

## GERMANY

### DE proposal

#### Recital

- (16) Pursuant to Directive (EU) 2018/410, the Commission should report to the European Parliament and to the Council on the progress achieved in the IMO towards an ambitious emission reduction objective, and on accompanying measures to ensure that the maritime transport sector duly contributes to the efforts needed to achieve the objectives agreed under the Paris Agreement. Efforts to limit global maritime emissions through the IMO are under way and should be encouraged. **IMO market-based measures could have a large effect on global GHG emissions because they would apply to all ships, in principle. Therefore, the EU Member States will continue to seek an agreement on ambitious global market-based measures to effectively reduce GHG emissions from international shipping.** However, while the recent progress achieved through the IMO is welcome, these measures will not be sufficient to achieve the objectives of the Paris Agreement.
- (18) The provisions of Directive 2003/87/EC as regards maritime transport activities should be kept under review in light of future international developments and efforts undertaken to achieve the objectives of the Paris Agreement, including the second global stocktake in 2028, [...] and in the event of the adoption by the International Maritime Organization of a global market-based measure to reduce greenhouse gas emissions from maritime transport **to take such progress into account, in particular if the measure is sufficiently ambitious and robust.** [...] To this end, the Commission should without delay [...] any time before the second global stocktake in 2028 - and therefore no later than by 30 September 2028 – present a report to the European Parliament and to the Council. The Commission should in that report examine that measure as regards its ambition in light of the objectives of the Paris Agreement and its overall environmental integrity. It should also examine any issue related to the possible co-existence or alignment of this Directive with that measure ~~such as the need to avoid double coverage of greenhouse gas emissions from maritime transport.~~ [...] Where appropriate, the report should be accompanied by a legislative proposal to amend this Directive, consistent with the Union economy-wide greenhouse gas emission commitments, and with the aim of preserving the environmental integrity and effectiveness of the Union climate action, **ensuring appropriate implementation of the global market-based measure adopted by the International Maritime Organization, while taking into account the need for coherence between the EU ETS and the global market-based measure and avoidance of any resulting significant double burden.**

## Article 3ge

### **Reporting and review**

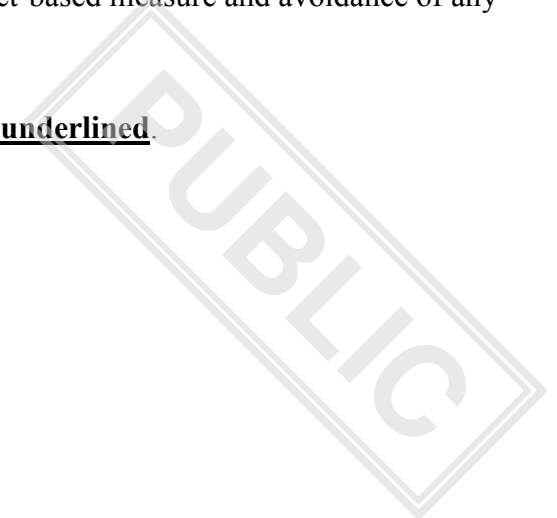
1. [...] In the event of the adoption by the International Maritime Organization of a global market-based measure to reduce greenhouse gas emissions from maritime transport, the Commission shall review this Directive **to take such progress into account.** [...] To this end, it shall without delay and in any event before the 2028 global stocktake and no later than 30 September 2028 [...], present a report to the European Parliament and to the Council [...]. The Commission shall in that report examine that measure as regards its ambition in light of the objectives of the Paris Agreement and its overall environmental integrity. It shall also examine any issue related to the possible co-existence or alignment of this Directive with that measure. Where appropriate, the [...] report shall be accompanied by a legislative proposal to [...] amend this Directive [...], consistent with the Union economy-wide greenhouse gas emission commitments, and with the aim of preserving the environmental integrity and effectiveness of the Union climate action, **ensuring appropriate implementation of a global market-based measure adopted by the International Maritime Organization, while taking into account the need for coherence between the EU ETS and the global market-based measure and avoidance of any resulting significant double burden.**  
[...]

### Justification

From the German point of view, the ETS Directive should contain a clear political commitment, re-assuring the commitment of the EU Member States and their contribution to the progress at IMO, highlighting that any EU legislation concerning shipping will be reviewed and adapted, where appropriate, with a view to take such progress into account, ceding ground where ambition is ensured, while prepared to go beyond a global MBM, if this is needed to achieve international climate targets. At the same time, it is essential to appropriately address any risks of significant double burdening resulting from two parallel systems which have not been harmonized in due time, as well as carbon leakage. It is important, thus, to convey the firm intention of EU Member States to implement a global MBM. Simultaneously, the review clause should make clear that the ultimate objective is to raise ambition and to allow for concerted application, while taking into account the need for

coherence between the EU ETS and the global market-based measure and avoidance of any resulting significant double burden.

Changes are marked with ~~strike through~~ or **bold and underlined**.





Council of the European Union  
General Secretariat

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**Interinstitutional files:  
2021/0211 (COD)**

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**Brussels, 25 May 2022**

**WK 7525/2022 ADD 1**

**LIMITE**

**CLIMA**

**ENV**

**ENER**

**TRANS**

**CODEC**

**IND**

**MI**

**AVIATION**

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## **CONTRIBUTION**

From:	General Secretariat of the Council
To:	Working Party on the Environment
N° prev. doc.:	WK 7507/2022
Subject:	Fit for 55 package - ETS: Comments from delegations

Following the call for comments set out in WK 7507/2022, delegations will find attached comments by the BE, DK, DE and AT delegations.

## **Belgium**

# **Comments on the Presidency note (WK 7351/2022) concerning the extension of the ETS to the maritime sector**

### **I. Cluster 2 : ETS maritime**

#### **Question pour la discussion :**

2. Pouvez-vous accepter les propositions de la Présidence ?

General comment : Belgium would like to thank the Presidency for the work done on this Cluster. However, we should remain cautious that wanting to see progress in this file doesn't automatically result in lowering the ambition of the proposal. We can in general accept the proposals made by the Presidency, but we have some more detailed comments on the different elements.

#### ***Champ d'application***

- Prise en compte du risque d'évasion dans des ports proches de l'UE

Belgium can support this proposal in order to reduce the risk of circumvention through transshipment port calls. We do however have a practical question on how we can determine whether a port is a transshipment port. Some elaboration on this question is welcomed.

- Demande d'exemption de l'application de la directive pour les Etats membres n'ayant pas de ports maritimes ni de registre maritime

We understand the concerns of land-locked countries and Belgium is flexible on this issue.

#### ***Autres***

En ce qui concerne les autres aspects du champ d'application (périmètre géographique, non CO2, taille des navires), les propositions de la Présidence restent inchangées.

Des suggestions supplémentaires concernant l'inclusion des émissions non CO2 et l'inclusion d'une clause de révision sur la taille des navires dans le règlement MRV seront diffusées séparément, ainsi que des indications sur les modifications nécessaires pour transformer l'amendement du règlement MRV en un règlement modificatif, conformément à l'avis fourni par le Service juridique du Conseil. Sur ce dernier point, prenant en compte les explications de du SJC sur les différences entre les effets juridiques d'une Directive et celles d'un Règlement, la Présidence suggère la scission de la proposition en deux actes. Les co-législateurs adopteront donc deux actes différents : un Règlement contenant les modifications du Règlement MRV proposé par la Commission dans l'article 3 de la proposition et une Directive avec les modifications de la Directive ETS (Article 1 de la proposition) et la Décision 2015/1814 concernant la réserve de stabilité du marché (Article 2 de la proposition).

Cette scission pour des raisons juridiques nécessitera aussi des changements techniques des dispositions finales, notamment les Articles 6 et 8 de la proposition. De la même façon, les considérants devront être divisés entre les deux actes.

Comments on WK 7351/2022 ADD 1 :

Belgium supports lowering the 5000 GT threshold in MRV to collect more reliable data on the emissions resulting from ships below 5000 GT. If a significant amount of emissions results from these ships, we could then consider lowering the threshold in ETS. Belgium does therefore not support the way forward by the Presidency. We would propose to amend MRV before 2026, so enough data can be collected before amending the scope of ETS in 2026.

***Introduction progressive des exigences applicables au transport maritime (article 3ga)***

La Présidence suggère de conserver sa proposition dans son dernier compromis.

Belgium can go forward with this approach.

***Modalités du transfert des coûts de l'ETS de la compagnie maritime à l'affrètement (nouvel article 3gaa)***

Belgium supports this proposal in order to apply the polluter pays principle. This proposal makes it clear the shipping company remains the ultimate responsible entity to surrender allowances, which in our view strengthens the overall administrative enforcement.

***Clauses de rapport et de réexamen (article 3ge)***

Proposal DK : 3. "No later than 31 December 2026, the Commission shall present a report to the European Parliament and to the Council in which it shall examine the feasibility and cost-effectiveness of the inclusion in this Directive of additional greenhouse gas emissions from maritime transport, (b) of emissions from ships between 400 and 5,000 gross tonnage. In the report the Commission shall also examine how this Directive can best promote the uptake of sustainable, alternative fuels in the maritime sector, such as renewable fuels of non-biological origin (RFNBOs). That report shall also consider the Interlinkages between this Directive and Regulation (EU) 2015/757 and draw on experiences from the application thereof. If appropriate, the report may be accompanied by legislative proposals necessary to extend the scope of this Directive."

Belgium would like to thank the Presidency for the work done on redrafting the review clause. In general we are supportive of it, but we do see merits in the proposal made by Denmark. We can even be more general and refer to the EU policy framework as a whole, instead of solely to the ETS Directive, when examining how to promote the uptake of sustainable, alternative fuels in the maritime sector as we should choose the most appropriate policy measures to pursue this objective, taking into account that the ETS regulates end-use emissions.

***Soutien à la transition du secteur maritime***

Belgium supports the proposal regarding the Innovation Fund. We have made it clear from the beginning that sufficient revenues are needed for transitioning the maritime sector. This sector will have to make a tremendous amount of investments of which the majority will be required in port infrastructure, next to the R&D developments in shipping technologies. In contrast to other sectors, the maritime sector will have to invest in different technologies in order to make sure each ship can make use of their installed technologies. The path towards the decarbonization of the shipping industry is unknown at the moment. There is a whole set of candidate alternative fuels and technologies to help decarbonize this sector, however these are not yet available for the deep sea shipping segment. There is need for a rapid deployment of mature technological solutions, which requires considerable investments in R&D for which considerable support from the Innovation Fund (and Horizon Europe) will be needed.

## **DENMARK**

### **Danish proposals regarding the revised ETS proposal on inclusion of the maritime sector**

Denmark reserves the right to provide further comments at a later stage.

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Following up on the second compromise proposal communicated in ST 7815/2/22 REV 2 as discussed at WPE on May 23<sup>rd</sup>, 2002, Denmark would like to make the following proposals for changes of the text:

#### **1) Promoting the uptake of RFNBOs in the maritime sector**

Denmark proposes the following change to the new article 3ge (3):

“3. No later than 31 December 2026, the Commission shall present a report to the European Parliament and to the Council in which it shall examine the feasibility and cost-effectiveness of the inclusion in this Directive:

- a) of additional greenhouse gas emissions from maritime transport,
- b) of emissions from ships between 400 and 5 000 gross tonnage.

**In the report the Commission shall also examine how this Directive can best promote the uptake of sustainable, alternative fuels in the maritime sector, such as renewable fuels of non-biological origin (RFNBOs).** The report shall also consider the interlinkages between this Directive and Regulation (EU) 2015/757 and draw on experiences from the application thereof. If appropriate, the report may be accompanied by legislative proposals necessary to extend the scope of this Directive.”

Denmark believes that the calculation of the greenhouse gas intensity of fuels and related emissions should be based on a well-to-wake approach, thus taking into account the emissions from the full life-cycle of the fuels as is the case in the FuelEU Maritime proposal. This issue should be addressed and put on the agenda for the next revision.

#### **2) Terms and conditions for transferring the costs of the ETS from the shipping company to the charterer**

Denmark proposes the following change to the new article 3gaa:

“Member States ~~shall~~**may** take the necessary measure to ensure that when the ultimate responsibility for the purchase of the fuel or the operation of the ship is assumed by a different entity than the shipping company, the shipping company is entitled to reimbursement from that entity for the costs arising from the surrender of allowances. Operation of the ship for the purposes of this Article means determining the cargo carried, the route and the speed of the ship. The shipping company remains the responsible entity for surrendering allowances as required under Article 3ga and Article 12 of this Directive and for overall compliance with the provisions of national law transposing this Directive. Member States shall ensure that shipping companies under their responsibility comply with their obligations to surrender allowances, notwithstanding their entitlement to be reimbursed by the commercial operators for the cost arising from the surrender.”

Denmark is of the clear opinion that the relationship between the ship owner and an operator are a matter of private law contracts and should not be subject to binding regulation. Denmark would like to underline that it is not only the commercial operator of the ship that is responsible for the pollution. The shipping company has the responsibility for making green investments in their ships.

### 3) Report and review clauses

Denmark proposes the following change to article 3ge(1):

“1. The Commission shall consider possible amendments in relation to the adoption by the International Maritime Organization of a global market-based measure to reduce greenhouse gas emissions from maritime transport **as well as the need to avoid double coverage of greenhouse gas emissions from maritime transport**. In the event of the adoption of such a measure, and in any event before the 2028 global stocktake and no later than 30 September 2028, the Commission shall present a report to the European Parliament and to the Council in which it shall examine any 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 Directive as appropriate.”

DK prefers including wording on the need for avoiding double coverage of greenhouse gas emissions from maritime transport in the article and not only in the recitals.

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## AUSTRIA

Proposal from the Commission on the ETS revision  
WPE on 23.05.2022

The intensified discourse at European and global level on the topic of climate change has led to terms such as "low carbon" or "decarbonisation" being used more and more as the sole criterion for future solutions in the environment/climate/energy sector. However, in order to avoid undesirable developments - primarily from an environmental policy perspective - it is not sufficient to reduce the consideration to the question of CO<sub>2</sub> emissions alone. Other criteria of sustainability or criteria of safety, social compatibility and economic efficiency must also be taken into account without fail.

Therefore, AT would propose the following drafting suggestions instead of the terms "low carbon" and "decarbonisation".

### Recital 30

The free allocation no longer provided to the CBAM sectors based on this calculation (CBAM demand) must be auctioned [...] and the revenues will accrue to the Innovation Fund, so as to support innovation in **environmentally sound and socially acceptable ~~low carbon~~** technologies, carbon capture and utilisation ('CCU'), carbon capture and geological storage ('CCS'), renewable energy [...]

### Recital 33

The scope of the Innovation Fund referred to in Article 10a(8) of Directive 2003/87/EC should be extended to support innovation in **environmentally sound and socially acceptable ~~low carbon~~** technologies and processes that concern the consumption of fuels in the sectors of buildings and road transport. In addition, the Innovation Fund should serve to support investments **for a transition towards climate neutrality in ~~to decarbonise~~** the maritime transport sector, including investments [...] aimed at accelerating the development and deployment of renewable **~~and low carbon~~** fuels in the maritime sector, as specified in Article 21(1) of Regulation xxxx/xxxx [FuelEU Maritime] [...]

### Recital 42a)

In order to incentivize the uptake of **environmentally sound and socially acceptable ~~low carbon~~** technologies, Member States shall provide operators the option to remain [...]

### Recital 54

Innovation and development of new **environmentally sound and socially acceptable ~~low carbon~~** in the sectors of buildings and road transport are crucial for ensuring the cost-efficient contribution [...]

### Art. 10a

8. 365 million allowances from the quantity [...] shall be made available to a Fund with the objective of supporting innovation in **environmentally sound and socially acceptable ~~low~~**

~~carbon~~ technologies and processes, and contribute to zero pollution objectives (the 'Innovation Fund'). [...]

The Innovation Fund shall cover the sectors listed in Annex I and Annex III, including environmentally safe carbon capture and utilisation ("CCU") that contributes [...] as well as of innovative renewable energy and energy storage technologies; in geographically balanced locations. ~~The Innovation Fund may also support break-through innovative technologies and infrastructure to decarbonise the maritime sector and for the production of low- and zero-carbon fuels in maritime, aviation, rail and road transport.~~ The Innovation Fund may also support safe and sustainable technologies and infrastructure to support the transition of the maritime sector towards climate neutrality.

The Commission shall give special attention [...] to projects in sectors covered by the [CBAM regulation] to support innovation in ~~environmentally sound and socially acceptable low carbon~~ technologies, CCU, CCS, renewable energy and energy storage, in a way that contributes to mitigating climate change with the aim that over the 2021-2030 period, projects in those sectors are awarded a significant share of the equivalence in financial value of allowances mentioned in paragraph 1a of this article, and may launch before 2027 calls for proposals dedicated to the sectors covered by the [CBAM regulation]. The Commission shall give special attention to projects contributing to directly or indirectly ~~decarbonize transition~~ of the maritime sector ~~towards climate neutrality~~ and may launch calls for proposals to that end as appropriate.

[...]

Projects shall be selected on the basis of objective and transparent criteria, taking into account, [...] or to significantly lower the costs of transitioning towards a ~~low-carbon climate~~ ~~neutral~~ economy in the sectors concerned [...]

#### Art. 30d

5(a) measures intended to contribute to the ~~decarbonisation transition~~ of heating and cooling of buildings ~~towards climate neutrality~~ or to the reduction of the energy needs of buildings, including the integration of renewable energies and related measures according [...]