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DOCUMENT DE TRAVAIL

De:	Secrétariat général du conseil
A:	Groupe "Transports maritimes"
N° doc. prec.:	ST 12813/2/21 REV 2
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 - Discussion sur le non-papier de la Présidence: FuelEU Maritime – Bloc C

En vue du groupe de travail "Transports maritimes" du 28 janvier 2022, veuillez trouver ci-joint un non-papier préparé par la Présidence portant sur les dispositions relatives au cadre de gouvernance (bloc C).

Compte tenu des commentaires exprimés par les États membres au groupe « Transports maritimes » du 14 janvier 2022 et par écrit sur le « Bloc C – Cadre de gouvernance », la Présidence a rédigé ce non-papier incluant à la fois des suggestions rédactionnelles de compromis sur des aspects que la Présidence considère –à ce stade– moins controversées (partie I) et plusieurs approches possibles pour le renforcement de la supervision des activités de vérification (partie II).

Les délégations sont invitées à exprimer leur avis sur les aspects indiqués ci-dessous dans les parties I et II.

Toutes nouvelles modifications portant sur (partie du) document ST 12813/2/21 REV2¹ sont indiquées ci-dessous en « **gras souligné** » surligné en gris ou en « ~~barré~~ » surligné en gris.

Partie I

Article 6

Common principles for monitoring and reporting

3. Monitoring and reporting shall be consistent and comparable over time. To that end, companies shall use the same monitoring methodologies and data sets subject to modifications ~~assessed~~ **approved** by the verifier. Companies shall enable reasonable assurance of the integrity of the data to be monitored and reported.
4. Companies shall obtain, record, compile, analyse, ~~and~~ document **and store** monitoring data, including assumptions, references, emission factors and activity data, in a transparent and accurate manner, so that the verifier can determine the greenhouse gas intensity of the energy used on-board by ships. **The mentioned information and elements shall be kept available for a period of at least 5 years.**

¹ Les changements précédents indiqués dans le document ST 12813/1/21 REV1 en « **gras souligné** » surligné en gris ou en « ~~barré~~ » surligné en gris qui ont été, à ce stade, acceptés par la Présidence sont désormais indiqués en « **gras souligné** » ou en « ~~barré~~ ».

5. [In undertaking the monitoring and reporting activities set out in Articles 7 to 9 and 14 of this Regulation, information and data collected for the purpose of Regulation (EU) 2015/757 shall be used where appropriate.]

Rest of the Article: omissis

Article 8

Modifications to the monitoring plan

4. ~~Modifications of the monitoring plan referred to in paragraph 2, points (b), (c) and (d) of this Article shall be subject to assessment by the verifier. Following the assessment, the verifier shall notify the company concerned whether those modifications are in conformity with Article 6.~~

Rest of the Article: omissis

Article 10

Verification activities

1. **For each ship under its supervision,** the verifier shall assess the conformity of the monitoring plan with the requirements laid down in Articles 6 to 9. Where the verifier's assessment identifies non-conformities with those requirements, the company concerned shall revise its monitoring plan accordingly and submit the revised plan for a final assessment by the verifier before the reporting period starts. The company concerned shall agree with the verifier on the timeframe necessary to introduce those revisions. That timeframe shall in any event not extend beyond the beginning of the reporting period.
2. ~~The verifier shall assess the conformity of the information reported with the requirements laid down in Articles 6 to 9 and Annexes I, II and III before performing the operations set out in Article 15(2).~~
23. [Where the verification assessment identifies incorrect statements or non-conformities with this Regulation, the verifier shall inform the company concerned

thereof in a timely manner. That company shall then amend the incorrect statements or non-conformities so as to enable the verification process to be completed in time.²

3. **Following the assessment, if the plan is in conformity with this Regulation, the verifier shall issue a confirmation of conformity of the monitoring plan.**
4. **Modifications of the monitoring plan shall be subject to assessment by the verifier. Following the assessment, if the plan is in conformity with this Regulation, the verifier shall issue a new confirmation of conformity of the monitoring plan.**
5. **The verifier shall withdraw the confirmation of conformity if a modified monitoring plan is no longer in conformity with this Regulation or if a monitoring plan has not been duly modified in any of the situations listed in Article 8 paragraph 2 of this Regulation.**
6. **For each approved monitoring plan, the verifier shall inform the administering authority and record both the monitoring plan and the confirmation of conformity in the compliance database referred to in Article 16. A copy of the monitoring plan and of the confirmation of conformity shall be kept on-board the ship.**

Article 14

Monitoring and recording

1. **As of 1 January 2025, B**based on the monitoring plan referred to in Article 7, and following the assessment **and confirmation of conformity** 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:

² The exact placement of this provision could be further examined after discussions on “Partie II” of this note.

- (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 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;
 - (d) the well-to-wake emission factors for each type of fuel consumed at berth and at sea, broken down by well-to-tank, tank-to-wake and fugitive emissions, covering all relevant greenhouse gases;
 - (e) the amount of each type of substitute source of energy consumed at berth and at sea.
2. Companies shall record **all necessary documentation, including** 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 ~~31~~¹⁰ March of each year, companies shall provide to the verifier **a ship-specific FuelEU report containing all** the information **and documentation** referred to in paragraphs 1 **and 2 for the reporting period corresponding to the previous calendar year.** **The company shall record the FuelEU report in the compliance database referred to in Article 16.**

4³. In case there is a change of company⁵:

- (a) **the previous company shall report to the new company the information referred to in paragraph 1 for the period from the beginning of the calendar year to the date of the change, one month after completion of the change at the latest. This information shall be verified in accordance with**

³ As a complement, recital 6 could be further amended as follows:

(6) [...] This entity would normally be the entity that is responsible for the choice of fuel, route and speed of the ship. **Where there is a change of company, the new company should 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. The previous company should provide the required data to the new company.**

Article 15 and recorded in the compliance database by the verifier that was in charge of the ship under the previous company; and

- (b) 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 Articles 4 and 5 for the entire reporting period in the calendar year during which the change took place.**

Article 17

Banking and borrowing of compliance surplus between reporting periods

1. Where the ship has a compliance surplus for the reporting period, the company may bank it to the same ship's compliance balance for the following reporting period. **To that purpose, by 30 April of the year following the reporting period, upon the request of the company, the verifier** shall record the banking of the compliance surplus to the following reporting period in the compliance database ~~subject to approval by its verifier~~. The company may no longer bank the compliance surplus once the FuelEU certificate of compliance has been issued.
2. Where the ship has a compliance deficit for the reporting period, the company may borrow an advance compliance surplus of the corresponding amount from the following reporting period. The advance compliance surplus shall be added to the ship's balance in the reporting period and subtracted from the same ship's balance in the following reporting period. The amount to be subtracted in the following reporting period shall be equal to the advance compliance surplus multiplied by 1.1. The advance compliance surplus may not be borrowed:
 - (a) for the amount exceeding by more than 2% the limit set out in Article 4(2), multiplied by the energy consumption of the ship calculated in accordance with Annex I;
 - (b) for two consecutive reporting periods.
3. By 30 April of the year following the reporting period, **upon the request of the company**, the ~~company~~**verifier** shall record the advance compliance surplus

borrowed in application of paragraph 2 following approval by its verifier, in the compliance database.

Article 19

FuelEU certificate of compliance

1. By 30 June of the year following the **end of a** reporting period, the verifier shall issue a FuelEU certificate of compliance for the ship concerned, provided that, **on the basis of the FuelEU report**, the ship does not have a compliance deficit, after possible application of Articles 17 and 18, and does not have non-compliant port calls.
2. The FuelEU certificate 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, its period of validity and the reporting period it refers to.
3. The FuelEU certificate of compliance shall be valid for ~~the a~~ period of 18 months after the end of the reporting period, **or expire if a new certificate is issued in the meantime.**
4. The verifier shall inform the Commission and the flag State, without delay, of the issuance of any FuelEU certificate of compliance, **and record it in the compliance database referred to in Article 16.**
5. The Commission shall adopt implementing acts establishing models for the FuelEU certificate of compliance, including electronic **templates** ~~models~~. Those implementing acts shall be adopted in accordance with the ~~advisory~~ **examination** procedure referred to in Article 27(23).

Article 29

Amendments to Directive 2009/16/EC

The following point shall be added to the list set out in Annex IV to Directive 2009/16/EC:

- 1.** '51. The FuelEU certificate of compliance issued under **Article 19 of Regulation (EU) xxxx on the use of renewable and low-carbon fuels in maritime transport**', **and**
- 2.** **'52. The confirmation of conformity issued under Article 10 of Regulation (EU) xxxx on the use of renewable and low-carbon fuels in maritime transport'.**

Article 30

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union. It shall apply from 1 January 2025, **with the exception of Article 7, paragraph 1 that shall apply from 31 August 2024.**

Partie II

Nota: These approaches may be considered in isolation or in different possible combinations

Approaches	Description and rationale	Possible amendements in FuelEU Maritime
1	Define and involve “administering authorities” On the model of what is proposed in the ETS directive legislative proposal, this approach would consist in attributing each shipping company to one Member State for some enforcement provisions. It could provide more and complement the supervision of the implementation by the companies and the verifiers while limiting the administrative burden. Their role and the role of the “competent authorities” designated under Article 25 would have to be strictly defined in each relevant provisions with a view to ensure complementarity and no overlap between the two types of authorities. Some options presented in this table provide examples of their possible role.	<i>Article 3</i> Definitions For the purposes of this Regulation, the following definitions apply: [...] (ff) ‘administering authority’ means the administering authority in respect of a shipping company referred to in Article 3gd of Directive 2003/87/EC of the European Parliament and of the Council. <i>Rest of the Article: omissis</i>
2	Strengthen the supervision of the work of verifiers by the national accreditation body	<i>Article 13</i> Accreditation of verifiers

	This could be done either through the FuelEU Maritime regulation (cf example opposite), or through a delegated act taken on the basis of Article 13(3) of FuelEU Maritime regulation, such as delegated regulation No 2016/2072 (see in particular Articles 36, 38, 39, 40 and 41). Delegated regulation No 2016/2072 could also be strengthened specifically for the needs of FuelEU Maritime. In alternative, national administrations could also play a role based on a requirement to develop and implement national audit programmes on verifiers, on the model of the existing requirements in Article 30, paragraph 9 of directive RED II (2018/2001)	2. <u>The national accreditation body shall guarantee that the verifier has sufficient expertise to carry out the task required by this Regulation.</u> Where no specific provisions concerning the accreditation of verifiers are laid down in this Regulation, the relevant provisions of Regulation (EC) No 765/2008 shall apply. <u>2bis. Member States can request their national accreditation body, as part of their annual surveillance activities, to assess the verifier's activities related to one or several identified ships within the scope of this Regulation, at any time for the reporting activities undertaken during the previous reporting period. The company concerned shall provide the national accreditation body with any additional information that enables it to carry out this assessment, and shall allow the national accreditation body to access the ships or the premises of the company to facilitate this assessment. The results of the assessments are notified to [to complete] and recorded in the compliance database referred to in Article 16.</u> <i>Rest of the Article: omissis</i>
3	<i>Submit the recognition of verifiers to the same rules as recognised organisations (Regulation (EC) 391/2009)</i> This approach would consist in basing the verification activities and their supervision on Regulation No 391/2009, in order to benefit from this long-established framework in shipping. The pros and cons of this change of approach in comparison with the “verifiers” approach would probably have to be thoroughly considered. If	<i>Article 13</i> Accreditation of verifiers 1. Verifiers shall be accredited for activities under the scope of this Regulation by a national accreditation body pursuant to Regulation (EC) No 765/2008. 2. Where no specific provisions concerning the accreditation of verifiers are laid down in this Regulation, the relevant provisions of Regulation (EC) No 765/2008 shall apply. 3. The Commission is empowered to adopt delegated acts in accordance with Article 26, in order to supplement this Regulation by establishing further methods and criteria of accreditation of verifiers. The methods specified in those delegated acts shall be based on the principles for verification provided for in Articles 10 and 11 and on relevant internationally accepted standards. Recognition of verifiers

	decided so, other provisions of the Regulation would have to be adapted.	1. Verifiers shall be recognised organisations pursuant to Regulation (EC) No 391/2009 on common rules and standards for ship inspection and survey organisation. 2. Where no specific provisions concerning the accreditation of verifiers are laid down in this Regulation, the relevant provisions of Regulation (EC) No 391/2009 shall apply.
<u>4</u>	<i>Enhance the independence of the verifier,</i> through specifying that the verifier should be another entity that the recognized organisation already responsible for the international certifications of the ship.	<i>Article 11</i> General obligations and principles for the verifiers 1. The verifier shall be independent from the company or from the operator of a ship and shall carry out the activities required under this Regulation in the public interest. For that purpose, neither the verifier nor any part of the same legal entity shall be a company or ship operator, the owner of a company, or be owned by them, nor shall the verifier have relations with the company that could affect its independence and impartiality. <u>The verifier cannot be the recognized organisation ensuring the delivery of the ship's international certificates under IMO Conventions.</u> <i>Rest of the Article: omissis</i>
<u>5</u>	<i>Enable Member States to request in depths checks during the verification process</i> This could be based on Article 12(4), with a view to increase the credibility of the verification activities and enable on-site visits when necessary.	<i>Article 12</i> Verification procedures 4. The company concerned shall provide the verifier with any additional information that enables it to carry out the verification procedures. <u>On the request of [a competent authority] [the administering authority], or when necessary to determine the reliability of reported data and information,</u> the verifier may <u>shall</u> conduct checks during the verification process to determine the reliability of reported data and information. <u>The company shall allow the verifier to access the ships or the premises of the company to facilitate its verification activities.</u> <i>Rest of the Article: omissis</i>
<u>6</u>	<i>Introduce “second level checks” of the work of the verifier, during the verification process, by public authorities</i>	<i>Article 15</i> Verification, second-level checks and calculation

	This approach would consist in providing the possibility or the requirement for public authorities (e.g. competent authorities, and/or administering authorities and/or the EMSA) to conduct verifications checks on some reportings and possible follow-up actions in case of non-conformities, in addition to the exhaustive verifications undertaken by the verifier. These checks and the follow-up actions would be limited to the period of the verification process (i.e. before 30 June). The aim would be to incentivize both the company and the verifier to fulfill these tasks as thoroughly as possible. Here is provided an example but such approach can be designed in different ways, with different levels of engagement of the public authorities, different follow-up actions and different timings in relation with the verifier's work. If the Group decided to further consider this approach, the different options would have to be considered carefully to ensure efficiency and consistency with the other provisions of the Regulation.	1. Following <u>By 30 April of the year following the end of a reporting period, on the basis of</u> 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) <u>FuelEU report.</u> <u>1bis. Where the initial assessment concludes, with reasonable assurance from the verifier, that the FuelEU report is free from material misstatements, the verifier shall issue and record in the compliance database an initial verification report stating that the FuelEU report complies with this Regulation. The initial verification report shall specify all issues relevant to the work carried out by the verifier.</u> <u>1ter. Before 30 June of the year following the end of a reporting period, the administering authority in respect of a company and the European Maritime Safety Agency may conduct second-level checks of selected FuelEU reports. For this purpose, they can request any additional information or documents to the company. The administering authority and the European Maritime Safety Agency can delegate these checks, at their own expenses, to a verifier accredited under Article 13.1 of this Regulation other than the verifier having conducted the initial assessment.</u> <u>1quater. Where the initial assessment or the second-level checks conclude that the FuelEU report includes misstatements or non-conformities with the requirements of this Regulation, the verifier or the entity having conducted the second-level checks shall inform through the compliance database the company and, where appropriate, the administering authority, the verifier and the Member State of the national accreditation body of the verifier, 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 and record in the compliance database a revised FuelEU report and any other documentation that was necessary to correct the non-conformities identified.</u> <u>1quinquies. Following assessment of the revised FuelEU report, the verifier shall issue and record in the compliance database a revised verification report stating whether the revised FuelEU report is compliant with this Regulation.</u> <i>Rest of the Article: omissis</i>
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7	<i>Introduce “routine checks” of the work of the verify, at any time, by public authorities</i> Such “routine checks” could be an alternative or a complement to “second-level checks” described above. They would not be limited to the period of the verification process. Here is provided an example but, as above, this approach could be designed in different ways, in particular regarding the authorities in charge of these checks and the follow-up actions resulting from possible non-conformities found.	<u>Article 15bis</u> <u>Routine checks</u> <u>1. At any time, any administering authority, competent authority and the European Maritime Safety Agency may, for any ship to which this Regulation applies, conduct routine checks of:</u> <u>1. the initial verification report established in application of Article 15(1bis);</u> <u>2. the revised verification report established in application of Article 15(1quinquies); and</u> <u>3. the calculations made by the verifier in application of Article 15(2).</u> <u>2. On request of the entity conducting such routine check, the company shall provide any additional information or document that enables it to carry it out. The administering authority, the competent authority and the European Maritime Safety Agency can delegate these checks, at their own expenses, to a verifier accredited under Article 13.1 of this Regulation other than the verifier having issued the verification reports and calculations mentioned in paragraph 1.</u> <u>3. The entity having conducted a routine check shall record the routine check report in the compliance database.</u> <u>4. Where such check finds misstatements, non-conformities or miscalculations resulting in a non-conformity to the requirements set out in Articles 4 or 5 of this Regulation, the entity having conducted the check shall withdraw the FuelEU certificate of compliance of the ship and inform the company, the verifier, the administering authority and the Member State of the national accreditation body of the verifier in a timely manner.</u> <u>5. The verifier may issue a new FuelEU certificate of compliance once the ship concerned has corrected the non-conformities, after possible application of Articles 17 and 18 and possible payment of the penalties referred to in Article 20.</u>
8	<i>Develop EMSA’s support and coordination on enforcement of FuelEU Maritime</i>	<u>Article XX</u> <u>Support and coordination from the European Maritime Safety Agency</u>

	This approach is inspired from Article 18b of the ETS directive legislative proposal. Synergies between the supporting tools and guidance that EMSA could provide for the ETS could also benefit to Member States for the enforcement of FuelEU Maritime. Here is provided an example, but different options and levels of engagement from EMSA and Member States could be considered.	1. The European Maritime Safety Agency shall develop shipping and bunkering activities monitoring tools, as well as guidance to facilitate enforcement activities related to this Regulation, and make them available to the competent authorities and administering authorities. 2. The European Maritime Safety Agency shall develop and regularly update a FuelEU Maritime enforcement coordination program with the aim to coordinate and support the competent authorities and administering authorities in their enforcement activities. This program may define priorities and criteria for targeting the second-level checks and the routine checks undertaken respectively in application of Articles 15 and 15bis, and provide quantitative objectives [at the European level] for such checks.
9	<i>Involve Member States in the calculation of the penalties</i> This could be done in both Articles 15 and 20, in order to respond to some legal concerns already expressed, and also to reduce the risk of conflicts of interest between the verifier and the company.	<i>Article 15</i> Verification and calculation 2. On the basis of the 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, the ship's compliance balance; c) calculate the number of non-compliant port calls in the previous reporting period including the time spent at berth for each non-compliant port call and the megawatts of power installed on-board for electrical power demand at berth. d) calculate the amount of the penalties referred to in Article 20(1) and (2). <i>Rest of the Article: omissis</i> <i>Article 20</i> Penalties 1. Where on 1 May of the year following the reporting period the ship has a compliance deficit, the company shall pay a penalty. The verifier administering authority shall calculate the amount of the penalty on the basis of the formula specified Annex V. 2. The company shall pay a penalty for each non-compliant port call during the previous reporting period. The verifier administering authority shall calculate the amount of the penalty by multiplying the amount of EUR 250 by megawatts of power

		installed on-board for electrical power demand needs while at berth and by the number of completed hours spent at berth. <i>Rest of the Article: omissis</i>
10	<i>Increase information sharing in the data on which verification activities are based</i> The use of the “compliance database” could have a more central role in the governance framework of FuelEU Maritime, as a platform centralising all the data and information and specific access to the different entities involved depending on their roles and responsibilities. Other Articles regulating the verification activities could be slightly amended to ensure enough information is shared through this database to allow proper enforcement of the Regulation.	<i>Article 16</i> Compliance database and reporting 1. The Commission shall develop, ensure functioning and update an electronic compliance database for the monitoring of compliance with <u>this Regulation, including but not limited to</u> Articles 4 and 5. The compliance database shall be used to keep a record of the compliance balance of the ships and the use of the flexibility mechanisms set out in Articles 17 and 18. It shall be accessible to the companies, the verifiers, the competent authorities, <u>the administering authorities, the national accreditation bodies</u> and the Commission, <u>with appropriate access rights and functionalities corresponding to their respective requirements and responsibilities in the implementation of each provision of this Regulation referring to it.</u> <i>Rest of the Article: omissis</i> <i>Article 12</i> Verification procedures 5. <u>The competent authorities, the administering authorities and the national accreditation bodies having accredited a verifier for activities under the scope of this Regulation shall have access, either through the compliance database or on request made to the verifiers, to all the verification procedures, documents and activities being carried out by the verifiers.</u> <i>Rest of the Article: omissis</i>