



# **FuelEU: The impact on vessel sale and purchase contracts**

Buying a vessel that has operated in the EU after 1 January 2025 may bring unexpected costs. Under the FuelEU regulations, buyers could end up with both a vessel and a penalty on their hands.

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So far, most of the discussion on FuelEU has centred on a vessel's fuel requirements and how shipowners can reduce their greenhouse gas (GHG) intensity.

However, because of the way in which penalties are imposed under FuelEU, the regulations will also have an impact on agreements to buy and sell vessels that have operated in the EU after 1 January 2025.

## **Issues to be aware of**

To ensure that all penalties are paid even after a sale, the FuelEU regulations provide that, when there is a change of ownership of a vessel after 1 January 2025:

- The seller, or more accurately, the vessel's Document of Compliance (DOC) holder, must register the vessel's GHG intensity of consumption for the period from 1 January to the final date at which the seller had responsibility for operation of the ship.
- That information must be verified and recorded in the FuelEU database no later than 30 days after completion of transfer of responsibility.
- The monitoring plan must be modified without undue delay to reflect the change of DOC holder to the buyer.
- The buyer (or more accurately, the vessel's new DOC holder) will take over and ultimately be responsible for the vessel's GHG intensity for the entire calendar year during which the sale took place. This will include payment of any penalties for excess GHG intensity during the seller's period of responsibility.

To illustrate – assume a vessel consumes fuels in the EU with excess GHG intensity resulting in a penalty, and it is then sold on 30 June 2025. The seller must register the GHG intensity of the fuel consumed by 30 July 2025, and the buyer must modify the monitoring plan. When the buyer submits the final report for 2025 by 31 January 2026, it is the buyer that will be responsible for the seller's penalty (assuming of course, that the buyer does not take steps to reduce the GHG intensity in the second half of the year to avoid any penalty).

## **Advice to the vessel buyer**

A buyer may want to check the following when purchasing a second-hand vessel where delivery is to take place after implementation of FuelEU:

- Has the vessel traded in the EU after 1 January 2025?
- If yes:
  - What was the average GHG intensity of the fuel used?
  - What quantities of fuel were used?
  - Has “borrowing” been used to achieve compliance with the FuelEU regulations?
  - Borrowing is deferring of payment of penalties with the promise of paying more in

the following year.

Will the seller submit the FuelEU monitoring report for the period up to change of ownership within 30 days?

- Will the vessel trade in the EU between conclusion of the MOA and delivery?
- Has the vessel incurred a FuelEU penalty in the year prior to sale? If yes then any penalty incurred in the following year will be +10% higher.

Depending on the answers to the above questions, the buyer may need to make provisions in the sales contract or perhaps consider an adjustment to the purchase price – for example a reduction to reflect the fact that at the end of the year the buyer will need to pay a penalty.

## **Ensuring compliance after a sale**

Whilst the buyer's DOC holder will be responsible for any penalties for the entire calendar year during which the sale takes place, it is unclear what happens if the seller does not comply with its FuelEU obligations to report after completion of the sale. Under the MRV regulation of 2015 (with which the FuelEU regulations aim to be consistent) a buyer is only responsible for the reporting obligations relating to the period under the buyer's control, but there is no similar provision under the FuelEU regulations. The parties may want to include a specific provision to address this in the final contract.

One approach would be for the seller to warrant that its FuelEU regulations will be complied with. If the parties are certain that there will be no further EU trade between the sale and delivery, the seller's report could even be prepared in advance.

## **Ensuring protection for the buyer**

After FuelEU comes into force, the buyers of vessels will need to check if the vessel has been trading in the EU. If it has not traded in the EU in the period prior to change of ownership, there is less of a concern. However, it may become necessary for a buyer to perform a more thorough analysis of the vessel's previous movements or include suitable protections in the sales contract to cover outstanding FuelEU liabilities. For example, a buyer from 2026 onwards may seek a warranty that there has been no "borrowing" under the regulations in previous years.

One option would be to include a specific provision in the sales contract that the seller will comply with all of their FuelEU requirements upon completion of sale and provide up-to-date information on the vessel's GHG intensity for previous years and details of any borrowing undertaken.

Most sale and purchase contracts (for example clause 10 of the Shipsale22) include a provision that the sellers will indemnify the buyers against all claims made against the vessel which were incurred prior to delivery. However, that may not necessarily fully protect a buyer. For example, if a buyer takes over a vessel midway through a

year with excess GHG emissions and then brings the vessel in line with the FuelEU regulations through the use of more costly low-emission fuel, there would be no penalty within the indemnity clause. Nonetheless, the buyer would have suffered an economic loss due to the more expensive fuel.

Alternatively, it could be said that at the date of delivery the excess GHG emissions do not amount to a lien, charge, encumbrance, or other debt (within the meaning of the clause) because it is only at the end of the year that a penalty would materialise. For this reason, buyers may want an express clause dealing with FuelEU compliance.

## **What if the vessel has a FuelEU credit?**

Where a vessel reduces its GHG-intensity below the limit imposed under the FuelEU regulations, the vessel will earn a credit which can be banked for future use or pooled with other vessels that have a higher GHG intensity. Such credits can be valuable as they can be used to balance out excess GHG intensity, thereby avoiding potentially large penalties. Presumably, the seller of a vessel with a credit will demand a higher purchase price to reflect the value of that credit.

The buyer of a vessel with FuelEU credit may be willing to pay extra for it, because they could pool with other vessels in return for payments, use the credit or carry it forward into future years, enabling the buyer to use cheaper, higher-GHG fuel without incurring a penalty. These credits could potentially be very valuable, although their exact worth can be difficult to establish. For example, there is no guarantee that the full credit could be successfully pooled, and pooling will presumably incur some transaction costs.

If the buyer is unable to finance payment for the credit themselves, one option may be for the seller to retain title to the credit, in which case they may also want security over how that credit is used. If a seller seeks to retain rights to direct how the credit is pooled, account needs to be taken of the fact that the credit may be increased or reduced by the buyer's subsequent trading. The seller's retained rights to the credit may in turn impact what the buyer (or a charterer) can do with any additional FuelEU credit earned during the remainder of that year.

Conversely, where the buyer is willing and able to make payment for any FuelEU credit, the buyer is taking on the risk of the credit losing value or being unusable for whatever reason. A buyer may therefore seek to stagger payment for any credit upon it being realised, or to have a percentage withheld until the actual value is determined and realised. It is worth bearing in mind that if credits are being used in a pool there may well be transaction costs, so the actual recovered amount is less than the face value of the credit.