Council of the European Union
General Secretariat

Interinstitutional files:
2021/0210 (COD)

Brussels, 19 April 2022

WK 5615/2022 INIT

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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Shipping
N° prev. doc.:	7601/22
N° Cion doc.:	10327/21 INIT + ADD1-3
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 document.

Representación Permanente de España ante la Unión Europea

COMMENTS BY SPAIN TO ARTICLES 1 TO 28 OF COMPROMISE PROPOSAL BY THE PRESIDENCY.

DOCUMENT ST7601.xx22

Spain wants to thank the presidency for the text, before preparing the next compromise text find attached our consolidated comments to articles 1 to 28. New amendments in double and justifications ***in blue*** below.

In relation to our proposals we want to note the following criteria, which is very important for Spain:

- Achieving a technologically neutral proposal where no power source or technology is directly o indirecty benefited.
- Avoiding carbon leakage to other transport means or modes
- Protecting socioeconomically afected areas where the proposal may damage the transport network.
- Controlling of the impact. Spain considers that the impact needs to be controlled from the beginning, before socioeconomic damage occur and during the course of implementation of the regulation.

The proposals made by Spain during these months, which still stand, are the following:

- **Exclude port of transhipment of non-EU neighboring countries** due to the likely carbon leakage and distortion of the maritime routes. This is the case of ports such as Algeciras, where there is a risk of leakage. This threat is demonstrated in our negotiations for the ETS proposal (articles 2 and 3). The reasoning is supplemented with a presentation attached to be submitted by the REPER
- **Exclude the voyages from the continent to the outermost regions of the EU**, such as the Canary Islands and voyages within its islands. ES is open to combine the proposal with the proposal made by Greece in their document WK03129/22 (article 2).
- Since the proposal by COM seems not to have properly considered socioeconomic risks Spain wants to leave a place holder to consider regions or areas where there is a demonstrated socioeconomic damage rendering the maritime transport impossible unless it is subsidized (article 2).
- **Revision of the percentages established in article 4** every 5 years, before 2028 and then every 5 years to assess the possibility to increase them or decrease them. This is a safeguard to allow a suitable transition. This assessment would be carried out by the Commision (article 4)
- Introducction of the responsibility of the fuel suppliers. We believe that the suppliers need to be responsible to provide the necessary fuels. This is specially relevant since ships will be dual fuelled, there is a possibilty to use mixes of fuels and suppliers may not provide the necessary demand to scalate alternative fuels. ES does not concur with fuel suppliers being dealt with in the RED II directive. Following that argumentation the BDNs should also be dealt with in the RED II directive. Furthermore the development of GFS at IMO in the MARPOL convention and the adjustment with FUEL EU leads to our proposed approach of having a self contained

instrument (articles 3, 4a, 4b, 6, 14). Spain is ready to reach an agreement with other members with similar proposals such as Greece (WK03129/22).

- **Responsibility of the time charterer**. ES considers that operators with contracts into force would also need to bear the costs of the penalties. New contract clauses will solve this issue, however there is a problem in existing contracts. We also think that the Competent Authority just needs to deal with the Company, not with the operator. In this regard we are concerned with mixing public and private law and we support Greece in this matter. Spain supports Greece in document WK03129/22 (article 20)
- The **provision of electricity to ships** is a very important concern to Spain.
    - The regulation needs to be pragmatic and the conection takes time due to bureaucracy and the necessary phisical connections, voltage and frequency coupling. Spain believes that two hours of stay is not enough, therefore we propose four hours (article 5 and others).
    - As indicated above the regulation needs to be carbon neutral. During the course of negotiations Spain has indicated that electricity should be accounted in the well to wake approach. Our proposal has been supported by Italy and Germany, but only from 2030. We consider that a clear signal needs to be sent from the beginning. Considering $\sum_k^c E_k \times CO_{2eq}{}_{electricity,k}$ equals to zero leads to the following.
        - Electricity for use at port not being accounted. Not doing this is an incentive to use electricity without any consideration to its origin. If the proposed regulation considers elements from the RED directive in terms of sustainability it is completely illogical that electricity is not. This is a first perverse effect. Furthermore if electricity is not accounted there is an automatic reduction of the GHGIE by connecting to an OPS. Ships do not need to do anything, since "$\sum_k^l E_k$ " is in the denominator and the index is lowered without any effort.
        - Electricity for use at sea not being accounted. Doing this means that when a ship charges its batteries for navigation the energy is zero emissions well to tank. There is a second perverse effect by which electric propulsion is considered clean by default, irrespective of its source e.g coal, and therefore the proposal lacks of neutrality. In addition since "$\sum_k^l E_k$ is accounted in the denominator these ships would become overcompliant and able to negotiate a surplus.

The current text is not fuel and technology neutral for Spain.

In relation to the proposals Spain may accept the following ones:

- The enhanced control of the verifiers (articles 14, 15,15bis and 16)
- The management of the remedial penalties (article 20)

- A dedicated Fund with the income collected with the penalties, provided that a percentage of the income is given to the member states. We are open to develop a criteria for this (article 21)
- The revision clause if suitably enhanced so that there is immediate alingment with IMO regulations (article 24).
- Enhanced linkage with RED directive. However Spain wants to note the problems this will bring negotiating at the IMO the GFS and LCA (Annex II)

In relation to the new proposals Spain does not accept the following

- That the role of the maritime administration is diluted. ES does not accept the Administering Authority of the ETS as the one bearing the responsibility of the regulation (article 3 and subsequent references). This will also impact midterm measures at the IMO.
- Articles relating to electricity supplied at anchorage, even in a voluntary manner (article 3 and subsquent).

Article 1

Objective and purpose

This Regulation lays down uniform rules imposing:

(a) the limit on the greenhouse gas ('GHG') intensity of energy used on-board by a ship arriving at, staying within or departing from ports under the jurisdiction of a Member State and

(b) the obligation to use on-shore power supply or zero-emission technology in ports under the jurisdiction of a Member State,

in order to increase consistent use of renewable and low-carbon fuels and substitute sources of energy **in maritime transport** across the Union, while ensuring ~~the~~ **its** smooth operation and avoiding distortions in the internal market.

Article 2

Scope

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

(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 transhipment port ~~of transhipment 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 transhipment port.

Justification

There is a rising concern with the carbon leakage risks in transhipment ports of the EU close to non-EU transhipment 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 transhipment 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 transhipment 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 transhipment 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) "Transhipment 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 transhipment port of a non-EU neighbouring country, ships will not be incentivized to change routes to, or add a stop at, a transhipment port of a non-EU neighbouring country as the portion of the voyage between the non-EU port and the non-EU transhipment port will be covered by the directive (50% of emissions. This is related to the scope and our proposal to include or create ghost ports to avoid carbon leakage in EU neighbor countries

~~[(rbis) 'off-shore power supply' means the system to supply electricity to ships at anchorage, at low or high voltage, alternate or direct current, including ship side and shore side installations;][1]~~

Justification

ES propose to delete this. We do not agree in OPS at anchorage. It is not feasible and in terms on WtT it will be as effective as on shore supply. We still consider that there is a need of having a fundamental debate in WtT emissions on electricty.

~~(m2) 'ship at anchorage' means a ship at anchorage as defined in Article 2(7) of Directive 2009/16/EC;~~

[1] The need for this definition might be considered depending on MS' opinion on introducing Article 5(2bis), presented as a possible option.

Justification

ES propose to delete this. We do not agree in OPS at anchorage

(r2) 'electrical power demand at berth' means~~...~~[2] the demand in electricity from a ship at berth for powering all energy needs based on electricity on board, excluding the recharging of electrical systems for use at sea;

Justification

We are not aware of having a debate on charging batteries for navigation. How this is going to be considered?. We don't want to increase emissions at port using "dirty" electricity with high WtT values to recharge batteries that would save fuel for navigational use. This extrapower demand needs to be excluded and provides a further argument to consider WtT emissions from electrical demand. The definition of onshore power supply partly addresses this but the regulation is not clear.

(ff) 'administering State' means the administering authority in respect of a shipping company as defined in Article 3(w) ~~and as determined in accordance with Article 3gd of Directive 2003/87/EC of the European Parliament and of the Council[3];~~

Justification

As previously indicated we support the term competent autority. ES propose to delete this. We cannot find Article (3w). Please clarify

(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 supliers since ES wishes to introduce responsibilities for suppliers too.

CHAPTER II

REQUIREMENTS ON ENERGY USED ON-BOARD BY SHIPS

~~[2] A definition might be needed since the term is now used in the text; nevertheless, further work is needed in this respect.~~

3 The Presidency refers to the Proposition by the Commission on the revision of Directive 2003/87/EC, depending on results of the negotiation.

Article 4

Greenhouse gas intensity limit of energy used on-board by a ship

1. The yearly average greenhouse gas intensity of the energy used on-board by a ship during a reporting period shall not exceed the limit set out in paragraph 2.

2. The limit referred to in paragraph 1 shall be calculated by reducing the reference value of [X grams of CO_2 equivalent per MJ]* by the following percentage:

   – -[4]2% from 1 January 2025;

   – -6% from 1 January 2030;

   – -13% from 1 January 2035;

   – -26% from 1 January 2040;

   – -59% from 1 January 2045;

   – -75% from 1 January 2050.

   *[Asterix: The reference value, which calculation will be carried out at a later stage of the legislative procedure, corresponds to the fleet average greenhouse gas intensity of the energy used on-board by ships in 2020 determined on the basis data monitored and reported in the framework of Regulation (EU) 2015/757 and using the methodology and default values laid down in Annex**es** I **and II** to thi**s**~~t~~ Regulation.]*

3. The greenhouse gas intensity of the energy used on-board by a ship shall be calculated as the amount of greenhouse gas emissions per unit of energy according to the methodology specified in Annex I.

4. The Commission is empowered to adopt delegated acts in accordance with Article 26 to amend Annex II in order to include the well-to-wake emission factors related to any new sources of energy or to adapt the existing emission factors to ensure consistency with future international standards or the legislation of the Union in the field of energy.

5. The Commission will carry out a review of the implementation of this regulation at the level of the MS and with regards to fuel certification schemes worldwide every five years from 2028 in order to assess the need to maintain or modify the percentages indicated in section

[4] **Please note that all symbols "minus" have been deleted.**

.2 of this article. The Commision will carry out with a first review in 2025 to specifically address carbon leakage."

Justification.

This is related to the fact that ES doesn't see clearly the projections made by the EC. Since the burden on the shipowners will be high at that time MS need to be sure on the available technologies, the fuel leakage and the social impact of this measure.

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 ion maritime fuel supliers. 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 5

Additional zero-emission requirements of energy used at berth

1. From 1 January 2030, a ship ~~at berth~~**moored at the quayside** in a port of call under the jurisdiction of a Member State shall connect to on-shore power supply and use it for **its** ~~all~~ ~~energy~~ **electrical power demand** ~~**needs**~~ ~~while~~ at berth.

2. Paragraph 1 shall apply to:

   (a) containerships;

   (b) passenger ships.

~~**[POSSIBLE OPTION:**~~

~~**2bis From 1 January 2035, a passenger ship operating at anchorage within a port area under the jurisdiction of a Member State shall connect to off-shore power supply and use it for its electrical power demand at berth.]**~~[5]

Justification.

ES propose to delete this. We do not agree in OPS at anchorage. It is not feasible and in terms on WtT it will be as effective as on shore supply. We still consider that there is a need of having a fundamental debate in WtT emissions on electricty.

3. Paragraph**[s]** 1 ~~**[and 2bis]**~~ shall not apply to ships:

[5] Note from the Presidency: if this option is agreed to be further considered, other provisions of this Regulation may need to be adapted.

(a) that are ~~at berth~~**moored at the quayside** for less than **four** ~~two~~ hours, calculated on the basis of hour of departure and arrival monitored in accordance with Article 14;

Justification.

Two hours is not enough time to justify a connection. After consulting with stakeholders 30 min will be needed to connect and 30 to disconnect due to the coupling and adjusting of voltages and frequencies with safety. We need a realistic number and this is why we propose 4 hours

(b) that use zero-emission technologies **for their electrical power demand at berth, while moored at the quayside**~~, as specified in Annex III~~;

(c) that have to make an unscheduled **and not systematic** port call for reasons of safety or saving life at sea**, due to unforeseen circumstances beyond the control of the owner or master**;

(d) that are unable to connect to on-shore power supply due to unavailable connection points in a port **or where exceptionnally the electrical grid stability is at risk, due to insufficient available shore-power to satisfy the ship's required electrical power demand at berth**;

(e) that are unable to connect to on-shore power supply because the shore installation at the port is not compatible with the on-board on-shore power equipment**, provided that the installation for shore-connection on-board the ship is certified in accordance with the standards specified in Annex II of AFIR[6] which will be further developed for seagoing ships shore connection systems**;

Justification

ES is also aware of the AFIR modifications. We have examined Annex II and the list provided is not exhaustive enough. Standards need to be updated considering for example "Technical specifications for on-shore shore-side electricity recharging points for maritime vessels, featuring interconnectivity and system interoperability". This not enough: training and familiarization, assignment of responsibilities, proper communication between ship and port, compatibility assessment, equipotential bonding, pre-connection tests and operational procedures and equipment for high voltage or low voltage. for maritime vessels need to be considered too. Otherwise we would have a problem in the interphase ship port

[6] Correct title to be added later.

(f) which, for a limited period of time, require the use of on-board energy generation, under emergency situations representing immediate risk to life, the ship, the environment or for other reasons of force majeure;

(g) which, for a period of time limited to the strict necessary, require the use of on-board energy generation for maintenance tests, or for functional tests carried out upon request of an officer from a competent authority or the representative of a recognised organization undertaking a survey or inspection.

3bis. A ship that intends to use zero-emission technologies as a substitute to on-shore, [or, where applicable, off-shore power supply], in application of paragraph 3(b) above, shall inform the port authority concerned, along with the notification prior to entry into ports referred to in Article 4 of Directive 2002/59/EC, of the following elements:

(a) the identification of the zero-emission technology used among the technologies listed in the implementing acts adopted pursuant to paragraph 4;

(b) the location of the technology used on board, and any other information enabling the inspection of its use on board by competent authorities.

3ter. The port authority shall record in the FuelEU database the information received pursuant to paragraph 3bis without delay.

4. The Commission is empowered to adopt ~~delegated~~ **implementing** acts in accordance with Article 2**7(3)** ~~6 to amend Annex III~~ in order to **establish the list and acceptance criteria of the technologies considered as zero-emission technologies within the meaning of Article 3(g), for the uniform implementation of this Regulation. The Commission shall regularly update the list in the light of the scientific and technical progress to assess if new technologies can be considered as zero-emission technologies within the meaning of this Regulation** ~~insert references to new technologies in the list of applicable zero-emission technologies or criteria for their use, where these new technologies are found equivalent to the technologies listed in that Annex in the light of scientific and technical progress~~.

5. ~~The managing body of the port of call shall determine whether the exceptions set in paragraph 3 apply and issue or refuse to issue the certificate in accordance with the requirements set out in Annex IV.~~

~~[Option 1: The port authority, after consultation of the managing body of the port where necessary,]~~

[Option 2: The competent authority of the Member State of the port of call or any entity duly authorized]

Justification

ES prefers competent authority all along the text for simplification purposes

shall record in the FuelEU database, without delay, the following information:

(a) the application of any exception set in paragraph 3 points (a), (b), (c), (d), (e), or (f);

(b) the non application by a ship of the requirement of paragraph[s] 1 [and 2bis] without being eligible to any exception set in paragraph 3.

6. ~~From 1 January 2035, the exceptions listed in paragraph 3, points (d) and (e), may not be applied to a given ship, in total, more than five times during one reporting year. A port call shall not be counted for the purpose of compliance with this provision where the company demonstrates that it could not have reasonably known that the ship will be unable to connect for reasons referred to in paragraph 3, points (d) and (e).~~**From 1 January 2030, in ports mentioned in Article 9 of AFIR[7] equipped to provide the required shore-side electricity to supply a given ship type, the exceptions provided for in paragraph 3, points (d) and (e), shall not be applied to a ship of that given type, in total, more than five times, during one reporting period. A port call shall not be counted for the purpose of compliance with this provision where the company demonstrates that it could not have reasonably known that the ship will be unable to connect for the reason referred to in paragraph 3, points (d) and (e).**

~~7. Emergency situations resulting in the need to use on-board generators, referred to in paragraph 3, point (f), shall be documented and reported by the ship to the managing body of the port.~~

7. ~~A Member State may decide that, in a port or some parts of a port located in its jurisdiction, containerships or passenger ships at anchorage are covered by the same~~

[7] Correct title to be added later.

~~obligations made to ships moored at the quayside in this Article. The Member State shall notify its decision to the Commission a year prior to its application, which must start at the beginning of a reporting period. The Commission shall publish the information in the Official Journal of the European Union and provide an updated list of the concerned ports which shall be easily accessible.~~

Justification.

ES propose to delete this. We do not agree in OPS at anchorage. It is not feasible and in terms on WtT it will be as effective as on shore supply. We still consider that there is a need of having a fundamental debate in WtT emissions on electricty.We prefer this to be tackled in future revisions of the regulation if needed

Article 6

Common principles for monitoring and reporting

…

1. In accordance with Articles 7 to 9, companies shall**,** for each of their ships, monitor and report on the relevant data during a reporting period. They shall carry out that monitoring and reporting within all ports under the jurisdiction of a Member State and for ~~any~~ **all** voyages ~~to or from a port under the jurisdiction of a Member State.~~

Justification.

ES sees a serious problem in the regulation and a risk of carbon leakage. Therefore, ES wants the system to collect all the information, irrespective of the applicability. There wouldn't be any legal issues in collecting the data. ES doesn't intend that the GHGIE is calculated for all the data neither wish the penalties to be set also due to the non-provision of data.

…

4. Companies shall obtain, ~~record, compile,~~ analyse and ~~document~~ **store for at least three years all** monitoring data **and documentation**, including assumptions, references, emission factors**,** Bunker Delivery Notes as complemented **persuant to Annex I** and activity data, *FuelEU Maritime Bunker Notes, pursuant to article 4a (new), and Fuel non-availability reports pursuant Article 14.1(a)(new)'*in a transparent and accurate manner, **in paper or electronic form,** so that the verifier can determine the greenhouse gas intensity of the energy used on-board by ships.

Justification.

In case fuel is not provided in a port there should be a possibility to report as we indicate in our proposals to articles 4a (new), 4b(new) and amendments to articles 14 and 20

Article 7

Monitoring plan

3. The monitoring plan shall consist of a complete and transparent documentation and shall contain at least the following elements:

…

(d2) the value of the established total electrical demand of the ship at berth, which shall be approved by its flag State ~~or a recognised organisation acting on its behalf pursuant to the IMO Code for Recognized Organizations adopted by Resolution MEPC237(65);~~

Justification.

This is the normal practice. No need to introduce ROs for this purpose. In addition the demand may not necessarily be calculated by RO but by a classification society not inovolved in statutory certification.

….

(l) new. A description of the accountability of the electricity taken from shore for the purpose of providing energy to prime movers, auxiliaries and equipment other than transitional emergency power stored in secondary batteries

Justification.

The monitoring plan needs to account for the extrapower taken from shore for latter use in navigation

Article 9

Certification of biofuels, biogas, renewable liquid and gaseous transport fuels of non-biological origin and recycled carbon fuels

…

2 **On the basis of the Bunker Delivery Notes as complemented persuant to Annex I**, *FuelEU Maritime Bunker Notes, pursuant to article 4a (new), and Fuel non-availability reports*

*pursuant Article 14.1(a)(new)*c~~C~~ompanies 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, **as** verified by a scheme that is recognised by the Commission in accordance with Article 30(5) and (6) of the Directive (EU) 2018/2001.

Justification.

In case fuel is not provided in a port there should be a possibility to report as we indicate in our proposals to articles 4a (new), 4b(new) and amendments to articles 14 and 20

Article 11

General obligations and principles for the verifiers

…

2. The verifier shall assess the reliability, credibility**,** ~~and~~ accuracy **and completeness** of the data and information relating to the amount, type and emission factor of the energy used on-board by ships, in particular:

…

(d) the use of on-shore ~~**[or, where applicable, off-shore]**~~ power supply or the presence of exceptions certified in accordance with Article 5(5)~~;~~.

Justification

ES propose to delete this. We do not agree in OPS at anchorage. It is not feasible and in terms on WtT it will be as effective as on shore supply. We still consider that there is a need of having a fundamental debate in WtT emissions on electricty.

2ter. Any competent authority ~~**of the Member State of the port of call or of the administering State**~~ **identifying non-conformities of a verifier's activities within the scope of this Regulation shall inform the verifier and the national accreditation body having accredited the verifier. The national accreditation body shall take into account this information as part of its surveillance activities.**

Justification

In line with our view that the administering authority of the ETS does not need to be involved here and the control of the verifier is not just the accreditation body. Accreditation bodies may not have sufficient criteria to appoint a verifier in the maritime domain but also the maritime administrations needs to carry out an oversight. In this regard we feel comfortable with the term competent authority. If there is a need to involve maritime administrations+administering authorities+accreditation bodies+Commission we are creating an excessive burden to the process. In addition we do not want to restrict this to the port of call because there may be other cases giving raise to non conformites derived from activities such as PSC.

Article 14

Monitoring and recording

1. **As of 1 January 2025,** ~~B~~**b**ased on the monitoring plan referred to in Article 7, and following the assessment of that plan by the verifier, companies shall record, for each ship arriving in or departing from, and for each voyage to or from a port of call under the jurisdiction of a Member State, the following information:

(a) port of departure and port of arrival including the date and hour of departure and arrival and time spent at berth;

(b) for each ship ~~that the requirement of~~ **to which** Article 5(1) applies, the connection to and use of on-shore power or the existence of any of the exceptions listed in Article 5(3);

(c) the amount of each type of fuel consumed at berth and at sea;

(cbis) the amount of electricity taken at berth for navigational purposes

Justification.

To consider the electricity taken for other purposes other than the electricity needs at port

(d) the well-to-wake emission factors for each type of fuel, including electricity taken from onshore power supply, consumed at berth and at sea, broken down by well-to-tank, tank-to-wake and fugitive emissions, covering all relevant greenhouse gases;

Justification.

To include electricity in Well to Tank emissions in accordance to our proposal in regulation

(e) the amount of each type of substitute source of energy consumed at berth and at sea.

(new) Paragraph 1bis.

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.

Justification.

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

2. Companies shall record the information ~~and data~~ listed in paragraph 1 on annual basis in a transparent manner, that enables the verification of compliance with this Regulation by the verifier.

3. By ~~3~~**1**~~0 March~~ **31 January** [8] of ~~each year~~ **the reporting year**, companies shall provide to the verifier **a ship-specific FuelEU report containing all** the information referred to in paragraph 1 **and the monitoring data and documentation referred to in Article 6(4) for the reporting period**~~corresponding to the previous calendar year~~.

3bis Companies shall notify to the verifier each ship that has borrowed an advance compliance surplus for the period preceding the reporting period and has not performed any voyage to or from a port of call under the jurisdiction of a Member State during the reporting period.

4. ~~In case there is a change of company~~ **In the event of the transfer of a ship from one company to another:** ~~**, the new company shall ensure that each ship under its responsibility complies with the requirements of this Regulation in relation to the entire reporting period during which it takes responsibility for the ship concerned.**~~

[8] Note from the Presidency: moving forward the deadline for the initial FuelEU report of the company to 31 January, which seems doable since the data will be collected continuously during the reporting period, would allow to let more time for the next steps, notably the verification procedures, and to possibly align the deadline of 31 March for the transmissions of the verified FuelEU report and the verified emisisons report required under MRV for the ETS (as proposed in Article 11a of MRV Regulation in the ETS legislative proposal).

(a) the previous company shall notify to the verifier the information referred to in paragraph 1 for the time during which it has assumed the responsibility for the operation of the ship. Within two months after completion of the transfer, this information shall be verified and recorded in the FuelEU database in accordance with Article 15 by the verifier that performed verification activities for the ship under the previous company; and

(b) the new company assuming the responsibility for the operation of the ship on 31 December of the reporting period shall be responsible for the compliance of the ship with the requirements of Articles 4 and 5 for the entire reporting period during which the transfer or multiple transfers took place.

Paragraph 4bis (new).
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 1bis (new).

Article 15

Verification and calculation

1. Following the verification laid down in Articles 10 to 12, the verifier shall assess the quality, completeness and accuracy of the ~~information provided by the company in accordance with Article 14(3)~~ **FuelEU report. To this purpose, the verifier shall use any information contained in the FuelEU database, including information provided on port calls in accordance with Article 5. 1bis[9]. Where the verification assessment concludes, with reasonable assurance from the verifier, that the FuelEU report is free from material misstatements, the verifier shall notify to the company a verification report stating that the FuelEU report complies with this Regulation. The verification report shall specify all issues relevant to the work carried out by the verifier.**

9 Note from the Presidency: this paragraph is inspired from Article 13(3) of MRV Regulation, for better consistency and robustness of the verification process.

1ter[10]. Where the verification assessment identifies misstatements or non-conformities with this Regulation, the verifier shall inform the company thereof in a timely manner. The company shall then correct the misstatements or non-conformities so as to enable the verification process to be completed in time and shall submit to the verifier an amended FuelEU report and any other information that was necessary to correct the non-conformities identified. In its verification report, the verifier shall state whether the amended FuelEU report complies with this Regulation. Where the communicated misstatements or non-conformities have not been corrected and lead to material misstatements, the verifier shall notify to the company a verification report stating that the FuelEU report does not comply with this Regulation.

2. On the basis of the **compliant FuelEU report** ~~information verified according to paragraph 1~~, the verifier shall:

(a) calculate, using the method specified in Annex I, the yearly average greenhouse gas intensity of the energy used on-board by the ship concerned;

(b) calculate, using the formula specified in Annex V **Part A**, the ship's compliance balance;

(c) calculate the number of non-compliant port calls in the previous reporting period including the time spent **moored at the quayside and, where applicable in accordance with Article 5(7), at anchorage,** ~~at berth~~ for each ~~non-compliant~~ port call **non compliant with the requirements set in Article 5**.

~~(d) calculate the amount of the penalties referred to in Article 20(1) and (2).~~

3. **By 31 March of the reporting year,** ~~T~~the verifier shall ~~notify to the company the information referred to in paragraph 2~~**record in the FuelEU database the compliant FuelEU report, the verification report and the information referred to in paragraph 2** and notify the flag administration.

Justification.

Since there may be sanctions and penalties ES feels that the flag state has a role, therefore the flag state needs to be informed

10 Note from the Presidency: this paragraph corresponds to the initial Article 10(3), with additional elements from Article 13(4) of MRV Regulation, for better consistency and robustness of the verification process.

Article 15bis

Additional checks by a competent authority

1. At any time and for the two previous reporting periods, the competent authority ~~of the Member State of the port of call or the competent authority of the administering State~~ may, for a ship to which this Regulation applies, conduct additional checks of any of the following:

Justification.

As indicated Spain wants to simplify this and decide internally who is the competent authority. We do not support the use the administering authority of the ETS and the definition 3(ff) is misleading. We feel that it creates a loop.

(a) the compliant FuelEU report established in application of Articles 14 and 15;

(b) the verification report established in application of Article 15;

(c) the calculations made by the verifier in application of Article 15(2).

~~2. The competent authority may delegate these checks, at its own expenses, to a verifier accredited under Article 13(1) of this Regulation other than the verifier having issued the verification report and calculations mentioned in paragraph 1.~~

Justification.

We have concerns on this type of delegation, since it would be necessary to initiate again a process in case legal actions are need. It would be simpler to introduce a mechanism to rotate verifiers every X years.

3. On the request of the entity conducting such checks, the company shall provide any necessary information or document and shall allow the access to the premises of the company or the ship to facilitate the checks.

4. The competent authority shall issue or, where appropriate, endorse the additional checks report and record it in the FuelEU database.

5. Where such report finds misstatements, non-conformities or miscalculations resulting in a non-conformity to the requirements set out in Articles 4 or 5 of this Regulation:

a) the competent authority shall notify to the company and, where applicable, to the competent authority of the administering State, through the FuelEU database, the additional checks report, the updated calculations to be made in application of Article 15(2), where applicable the updated amount of the compliance surplus or of the advance compliance surplus and where applicable the amount of the remedial penalty corresponding to the non-conformity found, calculated in accordance with Article 20;

(b) the company responsible for the ship during the period subject to the additional checks shall pay the remedial penalty at the latest one month after receipt of the notifications mentioned in paragraphs 5.(a) at the latest, in accordance with the modalities referred to in Article 21;

(c) the competent authority shall notify the additional checks report to the verifier, to its national accreditation body and to the Member State of the accreditation body.

6. The competent authority shall withdraw without delay in the FuelEU database the FuelEU document of compliance of the ship whose company has not paid in due time the penalties referred to in paragraphs 5.(b) and 5.(c) and shall notify this withdrawal to the company in a timely manner. It shall issue the document of compliance again when the remedial penalty has been paid, provided that the other conditions set out in this Regulation for holding this document are fulfilled by the company.

7. Paragraph 6 do not apply to a ship which has been transferred to a company other than the one that assumed the responsibility for its operation during the period subject to the additional checks.

8. The actions referred to in this Article as well as the proof of the financial payments in accordance with Article 21 shall be recorded without delay in the FuelEU database.

Article 16

~~Compliance~~ FuelEU database and reporting

1. The Commission shall develop, ensure functioning and update an electronic ~~compliance~~ **FuelEU** database for the monitoring of compliance with ~~Articles 4 and 5~~ **this Regulation**.

The ~~compliance~~ **FuelEU** database shall be used to keep a record of **the actions related to verification activities, of** the compliance balance of the ships**, including** ~~and~~ the use of the flexibility mechanisms set out in Articles 17 and 18**, and of the actions related to the payment of the penalties referred to in Article 20 and the issuance of the FuelEU document of compliance**. It shall be accessible to the companies, the verifiers, the ~~competent authorities~~ **Member States, the national accreditation bodies,** ~~**the European Maritime Safety Agency**~~**, the port authorities** and the Commission**, with appropriate access rights and functionalities corresponding to their respective responsibilities in the implementation of this Regulation**.

Justification.

ES prefers to have the Commission as the guardian since there may be legal implications. Access to EMSA may be granted by COM at a later stage in accordance to point 2 below. Current EMSA regulation may not be allowed to do this.

1bis. Any elements recorded or modified in the FuelEU database shall be notified to the entities to which they are accessible.

2. The Commission shall, by means of implementing acts, lay down the rules for access rights and the functional and technical specifications of the ~~compliance~~ **FuelEU** database. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 27(3).

~~3. By 30 April of each year, the company shall record in the compliance database for each of its ships the information referred to in Article 15(2), as ascertained by the verifier, together with information **from the reporting period corresponding to the previous calendar year** allowing to identify the ship, the company, as well as the identity of the verifier that carried out the assessment.~~

Article 18

Pooling of compliance

1. The compliance balances of two or more ships, **as calculated in application of Article 15(2)** ~~which are verified by the same verifier~~, may be pooled for the purposes of fulfilling the requirements of Article 4. A ship's compliance balance may not be included in more than one pool in the same reporting period.

2. ~~By 31~~**1**~~0 March of the year following the reporting period~~ **To that end**, the company shall notify **in the FuelEU database** ~~to the verifier~~ the intention of including the ship's compliance balance in a pool, **the allocation of the total compliance balance of the pool to each individual ship, and the choice of the verifier selected for verifying this allocation** ~~for the immediately preceding reporting period~~. The company shall also notify the flag state

Justification.

Since there may be sanctions and penalties ES feels that the flag state has a role, therefore the flag state needs to be informed

2bis. In the case where the ships participating in the pool are controlled by two or more companies, the **notification, including the allocation of the total compliance balance of the pool to its ships and the choice of the verifier selected for verifying the allocation of the total compliance balance of the pool to each individual ship, shall be validated by all the** companies ~~shall make a joint notification to the~~ ~~**verifier**~~ **concerned**.

3. **A pool is valid only if the total pooled compliance is positive and if ships which had a compliance deficit as calculated in application of Article 15(2) do not have a higher compliance deficit after the allocation of the pooled compliance.**

~~By 30 April of the year following the reporting period, the pool shall be recorded in the compliance database by the verifier. The composition of the pool shall not change after that date~~

4. **A ship shall not be included in a pool if it does not comply with the obligation set out in Article 22.**

Note.

This addition is not understood.Article 22 refers to "detain"

~~In case of pooled compliance under paragraph 1 of this Article, and for the purposes of Article 15(2)(b), the company may decide how to allocate the total compliance balance of the pool to each individual ship, provided that the total pool compliance balance is respected. In case where the ships participating in the pool are controlled by two or more companies, the total compliance balance of the pool shall be allocated in accordance with the method specified in the joint notification.~~

5. If the **total pooled compliance balance** ~~pool average compliance balance~~ results in ~~the~~ **a** compliance surplus for an individual ship, Article 17(1) applies.

6. Article 17(2) does not apply to a ship participating in the pool.

7. The company may no longer include the ship's compliance balance in a pool once the FuelEU ~~certificate~~ **document** of compliance has been issued.

8. By 30 April of the reporting year, the selected verifier shall record in the FuelEU database the definitive composition of the pool and allocation of the total pooled compliance balance to each individual ship.

Article 19

FuelEU ~~certificate~~ document of compliance

1. By 30 June of the ~~year following the end of a reporting period~~ **reporting year**, the verifier shall issue a FuelEU ~~certificate~~ **document** of compliance for the ship concerned, provided that the ship does not have a compliance deficit, after possible application of Articles 17 and 18, ~~and~~ does not have non-compliant port calls**, complies with the obligation set out in Article 22 and, where applicable, has paid the penalties referred to in Article 20.**

2. The FuelEU ~~certificate~~ **document** of compliance shall include the following information:

   (a) identity of the ship (name, IMO identification number and port of registry or home port);

   (b) name, address and principal place of business of the ship-owner;

   (c) identity of the verifier;

   (d) date of issue of this ~~certificate~~ **document**, its period of validity and the reporting period it refers to.

3. The FuelEU ~~certificate~~ **document** of compliance shall be valid for ~~the~~ **a** period of 18 months after the end of the reporting period, which may be reduced when so decided by the competent authority of the flag state and ~~or~~ **expire if a new** ~~certificate~~ **document is issued in the meantime.**

Justification

We want to introduce a safeguard to allow to remove the certificate by the competent authority of the flag state.

Article 20

Remedial penalties~~[11]~~

1. Where on 1 May of the ~~year following the reporting period~~ **reporting year** the ship has a compliance deficit, the company shall pay a **remedial** penalty. The verifier shall calculate the amount of the **remedial** penalty on the basis of the formula specified Annex V **Part B. When a ship has a compliance deficit for two consecutive reporting periods or more, that amount shall be multiplied by 1 + (n-1)/10, where n is the number of consecutive reporting periods for which the company is subject to a remedial penalty for this ship.**[12]

2. The company shall pay a **remedial** penalty for each non-compliant port call. The verifier shall calculate the amount of the **remedial** penalty by multiplying the amount of EUR ~~250~~ **1,5** by ~~megawatts of power installed on-board~~ ~~**for electrical power demand needs while at berth**~~ **the established total electrical power demand of the ship at berth** and by the number of ~~completed~~ **rounded up** hours spent **moored at the quayside** ~~**and, where applicable in accordance with Article 5(7), at anchorage**~~.

Note.

Could Presidency provide an example. 1,5xKW used x hours at port….Is it equal to 1,5xKWh? Are we meaning that the penalty cost per Kwh is 1,5 Euros? What is the justification for this?

Justification.

ES proposes to delete anchorage

1. **2bis. By 1 May of the reporting year, the verifier shall notify to the competent authority** ~~**of the administering State**~~ **and to the company the amounts of the penalties referred to in paragraphs 1 and 2.**

~~**[11] The Presidency is aware of the concerns expressed by some Member State about the pertinence of the term "penalties". Further reflection is needed in this respect.**~~

~~**[12] The Presidency is aware of the questions raised by some Member States on this Article ans of their will to better involve the administrations in the process. Further reflection is needed in this respect.**~~

2ter. The competent authority of the administering State may review the amounts referred to in paragraphs 1 and 2. If it identifies any possible errors in the calculation of the remedial penalties notified by the verifier, it shall inform the company and the verifier thereof by 1 June of the reporting year. After giving the opportunity to the company and the verifier concerned to submit their observations, the competent authority of the administering State shall notify to the verifier and the company, if applicable, the amended amount of the remedial penalties. The company shall pay these penalties at the latest one month after receipt of this notification.

2quater. If the notification mentioned in paragraphs 2ter is made after 1 June of the reporting year and the company has not paid the amended penalties by 30 June, a provisional document of compliance shall be issued to the company by the competent authority ~~of the administering State~~ on 30 June of the reporting year. This provisional document of compliance shall be valid until one month after the notification mentioned in paragraph 2ter.

3. ~~Notwithstanding Article 19(1), the verifier shall issue a FuelEU certificate of compliance once the penalties referred to in paragraphs 1 and 2 of this Article have been paid.~~[13] The actions referred to in this Article as well as the proof of the financial payments in accordance with Article 21 shall be recorded **without delay** in the FuelEU **database by the entities who had performed those actions**~~certificate of compliance~~.

3bis. Where the shipping company concludes a contract with a commercial operator specifiyng that this operator is responsible for the purchase of the fuel or the operation of the ship, the shipping company and that commercial operator may, by means of a contractual arrangement, determine that the latter shall be liable for all or part of the costs arising from the payment of the remedial penalties referred to in this Article. For the purposes of this paragraph, operation of the ship shall mean determining the cargo carried, the itinerary, the routeing and/or the speed of the ship.

Note.

Spain concurs with the idea in the text. Time charterers need to bear the costs of existing contracts and new contracts will have to include the necessary clauses. We are having some concerns with the potential consequences of mixing public and private law and we understand

[13] **This deletion is linked to the new addition in Article 19(1)**

that the Competent Authority will deal only with the Company. Clarifying text will need to be included in the preamble.

4. The Commission is empowered to adopt delegated acts in accordance with Article 26 to amend Annex V in order to adapt **the factor defined in cells 7 of the table in Part B of that Annex and used in** the formula referred to in paragraph 1 of this Article, **based on the developments in the cost of energy,** and to amend the **numerical factor** ~~amount of the fixed penalty~~ laid down in paragraph 2 of this Article, **based on the indexation of the average cost of electricity in the Union** ~~taking into account the developments in the cost of energy~~.

~~**5.[14] Any Member State without maritime ports in its territory and which has closed its national ship register or has no ships flying its flag that fall within the scope of this Regulation, and as long as no such ships are flying its flag, may derogate from the provisions of this Article. Any Member State that intends to avail itself of that derogation shall notify the Commission at the latest on XXXXX. Any subsequent change shall also be communicated to the Commission.[15]**~~

Article 21

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

1. The penalties referred to in **Article 15bis(5),** Article 20(1) and 20(2) shall be allocated to support common projects aimed at the rapid deployment of renewable and low carbon fuels in the maritime sector. Projects financed by the funds collected from the penalties shall stimulate the production of greater quantities of renewable and low carbon fuels for the maritime sector, facilitate the construction of appropriate bunkering facilities or electric connection ports in ports, and support the development, testing and deployment of the

~~**[14] The Presidency intends to accommodate this aspect but wonders whether this paragraph is correctly placed here. Would it not be more appropriate in Article 23? Indications from the delegation sought.**~~

~~**[15] The following recital could be also added: "(XX) Member States that have no maritime ports in their territory and which have no ships flying their flag and falling under the scope of this Regulation, or which have closed their national ship registers, should be able to derogate from the provisions of this Regulation relating to penalties, as long as no such ships are flying their flag".**~~

most innovative European technologies in the fleet to achieve significant emission reductions.

2. The revenues generated from penalties referred to in paragraph 1 shall be allocated to ~~the Innovation Fund referred to in Article 10a(8) of Directive 2003/87/EC. These revenues shall constitute external assigned revenue in accordance with Article 21(5) of the Financial Regulation, and shall be implemented in accordance with the rules applicable to the Innovation Fund.~~ a marine dedicated fund set with the objective of supporting projects and investments as follows:

(a) improvement of the energy efficiency of ships and ports;

(b) innovative technologies and infrastructure for decarbonising the maritime transport sector, including as regards short sea shipping and ports;

(c) deployment of sustainable alternative fuels, such as hydrogen and ammonia, that are produced from renewable energy, including through carbon contracts for difference aimed at bridging the price difference between low- and zero-carbon fuels and conventional fuels;

(d) zero-emission propulsion technologies, including wind technologies;

(e) research and development and first industrial application of technologies and designs reducing greenhouse gas emissions, including innovative technologies and fuels;

(f) priority shall be given to those projects that have a positive effect on biodiversity and promote innovation in the sector, such as technologies that not only decarbonize but inter alia also reduce the risk of noise, air and maritime pollution;

(g) contribution to a just transition in the maritime sector through training, upskilling and reskilling of existing workforce and preparation of next generation maritime workforce

All investment supported by the Fund shall be made public and shall be consistent with the aims of this Regulation.

3 Fifty per cent of the revenues generated from the penalties shall be used through the Fund and the rest shall be distributed to the competent authorities of the member states with criteria that will take into account the number of calls made in the member state and the ships flying the flag of the member states. For ships non flagged in the member states the revenues will be assigned on the port of call basis, however the Commission shall engage with third countries with regard to exploring options as to how they could also make use of the Fund.

Justification.

A dedicated fund is proposed using the same structure as the Ocean Fund proposed by the ETS by some MS. ES considers that part of the revenues should go directly to the member states.

This is why we propose that 50% of the revenues go directly to the MS. Detailed criteria may be proposed at a later stage.

3. **The Commission is empowered to adopt implementing acts in accordance with Article 27, paragraph 3 in order to specify the modalities for the payment of the remedial penalties referred to in paragraph 2 of this Article.** ~~The Commission is empowered to adopt delegated acts in accordance with Article 26 to supplement this Regulation concerning the modalities for the payment of the penalties referred to in Article 20(1) and 20(2).~~

Article 22

Obligation to ~~carry~~ detain a valid FuelEU document ~~certificate~~ of compliance ~~on board~~

1. **By 30 June of the ~~year following the end of a reporting period~~ reporting year,** ~~T~~the ships calling at a port under the jurisdiction of a Member State**, arriving at, within or departing from a port under the jurisdiction of a Member State, and which have carried out voyages during that reporting period,** shall ~~carry on-board, in paper or electronic form,~~ **detain** a valid FuelEU **document** ~~certificate~~ of compliance.

Note.

Spain needs clarification on the expression detained. It also needs to be clarified what will happen to new ships or also those ships that start travelling in the EU. There is a need to identify which ships are obliged to have the document. The article is clear but how this is going to be made operative may be not.

2. The Fuel EU **document** ~~certificate~~ of compliance issued for the ship concerned in accordance with Article 19 shall constitute evidence of compliance with this Regulation.

Article 23

Enforcement

Note.

Scrutiny reservation.

Article 23b

Derogations

Note.

Scrutiny reservation.

Article 24

Right to review

1. The companies shall be entitled to apply for a review of the calculations and measures addressed to them by the verifier under this Regulation, including the refusal to issue a FuelEU **document** ~~certificate~~of compliance pursuant to Article 19(1). **The application for review shall be lodged, within one month of the notification of the result of calculation or of the measure by the verifier, with the competent authority of the Member State in which the verifier has been accredited**.

2. **The companies shall be entitled to apply for a review of the decisions taken under this Regulation by the managing body of the port.**[16] The application for review shall be lodged, within one month of the notification of the **decision, with the competent authority of the Member State of the port of call** ~~result of calculation or of the measure by the verifier, with the competent authority of the Member State in which the verifier has been accredited. The decision of the competent authority shall be subject to judicial review~~

2bis The Competent Authority shall be entitled to apply for a review of the penalties set by the verifier under this Regulation.

Justification:

The competent authority needs to have the capacity to ask for

3. The decisions taken under this Regulation by the **competent authority of a Member State** ~~managing body of the port~~ shall be subject to ~~judicial~~ review **by a court of the Member State concerned~~, respectively in which the verifier has been accredited or of the port of call~~**.

Article 25

Competent authorities

➢ ***Note. Scrutiny reservation.***

Article 26

Exercise of delegation

[16] Adjustments to this provision might be needed depending on the final drafting of Article 5(5).

Note.
Scrutiny reservation.

Article 27

Committee procedure

Note.

Scrutiny reservation.

Article 28

Report and review[17]

1. The Commission shall report to the European Parliament and the Council, by 1 January 2030 **and every five years thereafter**, the results of an evaluation on the functioning of this Regulation and the evolution of the technologies and market for renewable and low-carbon fuels in maritime transport and its impact on the maritime sector in the **Union** and globally. The Commission shall consider possible amendments **including but not limited** to:

   (a) the limit referred to in Article 4(2);

   (b) the ship types **and situations t**o which Article 5(1) applies;

   (c) the exceptions listed in Article 5(3).

   (d) In the event of the adoption by the International Maritime Organization of a global low GHG carbon fuel standard, the Commission shall present a report to the European Parliament and to the Council examining such measure, accompanied with a legislative proposal to the European Parliament and to the Council to appropriately amend this Regulation in order to align it with international rules.

Justification

ES supported MT (13405 and 14174 ad 3) and incorporates the text provided by DE (13353). ES supports PL (13397), DE (13353), SE(14698) and DK (14174 ad 5). ES has added the proposed by EL in their document WK03129 which we fully support.

17 **The Presidency is aware that some Member States requested an IMO-related review clause. Further reflection is needed in this respect; an addition could be considered along the following lines: "2. The Commission shall consider possible amendments in relation to the adoption by the International Maritime Organization of a global low-GHG fuel standard for maritime transport. In the event of the adoption of such a measure, the Commission shall present a report to the European Parliament and to the Council examinining such measure. Where appropriate, the Commission may follow to the report with a legislative proposal to the European Parliament and to the Council to amend this Regulation as appropriate."**

Note

ES invites all to read its proposal for Art 4 (new paragraph 5) to introduce an analysis before each five year cycle before moving to the next five year step. We rather see stronger and more clear text in Article 4, than the one proposed by Presidency in paragraph 1.

(e) the scope of application listed in Article 2;
(f) the definitions listed in Article 3

[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^3]
- fuel density [kg/m^3]
- WtT GHG emission factor for CO_2 (carbon factor) [$gCO_2/gFuel$] and for CO_{2eq} [$gCO_{2eq}/gFuel$] and related certificate[18]
- *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

18 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.