

ECSA answer to the public consultation on the Draft Implementing Regulation laying down rules for the administration of shipping companies by administering authorities under the EU ETS

ECSA welcomes the possibility to provide feedbacks on the Draft Implementing Regulation laying down rules for the administration of shipping companies by administering authorities under the EU ETS.

ECSA would like to highlight that the Implementing Regulation should include clear wording on the legal consequences for shipowners if the shipping company fails to fulfil its obligations. Our understanding is that the ETS obligation in these situations lies with the shipowner. However, a clarification in the Implementing Regulation would be welcome to avoid uncertainty.

In addition, ECSA would like to raise two issues.

1. Ship management companies

The draft implementing regulation does not properly address ship management companies (DoC holding / ISM companies), which are incorporated in a non-EU country, but established in a Member State.

In this context, for reasons of compliance with institutional regimes of foreign shipping (ship management) companies in the territory of EU Member States and for the avoidance of practical complications of EU ETS implementation, the following proposal shall be considered.

Proposal

It is proposed that for the effective definition and determination of the country of registration of the shipping company the draft implementing regulation shall be amended to include the phrase "based on the address of establishment of the said company".

Article 3 paragraph 1 should be:

"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 *based on the address of establishment of the said company.*"

2. Declaration regarding the responsible entity under the EU ETS to the competent authority

The draft implementing regulation does not clarify, even if seen together with the draft delegated regulation on the Union Registry, how the declaration (required when the shipowner has agreed with the DoC holder / ISM company to be explicitly responsible for the compliance with the EU ETS obligations) is allowed for in the assignment of Administering Authorities.

In the relevant draft regulations, the declaration is only required to be submitted together with the application for opening a Maritime Operator Holding Account. As these applications will only be made after the list of shipping companies specifying the respective Administering Authority has been published, it will not be possible to allow for the declarations when the Commission compiles the list.

In addition, as the shipping company is obliged to apply for the opening of a Maritime Operator Holding Account within 20 working days of the publication of the above list, there is insufficient time to make any corrections.

Proposal

It is therefore proposed in case that the voluntary declarations above required are submitted to the competent Administering Authority of the DoC holder (or to any national administrator of the Union Registry) in advance of the application to open the Maritime Operator Holding Account that the Administering Authority be obligated to inform the Commission.

As shipowning and management companies will need time to agree and make necessary contractual agreements and the Commission will require time to prepare the list, it is suggested that a deadline of 31 December 2023 be set for the voluntary submission of such declarations. Where such declarations have been made within the deadline, the Administering Authority shall promptly inform the Commission and should be assigned accordingly.