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FUEL EU MARITIME

PUBLIC ENFORCEMENT : PENALTIES AND EXPULSION

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Why Fuel EU Maritime ?

Accelerate demand for sustainable alternative fuels throughout their life cycle by ship operators in Europe, through a regulatory measure complementing the ETS (price signal), RED II (fuel supply), and AFIR (infrastructure and distribution).

Provide predictability for shipping companies and encourage sound investments through a long-term regulatory framework.

Stimulate the selection and deployment process for sustainable alternative marine fuels in Europe and in major bunkering ports outside the EU (demand-driven supply logic).

Accelerate shore power connection by the most polluting ships calling at ports.

Scope

Ships carrying passengers or goods for commercial purposes with a gross tonnage of more than 5,000, regardless of their flag.

Geographical scope:

- 100% of energy used at berth + 100% of energy used between European ports.....
.....except 50% for energy used to/from an outermost region or 50% of energy used between a European port and a third-country port.

Possible exemptions until December 31, 2029:

- Passenger ships for voyages between an island with less than 200,000 inhabitants and another port in the same country, and for stopovers on the island
- All ships for voyages between two outermost regions and the ports of call concerned
- Passenger ships under public service obligation (mainland <-> island)
- Additional energy used due to the ship's ice class and/or navigation in ice.

Enforcement & Penalties : correction and sanction

Corrective penalty system ("pay to comply") (art. 23)

Non-compliance art. 4, GHG intensity :

Corrective penalty, the amount of which is determined by a calculation formula that takes into account the cost of energy and increased by 10% of the initial amount each subsequent year

Art. 5, sub-target RFNBO :

Corrective penalty, calculated in a similar way as of for non-compliance with article 4.

Art. 6, port-call :

- Corrective penalty, the amount of which is determined by a formula that takes into account the average cost of electricity in the EU

Sanctions (art. 25)

Expulsion order and deny of access : each Member State, with the exception of the flag State where applicable, shall refuse entry of the ship into its ports until it has been brought into compliance

Flag state detention order : the flag State, if the ship is in one of its ports, shall detain the ship until it is brought into compliance.

PSC
(art. 24 & 25) :
Assess the presence of a DoC on board, in parallel with each inspection.





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THE THREE FOLDS OF PUBLIC ENFORCEMENT

- 1. FINANCIAL PENALTIES, THE “FUEL-EU PENALTIES”**
- 2. SANCTIONS ON VESSELS: DETENTION, EXPULSION, ENTRY REFUSAL**
- 3. PORT STATE CONTROL MEASURES**

1. First level of sanctions, the FuelEU “penalties”

Corrective penalty system (“pay to comply”)

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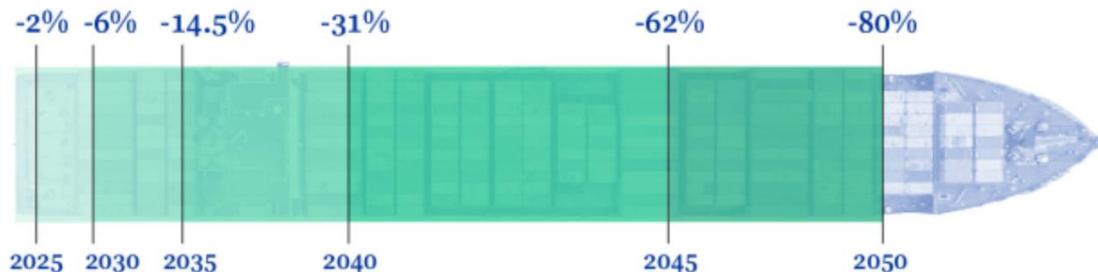
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Annual average carbon intensity reduction compared to the average in 2020



Reference Baseline, 2020 data (91,16 gCO₂eq/MJ)



Highly dissuasive nature of the penalties

In the event of non-compliance, the amount payable for ships under Fuel EU aims to be set high enough that the *pay-to-comply* strategy quickly proves to be a costly one.

In its White paper on Fuel EU, DNV estimated the total cost at approximately US\$226 million for the period 2025-2044 to comply with Fuel EU standards for a single vessel, if it continues to operate on VLSFO (*very low sulfur fuel oil*).

(for a bulk vessel of 80,000 DWT, operating solely in EU waters).

2400EUR/MT VLSFO éq.

This is the factor used to calculate Fuel EU penalties

FuelEU Penalties

Article 23



FuelEU penalties

6. Member States shall have the necessary legal and administrative framework in place at national level to ensure the fulfilment of the obligations concerning the imposition, payment and collection of the FuelEU penalties.

- FuelEU's penalty raises legal questions as it has no equivalent in France.

No penalty can end an offence, which must be corrected

- Drafting a new dedicated section in our environmental code
- Authority responsible for imposing penalties and issuing decisions to refuse port access, expel or immobilize non-compliant ships : the **minister in charge of maritime affairs**
- **Differs from the ETS sanctions:** administrative + criminal sanction (1 year's imprisonment and a fine of EUR 500,000)

In France, an administrative procedure

Soon to be set by decree inside the French Environmental Code (Code de l'environnement). The administrative procedure involves:

- Determining the amount of the penalty, using one of the formulas displayed
- Sending a *mise en demeure* i. e. formal notice
- Finally, issuing a **penalty as an financial administrative sanction, signed by the Minister in charge of Maritime Affairs**
- Then, making sure the company is paying, in connection with the French Treasury Department

$$\text{Penalty [€]} = \frac{|\text{Compliance balance}| [\text{tCO}_2\text{eq}]}{\text{Actual GHG intensity} \left[\frac{\text{gCO}_2\text{eq}}{\text{MJ}} \right]} \times \frac{2,400 [\text{€}/\text{tVLSFOeq}]}{41,000 [\text{MJ}/\text{tVLSFOeq}]} \times \left(1 + \frac{\text{Consecutive periods} - 1}{10} \right)$$

$$\text{Penalty per tonne GHG compliance deficit} [\text{€}/\text{tCO}_2\text{eq}] = \frac{58,537 [\text{€}/\text{TJ}]}{\text{Actual GHG intensity} \left[\frac{\text{gCO}_2\text{eq}}{\text{MJ}} \right]}$$



Examples of Fuel EU corrective measures

The European Commission gives two examples here that illustrate the financial amounts that shipowners must pay in the event of non-compliance. They represent a FuelEU Penalty for non-compliance to articles 4 and 6 respectively.



Example of FuelEU penalty calculation in case of a GHG intensity compliance deficit

As an example, the following could be assumed. A ship has a compliance deficit of 1,221,220,000 g CO₂eq. The GHG intensity to apply equals 90.77 g CO₂eq/MJ. When applying the formula, the penalty would amount to EUR 787,551

$$\frac{|1,221,220,000 \text{ g CO}_2\text{eq}|}{90.77 \frac{\text{g CO}_2\text{eq}}{\text{MJ}} \times 41,000 \frac{\text{MJ}}{t_{\text{fuel}}}} \times 2,400 \frac{\text{EUR}}{t_{\text{fuel}}} = \text{EUR } 787,551$$

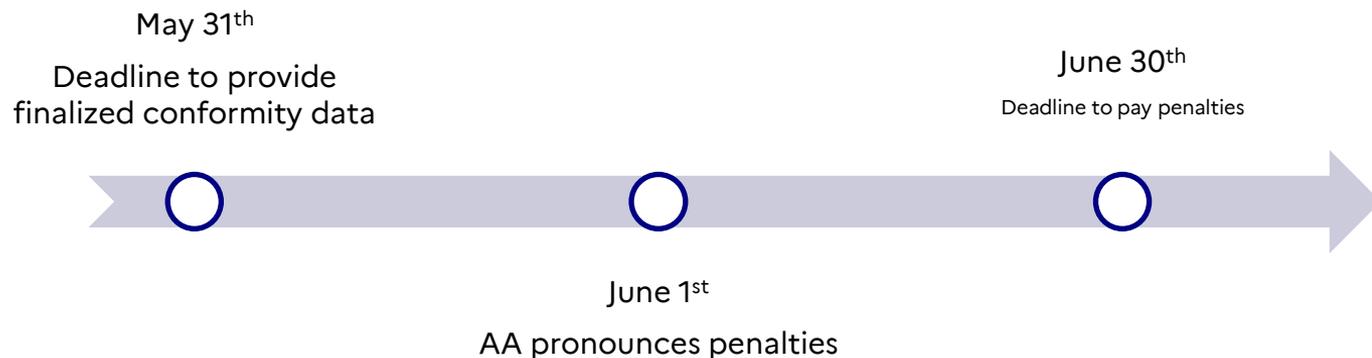
FuelEU penalty in case of non-compliant port calls

The following example presents the applicable penalty for a containership with electrical power demand at berth of 2000 kW which did not connect to OPS for 12 hours.

$$\text{Penalty} = 1.5 \text{ EUR/kWh} \times 2,000 \text{ kW} \times 12 \text{ h} = 36,000 \text{ EUR}$$

Strict deadline of the regulation

It should be noted that the regulation requires Member States to take appropriate measures to ensure that penalties are paid within a short period of one month after non-compliance has been established.



Focus on *pay-to-comply* in domestic law

National law provides few possibility of penalties that result in compliance (so-called “pay to comply”). In other words, payment of a financial penalty does not normally put an end to the infringement but represents a financial sanction with also required corrective measures.

Thus, the exact nature of the Fuel EU penalties in that respect is somewhat “unique”.



It is not a **sanction** aimed at putting an end to a clear and serious offense (pollution) or a protective measure aimed at stopping the offense or ensuring the payment of fines. The aim here is to give the opportunity for an operator to become compliant with GHG regulations through the payment of a penalty. Yet, this strategy is costly and aims at deter using it.

Flexibility mechanisms (art. 4) I

Reminder: the regulation provides for flexibility mechanisms in order to maintain a fair incentive for decarbonization and optimize the compliance rate and acceptability of the measure.

Pooling (art. 21)

Possibility of **grouping compliance assessments for several ships**, within the same company or between different companies, **in order to encourage investment in the most advanced technologies.**

Banking/Borrowing (art. 20)

Possibility of banking compliance surpluses, **which can be used by the same vessel the following year.**

Flexibility mechanisms (art. 4) II

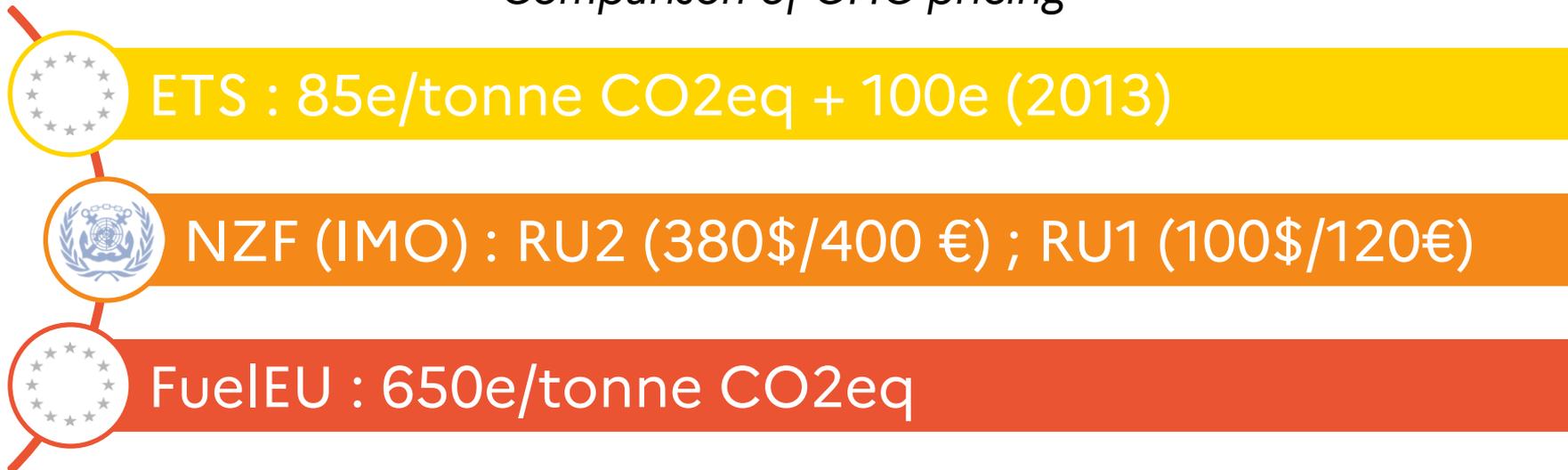
Nevertheless, keep in mind that these mechanisms also include safeguards and are intended to contribute to the achievement of the text's objective: **to support transitional fuels.**



Comparison of ship emission standards and pricing

It is important to stress that in respect of the EU ETS, **the penalty does not make the operator compliant – the EU-ETS quotas still need to be surrendered.** Nonetheless, Fuel EU provides for by far **the highest** penalties.

Comparison of GHG pricing



A FuelEU Maritime “Fund”?

11. Member States shall endeavour to ensure that the revenue generated from the FuelEU penalties, or its equivalent financial value, is used to support the rapid deployment and the use of renewable and low-carbon fuels in the maritime sector, by stimulating the production of greater quantities of renewable and low-carbon fuels for the maritime sector, facilitating the construction of appropriate bunkering facilities or OPS infrastructure in ports, and supporting the development, testing and deployment of the most innovative technologies in the fleet to achieve significant emission reductions.

- First step with the EU-ETS: French government is attempting to **establish a mechanism for allocating funds to maritime decarbonization initiatives**
- French budgetary logic usually doesn't allow resources to be earmarked for specific spending
- Success with the earmarking of EU-ETS at the end of this year will mean including revenue from **FuelEU sanctions** in the future
- **Budget is currently still under discussion**

2. Second level of sanctions

If a repeat offense is observed in **two consecutive years**, expulsion and detention measures are considered in accordance with art. 25.

The decision is made by the AA, based on the data provided by the company (or the meaningful absence of them) via the FuelEU Database and previous infringements.

Sanctions (art. 25)

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Immobilisation/expulsion & deny of entry

Keep in mind that sanctions are pronounced against the company

Situation	Under french flag		Under a foreign flag
	French harbors	Others	Port-call in a EEE harbor (beside the case of flag state jurisdiction)
1st action	<p>France may, after giving the company concerned the opportunity to submit its observations, issue a decision to detain the vessel until the company complies.</p> <p>The decision must be notified to Com EU, EMSA, and other MS</p>	<p>The MS shall, after giving the company concerned the opportunity to submit its observations, issue a decision to expel it.</p> <p>The decision must be notified to Com EU, EMSA, and other MS</p>	<p>The MS shall, after giving the company concerned the opportunity to submit its observations, issue a decision to expel its vessel.</p> <p>The decision must be notified to Com EU, EMSA, and other MS.</p>
2 nd action	In the event of a ongoing decision to expel or detain from a Member State, subsequent action by France :		
	French vessels		Must detains the vessel until the company complies.
	Other vessels		Must refuse entry into its ports until the company complies.
	The same measures are taken by other Member States with regard to their flags.		

3. Enforcement in the field on Port State Control

Corrective penalty system ("pay to comply")

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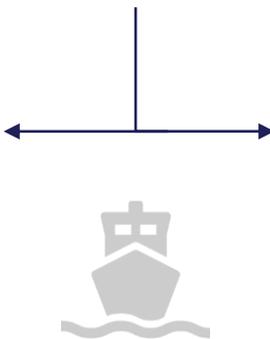


3. Focus on Port State Control inspections

The importance of the Document of compliance (DoC)

If the ship is compliant → the vessel's verifier issues the DoC :

The company is required to have the DoC on board.



If the ship is not compliant:

The company is required to take corrective measures by paying FuelEU Penalties (June) → if penalties are paid, the AA issues the DoC, required to be onboard.

Port State Control Inspections are recorded via THETIS-EU in each Member State, a common platform managed by the EMSA. They are based on the presence of a **Document of Compliance (DoC)** onboard the vessel. In case of an absence of a DoC during PSC, the vessel may be detained by PSC authorities.

3. Enforcement in the field on Port State Control

- Agents from ship security centers (Fr. *Centre de sécurité des navires – CSN*), who are responsible for Port State Control inspections, directly observe the absence of documents certifying compliance with EU fuel regulations in the field, pursuing the obligation made by art. 24 and art. 25 §2.
- Thus, a Fuel EU inspection is carried out in parallel with **any PSC inspection** carried out in accordance with national law transposing the PSC Directive 2009/16/EC on a ship in a port within national territory, provided that it falls within the scope of the Regulation.
- Cooperation between Member States is ensured through the use of the **Fuel EU database**, which enables rapid communication and effective enforcement of penalties across the EU.



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TO CONCLUDE

Fuel EU regulation and ETS Directive

Backbones of the legal frameworks aimed at decarbonizing shipping

FuelEU Maritime





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DISCUSSION