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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 - Greece

Delegations will find, attached, comments from Greece on the above-mentioned document.

**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**  
(COM(2021) 562 final/ 14.07.2021)

Comments and drafting proposals by Greece  
(on Working Document 7601/22 LIMITE/ 28.03.2022)

Greece would like to thank the French Presidency for the work carried out so far on the proposed Fuel EU Maritime Regulation.

In view of the continuation of the deliberations of the file within the Shipping Working Party (SWP), Greece would like to highlight its main priorities and to offer concrete updated drafting proposals, corresponding to the positions expressed in the previous meetings. The related objective and justification is also provided alongside each drafting proposal.

Please kindly note that for facilitation reasons and in order to keep the current document as short as possible, for our drafting proposals and respective reasoning in several articles below you may need to refer to WK 3129/2022 INIT/02.03.2022 and WK 14554/2021 INIT/ which are still valid.

## **I. UPDATED DRAFTING PROPOSALS**

### **Recital 6 & Article 20**

#### **Implementation of the “polluter pays” principle**

Revised drafting proposal  
taking into account for Article 20 the Presidency approach  
in Working Document 7601/22 LIMITE/ 28.03.2022

a) It is proposed to amend Recital 6 of the proposed Regulation as follows<sup>1</sup>:

#### Recital 6

(6) The person or organisation responsible for the compliance with this Regulation should be the shipping company, defined as the shipowner or any other organisation or person, such as the manager or the bareboat charterer, that has assumed the responsibility for the operation of the ship from the shipowner and that, on assuming such responsibility, has agreed to take over all the duties and responsibilities imposed by the International Management Code for the Safe Operation of Ships and for Pollution Prevention. This definition is based on the definition of ‘company’ in Article 3, point (d) of Regulation (EU) 2015/757 of the European Parliament and of the Council<sup>5</sup>, and in line with the global data collection system established in 2016 by the International Maritime Organization (IMO). ~~In line with the polluter pays principle, the shipping company could, by means of a contractual arrangement, hold the entity that is directly responsible for the decisions affecting the greenhouse gas intensity of the energy used by the ship accountable for the compliance costs under this Regulation. This entity would normally be the entity that is responsible for the choice of fuel, route and speed of the ship.~~ **However, the shipping company is not always responsible for purchasing the fuel and/or taking operational decisions that affect the greenhouse gas intensity of the energy used by the ship. These responsibilities may be assumed by an entity other than the shipping company under a contractual arrangement. Whilst the shipping company will remain responsible for fulfilling monitoring and reporting obligations**

<sup>1</sup> Deletions in green strikethrough and additions in red bold underlined text

under this Regulation, as well as for paying the remedial penalties, in order to properly implement the ‘polluter pays’ principle and to promote the uptake of cleaner fuels, that other entity should be responsible for complying with the energy intensity limits set out in this Regulation and, in case of compliance deficit, reimburse the shipping company with respect to the cost of the remedial penalties. For the purpose of this Regulation operation of the ship means determining the cargo carried, the itinerary, the routing and/or the speed of the ship.

b) It is proposed to amend new paragraph 3bis of Article 20 of the proposed Regulation as follows<sup>2</sup>:

#### Article 20 Remedial penalties

**3bis. When the responsibility for the purchase of the fuel and/or the operation of the ship is assumed, by a different entity than the company, Where the shipping company concludes a contract with a commercial operator specifying 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, that entity determine that the latter shall be liable for all or part of the costs arising from reimbursing the company for the payment of the remedial penalties referred to in this Article. In that case, the verifier shall also allocate the proportion of the compliance deficit to the entity that is ultimately responsible for the purchase of the fuel and/or the operation of the ship, calculate the proportionate remedial penalty and notify the shipping company and that other entity for the sake of payment or reimbursement. For the purposes of this paragraph, operation of the ship shall mean determining the cargo carried, the itinerary, the routing and/or the speed of the ship.**

#### **Justification**

The commercial operator/charterer (the actual polluter) should be responsible for complying with the fuel energy intensity limit requirements of this Regulation and reimbursing the shipping company with respect to the penalties imposed for each non-compliant port call and for failing to meet the limits on the greenhouse gas intensity of the energy used on-board the ship. As it could be challenging for the competent authorities to trace down a commercial operator/charterer, not least for companies based outside the EU (due to the fact that such international registry does not exist in shipping), the proposed approach (on recital 6 and Article 20 par. 3bis) ensures that in line with the “polluter pays” principle, the actual polluter (commercial operator/ charterer) shall reimburse the shipping company and the latter shall cover the costs arising from the penalties related to the under-performance of the ship. Consequently, the verifier shall also allocate the proportion of the compliance deficit to the entity that is ultimately responsible for the purchase of the fuel and/or the operation of the ship, calculate the proportionate remedial penalty and notify the shipping company and that other entity for the sake of reimbursement.

#### **Key elements of the proposal**

- **Enhances the effectiveness of the Regulation** by implementing the “polluter pays” principle, whilst incentivize the real polluter to use renewable and low-carbon fuels.
- **Eliminates administrative burden** as:
  - **the shipping company (as defined at the EU MRV Regulation) remains fully responsible for fulfilling all compliance obligations** (including monitoring, reporting and most importantly **paying the remedial penalties to the fund**).
  - no need to trace commercial operators (especially those located outside the EU) nor to resort to contractual arrangements.
- The principle of “freedom of contracts” is safeguarded and at the same time the proposal provides a level playing field for all engaged stakeholders, in particular shipping SMEs.

<sup>2</sup> Deletions in green strikethrough and additions in red bold underlined text

- It **provides legal clarity** since the conditions of the commercial operator/ charterer responsibility is fully clarified. The provision is 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/ charterer on the basis of a contractual arrangement. In such case, **the shipping company pays the remedial penalties** and the commercial operator reimburses the relevant cost to the shipping company. In case the commercial operator doesn't fulfill its obligation for reimbursing the shipping company, the latter can claim for the costs extrajudicially or judicially or through mediation. In any case, the Member States Authorities are not involved in this process.

c) It is proposed to amend paragraph 1 of Article 20 of the proposed Regulation as follows<sup>3</sup>:

#### Article 20 Remedial penalties

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.~~

#### Justification

This provision is not compatible with the modus operandi of bulk/tramp shipping, where a ship may have a different commercial operator during consecutive reporting periods. Taking into account the possible shortage or unavailability of fuels meeting the requirements of the Regulation at ports around the world, it would be unfair to penalize a company or the commercial operator/ charterer for the consecutive under-performance of a ship, if that company or commercial operator/ charterer is not responsible for the compliance deficit of a ship at previous reporting periods.

## II. MAIN PRIORITIES ON OPEN POLITICAL AND TECHNICAL ISSUES

### Article 1 “Purpose”, Article 2 “Scope” and Article 4 “GHG intensity limit of energy used on-board by a ship”

#### Introducing EU Maritime Fuel Suppliers’ Obligations as in WK 3129/2022 INIT/02.03.2022

a) For drafting proposal please refer to WK 3129/2022 INIT/02.03.2022

#### Rationale

Since the beginning of the discussions within the SWP, Greece has mentioned specific enforcement loopholes of the proposed Regulation. These loopholes are linked to the architecture of the proposed regulation which ignores the role of the global fuel suppliers to its implementation. In our view, the Fuel EU Maritime Regulation should put the implementation burden, in a shared and equally balanced manner, both at the fuel suppliers and the fuel users (ships). In working document WK 3129/2022 INIT/02.03.2022 we offered specific drafting proposals which solve the issue of extraterritorial enforcement loopholes (by proposing ensuing changes at the geographical scope of the proposed Regulation. These proposals, in conjunction with the respective proposals provided by Spain (ref. WK 4810/2022 INIT/ 01.04.2022), need further in-depth discussion at the SWP

<sup>3</sup> Deletions in green strikethrough and additions in red bold underlined text

and at political level. Both countries, attempt to introduce - at a single legislative instrument<sup>4</sup>- rules for the consistent supply and use of renewable and low-carbon fuels in the maritime transport sector across Union, rendering the Regulation fit for purpose.

## **Article 2 “Scope”**

### **Request to grant an extension to the Coastal shipping Services**

Additional information to working document WK 3129/2022 INIT/02.03.2022 and WK 14554/2021 INIT

b) For drafting proposal please refer to WK 3129/2022 INIT/02.03.2022 (propose to add new para. “2”)

### **Rationale**

Greece has a unique geomorphology which is not found in any other EU MS. Almost 15% of its population is dispersed on more than 110 islands, in their vast majority with 100-10.000 permanent residents.

Even in islands where airline connection exists, the majority of passengers and almost all freight volumes continues to be served by sea. In this respect maritime transport is indispensable for islanders in order to have access to health, education and public services, who are served either by neighboring islands or mainland Greece.

For this reason, on working document WK 3129/2022 INIT/02.03.2022, we propose to postpone the implementation of the Fuel EU Maritime Regulation until 31<sup>st</sup> December 2029 to passenger and Ro-Ro passenger ships calling at ports of islands within the same Member State with less than 100.000 permanent residents, according to the latest official census of the population. Member States shall notify the Commission about the routes and islands exempted as well as for any alterations thereof.

Following the discussion within the SWP, exemptions for ferries operating under Public Service Contracts (PSOs) **are not suitable** for the case of Greece. **However, PSOs can work as an additional derogation for international connectivity to/from island Member States.**

In the case of PSOs, the operating cost (or a large part thereof) is reimbursed, to satisfy the public interest (connectivity of non-commercially viable routes). So, the PSO criterion alone would only ensure that public spending is not increased for existing routes.

However, there is a strong interest to prevent all island routes within a single Member State from becoming unviable and thus in need of PSOs! Unfortunately, fuel costs are the same, no matter if the ship travels with 50 (during winter time) or 1000 passengers (during summer time, when the wintertime losses are offset and the route is rendered commercially viable). Otherwise, if no commercial interest is shown (which is almost certain in Greek islands of a certain population and below), the fuel costs will in the end be paid by the public budget, which is almost inconceivable in difficult times for the public economics (and at the end of the day the taxpayer will be called to cover the compliance costs, which creates an obvious paradox).

In Greece, more than 200 scheduled routes are required in order to ensure direct and frequent connectivity with and within 140 different ports and more than 110 islands. In particular out of the existing scheduled routes, almost the half (56,65 %) are nowadays supported under PSO contracts.

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<sup>4</sup> It needs to be recall that this is the case of the proposed Regulation “on ensuring a level playing field for sustainable air transport”

In the aftermath and with the current economic/energy crisis, while the fuel costs account up to 60% of the total operational costs of a ferry ship, the transport costs have already been increased and borne by the permanent residents of islands, which leads to their unequal treatment compared to other EU residents.

Furthermore, the current economic/energy crisis is estimated to lead to acute liquidity and many operators will not be able to plan the necessary investments to reduce their environmental footprint or/ and modernize their passenger fleet, while others will face a real threat of bankruptcy.

It should also be mentioned that the requested extension should not concern the (geographical) size of islands, since in the end ships serving most islands, even the bigger ones, during winter time when traffic is trivial will have to comply with the ETS Directive.

### Key elements of the proposal

The requested extension:

(i) has **minimal** effect to the EU objectives for decarbonization of shipping, to which Greece fully subscribes (**less than 0,65% share** to the overall GHG maritime emissions),

(ii) **allows the coastal shipping, ports and the fuel supply 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 respectively,

(iii) **doesn't compromise** the current level of services/ jeopardize the country's and EU territorial cohesion

(iv) **is flag and Member State neutral**

(v) **all PSOs are anyway included.**

### Article 3 "Definitions"

#### Distribution of shipping companies between the EU MSs – Definition of administering state

#### c) Comment-Position

The issue of distribution of shipping companies between the EU MSs is important and has also been discussed at the Working Party "Environment" for the needs of the EU ETS Directive.

Greece has serious doubts on the enforcement approach as suggested at the EU ETS Directive. **Shipping company registration is not a legal concept covered under EU law** and the only well-known options dealing with enforcement issues are that of the flag and port state. There should be **a clear legal nexus between the ship and the administering MS and allocation to EU MS** cannot and should not be based simply of the ISM company postal address, as written in a Document of Compliance of a third country vessel. Company registration might be used but the only widely accepted and reliable company registration **is the one submitted at the IMO GISIS. Otherwise, companies may resort to "authority" cherry picking by simply changing postal address!**

In Greece, for instance, there is a big number of branches of third country registered shipping companies. Those branches, which are not registered in Greece, operate as ISM companies for third country flagged vessels. With our opposition on the distribution of the shipping companies among the EU MS on the basis of the postal address of the registration company, we do not try to avoid our enforcement responsibilities. **We want to**



**prevent problems in the enforcement phase – which is linked to the fact that the company branches are not registered in Greece.**

We agree with Spain that at national level it could be a different authority responsible for the enforcement of the EU ETS Directive and the FUEL EU Maritime Regulation.

**Article 4 “Greenhouse gas intensity limit of energy used on-board by a ship”**

d) Comment-Position

On the level of carbon intensity targets we support the Commission’s proposal, in the absence of sufficient visibility at this stage as to the level of production of alternative fuels and related technologies, as highlighted by several delegations at the SWP.

In addition, we support the view that the proposal should be technologically neutral. Some fuels that are used in maritime transport such as LNG and biofuels which are fossil-fuel captive, should not be penalized as they are considered necessary for the energy transition of shipping towards decarbonization.

**Article 5**  
**“Additional zero-emission requirements of energy used at berth”**

**Exception of passenger & container ships at anchorage**  
**from shore-side electricity requirements**

e) Comment-Position

Greece disagrees with the possibility to impose an obligation on container and passenger ships at anchorage to connect to shoreside electricity. It will prove very challenging for ports to meet such a requirement, since the technological solutions in this area are at an early stage of development and are not commercially widespread. Besides, issues of safety for ships could be raised. In this respect, we would be willing to examine this possibility during the review stage, if needed.

**Article 9 “Certification of biofuels, biogas, renewable liquid and gaseous transport fuels of non-biological origin and recycled carbon fuels”**

f) Comment-Position

We fully share the concerns expressed by other MSs (i.e Belgium, Spain) with regard to the enforcement loopholes outside the EU, namely:

- how the proposed changes on the Bunker Delivery Note can be enforced outside the EU;
- How fuels suppliers outside the EU will be enforced to fulfill the requirements of the EU legislation (namely FUEL EU Maritime Regulation and Renewable Energy Directive);
- How a level playing field between EU and non-EU bunkering ports will be ensured.

These concerns are properly addressed by our proposal to exclude voyages from third countries and counting 100% of the energy used on voyages departing from the EU with destination third countries.

We also agree with other MSs on the fact that companies should not be accountable in case the provided fuel data on BDN (or other documentation) has shown to be inaccurate.

**Article 21**

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

g) Comment-Position

Greece has clearly expressed its strong preference that the revenues of the remedial penalties should be reinvested in the maritime sector. That means that the revenues shall be allocated to support projects aimed at the rapid deployment of renewable and low-carbon fuels and technologies in the maritime sector. In addition, the revenues could be used on covering the price gap between the conventional and alternative fuels. To this direction we are willing to discuss proposals by others delegations (Italy, Malta, Spain, Belgium, Portugal) on this issue, with a preference to the allocation of revenues at MS level

**Article 28**

**Alignment of EU legislation with international fuel standard**

as in WK 3129/2022 INIT/02.03.2022

h) For drafting proposal please refer to WK 3129/2022 INIT/02.03.2022

**Justification**

On working document WK 3129/2022 INIT/02.03.2022 we offer specific drafting proposal on strengthening the review clause (article 28) by including in the operative part of the Regulation a clear requirement to align it with international rules, once an agreement on a global fuel standard is reached at the IMO.