed on the companies to get the right bunker delivery notes.*



Representación Permanente de España ante la Unión Europea

3(new). Companies shall be entitled to divert from the default values for the well-to-tank emission factors reported in Annex II of biofuels, biogas, renewable fuels of non-biological origin and recycled carbon fuels delivered to the ship in the reporting period, provided that actual values are certified under ~~a voluntary~~ schemes ~~which are equivalent to~~ those of the Directive (EU) 2018/2001.

4. (3previous). Companies shall be entitled to divert from the ~~established~~ default values for the tank-to-wake emission factors **defined in Annex II** provided that actual values are certified by means of laboratory testing or direct emissions measurements ~~The Commission is empowered to adopt delegated acts in accordance with Article 26, in order to supplement this Regulation by establishing the rules on conducting the laboratory testing and direct emissions measurements.~~

➤ Justification. Far over prescriptive. This is up to IMO and/or ISO.

➤ Note: ES supports FI (13311) as considered by Presidency

- Article 14.

No comments

- Annex I

ES needs COM to specify the right formula in Equation 1. It seems that it is no longer the one agreed in the previous presidency.

▪ Table 1

- $M_{i,j}$ Does the term “consumed” include slip and fugitive emissions? ES is not clear about it.
- $C_{engineslipj}$ should not be limited to engines. There may be fugitive emissions and slippage in other consumers. The term should be changed to C_{slipj} .
- $CO_{2eq,TtWslippage,j}$. ES needs clarification to understand why slippage and not slip is kept.
- In relation to the expression where: $C_{sf\ CO_2,j}$ and $C_{sf\ N_2O,j}$ are set to zero., consider our comment from WK 14698-Ad 1

➤ Note: ES needs COM to clarify this amendment and indicate the values to decide whether they can be set to zero or not. Provide a reasoning., otherwise the manufacturer will have to certify that they are 0 in engines such as ammonia. DK(14174 ad5) raises why/whether they need to be set to zero

- In relation to the expression CO_2, CH_4, N_2O Global Warming Potential over 100 years, which are: $GWP_{CO_2} = 1; GWP_{CH_4} = 29,8, GWP_{N_2O} = 273$ consider our comment from WK 14698-Ad 1

➤ Note. ES supports FI(14147)in relation to RED II values and also supports DE (14174 ad 2) asking to include the values. We could accept this mix if the IMO went on the same line. (RED values CO_2 1, N_2O 298, CH_4 25).



Representación Permanente de España ante la Unión Europea

▪ Text below table 1

ES wants to recall our comments in relation to the consideration of electricity. The current crisis makes unacceptable to consider electricity used on board as “free of charge” in terms of Well to Tank emissions. ES strongly opposes to the current way forward and propose to consider our position in document WK14698- Add 1. We wonder whether COM intends EU users to bear the electricity charges. Therefore, ES proposes the following:

~~For the purpose of this regulation the term $\sum_k^E E_k \times CO_{2eq_electricity,k}$ in the numerator of Equation (1) shall be set to zero.~~

- ***Justification.** ES doesn't agree with the idea that electricity is a clean energy no matter the origin as proposed by the note and the regulation. The justification offered that electricity has its own measures in fit for 55 can not be accepted.*

ES disagrees on the following sentence “In the case of fossil fuels, only the default values in Annex II shall be used”. This deviates from the original proposal from the Commission and is in contradiction with article 9.4. If that was the case slip factors could not be certified and we would be obliged to use the ones in the table, which ES doesn't agree with.

▪ Fuel Bunker delivery note (BDN)

As indicated in WK 14698 Ad 1 ES would like to have the following insertion

– **Standard used for setting the WtT GHG emission factors**

- ***Justification.** ES considerst that MSs should know the standard used to determine the WtT emissions*

ES is extremely concerned that the bunker delivery notes is something regulated by MARPOL and there is a need to have this information provided in MARPOL convention itself

▪ BDN Electricity

As indicated in WK 14698 Ad 1 ES proposes to add the following information, based on our proposal to include the WtT emissions of the electricity supplied to the ship.

- **CO2eq electricity**
- **Electricity delivered to the ship per point (Ek)**
- **Number of connection points provided**

- ***Justification.** In order to be consistent with the regulation and its requirements the new proposed information is needed in a similar way as it is needed for all BDN, since ES agrees on the principle of its accountability and therefore this is why ES propose the suggested amendments*

▪ Method for determining TtW fugitive and slipped emissions

ES agrees with the text, but we propose to add the following text in red, providing consistency with the text in subsection



Representación Permanente de España ante la Unión Europea

*Fugitive **and slipped** emissions are emissions caused by the amount of fuel that does not reach the combustion chamber of the combustion unit or that is not consumed by the energy converter. For the purpose of this Regulation, fugitive **and slipped** emissions are taken into account as a percentage of the mass of the fuel used by the engine. The default values are contained in Annex II. **In accordance with its compliance monitoring plan referred to in Article 7 and upon assessment by the verifier, other methods, such as direct measurement, laboratory testing, may be used if it enhances the overall accuracy of the calculation, in application of Article 9(4).***

- Annex II

ES doesn't oppose to delete the reference source provided that all references are kept as footnotes or as explanations in the column explanation to keep traceability of the decisions taken at this time, either from RED II, IMO or scientific literature, failure to do so would provide uncertainty if there was a need to align with any midterm measure at the IMO.

▪ Column 3

Others Electricity, ES proposes to use these as default values in case the value for each OPS is not provided. However, ES supports FI (13311) to revise emission factor for electricity mix in Table 1 and give the references, since it is not clear how the values given are defined. They seem to be somewhat overestimated

▪ Column 4

In relation to the text (pag.12

*contains the **WtT** CO_{2eq} emissions values in [gCO_{2eq}/MJ]. For fossils fuels only the default values in the table shall be used. **For liquid biofuels, the default values shall be calculated by using the values of E established in accordance with the methodologies laid down in Directive (EU) 2018/2001, Part C of Annex V for all liquid biofuels except bio-LNG and in Part B of Annex VI for bio-LNG, and on the basis of default values associated to the particular biofuel used as a transport fuel and its production pathway, laid down in that Directive, Part D and E of Annex V for all liquid biofuels except bio-LNG and in Part D of Annex VI for bio-LNG.** However, the values of E need to be adjusted by subtracting the ratio of the values contained in column 6 (cf_ CO₂) and column 3 (LCV). This is required in this regulation, which separates the WtT and the TtW calculations, to avoid double counting of emissions.*

Please clarify in written why bio-LNG is excepted in the highlighted text in yellow

ES proposes to use the *CO_{2eq}WtT* 17.7 instead of 18.5 in column 4 for LNG. We also need a proper written justification by COM on the proposed Cslip factors in column 9.

▪ Column 7

- TBM for Ethanol. - ES needs COM to propose the right values
- Bio LNG. - ES proposes to reinstate 0.00005
- e-methanol. - ES proposes to reinstate 0.00005. We don't understand why it has been changed to TBM



Representación Permanente de España ante la Unión Europea

▪ Column 8

- TBM for Ethanol. ES needs COM to propose values

▪ Column 9

- ES needs a proper written justification by COM on the proposed Cslip factors in column 9.

• Part 2

- Global Warming Potentials

In relation to the expression CO₂, CH₄, N₂O Global Warming Potential over 100 years, which are: $GWP_{CO_2} = 1$; $GWP_{CH_4} = 29,8$; $GWP_{N_2O} = 273$ consider our comment from WK 14698-Ad 1

- Note. ES supports FI(14147) in relation to RED II values and also supports DE (14174 ad 2) asking to include the values. We could accept this mix if the IMO ent on the same line. (RED values CO₂ 1, N₂O 298, CH₄ 25).

ES would rather be aligned with IPCC AR6 values if the IMO went in that direction.

- BDN

▪ Question 1.

ES prefers making reference to MARPOL regulations as we want to stick to the IMO as much as possible, however we would need to include the new additions in the IMO BDNs. In this regard we support the insertions proposed in the WK03260. However as indicated above ES also needs to include a reference to the standard used to obtain the parameters WtT GHG and MJ/g. We propose to add the text in red.

- **WtT GHG emission factor CO₂eq [gCO₂eq/gFuel] and related certificate¹**
- **Standard used for setting the WtT GHG emission factors**
- **Lower Calorific Value [MJ/g] of the fuel batch, including blends.**

In relation to the options ES prefers option 1, with our addition. We could also indicate that COM will decide via delegated act to withdraw the BDN text in case IMO agrees with a LGHGFS . We consider that we need to keep a template of the BDN in the current text to provide certainty

We also recall that ES has proposed amendments to electricity delivery note

- Liquid biofuel pathways

As indicated above we prefer clear references to the decisions taken to select the right values, not only for liquid biofuels but for all parameters. What is being proposed by Presidency in relation to liquid biofuel pathways is an example.

ES prefers option 1, adding default values when needed and other pathways in the future. We prefer consistency among MS and accurate calculations.



Representación Permanente de España ante la Unión Europea

- **RFBNOs**

ES prefers to keep the JEC values but making reference to the forthcoming delegated act for the time being. Whenever the delegated act is available, we could amend them. COM should do this and inform us when this is available

- **Calculation of the reward factors for wind propulsion**

ES would rather use the factors stemming from the 0221 *Guidance on treatment of innovative energy efficiency technologies for calculation and verification of the attained EEDI and EEXI* (MEPC.1/Circ.896). The Presidency notes that $feff * Peff$ as defined in this Guidance, as well as power factors such as PME and PAE as defined in the EEXI calculation Guidelines (MEPC.333(76)), could be considered for this purpose. However, we need confirmation from COM that the process to turn the $feff * Peff$ and PME and PAE can be easily translated in reward factors. We need COM to elaborate a example.