

FuelEU MARITIME AT A GLANCE

The FuelEU Maritime Regulation (“FuelEU”) comes into force on 1st January, 2025 and is implemented as part of the EU’s “Fit for 55” package initiative which aims to reduce net greenhouse gas (“GHG”) emissions by at least 55% by 2030. Working alongside the EU Emission Trading System (“EU ETS”), the purpose of FuelEU is to decarbonise the maritime sector, which currently contributes to roughly 3% of GHG emissions.

In this publication we answer some of the key questions in respect of FuelEU, its scope and application.

1. What are the principle requirements of FuelEU?

FuelEU provides that all ships over 5,000 gross tonnage must gradually reduce GHG emission intensity by investing in more renewable fuel of non-biological origin (“RFNBOs”), and connecting to onshore power supplies when ships are at berth. It is applicable to all ships travelling to, from or within the EU and is not limited to ships owned or operated by European companies.

i) Reducing GHG intensity

All ships operating within the EU or the European Economic Area (EEA) must cover their energy needs by fuel of GHG intensity below the threshold value.

The GHG intensity threshold is based on a reference value which has been calculated to be 91.16gCO₂e/MJ. Every five years the percentage of reduction of GHG intensity of fuels consumed by ships will increase, starting with 2% from 1st January, 2025 and ending with 80% in from 1st January, 2050.

The limits on the GHG intensity used on board a ship is counted as follows:

- 50% of energy used on voyages into or out of the EU/EEA;
- 100% of energy used during a port stay in an EU/EEA port; and
- 100% of energy used between EU/EEA ports.

The way in which the GHG intensity will be gauged is on a well-to-wake basis, where the well-to-tank phase covers generated emissions from the extraction, cultivation, production, and transportation of the fuel, and tank-to-wake covers the emissions generated during the combustion of the fuel.

ii) Onshore power supply (“OPS”) in main European ports

When moored at a trans-European transport network port, ships must meet all electrical power demands using OPS. From 1st January, 2035 onwards, this obligation expands to all European ports.

There are, however, specific circumstances where usage of OPS at ports is not compulsory as follows:

- The onshore and onboard power equipment is incompatible.
- The ship is docked at the port for less than two hours.
- The ship uses zero emission technologies for all tier electrical power demands at berth.

iii) Use of renewable fuels of non-biological origin

Using RFNBOs will be encouraged through counting only half of the GHG emissions when calculating the ships total GHG fuel intensity. In addition, if the RFNBOs make up less than 1% of the energy mix in 2031, then a new target will require ships to use at least 2% RFNBOs from 1st January, 2034.

2. Who is responsible for compliance?

The party responsible for the submission of data is the shipowner or any other party who is the Document of Compliance (“DOC”) holder under the ship’s ISM. There is no need to mandate the DOC holder (in contrast with the position under EU ETS).

BIMCO is currently drafting a clause to be inserted into the Shipman management agreement, given that it will be the DOC holder who will be the party responsible for compliance.

3. How is a certificate of compliance obtained?

Ships entering an EEA port will have to carry a valid certificate of compliance. In order to obtain a certificate of compliance, the party responsible has to:

- Submit a FuelEU Monitoring plan to a recognised verifier. This was required by 31st August, 2024. The plan should outline intended ways of monitoring and reporting the emissions for each ship within the fleet.
- Report key data required under FuelEU, based on the monitoring plan, namely fuel consumption, CO₂ emissions and distance travelled by 1st January, 2025.
- Submit individual ships’ FuelEU reports to the verifier by 31st January, 2026. The verifier will then calculate the compliance balance and issue the certificate of compliance.

Any failure in presenting a certificate of compliance for two of more consecutive reporting periods may lead to a ship being banned from the EU.

4. Can a non-compliance be rectified?

There are various ways of dealing with a negative balance/compliance deficit in order to obtain a certificate of compliance:

- (i) Paying the penalty which has been incurred. From 2026 onwards, if a ship has a compliance deficit the company will be obliged to pay a penalty. By 30th June each year companies must pay any remedial penalties and submit the certificate of compliance.
- (ii) It is possible to “borrow” an allowance from the following year, though the borrowed allowance plus a premium shall be deducted from the following year. It is also possible to use a surplus in one year to offset against non-compliance in a following year.
- (iii) Pooling: the principle is that a number of ships are “pooled” (not in the sense of a commercial pool) so that ships with a surplus can be offset against non-compliant ships. One can see how this will work with ships with a common in-house manager, but it will be more difficult where the pooled ships are owned by different owners. Every company within the pool must approve the pool composition and the distribution across the pool.

5. How does FuelEU differ from EU ETS?

Fundamentally, there is a difference between the two schemes’ scopes.

While EU ETS only deals with CO₂ on a tank-to-wake basis, FuelEU works on a well-to-wake basis and handles a larger variation of GHG’s. The information to be provided by the shipowners/ship managers is therefore greater under FuelEU than required under EU ETS. This will mean, for example, bunker suppliers having to provide the fuel carbon intensities when supplying bunkers, by way of a ‘Sustainability Annex’ to the bunker delivery note.

There are differences also between the mechanisms used by FuelEU and EU ETS. The latter operates under a cap-and-trade system. A cap is a set on the total amount of GHG emissions that can be emitted by all participating entities. Companies buy or receive emissions allowances, which they can trade with one another as needed. The cap is reduced overtime to reduce total emissions.

By contrast, FuelEU sets a gradually decreasing limit on GHG intensity of energy used by ships. So, over time, ships will need to use cleaner fuels, with a growing percentage reduction. Further, EU ETS is based on single ships whilst FuelEU can be fleet based.

6. What are the contractual implications of FuelEU?

Clearly, in circumstances where whether a particular ship will meet the GHG intensity target will depend on the type of bunkers which are provided to the ship, there will need to be agreement between an owner and a time charterer as to how any penalty will be dealt with and who will have the benefit of any surplus.

It is clear that charterers will need to supply biodiesel (which can be admixed with fuel oil) or other types of fuel (methanol etc) in order for the ship to meet the intensity target. Thus it seems likely that agreement will be reached under time charters whereby the charterer will reimburse the owner for any penalties which are incurred as a consequence of their operation of the ship. What the agreement will be in relation to surpluses remains to be seen but logically charterers will want the benefit of them.

7. Is there a FuelEU clause for time charter parties?

There are potential complexities concerning charters which straddle two or more reporting periods, and these will need to be dealt with by any clause which is agreed. Further, logically any clause would deal with FuelEU and its consequences on a ship by ship basis, so for example no account would be taken of any pooling decisions made prior to the charter being entered into.

BIMCO has set up a dedicated sub-committee with the aim of drafting a clause for use in time charter parties. It remains to be seen whether the industry uses the BIMCO clause with changes or whether owners and charterers will draft their own bespoke clauses. Current investigations have not revealed any bespoke clauses save for ones which say that the parties acknowledge the coming into force of the regulation and agreeing to negotiate (in good faith) a clause to deal with it.

CONCLUSION

The introduction of FuelEU creates a new regulatory burden on shipowners and managers. It also creates the need for the agreement of clauses dealing with (amongst other things) deficits and surpluses arising as a consequence of the application of FuelEU. The Managers will continue to monitor the situation in the lead up to the coming into force of the regulation on 1st January, 2025 and update Members as necessary.

ukdefence.com

The UK Defence Club

c/o Thomas Miller Defence Ltd,
90 Fenchurch Street, London EC3M 4ST
+44 207 283 4646

The UK Defence Club (Europe)
c/o Thomas Miller B.V. Cyprus Branch
214 Arch. Makarios III Avenue
Kanika Ideal Court, Office 401
Limassol
CY-3030
Cyprus
+00 357 25 375020

tmDefence@thomasmiller.com
ukdefence.com

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Company number: 00501877