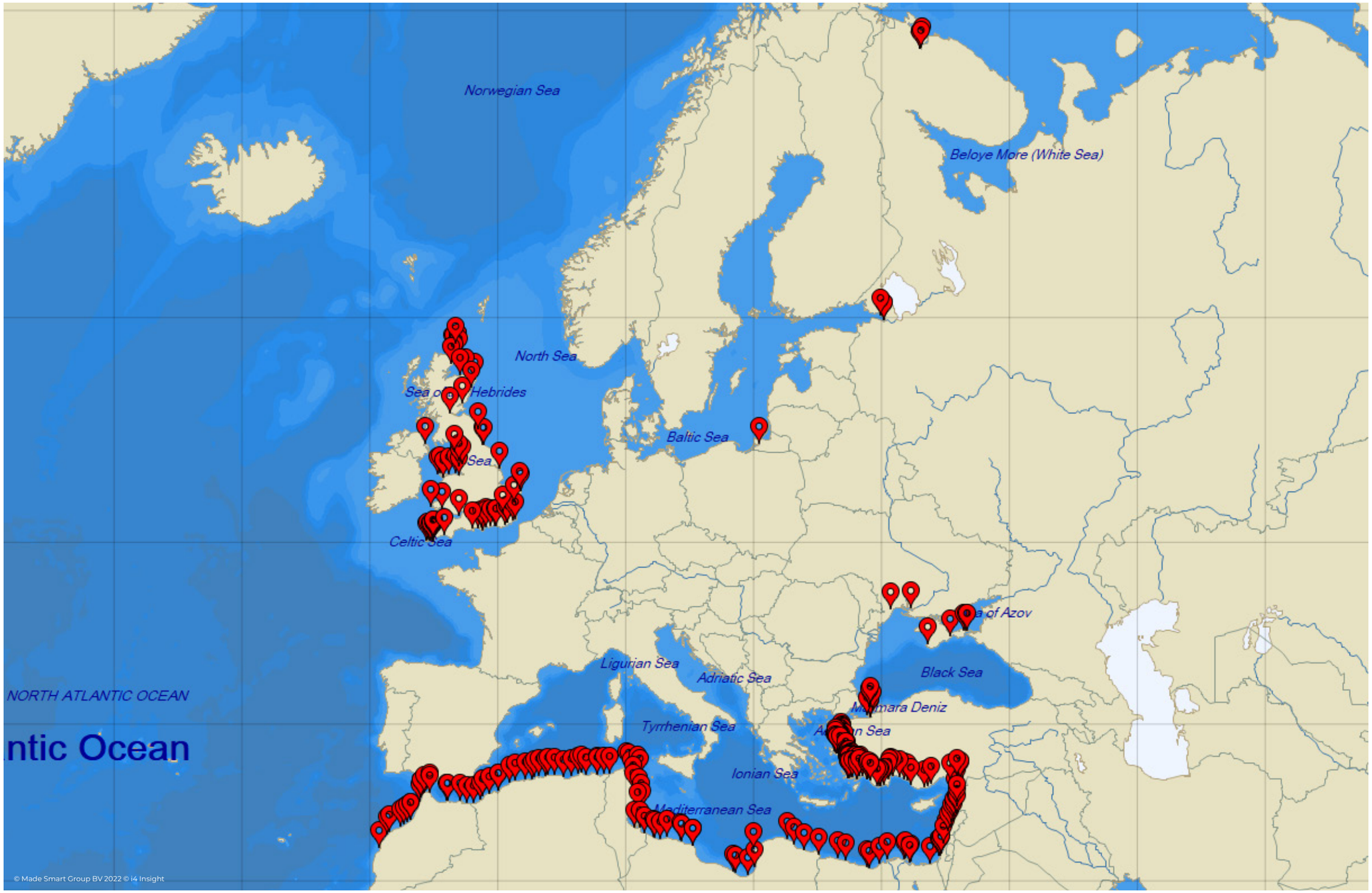
European Commission Proposals 14 July 2021	**European Parliament Proposed Amendments** 22 June 2022	**European Council Proposals** 28 June 2022
ISSUE 1: SCOPE		
Issue 1(a): *Date and extent of application to the maritime sector*		
Phase in of the maritime sector between 2023 and 2026, with EU emission allowances (**EUAs**) only needing to be surrendered by compliance entities (**Shipping Companies**) for 20% of verified reported emissions in 2023, raising to 45% in 2024, 70% in 2025, and then 100% from 2026 onwards.	The Parliament's amendments remove the incremental introduction proposed by the Commission, and instead propose the full inclusion (100%) of the maritime sector's annual verified reported emissions from the start. However, the inclusion of the maritime sector in the EU ETS would be pushed back one year to 1 January 2024, so there would be additional time to prepare.	As per the Commission's proposals, albeit the specific timeframes have been amended to 2024 – 2027 (and, in the legislative text itself, reference is made to *"the first full year after the deadline of transposition of this amending Directive"*, *"the second full year after..."* and so on).
Issue 1(b): *Regulated vessels*		
The EU ETS would apply to vessels of 5,000 gross tonnage (**GT**) and above, reflecting the current application of the EU Monitoring, Reporting and Verification Regulation 2015/757 (**MRV Regulation**). There is no application to offshore installations or offshore supply vessels (**OSVs**).	In order to (amongst other things) *"increase the environmental effectiveness of Union measures"*, the Parliament seeks to amend the MRV Regulation so that: • it applies to vessels of 400 GT and above from 1 January 2024; and • vessels above 400 GT but less than 5,000 GT *"shall only be required to report the information which is relevant for the inclusion of such ships within the scope of the EU ETS from 1 January 2027"*, purportedly to ensure there is a proportionate administrative burden for these vessels. Consequently, it is proposed that the EU ETS applies to vessels of 400 GT and above from 1 January 2027. By that date, the Commission shall carry out an *"assessment of the level playing field for all ships and the avoidance of possible unwanted adverse effects on greenhouse gas emissions resulting from the possible replacement of ships of 5 000 gross tonnage and above by several ships of a gross tonnage below that threshold in the absence of lowering the threshold"*, and propose legislative proposals if appropriate. Separately, the EU ETS would also cover service activities for offshore installations from 2024, including movements and work done by OSVs, via amendments to the definition of 'voyage' under the MRV Regulation.	Only vessels of 5,000 GT are to be covered. However: • For the MRV Regulation, the Commission shall review the Regulation by 31 December 2024, which will include an assessment of the appropriateness of including ships below 5,000 GT but not below 400 GT under the scope of the Regulation, *"or proposing other measures to reduce greenhouse gas emissions from such ships"*. • For the EU ETS, the Commission is to present a report to the Parliament and the Council by 31 December 2026 examining the feasibility and cost-effectiveness of the inclusion in the EU ETS of emissions from ships below 5,000 GT but not below 400 GT. In relation to offshore installations/OSVs, as per the Commission's proposals.
Issue 1(c): *Regulated voyages and ports of call*		
The EU ETS would cover 100% of intra-EU voyages and time spent at EEA berths, and 50% of all inbound and outbound voyages between the EU and non-Member States.	The position under the Commission's proposals will remain the case until 1 January 2027, after which the scope will be expanded to include 100% of all inbound voyages between the EU and non-Member States. • Some derogations may be possible *"under strict conditions"* and, in particular, where a non-EU country has introduced its own emissions trading system, or has established via a bilateral or multilateral agreement between the EU and one or more third party countries an emissions trading system linked to the EU ETS. However, this is subject to delegated acts to be proposed and adopted by the Commission in its discretion. There remains a risk, therefore, that vessels subject to the EU ETS will become 'double-taxed' on voyages between the EU and any non-EU port subject to a different emissions trading system. • In any case, where the distance between a port under the jurisdiction of a Member State and a port outside the jurisdiction of a Member State is less than 300 nautical miles (**NM**), then 100% of emissions from voyages to/from those ports and the EU will be covered. In effect, this seems to increase the geographical range of the EU ETS by 300 NM outside of the EU's borders with scope to catch transhipment operations at ports within that range, regardless of where the relevant voyage starts or ends within the EU. For example, in theory voyages between any port within the EU to/from the UK would be 100% covered, notwithstanding that the UK is no longer a Member State (and has proposed to introduce its own UK Emissions Trading Scheme system applicable to the maritime sector for domestic shipping – see our previous briefing on this **here**).	The Council takes a third approach: • It supports the Commission's general approach to the voyages covered under the EU ETS (i.e. 100% of intra-EU voyages, and 50% of all inbound and outbound voyages between the EU and non-Member States). • The Commission is to establish, by 31 December 2023, a list of *"neighbouring container transhipment ports"* (defined as being within 300 NM of the EU and where the share of transhipment of containers exceed 65% of the total container traffic of the port). This list is to be updated before 31 December every two years. • These *"neighbouring container transhipment ports"* are excluded from the definition of *"port of call"* in both the ETS Directive and the MRV Regulation. This would appear to mean that any calls to these ports will not be counted when determining relevant voyages for the purposes of calculating emissions. It is unclear whether / how this would impact other non-container shipping sectors. • The Council proposes that the Commission *"review the functioning"* of the EU ETS *"including detecting evasive behaviour in order to prevent them at an early stage"*.

	For indicative purposes only, a map showing the non-EU ports that could be captured under these proposed amendments is **attached** to this factsheet.	
Issue 1(d): *Regulated emissions*		
The EU ETS would cover only the CO2 emissions from the maritime sector, as monitored and reported by Shipping Companies in accordance with the MRV Regulation.	The scope of the EU ETS would be widened to cover not only CO2 but also methane (CH4) and nitrous oxides (N2O), due to a corresponding amendment to the MRV Regulation. This would mean a higher operational / administrative burden on Shipping Companies, who would be required to monitor and report these additional emissions in accordance with the MRV Regulation, meaning a higher operational / administrative burden. This may also impact on the choice of maritime fuel used by vessels and could impact vessels in the LNG sector.	Methane and nitrous oxides are to be included in the scope of the MRV Regulation from 1 January 2024, but not initially in the EU ETS. No later than 31 December 2026, the Commission is to present a report to the Parliament and the Council examining the feasibility and cost-effectiveness of the inclusion of additional greenhouse gas emissions in the EU ETS.
ISSUE 2: RESPONSIBLE PARTY FOR AND/OR COST OF COMPLIANCE		
The responsible party under the EU ETS is the Shipping Company, defined as *"the shipowner or any other organisation or person, such as the manager or the bareboat charterer, that has assumed responsibility for the operation of the ship from the shipowner"*. It is therefore likely that responsibility rests with the ISM Document of Compliance (**DOC**) holder for the relevant vessel. However, the Shipping Company could, by means of a *"contractual arrangement"*, hold the entity directly responsible for the decisions affecting the CO2 emissions of the vessel (i.e. normally the entity responsible for the choice of fuel, route and speed) accountable for the compliance costs. This probably includes at least time charterers of the vessel.	Under the Parliament's proposals: • entities which (i) have ultimate responsibility for purchasing the fuel, and/or (ii) determine the cargo carried by, or the route and speed of, the vessel, shall be responsible for compliance costs (defined as the **Commercial Operator**); and • Member States *"shall take the necessary measures"* to ensure that the Shipping Company has appropriate and effective means of recovering the costs from the above-mentioned entities by introducing a binding clause into commercial contracts making the Commercial Operator responsible for the compliance costs. It remains unclear what could constitute the *"necessary measures"* in this context and how these might work in practice (if at all) so as to make the Commercial Operator responsible for the costs of EU ETS compliance (which would, at the very least, include the cost of EUAs).	It appears that the Council also supports the idea that the Commercial Operator should cover compliance costs. However, the Council proposes an alternative route to achieve this, whereby costs could be obtained via either a *"contractual arrangement"* or *"national law"* to be implemented/enforced by Member States. Again, it remains presently unclear how this might work in practice if adopted.
Given the present uncertainty, all of the above considerations should be borne in mind when entering into contracts (until such time as a formal legislative text is adopted).		
ISSUE 3: MARKET ACCESS TO THE EUA MARKET		
EUAs can be transferred between persons (legal and natural) within the EU without restrictions.	This amendment seeks to limit access to the market for EUAs to *"regulated entities"* or natural persons/legal entities authorised on their behalf. This would change the existing fundamental structure and operation of the EU ETS, which thus far has enabled brokers, intermediaries and banks to enter into the market and trade EUAs with the entire market (not just sector-specific entities). In a charterparty context, it is unclear whether charterers would constitute a *"regulated entity"* under these proposals so as to be able to enter the market and purchase EUAs. The term *"regulated entity"* is currently not clearly defined, so the answer may be *"no"*, as charterers do not bear primary responsibility for compliance as they are not the Shipping Company (i.e. the ISM DOC holder). On the other hand, the Parliament's amendments provide that *"regulated entities with past, current, or predictable future EU ETS compliance obligations"* are permitted to hold EUAs and since the Commercial Operator (which would include at least time charterers) is to be responsible for the *"compliance costs"*, charterers could potentially qualify as a regulated entity. Given the present uncertainty, the position should be kept under close review and it may be wise to factor this in when negotiating contracts going forward (until such time as a formal legislative text is adopted).	As per the Commission's proposals.



Map showing ports within 300 nautical miles from EU Member State borders, as discussed under Issue 1(c) above.