

The FuelEU Maritime Regulation (Regulation (EU) 2023/1805) (Regulation or FEUM), adopted on September 13, 2023, and applying from January 1, 2025, is a fundamental cornerstone of the EU strategy to support the transition towards more sustainable modes of transport and to put the EU on track for the full decarbonization of the transport sector by 2050.

The Regulation has been introduced as part of the EU's aim to achieve a 55% reduction in greenhouse gas (GHG) emissions by 2030 and to encourage the maritime sector to switch to renewable and sustainable fuels. It forms part of the EU's "Green Shipping" package, alongside the EU Emissions Trading Scheme (EU ETS) and EU Monitoring, Reporting and Verification (EU MRV) Regulation, constituting a package of legislative proposals aimed at decarbonizing maritime transportation.

We have [written extensively](#) on the various initiatives under the EU Green Deal (2019-2024), having supported clients from the initial discussions with the European Commission on certain new environmental, social and governance (ESG) legislative proposals, to helping them shape the final version of such new ESG laws throughout the legislative adoption process, working with members of the European Parliament, the European Council and other stakeholders.

The FEUM establishes a harmonized framework to promote the use of renewable and low-carbon fuels in maritime transport across the EU.

The Regulation introduces standardized rules aimed at:

- Limiting the GHG intensity of energy used onboard ships arriving at, staying within, or departing from ports under the jurisdiction of EU Member States
- Mandating the use of onshore power supply (OPS) or zero-emission technology in ports under EU jurisdiction.

These rules apply to all ships exceeding 5,000 gross tonnage engaged in commercial passenger or cargo transport. The Regulation applies to 100% of energy usage for intra-EU voyages – where both the departure and arrival ports are within EU Member States. For voyages involving a third country or an outermost EU region, 50% of energy usage is covered.

## Compliance and Reporting Obligations

The Regulation imposes a range of obligations on ships, including:

- Continuous monitoring and recording of energy use, both at sea and while at berth
- Annual reporting and verification of GHG intensity levels of the energy used
- Ensuring compliance with GHG intensity reduction targets established under Article 4(2)

Reduction targets commence with a 2% decrease in 2025, increasing incrementally every five years until 2050. Noncompliance penalties are calculated per metric ton of noncompliant fuel used, starting at €2,400 per ton.

To facilitate compliance with these requirements, the Regulation introduces additional mechanisms, including:

- **Banking** – Carrying forward compliance surpluses for future periods.
- **Borrowing** – Using anticipated compliance surpluses in advance.
- **Pooling** – Consolidating compliance balances across multiple ships.

Further details on the general provisions of the FEUM can be accessed in our [client alert](#).

This alert focuses on the pooling mechanism, highlighting its potential contractual challenges for shipping companies, charterers and managers.

## The Pooling Mechanism – Key Provisions

Article 21 of the Regulation permits pooling compliance balances among ships operated within the same pool. This mechanism can apply to:

- GHG intensity limits under Article 4(2)
- Subtargets for Renewable Fuels of Nonbiological Origin (RFNBOs) under Article 5(3).

Key considerations for pooling include:

- Ships in a pool may be controlled by different entities.
- A ship's compliance balance may only be included in one pool per reporting period.
- Pooling arrangements must be notified to the FuelEU database, including allocation details for participating ships.
- Terms related to pooling must be negotiated and agreed between the parties involved.

## Key Contractual Considerations

The pooling mechanism introduces various contractual issues that parties to shipping agreements and/or ship financing arrangements must address:

### 1. Allocation of Responsibilities and Risks

Under the Regulation, the shipowner or **Document of Compliance** (DoC) holder is responsible for compliance. This creates several challenges, including:

- **Operational decision-making** – Managers or owners may lack control over operational decisions (e.g. fuel selection) that impact emissions. Accordingly, owners should consider whether to impose further obligations under charterparties, including with respect to the use and type of bunkers.
- **Surplus allocation** – Agreements must specify which party benefits from compliance surpluses. For instance, charterers may require that surpluses derived from alternative fuels, funded by them, should not be retained solely for the benefit of owners.
- **Restrictions on pooling** – Agreements would have to address, for example, veto rights based on compliance or sanctions risks.
- **Provision of pooling-related information** – Requirements for the relevant party to provide detailed information about proposed pools and timelines for the counterparty's review or objection would also have to be included in agreements.

### 2. Year-end Compliance Responsibility

FEUM assigns compliance responsibility on December 31 to the entity holding responsibility at that time, irrespective of midyear changes in management, ownership or chartering arrangements. Contracts should therefore:

- Include indemnities and guarantees to manage risks arising from changes in operational control
- Require data-sharing provisions to ensure timely and accurate compliance monitoring throughout the year
- Incorporate interim compliance assessments, enabling parties to adjust operational strategies based on performance trends or regulatory developments.

### 3. Ship Financing Arrangements

Where ships are being financed, this introduces an additional layer of complexity and uncertainty, and parties under such financing arrangements will have to contractually agree on various issues related to the pooling mechanism, including:

- The appropriate level of representations and undertakings (including confidentiality obligations) in respect of the Regulation where third parties (e.g. shipowners not related to the financing but within the same pool) are involved

- The requirement for documents relating to the pooling to be provided as conditions to funding
- Remedy periods/mechanics and exit strategies where there is a breach of the Regulation in different scenarios; for example, where the breach is caused by one party as opposed to more than one party (whether related to the financing or not)

The issues highlighted above represent only a subset of potential contractual challenges that may arise between parties dealing with the pooling mechanism. The list is not exhaustive, and many other concerns may emerge, particularly given the novelty of these rules and their wide-reaching implications. The new issues arising from the pooling mechanism will require carefully crafted contractual provisions to manage the allocation of responsibilities, risk-sharing and compliance obligations among parties.

A comprehensive and proactive approach to drafting and negotiating contracts will be essential to address these challenges effectively and minimize disputes.

## Future Opportunities Impacting Sustainable Fuels in Maritime Transport

The newly appointed European Commission leadership (2024-2029) officially started its work on December 1, 2024. In the domain of maritime transport, as outlined in the mission letter from President Ursula von der Leyen to the newly designated commissioner for sustainable transport and tourism, Apostolos Tzitzikostas, the commission intends to develop and adopt a new Industrial Maritime Strategy and a comprehensive EU Port Strategy.

While the specifics of these strategies remain undisclosed, in the Q&A script released ahead of his European Parliament confirmation hearing, Commissioner Tzitzikostas reaffirmed his commitment to boosting the adoption of zero-emission fuels in shipping. The extent to which these objectives will be converted into tangible measures is yet to be seen, apart from ensuring the effective implementation of the requirements set out in the FEUM.

For a detailed analysis of EU regulatory developments impacting the shipping sector, please refer to our dedicated [client alert](#).

## How We Can Help

We are equipped to help clients adapt to the requirements of the Regulation. Our services include:

### Contractual Support

- **Drafting and negotiating tailored contractual provisions** addressing pooling, surplus allocation, and compliance obligations.
- **Reviewing and revising ship management and charter agreements as well as ship financing arrangements** to clarify responsibilities and minimize risk exposure.
- **Advising on implementing pooling, banking, and borrowing mechanisms** within regulatory frameworks.
- **Providing guidance on dispute resolution and enforcement risks** arising from compliance disagreements.

### Regulatory Support

- **Comprehensive understanding of regulations** – Ensure a thorough and up-to-date understanding of applicable laws, including the FEUM, EU MRV framework and other relevant EU and international laws.
- **Compliance assurance** – Provide guidance to ensure full compliance with regulatory requirements, minimizing legal and financial risks for stakeholders.
- **Public Policy Support**
- **Monitoring policy developments** – Closely follow the adoption of new legislative and regulatory initiatives, such as the forthcoming Industrial Maritime Strategy and EU Port Strategy, to anticipate and adapt to evolving requirements.
- **Advocacy and influence** – Engage with policymakers and industry stakeholders to shape the regulatory framework during the legislative process, ensuring that industry perspectives and concerns are adequately represented.
- **Early compliance preparation** – Proactively assess forthcoming requirements and support the development of internal strategies to achieve early compliance, reducing operational disruptions and maintaining competitive advantage.

Our maritime law team, in collaboration with our EU regulatory specialists, delivers comprehensive expertise in shipping and environmental law, offering practical, commercially focused advice to help clients meet the challenges and opportunities presented by the FuelEU Maritime Regulation.

## Contact Us

For further information or to discuss your compliance and contractual requirements, please reach out to our dedicated team.

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