

# FuelEU – Bunker up for greener shipping!

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## 1. Introduction

By ratifying the Paris Agreement, the European Union (“EU”) and its member states committed to becoming climate neutral by 2050.<sup>1</sup> The EU’s ‘Fit for 55’ agenda, which aims to reduce greenhouse gas (“GHG”) emissions by at least 55% by 2030 (compared to 1990 levels), is a step towards climate neutrality.<sup>2</sup>

While transport by sea is comparatively energy-efficient, its total impact on the EU’s GHG emissions is still significant. In 2022, maritime transport accounted for approximately 3-4% of all EU CO<sub>2</sub> emissions.<sup>3</sup> It is therefore not surprising that the sector was included in the ‘Fit for 55’ strategy.<sup>4</sup>

With effect from 1 January 2024, emissions from maritime transport were included in the EU Emissions Trading System (“ETS”).<sup>5</sup> On 1 January 2025,

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1) Paris Agreement to the United Nations Framework Convention on Climate Change (adopted 12 December 2015, entered into force 4 November 2016) 3156 UNTS 3 (the “Paris Agreement”), and European Commission, ‘The European Green Deal’ (Communication) COM (2019) 640 final, 11 December 2019. The Paris Agreement commitment was reinforced in 2021 with the adoption of the Glasgow Climate Pact, in which it was recognized that impacts of climate change would be lower at a temperature increase of 1.5 °C and resolved to pursue efforts to limit temperature increases to 1.5 °C.

2) On 11 December 2020, the European Council endorsed this climate target and submitted it to the United Nations Framework Convention on Climate Change as an updated and enhanced nationally determined contribution (NDC) on 18 December 2020, cf. European Union, ‘NDC Submission’ (December 2020), [https://unfccc.int/sites/default/files/NDC/2022-06/EU\\_NDC\\_Submission\\_December%202020.pdf](https://unfccc.int/sites/default/files/NDC/2022-06/EU_NDC_Submission_December%202020.pdf) [accessed 28 March 2025].

3) Publications Office of the European Union (European Maritime Transport Environmental Report 2025) ISBN 978-92-9480-697-0, ISSN 1977-8449, DOI:10.2800/3162144 (hereafter, “EMTER 2025”), page 125.

4) COM(2021) 550 final. ‘Fit for 55’: delivering the EU’s 2030 Climate Target on the way to climate neutrality.

5) Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the

the FuelEU Maritime Regulation (“FuelEU”) came into effect.<sup>6</sup> The ETS and FuelEU are both integrated with the data verification regime set up under the MRV regulation (“MRV”), pursuant to which shipping companies are obligated to monitor and report their GHG emissions and other relevant information.<sup>7</sup>

FuelEU is targeted at promoting a shift towards renewable and low-carbon fuels in the short and medium term, which will contribute to the EU’s decarbonisation goals.<sup>8</sup> FuelEU imposes a maximum limit on the annual average GHG intensity for fuels used onboard vessels calling at European ports, regardless of their flag state.<sup>9</sup> The maximum limit will decrease every five years to ensure a gradual increase in GHG intensity reduction, culminating in 2050, where an 80% reduction of GHG intensity will be required.<sup>10</sup> Furthermore, FuelEU introduces obligations relating to the use of on-shore power for certain vessel types.<sup>11</sup>

Union and amending Council Directive 96/61/EC [2003] OJ L 275 25.11.2003, page 32-46, as subsequently amended. From 2024, the ETS applies to CO<sub>2</sub> emissions from maritime transport. With effect from 2026, the ETS will furthermore cover N<sub>2</sub>O and CH<sub>4</sub> emissions, cf. ETS, Annex I.

6) Regulation (EU) 2023/1805 of the European Parliament and of the Council of 13 September 2023 on the use of renewable and low-carbon fuels in maritime transport, and amending Directive 2009/16/EC [2023] OJ L 234, 22.9.2023, p. 48–100. Certain provisions under FuelEU relating to the production and submission of a monitoring report applied from 31 August 2024, cf. FuelEU, Art. 32.

7) Regulation (EU) 2015/757 of the European Parliament and of the Council of 29 April 2015 on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport, and amending Directive 2009/16/EC, [2015] OJ L 123, 19.5.2015, p. 55–76, as amended.

8) FuelEU, recital 21-24.

9) Certain types of vessels are excluded from the scope of FuelEU, cf. Art. 2(2) and 2(7). Vessels of less than 5,000 GT (gross tonnes), and, regardless of size, warships, naval auxiliaries, fish-catching or fish-processing ships, wooden ships of a primitive build, ships not propelled by mechanical means or vessels owned or operated by a government and used only for a non-commercial purpose are excluded. Furthermore, similarly to the ETS, FuelEU will not apply to offshore vessels and dredging vessels as these are deemed not to be used predominantly for ‘transport’ purposes. Similarly to the ETS, the requirements in FuelEU apply in respect of all energy used by a vessel while in a port under the jurisdiction of an EU member state (an “EU Port”), all energy used on voyages between two EU Ports and half of the energy used by a vessel on a voyage between an EU Port and a third country port or an EU Port located in an outermost region, cf. FuelEU, Art. 2(1).

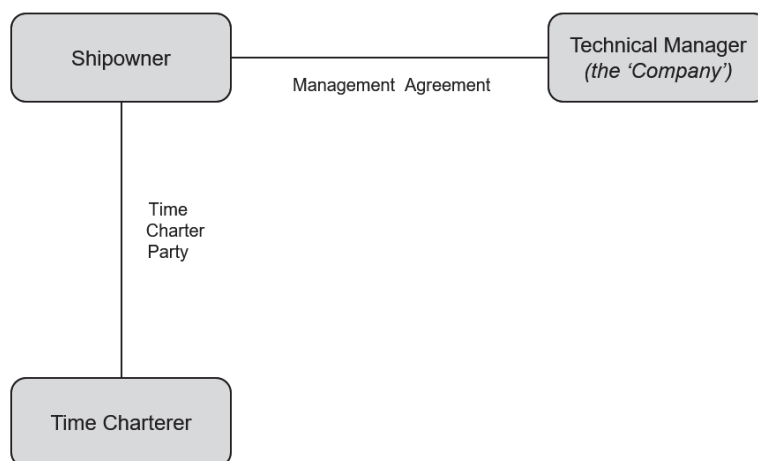
10) FuelEU, Art. 4 and recital 23.

11) FuelEU, Art. 6. Requirements relating to the use of on-shore power will not be further

The entity responsible for a vessel's compliance with FuelEU is the 'Company' meaning the shipowner or any other organisation or person, such as a technical manager or a bareboat charterer, which has assumed the responsibility of the operation of the vessel from the shipowner and which has agreed to take over all the duties and responsibilities imposed by the ISM Code.<sup>12</sup>

However, the Company is in practice often not the entity responsible for purchasing fuels for the vessel or taking operational decisions for the vessel. This creates a separation between the entity which is responsible for compliance with FuelEU and the entity which is responsible for the commercial decisions affecting compliance with FuelEU.

This separation can be illustrated with the following hypothetical set-up:



In the hypothetical set-up, the Technical Manager is the 'Company' under the ISM Code and therefore also the responsible entity under FuelEU. Meanwhile, the Time Charterer is, pursuant to the terms of the time charter party, in all likelihood responsible for (i) fuel procurement and (ii) voyage instructions.

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discussed in this article. In addition to the GHG intensity reduction requirements and the obligation to use on-shore power for certain vessels, FuelEU may from 2034 be extended to impose a minimum limit on the use of RFNBOs, cf. FuelEU, Art. 5.

12) International Maritime Organization, International Management Code for the Safe Operation of Ships and for Pollution Prevention (International Safety Management (ISM) Code), Resolution A.741(18), adopted 4 November 1993, entered into force 1 July 1998 and subsequently amended (hereafter, "ISM Code").

Hence, there is no overlap of entities nor any direct contractual relationship between these two entities.

FuelEU itself recognises the missing link between these entities:

*“While the company should remain responsible for fulfilling monitoring and reporting obligations under this Regulation, as well as for paying the FuelEU penalties, in line with the ‘polluter pays’ principle and in order to promote the uptake of cleaner fuels, the entity responsible for purchasing the fuel or for taking operational decisions that affect the GHG intensity of the energy used by the ship could, through contractual agreements with the company, in the event of compliance deficit, be put under the obligation to reimburse or otherwise compensate the company with respect to the cost of the FuelEU penalties resulting from the operation of the ship.”<sup>13</sup>*

Thus, there is a clear need for contractual arrangements to establish a framework for handling the vessel’s compliance with FuelEU.

The purpose of this article is to identify and highlight certain relevant considerations arising as a result of FuelEU in connection with two particular contractual arrangements:

- A Management Agreement (between the Technical Manager and the Shipowner)
- A Time Charter Party (between the Shipowner and a Time Charterer)

FuelEU will also have an impact on other contracts within the maritime transport sector, including but not limited to fuel supply contracts, contracts for the sale and purchase of vessels, bareboat charter parties and voyage charter parties and will lead to the introduction of new agreements, such as the agreement for verification of vessels’ compliance with FuelEU and agreements for the sale and purchase of the right to pool with a vessel with a compliance surplus. Consideration of these contracts is beyond the scope of this article.

To provide the relevant context, section 2 includes a brief description of the framework and rationale behind FuelEU and section 3 contains a high-level explanation of material obligations and options under FuelEU.

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13) FuelEU, recital 63.

## 2. Emissions from Transportation within the EU

Shipping accounted for approximately 3-4% of all CO<sub>2</sub> emissions in the EU in 2022 and accounted for 14.2 % of CO<sub>2</sub> emissions from the EU transport sector.<sup>14</sup> CO<sub>2</sub> emissions from maritime transport have risen annually from 2015 (when the Paris Agreement was signed) to 2022, with the exception of a temporary decline in 2020 due to the COVID-19 pandemic.<sup>15</sup> In 2022, CO<sub>2</sub> emissions from monitored voyages totalled 137.5 million tonnes, marking an 8.5% increase from 2021, with five types of vessels accounting for 80% of these emissions.<sup>16</sup> This increase in total emissions has occurred despite improvements in technical and operational energy efficiency, which have led to decreased emissions per unit of transport work.<sup>17</sup>

Emissions of nitrogen oxides (NO<sub>x</sub>), including nitrous oxide (N<sub>2</sub>O), have seen a significant increase in the shipping sector. Between 2015 and 2023, NO<sub>x</sub> emissions from all forms of transport rose by approximately 10% across the EU, and by 2022, the sector accounted for 39% of all NO<sub>x</sub> emissions from transport in the EU.<sup>18</sup> Concurrently, methane (CH<sub>4</sub>) emissions have increased, particularly due to a significant growth in the number of vessels using LNG (Liquefied Natural Gas, mostly comprised of methane) for propulsion. Data indicates that in 2022, maritime transport contributed 26% of the total methane emissions from the EU transport sector.<sup>19</sup> While LNG is promoted as a cleaner alternative fuel due to its lower CO<sub>2</sub> emissions, the use of LNG as fuel for propulsion can lead to methane slips (i.e. methane escaping into the atmosphere), undermining greenhouse gas reduction efforts.<sup>20</sup> FuelEU therefore

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14) EMTER 2025, page 125.

15) Ibid., page 10.

16) Ibid., page 10. These five vessel types are container vessels, oil tankers, bulk carriers, chemical tankers and general cargo vessels.

17) For example, specific emissions (emissions per tonne-mile) have declined for cargo vessels by 21%, containerships by 18%, and tankers by 14% between 2015 and 2023, EMTER 2025, pages 32 and 47.

18) EMTER 2025, page 45.

19) Ibid., page 11.

20) Ibid., page 130. Methane has a CO<sub>2</sub> equivalent of 25, i.e. emission of 1 tonne of methane is equivalent to emission of 25 tonnes of carbon dioxide.

applies to CO<sub>2</sub> emissions, CH<sub>4</sub> emissions, and N<sub>2</sub>O emissions.<sup>21</sup>

GHG emissions from maritime transport are – on an international basis – mainly regulated through (i) the United Nations and (ii) the EU. Insight into the United Nations regulation in this area is relevant to clarify the gaps and overlaps with the EU decarbonisation initiatives.

The central global initiative to address climate change is anchored in the United Nations Framework Convention on Climate Change (“UNFCCC”).<sup>22</sup> The UNFCCC provides the foundational structure for international climate negotiations and legally binding agreements. In 1997, the signatories of the UNFCCC established the Kyoto Protocol,<sup>23</sup> and in 2015, the Paris Agreement, which was signed by 196 parties, including the EU and all its member states.<sup>24</sup>

The main international convention seeking to minimise pollution from ships – including airborne emissions from ships – and to reduce the carbon intensity of global shipping is the International Convention for the Prevention of Pollution from Ships (“MARPOL”).<sup>25</sup> MARPOL was expanded with the addition of Annex VI in 1997, which establishes limits on air pollutants emitted from ship exhausts, and which specifically targets sulphur oxides (SO<sub>x</sub>), particulate matter, and nitrogen oxides (NO<sub>x</sub>). Annex VI has been amended several times since its adoption.

The International Maritime Organization (“IMO”) has implemented a phased strategy to reduce GHG emissions, encompassing short-term, mid-term, and long-term measures.<sup>26</sup> The short-term measures, which are set to be reviewed by 1 January 2026, include initiatives such as the Energy Efficiency Existing Ship Index (EEXI) and the Carbon Intensity Indicator (CII).

The overlap between ETS, FuelEU, and international regulations and ini-

21) FuelEU, recital 34, Art. 3(1).

22) United Nations Framework Convention on Climate Change, adopted 9 May 1992, 1771 UNTS 107, entered into force 21 March 1994.

23) Kyoto Protocol to the United Nations Framework Convention on Climate Change, adopted 11 December 1997, 37 ILM 22 (1998), entered into force 16 February 2005.

24) Paris Agreement, Art. 2(1)(a).

25) The International Convention for the Prevention of Pollution from Ships, adopted 2 November 1973, 1340 UNTS 61 and subsequently amended and extended several times.

26) The 2023 IMO Strategy on the Reduction of GHG Emissions from Ships, Annex 15 to IMO Resolution MEPC.377(80), adopted on 7 July 2023 (the “2023 IMO Strategy”).

tatives is limited. However, the IMO has announced that it is aiming to approve mid-term measures during 2025 which are similar to the EU initiatives. Specifically, the proposed mid-term strategies include goal-based marine fuel standards regulating a phased reduction of marine fuels' GHG intensity (similar to FuelEU) and GHG emissions pricing mechanisms (similar to the ETS).<sup>27</sup>

If these IMO mid-term measures are approved and widely ratified by countries involved in the shipping industry, an overlap may potentially arise between the EU measures and international measures. The EU has addressed this potential overlap by explicitly stating in FuelEU that in the event of the adoption of an IMO global GHG fuel standard or global GHG intensity limits, the Commission must produce a report and, if deemed appropriate, a legislative proposal relating to the alignment of FuelEU with the international regulation while aiming to preserve the environmental integrity and effectiveness of the EU climate strategy.<sup>28</sup>

### 3. FuelEU – What are the requirements and who needs to comply?

It is important to understand certain key obligations under FuelEU; particularly with respect to (i) who is responsible and what the aim of FuelEU is, (ii) what constitutes 'compliance' and how a vessel complies with FuelEU, and (iii) what the consequences of non-compliance are.

#### 3.1 Who is responsible and what is the aim of FuelEU?

As noted in section 1, the responsible entity under FuelEU is the Company (the shipowner or such other person who has assumed responsibility for the operation of the vessel from the shipowner.) There is no option under FuelEU to 'transfer' the designation as the responsible entity to another party.<sup>29</sup>

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27) 2023 IMO Strategy, paragraph 4.5-4.9.

28) FuelEU, Art. 30(5).

29) This is a difference from ETS, where the responsible entity is the shipowner (registered owner), but where the Commission have allowed the registered owner access to mandate the Company (per the ISM Code) to accept and assume the ETS responsibility, cf. Art. 1 of Commission Implementing Regulation (EU) 2023/2599 of 22 November 2023 laying down rules for the application of Directive 2003/87/EC of the European

Where there is a change of Company during a reporting period, for example where a vessel changes ownership or where a Shipowner replaces the Technical Manager, it will be the Company as at 31 December of a reporting period that has the obligations under FuelEU in respect of the reporting period in question.

Under FuelEU, Companies are required to ensure that the annual average GHG intensity of the fuels used onboard their vessels (measured in grams of CO<sub>2</sub> equivalent relative to the energy used (in megajoules), i.e. 'gCO<sub>2eq</sub>/MJ') does not exceed specified limits during a reporting period (which is a calendar year).<sup>30</sup> The GHG intensity limit will decrease every five years by a percentage reduction from the 'baseline' value of 91.16 gCO<sub>2eq</sub>/MJ, which was the fleet average GHG intensity of the fuel used onboard vessels in 2020 (based on the data collected under MRV).

A vessel will have a negative compliance balance (i.e. a 'compliance deficit') where the vessel has a GHG intensity exceeding the applicable GHG intensity limit under FuelEU (for the relevant reporting period) and a positive compliance balance (i.e. a 'compliance surplus') where the vessel has a GHG intensity below the applicable GHG intensity limit under FuelEU.<sup>31</sup>

Companies are subject to monitoring and reporting obligations before and during a reporting period.<sup>32</sup> A Company must submit a 'monitoring plan' to their verifier detailing how they will monitor and report a vessel's energy use and emissions. They must then actually monitor and report in line with that plan, which is used as the basis for calculating a vessel's compliance balance.<sup>33</sup> In the calendar year following a reporting period (referred to as the 'verification period'), the data monitored and reported by a Company is verified by an

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Parliament and of the Council as regards the administration of shipping companies by administering authorities in respect of a shipping company, [2023] OJ L, 2023/2599, 23.11.2023.

30) FuelEU, Art. 4(1). Furthermore, an obligation will be imposed on certain vessels (container vessels and passenger vessels) on the use of on-shore power from 2030. Depending on the percentage of RFNBO used in 2031, a target on the use of such fuels may be imposed from 2034.

31) FuelEU, Art. 3(35)-(37). The compliance balance is calculated in accordance with specified formulas set out in Annex IV to FuelEU.

32) FuelEU, Art. 4(3), Annex I.

33) FuelEU, Art. 8.

independent verifier and included in the FuelEU Database.<sup>34</sup> During the verification period, the Company's verifier will calculate the vessel's average annual GHG intensity for the reporting period in question and the vessel's compliance balance.<sup>35</sup>

### **3.2 What is 'compliance', and how does a vessel comply with FuelEU?**

Following a reporting period, the Company will submit all relevant and required information to the verifier, who will by 31 March of the verification period inform the Company of the vessel's compliance balance.<sup>36</sup>

As described in section 3.1 above, a vessel can have a compliance surplus or a compliance deficit for each reporting period, depending on whether the vessel has complied with the applicable GHG intensity limit.<sup>37</sup>

An important point to note is that a vessel is not *non-compliant* under FuelEU just because it has a compliance deficit for a reporting period. There are several ways for a Company to comply with FuelEU and effectively address a compliance deficit, including pooling with other vessels, borrowing compliance from subsequent reporting periods, or paying a 'FuelEU penalty', all as further detailed below. It should be noted that – based on the wording of the relevant articles in FuelEU – the methods of compliance may be combined in certain circumstances.<sup>38</sup>

A vessel will only be *non-compliant* under FuelEU where a Company has *not* effectively addressed a compliance deficit by 30 June following each reporting period. Provided that the vessel (i) does not have a compliance deficit, or (ii) the applicable FuelEU penalty has been paid, the verifier will issue a 'Document of

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34) FuelEU, Art. 15, 16 and 17.

35) FuelEU, Art. 16.

36) FuelEU, Art. 15 and 16.

37) Theoretically, a vessel could also achieve 'exactly' the limit required under FuelEU and thereby be 'compliance neutral', but this is treated similarly to a compliance surplus.

38) It may for example be possible for a company with a compliance deficit to reduce (but not eliminate) the compliance deficit through pooling and to pay the FuelEU penalty for the remaining compliance deficit. This appears to be the presumption of FuelEU, Art. 23(1), according to which the compliance balance used for the calculation of liability of payment of FuelEU penalty take into account pooling and borrowing decisions. However, as at the date of this article, there has been no formal guidance or confirmation hereof from the Commission.

Compliance' for the vessel for that reporting period.<sup>39</sup>

The consequences of *non-compliance* and not obtaining the required FuelEU Document of Compliance are detailed further in section 3.3 below.

### 3.2.1 Compliance through the use of alternative fuels

Companies may choose to use renewable and low-carbon fuels for the purpose of achieving a compliance surplus (having an annual average GHG intensity which is *lower* than the requirement under FuelEU).

Where a Company intends to create a compliance surplus through the use of renewable and low-carbon fuels, it is essential that the fuels used comply with GHG saving and sustainability requirements under the Renewable Energy Directive (“RED”).<sup>40</sup> Fuels which do not meet these criteria are assigned the same emissions factors as the least favourable fossil-based equivalent, which means that proper certification of renewable and low-carbon fuels is key to a Company being able to comply with FuelEU through fuel usage.<sup>41</sup>

Under FuelEU, the GHG intensity of a fuel is assessed on a ‘well-to-wake’ basis, which means that the entire lifecycle of the fuel is taken into account.<sup>42</sup> However, although FuelEU utilises the ‘well-to-wake’ assessment of GHG intensity, the calculation of a fuel’s emission values is based on two separate

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39) FuelEU, Art. 22.

40) Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources [2018] OJ L 328, 21.12.2018, p. 82–209, as subsequently amended (hereafter “RED”). Bio-based fuels, RFNBOs and RCFs must comply with certain GHG savings criteria and bio-based fuels must comply with certain sustainability requirements, cf. RED, Art. 29. In certain circumstances, FuelEU includes requirements which are in addition to the requirements set out in RED; for example, certain bio-based fuels based on food and feed crops are not acceptable for the purpose of obtaining benefits under FuelEU.

41) FuelEU, Art. 10.

42) FuelEU, recital 31-32 and Annex I. This is different from ETS which applies a tank-to-wake principle for GHG emissions (ETS, Art. 3gd and 3ge which refers to MRV, in which calculation of GHG emissions are detailed in Annex I). An effect of taking into account the ‘well-to-tank’ stage of a fuel’s lifecycle is that all stages of the fuel production pathway becomes important to the final emissions factors of the fuel, which promotes developers and other actors in fuel procurement to consider both the effect of the origin and source of the fuel but also the impact on transport between place of production and place of use.

calculations: ‘well-to-tank’ emission values and ‘tank-to-wake’ emission values. Where a vessel uses bio-based fuels, renewable fuels of non-biological origin (“RFNBOs”) and/or recycled carbon fuels (“RCFs”), Companies may, under certain conditions, use the actual emissions values – as certified under a recognised scheme in accordance with RED – for the fuel’s ‘well-to-tank’ emissions. This would be beneficial where those values are lower than the default values set out in RED and FuelEU.<sup>43</sup> ‘Tank-to-wake’ emissions must be included using default values or actual values certified by means of laboratory testing or direct emissions measurement.<sup>44</sup>

In the initial years of FuelEU, due to the limited reduction required from the 2020 base level GHG intensity of 91.16 gCO<sub>2eq</sub>/MJ, the use of certain fossil fuel types over others (for example, use of LNG instead of MGO (Marine Gas Oil)) will be sufficient to achieve compliance surpluses. However, in subsequent years, the use of renewable and low-carbon fuels, for example LBG (Liquefied Bio Gas), will be required in order for a vessel to obtain a compliance surplus.

Where a vessel has obtained a compliance surplus in a reporting period, this surplus can be utilised in a number of ways. One option is ‘banking’ the surplus (i.e. rolling it over into the next reporting period, thereby reducing the reduction requirements for that subsequent reporting period).<sup>45</sup> Another option is to pool the ‘over-compliant’ vessel with ‘under-compliant’ vessels, thereby using a compliance surplus on one vessel to offset compliance deficits on other vessels.<sup>46</sup> The ability to pool a vessel with a compliance surplus creates the possibility of an additional revenue stream, which should be taken into account by

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43) This can, for example, be the case where the ‘well-to-tank’ emission factor of a fuel takes into account captured or avoided emissions.

44) FuelEU, Art. 10. Under the ETS (ref. MRV, Annex II, Part C, Point 1.2), ‘tank-to-wake’ CO<sub>2</sub> emissions from biofuels, RFNBOs and RCFs may be zero-rated under certain conditions. The concept of zero-rating does not apply under FuelEU. An additional difference between ETS and FuelEU on ‘tank-to-wake’ emissions is that ETS takes into account carbon capture measures on the vessel (ref. MRV, Annex II, Part C, Point 1.3), while FuelEU does not currently allow for the reduction of ‘tank-to-wake’ emissions with reference to carbon capture, although FuelEU may in the future be amended to take such into account (ref. FuelEU, recital 33).

45) FuelEU, Art. 20(1).

46) FuelEU, Art. 21.

Companies when assessing the cost of using renewable and low-carbon fuels. The pooling mechanism is further detailed immediately below.

### 3.2.2 Compliance through pooling

Under FuelEU, two or more vessels can be ‘pooled’, meaning that the vessels’ compliance balances are aggregated and distributed among the pooled vessels in accordance with the parties’ agreement.<sup>47</sup> A Company can pool its own fleet of vessels, but it is also possible to pool vessels with third parties. However, a vessel cannot be included in more than one pool within the same reporting period.<sup>48</sup> The pool is valid only if the total pooled compliance is positive and individual vessels do not end up with a higher compliance deficit after pooling.

Pooling provides a flexible mechanism for Companies to achieve compliance. Furthermore, as per section 3.2.1 above, Companies whose vessels have a compliance surplus can monetise this by requiring Companies whose vessels have compliance deficits to pay to access the pool.

### 3.2.3 Compliance through borrowing advance compliance

Where a vessel has obtained a compliance deficit for a reporting period, the Company may address the deficit by ‘borrowing’ compliance from the subsequent reporting period.

The advance compliance surplus is added to the vessel’s compliance balance in the current reporting period, and the borrowed amount, multiplied by 1.1, is subtracted from the vessel’s compliance balance in the following reporting period.<sup>49</sup>

This mechanism provides flexibility for Companies transitioning to more sustainable practices by offering temporary relief while encouraging long-term compliance. However, advance compliance surplus cannot exceed 2% of the vessel’s energy consumption and a Company cannot borrow for two consecutive reporting periods.

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47) FuelEU, Art. 21.

48) FuelEU, Art. 21(1). However, two separate pools may be used for GHG intensity targets and the RFNBO sub-target, if imposed.

49) FuelEU, Art. 20(2).

### 3.2.4 Compliance through payment of a FuelEU penalty

Where a vessel has for a reporting period obtained a compliance deficit and this compliance deficit has not been (fully) remediated through pooling or borrowing of compliance, the Company will become liable to pay a 'FuelEU penalty'.<sup>50</sup> The FuelEU penalty is not a fixed amount but rather a variable amount calculated by reference to the vessel's compliance deficit; the bigger the deficit, the bigger the FuelEU penalty. This means that as reduction targets will increase in the future, the potential FuelEU penalty liability will increase correspondingly.

While payment of a 'penalty' may, on its face, sound like a consequence of non-compliance, this is not the case under FuelEU. Payment of the FuelEU penalty is merely a different path to compliance.

Payment of the FuelEU penalty is however not intended to be an 'easy' way out, but rather to have a "*dissuasive effect*" and "*remove any economic advantage of non-compliance, thus preserving a level playing field in the sector*".<sup>51</sup> If a Company decides to comply via paying the FuelEU penalty for two or more consecutive reporting periods, the penalty will be multiplied by 1+0.1 for each consecutive reporting period in which the vessel has a compliance deficit.<sup>52</sup>

Payment of the FuelEU penalty must be made no later than 30 June of the applicable verification period.

### **3.3 What are the consequences of non-compliance?**

Where a Company has not effectively addressed a compliance deficit through pooling or borrowing and has not paid the FuelEU penalty by 30 June of a verification period, the Company will not be entitled to receive a FuelEU Document of Compliance.

Under FuelEU, it is a requirement for all vessels calling, arriving at, staying in or departing from an EU Port to hold a FuelEU Document of Compliance by 30 June of the applicable verification period.<sup>53</sup>

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50) FuelEU, Art. 23.

51) FuelEU, recital 60.

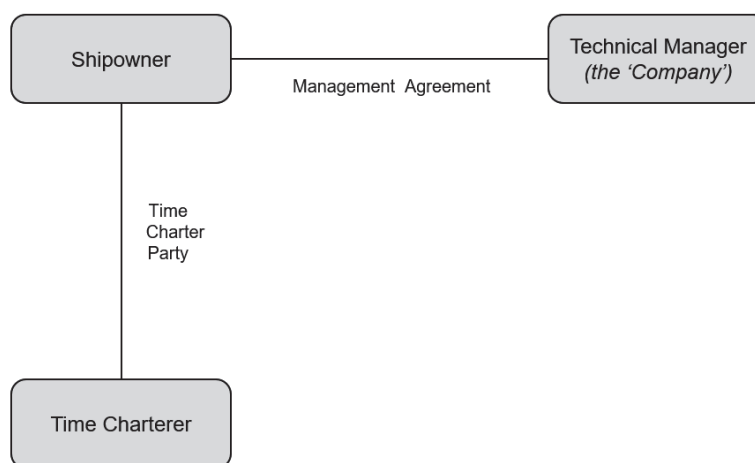
52) More specifically, the amount is multiplied by  $1+(n-1)/10$  where  $n$  is the number of consecutive reporting periods where the company is subject to a FuelEU penalty for the vessel, meaning that for example, in the vessel's third consecutive year with a FuelEU penalty, the FuelEU penalty payable will be multiplied by 1.2.

53) FuelEU, Art. 24. Where a vessel has not had any voyages falling within the scope of

The EU member states must ensure that vessels calling at their ports have a valid FuelEU Document of Compliance.<sup>54</sup> If a vessel does not hold a valid FuelEU Document of Compliance for two or more consecutive reporting periods and if other enforcement measures have not been successful, a member state may issue an expulsion order. Following which all member states (with the exception of the member state, if any, whose flag the vessel is flying) must refuse the vessel entry into their jurisdiction until the Company has fulfilled its obligations under FuelEU.<sup>55</sup>

#### 4. Navigating the practical challenges arising under FuelEU

Now that we have discussed the complex obligations arising under FuelEU, we revisit our hypothetical contractual set-up. A shipowner (the “Shipowner”) owns a vessel. This vessel is time chartered to a charterer (the “Time Charterer”) on a long-term time charter. Additionally, the Shipowner has employed a technical manager (the “Technical Manager”). The Technical Manager is the Company under the ISM Code and therefore is the responsible party under FuelEU.



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FuelEU within the corresponding reporting period.

54) FuelEU, Art. 25(2). Member states must check that a vessel holds a valid FuelEU Document of Compliance in connection with port state inspections carried out in accordance with Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control [2009] OJ L 131, 28.5.2009, p. 57–100 as amended.

55) FuelEU, Art. 25(3). Where a vessel which has been non-compliant for two or more consecutive reporting periods enters the jurisdiction of its flag state (and that flag state is a member state), the flag state must order a flag detention until the company has fulfilled its obligations under FuelEU.

In a set-up where one party (the Technical Manager) is legally responsible for compliance with FuelEU, while another party (the Time Charterer) is responsible for the actions which actually determine whether the vessel achieves a FuelEU compliance surplus or compliance deficit, and yet another party (the Shipowner) has no direct ability to influence the vessel's compliance with FuelEU but is the owner of the vessel, the most important question is:

*Who pays the bill for compliance (one way or another)?*

The Technical Manager is directly liable under FuelEU to pay the FuelEU penalty, if applicable, and will therefore want a right to claim the corresponding amount from its contractual counterparty, the Shipowner. The Shipowner, having no influence on the commercial operation of the vessel, will not want to bear the cost of decisions taken by the Time Charterer and will want a right under the time charter party to receive the funds from the Time Charterer.

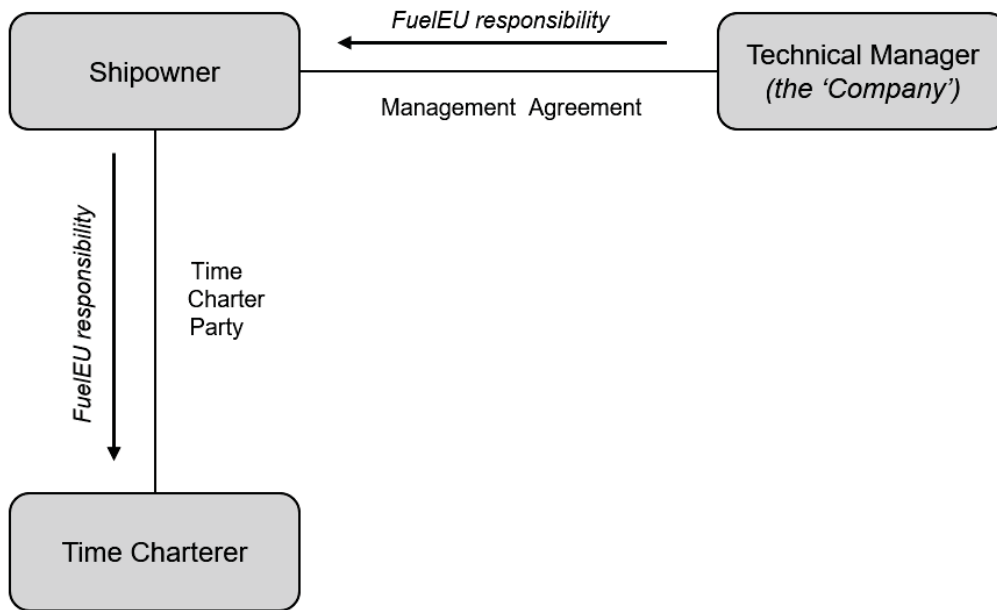
This is, however, not the only important question. The flipside is just as important, i.e.:

*Who owns the revenues generated by the vessel's compliance?*

The Time Charterer may have access to renewable and low-carbon fuels, which could lead to the vessel generating a compliance surplus. As stated in section 3.2, a compliance surplus can be utilised and potentially monetised through pooling with other vessels. Therefore, the Time Charterer will want the right to make compliance decisions regarding the vessel and to receive any resulting revenue.

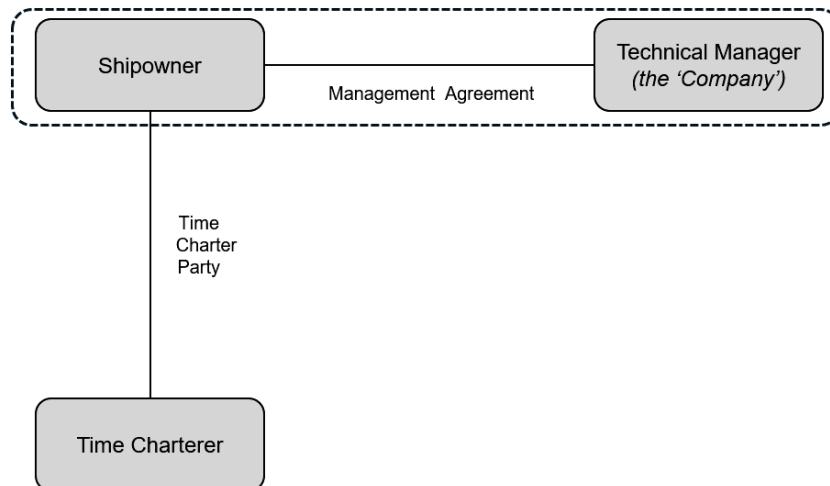
Therefore, it is apparent that there are strong drivers for the Technical Manager, Shipowner, and Time Charterer to seek to transfer rights and responsibilities relating to FuelEU compliance through their contractual arrangements.

In section 4.1 below, certain practical and contractual considerations that arise in respect of the management agreement between the Shipowner and the Technical Manager will be explored. Thereafter, in section 4.2, certain practical and contractual considerations in time charter parties will be considered.



#### 4.1 Management agreements – new contractual risks

This section focuses on the contractual relationship between the Shipowner and the Technical Manager in our hypothetical set-up.



The considerations set out herein are relevant regardless of whether or not the Shipowner has entered into a charter party. However, the more parties involved, the more agreements regarding FuelEU compliance will exist. This, in turn, creates contractual complexity, with the potential for overlaps, gaps, and mismatching rights and obligations.

The designation under FuelEU of the Company as the responsible entity entails a material change to the relationship between the Shipowner and Technical Manager. Under standard contractual terms for a management agreement, the Technical Manager acts as an agent for and on behalf of the Shipowner.<sup>56</sup> Under FuelEU, the Technical Manager is responsible in its own name, not as an agent, and does not have any right under FuelEU to demand payment from the Shipowner or a Time Charterer if the Technical Manager is required to pay a FuelEU penalty.

The Technical Manager therefore has a strong interest in including provisions in existing and new management agreements whereby the Shipowner agrees to bear all costs of compliance with FuelEU. In return, the Shipowner will want the Technical Manager to confirm that they will be (also contractually) responsible for monitoring and reporting under FuelEU and to agree that all benefits arising from FuelEU, for example in the form of a compliance surplus, will accrue to the Shipowner.

To fully govern the implications of FuelEU on a technical management agreement, special FuelEU clauses will be required, such as the BIMCO FuelEU Maritime Clause for Shipman 2024 (the “BIMCO FuelEU Shipman Clause”). However, in each case, the contractual parties will have to consider the required terms and make appropriate decisions.

A complete discussion of all material points to be addressed in a FuelEU clause for a technical management agreement exceeds the scope of this article. However, in the following, three key issues will be considered:

- The respective obligations of the Shipowner and the Technical Manager in relation to FuelEU.
- The Technical Manager’s right to indemnification from the Shipowner.
- The Technical Manager’s right to security from the Shipowner.

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56) See for example clause 3 of SHIPMAN 2024, which stipulates that “... *the Managers shall carry out the Management Services in respect of the Vessel as agents for and on behalf of Owners.*”

#### 4.1.1 The respective obligations of the Shipowner and the Technical Manager in relation to FuelEU

A material aspect of any clause intended to regulate FuelEU between a Shipowner and a Technical Manager requires a clear allocation of the rights and obligations of the parties. Such distribution has practical implications, allowing the parties to navigate the day-to-day management of the vessel on a clear basis. It also has important contractual implications, as a clear distribution of rights and obligations allows each party to comply with the contractual terms and avoid breaching the contract.

##### *Monitoring and reporting*

FuelEU imposes obligations to monitor and report data related to vessel fuel use and voyages. Under the BIMCO FuelEU Shipman Clause, the Technical Manager must “...continuously monitor and record the Vessel’s GHG Intensity and all other relevant information and data required under FuelEU Maritime...”<sup>57</sup> This makes sense, because the Technical Manager generally has access to the relevant vessel information and the obligation to monitor and report information is aligned with the Technical Manager’s other obligations under the management agreement.

However, the Technical Manager lacks access to certain fuel documentation. To achieve benefits from FuelEU, renewable and low-carbon fuels must comply with RED requirements.<sup>58</sup> The Technical Manager relies on the Shipowner for this documentation.<sup>59</sup> As long as the agreement allocates compliance responsibility to the Shipowner, the Technical Manager faces no consequences if the documentation isn’t provided. FuelEU imposes no sanctions for using uncertified renewable fuels, they are simply counted with default (higher) emission factors. Therefore, the Shipowner’s obligation to provide fuel documentation should be on a ‘reasonable efforts’ basis, but the Shipowner should in turn bear the consequences resulting from the use of default (higher) emission factors. Subclause (d) of the BIMCO

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57) BIMCO FuelEU Shipman Clause, subclause (f).

58) FuelEU, Art. 10.

59) The Shipowner must, if the Shipowner is not themselves operating the vessel and procuring fuels, for example where the vessel is on a time charter, in turn make contractual arrangements for the receipt of such documentation from the charterers.

FuelEU Shipman Clause requires the Shipowner to provide the necessary documentation under FuelEU.<sup>60</sup> Making this a strict obligation is unnecessary, as the Technical Manager suffers no loss if the Shipowner fails to provide it.

*Rights in relation to the compliance balance of the vessel*

Under FuelEU, the Company will have all rights and obligations relating to the compliance balance of the vessel. However, this is unacceptable to the Shipowner, who will want the right to make decisions relating to the vessel's compliance balance, and the Technical Manager, who will want the Shipowner to be responsible for any costs of compliance.

Therefore, a FuelEU clause in a management contract should clearly state that the rights and responsibilities relating to the vessel's compliance balance, whether positive or negative, will vest exclusively in the Shipowner, and that the Technical Manager will only take actions in relation to the vessel's compliance balance as instructed by the Shipowner.

If this is not clearly agreed, the Technical Manager risks not having a basis to demand payment from the Shipowner in the event of a FuelEU penalty becoming payable in respect of the vessel and the Shipowner risks the Technical Manager having the rights over a compliance surplus in relation to the vessel.

Where the vessel is on a long-term contract, such as a time charter party, the Shipowner may agree with the charterer that the charterer will have rights over the vessel's compliance balance. Prior to making such commitments in relation to a charterer, the Shipowner needs to ensure that they have corresponding rights to instruct the Technical Manager in relation to the vessel and, as applicable, the right to appoint the time charterer as their nominee to instruct the Technical Manager.<sup>61</sup>

#### 4.1.2 The Technical Manager's right to indemnification from the Shipowner.

One of the primary concerns of a Technical Manager in relation to FuelEU

60) BIMCO FuelEU Shipman Clause, subclause (d).

61) BIMCO FuelEU Shipman Clause, subclause (j) includes certain timing requirements relating to the Shipowner's instructions when the Shipowner is instructing the Technical Manager to pool the vessel. A Shipowner should ensure that such timing requirements are aligned with any timing requirements in a time charter party to reduce the risk of getting instructions from a time charterer which cannot be relayed to the technical manager.

will be the right to indemnification in the event of a FuelEU penalty becoming payable in respect of the vessel. A Technical Manager may be responsible for multiple vessels and therefore can accumulate a large risk relating to payment of FuelEU penalty if and when the Technical Manager's counterparties (Shipowners) do not provide the Technical Manager with funds to pay the FuelEU penalty. Ultimately, the Technical Manager could be exposed to the risk of insolvency.

Under SHIPMAN 2024, clause 19(c), owners must indemnify managers for any “... *claims, demands or liabilities whatsoever and howsoever... arising out of or in connection with the performance...*” of the management agreement. From the perspective of the Technical Manager, it would appear reasonable for this provision to extend to cover FuelEU penalties in relation to the vessel, as the basis for a FuelEU penalty is the Shipowner's (or the Shipowner's charterer's) decisions in relation to the operation of the vessel within the jurisdiction of member states of the EU without reducing the average GHG intensity of the fuels used by the vessel or otherwise mitigating a compliance deficit through pooling or borrowing. The Technical Manager has had no influence on these decisions. There is however no certainty that SHIPMAN 2024, clause 19(c), is by itself sufficient protection for the Technical Manager. This is particularly due to the fact that under FuelEU, the obligation to comply with GHG intensity reduction requirements and to pay the FuelEU penalty is an obligation on the Technical Manager itself, and the Shipowner may therefore argue that the obligation to pay the FuelEU penalty does not arise out of the management agreement but from FuelEU.<sup>62</sup>

The Technical Manager will therefore want certainty of the right to demand indemnification of FuelEU penalties from the Shipowner and it should be expressly stated in the agreement between the Shipowner and the Technical Manager that cost of FuelEU penalties, if any, will be on the Shipowner.

Pursuant to the BIMCO FuelEU Shipman Clause, subclause (k), where a FuelEU penalty becomes payable in respect of the vessel, the Technical Manager must notify the Shipowner who must thereafter provide the funds for payment

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62) Similarly, clause 19(c) of SHIPMAN 2024 is unlikely to impose an obligation on the Shipowner to indemnify a Technical Manager where a Technical Manager receives a fine in their own name, for example in the event of a breach of the ISM Code.

of the FuelEU penalty to the Technical Manager a specified time prior to the due date for payment of the FuelEU penalty. While this set-up is understandable, particularly for a Technical Manager in charge of multiple vessels who will not want to pay the FuelEU penalty out of pocket, the Shipowner should be aware that by pre-paying the funds to the Technical Manager, the Shipowner is exposed to credit risk and the risk of the Technical Manager becoming insolvent. Another option which may become available is for the Shipowner to pay the FuelEU penalty directly and to provide documentation of such payment to the Technical Manager instead of providing the funds.

#### 4.1.3 The Technical Manager's right to security from the Shipowner.

The responsibility for compliance with FuelEU rests with the Company as at 31 December of a reporting period. This means that effectively, the responsibility and liability for an entire reporting period 'crystallises' on 31 December of the reporting period, even though actions relating to the compliance balance of the vessel (such as pooling and payment of FuelEU penalty, as applicable) are not completed for a number of months thereafter.

The Technical Manager has an interest in obtaining security for its potential liability under FuelEU to protect itself from the risk of the Shipowner not being able to or refusing to pay required funds in respect of the FuelEU penalty when such FuelEU penalty falls due.

Under SHIPMAN 2024, clause 20(f) states that owners must provide "... *necessary guarantee bond or other security.*" This clause, which originates from SHIPMAN 98, is linked to the manager's obligations to deal with incidents and claims from third parties as part of the general management services. It is not certain that this provision would provide the Technical Manager with the right to demand security in respect of its potential liability under FuelEU as the obligation to comply with FuelEU is, as also stated above, an obligation on the Technical Manager and not an obligation on the Shipowner that the Technical Manager is handling on behalf of the Shipowner.

The BIMCO FuelEU Shipman Clause, subclause (i), has proposed a set-up whereby "...*the Parties shall agree on the appropriate form and amount of security ... to be provided by the Owners to cover the Managers' corresponding exposure (if*

*any) to the reasonable satisfaction of the Managers.”* Where the Shipowner does not pay such security to the Technical Manager within a defined deadline, the Technical Manager becomes entitled to terminate the management agreement with immediate effect.

This clause is beneficial to the Technical Manager who can demand security and terminate the agreement if the Shipowner does not provide security to the reasonable satisfaction of the Technical Manager. However, the clause may be unacceptable to the Shipowner. The Shipowner may not agree with the Technical Manager on the required level of security as the Shipowner may have already planned actions addressing the vessel’s potential compliance deficit. For example, where the Shipowner has multiple vessels, the Shipowner may utilise the vessels in a way that ensures that certain vessels obtain a compliance surplus which can be used to offset the compliance deficit of other vessels. In such circumstances, the Shipowner will be required to provide security to the Technical Manager even where the Shipowner has already made plans which means that the FuelEU penalty will never become payable in respect of the vessel. However, the Technical Manager is not necessarily going to accept not receiving any security based on the promise of the Shipowner to arrange pooling of the vessel’s compliance deficit, until the pooling has actually been completed, the Technical Manager would be exposed to the risk of the Shipowner changing its mind about pooling and leaving the Technical Manager to pay the FuelEU penalty without having received any security.

Certain modifications can, however, be made to the set-up proposed by BIMCO without exposing the Technical Manager to unnecessary credit risk.

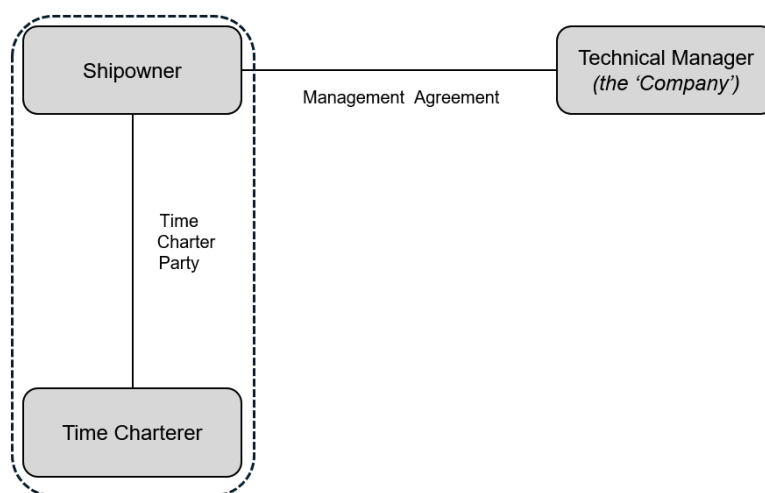
Firstly, due to the FuelEU responsibility only crystallising on 31 December of a reporting period, the suggested set-up can be adjusted to specify that the Technical Manager will not be entitled to request security prior to December of a reporting period. Then, if the Technical Manager does not receive reasonable security, the Technical Manager can terminate the management contract prior to 31 December and escape all FuelEU responsibility for the reporting period in question.

Secondly, where the Shipowner is the owner of multiple vessels and the Technical Manager is the Company for more than one of these vessels, the Technical Manager’s right to demand security across the entire ‘fleet’ of the

Shipowner's vessels can be limited to the aggregate compliance deficit of the Shipowner's vessels, if any. This should, however, be on the condition that the Shipowner commits to the Technical Manager to pool its vessels (thereby utilising compliance surplus on certain vessels to set off compliance deficit on other vessels) and instructing and authorising the Technical Manager to take actions to effect such pooling.<sup>63</sup>

#### 4.2 Time Charter Parties

This section focuses on the contractual relationship between the Shipowner and the Time Charterer in our hypothetical set-up.



Where a Shipowner has chartered out a vessel under a time charter party, it is the Time Charterer who is responsible for procuring fuels and managing the commercial operations of the vessel, including decisions on whether the vessel will operate within the jurisdiction of EU member states.<sup>64</sup> In line with this,

63) The clause could further include a right for the Shipowner to change its mind about pooling of the vessels and revocation of the instruction and authorization to pool on the condition that the Shipowner at that stage provides sufficient security to the Technical Manager.

64) A bareboat charter party involves the transfer of both commercial and technical operation of the vessel from the owner to the bareboat charterer. Unless a bareboat charterer has delegated the obligation of technical management to a third party technical manager, the bareboat charterer will therefore be the Company within the scope of the ISM Code and will be the responsible party under FuelEU. The relationship between a bareboat charterer and a technical manager will be similar to the relationship between a

FuelEU envisages aligning FuelEU responsibility with the ‘polluter pays’ principle through contractual arrangements that allocate the cost of compliance to the ‘polluter’, i.e. the Time Charterer. However, FuelEU imposes no direct obligations on a time charterer, so unless an agreement is reached between the Shipowner and the Time Charterer, FuelEU compliance is left in the hands of the Time Charterer with the Shipowner bearing the cost.<sup>65</sup>

In a time charter party, the Shipowner has a strong interest in including provisions that require the Time Charterer to bear all FuelEU compliance costs. In return, the Time Charterer will want the Shipowner to confirm their responsibility for monitoring and reporting under FuelEU and agree that benefits, such as a compliance surplus, will accrue to the Time Charterer.

Special clauses will be needed to govern the impact of FuelEU on time charter parties. In this respect, BIMCO has issued a FuelEU Maritime Clause for Time Charter Parties 2024 (the “BIMCO FuelEU TCP Clause”). However, in each case, the contractual parties will have to consider the required terms and make appropriate decisions. The following two key issues will be considered:

- The Time Charterer’s obligation to ensure FuelEU compliance.
- The Time Charterer’s obligation to pay for FuelEU compliance.

#### 4.2.1 The Time Charterer’s obligation to ensure FuelEU compliance.

With the Time Charterer having the ability to arrange FuelEU compliance through the use of renewable and low-carbon fuels, it may appear as a simple solution to the Shipowner’s interest in avoiding a FuelEU penalty to impose on the Time Charterer an obligation to ensure that the vessel does not have a compliance deficit at the end of a reporting period.

This is, however, not necessarily a workable solution as it may be impractical or impossible for the Time Charterer to arrange the use of renewable and low-carbon fuel to an extent which ensures that the vessel has a compliance surplus.

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shipowner and a technical manager as described in section 4.1. A voyage charter party is a charter party for a single voyage and does not include a transfer of the right/obligation to purchase fuel for the vessel.

65) Either directly where the Shipowner is itself the Company or in accordance with the Shipowner’s other contracts such as a management agreement (like in the hypothetical set out in this article) or under a time charter party where the Shipowner themselves are the charterer.

Furthermore, while this set-up may be sensible for the Shipowner, the Time Charterer will likely demand access to all methods of achieving FuelEU compliance, including access to pool and pay to comply through payment of the FuelEU penalty and the possibility of using conventional fuels if the use of renewable and low-carbon fuels is not deemed commercially sensible.

According to the BIMCO FuelEU TCP Clause, subclause (c), the Time Charterer has the “...*option to enable the Vessel to comply with FuelEU Maritime through the supply of fuels and energy...*”, provided that such fuels (i) comply with the fuel specification clauses in the time charter party and (ii) bunker delivery notes are provided in accordance with FuelEU with certification that the fuels meet the requirements under RED.

If the Time Charterer is responsible for the costs of compliance when fuels are not certified according to RED and eligible for FuelEU benefits, the Shipowner should not be able to claim a breach of the time charter party for fuels which do not live up to the requirements under FuelEU and RED but which were still suitable for use on the vessel and which were in compliance with the fuel specification clauses of the time charter party. It is crucial to maintain strict obligations for the Time Charterer to provide only the fuels permitted under the time charter party terms and to consider whether the fuel specifications actually allow the use of renewable and low carbon fuels. For instance, if a time charter party requires compliance with ISO 8217:2017, biofuels may not be acceptable, as they were only included in ISO 8217:2024.

#### 42.2. The Time Charterer’s obligation to pay for FuelEU compliance.

Decisions relating to a vessel’s compliance balance for a reporting period are taken after the end of that reporting period. For example, decisions relating to pooling of a vessel’s compliance balance need to be effectuated in April of the relevant verification period (i.e. the April following the reporting period in question), and the FuelEU penalty, if any, must be paid before the end of June of the verification period.

Where the time charter party between the Time Charterer and the Shipowner is a long-term time charter party, it may appear as an obvious and simple solution to require the Time Charterer to pay the Shipowner the amount cor-

responding to the FuelEU penalty when this becomes due in June of the verification period. However, this exposes the Shipowner to credit risks, especially where a large compliance deficit has been accrued over the reporting period.

An alternative option, which has been adopted in the BIMCO FuelEU TCP Clause, is to require the Time Charterer to pay a monthly surcharge during the reporting period corresponding to the estimated FuelEU penalty payable for the compliance deficit 'created' over the month.<sup>66</sup> Where the Time Charterer creates a compliance surplus in certain months, thereby reducing the vessel's overall exposure to a FuelEU penalty for the reporting period, the Time Charterer should be entitled to repayment of already paid surcharges. This mechanism has also been included in the BIMCO FuelEU TCP Clause.

Monthly payments should be able to reasonably protect the Shipowners' interests, which would not necessarily be possible if the Time Charterer only to pay the FuelEU penalty on an annual basis. However, other arrangements can be considered. Firstly, Shipowners may find that certain Time Charterers' creditworthiness is such that they do not need security for the payments. Alternatively, other forms of security, such as parent company guarantees, may be accepted by the Shipowner. Ultimately, the payment mechanism will depend on the negotiating power of the parties. One benefit of monthly payments is that the Shipowner can suspend performance under the charter party if the Time Charterer does not pay the monthly surcharge on time, a right included in the BIMCO FuelEU TCP Clause. The ability to suspend performance in the event of non-payment of funds due from the charterers to the owners aligns with many charter parties' terms on hire payments.<sup>67</sup>

Pursuant to the BIMCO FuelEU TCP Clause, fuel and energy consumed during undisputed off-hire periods will be excluded from the monthly surcharge.<sup>68</sup> While this aligns with the 'polluter pays' principle (during off-hire, the Shipowner is responsible for the vessel), it may give rise to issues in certain situations.

Under certain circumstances, the Time Charterer may want the right to de-

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66) BIMCO FuelEU TCP Clause, sub-clause (d).

67) See, for example, *Baltimexchar 1939* (revised 2001), clause 6, *NYPE 93*, clause 11(a) and *Shelltime 4*, clause 9.

68) BIMCO FuelEU TCP Clause, subclause (e).

cide whether the vessel will be pooled or not. This will particularly be the case where the Time Charterer has been responsible for the vessel for a full reporting period. Pursuant to the BIMCO FuelEU TCP Clause, the Time Charterer has a right to arrange pooling for the vessel where the reporting period falls fully within the charter period. Where the Time Charterer arranges pooling that eliminates the vessel's compliance deficit, the Time Charterer is entitled to repayment of the monthly surcharge(s) paid during the reporting period. However, in the hypothetical scenario where the vessel has been off-hire during such reporting period, it is unclear whether the Time Charterer is obligated to arrange compliance for the 'part' of the vessel's compliance balance attributable to the off-hire period. If the Time Charterer is not responsible for this period, the Shipowner will be. However, if the Time Charterer has pooled the vessel, the Shipowner has no option but to pay the FuelEU penalty for the compliance deficit attributable to the off-hire period, as the vessel cannot be included in more than one pool under FuelEU.

Similarly, a situation may arise where the vessel goes off-hire after the Time Charterer has bunkered renewable fuels. Under typical charter party terms, the Shipowner will be obligated to pay the Time Charterer for fuels used during off-hire.<sup>69</sup> However, the BIMCO FuelEU TCP Clause does not include any mechanism whereby the Shipowner is compensated by the Time Charterer for the compliance surplus created during the off-hire period, nor any terms clearly stating that such compliance surplus has vested in the Shipowner. The Parties may want to include terms more closely addressing the impact of off-hire on FuelEU compliance in long-term time charter parties where longer off-hire periods may arise, for example, in connection with periodical drydockings.

## 5. Conclusion – a new reality for shipping

As the shipping industry moves forward, the implementation of FuelEU represents a significant shift towards greener shipping. Companies must now navigate not only the technical aspects of compliance but also the contractual complexities that arise between Shipowners, Technical Managers, Time Charterers, and other parties within the shipping industry. The impact of FuelEU

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69) See, for example, Shelltime 4 clause 7(a) and NYPE 93, clause 17.

will need to be considered on a contract-by-contract basis and a point of major importance will be the interaction between different interests and contractual arrangements relating to FuelEU compliance for a vessel. There is an important need for back-to-back analysis of contractual terms. Embracing the changes brought about by FuelEU is not just a regulatory requirement but an opportunity to contribute to a more sustainable future.

Looking ahead, it is clear that the industry must “bunker up” and adapt to new regulations that prioritize sustainability and environmental responsibility. This shift towards a greater use of renewable and low-carbon fuels will require material changes to many contracts within the maritime transport industry, not just relating to the management of compliance with FuelEU but also relating to the procurement and use of renewable and low-carbon maritime fuels. Future developments may include further alignment with international regulations from the IMO, potential overlaps with new global measures, and advancements in sustainable fuel technologies.