JOHANNA OHLMAN
Associate

VIOLET O'GORMAN
Trainee solicitor

ALESSIO SBRAGA
Partner

Wake-up call

With the EU Emissions Trading System entering into force, Johanna Ohlman, Violet O'Gorman and Alessio Sbraga at HFW, look at its implications for ports

In a significant move toward industry decarbonization, the EU in 2023 adopted legislative measures to the EU Emissions Trading System Directive for maritime transport emissions to be included in the EU Emissions Trading System (EU ETS) from Jan. 1, 2024. The move will have wide-ranging implications for the maritime industry, particularly on certain ports within and outside the EU.

The port of call

The Directive defines a port of call as “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.” There are also various exclusions from this definition, including stops for refueling, relieving crew – if not an offshore ship, ship-to-ship transfers, carrying out repairs, dry-docking, emergencies, sheltering from adverse weather and notably also “stops of containerships in a neighboring container transshipment port” (NCTP). The EU has now published an implementing act (Implementing Regulation 2023/2297) listing East Port Said in Egypt and Tanger Med in Morocco as NCTPs. A vessel stopping at these ports shortly before or after entering EU ports will not be able to count their stop as either a beginning or end to the vessel's voyage. This may have the effect of extending the length of a voyage covered by the EU ETS and, in turn, the quantity of emission allowances that need to be surrendered for the ship's emissions during the voyage in question.

The designation of NCTPs may have the effect of decreasing vessel traffic at NCTP ports and potentially increase traffic in other non-EU ports in efforts by operators to minimize the length of voyages covered by the EU ETS. However, as noted below, the EU will monitor and review such potential evasive activity.

Furthermore, Articles 12(3-d), (3-c) and (3-b) of the Directive allow member states (by making a request to the EU Commission) to take no action against shipping companies in respect of emissions incurred for certain voyages to/from certain ports and/or by certain vessel types. These exclusions can apply until Dec. 31, 2030.

These exclusions appear targeted to cover lifeline services operated in remote regions and it remains to be seen how – if at all – these provisions affect port traffic. Operating vessel services to other ports in remote regions not covered by the exclusions may prove more expensive due to the additional costs associated with EU ETS compliance – including but not limited to purchasing emission allowances – which may make calls at ports covered by the exclusions more attractive. Further, as the exclusions are subject to member state discretion, they may be utilized to different extents in different countries.

On the horizon

The Directive itself includes a requirement on the EU Commission to review and report on the effectiveness of the EU ETS provisions for maritime emissions and considering amending these in light of other global commitments, such as a potential IMO market-based measure on emissions reduction.

Under Article 3gg of the Directive, as part of this requirement to review and report, the EU Commission must consider the risk of an increase in evasive practices. In particular, the Commission must monitor the risk of a “shift of port hubs to ports outside the Union”, which may occur for reasons explained above. The EU Commission will report biennially from 2024 onward and will propose measures “to ensure the effective implementation” of the Directive, taking into consideration in particular possible increases in transport costs, shifts of transshipment hubs and changes in port traffic.

Stakeholders should therefore remain cautious if planning strategically or long term to use alternative ports to minimize EU ETS costs, as these practices will be monitored and may be subject to more stringent regulation in future. It is therefore clear that, going forward, the impact of the EU ETS on the maritime industry will be far-reaching. ■

Photos: HFW