



GUIDE TO FUELEU MARITIME

FuelEU Maritime

The EU Shipping Fuel Regulation

What is FuelEU?

The first deadline under the FuelEU regulations is looming: on 31 August 2024, a vessel monitoring plan must be submitted to an accredited verifier. Starting from 1 January 2025, shipowners will be obliged to gradually reduce the greenhouse gas emissions from their vessels. To achieve a reduction in GHG emissions, FuelEU seeks to encourage the use of renewable and low-carbon fuels by all vessels, and specifically, obliges containerships and passenger vessels to use onshore power supply. Along with the EU Emissions Trading System, FuelEU is part of the EU's strategy of achieving climate neutrality by 2050

When do I need to comply with FuelEU?

The obligation to reduce a vessel's GHG emissions will apply as of 1 January 2025, while the obligation to use onshore power supply for container- and passenger ships will apply as of 1 January 2030.

Who does FuelEU apply to?

Geographically, FuelEU covers the European Economic Area (the "EEA") comprising the European Union, Iceland, Liechtenstein and Norway.

FuelEU applies to all vessels of 5,000 GT and above in respect of:

[1] The energy used during their stay at an EEA port;

[2] The entirety of the energy used on voyages between two EEA ports;

[3] Half of the energy used on voyages where only one port within a port pair is located in the EEA and the second port is under the jurisdiction of a third country; and

[4] Half of the energy used on voyages arriving at or departing from a port located in an outermost region under the jurisdiction of an EEA state.

How does FuelEU promote the use of low-carbon fuels?

FuelEU obligates a shipowner to reduce the greenhouse gas intensity of its vessels. The baseline GHG intensity is set at 91,16 grams of CO₂ per Mega Joule of energy used on board.

The baseline value is subject to the following reduction factors:

- 2% reduction from 1 January 2025;
- 6% from 1 January 2030;
- 14,5% from 1 January 2035;
- 31% from 1 January 2040;
- 62% from 1 January 2045;
- 80% from 1 January 2050.



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How to Comply with the Regulation

How can a shipowner comply with the GHG intensity limits?

To achieve compliance, shipowners can use a combination of energy saving equipment and low-carbon fuels. Each fuel is assigned an emission factor, with the worst emission factors given to fossil fuels, and the best emission factors given to biofuels, renewable fuels of non-biological origin ("RFNBO") and recycled carbon fuels.

FuelEU seeks to specifically incentivise the use of RFNBOs, such as e-LNG and e-methanol. Between 2025 and 2033, the energy from the use of RFNBO will be counted twice. It means that a smaller quantity of RFNBO will be needed to comply with the GHG intensity targets, reducing the costs of using RFNBOs.



What does the obligation to use onshore power supply entail?

From 1 January 2030, container- and passenger vessels calling at major EU ports will need to connect to the onshore power supply ("OPS") and use it for all their electrical power demand at berth. It will also apply to the rest of EU ports as of 2035, if these ports have an OPS.

Certain exemptions, such as staying at port for less than two hours, using own zero-emission technology or making a port call due to unforeseen circumstances or emergencies, will apply.

What are the penalties for non-compliance?

If a vessel exceeds the relevant GHG intensity limit, the shipowner must pay a penalty. The penalty amount is equal to approx. EUR60 per gigajoule of non-compliant energy consumption.

Container- and passenger ships that fail to use OPS will need to pay a fine for each hour of non-compliance.

Who is responsible for compliance with FuelEU?

All obligations under FuelEU rest with a shipowner, or such other entity that holds the vessel's ISM document of compliance (e.g., a bareboat charterer or manager).

Can a shipowner pass the FuelEU costs on to a charterer?

The FuelEU legislation does not create an automatic right for a shipowner to be reimbursed by the charterer for the increased fuel cost or any applicable fines.

This is in stark contrast to the EU ETS which effectively obliges a charterer to compensate the owner for any ETS allowances arising from the charter service.

The surest way to pass on the cost to commercial operators, such as time and voyage charterers, is to agree on express charterparty terms. Whether a shipowner can recover FuelEU costs under existing charterparties is always a question of construction of each individual charterparty. Answering that question requires the consideration of provisions allocating the regulatory risks between the parties, as well as any clauses dealing with bunkers to be supplied. Lastly, a shipowner might seek to rely on implied indemnity to recover such costs, but in each case, it will be a matter of interpreting a given charter.

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Banking, Borrowing and Pooling

What are banking and borrowing of compliance?

Each year a vessel will have a 'compliance balance' reflecting that vessel's over- or under-compliance with respect to the GHG intensity limit applicable in that year.

Banking:

Where a vessel has a 'compliance surplus' (i.e., it over-complies), the shipowner may bank the surplus to the same vessel's compliance balance for the following year.

Borrowing:

Where a vessel has a 'compliance deficit' (i.e., it under-complies), the shipowner may borrow an 'advance compliance surplus' of the corresponding amount from the following year. However, an advance compliance surplus may not be borrowed:



[1] For an amount exceeding by more than 2% the energy consumption of the ship multiplied by the GHG intensity limit applicable in that year; and

[2] For two consecutive years.

What is pooling of compliance?

Two or more ships may pool their respective compliance balances to achieve compliance per individual ship, even if such ships are controlled by different entities.

A pool is valid only if:

- The total pooled compliance is positive;
- Ships which had a compliance deficit do not have a higher compliance deficit after the allocation of the pooled compliance; and
- Ships which had a compliance surplus do not have a compliance deficit after the allocation of the pooled compliance.

In practice, pooling is going to have far-reaching consequences. According to Lloyd's Register, a pool of ten container ships could avoid around €226 million in FuelEU penalties in five years (2030-2034) if they are joined by a single vessel fuelled by e-methanol. That saving far outweighs the likely cost of constructing a methanol-fuelled containership.

An interesting question is the shape any pooling arrangement might take. The first issues that spring to mind are the shipowners' rights and obligations as regards their respective vessels' energy consumption, as well as the relationship with any underlying charterparties.

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Compliance Deadlines

What are the relevant compliance deadlines?

31 August 2024:

Submission of a monitoring plan to an accredited verifier.



1 January 2025 onwards:

Start of the obligation to monitor and record emissions, including:

- Ports of departure and arrival
- The amount of each type of fuel consumed at berth and at sea
- Emission factors for each type of fuel used

31 January of each year:

Submission of ship-specific 'FuelEU reports' containing the information about a vessel's ports of call, emissions, etc.

31 March of each year:

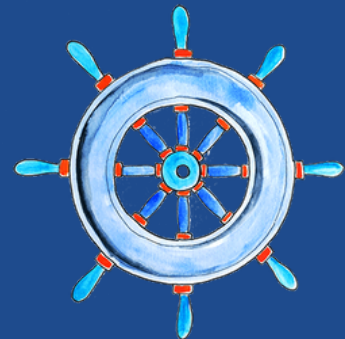
Verification by the verifier of the following information:

- The yearly average GHG intensity of the energy used on board by the ship;
- The ship's compliance with the yearly GHG intensity limits (compliance balance);
- The number of non-compliant port calls in the previous year;
- The amount of the yearly energy used on board by the ship;
- The amount of the yearly energy used on board by the ship from the RFNBO.

30 June of each year:

The Verifier must issue a FuelEU document of compliance for each ship that does not have a compliance deficit and does not have non-compliant port calls.

**Ad hoc checks of the FuelEU report may be carried out by a relevant national authority.*



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Impact on Vessel Chartering

How should FuelEU costs be allocated under a charterparty?

There are arguments both ways as to how the responsibility for FuelEU costs should be allocated.

Arguably, a charterer would be expected to foot the bill (or most of it). A charterer gives employment orders under a time CP and nominates load and discharge ports under a voyage CP. Accordingly, whether a vessel is captured by FuelEU at all, depends entirely on the charterer's orders.

Furthermore, under a TCP, a charterer is responsible for the fuel supplied, which makes the charterer the primary polluter.

On the other hand, a shipowner is responsible for keeping the vessel technologically efficient and for installing energy saving equipment. A shipowner can also take advantage of the pooling mechanism to ensure the vessel's compliance.

What is the likely position under a voyage charterparty?

In a VCP context, a shipowner will attempt to pass on the fuel cost increase to the charterer. Therefore, a charterer may expect an additional expense expressed as a freight increase or a separate FuelEU surcharge.



What issues should be addressed by a FuelEU time charterparty clause?

- The vessel's technical and design efficiency and whether it is in principle able to comply with the FuelEU Regulation;
- The vessel's actual or projected compliance balance for a given year;
- Whether the vessel is part of a pooling arrangement;
- Charterers' obligations to supply FuelEU compliant fuels, including the grades of such fuels;
- Whether Charterers should be entitled to request that Owners borrow an advance compliance surplus to enable Charterers to operate the vessel more economically in a given year;
- Where in the redelivery year the vessel has a compliance surplus, whether Charterers should be entitled to a rebate or other form of compensation;
- Owners' right to be indemnified in respect of any penalties incurred by the vessel as a result of compliance with Charterers' instructions.

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