

Brief
On
Summary of developments
In the EU and the EU Fit for 55 policy package
June/July 2023

EU ETS

A consolidated version of Directive 2003/87/EC has been released for reference.

- The text can be found in all EU languages at the following link: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02003L0087-20230605>.
- Please note that this text is meant purely as a documentation tool and has no legal effect.

FUEL EU MARITIME

Background

FuelEU Maritime is the EU's strategy to phase out fossil fuels from shipping and boost the uptake of alternative fuels in the sector. The proposed regulation introduces increasingly stringent limits on carbon intensity of the energy used by vessels from 2025, which should oblige them to use alternative fuels.

Summary of Developments

On 11 July, the Plenary of the European Parliament **adopted the FuelEU maritime regulation**. This was followed by the approval of the Committee of Permanent Representatives in the European Union on 19 July and of the Council on 27 July. These approvals **completed the legislative procedure**.

- The text can be found in the following link:
<https://data.consilium.europa.eu/doc/document/PE-26-2023-INIT/en/pdf>
- In parallel, the Commission has already **started to work on the delegated and implementing acts**.
- **DG MOVE and DG CLIMA have opposing views** on how low-GHG fuels used in international voyages should be counted towards the yearly average GHG intensity of the energy used on-board under FuelEU maritime.
 - DG CLIMA's interpretation (Interpretation A) is that only 50% of the low GHG fuels purchased and used to ensure compliance with FuelEU in international voyages should be counted when calculating the annual total reduction in GHG intensity of the energy used under FuelEU.
 - DG MOVE's interpretation (Interpretation B) is that all low GHG fuels purchased and used to ensure compliance with FuelEU should be counted when calculating the annual total reduction in GHG intensity of the energy used under FuelEU, irrespective where they were used. DG MOVE thinks that its interpretation would allow a higher share of the low GHG fuels used during the international voyage to be taken into account,

Next steps:

The new regulation will be published in the EU's official journal after the summer and will enter into force the twentieth day after this publication. The **new rules will apply from 1 January 2025**, apart from articles 8 and 9 which will apply from 31 August 2024.

BASEL III RULES

Background

The Basel III **agreement was reached** by the EU and its G20 partners in the Basel Committee on Banking Supervision to **make banks more resilient to possible economic shocks**. The Basel III-standards comprise a number of measures to enhance prudential regulatory standards, supervision and risk management of banks as a response to the Global Financial Crisis of 2007/2008.

Summary of Developments

- The agreement on the Basel III rules reached between the European Parliament and the Council end of June that **gives explicit recognition to ship finance**.
- The new rules will allow banks to apply preferential treatment to shipping portfolios on specialized lending when calculating risk weights and ultimately their capital requirements.
- As a result, *the new law will enable banks to finance at a competitive price*.

Next steps:

The new law will have to be formally approved by the Plenary of the European Parliament and the Council in the following months.

ALTERNATIVE FUELS INFRASTRUCTURE REGULATION (AFIR)

Background

The 2014 Alternative Fuels Infrastructure Directive required EU countries to develop national policy frameworks (NPFs) for developing publicly available refuelling and recharging points for alternative fuel vehicles and vessels. The Fit for 55 package included the proposal to revise the 2014 Directive on alternative fuels infrastructure. The Commission proposed to repeal the directive and replace it with a regulation.

Summary of Developments

The **EU Council adopted** the new regulation.

- The text can be found in the following link :
<https://data.consilium.europa.eu/doc/document/PE-25-2023-INIT/en/pdf>

Next steps:

The new regulation will be published in the EU's official journal after the summer and will enter into force the twentieth day after this publication. The new rules will apply from six months after the date of entry into force of the regulation.

EU TAXONOMY

Background

The proposal forms an integral part of the EU's efforts, under its Capital Market Union project, to connect finance with needs of the economy and the EU's sustainable development agenda.

- The proposal sets out uniform criteria for determining whether an economic activity is environmentally sustainable and sets out a process involving a multi-stakeholder platform to establish a unified EU classification system (EU taxonomy) based on a set of specific criteria, in order to determine which economic activities are considered sustainable.
- On 18 June 2020, the European Parliament adopted the regulation in Plenary.

Summary of Developments

On 13 June 2023, the European Commission approved in principle:

- the amendments to the first Taxonomy Environmental Delegated Act (TDA1), which defines the **technical screening criteria** for economic activities – **including maritime transport** -

making substantial contribution to climate change mitigation (Annex 1) and adaptation (Annex 2).

- The amendments to TDA1 provides **additional technical screening criteria for maritime transport for after 2025** including criteria based on the life-cycle approach. The criteria are to a very large extent are following the recommendations of the Platform on Sustainable Finance published in March and November 2022.
- Compared to the draft TDA1 that was also consulted on in April 2023, the main changes are as follows:
 - Under manufacturing (3.3 of Annex 1) and the maritime transport chapters (6.10 and 6.11 of Annex 1) and additional **criterion was added to address methane slip**;
- Maritime transport is not addressed under the second Taxonomy Environmental Delegated Act (TDA2) which defines the technical screening criteria for some economic activities making a substantial contribution to one or more of the non-climate environmental objectives.

More details and the texts of may be found in the following link:

https://finance.ec.europa.eu/publications/sustainable-finance-package-2023_en

Next steps

The European Parliament and the Council have now 2 months – and an additional two months if extension is requested – to raise objection against the delegated acts. The formal adoption of TDA1 and TDA2 in all the official languages of the European Union will take place later on, as soon as the language versions are available. It is expected that the delegated acts will be published in the Official Journal and **enter into force by the end of 2023**.

CORPORATE SUSTAINABILITY DUE DILIGENCE DIRECTIVE

Background

On 23 February 2022, the Commission adopted a proposal for a Directive on corporate sustainability due diligence. The Corporate Sustainability Due Diligence Directive does not refer explicitly to shipping companies, but it has provisions for all the business sectors. **Big shipping companies are expected to be impacted by the directive.**

Summary of Developments

On 1st of June the European Parliament formally **adopted in plenary** the Corporate Sustainability Due Diligence Directive.

- The scope of the Directive covers **companies with more than 250 employees and a turnover of at least €40 million**.
- The final text is available in English on the Parliament's website via this link:
https://www.europarl.europa.eu/doceo/document/TA-9-2023-0209_EN.html

Next steps:

The European Commission, the Parliament and the Council have started the final talks to turn the proposal into law.

MARITIME SAFETY PACKAGE

Background

The Commission presented on 1 June 2023 the maritime safety package that seeks to align the Agency's activities with the sustainable and smart mobility strategy adopted in December 2020 and with the "Fit for 55" package:

- Proposal for a Regulation of the European Parliament and of the Council on the [European Maritime Safety Agency](#) and repealing Regulation (EC) No 1406/2002 [COM(2023) 269].

Among other objectives and proposes the revision of the:

- Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/16/EC on [port State control](#) [COM(2023) 271],
- Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/21/EC on compliance with [flag State requirements](#) [COM(2023) 272],
- Proposal for a Directive of the European Parliament and of the Council amending Directive 2005/35/EC on [ship-source pollution](#) and on the introduction of penalties, including criminal penalties, for pollution offences [COM(2023) 273], and
- Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/18/EC establishing the fundamental principles governing the [investigation of accidents](#) in the maritime transport sector [COM(2023) 270].

Summary of Developments

Main points of the above are as follows.

Updated EMSA mandate

- To move the EMSA mandate away from the old core/ancillary tasks to a topic based approach to better reflect the growing role the Agency in many maritime transport areas.
- This thematic approach includes safety, pollution prevention and environmental protection, climate action, security, surveillance and crisis management and digitalisation.
- To empower EMSA with new tasks on safety and sustainability which emanating from the new maritime safety legislative package.
- EMSA to present every three years to the Commission reports on progress on maritime safety, in achieving the decarbonisation and in reducing the environmental impact of maritime transport at the Union level with possible technical recommendations.
- The Commission and the Member States to rely on EMSA's support for instance when implementing the FuelEU Maritime Regulation and extending the EU Emissions Trading System to maritime transport.
- EMSA to assist the Commission and the Member States with maritime surveillance, cybersecurity resilience and crisis preparedness.
- To play a significant role in simplifying reporting between Member States through the use of IT tools, while continuing to offer training and capacity building for Member States administrations.
- To introduce fees for third countries and the industry for capacity building and training. This it would be defined in implementing acts at a later stage and could be more problematic (e.g. Article 33(2) of new proposal).

Port State Control

The Commission proposes to extend the scope of the directive:

- To bring within the scope of port State control inspections the International Convention for the Control and Management of Ships' Ballast Water and Sediments (**BWM Convention**), and the International Convention on the Removal of Wrecks (Nairobi)
- The Commission proposes to **amend the ship risk profile** to take account of changes already agreed in principle by the Paris MOU. These include:
 - the weighting points applied to certain vessel types, and
 - the IMO Audit Scheme, which is no longer a voluntary system, but is replaced by a weighting factor to take account of whether the Flag State has ratified the international conventions.
- The Commission also proposes to **add environmental parameters** which will be taken into account to establish the **ship risk profile** used to target ships for inspection (article 10 and annex I & II). The proposed environmental parameters are:

- “The **Carbon Intensity Indicator of the ship, ships which are category D-E shall be considered as posing a higher risk.**
- Ships which, during inspection(s) carried out within the period referred to in Annex II have had less than the number of deficiencies relating to MARPOL, AFS, BWMC, CLC 92, Bunkers Convention and Nairobi Conventions referred to in Annex II, **shall be considered as posing a lower risk”.**
- A parameter of the ship risk profile will also be added to encourage the flag states of vessels eligible for PSC to use **electronic certificates** (annex I.1.c.iv).
- The introduction of a paragraph 2a to Article 5 modifies the inspection commitment (the so-called “**fair share**”) and the way that this is calculated and complied with by Member States.
- A new provision covers **force majeure** situations to address the issue of lack of flexibility of the PSC regime in cases of crisis or unexpected events, such as the COVID-19 pandemic (Article 8a).
- The Commission also proposes to amend the Directive to align it to the changes adopted by the Paris MOU relating to the **refusal of access** (banning) procedure and the possibility to ban vessels **which are on the grey or white lists of the Paris MOU** (flag-blind banning) as well as provision related to jumped detention or when the detained vessel does not proceed to an agreed repair yard (article 16).

Flag State Requirements

The legislative proposal aims to update the directive to **bring it in line with IMO instruments** adopted since 2009, as well as to reflect technological and digital developments.

The Commission proposes to:

- Integrate the provisions of the **IMO Instruments Implementation Code (III Code)** into EU law.
- Lay down more detailed measures for EU Flag States to implement to ensure safety of ships flying the flag of a Member State (article 4b new) including making explicit reference to the **survey guidelines under the Harmonized System of Survey and Certification (HSSC)**.
- Introduce **safety and pollution prevention requirements** (article 4c new), including requiring that each Member State’s administration “relies on appropriate resources, commensurate with the size and type of its fleet” and “ensure the oversight of the activities of flag State surveyors, flag state inspectors and recognised organisations”, amongst others by participating in the EU Recognised Organisation oversight scheme introduced by the proposal. A common capacity building scheme is created in accordance to Article 4c new.
- Introduce **digitalisation and information exchange requirements**. Member States are required to make a list of information concerning ships flying their flag (list under article 6) accessible in an electronic format which is compatible and interoperable with Union maritime safety databases. The Commission shall create an inspection database containing the information referred to in article 6.
- Amend existing provisions on Flag State audits and quality management systems, giving the **Commission and EMSA more oversight** and further detailing the requirements for the quality management systems and for annual performance evaluations.
- Establish a “**High Level Group on Flag State matters**”, tasked amongst others with making recommendations on a common approach to flag state inspection and with developing and implementing an RO oversight scheme.

Maritime Accident Investigations

The Commission proposes to:

- Update the directive to bring it in line with the **IMO Casualty Investigation Code**.
- Repeal the Commission Regulation (EU) No 1286/2011 of 9 December 2011 adopting a common methodology for investigating marine casualties and incidents, because the **IMO** adopted **Guidelines** to assist investigators in the implementation of the Casualty Investigation Code (Resolution A.1075(28))

Ship source pollution directive (SSPD)

The Commission proposes to:

- **Include** in addition to illegal discharges of oil and noxious liquid substances (Annex I & II of MARPOL which are covered by the existing directive), **discharges of harmful substances** carried in packaged form (MARPOL Annex III), **sewage** (MARPOL Annex IV), **garbage** (MARPOL Annex V), as well as discharge **waters and residues from Exhaust Gas Cleaning Systems** (wet scrubbers) (MARPOL Annex VI).
- **Leave air emissions (Annex VI) out of the scope**, for the time being but envisages a future possible inclusion.
- **Align MARPOL** and the ship-source pollution directive in terms of **serious negligence, as advocated by ECSA** for several years. Article 5 on the exceptions is now reverting back to the MARPOL wording and which reads *“with intent to cause damage or recklessly and with knowledge that damage would probably result”*.
- Amend the directive to cover only **administrative sanctions** and no longer criminal penalties, which now are included in the Environmental Crime Directive (ECD).
- Add the **definition of “company”** to clarify the notion of ‘owner’ **used in MARPOL**. This notion applies to any organisation (e.g. manager or charterer) which has assumed the operation of the ship, in alignment with the ISM Code.
- Put forward **criteria on circumstances of infringements** for the effective application of administrative penalties (Article 8d). This includes the gravity of the discharge, its impact on the environment, human health, the financial strength of the responsible entity, or the economic benefits generated by the infringement.

As **preliminary concerns**, ECSA has pointed out that:

- In general the new scope provided in Article 4 is defined with **numerous specific references to MARPOL** and the **language lacks clarity and legal certainty**.
- As it currently reads, the reference to Article 4 of SSPD by the ECD (currently in final stages of legislative process) could lead to **an extension of criminal sanctions** to the new enlarged scope of the SSPD.
- The alignment with MARPOL in terms of **criminal liability/serious negligence** could be taken into account in the future ECD (ref: Article 3 (1) h) of ECD to Article 5 of SSPD) but the reference to ‘serious negligence’ in Article 3 (2) of ECD leaves room for uncertainty.
- The exceptions of Article 5 **do not take into account sewage and garbage discharges** (MARPOL Annex III and IV).
- The exceptions in Article 5 (Annex I, II and VI) seem **not to apply in the territorial sea and internal waters**.
- Article 6(3) introduce a **list of irregularities** in Annex I, however the list does not seem sufficiently linked to the principle of Article 6 (1) which only references to suspicions of irregularities of discharges.
- Article 8 define that penalties (fines) should be **imposed to the company unless it can prove that the master and the crew are responsible**. Further clarification on the burden of proof and/or presumption of fault is needed.
- Article 10 and 10d introduce **new reporting obligations and protection of whistleblowers**, but the right to contradictory by the company is lacking

Next steps:

The Parliament and the Council will start working on the proposals.