

New shipping emissions regulations

How will the regulations be used and enforced in practice and what will their impact be on commonly used terms included in contracts such as charterparties?

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The new regulations

There are three key pieces of new EU legislation:

1. **Directive 2023/959**, amending the 2003 Emissions Trading Scheme Directive and published on 16 May 2023.
2. **Regulation 2023/957**, amending the 2015 Monitoring, Reporting and Verification of Carbon Dioxide from Maritime Transport Regulation and also published on 16 May 2023.
3. **Regulation 2023/1805** of 13 September 2023 which is concerned with promoting the use of renewable and low-carbon fuels.

The first two measures, which are both concerned with the EU's emissions trading scheme, have had practical effect since the beginning of 2024. The FuelEU Maritime Regulation, which is separate, will come into force on 1 January 2025.

How is this going to affect shipping contracts and shipping disputes?

Parties to charterparties are likely to wish to include contractual provisions dealing with responsibility for and/or reimbursement of obligations under the EU ETS. BIMCO has produced four model clauses to assist them. They are:

1. The BIMCO Emission Trading Scheme Allowances Clause for Time Charter Parties 2022 (“**the BIMCO Time Charter Clause**”);
2. The BIMCO Emission Scheme Transfer of Allowances Clause for Voyage Charter Parties 2023 (“**the BIMCO VC Transfer of Allowances Clause**”);
3. The BIMCO Emission Scheme Freight Clause for Voyage Charter Parties 2023 (“**the BIMCO VC Freight Clause**”);
4. The BIMCO Emission Scheme Surcharge Clause for Voyage Charter Parties 2023 (“**the BIMCO VC Surcharge Clause**”).

BIMCO Time Charter Clause

Notwithstanding any other provision in this Charter Party, the Owners and the Charterers (the "Parties" and each individually a "Party") agree as follows:

"Emission Allowances" means an allowance, credit, quota, permit or equivalent, representing a right of a vessel to emit a specified quantity of greenhouse gas emissions recognised by the Emission Scheme.

"Emission Scheme" means a greenhouse gas emissions trading scheme which for the purposes of this Clause shall include the European Union Emissions Trading System and any other similar systems imposed by applicable lawful authorities that regulate the issuance, allocation, trading or surrendering of Emission Allowances.

(a) The Owners and the Charterers shall co-operate and exchange all relevant data and information in a timely manner to facilitate compliance with any applicable Emission Scheme and enable the Parties to calculate the amount of Emission Allowances in respect of the Vessel that must be surrendered to the authorities of the applicable Emission Scheme for the period of the Charter Party.

(b) The Owners shall monitor and report the relevant greenhouse gas emissions of the Vessel for verification by an independent verifier in accordance with the applicable Emission Scheme.

(c) (i) Throughout the Charter Party period the Charterers shall provide and pay for the Emission Allowances corresponding to the Vessel's emissions under the scope of the applicable Emission Scheme:

(1) Within the first seven (7) days of each month, the Owners shall notify the Charterers in writing of the quantity of Emission Allowances for the previous month; and

(2) No later than fourteen (14) days prior to the expected date of redelivery the Owners shall notify the Charterers in writing of the estimated quantity of Emission Allowances for the final month or part thereof.

(ii) The Owners' notifications in subclause (c)(i) shall include the relevant calculations and the data used to establish the quantities.

(iii) Within seven (7) days of notification under subclause (c)(i), the quantity of Emission Allowances notified by the Owners above shall be transferred by the Charterers and received into the Owners' nominated Emission Scheme account. If the estimated quantity of Emission Allowances for the final month or part thereof is higher or lower than the actual quantity calculated by the Owners as at the time and date of redelivery, any difference in Emission Allowances shall be transferred by the Charterers or returned by the Owners, as the case may be, and received into the nominated account of the receiving Party within seven (7) days of written notification from that Party.

(iv) During any period of off-hire, the Charterers shall have the right to offset against any Emission Allowances due or require the Owners to return a quantity of Emission

Allowances equivalent to the emissions that the Charterers would otherwise have been responsible for, had the Vessel remained on hire.

(d) If the Charterers fail to transfer any of the Emission Allowances in accordance with subclause (c), the Owners shall, by giving the Charterers' five (5) days' notice, have the right to suspend the performance of any or all of their obligations under this Charter Party until such time as the Emission Allowances are received in full by the Owners. Throughout any period of suspended performance under this subclause, the Vessel shall remain on hire and the Owners shall have no responsibility whatsoever for any consequences arising out of the valid exercise of this right. The Owners' right to suspend performance under this Clause shall be without prejudice to any other rights or claims they may have against the Charterers under this Charter Party.

BIMCO VC Transfer of Allowances Clause

Notwithstanding any other provision in this Charter Party, the Owners and the Charterers (the "Parties" and each individually a "Party") agree as follows:

"Emission Allowances" means an allowance, credit, quota, permit or equivalent, representing a right of a vessel to emit a specified quantity of greenhouse gas emissions recognised by an Emission Scheme.

"Emission Scheme" means a greenhouse gas emissions trading scheme which for the purposes of this Clause shall include the European Union Emissions Trading System and any other similar systems imposed by applicable lawful authorities that regulate the issuance, allocation, trading or surrendering of Emission Allowances.

"Voyage(s)" means any voyage(s) or shipment(s) performed by the Vessel to meet any obligation under the Charter Party from **[insert load port(s)]** to **[discharge port(s)]** including a ballast voyage from **[insert ballast port or location]**. **

**If the load port(s), discharge port(s) and ballast port or location are not inserted in this definition, the default shall be that "Voyage(s)" means any voyage(s) or shipment(s) performed by the Vessel to meet any obligation under the Charter Party up until the completion of final discharge of cargo including any ballast voyage and any laden legs performed.

(a) The Parties hereby agree:

(i) The quantity of Emission Allowances corresponding to the Vessel's emissions under this Charter Party shall be **[insert quantity]**.

(ii) By the date on which freight (or any other initial freight payment) falls due under this Charter Party or within **[X]*** days of sailing from the load port, whichever is sooner, the quantity of Emission Allowances agreed by the Parties in subclause (a)(i) shall be transferred by the Charterers and received into the Owners' nominated Emission Scheme account.

(b) If the quantity in subclause (a)(i) is left blank, then the following provisions in this subclause (b) shall apply:

(i) By no later than the first day of the laycan, the Owners shall notify the Charterers in writing of the estimated quantity of Emission Allowances corresponding to the Vessel's estimated emissions for the Voyage(s).

(ii) By the date on which freight (or any other initial freight payment) falls due under this Charter Party or within **[X]*** days of sailing from the load port, whichever is sooner, the estimated quantity of Emission Allowances as notified by the Owners pursuant to subclause (b)(i) shall be transferred by the Charterers and received into the Owners' nominated Emission Scheme account.

(iii) No later than [X]* days after completion of final discharge of cargo, the Owners shall notify the Charterers in writing of the actual quantity of Emission Allowances for the Voyage(s) performed in accordance with this Charter Party. Such notification shall include the relevant calculations and the data used to establish the quantity of Emission Allowances.

(iv) If the actual quantity of Emission Allowances notified by the Owners as per subclause (b)(iii) is higher or lower than the estimate of Emission Allowances notified by Owners under subclause (b)(i) and transferred by the Charterers under subclause (b)(ii), any difference in the quantity of Emission Allowances shall be transferred by the Charterers to the Owners' nominated Emission Scheme account or returned by the Owners to the Charterers' nominated Emission Scheme account as the case may be, within [X]* days after receipt of the Owners' written notification as per subclause (b)(iii).

(c) Upon receipt of the full quantity of Emission Allowances set out in subclause (a) or (b), as applicable, and subject always to subclause (d), the Owners shall have no right of recourse against the Charterers in respect of the costs arising from the surrender of Emission Allowances corresponding to the Vessel's emissions under the scope of the applicable Emission Scheme for the Voyage(s) performed under the Charter Party.

(d) Subclauses (a) to (c) are without prejudice to the Owners' right to recover from the Charterers any costs arising from the surrender of Emission Allowances to the applicable Emission Scheme for the Voyage(s) performed under the Charter Party resulting solely from the Charterers' breach of the Charter Party.

(e) If the Charterers fail to transfer any quantity of Emission Allowances in accordance with this Clause, such failure shall be deemed as non-payment of freight under this Charter Party.

(f) The Owners shall be solely responsible for compliance with any applicable Emission Scheme including (without limitation) the surrender of Emission Allowances corresponding to the Vessel's emissions under the scope of the applicable Emission Scheme for the Voyage(s) performed under the Charter Party.

**If number of days is not inserted in subclauses (a)(ii), (b)(ii), (b)(iii) and (b)(iv), the default shall be 14 (fourteen) days.*

BIMCO VC Freight Clause

Notwithstanding any other provision in this Charter Party, the Owners and the Charterers (the "Parties" and each individually a "Party") agree as follows:

"Emission Allowances" means an allowance, credit, quota, permit or equivalent, representing a right of a vessel to emit a specified quantity of greenhouse gas emissions recognised by an Emission Scheme.

"Emission Scheme" means a greenhouse gas emissions trading scheme which for the purposes of this Clause shall include the European Union Emissions Trading System and any other similar systems imposed by applicable lawful authorities that regulate the issuance, allocation, trading or surrendering of Emission Allowances.

(a) The freight due under this Charter Party is inclusive of all costs arising from the surrender of Emission Allowances corresponding to the Vessel's emissions under the scope of the applicable Emission Scheme for the voyage(s) performed under the Charter Party.

(b) Upon receipt of payment of freight in full from the Charterers and subject always to subclause (c), the Owners shall have no right of recourse against the Charterers in respect of the costs arising from the surrender of Emission Allowances corresponding to the Vessel's emissions under the scope of the applicable Emission Scheme for the voyage(s) performed under the Charter Party.

(c) Subclauses (a) and (b) are without prejudice to the Owners' right to recover from the Charterers any costs arising from the surrender of Emission Allowances to the applicable Emission Scheme for the voyage(s) performed under the Charter Party resulting solely from the Charterers' breach of the Charter Party.

(d) The Owners shall be solely responsible for compliance with any applicable Emission Scheme including (without limitation) the surrender of Emission Allowances corresponding to the Vessel's emissions under the scope of the applicable Emission Scheme for the voyage(s) performed under the Charter Party.

BIMCO VC Surcharge Clause

Notwithstanding any other provision in this Charter Party, the Owners and the Charterers (the "Parties" and each individually a "Party") agree as follows:

"Emission Allowances" means an allowance, credit, quota, permit or equivalent, representing a right of a vessel to emit a specified quantity of greenhouse gas emissions recognised by an Emission Scheme.

"Emission Scheme" means a greenhouse gas emissions trading scheme which for the purposes of this Clause shall include the European Union Emissions Trading System and any other similar systems imposed by applicable lawful authorities that regulate the issuance, allocation, trading or surrendering of Emission Allowances.

"Emission Scheme Surcharge" means the agreed costs corresponding to the Vessel's emissions under the scope of the applicable Emission Scheme as set out in subclause (a).

(a) The Emission Scheme Surcharge shall be **[insert currency and amount]**.

(b) The Charterers shall pay the Emission Scheme Surcharge to the Owners in full and without deduction or set off by the date on which freight (or any other initial freight payment) falls due under this Charter Party or within **[X]*** days of sailing from the load port, whichever is sooner.

(c) Upon receipt of the full payment of the Emission Scheme Surcharge, and subject always to subclause (d), the Owners shall have no right of recourse against the Charterers in respect of the costs arising from the surrender of Emission Allowances corresponding to the Vessel's emissions under the scope of the applicable Emission Scheme for the voyage(s) performed under the Charter Party.

(d) Subclauses (a) to (c) are without prejudice to the Owners' right to recover from the Charterers any costs arising from the surrender of Emission Allowances to the applicable Emission Scheme for the voyage(s) performed under the Charter Party resulting solely from the Charterers' breach of the Charter Party.

(e) If the Charterers fail to pay the Emission Scheme Surcharge in accordance with subclause (b), it shall be deemed as non-payment of freight under this Charter Party.

(f) The Owners shall be solely responsible for compliance with any applicable Emission Scheme including (without limitation) the surrender of Emission Allowances corresponding to the Vessel's emissions under the scope of the applicable Emission Scheme for the voyage(s) performed under the Charter Party.

(g) Price Adjustment

This subclause (g) is applicable only if the Parties state "Yes" here: [].

This Charter Party is concluded on the basis of an Emission Scheme Surcharge calculated on the basis of **[insert currency and amount]** per Emission Allowance under the applicable Emission Scheme. The number of agreed Emission Allowances for the voyage(s) to be performed under this Charter Party is **[insert number]**. If the spot price of an Emission Allowance (on any applicable

trading platform agreed between the parties or, in the absence of agreement, the designated auction platform of the applicable Emission Scheme) is higher than **[insert currency and amount]** or lower than **[insert currency and amount]** on the first day of loading, the Emission Scheme Surcharge shall be adjusted upwards or downwards to reflect such increase or decrease in the spot price and paid in accordance with the terms of this Clause.

**If number of days is not inserted in subclause (b), the default shall be 14 (fourteen) days.*

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