

# EU ETS – A New Era in Shipping

## Loss Prevention Webinar – 6 March 2024



# EU ETS – A New Era in Shipping

## Speakers



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# EU ETS

## A short introduction

- European Union Emissions Trading System
- A mandatory 'cap and trade' system applying to greenhouse gas (GHG) emissions within the EU
- Participants must annually acquire and surrender 'emissions allowances' (EUAs) representing the quantity of their emitted GHGs
- Emissions from maritime transport included from 1 January 2024 – Allowed phase-in period for the surrender of EUAs:
  - For 2024, 40% of verified regulated GHG emissions;
  - For 2025, 70% of verified regulated GHG emissions; and
  - For 2026 onwards, 100% of verified regulated GHG emissions



# EU ETS

## A short introduction

- Applies to ships 5,000 GT – Aligned with the EU MRV Regulation
  - Certain vessels are exempted e.g., fishing vessels
  - Until 31 December 2030, ice-class vessels may surrender 5% fewer EUAs
- Commercial voyages will be regulated as follows:
  - 100% of a vessel's emissions from voyages between two EU ports of call;
  - 100% of a vessel's emissions during a port of call; and
  - 50% of emissions from an EU port of call to a non-EU port of call, or vice versa
- The EU ETS will initially apply to carbon dioxide (CO<sub>2</sub>) emissions only
  - From 1 January 2026 methane (CH<sub>4</sub>) and nitrous oxide (N<sub>2</sub>O) will also be included
  - Therefore, from 2024 CH<sub>4</sub> and N<sub>2</sub>O emissions also to be reported in accordance with the MRV Regulation



# EU ETS & The Shipping Industry



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06 March 2024

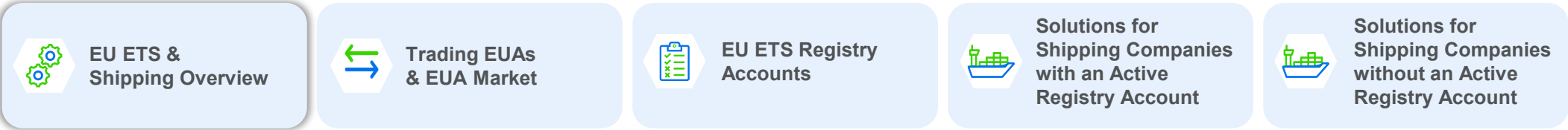
Produced by Lucy Palairt

Director, Carbon Markets Development

CCIB



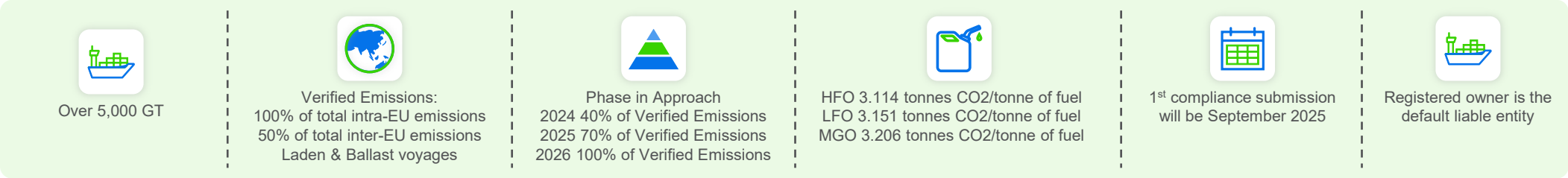
# Key Themes



## EU Emission Trading System (ETS)



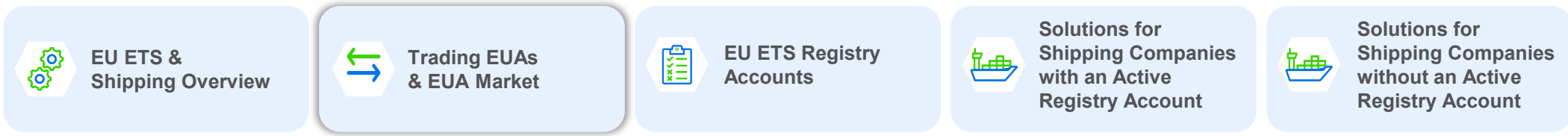
## Shipping & EU ETS



Source: EU



# Key Themes



## Primary Market via EU Auctions

These happen almost daily and are run by individual member states.

Auctions are open to liable entities under EU ETS.

There are minimum bid and volume requirements which vary across member states

## Secondary Market via

- 1. Over The Counter (OTC)**  
 Direct trading with an established counterparty – this could be a Financial Institution, a trading firm or a liable entity under EU ETS.  
 Dealing terms are agreed directly including:
  - Price – this could be spot or forward price
  - Volume – no fixed size
  - Settlement Terms
  - Delivery Terms
- 2. Exchanges i.e ICE, EEX**  
 Need to set up an account with the exchange and abide by their rules, regulations, fixed expiry and delivery dates and minimum lot size.  
 For example, for ICE the minimum lot size is 1 lot i.e 1,000 EUAs

## EUA Market



The most liquid EUA contract is the front December contract i.e currently it will be December 2024.

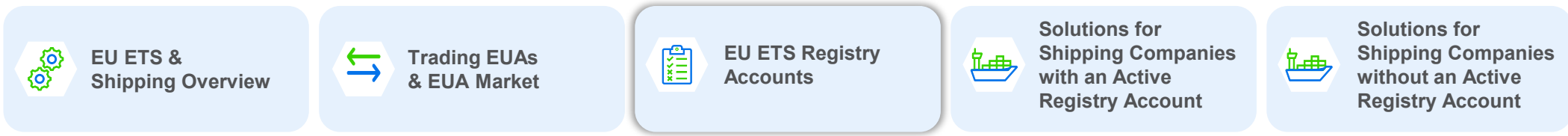
1 lot is equal to 1,000 tonnes of CO2

EUAs are regulated and traded like most other commodities.

Swaps, options, structured products are all available within EUA market



# Key Themes



## 1. Trading Account

- Can be opened by entities who need to comply with EU ETS
- Can be opened by entities who do not need to comply with EU ETS
- Difficult to open without an EU presence
- EUAs are easily transferable into and out of Trading Accounts

## 2. Operator Holding Account

- This is the account from where EUAs are surrendered to the EU
- Must** be opened by entities who need to comply with EU ETS
- Cannot be opened by entities who do not need to comply with EU ETS
- EUAs are not as easily transferable into and out of OHAs
- Aviation and Maritime have dedicated OHAs

*NB. It is possible to open both an Operator Holding Account and a Trading Account, they do not have to be opened in the same member state*

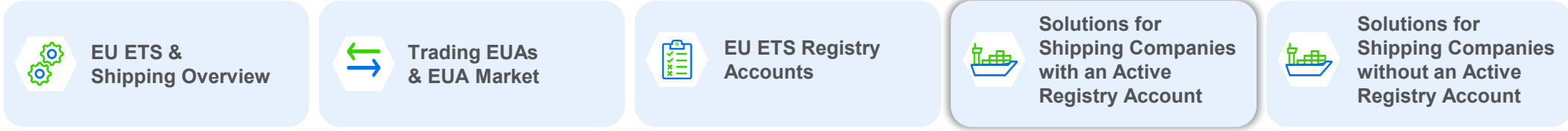
## Maritime Operator Holding Account (M)OHA – Must be opened by every liable entity under EU ETS for Shipping

<p>Who is the liable entity?</p> <ul style="list-style-type: none"> <li>The Registered Shipowner is the default liable entity</li> <li>This liability can be transferred to DOC holder with the correct documentation.</li> </ul> <p>How to open a (M)OHA?</p> <ul style="list-style-type: none"> <li>The account will be opened with an individual EU member state</li> </ul> <p>Which member state will the M(OHA) be opened in? If Shipping Company has:</p> <ul style="list-style-type: none"> <li>An EU presence, then this shall be their member state</li> <li>No EU presence, then member state shall be determined by: The member state where the shipping company has had the greatest number of port calls over the last four years</li> <li>No EU presence and has no port calls in the last four years, then member state shall be determined by: The first port of call in EU</li> </ul>	<p>When to open M(OHA)</p> <ul style="list-style-type: none"> <li>On 1<sup>st</sup> February 2024 the EU released a list of the 2,245 Shipping Companies that had called at an EU port in 2024 with their assigned member state</li> <li>These companies have 40 days to submit the opening documents to their member state</li> <li>The member state then has 40 days to open, or reject, the M(OHA)</li> <li>For those companies not on the list they can start this process only after their first port of call in EU</li> <li>These companies have 65 days to submit the opening documents to their assigned member state</li> <li>The member state then has 40 days to open, or reject, the M(OHA)</li> </ul>
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# Key Themes



## Spot

## Forward



*It is possible to have EUAs transferred to a related third party, subject to sanctions checks and valid economic rationale.*

*For example, if the buyer is dealing and contracting the trade from their non-European incorporated legal entity; however, their registry account is housed with a related party European incorporated entity, the purchased EUAs may be transferred into the registry account of the related entity instead*

Current trend is to buy EUAs on a voyage-by-voyage spot basis.

Some owners are requesting for charterers to purchase EUAs and transfer directly into owners EU registry account.

Other owners are agreeing an EUA price and charterers pay for the exposure in cash whilst owners purchase EUAs.

Generally EUAs need to be dealt with under an ISDA with additional Emissions Annex



# Key Themes



## Spot with Deferred Delivery

## Forward



Current trend is to buy EUAs on a voyage-by-voyage spot basis.

Some owners are requesting for charterers to purchase EUAs and transfer directly into owners EU registry account.

Other owners are agreeing an EUA price and charterers pay for the exposure in cash whilst owners purchase EUAs.

Generally EUAs need to be dealt with under an ISDA with additional Emissions Annex



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# HFW

SUSTAINABILITY  
IN OUR SECTORS



## EU ETS: in practice and contractual implications

In association with Britannia P&I Club

6 March 2024

Alessio Sbraga – Partner, HFW



## EU ETS AND SHIPPING GETTING TO GRIPS WITH THE EU ETS

**RESPONSIBILITY UNDER THE EU ETS FOR SHIPPING**

**SANCTIONS AND  
PENALTIES**

**For Compliance**  
(i.e. EUA surrender +  
monitoring/reporting)

**For Costs liability**  
(i.e. for payment for  
EUA cost)

**GENERAL EU ETS /  
FINANCIAL  
REGULATORY ISSUES**

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## COMPLIANCE RESPONSIBILITY WHO IS THE SHIPPING COMPANY?

- “Shipping Company” solely responsible for compliance – EU ETS and MRV
- Key gateway issue / decision - Article 3(w):

*“the **shipowner** or any other 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.....”*

- “Shipping company”: shipowners or technical managers / bareboat charterers (“ISM Company”)
  - Key role of EU Commission (Article 3gf EU ETS Directive):
    - **Implementing Regulation 2023/2599** – act “to establish detailed rules relating to the administration of shipping companies”
    - **Implementing Decision 2024/411** – “list of Shipping Companies” and “specifying administering authority for each shipping company”
-



2023/2599

23.11.2023

## COMMISSION IMPLEMENTING REGULATION (EU) 2023/2599

of 22 November 2023

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)

Source: [EU Parliament](#)

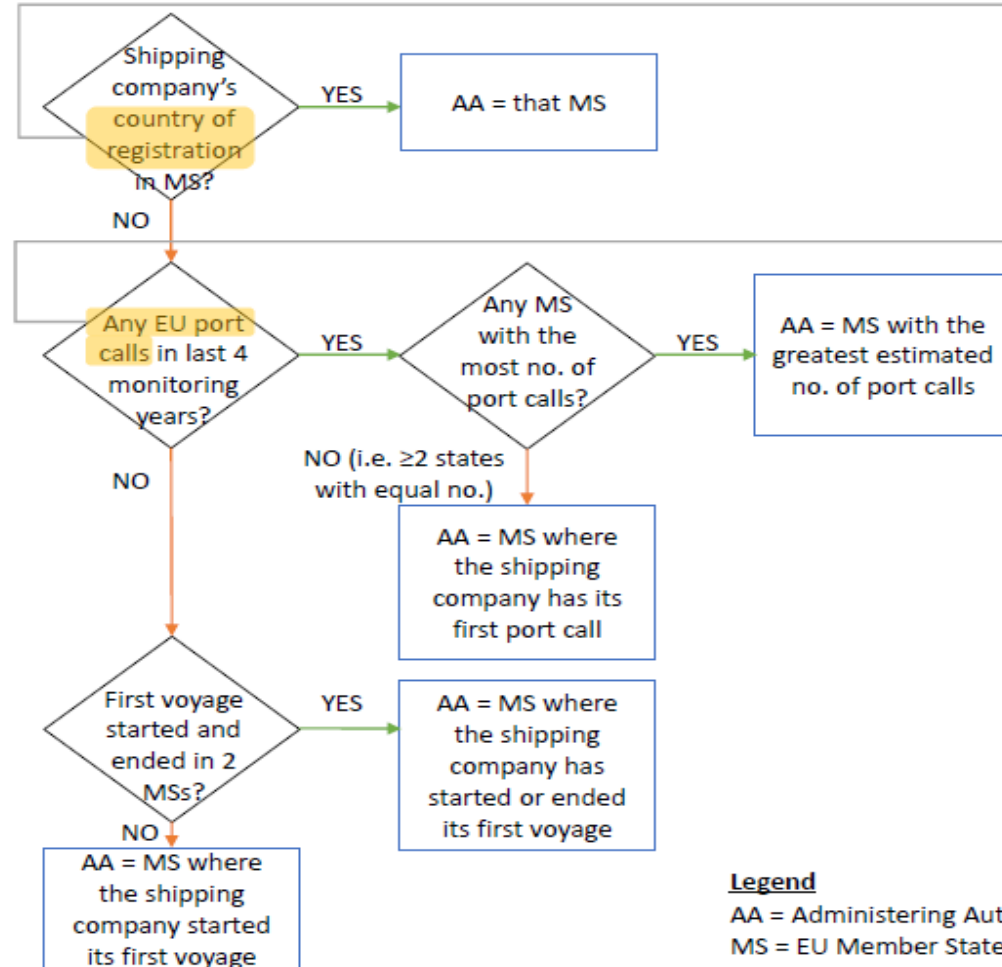
- Default compliance entity as shipowner (undefined) – registered owner?
- Possible to pass on compliance responsibility via Document Mandate (between shipowner and ISM Company)
- *Uncertainty* remains over the nature of / parties to Document Mandate
- Document Mandate submitted to the relevant Administering Authority (AA) – Article 3gf EU ETS Directive





# COMPLIANCE RESPONSIBILITY ATTRIBUTION OF ADMINISTERING AUTHORITY

**Decision Tree Matrix for Attribution of AA for a Shipping Company**  
(Art 3gf, EU ETS Directive; Arts 3, 4 and 5 of Implementing Reg. (EU) 2023/2599)



**Legend**

AA = Administering Authority  
MS = EU Member State

**Where Information is Taken From**

'Country of Registration' as recorded in THETIS-MRV

Port call data based on SafeSeaNet or if insufficient, EC can use AIS data

**Initial list of shipping companies**  
(Implementing Decision (EU) 2024/411)

Based on:

1. Algorithm using the decision tree
2. Data\* available as at 20 Nov 2023
3. Algorithm applied on 20 Nov 2023
4. All entities that had a company account with at least one ship in THETIS-MRV.

\*Data based on persons reporting under MRV Regulations (Regulation (EU) 2015/757) (i.e. pre-definition alignment between EU ETS definition of 'shipping company' and definition of 'company' under MRV regulations)

Does this apply to Shipping Companies on the List only?



# COMPLIANCE RESPONSIBILITY SHIPPING COMPANY LIST



Official Journal  
of the European Union

EN

Series L

2024/411

31.1.2024

COMMISSION IMPLEMENTING DECISION (EU) 2024/411

of 30 January 2024

on the list of shipping companies specifying the administering authority in respect of a shipping company in accordance with  
Directive 2003/87/EC of the European Parliament and of the Council

(Text with EEA relevance)

Source: [EU Parliament](#)

- Entities (and AAs) listed: where submitted emissions data in THETIS MRV, predominantly ship managers
- Shipping Company List – no changes until re-issued on a 2-year (Member State registered entity) and 4-year (non-Member State registered entity) basis.
- Delegated Regulation 2019/1122 (“**Registry Regulation**”) - time started ticking to apply for MOHA:
  - Shipping Company on List – apply within 40 working days of publication of List (i.e 26 March)
  - Shipping Company not included – apply within 65 working days of first qualifying voyage within scope

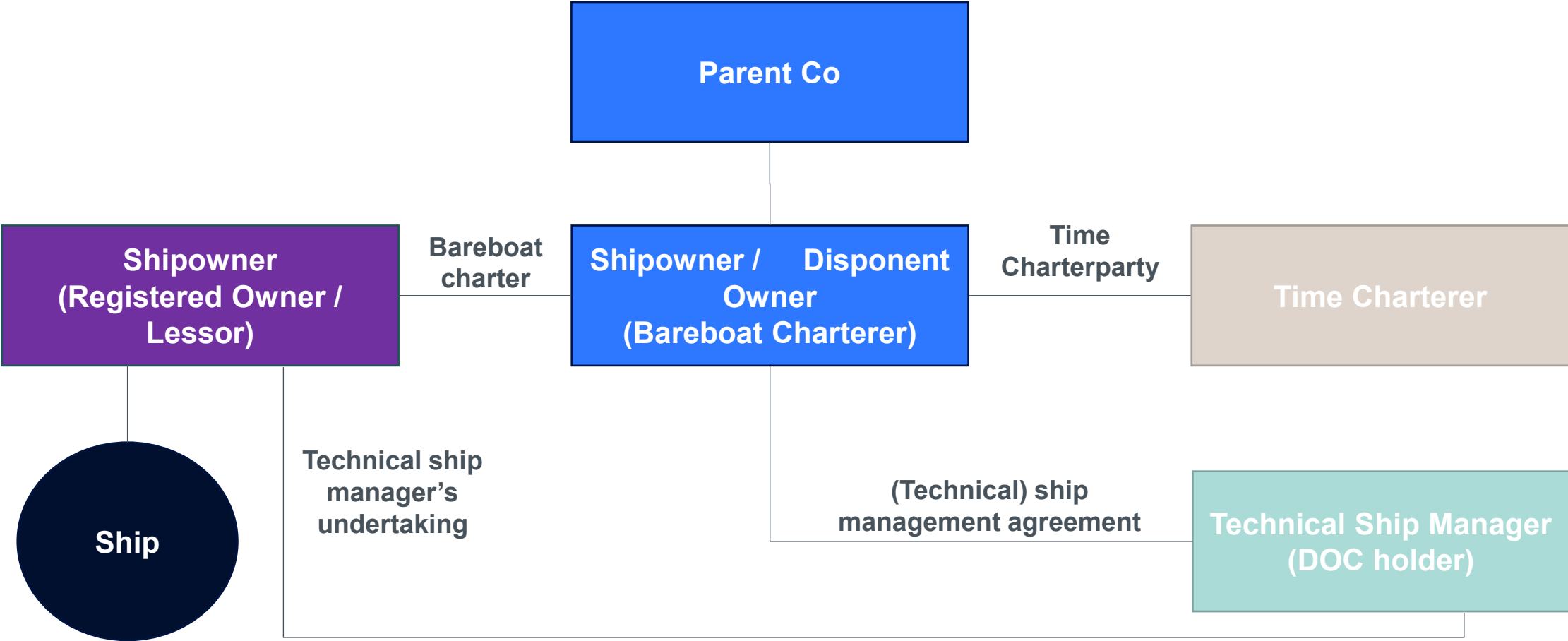


## COMPLIANCE RESPONSIBILITY PRACTICAL CONSIDERATIONS

- How can compliance work in practice?
  - What are the necessary considerations?
  - Shipping Company List  $\neq$  definitive list of Shipping Companies / determinative of compliance responsibility
  - Establishing the right candidate for compliance responsibility
    - Importance of assessing compliance permutations where:
      - (a) vessel ownership interest; or
      - (b) performing ship management function
    - Very relevant enquiry when viewed against typical commercial ownership structure....
-



# COMPLIANCE RESPONSIBILITY TYPICAL COMMERCIAL OPERATING STRUCTURE





## COMPLIANCE RESPONSIBILITY CONTRACTUAL RELATIONS

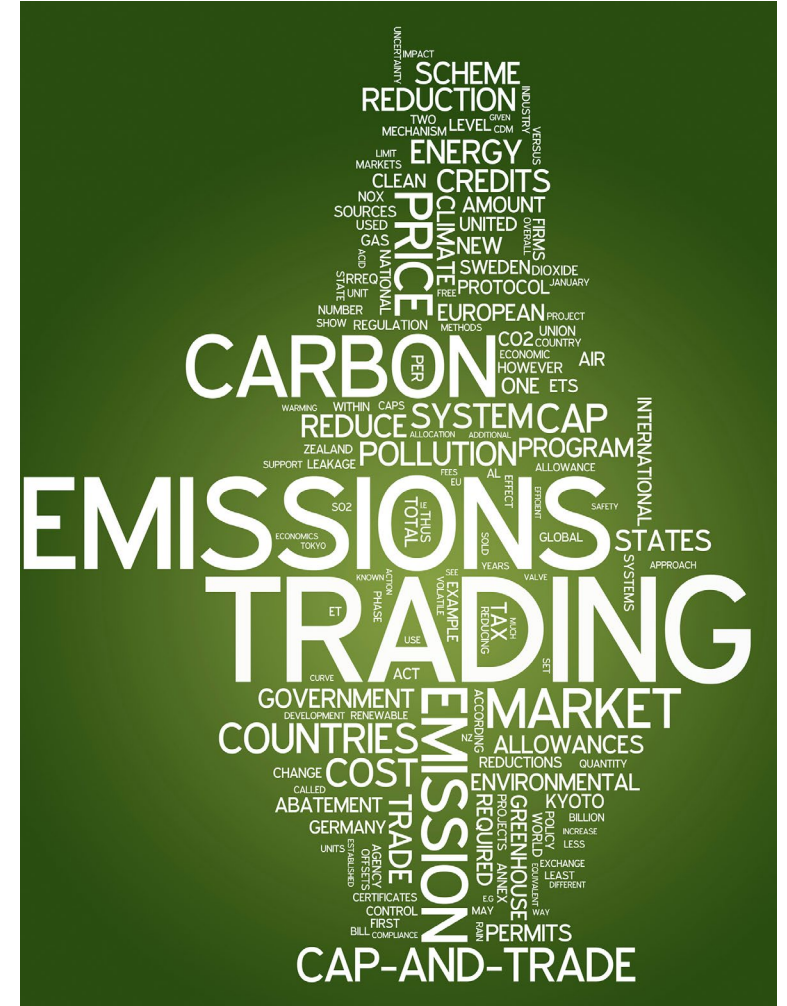
- Important to determine whether EU ETS compliance responsibility *can* be assumed / by whom / whether *desired*
  - Determining the Shipping Company impacts:
    - compliance documentation and steps to be taken; and
    - contractual relationships – depending on commercial ownership structure
  - Ambiguity over which entity *could qualify* as a “Shipping Company”
    - “Shipowner” – role of a registered bareboat charterer?
    - “ISM Company” – responsibility for ISM under contract v ISM DOC Holder
  - Role of Administering Authority – establishing entities and Document Mandate compliance
  - Document Mandate: options
    - bilateral / power of attorney / tripartite?
  - Solutions depend on underlying contractual relationships / amendments required to:
    - Shipmanagement agreements (and undertakings)
    - Bareboat charters / sale and leaseback arrangements
-

- Transfer of EU ETS costs liability:
  - Responsibility for “*EU ETS costs*” attributed to charterers under “polluter pays” principle
- Dependent on underlying contractual arrangement [Article 3gc]
  - *Where the ultimate responsibility for purchase of the fuel or operation of ship (or both) assumed by an entity other than the Shipping Company*
  - *Operating ship = determining the cargo carried or the route and speed*
- Highly relevant to both time and voyage charters / COAs
- Shipping Company right to seek reimbursement in Member State
  - Member States to facilitate statutory entitlement of the Shipping Company to claim EU ETS costs by providing for “*necessary measures*” under national law
  - Known-unknown – unclear as to how it will work in practice



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# EU ETS COSTS LIABILITY SEEKING CONTRACTUAL CERTAINTY





## EU ETS COSTS LIABILITY WHERE NO CONTRACTUAL SOLUTION

- Where no contractual solution for passing on EU ETS costs liability exists/agreed:
  - Role of Member States
  - Existing contractual terms
- Shipowner and charterer / operator perspectives:
  - Practical and commercial uncertainty
  - What are the terms of the contract agreed between the parties
  - Role of choice of law and jurisdiction clauses in contracts where forum is non-Member State







## FUTURE OF EU ETS FOR SHIPPING ACTION REQUIRED NOW

- Important to address these issues now
- Not a question of kicking the can down the road.....



# THANK YOU FOR YOUR TIME!



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Americas | Europe | Middle East | Asia Pacific

The background of the slide features a blurred image of industrial machinery, likely a steel mill, with large rollers and pipes. The scene is lit with a warm, golden light, possibly from a sunset or sunrise, creating a hazy, atmospheric effect. A large, solid blue shape overlaps the top right and bottom right of the image, framing the text.

# Decarbonisation

Stinne Taiger Ivø  
Deputy Secretary General

6 March 2024

# Emission Trading Schemes

# It takes two to tango...

Does EU ETS need to be addressed in commercial contracts?

Why would parties want to reflect new legislation in their commercial contracts?

Commercial optionality



# Time Charter Parties

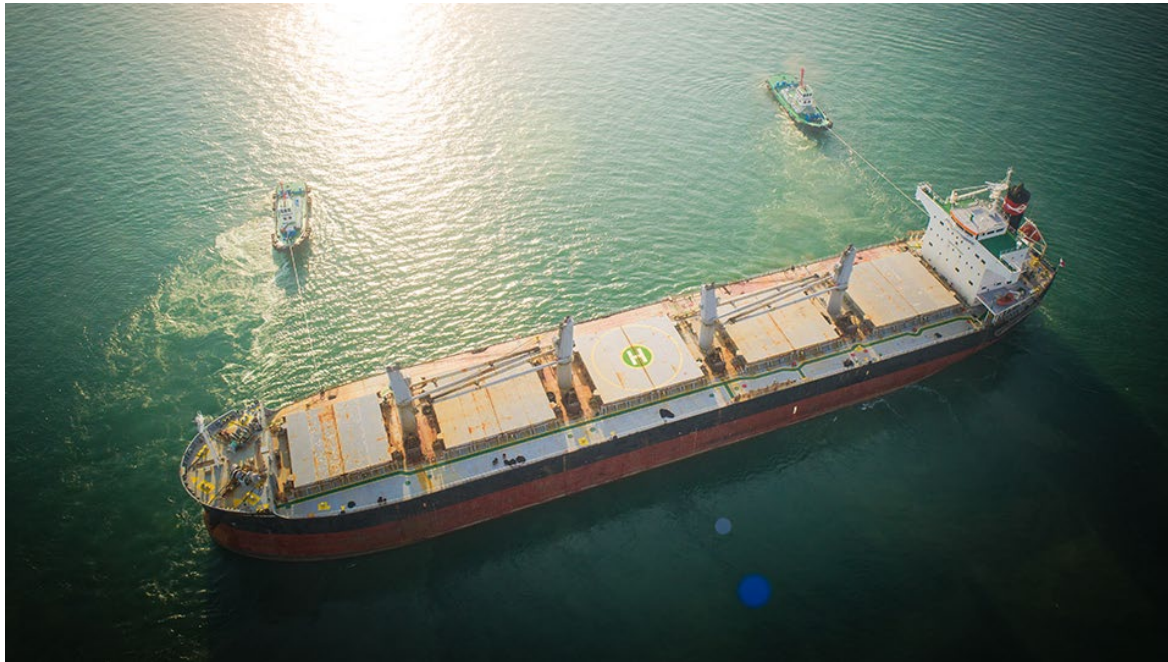


ETS - Emission Trading Scheme  
Allowances Clause for Time  
Charter Parties 2022

# Key features

- Owners to monitor and report relevant GHG emissions
  - Owners to nominate an Emission Scheme Account
  - Notifications
  - Charterers to transfer EUAs
  - Data and calculations to establish the quantities
  - Redelivery
  - Off-hire
  - Suspension of performance
-

# Voyage Charter Parties



[ETS – Emission Scheme Freight Clause for Voyage Charter Parties 2023 \(bimco.org\)](#)

[ETS – Emission Scheme Surcharge Clause for Voyage Charter Parties 2023 \(bimco.org\)](#)

[ETS – Emission Scheme Transfer of Allowances Clause for Voyage Charter Parties 2023 \(bimco.org\)](#)



# Which path to choose?

Legal certainty

Predictability

Data and accuracy

Corporate structure



# ETS costs included in the freight

- ETS costs included in the freight
- No additional payment unless the charterers are in breach of the charter party
- Follows traditional voyage charter party principles

# ETS costs paid as a surcharge

- ETS costs payable as a surcharge
- No additional payment unless the charterers are in breach of the charter party
- Follows traditional voyage charter party principles – however an option to protect against price fluctuations

# ETS costs paid by transfer of allowances

- The clause sets out two options:
  - (1) An agreed quantity of emission allowances is to be transferred and received by owners at a certain point in time
  - (2) An estimated quantity of emission allowances is to be transferred and received by owners at a certain point in time, but reconciliation will take place post-voyage



# Q&A

For more information: [lossprevention@tindallriley.com](mailto:lossprevention@tindallriley.com)

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