FuelEU penalties: What charterers and owners need to know

One year into FuelEU, the first penalties are being incurred, and the shipping industry is still figuring out who pays, how and when. From biofuel handling to reporting obligations, multipliers and credit pooling, shipowners and charterers face a complex web of requirements. This article breaks down the key points that we see being negotiated and where solutions might be found.

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The Fuel EU regulations have now been in force for a full year, penalties are already being incurred and the deadline for payment is fast approaching. Despite this, and despite the fact that the BIMCO FuelEU clause was published in February 2025, many parties are still negotiating clauses to cover responsibility for compliance, and the BIMCO clause is often subject to significant amendment or negotiation.

With that in mind, we want to highlight some issues which we have seen arise, the key points that any FuelEU clause needs to cover, and some of the possible solutions that can be considered. All the points that follow arise from our experience assisting our Members with the FuelEU requirements.

Blending biofuels: risks and responsibilities

In our experience, the most common method of compliance is blending fossil fuels with biofuels to bring the fuel within the FuelEU limits. This raises issues of compatibility, stability and other potential technical problems. Some owners and charterers can be so absorbed in the discussion of FuelEU penalties, that they overlook a key point: if they agree to use new fuels, the charterparty should include provisions for handling those fuels - unless it already does. A good Biofuels clause should address everything from the time and cost of preparing bunker tanks to fuel certification, testing, handling and the vessel's performance with these new fuels. BIMCO is currently drafting a Biofuels Clause, so that may be an option once published, but until then parties will need to consider their own solution to the potential risks and issues that biofuels raise.

There can be tension between owners and charterers over when biofuels should be used. Owners will want biofuels to be used promptly as they can have a shorter shelf life than fossil fuels and there are potential microbial issues when biofuels are left in the bunker tanks for prolonged periods. Charterers may buy biofuels in advance according to availability but may also wish to delay the use for when voyages come within the remit of the FuelEU regulations.

Parties should also agree on what is to happen to biofuels left on board on re-delivery (bearing in mind that they may not have much shelf life left) and how any payment for those is to be calculated and made.

Notification of emissions

The parties will want to agree on how regularly owners provide information to charterers about the vessel's emissions and potential FuelEU exposure. Charterers will want to keep track of their emissions for their own governance and to ensure they recover those costs from parties down the chain. For this reason, charterers may wish to check the accuracy of owners' calculations, and the parties can agree when the data is provided to allow this. An owner should ensure that whatever it agreed with charterers is aligned with owners' technical managers, as they will likely have the relevant documents and calculations. As charterers have been seen to request even daily updates and reports, Owners should ensure whatever is agreed is achievable, not overly onerous and does not incur additional expense. It may also be worth bearing in mind that the shorter the timescales of data, the more difficult it will be for owners to ensure accuracy and avoid the need for possible revision.

Where owners are asked to submit information to third parties or comply with charterers' internal reporting systems, they should always check exactly what that may involve. This helps avoid disputes over potential reporting breaches, which in turn could impact whether owners can request payment.

Whilst ideally there would be agreement on how reporting is done and whom calculations are checked by (and at whose cost), the parties should remember that any calculation will always be verified by the administering authority (the same authority as under the MRV / EU ETS scheme) and any payments can be adjusted then. For short term charters, owners would likely want to make sure they have adequate funds on re-delivery and in advance of the payment deadline. Some charterers press for figures to be final/binding, which is understandable, but many owners find that difficult to agree. If interim figures are agreed to be final, this should apply to both parties so that the risk of adjustments does not only flow in one direction.

Excluded emissions

Apart from the multiplier (see below), parties generally find it fairly easy to agree which FuelEU emissions should remain owners' responsibility – such as emissions during off-hire periods or when unrelated to charterers' orders/activity. Whilst it is understandable that charterers wish to avoid liability for emissions during off-hire periods, these periods are often the subject of dispute. It may therefore be worth ensuring that any off-hire carve-out only applies when both owners and charterers have agreed on the off-hire period.

The same logic would apply where charterers seek to avoid liability for periods where the vessel is underperforming. Vessel underperformance is also often the subject of dispute, and so if owners are willing to make a concession for underperformance periods, it may be worth making it clear that those underperformance periods must be firstly agreed by owners and charterers.

Penalty payment

The majority of clauses provide that charterers will reimburse owners for any FuelEU penalties owners calculate. However, some variations that we have seen include charterers instead pay for a supply of biofuels sufficient to provide a surplus that will cover the calculated penalty, with the cost based on an agreed date from an agreed index.

This can work if owners are able to source and consume adequate biofuels to ensure compliance with the regulation. Problems arise if biofuels are unavailable or if the vessel is not certain to engage in FuelEU trade during the relevant period. In that case, owners would be liable to pay a penalty but would only be able to claim the marginal cost of biofuels from charterers, which is likely less than the penalty.

Timing of paying penalties

Owners do not normally grant charterers credit under a time charterparty - hire must be paid in advance, as is fuel on delivery. When should charterers pay for penalties that are incurred because their orders give rise to FuelEU liabilities? Owners may want payment as soon as the cost of emissions are calculated, or on completion of the voyage. Charterers may want to delay until payment actually falls due, which could be well over a year later. How much credit owners extend is a matter of agreement, but it’s worth bearing in mind that the charterers may well be in funds to cover the penalty from the time of completing the voyage (because it was included in the freight they earned or because they recover from sub-charterers on completion of the voyage).

It is also easier for owners to ensure payment is made while the vessel remains on charter. Once the vessel has been re-delivered the charterers' duty to pay the penalties can remain, but it is more difficult for owners to enforce. Owners that are happy with the charterers' creditworthiness may allow penalties to be paid shortly before they fall due - as long as the charterparty continues to run, but with any amount in the final/partial year at the time of re-delivery.

There can also be hybrid solutions. Owners may allow charterers to pay the penalty shortly before owners must remit the funds, as long as the amount is less than an agreed sum, with any excess to be paid when it is incurred. In this way owners cap the credit extended to charterers.

Balances due on redelivery

One area where we have seen parties reach greater clarity is what to do when charterers redeliver with a positive compliance balance. If charterers do not wish to pool the credit they will likely want owners will refund the credit, so that owners take it over for pooling/banking. Whilst the BIMCO clause provided that owners would pay a lumpsum per tonne of positive compliance, at a figure to be agreed and inserted into the clause, there are now companies which provide market indices for FuelEU surplus which parties agree to refer to. If the surplus value is to be taken from one of these market indices, it should be clarified *when* the surplus value is to be taken. Would owners pay for a surplus at the market index rate when the bunkers were bought or when the surplus was earned or when the vessel is redelivered?

There is also the issue of *when* owners should pay any sums due for surpluses. Would it be on redelivery, or at the time when owners receive payment themselves (e.g. from the next charterer or by pooling). If charterers want owners to extend credit for the payment of penalties that they incur, should owners request similar time to recover and remit credit balances to charterers?

The multiplier

Where a vessel fails to meet the targeted FuelEU reduction in two or more consecutive years, an additional 10% 'multiplier' penalty is added to the vessel's penalty each time. The issue of who should pay the additional 10% penalty does not come with a clear answer.

That is, where charterer A incurs a penalty, pays it and redelivers in Year 1 and charterer B subsequently charters the vessel and incurs a penalty in Year 2, the penalty will be 10% higher in Year 2. Should charterer A pay it, because it would not have arisen without their orders? Should the extra 10% fall on owners rather than charterer B? Should charterer B pay the extra 10% as it was their orders that caused it?

Whilst the BIMCO clause requires charterer A to pay a lumpsum to cover the penalty, agreeing in advance on an amount that would adequately cover 10% of an unknown future penalty is challenging. Perhaps the easiest fix for owners is when owners incur a penalty in a given year, to expressly agree in the following charter, that the ship cannot earn a penalty in that first year as that will incur a 'multiplier'. If that is agreed, subsequent charterers incurring a penalty would be a breach of contract and owners could seek to claim any multiplier. Of course, including such a restriction would make the vessel less attractive to charterers, so presumably the rate of hire earned would be lower than without it. If this cannot be agreed, owners need to at least be aware that the multiplier cost may rest with owners – unless owners devise a way to avoid it, by for example, paying the marginal cost of biofuel to avoid a second year of deficit.

Pooling

When FuelEU was introduced, there was some uncertainty around how pooling would work and how the pooling schemes would be arranged. As perhaps expected, various brokers have emerged in the market offering services which identify pools and arrange the pooling agreements at a cost. Provision should always be made in the charter for who is to remain responsible for any brokers' fee and entitling owners to object to any pooling should there be reasonable grounds.

Many of the owners with the larger fleets have devised strategies where they will pool their credits earned internally amongst their own fleet. Where that is the case, owners need to ensure they are retaining the right to pool credits earned, as standard clauses give charterers the right to control credits earned and decide on pooling.

Voyage charters

Under a voyage charter, it remains with owners to devise their own strategy on FuelEU and seek to calculate in advance exposure and add this to the freight. It remains to be seen whether any of the freight indices, which set out the established freight rates for different ships and voyages, will be amended to include these FuelEU costs. For now, the position is that FuelEU costs are not currently reflected in the freight rates.

Other clause considerations

The BIMCO FuelEU clause entitles owners to suspend performance where timely payment of any penalty has not been made to owners. Perhaps unsurprisingly, this has been one of the clauses which has been most frequently removed. Many charterers delete owners' right to suspend performance stating that it is disproportionate as it could be exercised when only minor sums are due. A middle ground may be therefore to amend owners' right to suspend to performance only when a certain penalty threshold (e.g. USD 50,000) has been met.

Concluding comments

The FuelEU regulations raise issues that do not fit easily into standard time charterparty mechanisms – for example, pooling or the multiplier. The BIMCO FuelEU clause is a well drafted and balanced solution for owners and charterers, but we often see it being used as only the starting point for discussions. Many variations are possible but because of the complexity of the regulations, care does need to be taken to ensure that all consequences are explored and understood. Our defence team have considerable experience advising owners and charterers on these issues, so please do contact us if you have questions or need guidance.

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