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WORKING DOCUMENT

From: To:	General Secretariat of the Council 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 - Sweden

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

Sweden's comments on Fuel EU Maritime, doc. 7601/22 (date 12 April 2022)

Article 2 – Scope
Sweden is still of the view that we can increase the ambition of Fuel EU Maritime by expanding the scope of the Regulation to include all ships above 400 GT as well as to include emissions from 100 % of extra-EU voyages.

Article 3 – Definitions
Paragraph eebis: Sweden does not consider it appropriate to include the definition "port authority" in Fuel EU Maritime. See also 5.5 below.

Article 5 – Additional zero-emission requirements of energy used at berth
Paragraph 1: Sweden supports the new text in Article 5. Important however that the text match the wording and the obligation for the ports in AFIR.

Possible option 2bis: Sweden does not support the proposal and maintains the view that a ship at anchor should not be included in the OPS obligation at this stage. This position is based on an analysis where legal, technical, safety and economical aspects have been considered, see Sweden's comments in document WK 512/2022 Add 2. Sweden recognizes that there are many benefits from an environmental and health perspective if ships at anchor could use OPS or zero emission technologies. We assume that there will be technology developments in the coming years that will enable future use. Therefore, Sweden welcomes a more defined and strong review clause to analyse the different aspects of OPS requirements that also include ships at anchor. That can be done earlier than the 1st of January 2030 as stated in article 28.

Paragraph 5: Sweden supports option 2 as it provides flexibility for member States to decide on which national authority should be given the task.

Article 9 - Certification of biofuels, biogas, renewable liquid and gaseous transport fuels of non-biological origin and recycled carbon fuels
Sweden believes that the rules that determine whether a fuel is sustainable, and the emission factors of the fuels must be regulated in the Renewable Energy Directive 2 (RED II, 2018/2001). Sweden therefore considers that all biofuels that are sustainable according to RED II, e.g. fuels based on food or feed crops, shall be included. Otherwise, the EU risks having a patchwork of sustainability criteria that counteract equal conditions in the internal market and disadvantage investors and a cohesive transition to

renewable fuels. However, Sweden can accept, as a compromise, that biofuels, that are produced from food and feed crops with high indirect land-use change-risk, shall be considered to have the same emission factors as the least favourable fossil fuel. Sweden support inclusion of text in (c):

> *biofuels and biogas that do not comply with point (a) or that are produced from food and feed crops* ***with high indirect land-use change-risk as defined in Article 26(2) of the same Directive (EU) 2018/2001*** *shall be considered to have the same emission factors as the least favourable fossil fuel pathway for this type of fuel;*

Artikel 17 – Banking and borrowing of compliance surplus between reporting periods
Generally, Sweden is positive to introduce flexibility mechanisms that can facilitate shipping companies' green transition but is, as a matter of principle, hesitant to introduce a mechanism that allows companies to <u>borrow an advance compliance surplus</u> from the next reporting period in case of compliance deficit.

Article 20 – Remedial penalties
Paragraph 2ter: Sweden supports the introduction of 2ter. From our perspective, it is fundamental that the competent authority, rather than the verifier, is authorized to decide the remedial penalties as it provides legal certainty. But this needs to be further clarified and Sweden propose to include below text in the beginning of the paragraph 2ter:

> 2ter
> ***Based on the information in paragraphs 1 and 2, the competent authority of the administering state shall decide the remedial penalty.*** *The competent authority ~~of the administering state~~ may before the decision review the amounts. Etc…*

Paragraph 3bis: It is the understanding of Sweden that the contract specified in paragraph 3bis does not exclude a company's responsibility to pay the remedial penalty decided in according to paragraph 2ter. From our view it should not be possible to transfer the obligation to pay remedial penalty. Therefore, Sweden proposes to include the text in paragraph 3bis:

<u>***"Such an agreement has no effect on the obligation for the company in relation to the competent authority to pay the remedial penalties."***</u>

Article 21 – Allocation of penalties to support renewable and low-carbon fuels in the maritime sector

Sweden believes that income from penalties (administrative sanctions) according to Article 20 should not be earmarked for special funds. Sweden continues to be supportive of innovation, but the revenues should be returned to the Member States budget or accrued to the EU general budget without earmarking. Expenditure at EU level should be financed through expenditure reductions within the EU general budget.

Article 28 – Report and review

As Sweden has expressed earlier depending of the final outcome of the negotiation, we encourage that the review of the Regulation should in particular focus on the possibility to extend the scope and amend Article 2 (ship size and geographical scope) which should be reflected in Article 28.

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