

# IMCA is advocating for clarity in the applicability of the EU ETS Regulation & associated EU MRV Regulation to the Offshore Marine Contracting Sector

## Background

The EU ETS was launched in 2005 and originally only regulated energy intensive sectors such as oil refineries, power generation and steel works. The aviation sector was incorporated into the Regulation in 2012 and in 2023, the EU agreed to extend the scope to include emissions from the maritime sector. In order to do this, it was necessary for the Commission to amend the associated EU Regulation (2015/757), on the Monitoring, Reporting and Verification of Carbon Dioxide Emissions from Maritime Transport. On 1 May 2023, the amending Regulation ((EU) 2023/957) was issued *‘in order to provide for the inclusion of maritime transport activities in the EU Emissions Trading System and for the monitoring, reporting and verification of emissions of additional greenhouse gases and emissions from additional ship types’*.

(Note: Underlining has been included for emphasis and elaborated further below.)

## The EU MRV Regulation

To clarify the change in position, it is necessary to compare the change in Scope of the two Regulations.

Article 2 of the original EU MRV Regulation 2015/757 stated:

*‘This Regulation applies to ships above 5 000 gross tonnage in respect of CO<sub>2</sub> emissions released during their voyages from their last port of call to a port of call under the jurisdiction of a Member State and from a port of call under the jurisdiction of a Member State to their next port of call, as well as within ports of call under the jurisdiction of a Member State.’*

The scope of the amended Regulation (2023/957) issued in May 2023 is stated as:

1. *‘This Regulation applies to ships of 5 000 gross tonnage and above in respect of the greenhouse gas emissions\* released during their voyages for transporting for commercial purposes cargo or passengers from such ships’ last port of call to a port of call under the jurisdiction of a Member State and from a port of call under the jurisdiction of a Member State to their next port of call, as well as within ports of call under the jurisdiction of a Member State’.*

\* In accounting for the release of greenhouse gas emissions, the Regulation has been extended beyond carbon dioxide (CO<sub>2</sub>) and now includes methane (CH<sub>4</sub>) and nitrous oxide (N<sub>2</sub>O).

Furthermore, it is stated that:

- 1b. *‘From 1 January 2025, this Regulation shall apply to offshore ships of 5 000 gross tonnage and above in respect of the greenhouse gas emissions released during their voyages from their last port of call to a port of call under the jurisdiction of a*

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Member State and from a port of call under the jurisdiction of a Member State to their next port of call, as well as within ports of call under the jurisdiction of a Member State.'

The Commission has made this change so that it can bring the maritime sector into the scope of the EU ETS from 1 January 2027.

### What does this mean for IMCA members?

If members have vessels which are considered by Class or Flag to transport cargo for commercial purposes, they will fall within scope in accordance with the requirements of Regulation 1 above. Otherwise members whose vessels do not transport cargo or passengers for commercial purposes and are of 5,000 GT and above will be within scope in accordance with Regulation 1b.

### Actions related to the amended EU MRV Regulation from 1 January 2024

- 1) Shipowners should prepare the monitoring plan for each of their ships to ensure that they remain in conformity with the amended regulations. Members should be aware that their revised monitoring plans must first be assessed by an independent accredited verifier, such as a classification society.
- 2) Shipowners should ensure that they are now monitoring and report emissions of methane (CH<sub>4</sub>) and nitrous oxide (N<sub>2</sub>O) as well as carbon dioxide (CO<sub>2</sub>).

### The EU ETS Regulation

The EU Emissions Trading System (EU ETS) introduced through Regulation (2023/959) as part of the EU's Fit for 55 package of legislation is a 'cap and trade' system whereby greenhouse gas emissions from an Industry within the scope of the Regulation are 'capped', i.e. fixed GHG emission allowances are allocated to that industry. The system allows the Industry to buy additional allowances if they exceed the capped value or sell surplus allowances which they do not need, i.e. 'trade'. Over time the capped allowances will reduce meaning that shipowners will be compelled to find ways to reduce their emissions of Greenhouse Gases, most likely through the use of alternative green fuels.

[The ETS has been extended to include maritime transport as set out below:

- ◆ 100% of emissions from ships calling at an EEA port for voyages within the EEA
- ◆ 50% of the emissions from voyages starting or ending outside of the EEA
- ◆ 100% of emissions produced when ships are within EEA ports.

Under this extension, every year, shipping companies will have to monitor and report their emissions and purchase and surrender ETS emission allowances for each tonne of reported CO<sub>2</sub> emissions in the scope of the system.

The new system will be phased in gradually, and shipping companies will have to surrender allowances, as follows:

- ◆ in 2025, for 40% of their emissions reported in 2024
- ◆ in 2026, for 70% of their emissions reported in 2025
- ◆ from 2027 onwards, for 100% of their reported emissions.

The EU Regulation is linked to the revised EU MRV and so the two need to be studied together.

The term “voyage” has been updated in the EU MRV, to read:

“voyage” means any movement of a ship that originates from or terminates in a port of call.

This definition raises several questions for the offshore marine contracting sector which pick up on the words underlined in the definition above:

- 1) What does the Commission consider the movement of an offshore vessel to be?
- 2) What is the definition of a “port of call” for offshore vessels?

In EU MRV (2023/957) “port of call” is defined as in Article 3, point (z), of Directive 2003/87/EC of the European Parliament and of the Council as:

“‘port of call’ means the port where a ship stops to load or unload cargo or to embark or disembark passengers, or the port where an offshore ship stops to relieve the crew; stops for the sole purposes of refuelling, obtaining supplies, relieving the crew of a ship other than an offshore ship, going into dry-dock or making repairs to the ship, its equipment, or both, stops in port because the ship is in need of assistance or in distress, ship-to-ship transfers carried out outside ports, stops for the sole purpose of taking shelter from adverse weather or rendered necessary by search and rescue activities, and stops of containerships in a neighbouring container transshipment port listed in the implementing act adopted pursuant to Article 3ga(2) are excluded;”

What Marine Policy and Regulatory Affairs (MPRA) Committee members are particularly concerned about is what the effect of the effect of the legislation will be, e.g., how will project locations be regarded (port calls or not), how will offshore crew changes be regarded, etc.

- 1) Since the EU MRV applies from 1 January 2024, are offshore vessels covered when they transport cargo for commercial purposes from 2024?
- 2) Will the sector be covered if they don’t carry cargo and don’t carry out a crew change?
- 3) Will they in addition be covered during voyages when they relieve the crew after 2027 when the EU ETS enters into force?
- 4) Under the EU ETS, vessel types other than offshore vessels report their total emission in tonnes, per distance and per tonne of cargo or number of passengers per mile. What information should be reported for offshore vessels?

These are only some of the questions which have arisen. The MPRA Committee has gathered a long list of questions on the application of the ETS Regulation to the offshore and marine contracting sector for which it is seeking answers and is lobbying the EU Commission to address these.

The Industry needs regulatory certainty. Ambiguity or grey areas in the legislation lead to uncertainty and confusion. While IMCA and other partner trade associations have raised these questions, only the EU Commission itself, as the regulator for EU legislation, can answer them.

The list of questions will be made available to members in due course and the wider IMCA membership is requested to contact Margaret Fitzgerald, Head of Legal & Regulatory Affairs with any additional questions they might have so that they can be added to the paper which is being prepared.

Rest assured that the MPRA Committee is strongly advocating for a pragmatic approach to this piece of legislation which appears to have been written for the cargo and passenger carrying parts of the Industry, not recognising the unique way in which the offshore and marine contracting sector operates.

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