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**LIMITE**

**CLIMA**

**ENV**

**ENER**

**TRANS**

**CODEC**

**IND**

**MI**

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## **CONTRIBUTION**

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From:	General Secretariat of the Council
To:	Working Party on the Environment

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Subject:	Fit for 55 package - ETS: Comments from delegations
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Following the call for comments set out in WK 4165/2022, delegations will find attached joint comments from the CY, EE, EL and MT delegations on the inclusion of maritime transport to EU ETS.

# Joint paper of proposals on inclusion of maritime transport to EU ETS

by CYPRUS, ESTONIA, GREECE and MALTA

The above-mentioned Member States would like to submit the following proposals linked to the phase-in of maritime transport to the ETS that would limit the negative impacts of the inclusion of the sector and ensure the effective implementation of the Directive. As the issues are well known, this document focuses on proposed amendments to the text of the Directive and associated justification. The proposed wording is in **bold**.

- **Additional measures to avoid carbon leakage (incl. transshipment port).**

Rationale: Further steps are needed to reduce the risks of evasion via opportunistic ports of call at the gates the Union or relocation of transshipment operations. In addition, a limited time exemption is needed to reduce the risk of changing of the routes.

***Article 3 (ab) (new): ‘transshipment port’ is the port where the movement of one type of cargo to be transhipped exceeds 60 % of the total traffic of that port. It needs to be considered that cargo, container or goods are transhipped when they are unloaded from ship to the port for the sole purpose of loading them on another ship.***

***Article 12 (9) (new): An obligation to surrender allowances shall not arise, until 2030, in respect of emissions from ships operating in deep-sea routes with Carbon Leakage risks and under an efficiency benchmark. The list of routes and the efficiency benchmark shall be determined by the Commission.***

- **Timing of the phase-in: 100% obligation should be more gradual up to 2030**

Rationale: To give further time to the sector to adapt by developing the required alternative/ low emission technologies as well as the relevant infrastructure, the phase-in period should be extended until 2029. A later start of the obligation (for example 2024) could be also considered to enable time for transposition.

***Article 3ga: Shipping companies shall be liable to surrender allowances according to the following schedule:***

~~20 % of verified emissions reported for 2023;~~

~~45~~**20 % of verified emissions reported for 2024;**

~~70~~**30 % of verified emissions reported for 2025;**

~~100~~**40 % of verified emissions reported for 2026**

**50 % of verified emissions reported for 2027**

**70 % of verified emissions reported for 2028**

**90% of verified emissions reported for 2029**

**100% of verified emissions reported for 2030 and each year thereafter.**

- **Separate distribution key for the maritime auctioning allowances**

Rationale: Using the same allocation key for stationary installations and for the additional allowances created as regards maritime transport activities is an unsuitable approach due to the scale of impacts of the phase-in of maritime transport activities on the Member States while it disregards the principle of fairness and proportionality. Instead, these allowances would need a separate allocation key that reflects the realities of the sector.

***Article 3gf (new): The Commission is empowered to adopt delegated acts in accordance with Article 23 to supplement this Directive concerning the detailed arrangements for the auctioning by Member States of maritime activities allowances in accordance with Article 3g and 3ga, including the***

*modalities for the transfer of a share of revenue from such auctioning to the general budget of the Union. The number of allowances to be auctioned in each period by each Member State shall be proportionate to [modalities to be determined] for the period 2018-2019.*

- **Commercial operator as responsible for ETS obligations**

Rationale: While the shipping company should be responsible for the compliance (including monitoring and reporting) with the Directive, the commercial operator should be responsible covering the EU ETS costs. For this, the conditions of the responsibility by the commercial operator should be clearly defined. Making the commercial operator responsible for covering the EU ETS costs enhances the effectiveness of the Regulation by implementing the “polluter pays” principle, safeguards the principle of “freedom of contracts” and provides a level playing field for all engaged stakeholders, in particular shipping SMEs. This clause could be activated once the purchase of the fuel and/or the operation of the ship (i.e. determining of cargo/itinerary/speed/route) is assumed by a commercial operator based on a contractual arrangement. In such case, the shipping company surrenders the allowances and the commercial operator either pays the relevant cost or reimburses the shipping company. In case the commercial operator does not fulfil the obligation for reimbursing the shipping company, the latter can claim for the costs extra judicially or judicially or through mediation. In any case, the Member States Authorities are not involved in this process.

*Article 3gb (2) (new): When the ultimate responsibility for the purchase of the fuel or the operation of the ship is assumed by a different entity than the shipping company, that entity shall be responsible to pay for or reimburse the shipping company for covering the costs arising from the surrender of allowances. Operation of the ship for the purposes of this Article means determining the cargo carried, the route and the speed of the ship. The shipping company remains the responsible entity for overall compliance with the provisions of this Directive.*

- **Passenger shipping to islands, islands MS and between islands**

Rationale: As sea transport is an essential mode of public transport for many islands in the EUs, the ports of islands with less than 100.000 permanent residents should be excluded from the obligation to surrender allowances until 2030, to enable time for investments and avoid unnecessary impacts to the citizens. The requested derogation: (i) has minimal effect to the EU objectives for decarbonisation of shipping; (ii) allows the sector to adapt to the new regulatory environment, by providing sufficient time to replace the existing fleet and develop the necessary alternative fuels, electricity grid and infrastructures; (iii) doesn't compromise the current level of services/ jeopardize the country's territorial cohesion; (iv) is flag and Member State neutral and (v) includes also all PSOs.

*Article 3gg (new): By way of derogation from Article 3g, emissions from passenger and Ro-Ro passenger ships calling to ports of islands within the same Member State with less than 100.000 permanent residents, according to the latest official census of the population, shall not be covered by this Directive and shipping companies shall not be liable to surrender allowances until 2030. Member States shall notify the Commission about the routes and islands exempted as well as for any alterations thereof.*

- **Navigation in ice conditions should be taken into account**

Rational: For ensuring the level playing field between ice-classed and other ships, the extra emissions associated with sailing in ice conditions and of ships belonging to the highest ice classes should be taken into account based on a calculation methodology presented in a separate annex. In addition, further changes are needed as regards the EU-MRV.

*Article 12 (3) (c): each shipping company surrenders a number of allowances equal to its total emissions during the preceding calendar year, as verified in accordance with Article 3gc. Shipping companies*

*may surrender fewer allowances on the basis of ships' ice class or navigation in ice or both in line with Annex X.*

*[Relevant changes to the EU-MRV and annex X with the calculation methodology.]*

- **Creation of the Maritime Transition Fund**

Rational: Separate fund financed by 50 million allowances should be established for the purpose of financing innovative projects relating to decarbonisation of the maritime transport sector. The principles underpinning such a Fund, and the rules and modalities for its operation would be similar to those applicable to the existing Innovation Fund. Dedicated calls for proposals in the existing Innovation Fund, earmarked for the maritime sector, could also be an alternative solution.

*Article 10a (bis) (new): 1. [50] million allowances from the quantity of allowances which could otherwise be auctioned in accordance with Article 10 shall be made available to 'the Maritime Transition Fund', for the period from [the year of the start of auctioning of allowances in maritime transport under this Directive] to 2030 with the objective of contributing to the decarbonisation of maritime transport. Furthermore, the external assigned revenues referred to in Article 21(1) of Regulation (EU) [Fuel EU Maritime] shall be allocated to the Maritime Transition Fund and be implemented in line with this paragraph.*

*2. The Maritime Transition Fund shall support break-through innovative technologies and infrastructure to decarbonise shipping and for the production of low- and zero-carbon fuels in the maritime sectors. Projects in the territory of all Member States, including small-scale projects and projects that involve collaboration between parties from more than one Member State shall be eligible. Technologies receiving support shall be innovative and not yet commercially viable at a similar scale without support but shall represent breakthrough solutions or be sufficiently mature for application at pre-commercial scale.*

*3. [Further modalities of the Maritime Transition Fund similarly to the Innovation Fund].*

- **The scope of application for the EU ETS**

The scope of the EU ETS including the type of ships (only for ships for transport of passenger or goods for commercial purposes) to the 5000 Gross Tonnage (GT) limit should be kept as currently in EU-MRV regulation.

- **Ensure a level-playing field in shipping – Alignment with international market-based measure instruments**

Rationale: The EU should safeguard the competitiveness of the EU fleet and ensure a level-playing field for international shipping. Therefore, we propose to speed up the foreseen for 2028 review clause, taking into account the deliberations on a global Market-Based Mechanism (MBM), as part of the IMO's GHG Strategy mid-term measures in order to fully align timely with a possible IMO MBM scheme. The acceleration of the review date will also put more pressure on IMO to accelerate its own internal process.

*Article 3ge (1): The Commission shall consider possible amendments in relation to the adoption by the International Maritime Organization of a global market-based measure to reduce greenhouse gas emissions from maritime transport. In the event of the adoption of such a measure, and in any event before ~~the 2028 global stocktake and no later than 30 September 2028~~ **31 December 2026**, the Commission shall present a report to the European Parliament and to the Council in which it shall examine any such measure. Where appropriate, the Commission ~~may~~ **will** follow the report with a legislative proposal to the European Parliament and to the Council to amend this Directive ~~as appropriate~~ **with a view to align it with the international market-based measure.***

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