B 2172

L.N. 316 of 2024

CLIMATE ACTION ACT
(CAP. 643)

European Union Greenhouse Gas Emissions Trading System for Maritime Transport Regulations, 2024

IN EXERCISE of the powers conferred by article 27 of the Climate Action Act, the Minister responsible for climate action policy and the Minister responsible for justice, in consultation with the Climate Action Authority have made the following regulations:-

Citation and scope.

1. (1) The title of these regulations is the European Union Greenhouse Gas Emissions Trading System for Maritime Transport Regulations, 2024.

(2) These regulations provide for the implementation in Malta of the European Union system for greenhouse gas emissions allowance trading, established by 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/EC, for maritime activities listed in Schedule 1.

(3) These regulations transpose Directive 2003/87/EC, as amended by 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, to the extent that it relates to maritime transport.

Interpretation.

2. For the purposes of these regulations and unless the context otherwise requires:

"account holder" means a natural or legal person that holds an account in the Union registry;

Cap. 643.

"Act" means the Climate Action Act;

"administering authority" or "administering authority in respect of a shipping company" means the authority responsible for administering the EU ETS in respect of a shipping company in accordance with regulation 3;

"allowance" means an allowance to emit one (1) tonne of carbon dioxide equivalent during a specified period, which shall be valid only for the purposes of meeting the requirements of Directive 2003/87/EC and shall be transferable in accordance with the provisions of Directive 2003/87/EC;"

"auctioneer" means the Debt Management Office within the Treasury Department appointed by the Government to auction allowances on its behalf;

"authorised representatives" means the representatives, nominated by an account holder in respect of an account in the Union registry, to have access to that account and undertake processes relating to that account on behalf of the account holder;

"Authority" means the Climate Action Authority established by article 9 of the Act;

"Commission" means the European Commission;

"confidential information" means any non-public information deemed to be sensitive by the shipping company and, or any privileged information falling within the scope of these regulations, revealed only for promoting and elaborating certain purposes. It shall include *inter alia*:

(a) trade secrets;

(b) any other information having a commercial value that would be, or may reasonably be expected to be destroyed or diminished if the information were disclosed; or

(c) information other than trade secrets or information under paragraph (b) concerning a person, organisation or undertaking in respect of their business, professional, commercial or financial affairs;

"cruise passenger ship" means a passenger ship not having a cargo deck, designed exclusively for commercial transportation of passengers in overnight accommodation on a sea voyage;

"Decision (EU) 2015/1814" means Decision (EU) 2015/ 1814 of the European Parliament and of the Council of 6 October 2015 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and amending Directive 2003/87/EC;

"Directive 2003/87/EC" means 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/EC;

"Directive 2023/959" means Directive 2023/959 amending Directive 2003/87/EC 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;

"emissions" means the release, from ships performing a maritime transport activity listed in Schedule 1, of the greenhouse gases specified in respect of that activity;

"EU ETS" means the European Union Emissions Trading System established by Directive 2003/87/EC;

"HELCOM Recommendation 25/7" means HELCOM Recommendation 25/7, Safety of Winter Navigation in the Baltic Area, of the Baltic Marine Environment Protection Commission;

"Member State" means a state which is a member of the European Union and shall also include Iceland, Liechtenstein and Norway;

"Minister" means the Minister responsible for climate change policy;

"National Accreditation Board (Malta)" means the National Accreditation Board (Malta) established by regulation 3 of the National Accreditation Board (Malta) (Establishment) Regulations;

S.L. 419.07.

"national registry administrator" means the entity, designated in accordance with relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC, being responsible for the management, on behalf of the Government, of shipping operator holding accounts under the jurisdiction of the Government in the Union registry;

"other relevant legal bodies" means any other entities, public or private which, by virtue of the provisions of these regulations are obliged to act, provide information, direct or re-direct any action, or inform or report to any other indicated body. This shall also include any other specified bodies or persons to

which these regulations may apply;

"person" means any natural or legal person;

"port of call" means the port where a ship stops to load or unload cargo, or to embark or disembark passengers, or the port where an offshore ship stops to relieve the crew, considering that stops for the sole purposes of refuelling, obtaining supplies, relieving the crew of a ship other than an offshore ship, going into dry-dock or making repairs to the ship and, or its equipment, stops in port because the ship is in need of assistance or in distress, ship-to-ship transfers carried out outside ports, stops for the sole purpose of taking shelter from adverse weather or rendered necessary by search and rescue activities and stops of containerships in a neighbouring container transhipment port listed in the implementing act adopted in accordance with paragraph (2) of Article 3ga of Directive 2003/87/EC are excluded;

" public" means one (1) or more persons and associations, organisations or groups of persons;

"Regulation (EC) No 336/2006" means 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;

"Regulation (EC) No 765/2008" means Regulation (EC) No.765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and repealing Regulation (EEC) No 339/93;

"Regulation (EU) 2015/757" means Regulation (EU) 2015/ 757 of the European Parliament and of the Council of 29 April 2015 on the monitoring, reporting and verification of greenhouse gas emissions from maritime transport, and amending Directive 2009/16/EC;

"shipping company" means the ship owner or, if so mandated in accordance with the relevant decisions and regulations adopted by the Commission in accordance with Directive 2003/87/EC, any other 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;

"surrender" means the accounting of an allowance by a shipping company against verified emissions;

"Union" and "European Union" shall have the same meaning as assigned to the definition "the European Union" in the European Union Act;

Cap. 460.

"Union registry" means the registry established and maintained in accordance with Article 19 of Directive 2003/87/EC for the execution of processes pertaining to the maintenance of holding accounts and the allocation, surrender and cancellation of allowances;

"verifier" means a legal person or another legal entity carrying out verification activities in accordance with these regulations and accredited by a national accreditation body in accordance with Regulation (EC) No 765/2008 and relevant decisions and regulations adopted by the Commission in accordance with Directive 2003/87/EC, or natural person otherwise authorised, without prejudice to Article 5(2) of Regulation (EC) 765/2008, at the time a verification report is issued;

"voyage" means a voyage as defined in Article 3, point (c), of Regulation (EU) 2015/757.

Applicability.

3. (1) These regulations shall apply to:

(a) shipping companies performing activities listed in Schedule 1 resulting in emissions of greenhouse gases specified in respect of those activities and for whom Malta is designated as the administering authority, by virtue of:

(i) being registered in Malta; or

(ii) in the case of shipping companies that are not registered in a Member State, for whom Malta is the Member State with the greatest estimated number of port calls from voyages performed by those shipping companies in the last four (4) monitoring years; or,

(iii) in the case of shipping companies that are not registered in a Member State and that did not carry out any voyage falling within the scope of Directive 2003/87/EC in the preceding four (4) monitoring years, to which Malta is

the Member State where ships of those shipping companies have arrived or started their first voyage falling within the scope of Directive 2003/87/EC;

(b) to any other relevant legal bodies on which these regulations put any obligation.

Auctioning of allowances.

4. (1) The quantity of allowances that are not allocated free of charge, as determined for Malta in accordance with Directive 2003/87/EC, shall be auctioned by the auctioneer in accordance with the relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC.

(2) The auctioneer shall act in accordance with the relevant decisions and regulations adopted by the Commission in accordance with Directive 2003/87/EC.

Publicity of funding from EU ETS auction revenues.

5. A beneficiary of funding of any action or project funded from EU ETS auctioning revenues shall ensure the visibility of such source of funding.

Union Registry.

6. (1) A shipping company shall have a maritime operator holding account in the Union registry.

(2) The Authority shall act as national registry administrator in respect of maritime operators holding accounts of shipping companies to which these regulations apply. The national registry administrator shall perform its functions in accordance with relevant decisions and regulations adopted by the Commission in accordance with Directive 2003/87/EC. The national registry administrator shall ensure that there is no conflict of interest between itself and holders of maritime operator holding accounts.

(3) A request to open a maritime operator holding account shall be made by the Authority or the shipping company to the national registry administrator.

(4) A request for the opening of a maritime operator holding account shall include all information required by the national registry administrator in accordance with the relevant decisions and regulations adopted by the Commission in accordance with Directive 2003/87/EC and any requirements and terms and conditions made by the national registry administrator.

(5) The national registry administrator shall open and administer a maritime operator holding account for a shipping company in accordance with the relevant decisions and regulations adopted by the Commission in accordance with Directive 2003/87/EC

and any terms and conditions it may make:

Provided that the national registry administrator shall not open an account unless it is satisfied that the request is in accordance with the requirements of this regulation.

(6) An account holder of a maritime operator holding account and its nominated authorised representatives shall act in accordance with the relevant decisions and regulations adopted by the Commission in accordance with Directive 2003/87/EC and any terms and conditions made by the national registry administrator.

(7) Where a shipping company fails to comply with any requirements of decisions and regulations adopted by the Commission in respect of registries or terms and conditions made by the national registry administrator in respect of registries, the national registry administrator may prevent the transfer of allowances or other accounting units into and out of the maritime operator holding account held by that shipping company until non-compliance is rectified:

Provided that the national registry administrator shall not prevent surrender or cancellation of allowances in accordance with regulation 16.

Allowances.

7. (1) Allowances issued in respect of the period beginning 1st January 2021, and subsequent periods, shall be valid indefinitely.

(2) Allowances issued as from 1st January 2021 in a ten (10) year period shall be valid for emissions from the first year of that period onwards.

Monitoring annual emissions.

8. For the purposes of these regulations, a shipping company shall monitor annual emissions in accordance with Regulation (EU) 2015/757.

Reporting of verified annual emissions.

9. (1) For the purposes of these regulations, a shipping company shall report annual emissions in accordance with Regulation (EU) 2015/757.

(2) From the year 2025, a shipping company shall, by 31st March each year, submit to the Authority a report of aggregated emissions data at company level in accordance with Regulation (EU) 2015/757, for the previous calendar year:

Provided that the report shall be verified by a verifier in accordance with Regulation (EU) 2015/757.

(3) By 31st March of the subsequent year, the shipping

company shall also enter in the Union Registry the amount of emissions reported in the verified report of aggregated emissions data at company level in accordance with sub-regulation (2), in respect of a calendar year.

Checks performed by the Authority.

10. (1) The Authority may perform any checks it deems necessary on any report submitted by a shipping company pursuant to regulation 9.

(2) The Authority shall not accept a report of aggregated emissions data at company level which has not been verified as satisfactory or for which a verification report has not been submitted. Where it deems necessary, the Authority may require the submission of a revised report of verified aggregated emissions data at company level. Where necessary, the shipping company shall update the amount of emissions entered into the Union Registry.

(3) Where, in respect of any monitoring year, a shipping company does not submit a report of verified aggregated emissions data at company level in accordance with regulation 9, or where it is deemed that the shipping company has not submitted a report of aggregated emissions data at company level which is in accordance with the requirements set out in regulation 9, the Authority may, unless there is written agreement between the Authority and the shipping company providing otherwise, determine itself the aggregated emissions data at company level for maritime activities performed by that shipping company for that monitoring year. The Authority shall use best available data and shall ensure that a conservative estimate is made that does not underestimate emissions:

Provided that the Authority shall notify the shipping company of the emissions as determined and the methodology used to determine such emissions:

Provided further that the Authority shall enter the amount of emissions as determined in accordance with this sub-regulation into the Union registry.

Administrative penalties relating to reporting of annual emissions.

11. (1) A shipping company who fails to submit a verified report of aggregated emissions data at company level in respect of a year in accordance with regulation 9 shall be subject to the imposition of an administrative penalty as follows:

(a) one thousand euro (€1,000) and, or fifty euro (€50) for each day of non-compliance, from the date of a notice given by the Authority to the shipping company in the case of a shipping company whose aggregated emissions data at company level for that year are less than ten thousand (10,000) tonnes

carbon dioxide equivalents;

(b) five thousand euro (€5,000) and, or one hundred euro (€100) for each day of non-compliance, from the date of a notice given by the Authority to the shipping company in the case of a shipping company whose aggregated emissions data at company level for that year are equal to, or greater than ten thousand (10,000) tonnes carbon dioxide equivalents and equal to, or less than fifty thousand (50,000) tonnes carbon dioxide equivalents;

(c) ten thousand euro (€10,000) and, or three hundred euro (€300) for each day of non-compliance, from the date of a notice given by the Authority to the shipping company in the case of a shipping company whose aggregated emissions data at company level for that year are more than fifty thousand (50,000) tonnes of carbon dioxide equivalents and equal to, or less than five hundred thousand (500,000) tonnes carbon dioxide equivalents;

(d) fifty thousand euro (€50,000) and, or six hundred euro (€600) for each day of non-compliance, from the date of a notice given by the Authority to the shipping company in the case of a shipping company whose aggregated emissions data at company level for that year are more than five hundred thousand (500,000) tonnes of carbon dioxide equivalents.

(2) For the purposes of determining the administrative fine under this regulation, where the aggregated emissions data at company level of the shipping company are not known or are not reported or where the Authority is satisfied that there is no reasonable possibility that a verified quantity of aggregated emissions data at company level shall be reported by the shipping company, the Authority may determine the aggregated emissions data at company level from the activities performed by the shipping company. The Authority shall use the best available data and ensure that a conservative estimate is made that does not underestimate emissions. The shipping company shall be liable to the imposition of an administrative fine equal to the amounts established in sub-regulation (1) in respect of the quantity of emissions estimated in terms of this sub-regulation.

Surrender and cancellation of allowances.

12. (1) A shipping company shall, by 30th September of each year, surrender a number of allowances that is equal to the total aggregated emissions data at company level from maritime activities listed in Schedule 1 during the preceding calendar year in accordance with sub-regulation (3) and in accordance with the schedule in sub-regulation (4).

(2) Allowances issued by a competent authority of another Member State shall be recognized by the Authority for the purpose of meeting a shipping company's obligations under sub-regulation (1):

Provided that, where necessary, and for as long as is necessary, in accordance with relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC, a shipping company shall not surrender allowances that are issued by a Member State in respect of which there are obligations arising from Directive 2003/87/EC which are lapsing.

(3) A shipping company shall be liable to surrender allowances in respect of:

(a) fifty percent (50%) of the emissions from ships performing voyages departing from a port of call under the jurisdiction of a Member State and arriving at a port of call outside the jurisdiction of a Member State;

(b) fifty percent (50%) of the emissions from ships performing voyage departing from a port of call outside the jurisdiction of a Member State and arriving at a port of call under the jurisdiction of a Member State;

(c) one hundred percent (100%) of emissions from ships performing voyages departing from a port of call under the jurisdiction of a Member State and arriving at a port of call under the jurisdiction of a Member State; and

(d) one hundred percent (100%) of emissions from ships within a port of call under the jurisdiction of a Member State.

(4) Shipping companies shall be liable to surrender allowances according to the following schedule:

(a) forty percent (40%) of verified emissions reported for 2024 that would be subject to surrender requirements in accordance with sub-regulation (1); and

(b) seventy percent (70%) of verified emissions reported for 2025 that would be subject to surrender requirements in accordance with sub-regulation (1); and

(c) one hundred percent (100%) of verified emissions reported for 2026 and each year thereafter in accordance with sub-regulation (1);

(5) The national registry administrator shall cancel allowances

surrendered in accordance with sub-regulation (1);

(6) The national registry administrator shall cancel allowances at any time at the request of a shipping company holding such allowances.

(7) Surrender and cancellation of allowances shall be carried out in accordance with the relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC.

(8) The Authority shall publish the name of any shipping company which is in breach of the requirement to surrender sufficient allowances under sub-regulation (1).

(9) Any shipping company who does not surrender sufficient allowances by the 30th September of each year as required by sub-regulation (1) to cover its emissions during the preceding year shall be liable to the imposition of an administrative penalty of one hundred euro (€100) for each tonne of carbon dioxide equivalent emitted, for which the shipping company has not surrendered allowances. From 1st January 2013, where, for the year in respect of which a shipping company does not surrender sufficient allowances to cover emissions during that year in accordance with sub-regulation (1), the annual average Harmonized European Index of Consumer Prices published indicates a percentage increase as compared to the Harmonized European Index of Consumer Prices published for the previous year, the administrative fine shall be increased by the same percentage. The administrative penalty as revised pursuant to this sub-regulation shall apply to subsequent years unless further increased in accordance with the Harmonized European Index of Consumer Prices. For the purposes of this sub-regulation, each allowance not surrendered by the shipping company for a tonne of carbon dioxide equivalent emitted, shall be considered as a separate contravention.

(10) The imposition of an administrative fine as prescribed in sub-regulation (9) shall not release the shipping company from the obligation to surrender an amount of allowances equal to those excess emissions in respect of which the administrative penalty is paid when surrendering allowances in relation to the following calendar year.

(11) Where a shipping company fails to surrender allowances in accordance with sub-regulation (1), the national registry administrator shall not allow the transfer of allowances or any other accounting units out of the maritime operator holding account of that shipping company until the shipping company complies with the requirement to surrender allowances:

Provided that the national registry administrator shall not prevent the surrender of allowances in accordance with sub-regulation (1) or the cancellation of allowances in accordance with sub-regulation (6).

(12) By way of derogation from sub-regulation (3), a shipping company may surrender five percent (5%) fewer allowances than its verified emissions taking place until 31 December 2030 from ice class ships, provided that these ships have ice-class IA or IA Super or an equivalent ice class, established based on HELCOM Recommendation 25/7.

(13) By way of derogation from sub-regulation (3), a shipping company shall not be required to surrender allowances in respect of emissions released until 31st December 2030 from voyages performed by passenger ships, other than cruise passenger ships, and by ro-pax ships, between a port of an island under the jurisdiction of a Member State with no road or rail link with the mainland and with a population of fewer than two hundred thousand (200,000) permanent residents and a port under the jurisdiction of that same Member State, and from activities, within a port, of such ships in relation to such voyages, as may be listed in relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC.

(14) By way of derogation from sub-regulation (3), a shipping company shall not be required to surrender allowances in respect of emissions released until 31st December 2030 from voyages performed by passenger or ro-pax ships in the framework of a transnational public service contract or a transnational public service obligation, connecting two (2) Member States, and from the activities, within a port, of such ships in relation to such voyages, as may be listed in relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC.

(15) By way of derogation from sub-regulation (3), a shipping company shall not be required to surrender allowances in respect of emissions released until 31st December 2030 from voyages between a port located in an outermost region of a Member State and a port located in the same Member State, including voyages between ports within an outermost region and voyages between ports in the outermost regions of the same Member State, and from activities, within a port, of such ships in relation to such voyages.

Provisions for transfer of the costs of the EU ETS from the shipping company to another entity.

13. (1) When the ultimate responsibility for the purchase of the fuel and, or the operation of the ship is assumed by a different entity than the shipping company pursuant to a contractual arrangement, the shipping company shall be entitled to reimbursement

from that entity for the costs arising from the surrender of allowances.

(2) "Operation of the ship" for the purposes of this regulation means determining the cargo carried or the route and the speed of the ship. The shipping company shall remain the entity responsible for surrendering allowances as required under regulation 12 and for overall compliance with the provisions of these regulations. A shipping company shall comply with the obligations to surrender allowances under regulation 12, notwithstanding the entitlement of that shipping company to be reimbursed by the commercial operators for the costs arising from the surrender.

Expulsion orders.

14. Where a shipping company has failed to comply with the surrender obligations for two (2) or more consecutive reporting periods, and where other enforcement measures have failed to ensure compliance, the Authority may, after consultation with the regulatory authority responsible for maritime transport and after giving the opportunity to the shipping company concerned to submit its observations, request the Minister responsible for maritime transport to issue an expulsion order.

Access to information, disclosure and professional secrecy. S.L. 549.39.

15. Decisions related to the reports of emissions submitted in accordance with regulation 9 shall be made available to the public in accordance with the Freedom of Access to Information on the Environment Regulations:

Cap. 586.

Provided that any access to personal data shall be made in accordance with the Data Protection Act and such information covered by professional secrecy may not be disclosed to any other person or authority except by virtue of the applicable laws, regulations, administrative provisions and, or the provisions of the Professional Secrecy Act:

Cap. 377.

Provided further that without prejudice to this regulation and to the obligation which may be imposed on the Authority to disclose any information, the Authority shall not disclose any confidential information or any parts thereof or any other information provided in connection with the report which should be treated as commercially confidential:

Provided further that any information which shall be treated as commercially confidential shall be made known at all times to the Authority.

Submission of reports.

16. The Authority may require that submissions of reports under regulation 9 are made in the form and manner and by means of the medium as specified by it.

17. The revenue from the auctioning of allowances, after deducting the audited costs to administer the EU ETS agreed between the Minister responsible for finance and the Authority, shall accrue to the Consolidated Fund. Revenue accruing from the auctioning of allowances.

18. The Administrative Review Tribunal shall have jurisdiction to hear and determine appeals from decisions of the Authority made under these regulations in terms of the Administrative Justice Act, which appeal shall be filed by not later than twenty (20) days from the service of the said Authority's decision, wherein the aggrieved party shall specify the reasons on the basis of which the said decision of the Authority should be cancelled or modified: Right of appeal. Cap. 490.

Provided that any party to the proceedings before the Administrative Review Tribunal who feels aggrieved by a decision of the said Tribunal, may appeal to the Court of Appeal on a point of law in accordance with the Code of Organization and Civil Procedure. Cap. 12.

19. Immediately after the last item of the Second Schedule to the Administrative Justice Act there shall be added the words "European Union Greenhouse Gas Emissions Trading System for Maritime Transport Regulations S.L. 643.06, Superior/Inferior Competence". Consequential amendment. Cap. 490.

Schedule 1
Regulations 1, 2, 3, 12
Categories of activities to which these regulations apply

Activities	Greenhouse Gases
Maritime transport	Carbon dioxide (CO_2)
Maritime transport activities covered by Regulation (EU) 2015/757 with the exception of the maritime transport activities covered by Article 2(1a) and, until 31st December 2026, Article 2(1b) of the said Regulation	From 1 January 2026, methane (CH_4) and nitrous oxide (N_2O)

B 2186

Schedule 2
Regulation 2
Greenhouse gases

Carbon dioxide (CO_2)

Methane (CH_4)

Nitrous Oxide (N_2O)

Hydrofluorocarbons (HFCs)

Perfluorocarbons (PFCs)

Sulphur Hexafluoride (SF_6)

Ippubblikat mid-Dipartiment tal-Informazzjoni (doi.gov.mt) — Valletta — ***Published by the Department of Information (doi.gov.mt) — Valletta***
Mitbugħ fl-Istamperija tal-Gvern fuq karta FSC — ***Printed at the Government Printing Press on FSC certified paper***
Prezz/*Price*
€1.35