



EUROPEAN COMMISSION

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Dear President,

The Commission would like to thank the Bundesrat for its Opinion 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) 562 final}.

This proposal forms part of the Fit for 55 package, a broader package of ambitious measures designed to ensure inter alia that the shipping sector contributes fairly to the European Union's climate effort.

Ensuring a minimum and increasing level of demand for renewable and low-carbon fuels in the maritime transport sector is at the heart of the Commission's proposal. Setting ambitious but achievable targets will give a renewed impetus to meeting the European Union's commitment to reduce greenhouse gas emissions by 55% by 2030 and demonstrates its readiness to assume a leadership role.

The Commission welcomes the Bundesrat's broad support for the aims of the proposal, but notes a number of concerns and suggestions expressed, relating to different aspects of the proposal. The Commission is pleased to have this opportunity to provide clarifications.

With reference to point 2 of your Opinion, the Commission's proposes to incentivise the use of electricity whenever possible, and regardless of its source, in order to address air quality concerns in ports' areas. It is also important to avoid that the obligation to use Onshore Power Supply (OPS) depends on the specific energy mix of a given port, as this risks introducing distortions of competition and route diversions. It might be added that electricity is an energy carrier that can easily incorporate renewable sources, like wind and solar power, and a progressive greening of power generation is a development that can already be anticipated in view of other legislative requirements.

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Regarding Article 5(6) of the Commission's proposal, it serves the purposes of flexibility and consistency with the Alternative Fuels Infrastructure Regulation, which opts for specific targets and obligations for TEN-T core and comprehensive ports by 2030. There is a five years difference between the moment that these obligations come into force and the time when derogations from the ships expire in FuelEU Maritime, thus providing a margin of flexibility to the operators. This flexibility is needed for specific situations, where, for example, the shore-power connection is not available at a designated berth location on a port otherwise properly equipped.

As for the proposal, in points 4 and 6, to extend the obligation to all ship types and sizes as of 2030, the Commission considers that this would require an amount of port investments in OPS capacity that would be extremely difficult to achieve. However, the proposal contains a review clause that can be used to extend the scope of application, should this be considered feasible at a later stage.

With reference to point 5 of your Opinion, the Commission notes that the alternatives to the use of OPS would need to be zero emission energy technologies and therefore would not jeopardise compliance with other environmental legislation.

Points 7, 9, 11 and 13 of the Bundesrat's Opinion fall under the proposal for a Regulation on the deployment of alternative fuels infrastructure. The Commission will therefore take them into account in that context.

With reference to point 8 of the Opinion, the Commission's proposal follows this approach, taking into account the different organisation of the ports of different Member States. The managing body of the port is competent to ascertain all situations that may lead to the application of the exemptions of Article 5.(3). The managing body of the port would be the entity to manage, or delegate, the connection certification. It would be in the best position to confirm the availability and compatibility of connections to specific OPS requests.

Regarding point 12 of the Bundesrat's Opinion, the suggested approach took into account consistency with other proposals as well as with developments in fuel demand from other sectors and overall fuel production. The proposed level of ambition would allow a gradual start of the transition, but at the same time send clear signals on the future obligations.

The Commission shares the concern of the Bundesrat raised under point 14 of the Opinion, namely the reference in Article 9(1)(b) to Article 27(3) of Directive (EU) 2018/2001, and is considering to proceed with relevant changes in the text of the proposal.

Concerning point 15 of your Opinion, the pooling mechanism provides ships with the option to pool their compliance balances, with the aim of fulfilling the requirements set in Article 4 - paragraph 2, namely not exceeding, on a yearly average, the specified greenhouse gas intensity limits of the energy used on-board by a ship. In practice, the 'surplus' of a ship that has exceeded its compliance balance can be used to compensate for the 'deficit' of another ship in the pool which did not achieve its target.

The pool as a whole needs to have a sufficient compliance so that in the end, after the allocation of the total compliance balance to each individual ship, all the ships can get a certificate of compliance. On the other hand, it is almost impossible that after the allocation of the total compliance balance, all the ships of the pool would have the same – exactly equal to the limits – compliance balance and therefore, Article 17(1) would be applicable for the ships with a compliance surplus.

As far as the issue of Article 13(1) is concerned, in order to ensure impartiality, verifiers should be independent and competent legal entities and should be accredited by national accreditation bodies established pursuant to Regulation (EC) No 765/2008. This is a familiar approach, also followed in other maritime policies, which gives the Member States an active role in the procedure, through oversight and possible sanctioning. The concept of a central inspection body at European level could be considered as an additional instance of oversight.

The points made above are based on the initial proposal presented by the Commission, which is currently in the legislative process involving both the European Parliament and the Council.

The Commission hopes that the clarifications provided in this reply address the issues raised by the Bundesrat and looks forward to continuing the political dialogue in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*

*Adina Vălean
Member of the Commission*