



Brussels, XXX
[...] (2023) XXX draft

COMMISSION IMPLEMENTING REGULATION (EU) .../...

of XXX

laying down rules for the application of Directive 2003/87/EC of the European Parliament and of the Council as regards the administration of shipping companies by administering authorities in respect of a shipping company

(Text with EEA relevance)

This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the Commission.

COMMISSION IMPLEMENTING REGULATION (EU) .../...

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laying down rules for the application of Directive 2003/87/EC of the European Parliament and of the Council as regards the administration of shipping companies by administering authorities in respect of a shipping company

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 Union and amending Council Directive 96/61/EC¹, and in particular Article 3gf(4) thereof,

Whereas:

- (1) Directive 2003/87/EC, as amended by Directive (EU) 2023/959 of the European Parliament and of the Council², provides for the inclusion of maritime transport emissions within the system for greenhouse gas emission allowance trading within the Union (the ‘EU ETS’).
- (2) In order to reduce the administrative burden on shipping companies, Directive 2003/87/EC provides for one Member State to be responsible for each shipping company. Pursuant to Directive 2003/87/EC, the Member State responsible for administering a shipping company is referred to as the ‘administering authority in respect of a shipping company’.
- (3) In the context of general maritime law, the notion of ‘shipping company’ refers to the entity entrusted with managing the vessel and cannot be modified by a bilateral agreement between the parties. However, this general approach is not the most appropriate in the context of the EU ETS, which is the object of the present act. It is necessary in this specific context of the EU ETS to address the obligations to the entity that is more apt to take the necessary measures in this respect. Contrary to what happens in general maritime law, this entity may be different from the entity entrusted with the actual management of the vessel. In view of this fact, it is necessary to depart, for the purpose of the EU ETS, from the meaning of the notion of ‘shipping company’ in general maritime law in order to allow the parties to agree contractually among them on the identity of the entity that is entrusted with the obligations following from the EU ETS.

¹ OJ L 275, 25.10.2003, p. 32.

² Directive (EU) 2023/959 of the European Parliament and of the Council of 10 May 2023 amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union and Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading system (OJ L 130, 16.5.2023, p. 134).

- (4) In order to ensure equal treatment of shipping companies, Member States should follow harmonised rules for the administration of shipping companies for which they have responsibility. To guarantee the proper enforcement of the EU ETS and to take account of the differences between the EU ETS and general maritime law, Member States should ensure that where the organisation or person that has assumed the responsibility for the operation of the ship from the shipowner and that, on assuming such responsibility, has agreed to take over all the duties and responsibilities imposed by the International Management Code for the Safe Operation of Ships and for Pollution Prevention, set out in Annex I to Regulation (EC) No 336/2006 of the European Parliament and of the Council³ has also assumed responsibility for the EU ETS obligations, such organisation or person has been duly mandated by the shipowner to comply with the national measures transposing Directive 2003/87/EC, including the obligation to surrender allowances under Articles 3gb and 12 of that Directive. To the extent this requirement deviates from the practice with regard to the definition of “shipping company” in general maritime law, it is limited to the assumption of responsibility under the EU ETS.
- (5) To facilitate enforcement of the EU ETS, the organisation or person that has assumed responsibility for the EU ETS obligations should provide its administering authority in respect of a shipping company with information on ships under its responsibility.
- (6) Article 3gf(1) and (3) of Directive 2003/87/EC contains the provisions governing the attribution of each shipping company to its administering authority in respect of a shipping company. To ensure equal treatment of shipping companies, it is necessary to provide for harmonised detailed rules on the attribution of shipping companies to Member States. The rules for the attribution of a shipping company to a Member State include the country of registration of the shipping company, which should be based on information recorded under the International Maritime Organization Unique Company and Registered Owner Identification Number Scheme⁴. The attribution of shipping companies that are not registered in a Member State should be based on port calls data stored in the Union maritime information and exchange system established by Directive 2002/59/EC of the European Parliament and of the Council (SafeSeaNet)⁵. The port calls data might be supplemented with information from other information systems, as appropriate.
- (7) In addition, it is necessary to establish detailed attribution rules for shipping companies that are not registered in a Member State and that did not carry out any voyage falling within the scope set out in Article 3ga of Directive 2003/87/EC in the preceding 4 monitoring years and whose first voyage within the scope of that Directive is a voyage between ports under the jurisdiction of two Member States, and for shipping companies that are not registered in a Member State and that have their greatest number of port calls in two or more Member States. To ensure a smooth implementation of the EU ETS, Member States should exchange information in the

³ Regulation (EC) No 336/2006 of the European Parliament and of the Council of 15 February 2006 on the implementation of the International Safety Management Code within the Community and repealing Council Regulation (EC) No 3051/95 (OJ L 64, 4.3.2006, p.1).

⁴ Resolution MSC.160(78) adopted on 20 May 2004 by the International Maritime Organization.

⁵ Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC (OJ L 208, 5.8.2002, p.10).

case of change of administering authority in respect of a shipping company of a given shipping company.

- (8) The measures provided for in this Regulation are in accordance with the opinion of the Climate Change Committee,

HAS ADOPTED THIS REGULATION:

Article 1

1. Where the organisation or person, such as the manager or the bareboat charterer, that has assumed the responsibility for the operation of the ship from the shipowner and that, on assuming such responsibility, has agreed to take over all the duties and responsibilities imposed by the International Management Code for the Safe Operation of Ships and for Pollution Prevention, set out in Annex I to Regulation (EC) No 336/2006 of the European Parliament and of the Council has also assumed responsibility for the obligations to comply with the national measures transposing Directive 2003/87/EC and the obligation to surrender allowances under Article 3gb and 12 of that Directive (the ‘ETS obligations’), Member States shall ensure that this organisation or person has been duly mandated by the shipowner to comply with the ETS obligations.
2. For the purposes of paragraph 1, the organisation or person shall provide its administering authority in respect of a shipping company with a document clearly indicating that it has been duly mandated by the shipowner to comply with the ETS obligations.

The document shall be signed by both the shipowner and that organisation or person.

If that document is in a language other than English, an English translation shall be provided.

If that document is a copy, this shall be certified as a true copy by a notary public or other similar person specified by the administering authority in respect of a shipping company. If the certified copy is issued outside the Member State of the administering authority in respect of a shipping company, the copy shall be legalised, except where otherwise provided for by national law.
3. The document referred to in paragraph 2 shall include the following information:
 - (a) the name and the International Maritime Organization (IMO) unique company and registered owner identification number of the organisation or person mandated by the shipowner;
 - (b) the country of registration of the organisation or person mandated by the shipowner, as recorded under the IMO Unique Company and Registered Owner Identification Number Scheme;
 - (c) the name and the IMO unique company and registered owner identification number of the shipowner;
 - (d) the following information for the shipowner’s contact person:
 - (i) first name;
 - (ii) last name;

- (iii) job title;
 - (iv) business address;
 - (v) business telephone number;
 - (vi) business email address;
- (e) the date of application of the mandate from the shipowner to that organisation or person;
 - (f) the IMO ship identification number of each ship falling within the scope of the mandate.
4. Where the organisation or person referred to in the first paragraph cannot provide its administering authority with the document referred to in paragraph 2, the shipowner shall be considered as the entity responsible for ETS obligations.

Article 2

- 1. Where the entity that has assumed responsibility for ETS obligations is the shipowner, the administering authority in respect of a shipping company shall ensure that the shipowner provides it with a document that includes the list of the ships whose emissions fall within the scope of Directive 2003/87/EC, as well as their respective IMO ship identification number.
- 2. In the event of any change to the list referred to in paragraph 1, the shipowner shall inform its administering authority in respect of a shipping company without delay and shall provide it with an updated document, as well as with the name and IMO unique company and registered owner identification number of the new shipping company for each of the ships no longer under the shipowner's responsibility.

Article 3

- 1. For the purpose of attributing a shipping company to an administering authority in respect of a shipping company in accordance with Article 3gf of Directive 2003/87/EC, the country of registration of a shipping company as referred to in Article 3gf of that Directive shall be the country of registration as recorded under the IMO Unique Company and Registered Owner Identification Number Scheme.
- 2. For the purpose of attributing a shipping company that is not registered in a Member State to an administering authority in respect of a shipping company in accordance with Article 3gf(1) of Directive 2003/87/EC, port call data shall be based on data stored in the Union maritime information and exchange system(SafeSeaNet) established by Directive 2002/59/EC of the European Parliament and of the Council⁶.

Where the data registered in SafeSeaNet is insufficient for the purpose of attributing a shipping company that is not registered in a Member State to an administering

⁶ Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC (OJ L 208, 5.8.2002, p. 10).

authority in respect of a shipping company, the Commission may use complementary data, such as Automatic Identification System data, stored by other information systems.

Article 4

Where the first voyage of a ship of a shipping company that is not registered in a Member State, as referred to in Article 3gf(1), point (c), of Directive 2003/87/EC, is a voyage that started from a port of call under the jurisdiction of a Member State and that ended at a port of call under the jurisdiction of another Member State, the administering authority in respect of that shipping company shall be the Member State where that voyage started.

Article 5

In the case that a shipping company that is not registered in a Member State has its greatest number of port calls in two or more Member States, the administering authority in respect of a shipping company shall be the Member State where the shipping company had its first port call among the voyages that started or ended in those Member States with an equal number of port calls and that took place during the relevant reporting periods.

The date and hour of departure or arrival shall be calculated according to Greenwich Mean Time (GMT/UTC).

Article 6

1. In the event of a change of administering authority in respect of a shipping company, the new administering authority in respect of a shipping company shall have access to all relevant information on that shipping company. This shall include access to the monitoring plan of each ship under the responsibility of the shipping company, to the previous emissions reports at ship level and reports at ship level to be submitted where there is a change of company of each ship under the responsibility of the shipping company, and to the aggregated emissions data at company level of previous monitoring periods.
2. The administering authority in respect of a shipping company responsible before the change referred to in paragraph 1 shall exercise due diligence to provide the new administering authority in respect of a shipping company, upon its request, with any other relevant documents or information relating to the shipping company concerned.
3. The administering authority in respect of a shipping company responsible before the change referred to in paragraph 1 shall have access to information concerning the period during which the shipping company was under its responsibility as appropriate, in particular for the purposes of handling the penalties procedures applicable to infringements of the national provisions adopted pursuant to Directive 2003/87/EC and the penalties referred to in Article 16(3) of that Directive.

Article 7

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission
The President
Ursula VON DER LEYEN

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