Carbon Brief – Current Regulatory Landscape

Welcome to LA Marine's brand-new Carbon Brief by Linda Jacques. Our Carbon Brief intends to set out an overview - in as few words as possible - of the challenges and changes in the industry as we embrace the transition to green shipping.

Let's jump right into it. Our first brief sets out the current regulatory landscape. Additional briefs will get into the details of each of these strategies.

The International Maritime Organisation's (IMO) Greenhouse Gas (GHG) Strategies

In 2018, Member States in the International Maritime Organisation adopted the 'Initial IMO Strategy on the Reduction of GHG Emissions from Ships'. The aim was to achieve a 40% reduction of shipping carbon emissions by 2030, pursuing efforts towards a 70% reduction by 2050, compared to the position in 2008. This was one of the first milestones in a roadmap to reduce GHG emissions in the global shipping industry, but it was not ambitious enough.

In July 2023, the IMO adopted the '2023 IMO Strategy on Reduction of GHG Emissions from Ships' (the "IMO 2023 Strategy") in a radical step to amp up the pressure to achieve net zero GHG emissions by around and as close to 2050 as possible.

The IMO 2023 Strategy contains indicative checkpoints/KPIs to reduce the total GHG emissions by:

- at least 20%, striving for 30%, by 2030; and
- at least 70%, striving for 80% by 2040, both compared to 2008 levels.

It also introduces new measures, including a plan for implementing:

- a "technical element, namely a goal-based marine fuel standard regulating the phased reduction of the marine fuel's GHG intensity"; and
- an "economical element, on the basis of a maritime GHG emissions pricing mechanism".

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Both are set to be agreed to by 2025, with an entry-into-force date a few years later. The next review of the IMO 2023 Strategy is expected to take place in 2028.

Amendments to MARPOL

In June 2021, MEPC 76 approved a combination of new technical and operational measures in ANNEX VI of MARPOL, known as the EEXI AND CII Regulations. This came into force on 1 January 2023. The first attained annual operational CII ratings will be given in 2024 for that operational year.

Key things to watch out for:

EEXI (to ensure vessels meet a minimum energy efficiency standard in their ship design):

- The vessels are required to adhere to a one-time certification, which applies from the first scheduled survey after 1 January 2023;
- Owners bear responsibility for compliance (provided that the flag state is a MARPOL Member State) or if the vessel is calling at a MARPOL Member State;
- Market forces are unlikely to change that standpoint under their charterparties due to owners' obligations on seaworthiness and due diligence and
- The IMO's MEPC will review the effectiveness of the EEXI requirement by 1 January 2026.

CII (to regulate the operational carbon intensity of a vessel)

- Compliance with the CII Regulation lies primarily with the vessel owners. It is the owners who will bear the consequences of a low rating, planning and a decrease in asset value. That said, market forces do have a bearing on the way that risk is handled – via their respective charterparties.
- The CII Regulations present a possible conflict of interest between owners and charterers, particularly in a time charter context. Namely, a charterer's vessel orders versus the owner's CII rating, slow steaming/deviation versus utmost or due dispatch and wrongful deviation.
- A low CII rating is likely to reduce the earning potential of a vessel for owners. If a vessel earns a rating below "C" (the minimum rating), corrective action is required under the owner's Ship Energy Efficiency Management Plan "SEEMP) and claims may arise on that basis.

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The time invested in negotiating a CII clause in your charterparty is essential.

- The more comprehensive it is, the better equipped you are going forward.
- Many companies have now prepared their own bespoke clauses – following the release of BIMCO's CII Operations Clause for Time Charter Parties 2022 after perceived concerns over the burden placed on the charterers in that draft. Careful consideration needs to be given to the wording of these clauses so as to avoid misunderstandings over their construction.

EU Emissions Trading Scheme (EU ETS)

- The EU ETS applies to the shipping sector as of 1 January 2024. It affects all cargo and passenger ships of or above 5000 GT from 2024 and all offshore ships of or above 5000 GT from 2027.
- Compliance with the EU ETS falls on the "Shipping Company", (which is considered to be the registered owner (unless compliance with the ISM Code has been delegated to another manager), and the first ETS allowances must be used by 30 September 2025, for emissions reported in 2024.
- It is mandatory to surrender allowances covering 50% of emissions for voyages entering or departing the EU and 100% of the emissions for intra-EU port voyages (including those emissions at berth/idling).
- Shipping companies can start buying allowances now by opening trading accounts in the Union Registry. Non-EU citizens can open accounts in accordance with Member State legislation.
- Shipping companies are permitted to pass on the ETS costs via contractual arrangements. We expect to see many companies considering that option.
- Shipping companies that fail to surrender allowances are liable to an emissions penalty of "EUR 100 per tonne of CO2 equivalent" and are still liable for the surrender of the required allowances.
- The names of the penalised companies are also disclosed – similar to the way Port State Detention powers are available in the public domain. Thereafter, an "expulsion order" may be issued – meaning EU Member States must refuse a ship's entry pending its obligations being remedied. For EU-flagged ships, the vessel may be detained.

The LA Marine Carbon Brief is designed to keep you up to date with the legal issues and implications of

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developing carbon-based regulations and the transition towards decarbonisation of the shipping industry.

LA Marine can offer comprehensive advice to support your business.

For further insights or assistance related to the LA Marine Carbon Brief, please contact our shipping and logistics law specialists at online.enquiries@la-law.com.

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