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DOCUMENT DE TRAVAIL

De:	Secrétariat Général du Conseil
A:	Groupe "Transports maritimes"
N° Cion doc.:	ST 10327/21 ADD 1-3
Sujet:	Proposition de Règlement du Parlement Européen et du conseil relatif à l'utilisation de carburants renouvelables et bas carbone dans le transport maritime et modifiant la directive 2009/16/CE – Proposition rédactionnelle des considérants

En vue du groupe de travail « Transport maritimes » du 6 mai 2022, veuillez trouver ci-joint une proposition rédactionnelle des considérants, préparée par la Présidence.

Toutes nouvelles modifications portant sur la proposition de la Commission sont indiquées en « **gras souligné** » ou en « ~~barré~~ ».

Proposal for a

REGULATION (EU) OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of...

on the use of renewable and low-carbon fuels in maritime transport and amending Directive 2009/16/EC

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Maritime transport accounts for around 75% of EU external trade and 31% of EU internal trade in terms of volume. At the same time, ship traffic to or from ports in the European Economic Area accounts for some 11% of all EU CO₂ emissions from transport and 3-4% of total EU CO₂ emissions. 400 million passengers embark or disembark annually in ports of Member States, including around 14 million on cruise ships. Maritime transport is therefore an essential component of Europe's transport system and plays a critical role for the European economy. The maritime transport market is subject to strong competition between economic actors in the Union and beyond for which a level playing field is indispensable. The stability and prosperity of the maritime transport market and its economic actors rely on a clear and harmonised policy framework where maritime transport operators, ports and other actors in the sector can operate on the basis of equal opportunities. Where market distortions occur,

¹ OJ C , , p. .

² OJ C , , p. .

they risk putting ship operators or ports at a disadvantage compared to competitors within the maritime transport sector or in other transport sectors. In turn, ~~that~~^{is} can result in a loss of competitiveness of the maritime transport industry, and a loss of connectivity for citizens and businesses.

- (2) To enhance the Union's climate commitment under the Paris Agreement adopted under the United Nations Framework Convention on Climate Change¹ (the 'Paris Agreement'), Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality ('European Climate Law')² aims at cutting greenhouse gas emissions by at least 55% compared to 1990 levels by 2030 and puts the Union on a path to becoming climate neutral by 2050, and set out the steps to be taken to achieve climate neutrality by 2050, and to translate the political commitment into a legal obligation, the Commission adopted the (amended) proposal for a Regulation of the European Parliament and of the Council on establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law)³ as well as the Communication 'Stepping up Europe's 2030 climate ambition – Investing in a climate neutral future for the benefit of our people'⁴. This also integrates the target of reducing greenhouse gas (GHG) emissions by at least 55% compared to 1990 levels by 2030. Accordingly, ~~v~~ Additionally, various complementary policy instruments are needed to motivate the use of sustainably produced renewable and low-carbon fuels, including in the maritime transport sector. The necessary technology development and its deployment ~~haves~~ to take place ~~happen~~ by 2030 to prepare for much more rapid change thereafter.
- (3) In the context of fuel transition to renewable and low carbon-fuels and substitute sources of energy, it is essential to ensure the proper functioning of and fair competition in the EU maritime transport market regarding ~~maritim~~^e fuels, which account for a substantial share of ship operators' costs. Differences in fuel requirements across Member States ~~of the Union~~ can significantly affect ship operators' economic performance and negatively impact competition in the market. Due to the international nature of shipping, ship operators may easily bunker in third countries and carry large amounts of fuel. This may lead to carbon leakage and detrimental effects on the competitiveness of the sector if the availability of renewable and low-carbon fuels in maritime ports under the jurisdiction of a Member State is not accompanied by requirements for their use that apply to all ship operators arriving at and departing from ports under the jurisdiction of Member States. Therefore, this Regulation should lay down measures to ensure that the penetration of renewable and low-carbon fuels in the ~~maritim~~^e fuels market takes place under the conditions of fair competition on the EU maritime transport market.
- (4) In order to produce an effect on all the activities in ~~of~~ the maritime transport sector, ~~it is appropriate that this Regulation covers a share of the voyages between a port under the jurisdiction of a Member State and port under the jurisdiction of a third country.~~ This Regulation should thus apply to half of the energy used by a ship performing voyages arriving at a port under the jurisdiction of a Member State from a port outside the jurisdiction of a Member State, half of the of the energy used by a ship performing

¹ OJ L 282, 19.10. 2016, p. 4.

² OJ L 243, 9.7.2021.

³ COM(2020) 563 final

⁴ COM(2020) 562 final

voyages departing from a port under the jurisdiction of a Member State and arriving at a port outside the jurisdiction of a Member State, the entirety of the energy used by a ship performing voyages arriving at a port under the jurisdiction of a Member State from a port under the jurisdiction of a Member State, and the energy used at berth in a port under the jurisdiction of a Member State. Such ~~coverage~~ **application** of a share of the energy used by a ship in both incoming and outgoing voyages between the Union and third countries ensures the effectiveness of this Regulation, including by increasing the positive impact on the environment of such framework. [Simultaneously, such framework limits the risk of evasive port calls and the risk of delocalisation of ~~transshipment~~ **rerouting** activities outside the Union]. In order to ensure smooth operation of maritime traffic **and to avoid distortions in the internal market**, a level playing field among maritime transport operators and among ports and ~~avoid distortions in the internal market~~, **with regard to** all journeys arriving or departing from ports under jurisdiction of Member States, as well as the stay of ships in those ports should be covered by ~~uniform~~ **consistent** rules contained in this Regulation.

- (5) The rules laid down in this Regulation should apply in a non-discriminatory manner to all ships regardless of their flag. For reasons of coherence with Union and international rules in the area of maritime transport **or in order to limit the administrative burden, in particular that of smaller operators,** this Regulation **should focus in a first instance on ships with a gross tonnage above 5 000 gross tonnage (GT) and** should 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. **Even though** these latter **ships above 5 000 GT represent only approximately 55% of all ships calling at ports under the Regulation (EU) 2015/757 of the European Parliament and of the Council, they are responsible for 90% of the carbon dioxide (CO₂) emissions from the maritime sector.**
- (6) The ~~person or organisation~~ **entity** responsible for **ensuring** 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 **as implemented within the Union by Regulation (EC) No 336/2006 of the European Parliament and of the Council**¹. That ~~is~~ 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 Council², and **is** in line with the global data collection system established in 2016 by the International Maritime Organization (IMO).
- (6a) Whilst the company shall remain responsible for fulfilling monitoring and reporting obligations 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, the entity responsible for purchasing the fuel**

¹ OJ L 64, 4.3.2006, p. 1.

² Regulation (EU) 2015/757 of the European Parliament and of the Council of 29 April 2015 on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport, and amending Directive 2009/16/EC (OJ L 123, 19.5.2015, p. 55).

and/or taking operational decisions that affect the greenhouse gas intensity of the energy used by the ship could, through contractual agreements with the company, in case of compliance deficit, reimburse or otherwise compensate the company with respect to the cost of the remedial penalties resulting from the operation of the ship. 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. The company may, on contractual basis and for the purpose of its internal accountancy, request the verifier to calculate the amounts of the penalties corresponding to the operation of the ship by the other entity during the reporting period. 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 GHG 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.

- (7) ~~In order to limit the administrative burden, in particular that of smaller operators, this Regulation should not apply to wooden ships of a primitive build and ships not propelled by mechanical means and focus on ships with a gross tonnage above 5 000 gross tonnage (GT).~~
- (8) The development and deployment of new fuels and energy solutions requires a coordinated approach to match supply, demand and the provision of appropriate distribution infrastructure. While the current European regulatory framework already partly addresses fuel production with Directive (EU) 2018/2001 of the European Parliament and of the Council¹ and **fuel** distribution with Directive 2014/94/EU of the European Parliament and of the Council², there is also a need for a tool that establishes increasing levels of demand **for** ~~of~~ renewable and low-carbon maritime fuels.
- (9) While instruments such as carbon pricing or targets on the carbon intensity of activity promote improvements in energy efficiency, they are not suited to bring about a significant shift towards renewable and low-carbon fuels in the short and medium term. A specific regulatory approach dedicated to the deployment of renewable and low-carbon **maritime** fuels and substitute sources of energy, such as wind or electricity, is therefore necessary.
- (10) Policy intervention to stimulate demand **for** ~~of~~ renewable and low-carbon maritime fuels should be goal-based and respect the principle of technological neutrality. Accordingly, limits should be set on the **GHG** ~~greenhouse gas~~ intensity of the energy used on-board by ships without prescribing the use of any particular fuel or technology.
- (11) Development and deployment of renewable and low-carbon fuels with a high potential for sustainability, commercial maturity and a high potential for innovation and growth to meet future needs should be promoted. This will support creating innovative and competitive fuels markets and ensure sufficient supply of sustainable maritime fuels in the short and long term to contribute to Union transport decarbonisation ambitions,

¹ Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ L 328, 21.12.2001, p. 82).

² Directive 2014/94/EU of the European Parliament and of the Council of 22 October 2014 on the deployment of alternative fuels infrastructure (OJ L 307, 28.10.2014, p. 1).

while strengthening Union's efforts towards a high level of environmental protection. For this purpose, sustainable maritime fuels produced from feedstocks listed in Parts A and B of Annex IX ~~to~~ of Directive (EU) 2018/2001, as well as synthetic maritime fuels should be eligible. In particular, sustainable maritime fuels produced from feedstocks listed in Part B of Annex IX ~~to~~ of Directive (EU) 2018/2001 are essential, as ~~currently~~ the most commercially mature technology **for the production of such maritime fuels with a view** to decarbonising maritime transport **will** already **be available** in the short term.

- (12) Indirect land-use change occurs when the cultivation of crops for biofuels, bioliquids and biomass fuels displaces traditional production of crops for food and feed purposes. Such additional demand increases the pressure on land and can lead to the extension of agricultural land into areas with high-carbon stock, such as forests, wetlands and peatland, causing additional **GHG greenhouse gas** emissions and loss of biodiversity. Research has shown that the scale of the effect depends on a variety of factors, including the type of feedstock used for fuel production, the level of additional demand for feedstock triggered by the use of biofuels, bioliquids and biomass fuels, and the extent to which land with high-carbon stock is protected worldwide. The level of **GHG greenhouse gas** emissions caused by indirect land-use change cannot be unequivocally determined with the level of precision required for the establishment of emission factors required by the application of this ~~Regulation~~. However, there is evidence that all fuels produced from feedstock cause indirect land-use change to various degrees. In addition to the **GHG greenhouse gas** emissions linked to indirect land-use change – which is capable of negating some or all **GHG greenhouse gas** emissions savings of individual biofuels, bioliquids or biomass fuels – indirect land-use change poses risks to biodiversity. ~~That~~is risk is particularly serious in connection with a potentially large expansion of production determined by a significant increase in demand. Accordingly, ~~the use of no food feed and feed~~~~ed~~ crop-based fuels should **not** be promoted **under this Regulation**. Directive (EU) 2018/2001 already limits and sets a cap on the contribution of such biofuels, bioliquids and biomass **fuels** to the GHG emissions savings targets in the road and rail transport sector considering their lower environmental benefits, lower performance in terms of greenhouse **gas** reduction potential and broader sustainability concerns.
- (13) ~~However, this approach must be stricter in the maritime sector.~~ The maritime sector has ~~currently~~ insignificant levels of demand for food and feed crops-based biofuels, bioliquids and biomass fuels, since over 99% of currently used ~~maritime~~ fuels are of fossil origin. Therefore, the non-eligibility of food and feed crop-based fuels under this Regulation also minimises any risk to slow down the decarbonisation of the transport sector, which could otherwise result from a shift of crop-based biofuels from the road to the maritime sector. It is essential to minimise such a shift, as road transport currently remains by far the most polluting transport sector and the maritime transport currently uses predominantly fuels of fossil origin. It is therefore appropriate to avoid the creation of a potentially large demand ~~for~~ of food and feed crops-based biofuels, bioliquids and biomass fuels by promoting their use under this Regulation. Accordingly, the additional **GHG greenhouse gas** emissions and loss of biodiversity caused by all types of **food feed** and ~~feed~~~~ed~~ crop-based fuels require that ~~those~~ese fuels be considered to have the same emission factors as the least favourable pathway.
- (14) The long lead times associated to the development and deployment of new fuels and energy solutions for maritime transport require rapid action and the establishment of a clear and predictable long-term regulatory framework facilitating planning and

investment from all the stakeholders concerned. ~~Such~~ A clear and stable long-term regulatory framework will facilitate the development and deployment of new fuels and energy solutions for maritime transport, and encourage investment from stakeholders. Such regulatory framework should also define limits for the GHG ~~greenhouse gas~~ intensity of the energy used on-board by ships until 2050. Those limits should become more ambitious over time to reflect the expected technology development and increased production of ~~marine~~ renewable and low-carbon ~~marine~~ maritime fuels.

- (15) This Regulation should establish the methodology and the formula that should apply to the calculation of the yearly average GHG ~~greenhouse gas~~ intensity of the energy used on-board by a ship. ~~That~~is formula should be based on the fuel consumption reported by ships and consider the relevant emission factors of these consumed fuels. The use of substitute sources of energy, such as wind or electricity, should also be reflected in the methodology.
- (16) In order to provide a more complete picture of the environmental performance of the various energy sources, the GHG performance of fuels should be assessed on a well-to-wake basis, taking into account the impacts of energy production, transport, distribution and use on-board. This is to incentivise technologies and production pathways that provide a lower GHG footprint and real benefits compared to the existing conventional fuels.
- (17) The well-to-wake performance of renewable and low-carbon maritime fuels should be established using default or actual and certified emission factors covering the well-to-tank and tank-to-wake emissions. The well-to-tank performance of fossil fuels should however only be assessed through the use of default emission factors as provided for by this Regulation.
- (18) A comprehensive approach on all the most relevant GHG emissions (CO₂, CH₄ and N₂O) is necessary to promote the use of energy sources providing a lower GHG footprint overall. In order to reflect the global warming potential of methane and nitrous oxides, the limit set by this Regulation should therefore be expressed in terms of 'CO₂ equivalent'.
- (19) The use of renewable energy sources and alternative propulsion, such as wind and solar energy, greatly reduces the GHG ~~greenhouse gas~~ intensity of the overall ship energy use. The difficulty to accurately measure and quantify ~~those~~ these energy sources (intermittence of the energy use, direct transfer as propulsion, etc.) should not impede their recognition in the overall ship energy use through means of approximations of their contribution to the ship's energy balance.
- (20) Air pollution produced by ships (sulphur oxides, nitrogen oxides and particulate matter) ~~at berth in ports~~ is a significant concern for coastal areas and port cities. Therefore, specific and stringent obligations should be imposed to reduce emissions ~~at berth~~ from ships moored at the quayside that which draw power from their engines ~~during their stay in port~~. According to the data collected within the framework of Regulation (EU) 2015/757 in 2018, ~~passenger ships and containerships are the ship categories producing the highest amount of emissions per ship at berth. Accordingly, emissions from these categories of ships should be addressed as a priority.~~
- (21) The use of on-shore power supply (OPS) abates air pollution produced by ships as well as reduces the amount of GHG emissions generated by maritime transport. OPS

represents an increasingly clean power supply available to ships ~~at berth~~, in view of the growing renewables share in the EU electricity mix. While only the provision on OPS connection points is covered by Directive 2014/94/EU (~~Alternative Fuels Infrastructure Directive—AFID~~), the demand for and, as a result, the deployment of this technology ~~have~~ remained limited. Therefore, specific rules should be established to mandate the use of OPS by the most polluting ships.

- (22) In addition to OPS, other technologies might be capable of offering equivalent environmental benefits in ports. When the use of an alternative technology is demonstrated to be equivalent to the use of OPS, a ship should be exempted from its the obligation to use of OPS.
- (22b) Different OPS projects and solutions have been tested for ships at anchorage, but there is currently no mature and scalable technical solution available. For this reason, the obligation to use OPS should be limited to ships moored at the quayside in the first place. Nevertheless, the Commission should regularly reassess the situation, with a view to extending this obligation to ships at anchorage, when the due technologies are mature enough. In the meantime, Member States should be allowed to impose such obligation to ships at anchorage, for example in ports that are already equipped with such technology or are located in areas where any pollution should be avoided.**
- (23) Exceptions from the obligation to the use of OPS should also be provided for a number of objective reasons, ~~certified~~ **identified** by **the competent authority of the Member State of the port of call or any entity duly authorised, after consultation of** the managing body of the port of call **where necessary**, and limited to **unscheduled and not systematic** port calls for reasons of safety or saving life at sea, ~~for~~ **to** short stays of ships ~~at berth~~ **moored at the quayside** of less than two hours as this is the minimum time required for connection, **to unavailability or incompatibility of OPS**, and ~~for~~ **to** the use of on-board energy generation under emergency situations **and to maintenance and functional tests**.
- (24) Exceptions in case of unavailability or incompatibility of OPS should be limited ~~after ship and port operators have had sufficient time to make the necessary investments~~, in order to provide the necessary incentives for those investments and avoid unfair competition. ~~A limited number of~~ **Therefore, while some exceptions in case of unavailability or incompatibility of OPS should be possible for example for occasional last-minute changes in port call schedules and calls in ports with incompatible equipment, those exceptions should be limited in ports which are covered by the obligation to offer OPS connections in application of AFIR¹. As of 2035, ship** ~~Ship~~ operators should **thus** plan carefully their port calls to make sure that they can carry out their activities without emitting air pollutants and GHG ~~at berth~~ **while ships are moored at the quayside** and ~~compromising~~ the environment in coastal areas and port cities.
- (25) A robust monitoring, reporting and verification system should be put in place by this Regulation in order to trace compliance with its provisions. Such system should apply in a non-discriminatory way to all ships and require third party verification in order to ensure the accuracy of the data submitted within ~~that~~ **its** system. In order to facilitate

¹ **Exact title to be added later.**

achieving the objective of this Regulation, any data already reported for the purposes of Regulation (EU) 2015/757 should be used, when necessary, for verifying compliance with this Regulation in order to limit administrative burden imposed on companies, verifiers and maritime authorities.

- (26) Companies should be responsible for monitoring and reporting the amount and type of energy used on-board by ships in navigation and at berth, as well as other relevant information, such as information on the type of engine on board or presence of wind assisting technologies, with a view to showing compliance with the limit on the **GHG greenhouse gas** intensity of the energy used on-board by a ship set out by this Regulation. To facilitate the fulfilment of ~~those~~ monitoring and reporting obligations and the verification process by the verifiers, similarly to Regulation (EU) 2015/757, companies should document the envisaged monitoring method and provide further details on the application of the rules of this Regulation in a monitoring plan. The monitoring plan, as well as its subsequent modifications, if applicable, should be submitted to **and assessed by** the verifier.
- (27) Certification of fuels is essential to achieve the objectives of this Regulation and guarantee the environmental integrity of the renewable and low-carbon fuels that are expected to be deployed in the maritime sector. Such certification should be undertaken by means of a transparent and non-discriminatory procedure. With a view to facilitating certification and limiting the administrative burden, ~~the certification of~~ biofuels, biogas, renewable fuels of non-biological origin and recycled carbon fuels **defined in accordance with Directive (EU) 2018/2001** should rely on the rules established by **said directive for certification** ~~Directive (EU) 2018/2001~~. ~~That~~is approach ~~to~~of certification should also apply to fuels bunkered outside the Union, which should be considered as imported fuels, in a similar way as **in** Directive (EU) 2018/2001. ~~Where~~ren companies intend to depart from the default values provided for by that Directive or by this new framework, ~~that~~is should only be done when values can be certified by one of the voluntary schemes recognised under Directive (EU) 2018/2001 (for well-to-tank values) or by means of laboratory testing or direct emissions measurements (tank-to-wake).
- (28) Verification **activities are carried out** by accredited verifiers. **Verifiers should be equipped with means and staff commensurate with the size of the fleet for which they perform verification activities under this Regulation.** Verification should ensure the accuracy and completeness of the monitoring and reporting by companies and the compliance with this Regulation. ~~In order to ensure impartiality, verifiers should be independent and competent legal entities and should be accredited by national accreditation bodies established pursuant to Regulation (EC) No 765/2008 of the European Parliament and of the Council¹.~~
- (29) Based on the data and information monitored and reported by companies, the accredited verifiers should calculate and establish the yearly average **GHG greenhouse gas** intensity of energy used on-board by a ship and the ship's balance with respect to the limit, including any compliance surplus or deficit, as well as the respect of the **obligation** requirements to use **OPS** ~~on-shore power supply at berth~~. The verifier should notify ~~that~~is information to the company concerned. Where the verifier is the

¹ Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30).

same entity as the verifier for the purposes of Regulation (EU) 2015/757, such notification could be done together with the verification report under that Regulation. ~~Such information should be then reported by the company concerned to the Commission~~

- (30) The Commission should establish and ensure the functioning of an electronic **FuelEU** database that registers the performance of each ship and ensures its compliance with this Regulation. **This database should be used for all most important actions necessary to fulfill the obligations set out in this Regulation.** In order to facilitate reporting and limit administrative burden to companies, verifiers and other users, ~~that~~^{is} electronic database should build upon the existing THETIS-MRV module and take into account the possibility to reuse information and data collected for the purposes of Regulation (EU) 2015/757.
- (31) Compliance with this Regulation would depend on elements that could be beyond control of the company, such as issues related to fuel availability or fuel quality. Therefore, companies should be allowed the flexibility of rolling-over a compliance surplus from one year to another or borrowing an advance compliance surplus, within certain limits, from the following year. The use of OPS at berth, being of high importance for local air quality in port cities and coastal areas should not be eligible for similar flexibility provisions.
- (32) In order to avoid technology lock-in and continue supporting the deployment of most performant solutions, companies should be allowed to pool the performances of different ships. **To this purpose, and use the possible over-performance of one ship could be used to compensate for the under-performance of another ships, provided that the total pooled compliance is positive and that the ship originally in compliance deficit does not have a higher compliance deficit after the allocation of the pooled compliance.** This creates a possibility to reward overcompliance and incentivates investment in more advanced technologies. The possibility to opt for pooled compliance should remain voluntary and **should be** subject to agreement of the ~~concerned~~ companies **concerned**.
- (33) A document of compliance ('FuelEU **document** certificate of compliance') issued by a verifier **or, where applicable, the competent authority of the administering State,** following the procedures established by this Regulation, should be ~~kept on board~~ **held by** ships as evidence of compliance with the limits on the **GHG** ~~greenhouse gas~~ intensity of the energy used on-board by a ship **and** with the **obligations on the use** of OPS at berth. Verifiers **or, where applicable, the competent authority of the administering State** should **record in the FuelEU database the issuance of the FuelEU document of compliance** ~~inform the Commission of the issuance of such documents.~~
- (34) The number of non-compliant port calls should be determined by verifiers in accordance with a set of clear and objective criteria taking into account all ~~the~~ relevant information, including time of stay, the amount of each type and energy consumed, and the application of any excluding conditions, for each port call in the Union. ~~That~~^{is} information should be made available by the companies to the verifiers for the purpose of determining compliance.
- (35) Without prejudice to the possibility of complying through the flexibility and pooling provisions, the ships that do not meet the limits on the yearly average **GHG**

~~greenhouse gas intensity of the energy used on-board shall~~ **should** be subject to a **remedial** penalty that has dissuasive effect, ~~is. The penalty should be proportionate to the extent of the non-compliance and removes any economic advantage of non-compliance, thus preserving a level playing field in the sector. #~~ **The remedial penalty** should be based on the amount and cost of renewable and low-carbon fuels that the ships should have used to meet the requirements of ~~this~~ Regulation.

- (36) ~~The~~ **A remedial** penalty **should be** imposed **also** for each non-compliant port call, ~~should be proportionate to the cost of using the electricity and at sufficient level. That~~ **remedial penalty should be proportionate to the cost of using the electricity at sufficient level,** ~~should~~ have a dissuasive effect from the use of more polluting energy sources. ~~The~~ **and** penalty should be **equal to a fixed amount in EUR** based on ~~the power installed on board the vessel, expressed in megawatts, multiplied by the established total electrical power demand of the ship at berth and by the total number of rounded-up~~ a fixed penalty in EUR per hours of stay **spent** at berth **in non-compliance with OPS requirements.** Due to lack of accurate figures on the cost of providing OPS in the Union, this rate should be based on the EU average electricity price for non-household consumers multiplied by a factor of two to account for other charges related to the provision of the service, including among others connection costs and investment recovery elements.
- (37) The revenues generated from the payment of **remedial** penalties should be used to promote the distribution and use of renewable and low-carbon fuels in the maritime sector and help maritime operators to meet their climate and environmental goals. For this purpose ~~those~~ revenues should be allocated to the the Innovation Fund referred to in Article 10a(8) of Directive 2003/87/EC **of the European Parliament and of the Council¹.**
- (38) Enforcement of the obligations relating to this Regulation should be based on existing instruments, ~~namely~~ **including** those established under Directives ~~2009/16/EC of the European Parliament and of the Council² and Directive 2009/21/EC of the European Parliament and of the Council³.~~ **Additionally, Member States should lay down the rules on effective, proportionate and dissuasive sanctions applicable to infringements of this Regulation. To avoid undue or double punishment for the same infringements, such sanctions should not duplicate the remedial penalties applied in case a ship has a compliance deficit or made non-compliant port calls.** ~~The document confirming compliance of the ship with the requirements of this Regulation should be added to the list of certificates and documents referred to in Annex IV to Directive 2009/16/EC.~~
- (38b) In order to reduce the administrative burden on shipping companies, one Member State for each shipping company should be responsible for supervising the enforcement of this Regulation. The provisions laid down in the ETS**

¹ **Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).**

² Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control (OJ L 131, 28.5.2009, p. 57).

³ Directive 2009/21/EC of the European Parliament and of the Council of 23 April 2009 on compliance with flag State requirements (OJ L 131, 28.5.2009, p. 132).

Directive¹ should be used to determine the administering State in respect of each shipping company. The administering State should be allowed to conduct additional checks on the compliance of a specific ship with this Regulation, for the two previous reporting periods and should also ensure that the remedial penalties are paid in due time. .

- (39) Given the importance of consequences that the measures taken by the verifiers under this Regulation may have for the companies concerned, in particular regarding the determination of non-compliant port calls, calculation of the amounts of **remedial penalties** and refusal to issue a FuelEU ~~certificate~~ **document** of compliance, those companies should be entitled to apply for a review of such measures to the competent authority ~~in~~ **of** the Member State where the verifier was accredited. In ~~the~~ **the** light of the ~~fundamental~~ right to an effective remedy, enshrined in Article 47 of the Charter of Fundamental Rights of the European Union, decisions taken by the competent authorities ~~and the managing bodies of the port~~ under this Regulation should be subject to judicial review, carried out in accordance with the national law of the Member State ~~concerned~~ **of that competent authority**.
- (40) In order to maintain a level playing field through the efficient functioning of this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amendment of the list of well-to-wake emission factors ~~amendment of the list of the applicable zero-emission technologies or criteria for their use~~, to establish **ment of** the rules on conducting the laboratory testing and direct emissions measurements or by referring to ISO appropriate test standards in case such standards have been developed, adaptation of ~~the~~ **a remedial** penalty factor **based on the developments in the cost of energy and amendment of the numerical factor amount of the remedial penalty, based on the indexation of the average cost of electricity in the Union**, accreditation of verifiers, adaptation of the penalty factor, and modalities for the payment of penalties. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement **of 13 April 2016** on Better Law-Making² of 13 April 2016². In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (41) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council³. When establishing, by means of implementing acts, **the list and acceptance criteria of the technologies and the way they are operated to be considered as zero-emission technologies**, the templates for standardised monitoring plans, including the technical rules for their uniform application, **further**

¹ **Exact title to be added later.**
² **OJ L 123, 12.5.2016, p. 1.**

³ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

specifications of the rules for verification activities, further methods and criteria for the accreditation of verifiers, rules for access rights to and the functional and technical specifications of the FuelEU database and the modalities for the payment of the remedial penalties, the Commission should take into account the possibility of reusing information and data collected for the purposes of Regulation (EU) 2015/757.

- (42) Given the international dimension of the maritime sector, a global approach to limiting the **GHG** ~~greenhouse gas~~ intensity of the energy used by ships is preferable as it could be regarded as more effective due to its broader scope. In this context, and with a view to facilitating the development of international rules within the ~~International Maritime Organisation~~ (IMO), the Commission should share relevant information on the implementation of this Regulation with the IMO and other relevant international bodies, and relevant submissions should be made to the IMO. Where an agreement on a global approach is reached on matters of relevance to this Regulation, the Commission should review ~~this present~~ Regulation with a view to aligning it, where appropriate, with the international rules.
- (43) **Since the objective of this Regulation, namely** ~~the uptake of renewable and low-carbon fuels and substitute sources of energy by ships arriving at, within or departing from ports under the jurisdiction of a Member State across the Union,~~ **cannot be sufficiently achieved by the Member States without risking to introduce barriers to the internal market and distortions of competition between ports and between maritime operators, but can rather** ~~is not an objective that can be sufficiently achieved by the Member States without risking to introduce barriers to the internal market and distortions of competition between ports and between maritime operators. This objective can be better achieved by introducing uniform rules at Union level that create economic incentives for maritime operators to continue operating unimpededly while meeting obligations on the use of renewable and low-carbon fuels.~~ ~~Accordingly,~~ the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,