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Facing up to FuelEU Maritime

The European Council and Parliament have at last hammered out the text for FuelEU Maritime. As **Steve Simms** of Simms Showers explains, its provisions will have a significant impact on marine fuel suppliers, not least in relation to the burden of responsibility when it comes to paying penalties

With enactment in 2023, Europe's FuelEU Maritime Initiative will be the first law explicitly requiring written contracts between marine fuel suppliers and their customers and regulating specific written contract terms.

Marine fuel suppliers must be aware of how FuelEU Maritime will affect their customer and supplier relationships and prepare now to meet FuelEU Maritime requirements.

FuelEU Maritime continues the European Commission's 2021 'Fit for 55' legislation. Up to now, 'Fit for 55' has mostly regulated land-based and aviation fuel production, sale and use. 'Fit for 55' aims to reduce by 2030 European Union (EU) greenhouse gas (GHG) emissions by at least 55% of 1990's and by 2050 to achieve climate neutrality.

FuelEU Maritime contracting requirements will control fuel sales to any owner or operator of a vessel over 5,000 gross tons (GT) calling in the European Economic Area (EEA) – all European Union (EU) countries, Iceland and Norway. Sales affected are any both outside and within the EEA where the vessel is calling in the EEA. 50% of the energy used to enter EEA ports from non-EEA ports, and 100% of the energy used between EEA ports, will be subject to FuelEU Maritime GHG intensity limits.

Once FuelEU Maritime is in force (expected 1 January 2025), marine fuel supply contracts for affected marine fuel sales must:

> include provisions laying down the fuel supplier's liability to compensate the company or commercial operator for the payment of penalties referred to in this Article, if fuels were not delivered according to the agreed terms.[1]

FuelEU Maritime will impose penalties, likely beginning 2026, where a vessel uses energy exceeding the 2020 fleet average of GHG energy intensity used aboard ships, decreasing by a certain percentage every five years from 2025 to 2050.[2]

Enforcement authorities are to impose penalties based on vessel GHG yearly output.[3]

Any penalty can be significant. The penalty must be 'larger than the amount and cost of the renewable and low-carbon fuel that the ships would have used if they had met FuelEU Maritime requirements.[4]

Under the present FuelEU Maritime draft, fuel suppliers have no input into the final amount of any penalty.

Once the enforcement authority (which could be a 'Member State' or 'administering authority for the shipping company or operator, depending on which FuelEU draft is finally adopted) imposes a penalty, if the reason (or supposed reason) for the penalty is that the marine fuel did not deliver 'according to the agreed terms,' the supplier must pay the penalty.

FuelEU Maritime thus puts the liability question as between marine fuel suppliers and their customers assessed penalties: Was the penalty because of failure to deliver according to agreed terms? Then, under required written contractual terms, the marine fuel supplier must reimburse the customer for the amount of the penalty.

The contracting liability requirement is for the delivery according to 'agreed terms' of all marine fuels. There is a further contractual requirement for biofuels, biogas, fuels of nonbiological-origin and recycled carbon fuels: they must be compliant with the EU's Alternative Fuels Infrastructure Regulation.[5]

> 'Fuel EU Maritime raises a series of considerations marine fuel suppliers must begin to make now, even though its coming into force in 2025 may seem some time away'

Fuel EU Maritime thus raises a series of considerations marine fuel suppliers must begin to make now, even though its coming into force in 2025 may seem some time away.

Who is a 'fuel supplier' – and 'company or commercial operator' – under FuelEU Maritime?

Exactly which 'fuel supplier' does the FuelEU Maritime contracting requirement cover? The physical supplier? The trader? Both? How far do the terms 'company or commercial operator' extend, for example, where there is a vessel subject to charter and then a number of sub-charters?

FuelEU Maritime does not define its term 'fuel supplier'. The current Renewable Energy Directive ("RED II"),[6] though, defines 'fuel supplier' as

> an entity supplying fuel to the market that is responsible for passing fuel through an excise duty point or, in the case ... where no excise is due or where duly justified, any other relevant entity designated by a Member State ...

Of course, bunkers often don't pass through a duty point: they are stored for purposes of export. So then, what is the 'relevant entity' and the standard for 'designation' by a Member State? FuelEU Maritime gives no direct guidance on this.

Consider that to offer a marine fuel which will meet increasing GHG reduction and renewable energy requirements, there will need to be (except for ammonia, methanol and other similar 'new fuels') blending of biofuels (some at least supplied locally and passing through an excise duty point) with traditional fuels. Which entity then is the 'fuel supplier': the local biofuel supplier (which pays excise tax), the physical supplier buying from the biofuel seller and blending, or the trader selling to the vessel owner or operator?

FuelEU Maritime, focusing on the contracting, makes the contract define who the 'fuel supplier' is: the entity, whether trader or physical supplier, contracting with the 'company or commercial operator' for the fuel supply.

This is something, then, that all 'down the line' of a FuelEU Maritime-covered sale must keep in mind. The contractual counterparty with the ultimate buyer must under FuelEU requirements pay the penalty for failure to deliver 'according to the agreed terms'. But 'failure' may not be the direct fault of the ultimate seller.

For example, a trader might contract with a physical supplier, which fails to deliver fuel – either in time, or in the composition required – by the 'agreed terms'. The physical supplier might not be able to meet the 'agreed terms' because of scarcity of a biofuel needed for the required blend. So, ultimate sellers should, in their contracts, require their suppliers also to be responsible for indemnifying for 'payment of penalties referred to in this Article, if fuels were not delivered according to the agreed terms.'

Under FuelEU Maritime, the contract also is the likely limit of who is the 'company or commercial operator,' namely, the one which 'concludes a contract with a fuel supplier.' Under some countries' law, however, others than the direct contractual counterparty may claim to be a beneficiary of a contract, although not a direct party to it. Any contract consequently first to state the controlling law and state

also that the contract excludes any liability, to compensate for any penalty assessed against any entity other than the customer contracting directly with the fuel supplier.

There almost always will be multiple fuel suppliers over a year. How can any FuelEU Maritime penalty be directed to one?

Under FuelEU Maritime, penalties are not assessed until after the end of a reporting year.

Determining whether there is noncompliance is the result of a GHG intensity calculation based on 1) the vessel owner or operator's reported fuel consumption, 2) reports for the vessel made under the EU-MRV (the EU regulation on the monitoring, reporting, and verification of carbon dioxide (CO_2) emissions from ships)[7], and 3) the emission factors of the fuels used on a well-to-wake basis.

Perhaps if the marine fuel supplier sells near the end of the reporting year and there was a violation clearly because of that supplier's 'failure to deliver according to the agreed terms,' then the supplier contractually would have to compensate its customers for the penalty.

Consider, though, the components of reaching a penalty assessment – all over a year of fuel supplies. There is the consumption of fuels likely from multiple suppliers. As years advance toward 2050, if the vessel consumes more blends with a larger biofuel or RFNBOs (renewable fuels of non-biological origin) component to attempt to achieve reach compliance, how can any particular supplier's 'failure to deliver' be identified as the source of a penalty?

'A likely scenario is that where there is a non-compliance penalty, there will be a number of fuel suppliers which the penalised owner or operator will look to for payment'

A likely scenario is that where there is a non-compliance penalty, there will be a number of fuel suppliers which the penalised owner or operator will look to for payment. The fuel suppliers then will find themselves claiming against one another as responsible for all, part or none of the penalty. For the suppliers selling earlier in the reporting year, the claims may be more difficult to make because of the passage of time between the penalty claim and the supply.

Will contractual limitations of time and amount apply – or be held unenforceable?

Well drafted marine fuel supplier and traders' terms have limitations on the time in which a customer may report a quality, quantity or other dispute, and also limit to a certain amount (either a specified amount, or the monetary amount of the fuel sale) that the customer can recover if there is a 'failure to deliver according to the agreed terms.'

The FuelEU Maritime contracting requirements, though, do not allow for such limitations. If there is a penalty for 'failure to deliver according to the agreed terms' the fuel supplier apparently must pay it despite other contractual limitation.

So, the fuel supplier might learn well after a marine fuel provision of a customer's claim of 'failure to deliver according to the agreed terms' – even though that supposed failure may have been, for example, a quality failure that the customer failed

to report with the time or manner required of the supplier's terms and conditions.

Marine fuel suppliers frequently are insured against quality or other claims but the underwriting is conditioned on the suppliers' limitations of liability through their terms and conditions. Fuel suppliers affected by FuelEU Maritime should contact their underwriters now about the potential that for FuelEU Maritime penalty claims, existing liability and time reporting terms and conditions may be unenforceable.

Suppliers also should consider means to anticipate penalty claims. There should be, for example, systems in place to receive customer response about whether all 'agreed terms had been met for a fuel supply as well as clear specification of what those terms are. Documentation for each sale should provide details of the emission factors of the fuels sold – those factors computed on a recognised well-to-wake basis.[8]

Suppliers also should take extra steps to document whether the fuels they sell, and those fuels' components, are compliant with 'agreed terms.' It is not sufficient under FuelEU Maritime that a supplier has relied, for example, on their downstream supplier's certification of biofuels or similar compliance. Despite any such certification, if it is incorrect, 'agreed terms' are not met and a penalty results, FuelEU Maritime contractual requirements require the supplier to reimburse penalty to its customer.

FuelEU Maritime also presents a 'fine point' for suppliers contracting for sales to 'commercial operators' – generally, charterers – which are not shipowners, stating that:

> Where the company concludes a contract with a commercial operator specifying that this operator is responsible for the purchase of the fuel and the operation of the ship, the company and that commercial operator shall, by means of a contractual arrangement, determine that the latter shall be liable for the payment of the costs arising from the penalties referred to in this Article. For the purposes of this paragraph, being responsible for the operation of the ship shall mean determining the cargo carried, the itinerary, the routeing and/or the speed of the ship.

This language is different from the penalties for which FuelEU Maritime requires fuel suppliers to the 'commercial operator.' Instead, it is the 'costs' arising from those penalties, for example, legal expense, surveys and the like. Fuel supplier contracts should exclude liability for those costs, with the exclusion acceptable within the FuelEU Maritime contracting requirements.

Who will enforce the requirement for written contractual terms which 'shall include provisions laying down the fuel supplier's liability to compensate ...'?

Although FuelEU Maritime will designate the 'Member State' or 'Administering Authority' to assess penalties, it does not assign responsibility to any entity to enforce its fuel supply contract provisions.

Given that FuelEU Maritime requires the provisions, fuel suppliers (and their customers) can expect that some authority, perhaps as a part of supplier licensing, will review suppliers' contracts for FuelEU Maritime compliance. Then the question becomes, what terms will that authority consider to be compliant?

If the fuel supply contract (which likely would be supplier's terms and conditions incorporated into contract), despite what seems to be FuelEU Maritime's requirement for payment of all penalty, somehow limits that, does FuelEU Maritime give regulating authority to declare the provision acceptable?

If there is a penalty imposed because of a marine fuel supplier's failure to deliver 'accord-

ing to agreed terms certainly, in a dispute, there will be examination of the contract sale terms. As a minimum, if there is no 'provision' that FuelEU Maritime requires, fuel suppliers should expect that a court (or arbitrator if the contract otherwise provides for arbitration) will read that into the fuel supply contract – and maybe as broadly as that can be done.

So, as much as marine fuel suppliers may want to avoid having contract provisions which 'lay[ ] down the supplier's liability to compensate' for FuelEU penalties, their sale contract should have those provisions drafted in such a way as best to protect the supplier.

What is delivery 'according to the agreed terms?' What are the 'agreed terms'?

Under FuelEU Maritime, fuel suppliers contractually will be liable for penalties because there was not 'delivery' to 'agreed terms.'

It is essential that marine fuel suppliers are certain, with their customers, of exactly what the final 'agreed terms' of a sale are and that they can in fact deliver the fuel – that is subject to the 'agreed terms,' consistent with the agreement.

The basics, of course, in the confirmation would be to specify the fuel quality and quantity, including fuel emission factors that the customer requires to meet its FuelEU Maritime obligations. The confirmation also should specify any biofuel or RNBO content that the customer requires, or the supplier is offering, and, of course, any exact ISO specification for the fuel. For example, if biofuels are to be provided, suppliers should specify ISO 8217:2017, which includes biofuels.

Suppliers subject to FuelEU Maritime should also consider a term and condition which states that the customer confirms that its vessel is compliant with FuelEU Maritime and other GHG restrictions and that the supplier may at any time request information confirming compliance. This is keeping in mind that a supplier selling to a vessel which is noncompliant may find the customer blaming the supplier for later penalties which were already likely when the supplier made the sale.

Suppliers should be aware of whether the vessels they might supply are already noncompliant (for example, from past years) with GHG restrictions, and if the vessels are to call EEA ports, should consider whether or not to supply those vessels.

FuelEU does not – except for its requirement for provisions of responsibility for penalties – supersede suppliers' existing sales terms and conditions, which, as always, sales confirmations must incorporate by explicit reference and availability on the supplier's website. Because of FuelEU Maritime's delivery by 'agreed terms' requirements, suppliers also should assure that their sales terms and conditions should allow for cancellation when the supplier, as the supplier determines, is unable, for whatever reason, to deliver according to 'agreed terms' or otherwise. They also should confirm that the supplier may make a substitution of equivalent product. Terms and conditions further should allow for variation of delivery time and location as the supplier determines to be necessary.

Generally to anticipate FuelEU Maritime's contracting requirements, fuel suppliers should make sure that any 'agreed terms' are detailed and that the customer clearly understands them, prior to the supplier's confirming the fuel provision. At the same time, fuel suppliers should assure that they have the greatest flexibility in the means, timing and manner (including the product provided) of 'delivery.'

> 'Fuel suppliers affected by FuelEU Maritime should contact their underwriters now about the potential that for FuelEU Maritime penalty claims, existing liability and time reporting terms and conditions may be unenforceable'

Then, and particularly because penalty claims may come long after the sale, the fuel supplier should assure that they keep accurate and complete documentation of all parts of the agreement related to the sale, including the provision and any customer comments.

Marine fuel suppliers may, when FuelEU Maritime comes into force, still be using – or their customers requiring them to use – the BIMCO 2018 Bunker Terms rather than their own terms and conditions. If the supplier is using the BIMCO 2018 Bunker Terms (or, less likely, previous BIMCO Bunker Terms), the supplier should review those Terms with its legal counsel closely, particularly its use of the 2018 Terms Election Sheet. Even if not using the BIMCO Terms, suppliers should, well in advance of FuelEU Maritime coming in force, review their sales terms and amend them to comply with FuelEU Maritime requirements, including as this article recommend.

'Agreed Terms,' Biofuels and Others:

FuelEU Maritime requires that 'companies' provide 'accurate, complete and reliable data on the GHG emission intensity and the sustainability characteristics of biofuels, biogas, renewable fuels of non-biological origin and recycled carbon fuel verified by a scheme that is recognised by the Commission in accordance with Article 30(5) and (6) of the Directive (EU) 2018/2001. ["RED II"]"[10]

Even if the fuel is verified, does that make the data provided 'accurate, complete and reliable'? A criticism of FuelEU Maritime is that it enables non-EU fuel suppliers to rely on certificates provided by entities outside of the EU and otherwise not subject to EU oversight and enforcement. The concern is that because some biofuels have chemical composition similar to standard marine fuel, buyers cannot confirm the authenticity and quality of biofuel obtained outside of the EU.

The challenge will increase with the adoption, also expected in 2023 or soon afterwards, of Renewable Energy Directive III ("RED III"), which raises EU energy consumption from renewable energy to at least 42.5% by 2030. Within RED III is an expected, binding combined sub-target of 5.5% for advanced biofuels and renewable fuels of non-biological origin (RFNBOs) – largely renewable hydrogen and hydrogen-based synthetic fuels – in the share of renewable energies supplied to the transport sector, including marine fuel sectors.

Marine fuel suppliers, and customers, express concerns about the cost of compliantly produced renewable fuels and some accordingly may seek out non-compliant fuels, accompanied by inaccurate certification. FuelEU Maritime's requirement for fuel suppliers or their customers to provide 'accurate, complete and reliable data' on biofuels arguably cannot be met simply by accepting a certification, even if the renewable fuel supplier is located in the EU.

'Agreed terms' still should state that the marine fuel supplier is entitled, as a matter of contract with the customer, to rely on the certificate provided by the renewable fuel supplier consistent with RED II. Ultimately if the certificate is not 'accurate,' the supplier still is not liable for penalty because the supplier has sold the renewable fuel subject to its 'agreed terms.'

What Further May be on the Way for Marine Fuel Suppliers?

Prior drafts of FuelEU Maritime suggest that marine fuel suppliers may be even more in the 'sights' of regulators, and the suppliers' customers, with the press toward 2050. A 2022 draft by adopted by the European Parliament included amendments warning that:

> The reliability and accuracy of the information concerning the characteristics of fuels is essential for the enforcement of this Regulation. Fuel suppliers that have been proven to have provided misleading or inaccurate information about the greenhouse gas intensity of the fuels they supply should be subject to a penalty. Fuel suppliers who have repeatedly provided false or misleading information should be blacklisted from the certification schemes laid down in Directive (EU) 2018/2001 (Renewable Energy Directive). In such cases, any fuels bunkered from its facilities should be considered to have the same emission factor as the least favourable fossil fuel.[11]

And that

> The Commission shall continuously monitor the quantity of alternative fuels made available to shipping companies in the Union and shall report their findings to the European Parliament and the Council, by 1 January 2027, and every five years thereafter until 2050. If the supply of those fuels fails to meet the demand from shipping companies, required to fulfil the obligations set out in this Regulation, the Commission should propose measures to ensure that maritime fuel suppliers in the Union make available adequate volumes of alternative fuels to shipping companies calling at Union ports.[12]

A criticism of suppliers' customers is that FuelEU Maritime does not go far enough to incent (and dis-incent) marine fuel suppliers to provide alternative fuels and accurately report those fuels' sources and energy intensity. A compromise was to require the contractual provisions that this article examines, which alone call suppliers to respond. But, if alternative fuels do not become available, suppliers should expect to receive more regulatory focus.

This always has been contemplated, for years now under the basic provisions of MARPOL Annex VI Regulation 18.

Regulation 18 includes alternative fuels (para. 1.14), defining 'fuel oil' to mean 'any fuel delivered to and intended for combustion purposes for propulsion or operation on board a ship, including gas, distillate and residual fuels.' MARPOL VI parties, which of course include far more countries and their ports within the EEA (para. 9) 'undertake to ensure that appropriate authorities designated by them' to (para. 9.4) 'take action as appropriate against fuel oil suppliers that have been found to deliver fuel oil that does not comply with that stated on the bunker delivery note [statements including Regulation 14 and 18 compliance, as MARPOL VI requires]' and (para. 9.5) 'inform the Organization for circulation to Parties and Member States of the Organization of all cases where fuel oil suppliers have failed to meet the requirements specified in regulations 14 or 18 of this Annex.' For all types of fuel oil, petroleum and non-petroleum refined, the supply violates Regulation 18 if it 'contribute[s] overall to additional air pollution.'

EU Parliamentarians and other regulators are determined that marine fuel (and those supplying it) 'contribute[s] overall to additional air pollution.'

> 'Suppliers should take extra steps to document whether the fuels they sell, and those fuels' components, are compliant with ''agreed terms'''

Marine Fuel Suppliers Should Now Proactively Engage with FuelEU Maritime Requirements

FuelEU Maritime, including its contractual requirements, will almost certainly be law from 1 January, 2025. To anticipate it, marine fuel suppliers should continue to engage with stakeholders, including shipping companies, industry associations, and policymakers, to better understand their needs and perspectives, and to identify opportunities for collaboration and partnership. This can help to ensure that suppliers are in the position to deliver sustainable fuels that meet the needs of the industry and comply with the FuelEU Maritime Regulation.

Some fuel suppliers have already taken steps to transition to low-carbon fuels. For example, in 2020, Total announced that it would be developing a 0.50% sulphur biofuel for the shipping industry, which is expected to reduce GHG emissions by up to 80% compared to traditional fuels. Similarly, Shell has invested in a number of low-carbon technologies, including hydrogen and biofuels, and has committed to reducing the carbon intensity of its fuels by at least 6% by 2023 and by 20% by 2035.

Some fuel suppliers are still to face the FuelEU Maritime initiative. Some have raised concerns about the feasibility and cost of meeting the new requirements, particularly given the uncertain regulatory landscape and the lack of infrastructure for low-carbon fuels. One of the biggest challenges is the high cost of developing and producing these fuels, which can be significantly more expensive than traditional fuels. Another challenge is the lack of infrastructure to support the distribution and storage of sustainable fuels, which will require significant investment to develop.

The transition to low-carbon fuels can be expensive, and the mandatory inclusion of fuel suppliers under the scope of FuelEU Maritime may lead to increased costs for both fuel suppliers and shipping companies. These costs could potentially be passed on to consumers, resulting in higher prices for goods and services. There also are present limitations to the availability and scalability of low-carbon fuel alternatives. But the mandatory inclusion of fuel suppliers may put pressure on suppliers to provide low-carbon fuel options that are not yet commercially viable or widely available.

Ensuring compliance with emissions regulations can be difficult, and the mandatory inclusion of fuel suppliers under the scope of FuelEU Maritime may require additional enforcement measures to be put in place. This could increase administrative costs and create additional regulatory burdens for both fuel suppliers and their customers. Mandatory inclusion of fuel suppliers under the scope of FuelEU Maritime could have unintended consequences, such as fuel suppliers shifting their focus to other markets where regulations are less stringent or the use of alternative fuels that may have unintended environmental impacts.

The maritime industry of course is global, and to make the mandatory inclusion of fuel suppliers under the scope of FuelEU Maritime effective will require further international cooperation and agreement on emissions regulations – focusing on present discussions before the IMO – to be effective. This could be difficult to achieve given the diversity of global shipping markets and the different regulatory environments in different countries.

There are also potential benefits for marine fuel suppliers that invest in low-carbon fuels, and Fuel EU Maritime is an incentive for these even without further economic incen-

tives or disincentives. These fuels can help suppliers to differentiate themselves in a competitive market and to meet the evolving demands of customers who are seeking to reduce their environmental impact.

Fuel EU Maritime's impact on marine fuel suppliers will depend on a range of factors, including the specific regulations in place, the availability of low-carbon fuel alternatives, and the level of demand from customers for sustainable fuels. However, it is clear that the requirements to provide lower carbon emissions fuels are driving significant changes in the industry, and that marine fuel suppliers will need to adapt to remain competitive in the years ahead.

> 'Ensuring compliance with emissions regulations can be difficult, and the mandatory inclusion of fuel suppliers under the scope of FuelEU Maritime may require additional enforcement measures to be put in place'

Despite concerns, the FuelEU Maritime initiative is expected to drive significant changes in the maritime sector, including a shift towards low-carbon fuels and a reduction in GHG emissions. To achieve this goal, it will be important for fuel suppliers to work closely with regulators and other stakeholders to develop new technologies and processes for producing low-carbon and alternative fuels.

At the same time, FuelEU Maritime and its contracting requirements imposes a significant financial risk on fuel suppliers. To manage this risk, fuel suppliers need to have robust quality control systems in place to ensure that their products meet emissions regulations. They also need to stay up to date with changes in regulations and invest in research and development to develop low-carbon fuels that meet the requirements of the market. They also should consult now, well in advance of 1 January 2025, with knowledgeable legal counsel to make sure their contracts comply with and anticipate FuelEU Maritime's present requirements, and those which may soon follow for marine fuel suppliers.

1. The entire text the regulation governing marine fuel supplier contracting, for Fuel EU Maritime Article 20, paragraph 3 c (new)(Amendment 129), at www.europarl.europa.eu/doceo/document/A-9-2022-0233_EN.html is the following:

> Where the company or commercial operator concludes a contract with a fuel supplier, making the latter responsible for the supply of specific fuels, that contract shall include provisions laying down the fuel supplier's liability to compensate the company or commercial operator for the payment of penalties referred to in this Article, if fuels were not delivered according to the agreed terms. For the purpose of this paragraph, fuels supplied under mentioned contracts must be compliant with provisions in Article 9(1)(b).

2. The reductions must be by 2% from 2025; 6% from 2030; 14.5% from 2035; 31% from 2040; 62% from 2045; and 80% from 2050.

3. The draft Fuel EU Article 20, paragraph 1 as of March, 2023 has two approaches to which entity (Amendment 125 – the Member State's 'competent authority'; Amendments 132 and 166 – the 'administering authority of the shipping company') will calculate and impose penalties, but all propose the calculation to be made 1 May of each year following the ship's compliance reporting period. A further amendment (127) to Article 20, requires payment of penalty by 30 June of each reporting year a penalty imposed by the 'administering State' for each ship with a "compliance deficit." Article 20, Amendment 127, para. 3 a. Texts at www.europarl.europa.eu/doceo/document/A-9-2022-0233_EN.html.

4. FuelEU Maritime Art. 20, para. 4, Amendment 130. FuelEU Maritime Article 4(2) refers to Fuel EU Maritime's Annex V, calculating the greenhouse gas intensity limits of energy used shipboard and penalties for exceeding them.

5. Specifically, "Article 9(1)(b)" referred to is of the 'Alternative Fuels Infrastructure Regulation' – original text: https://eur-lex.europa.eu/resource.html?uri=cellar:078fb779-e577-11eb-a1a5-01aa75ed71a1.0001.02/DOC_1&format=PDF – Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the use of renewable and low-carbon fuels in maritime transport and amending Directive 2009/16/EC – 14 July, 2021.

> Art. 9 – Certification of biofuels, biogas, renewable liquid and gaseous transport fuels of nonbiological origin and recycled carbon fuels
>
> 1. Where biofuels, biogas, renewable fuels of non-biological origin and recycled carbon fuels, as defined in Directive (EU) 2018/2001, are to be taken into account for the purposes referred to in Articles 4(1) of this Regulation, the following rules apply:
>
> * * *
>
> (b) greenhouse gas emissions factors of renewable fuels of non-biological origin and recycled carbon fuel that comply with the greenhouse gas emission savings thresholds set out in Article 27(3) of Directive (EU) 2018/2001 shall be determined according to the methodologies set out in that Directive;

6. "RED II," Renewable Energy Directive DIRECTIVE (EU) 2018/2001 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 December 2018 on the promotion of the use of energy from renewable sources, Art. 2 (38), https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L2001.

7. REGULATION (EU) 2015/757 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 29 April 2015 on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport, and amending Directive 2009/16/EC https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R0757&from=EL . Since 30 June, 2019 the EU-MRV has required that each vessel calling or departing from an EU port have a document, valid for 18 months, confirming compliance with EU-MRV regulations.

The THETIS MRV reporting database at https://mrv.emsa.europa.eu/#public/eumrv gathers EU-MRV reports. The database is accessible only to a 'Company' – 'a shipowner or any other organisation or persons which has assumed the responsibility for the operation of ships calling or departure from ports in the European Economic Area (EEA)' – 'Verifier' – 'a legal entity accredited by a national accreditation body under Regulation 765/2008, carrying out verification activities to assess the conformity of the documents transmitted by the Company or a flag state. It is not – explicitly – accessible by marine fuel suppliers.

8. This (well to wake emissions measurement) is a matter of significant debate before the IMO, particularly for biofuels and RFNBOs, that fuel suppliers also should be aware of and continue to follow.

9. FuelEU Maritime Art. 20, para. 3b (Amendment 128).

10. FuelEU Maritime Art. 9, para. 2 (Amendment 9), at www.europarl.europa.eu/doceo/document/A-9-2022-0233_EN.html; RED II is at – https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L2001.

11. Texts adopted Wednesday, 19 October 2022 – Strasbourg:

> Amendments adopted by the European Parliament on 19 October 2022 on the proposal for a regulation of the European Parliament and of the Council on the use of renewable and low-carbon fuels in maritime transport and amending Directive 2009/16/EC (COM(2021)0562 – C9-0333/2021 – 2021/0210(COD)) - (27a)

12. *Id.*, 1b. Amendment 145, Proposal for a regulation Article 28 – paragraph 1 b (new)

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The opinions and recommendations of this article are his and not necessarily also those of IBIA or SEA/LNG, except if identified specifically as such.

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