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Suppliment tal-Gazzetta tal-Gvern ta' Malta Nru. 19,827, 11 ta' Lulju, 2017
Taqsima B

L.N. 191 of 2017

MERCHANT SHIPPING ACT
(CAP. 234)

Merchant Shipping (Monitoring, Reporting and Verification of Carbon Dioxide Emissions from Maritime Transport) Regulations, 2017

IN EXERCISE of the powers conferred by articles 308A, 374 and 375 of the Merchant Shipping Act, the Minister for Transport, Infrastructure and Capital Projects has made the following regulations:-

Citation and commencement.

1. (1) The title of these regulations is the Merchant Shipping (Monitoring, Reporting and Verification of Carbon Dioxide Emissions from Maritime Transport) Regulations, 2017.

(2) These regulations shall come into force on the 1st January, 2018.

(3) These regulations establish a system of penalties for failure to comply with the monitoring and reporting obligations set out in Regulation (EU) 2015/757 of the European Parliament and of the Council of the 29 April 2015, on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport, and amending Directive 2009/16/EC, in its up to date version, hereinafter referred to as "the EU Regulation".

Interpretation.

2. (1) In these regulations, unless the context otherwise requires: –

"the Act" means the Merchant Shipping Act; Cap. 234.

"appropriate inspector" shall have the same meaning as is assigned to it in article 154 of the Act;

"competent authority" means the Authority for Transport in Malta established by article 5 of the Authority for Transport in Malta Act and, in relation to other States means the national maritime administration maintained by those States; Cap. 499.

"Maltese Ships" shall have the same meaning as is assigned to it in article 3(1) of the Act ;

"Registrar General" shall have the same meaning as assigned to it in the Act;

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(2) Unless otherwise defined in these regulations, or unless the context otherwise requires, words and expressions used in these regulations shall have the same meaning assigned to them in the EU Regulation.

Application.

3. (1) These regulations shall apply to:

(a) Maltese ships above five thousand (5000) gross tonnage in respect of CO_2 emissions released during their voyages from their last port of call to a port of call under the jurisdiction of a European Union Member State and from a port of call under the jurisdiction of a European Union Member State to their next port of call, as well as within ports of call under the jurisdiction of a European Union Member State; and

(b) all other ships above five thousand (5000) gross tonnage in respect of CO_2 emissions released during their voyages from their last port of call to a port of call in Malta and from a port of call in Malta to their next port of call, as well as within ports of call in Malta.

(2) These regulations shall not apply to:

(a) warships;

(b) naval auxiliaries;

(c) fish-catching or fish-processing ships;

(d) wooden ships of a primitive build;

(e) ships not propelled by mechanical means; or

(f) government ships used for non-commercial purposes.

Document of compliance.

4. A ship to which these regulations apply shall not enter or leave a port in Malta, nor, if the ship is a Maltese ship, a port in any other European Union Member State, unless a valid document of compliance issued in terms of Article 17 of the EU Regulation, attesting that the requirements of the EU Regulation for the relevant reporting period is carried onboard.

Duty to ensure compliance.

5. It shall be the duty of the company to ensure that the ship is in compliance with the provisions of these regulations and the applicable requirements of the EU Regulation.

Penalties.

6. Failure by the company to comply with the provisions of these regulations shall constitute an offence. Such person shall, on

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conviction, be liable to a fine (*multa*) not exceeding five thousand (5,000) units.

Power to inspect and detain a ship.

7. (1) The Registrar General, or an appropriate inspector, may inspect any ship to which these regulations apply and if satisfied that the ship is not in compliance with the provisions of these regulations and the applicable requirements of the EU Regulation, the Registrar General shall take such steps as are considered necessary to ensure that the ship shall not sail until it can be ensured that the ship is in compliance with the provisions of these regulations and the applicable requirements of the EU Regulation.

(2) In the case of a non-Maltese ship, if the Registrar General takes such steps as specified in sub-regulation (1) hereof, the Registrar General shall forthwith notify the ship's flag State competent Authority; consular or diplomatic representative of the flag State of the ship.

(3) Where sub-regulation (2) applies, the Registrar General shall also notify all relevant accredited verifiers responsible for the issue of the document of compliance.

(4) For the purposes of this regulation, the provisions of article 154(2) and (3) of the Act shall apply *mutatis mutandis* to the Registrar General and to appropriate inspectors.

Expulsion Order.

8. In the case of ships that have failed to comply with the provisions of these regulations for two or more consecutive reporting periods, and where other enforcement measures have failed to ensure compliance, an expulsion order in terms of article 20 of the EU Regulation may be issued by the competent authority.

Right of appeal.

9. (1) Subject to the provisions of this regulation, the owner or the operator of a ship or his representative in Malta shall have a right of appeal against an expulsion order issued by the competent authority.

(2) An appeal shall not cause the relevant measure taken to be suspended.

(3) An appeal may be made by means of an application before the Court of Appeal (Inferior Jurisdiction).

(4) An appeal for the purpose of sub-regulation (3) shall be filed within twenty days of the imposition of the measure, as the case may be, and shall be served on the competent authority which shall reply thereto within ten days of notification.

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(5) If the appellant shows to the satisfaction of the Court that:

(a) the matter did not constitute a valid basis for the relevant action taken; and

(b) there were no reasonable grounds for that action,

the Court may award such compensation in respect of any actual loss suffered in consequence of the measure as it deems fit.

(6) The burden of satisfying the Court as to the matters specified in sub-regulation (5) shall lie with the appellant, as the case may be.

(7) The Court shall also have regard, in coming to its decision, to any matters not specified in the expulsion order that appears to it to be relevant as to whether the ship was or was not liable.

(8) Where the Court decides that the matter did not constitute a valid basis for the action taken, it shall either cancel or shall affirm the measure.

(9) The Court shall include in its findings whether there was or not a valid basis for the action taken.

10. Where another EU Member State has informed the competent authority that it has issued an expulsion order in respect of a ship in accordance with Article 20 of the EU Regulation, the competent authority shall refuse that ship entry to any port in Malta until the company fulfils its monitoring and reporting obligations in terms of the EU Regulation.

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