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**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to Article 294(6) of the Treaty on the Functioning of the European Union

concerning the

position of the Council at first reading on the adoption of a Regulation of the European Parliament and of the Council on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport and amending Regulation (EU) N° 525/2013

(Text with EEA relevance)

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1. Background

Date of proposal to the European Parliament and to the Council (document COM (2013) 480 final – 2013/0224 COD):	28 June 2013.
Date of the opinion of the European Economic and Social Committee:	16 October 2013
Date of the position of the European Parliament, first reading:	16 April 2014
Date of transmission of the amended proposal:	n/a
Date of adoption of the position of the Council:	5 March 2015

2. Objective of the proposal from the Commission

The Commission proposes to create an EU-wide legal framework for collecting and publishing verified annual data on CO₂ emissions and energy efficiency from all large ships (over 5 000 gross tons) that use EU ports, irrespective of where the ships are registered. This is the first step of the EU strategy to reduce greenhouse gas emissions from maritime transport as outlined by the Commission Communication adopted in June 2013¹ and should also bring a valuable contribution to ongoing debates in the International Maritime Organisation (IMO).

The key features of the monitoring, reporting and verification scheme resulting from this proposal are as follows:

- (a) Scope: ships above 5000 gross tons calling at ports under the jurisdiction of a Member State fall under the MRV rules. Exclusion of small emitters (small and medium size ships below 5000 GT) which represent about 40% of the fleet, but only 10% of the total emissions.
- (b) A few categories of ships are exempted: warships, fish catching and processing ships, wooden ships and government ships used for non-commercial purposes.
- (c) In accordance with the principles of international maritime law, MRV rules apply in a non-discriminatory manner to all ships calling at EU ports, regardless of their flag.

¹ Commission Communication on "Integrating maritime transport emissions in the EU's greenhouse gas reduction policies" COM (2013) 479 final.

- (d) Coverage of journeys from and to EU ports: from 1 January 2018, ships will need to monitor their CO₂ emissions and other relevant efficiency parameters for their intra-EU Union voyages (those between ports of call under the jurisdiction of a Member State), for their incoming voyages (from the last non-EU port of call to the first port of call under the jurisdiction of a Member State) and for their outgoing voyages (from a port of call under the jurisdiction of a Member State to the first non-EU port of call).
- (e) Emissions from vessels within ports will also need to be monitored, reported and verified. This is intended to encourage the use of available shore-based emission-reduction technologies.
- (f) Already available data from log books, noon reports and bunker delivery notes will be used.
- (g) After being monitored, this data will need to be independently verified and then annually reported in an aggregated manner to the Commission and to the ship's flag state.
- (h) The Commission will report on verified annual aggregated data on a "per ship" basis, including both CO₂ emission and efficiency parameters.
- (i) A limited number of tasks will be assigned to the European Maritime Safety Agency (EMSA), mainly related to the enforcement database, in line with its founding regulation.
- (j) Enforcement by MSs acting either as Flag States or as Port States (either through Port State Control (under 19§2) or through MRV specific inspections (under 19§3)) are to check that a valid Document of Compliance (DoC) is on board of ships when visiting ports under their jurisdiction, and to follow-up by sanctions, if appropriate.
- (k) Link with international developments by reviewing the Regulation and proposing/aligning, if appropriate, relevant amendments based on internationally agreed developments, notably in IMO.

3. Comments on the position of the Council

3.1. General comments on the Council Position

The Commission point of view is that the informal negotiations led to a balanced package with satisfactory solutions on a number of important issues such as the scope of the Regulation, the monitoring and reporting of cargo, data confidentiality and transparency of information or the enforcement provisions. The Commission is therefore in a position to support the outcome as reflected in the Council position.

The Commission nevertheless makes a specific statement relating to the use made by the Council of the possibility foreseen under Article 5(4) of Regulation 182/2011 (the "no opinion" clause) for implementing acts. The Commission does not oppose it, but it strongly believes that the use of such a provision needs to be justified and will therefore make the statement in Annex to this Communication.

3.2. European Parliament's amendments at first reading (in brief)

The Council did not explicitly consider a number of EP's amendments. The Commission's views on these EP's amendments is described below.

The EP first reading opinion put forward the following main amendments:

- (a) **Inclusion of broader references to "greenhouse gas emissions" instead of "CO₂ emissions" (Ams. 1, 9, 10, 12, 17, 21, 23, 24, 29, and 31). Partly accepted by the Commission.** The EP first reading opinion substitutes in several instances the words "CO₂ emissions" by "GHG emissions" so as to highlight the need to address "other than CO₂" maritime emissions over time. The Commission is of the view that the objective of the proposed Regulation shall remain focused on CO₂ which is by far the most significant GHG emission from the maritime sector. However, and as long as the scope of the Regulation remains untouched, some wider wording along the EP's amendments can be acceptable. The Council has retained CO₂ as the only emission covered, as in the Commission proposal, while accepting some broader wording on GHG emissions and air pollutants in the recitals (recital 1a new) and others).
- (b) **Including fishing and processing ships under the MRV (Am. 26) Rejected by the Commission** The EP is in favour of including under the MRV scheme "fishing and processing ships" which were excluded from the proposal. The Commission view is that these categories represented a negligible amount of emissions and presented some enforcement problems. The Council finally kept these categories out of the Regulation as in the Commission proposal
- (c) **Inclusion of a lightened MRV monitoring obligations for vessels operating only EU-related voyages and performing multiple voyages per day: "short sea shipping regime" (Am. 58). Partly accepted by the Commission.** The EP includes an exemption from "per voyage" monitoring obligations for ships only operating EU-related journeys and performing multiple voyages a day (such as ferries). The objective is to streamline required monitoring obligations for ships performing a high number of, potentially similar, journeys every day. In order to avoid that in those cases, monitoring becomes unnecessarily too onerous, "per voyage" monitoring will not be strictly required as an intermediate step while annual reporting obligations remain untouched. As a matter of principle, the Commission supports the inclusion of such a lightened regime which seeks a balance between the need to base ship's annual reporting on accurate data existing on board and the administrative burden this would entail for a particular type of trade or circumstances defined in an objective manner. The Council retained the EP's idea while preferred setting a threshold related to the number of voyages scheduled annually so as to provide for more legal certainty for the operators.
- (d) **Deletion of 'cargo carried' and 'transport work' from the scope of data monitored as well as related energy efficiency calculations (Ams. 29, 30, 43, 53-55, 59, 73, 91 and 93). Rejected by the Commission.** The EP has proposed the deletion of "cargo carried" and related operational energy efficiency calculations, based on "transport work". The Council has retained them as monitoring parameters as put forward in the Commission's proposal.
- (e) **Strengthening technical efficiency by requiring certified Energy Efficiency Design Index (EEDI) also for existing ships (Ams. 61 and 71) Rejected by the Commission.** The EP has proposed to require certification of EEDI for all ships categories under the MRV to which the EEDI applies, as a counterproposal to the deletion of cargo and the weakening of operational efficiency. The Council has retained the Commission proposed scope of EEDI, only applying to new ships (built or repaired after 2013).

- (f) **Adding ships' 'ice class' and information on severe winter conditions to the information included in the Monitoring plan and emissions reports (Ams. 33, 40, 44, 60 and 70). Accepted by the Commission.** The EP is in favour of adding a package of amendments aiming at ensuring that "ice class" (indicating whether the ship has been specifically designed for navigation in sea-ice conditions) is part of the core information to be reported under the MRV. The Council has retained the EP's main idea but has converted such a reporting into a voluntary one.
- (g) **Introduction of a reference to Directive 2003/4/EC on public access to environmental information (Am. 69). Rejected by the Commission.** The EP's concerns about MRV collected data, giving undue insights into commercially protected information, has led the EP to introduce a reference to existing EU legislation on access to environmental information (namely Directive 2003/4/EC on access to information) applicable only to MS. The Commission understands that MRV annual aggregated data do not typically give an insight into business secrets; it could however show some openness so as to assess whether in a concrete case and due to specific circumstances, protection of a legitimate commercial interest would be undermined. The Council has reformulated the EP's idea and developed it into a reference to Regulation 1367/2006 on access to environmental information applying to EU institutions and bodies (Aarhus Regulation) which contains a clause on protected commercially interest to be assessed against public interest in disclosure.
- (h) **Tacit extension of the Commission's empowerment to adopt delegated acts (Article 24 (1)). Accepted by the Commission.** The EP proposes that delegation of powers last five years and is tacitly extended for periods of identical duration, unless the EP or the Council oppose this extension. The Commission can accept this clause which indeed represents standard wording. The Council has also retained the usual tacit extension formula.
- (i) **Biennial assessment of non-CO2 impacts (Am. 82). Accepted by the Commission.** The EP has proposed a new obligation for the Commission under the Monitoring Mechanisms Regulation (MMR) to biennially assess the maritime transport sector's overall impact on the global climate including through non-CO₂ emissions. The Commission could accept the EP proposal subject to some reformulation. The Council has retained the EP's idea but converting it into a (biennial) obligation to be carried out at the time the general report on reported MRV emissions will be produced by the Commission pursuant to Article 21(3).

3.3. New provisions introduced by the Council and the Commission's stance.

The Council has inserted a number of changes which do not significantly weaken the proposal and also a number of new provisions into the text which the Commission can accept. These provisions are as follows:

- (a) **Inclusion of a lighter regime of monitoring for "short sea shipping" (Article 9 (2) new)** The Council has included new provisions enabling for ships exclusively operating journeys within the scope of the proposal and having more than 300 scheduled voyages per year, to benefit from an exemption from the "per voyage" monitoring obligations (Article 9§ 2 new). The wording of the Council exception is quite similar to the amendment put forward by the EP (Am. 58) and the Commission can go along such a lightened regime as described in the Council text (which provides more legal certainty in the form of an annual threshold). "Per voyage" monitoring of fuel consumption and CO₂ for ships performing a high number of potentially similar activities (as ferries) exclusively within the scope of the MRV

Regulation is not absolutely necessary as other documents and data existing on board (as BDN) can be used by the verifier to assess the way CO₂ and fuel consumption annual data have been calculated. It is therefore not an intermediate step strictly necessary to fulfil the ship's main annual reporting obligations under Article 10 of the MRV Regulation which remain applicable in the same way. "Per voyage" exemption relies also on the condition that it is not necessary to clearly distinguish and separate data on a "per voyage" basis (so as to avoid covering data from journeys outside the scope e.g.: between two non EU ports of call). Ships not fulfilling the two abovementioned objective criteria which apply regardless of the flag of the ships will not be able to benefit from such an exception.

- (b) **Voluntary reporting by companies on the basis of criteria defined in the monitoring plan (Article 10(3) new)** The Council has introduced new provisions allowing ships to monitor and later get published fuel consumption and CO₂ emission data according to different criteria (i.e.: laden/ballast voyages). The Commission can go along with the Council's text
- (c) **MRV regime of inspections (Article 19 (3)).** The Council has proposed to lessen MS authorities' obligations regarding ships not having notified a Document of compliance and not covered by other enforcement mechanisms, and entering a port under MS' jurisdiction. The Commission can go along with the Council's text as this would align the mechanisms for enforcement to levels traditionally applied in this sector.
- (d) **Expulsion order (Article 20 (3)).** The Council has watered down the conditions under which Member States may issue an expulsion order in case of ships in breach of the MRV obligations for "two or more consecutive reporting periods" (instead of "more than one reporting period") and "where other enforcement measures have failed to ensure compliance". Also a reference to international maritime law applicable in case of distress of ships has been added. The Commission can accept the Council's text.
- (e) **National rules on sanctions and penalties and information on national remedies (Article 20 (3a) and (4))** A derogation allowing landlocked MS without ships flying their flag to be excluded from the obligation to set national rules on penalties and sanctions has been included as 20 (3a) new. Also a new reference on the need to inform companies on the national effective remedies available in case of expulsion order has been added under Article 20(4) new. The Commission can go along with the Council's text on these points.
- (f) **Publication of annual data aggregated data and commercial interest** protected pursuant Regulation 1367/2006/EC (Aarhus Regulation) applicable to EU institutions and bodies (Article 21(2a) new). The Council has proposed to reword the EP clause regarding protection of commercial interest by inserting a reference to Regulation 1367/2006 on access to environmental information held by EU institutions and bodies (the "Aarhus Regulation"). The Commission can go along with the Council's text.
- (g) **Delegated acts on verification and accreditation and new Annex III** on the elements to be taken into account by the Commission when adopting these delegated acts (Articles 15(5) and 16(3) and Annex III new). The Council has added some further specification of the content of the delegated acts on verification and accreditation originally foreseen under Articles 15 and 16 of the Commission proposal by adding a list of non-essential elements to be taken into account when

developing these delegated acts under a new Annex III to the Regulation. This helps to circumscribe the scope of the delegated acts and can therefore be accepted by the Commission.

- (h) **Deletion of MS' reporting obligations on maritime emissions under the Monitoring Mechanism Regulation (MMR) (Article 26).** The Council has deleted any additional MS' reporting obligation to be fulfilled under the Monitoring Mechanism Regulation (MMR) based on data gathered under the MRV. MS annual reports of data are no strictly necessary as the Commission will directly receive the data from companies and will also establish annual reports. Therefore the Commission could accept the Council position.
- (i) **Development of parameters for monitoring cargo "per ship type" including through additional implementing acts (Annex II part B).** In the Council text "cargo" and "transport work" are part of the parameters to be monitored and reported, as in the Commission proposal. However, the Council has introduced a number of proposals regarding parameters for monitoring cargo and transport work adapted by specific ship type to be part of the MRV. Annex II part B contains therefore a number of additional provisions reflecting existing the state of the art regarding parameters for monitoring cargo for ro-ro and container ships (in addition to the ones for passenger ships from the Commission proposal).

For other ships, the Council suggests that weight and volume are taken into account as monitoring parameters as appropriate, and enables the Commission through implementing acts to further specify, and if necessary revise, how the obligation to monitor cargo is to be implemented. The Commission can accept this approach. The inclusion of ship-specific parameters for monitoring of cargo is relevant also to foster international developments, and notably progress in IMO.
- (j) **Amendment to Directive 2009/16/EC Directive of the European Parliament and of the Council on Port State Control ("PSC Directive) (Art. 26a).** The Council has proposed to amend Annex IV of the Port State Control Directive in order to add the Document of compliance issued under the MRV Regulation, to the list of documents to be checked by Port State Control officers when carrying out PSC inspections. This would facilitate the implementation of the enforcement mechanisms foreseen under the Regulation, and shall be accepted by the Commission.
- (k) **No opinion clause Article (Art. 25(2))** The Council had recourse to the possibility foreseen under Regulation 182/2011 to introduce a "no-opinion clause" in relation to the implementing acts under the MRV Regulation. The Commission will keep its standard position indicating that the inclusion of such a clause shall be accompanied by explanations on the specific reasoning justifying it in the present case: e.g. in the form of a recital.

4. Conclusion

The Commission considers that the text agreed by the Council remains close to the initial Commission proposal while including a number of amendments that the Commission can support in order to facilitate an agreement to be reached with the EP at the level of the Council's common position.

STATEMENT

Statement by the Commission on the revision of Regulation e 20xx/xx/EC

The Commission underlines that it is contrary to the letter and to the spirit of Regulation 182/2011 (OJ L 55 of 28.2.2011, p. 13) to invoke Article 5, paragraph 4, second subparagraph, point (b) in a systematic manner. Recourse to this provision must respond to a specific need to depart from the rule of principle which is that the Commission may adopt a draft implementing act when no opinion is delivered. Given that it is an exception to the general rule established by Article 5, paragraph 4, recourse to second subparagraph, point (b) cannot be simply seen as a "discretionary power" of the Legislator, but must be interpreted in a restrictive manner and thus must be justified.