



## Representación Permanente de España ante la Unión Europea

In line with the current discussion on policy matters for the FUEL EU proposal we are seeking for additional modifications in the text. As indicated in our document WK 04211/22 (22 march 2022) we are seeking alignment in our proposals. This is why we want to update them as follows.

Note. New amendments and justifications in double underline below:

### *Article 2* **Scope**

This Regulation applies to all ships above a gross tonnage of [5000], regardless of their flag in respect to:

- *Note SE proposed to expand the scope to 100% extra EU emissions and vessels under 5000 GT. ES initially supports this proposal, noting that ES has proposed to expand the MRV too to be able to achieve this. However we need to examine this issue very well due to the need to be able to calculate a reference for intensity which wouldn't be available, incorporate the bunker availability and feasibility and consider IMO negotiations in the LCA/LGFS.*

- (a) the energy used during their stay within a port of call under the jurisdiction of a Member State,
- (b) the entirety of the energy used on voyages from a port of call under the jurisdiction of a Member State to a port of call under the jurisdiction of a Member State, **and**
- (c) the entirety of the energy used on voyages from a non-EU neighbouring country transshipment port of transshipment less than 300 miles from a port in the EEE to a port of call under the jurisdiction of a Member State, and
- (d) a half of the energy used on voyages departing from or arriving to a port of call under the jurisdiction of a Member State, where the last or the next port of call is under the jurisdiction of a third country except those from a non EU neighbouring country transshipment port.

#### Justification

There is a rising concern with the carbon leakage risks in transshipment ports of the EU close to non-EU transshipment ports as well as in deep-sea routes. The text proposed by the Commission creates incentives to modify international routes to evade carbon costs. These evasive practices will negatively impact the implementation of the measure creating carbon leakages and economic and social disruptions.

- Note The above corrections (c) and (d) could be eliminated, going back to the original text, if the stop in a transshipment port is considered part of the voyage and not the beginning or the end of the voyage, As an example “Barcelona-Tanger-Barcelona”, being Tanger a Non Eu transshipment port would make this voyage a “Barcelona-Barcelona”, and therefore contributing 100% and not 0% as it would happen in a Tanger-Barcelona-Tanger. This proposal is in line with a similar one made by Spain on the ETS

Paragraphs (a), (b), (c), and (d) above shall not apply to:

- i. the energy used for force majeure purposes,
- ii. for the energy used for those voyages in the EEE where the social and economic impact of the measure would risk to render the service impracticable or where it can be demonstrated that there is a carbon leakage due to cargo shifting to other transport means,
- iii. the energy used for those voyages within the EEE to the outermost regions of the Union arriving and departing and arriving to the same country and within these regions, provided that the relevant Member States ensure that, in those regions the air quality standards are respected

#### Justification

This amendment proposes to introduce similar provisions as the ones applying for the aviation sector, to put both transport sectors on an equal footing. Voyages between outermost regions and their member states should be excluded from the obligation to surrender allowances until 2030. We also want to include the voyages within the islands in those outermost regions

This Regulation does not apply to warships, naval auxiliaries, fish-catching or fish-processing ships, wooden ships of a primitive build, ships not propelled by mechanical means, or government ships used for non-commercial purposes.

### *Article 3*

#### **Definitions**

...

(i) “port of call” means the port where a ship stops to load or unload cargo or to embark or disembark passengers; consequently, for the purpose of this regulation stops for the sole purposes of refuelling, obtaining supplies, relieving the crew, going into dry-dock or making repairs to the ship or its equipment, stops in port because the ship is in need of assistance or in distress, ship-to-ship transfers carried out outside ports, stops in a transshipment port of a non-EU neighbouring country and stops for the sole purpose of taking shelter from adverse weather or rendered necessary by search and rescue activities are excluded;

(ibis) “Transshipment Port”. It 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.

### Justification

By including a modified definition of Port of Call from MRV Regulation that excludes, for the purpose of this directive, stops in a transshipment port of a non-EU neighbouring country, ships will not be incentivized to change routes to, or add a stop at, a transshipment port of a non-EU neighbouring country as the portion of the voyage between the non-EU port and the non-EU transshipment port will be covered by the directive (50% of emissions)

(new) (fg) 'maritime fuel supplier' means a fuel supplier as defined in Article 2, second paragraph, point 38 of Directive (EU) 2018/2001, supplying marine fuel at a Union port;

### Justification

Necessary to introduce a definition of maritime fuel suppliers

#### Article 4a (new)

#### Maritime fuel suppliers

1. Maritime fuel suppliers shall ensure that the supply of fuels in the Union ports is sufficient, in order for ships to meet the requirements set out in Article 4 paragraph 2.

2. Notwithstanding paragraph 1, maritime fuel suppliers shall ensure that the supply of fuels in the Union ports is sufficient, in order for ships to meet the requirements set out in Article 4 paragraph 2b (new).

3. Marine fuel suppliers shall provide to the master of the ship a 'FuelEU Maritime Bunker Note', which should be annexed to the Bunker Delivery Note. The fuel supplier shall be responsible for the accuracy of the information.

4. The Commission is empowered to adopt delegated acts in accordance with Article 26 to calculate and publish, at least two years in advance, the total quantities of fuels referred to in paragraph 1 and 2.

### Justification

Necessary to introduce responsibilities on maritime fuel suppliers. ES considers that the responsibility in compliance with FUEL EU is not up to the companies once the demand has been created

#### (new) Article 4b.

#### Supply plans and reporting obligations for maritime fuel suppliers

1. By 31 March of each year maritime fuel suppliers shall develop and submit to the compliance database, referred to in Article 16, a comprehensive plan for the projected supply of the fuels referred to in Article 4 bis (New) paragraph 1 and 2. The supply plan shall include the following information for each of the fuels projected to be supplied at Union ports:

(a) The list of the Union ports and their geographical location;

(b) The type of fuels supplied and volumes;

(c) The well-to-wake emission factors, origin of feedstock and conversion process.

2. By 31 March of each reporting year, maritime fuel suppliers shall report in the compliance database referred to in Article 16, the following information:

(a) The volume of each type of fuels supplied at each Union port;

(b) The well-to-wake emission factors, origin of feedstock and conversion process for each type of renewable marine fuels supplied at Union ports.

3. Commission shall publish information submitted to the compliance database referred to in paragraph 1 and 2.

Justification. The compliance database should also deal with fuel providers at the level of the EU and where possible at worldwide level

#### **Article 14** **Monitoring and recording**

(new) Paragraph 1a.

When the supply of fuels referred to in Article 4a New paragraph 2 and 4, is not sufficient at the Union ports of call in accordance with the supply plan of the maritime fuel suppliers, the ship shall submit a fuel non-availability report (FNAR). The report shall cover the [Union] port of call where bunker is to be taken, the bunkers that gave rise to the FNAR. FNARs, shall be valid for one compliance period only, and shall be submitted to the competent authorities and the Commission.

(new) Paragraph 3a.

The Commission is empowered to adopt delegated acts in accordance with Article 26 to create a template for the fuel non-availability report referred to in paragraph 1 a (new).

Justification. In case fuel is not provided in a port there should be a possibility to report

#### **Article 20** **Penalties**

(new) Paragraph 2a.

The company, considering the bunker supplied leading to a FNAR shall get a proportional discount in the penalty referred to in paragraph 1. If more than one fuel supplier is included in the FNARs, the discounts shall be cumulative.

#### **[Fuel Bunker Delivery Note (BDN)]**

For the purposes of this regulation, relevant BDNs of fuels used on board shall contain at least the following information:

– Supplier

- product identification
- fuel mass [t]

- fuel volume [m<sup>3</sup>]
  - fuel density [kg/m<sup>3</sup>]
  - WtT GHG emission factor for CO<sub>2</sub> (carbon factor) [gCO<sub>2</sub>/gFuel] and for CO<sub>2eq</sub> [gCO<sub>2eq</sub>/gFuel] and related certificate<sup>1</sup>
  - Standard used for setting the WtT GHG emission factors
    - Justification. ES considerst that MSs should know the standard used to determine the WtT emissions
1. Lower Calorific Value [MJ/g] of the fuel batch, including blends.
- Note: ES shares IT (13351) concerns. The content of the BDN should be agreed at IMO and this would also solve the problems raised by MT (13405). ES places square brackets around the text

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<sup>1</sup> This value is not required in case of fossil fuels referred to in Annex II. For all other fuels, including blends of fossil fuels, this value should be made available together with a separate certificate identifying the fuel production pathway.



Council of the European Union  
General Secretariat

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## WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Shipping
N° Cion doc.:	10327/21 INIT + 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 the Member States - Spain

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