



## **EU ETS: important compliance clarifications**

As of 1 January 2024, vessels over 5,000 GT operating within EU waters are subject to the EU's Emission Trading System (ETS). A recent implementing regulation has clarified how a shipowner may transfer responsibility for compliance – but some important questions still remain.

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Launched in 2005, the EU's Emission Trading System is a "cap and trade" scheme where carbon emitters in certain sectors have to purchase allowances to cover their emissions during the relevant trading period. The number of allowances at any one time are fixed, but they generally reduce each year, so that emissions covered by the scheme gradually decrease. Allowances can be bought and sold within the scheme, depending on who has a surplus and who has higher emissions. The key features of the EU ETS's application to shipping include:

- Application to all vessels over 5,000 GT trading within EU waters, irrespective of flag
- Start date of 1 January 2024
- A phased-in implementation, with 40% of emissions covered in 2024, 70% in 2025 and 100% in 2026
- All emissions from voyages within EU must be completely covered by the scheme, whereas EU in-bound/out-bound voyage emissions must be covered at 50%
- The system covers carbon dioxide, methane and nitrous oxide
- 30 September is the deadline for surrendering allowances for the previous calendar year - for example, 30 September 2025 is the deadline for 2024 emissions
- Non-compliance can lead to penalties and expulsion orders

### **Clarification of compliance responsibility**

The EU ETS places responsibility for compliance on the "shipping company" which is defined in the ETS Directive as:

*"the shipowner or any other organisation or person, such as the manager or the bareboat charterer, that has assumed the responsibility for the operation of the ship from the shipowner and that, on assuming such responsibility, has agreed to take over all the duties and responsibilities imposed by the International Management Code for the Safe Operation of Ships and for Pollution Prevention ..."*

Unfortunately, this definition raised a series of questions about how far parties could contract to transfer their responsibility, and what would happen when an agreement dealt with some but not all of the definition's requirements.

This has now been clarified by the publication of the EU [Implementing Regulation](#), which makes it clear that the "shipowner" remains responsible, subject to certain exceptions. This has been done by adding the following words to the text above:

*"...and the obligation to surrender allowances under Article 3gb and 12 of that Directive (the 'ETS obligations'), Member States shall ensure that this organisation or person has been duly mandated by the shipowner to comply with the ETS obligations."*

The effect of the additional wording is that even where a party other than the shipowner has agreed to assume responsibility for the ship including those imposed by the ISM Code, that will not be enough to make them the "shipping company" *unless there is an express agreement to transfer the ETS obligations to a different "shipping company" that meets the specified requirements*. Importantly, this will apply *even where the vessel has been bareboat chartered out*.

Most bareboat charterparties will require the charterer to deal with all matters relating to trading costs and regulatory compliance, so bareboat charterers need to ensure that a suitable mandate has been provided by the shipowners.

It should be noted that the wording of the Implementing Regulation suggests that the mandate can only be granted by the shipowner himself to one single other organisation or person, i.e. multiple mandates are not possible. An organisation or person who has been mandated by the shipowner does not appear to have the right to make a further mandate under the regulations. As such, if the bareboat charterers wish to have their technical managers be responsible for ETS compliance, they may have to request that shipowners specify and mandate this clearly.

### **How to transfer responsibility**

To transfer ETS responsibility to another party the shipowner must provide its Administering Authority with a document signed by both the shipowner and the shipping company “*clearly indicating that it [the shipping company] has been duly mandated by the shipowner to comply with the ETS obligations.*” (Implementing Regulation Art. 1(2)).

Amongst other things, the mandate document must:

1. be signed by both the Ship Owner and the Shipping Company;
2. be in English or an official language of the Member State;
3. be an original or a certified/legalised true copy;
4. identify the name and IMO registered owner identification numbers of the shipowner and shipping company
5. contain information of the shipowner’s contact person;
6. specify the start date for the mandate; and
7. contain the IMO numbers for each ship that the mandate applies to.

We suggest that parties consider the mandate wording carefully so that it can be terminated or updated at the end of the charter, whether at the end of its term or early termination.

### **Remaining uncertainties**

The Implementation Regulation only states that the mandate should specify the start date for the mandate. It does not say if the mandate can have an expiry date, or if it can be effective for a limited period, i.e. whether it automatically reverts to the shipowner on expiry.

The wording of the Implementing Regulation is also limited in what it says about how changes to responsibility are to be notified to the Administering Authority. Under Art 2, the shipowner should update the Administering Authority when there are changes to the list of ships that it is responsible for. The current wording suggests that only a shipowner can file an update to the Administering Authority, and it is unclear how or whether a mandated shipping company can terminate its mandate and revert the responsibility for ETS compliance to the shipowner. This may cause concerns for some mandated shipping companies.

There is also uncertainty as to what happens if there is a dispute amongst the relevant parties – does the mandate for ETS compliance continue pending the resolution of the dispute? If bareboat owners dispute bareboat charterers’ early termination of the charterparty – are the mandated bareboat charterers still responsible until bareboat owners file an update with the Administering Authority? If a shipowner has granted the mandate to bareboat charterers’ technical managers, and there is a dispute between bareboat charterers and their technical managers – the owners would not wish to get involved in this dispute but will have problems if the technical managers fail to act as per their mandate.

### **Our advice**

In summary, the Implementing Regulation of the EU ETS does provide some useful answers to questions about the responsibility for compliance, but some important issues remain unanswered. There are draft ETS mandate wordings in circulation in the industry, but we suggest parties check carefully before signing, to make sure they cover all the points required.