



International Chamber of Shipping

BRIEF FOR EU MEMBER STATES AND MEMBERS OF THE EUROPEAN PARLIAMENT

Proposal for 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) No 525/2013

Preliminary ICS Comments on Draft EU Regulation on MRV

The International Chamber of Shipping (ICS) is the principal international trade association for shipowners. Its membership comprises the world's national shipowners' associations in Asia and the Americas as well as the European Union, representing all sectors and trades and over 80% of the world merchant fleet. The European Community Shipowners' Associations (ECSA) is a Regional Partner of ICS.

POLITICAL CONSIDERATIONS

Respecting the Primacy of IMO

ICS fully supports the development by the United Nations' International Maritime Organization (IMO) of a mandatory global system of monitoring and reporting of fuel consumption (and CO₂ emissions) by individual ships, and the consideration by IMO of additional measures to facilitate the further improvement of energy efficiency.

Shipping is a global industry requiring global regulation. ICS therefore believes that EU Member States, which are also Member States of IMO, have an obligation to respect the primacy of IMO as the regulator of international shipping and the vital importance of maintaining the global regulatory framework which the shipping industry requires in order to operate efficiently.

IMO has already successfully developed a binding global agreement on technical and operational measures to reduce CO₂ emissions from ships, which entered into force worldwide in January 2013. These amendments to the MARPOL Convention include the mandatory application of the Energy Efficiency Design Index (EEDI) to new ships, and the use of Ship Energy Efficiency Management Plans (SEEMP) across the entire world fleet.

ICS recognises that there is a growing expectation amongst many EU Member States (and other EU stakeholders) that IMO should develop additional measures due to the belief that this will facilitate a further improvement of fuel efficiency by ships. However, in view of IMO's recent track record, there is no reason to believe that IMO will not succeed in developing additional mandatory measures to address these issues at the global level.

ICS therefore believes that it is not appropriate for the European Union to consider the adoption of a unilateral regional regulation on monitoring and reporting of ships' fuel consumption (and CO₂ emissions) in advance of the debate that is currently taking place at IMO.

In particular, ICS respectfully suggests that it is premature to consider proposals for the development of a system for the mandatory indexing of the operational efficiency of individual ships, in advance of this major step being debated again at IMO in March 2014.

The development of further amendments to the MARPOL Convention, which should address the various issues covered by the proposals for an EU Regulation will be discussed at the next meeting of the IMO Marine Environment Protection Committee (MEPC 66) in March 2014 which *inter alia* will consider detailed proposals on monitoring and reporting, and the facilitation of energy efficiency improvements, that have already been submitted to IMO by the United States.

ICS therefore respectfully suggests that the Council and the Parliament should refrain from considering the detail of the proposals for a regional EU Regulation until the current debate at IMO is more advanced.

If detailed consideration of the EU proposal is taken forward at this stage, ICS believes this will greatly complicate the discussions at IMO. Non-EU States may be less willing to participate in a constructive debate at IMO if it is known that the EU institutions are already actively engaged in simultaneous discussions about unilateral regional measures that may be in conflict with any future IMO agreement.

ICS suggests that, at the current time, it would be far more productive for EU Member States to consider submitting their own proposals to IMO with respect to monitoring and reporting and the facilitation of further improvements to the energy efficiency of ships.

ICS welcomes the Commission's publically declared preference for a global solution and its recognition that IMO is the proper forum for discussing the issues raised by the proposal for a draft EU Regulation. However, it is unclear to ICS how the level of detail contained in the Commission's proposal can be reconciled with the desire to achieve a global agreement on monitoring and reporting that is based on consensus amongst IMO Member States.

In particular, it is understood that many IMO Member States now favour a 'three phase' approach to the monitoring and reporting of CO₂ emissions and additional energy efficiency measures, whereby any decision to move towards mandatory operational indexing of individual ships would follow the initial collection and analysis of the information derived from mandatory reporting and subsequent trials.

The draft EU Regulation, however, combines proposals for monitoring and reporting CO₂ emissions with what appears to be the introduction of a mandatory operational indexing system, and which contains elements such as cargo information and transport work which have not yet been debated at IMO.

ICS also notes with concern that the explanatory text which accompanies the draft Regulation comments that in the event of a global IMO system being adopted, the EU regional system should be reviewed and "if appropriate" aligned with the IMO system. Furthermore, Article 22 provides that the Commission shall review the EU Regulation and "may, if appropriate" propose amendments. There is therefore no explicit commitment that EU requirements will be aligned with any global system of monitoring and reporting adopted by IMO.

Notwithstanding ICS's belief that it is currently premature to commence detailed consideration of the proposal, it is respectfully suggested that the need to ensure that any final EU Regulation will be aligned with any agreement reached at IMO is of paramount importance.

It is reiterated that the shipping industry is a global industry, and the challenge of addressing CO₂ emissions, including monitoring and reporting and the facilitation of energy efficiency improvement measures, can only be meaningfully addressed at the global level.

ICS also recalls the political repercussions from the EU's trading partners that followed the application by the EU of unilateral regional measures to international aviation. There is a danger that these regional proposals, if taken forward at the present time, could result with a similar negative reaction from the EU's major trading partners.

Development of a Market Based Measure

The explanatory memorandum that accompanies the draft Regulation makes explicit reference to future development of a Market Based Measure (MBM). For example, the

draft Regulation is presented as a first step towards the “*pricing of these emissions at a later stage*”.

ICS reiterates that the only appropriate forum for developing an MBM for international shipping is IMO, which already has the development of an MBM on its agenda and is in the process of assessing various proposals that have been put forward by IMO Member States.

Delegated and Implementing Powers and Final Provisions

ICS notes that Articles 22, 23 and 24 grant the Commission a large degree of discretion with respect to how this draft Regulation will be implemented in practice, including the extent, if at all, to which the draft Regulation may be subsequently aligned with the agreement on monitoring and reporting and additional energy efficiency measures that is expected to be reached at IMO. This transfer of power may require careful consideration.

TECHNICAL CONSIDERATIONS

Notwithstanding ICS’s belief that it is premature to commence detailed consideration of the proposal, ICS has the following preliminary remarks about some of the practical details in the draft EU Regulation which are a cause for serious concern.

It is stressed that the national shipowners’ associations that belong to ICS are still developing their detailed views in anticipation of the debate which will take place in the IMO MEPC during 2014, including detailed proposals which ICS expects to be made by IMO Member States but which have not yet been published.

These proposals from IMO Member States are expected to include the product of informal consultations amongst interested IMO Member States, in which EU Member States have been participating, and which the European Commission has been chairing.

The following comments are therefore tentative and are made without prejudice to the position that ICS may take in the discussions at IMO. They nevertheless reflect the considered views currently held by the majority of the international shipping industry as represented by ICS following detailed consultation with its members.

Articles 9 and 10 [Type of data to be collected and reported]

The draft Regulation proposes the recording and reporting of a number of parameters in addition to fuel consumption. Items to be reported include, as a minimum:

- i. Port of departure and arrival;
- ii. Amounts and types of fuels used;

- iii. CO₂ emitted;
- iv. Distance travelled;
- v. Time spent at sea;
- vi. Cargo carried;
- vii. Transport work.

ICS believes that it is premature for EU Member States to reach agreement on these parameters until the debate at IMO is more advanced, and there is clarity as to the purpose for collecting such information, especially if it is not relevant to the conduct of the update of the IMO Green House Gas Study.

The majority of ICS member national associations still have serious reservations with respect to reporting such detailed parameters, especially references to “*cargo carried*” and the problems of meaningfully defining “*transport work*”, given that these do not seem to be relevant to measuring fuel consumption or CO₂ emissions.

The current ICS position, in the context of the IMO discussions, is that any mandatory system adopted should be simple to administer and be based, primarily, on measuring fuel consumption using bunker delivery notes.

The function of maritime transport is to be available to carry world trade in response to demand for the movement of a large number of very different cargo types, demand for which is cyclical and highly volatile, and subject to international trade flows, which are similarly volatile and unpredictable. While ship operators have a commercial interest in maximising utilization rates, they have no control over imbalances in trade flows between different regions or factors such as port congestion.

The majority of ICS members believe that “*cargo carried*” and “*transport work*” should be deleted from the draft Regulation. In the event that IMO decides to include these parameters or something similar in a global regime they could still be included (using the procedure set out in Article 22) in order to align the EU Regulation with the IMO requirements.

ICS believes that many of these reservations will be shared by many non-EU governments (at least until there has been a chance to discuss these complicated issues at IMO) with the attendant danger that premature EU agreement of these parameters may prejudice an international agreement at IMO.

ICS also notes with concern that the data set required may be increased to include any other “*climate relevant information*” at any time by the European Commission, on a seemingly *ad hoc* basis, under the ‘delegated act’ provision included towards the end of Section 2 of the explanatory memorandum.

Article 11 [Calculation of operational “energy efficiency”]

The draft Regulation also requires energy efficiency to be calculated and reported using at least the following four indicators:

- i. Annual fuel consumption / total distance travelled;
- ii. Annual fuel consumption / total transport work;
- iii. CO₂ / total distance travelled;
- iv. CO₂ / total transport work.

The majority of ICS members have significant concerns about the concept of ‘transport work’ being used meaningfully as a measurement of operational efficiency, especially if the stated aim is ‘ship targeting’ and the future imposition of penalties on seemingly ‘less efficient’ ships. However, the appropriate forum for developing an acceptable definition of transport work, and the use that might be made of such a calculation, is IMO.

Articles 11 and 21 [Indexing of existing ships]

In addition to various ratios noted above, Article 11 of the draft Regulation requires that the Energy Efficiency Design Index (EEDI) is to be reported or (for existing ships not constructed with an EEDI) that an **Estimated Index Value (EIV)** is to be reported.

ICS also notes that the information to be published in accordance with Article 21 includes the **Estimated Index Value (EIV)** where appropriate, i.e. for existing ships.

It is important to understand that IMO decided that it is **not** appropriate to assign the EIV to existing individual ships. The EIV is a purely theoretical value developed to assist the development of the EEDI, which does not provide a realistic assessment of an individual ship’s fuel efficiency. IMO has agreed that it is inappropriate to use such tools for comparing the operational efficiency of different ships. The reference to the EIV should therefore be deleted from the draft Regulation.

Article 21 also requires publication *inter alia* of “*annual average fuel consumption and GHG emissions per distance travelled and cargo carried on voyages within the scope of this Regulation*” which appears to be a clear reference to mandatory operational efficiency indexing.

ICS strongly believes it is most inappropriate for the EU to establish an operational index for existing ships on a mandatory basis since this can only provide a subjective indication of ship’s actual fuel efficiency and it cannot provide the same degree of objective certainty as a design index (tested in sea trials) carried by a new ship. Moreover, it is also unclear what the purpose of such an index would be.

ICS also notes that this concept was specifically rejected during earlier discussions at IMO. While IMO has developed the Ship Energy Efficiency Operational Indicator

(EEOI), this was adopted as an *indicator* only for use by shipping companies to assess the performance of individual ships in combination with the use of Ship Efficiency Management Plans (SEEMP) mandated by MARPOL. Using this indicator to make a comparison between ships was considered by IMO to be flawed. As with the EIV, IMO agreed that it was not appropriate to use such mandatory tools for comparing the operational efficiency of different ships.

In practical terms, there are serious doubts as to how a meaningful operational index can be developed for application to individual ships. Shipowners are well aware of the fuel used by their ships and also know that two identical sister ships operating on exactly the same route will still have very different levels of fuel consumption because of the unpredictable nature of sea and weather conditions.

Notwithstanding ICS reservations about applying a mandatory operational index, ICS repeats that in discussions at IMO amongst interested Member States, there is a body of opinion that supports a ‘three phase’ approach to monitoring and reporting of emissions and additional energy efficiency measures, whereby any decision to move towards indexing measures would follow the initial collection and analysis of the information derived from mandatory reporting, followed by trials.

ICS therefore respectfully proposes that those parts of the draft Regulation referring to indexing are deleted. In the event that IMO decides to mandate such indexing, this requirement could be inserted (using the procedure set out in Article 22) in order to align the EU Regulation with the IMO regime.

Article 15 [Verification procedures]

The proposed legislation includes provision of comprehensive verification requirements and procedures to be performed by Recognized Organizations (ROs), which will commonly be classification societies.

ICS has serious questions about ROs having any additional role in the verification of fuel consumption or CO₂ emissions data submitted by ships. In the context of any IMO regulation, ICS firmly believes that such data should only be submitted to the flag State. It should be noted, furthermore, that Bunker Delivery Notes are already subject to Port State Control under the MARPOL Convention.

The draft EU Regulation states that ROs will have a role *“comparing reported emissions with estimated data based on ship tracking data and characteristics such as the installed engine power. Where significant variations are found the verifier shall carry out further analysis”*. This goes significantly beyond what has so far been suggested in discussions at IMO and suggests a major degree of additional administrative complication (and cost), instead of what needs to be a simple system. This requirement also raises significant questions as to how such data might be used.

It is suggested that in the absence of international agreement of similar provisions by IMO, these requirements are likely to generate major concerns amongst the EU's trading partners and should therefore be deleted.

ICS also notes that rather than offering specific details of a verification method, Articles 23 and 25 provide for a 'delegated act' empowering the Commission to develop these important details by itself, apparently without consultation.

Article 21 [Publication of data]

ICS notes the large amount of detailed information that the Commission is proposing to publish openly on individual ships which does not appear to be related to assessing the overall level of CO₂ emissions from international shipping but which allows comparisons to be made between individual ships that may be directly linked to commercial issues. Most ICS members are concerned that this could potentially interfere with commercial confidentiality, and unfairly expose shipping companies to commercial decisions based on data that is not directly relevant to the operational performance of their ships.

ICS suggests that great caution is required with respect to the publication of data until agreement has been reached at IMO with respect to the type of data that should be collected on a global basis, and it has been fully determined what purpose this information will be used for.

The draft Regulation facilitates the placing into the public domain of detailed information on each individual ship, including:

- i. Name and address of ship owner;
- ii. EEDI or EIV;
- iii. Annual CO₂ emissions;
- iv. Annual total fuel consumption;
- v. Annualised ratios of fuel consumption and CO₂ emissions with respect to distance travelled and cargo carried.

In view of concerns expressed above about the problems associated with indexing, the relevance of factors such as cargo carried, and concerns about commercially sensitive information, most ICS members have serious concerns about the publication of data with respect to individual ships, as opposed to collated data about the performance of the international maritime transport system as a whole.

Annex 1 B [Methods for determining emissions]

The penultimate paragraph of the explanatory memorandum indicates that individual ship monitoring plans, reporting documents, verification of emissions etc. shall be implemented by means of electronic templates to be provided by the Commission. It is of the utmost importance that these EU templates are consistent with what may be agreed at IMO.

The draft Regulation requires that a ship must adopt one of the four options for monitoring *“as set out in Annex 1”*.

While the choice of method is optional, ICS believes that in the interests of enforcement by Port State Control, that the use of bunker delivery notes should always be a permitted method. However, in the interests of global uniformity the approach adopted by the EU should be consistent with that agreed by IMO.

It is hoped that these preliminary comments are helpful.

Notwithstanding the detailed comments above, ICS repeats the hope that decisions are not taken with regard to the content of the draft EU Regulation that might prejudice the successful conclusion of a global agreement at IMO on these important issues. It is respectfully suggested that detailed consideration of this draft unilateral EU Regulation should be deferred until the current debate at IMO is more advanced.

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