Legislation	Comments
(1) SCOPE	
(a) Phase-In of Maritime Transport	
Maritime transport will be included from 1 January 2024 onwards. To facilitate a smooth introduction, there will be a phase-in period for the surrender of EUAs by a Shipping Company / Shipping Companies (as defined below), as follows: (1) for 2024, 40% of verified regulated GHG emissions; (2) for 2025, 70% of verified regulated GHG emissions; and (3) for 2026 onwards, 100% of verified regulated GHG emissions. As fewer EUAs will be surrendered in 2024 and 2025 compared to verified emissions for maritime transport during those years, any difference between verified emissions and the amount of EUAs surrendered will be cancelled rather than auctioned.	As a Shipping Company will not need to purchase EUAs to cover all of its regulated GHG emissions during 2024 and 2025, this effectively amounts to a 'discount' on compliance liability up until 2026 (and even then, relevant EUAs for the 2026 reporting period will not be surrendered until 30 September 2027 – see below). Nevertheless, there are likely to be costs involved in setting up EUA registry accounts for Shipping Companies, as well as other considerations. The cancellation of EUAs in 2024 and 2025 is intended to prevent an excess amount of EUAs in the market, thereby protecting "the environmental integrity of the system".
(b) Regulated GHG Emissions	
The EU ETS will initially apply to carbon dioxide (CO_2) emissions. From 1 January 2026 onwards, EUAs will need to be surrendered for methane (CH_4) and nitrous oxide (N_2O) emissions. In preparation for this, from 2024 CH_4 and N_2O emissions are required to be reported in accordance with the MRV Regulation (under an updated monitoring plan which has been assessed by an accredited verifier). *n*	Transitional fuels such as LNG and biofuels could, in the short term, reduce total CO2 emissions and, ultimately, EUA cost liability, depending on the costs / benefits of such fuels for individual stakeholders and the terms of the underlying physical transport contract. However, this may change come 2026 when CH4 will be regulated by the EU ETS and 100% of verified emissions will attract EUA cost liability. FuelEU Maritime may also have a part to play in this.
(c) Regulated Vessels	
Only emissions from vessels over 5,000 gross tons (GT) will be included, mirroring the (existing) scope of the MRV Regulation. Certain categories of vessels are exempted, such as warships, fishing-related vessels, and government ships used for non-commercial purposes. Until 31 December 2030, ice-class vessels may surrender 5% fewer EUAs than their verified emissions.	By 31 December 2026, the European Commission will present a report to the European Parliament and European Council considering whether to expand the scope of the EU ETS to include vessels, including offshore vessels, which are above 400 GT but below 5,000 GT.

Legislation	Comments
(d) Regulated Voyages	
Voyages involving the transportation of passengers or carriage of cargo for commercial purposes, with emissions to be caught under the scope of the EU ETS as follows: (1) 100% of a vessel's emissions from voyages between two EU ports of call; (2) 100% of a vessel's emissions during a port of call; and (3) 50% of emissions from an EU port of call to a non-EU port of call, or vice versa. A 'port of call' is defined as follows: *"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; stops for the sole purposes of refuelling, obtaining supplies, relieving the crew of a ship other than an offshore ship, going into dry-dock or making repairs to the ship, its equipment, or both, stops in port because the ship is in need of assistance or in distress, ship-to-ship transfers carried out outside ports, stops for the sole purpose of taking shelter from adverse weather or rendered necessary by search and rescue activities, and stops of containerships in a neighbouring container transhipment port listed in the implementing act adopted pursuant to Article 3ga(2) are excluded"* Exempted voyages include those of passenger ships between the mainland and islands of a Member State, and voyages between "outermost regions" of a Member State and a port of call within the same Member State.	As the definition of 'port of call' concerns voyages between loading and unloading ports, other reasons for entering a port, for example due to emergencies or solely for maintenance, crew changes and/or bunkering, will not break up a regulated voyage for the purposes of computing regulated emissions. To discourage evasion of the scope of application of the EU ETS, the 'port of call' definition also excludes stops by containerships in designated neighbouring container transhipment ports, which are ports within 300 nautical miles (**NM**) of the EU where the share of transhipment of containers exceeds 65%. The European Commission will draw up a list of these ports by the end of 2023. Calls at such ports will similarly not break up a regulated voyage, so emissions will continue to count from the non-EU port of origin to the EU port of destination and vice-versa. This is a noteworthy departure from the European Parliament's proposals, which sought to apply this principle to *all* non-EU ports within a 300 NM radius.[1] Ship-to-ship (**STS**) transfers carried out outside ports are also excluded, meaning that these operations will not mark the start or end of a regulated voyage under the EU ETS. Consequently, the extent of total emissions of each of the vessels engaged in an STS operation will ultimately be determined by the location of those vessels' previous and next qualifying ports of call.

1 https://www.hfw.com/EU-Emissions-Trading-System-Current-status-and-key-issues-July-2022

Legislation	Comments
(2) RESPONSIBILITY	
(a) Compliance Obligations	
Responsibility for compliance rests with the 'Shipping Company'. There is now a common definition in both the EU ETS and MRV Regulation as follows: *"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..."*	Based on this definition, the Shipping Company could be the shipowner, manager or bareboat charterer (where either of the last two entities have assumed responsibility for the Document of Compliance (**DOC**) under the ISM Code the (**ISM DOC Holder**). In many cases, the ISM DOC Holder will be the technical manager, which is invariably the entity responsible for the regulated vessel under IMO regulations, for example. However, the EU ETS legislation does not, on the face of it, make clear whether this entity (as opposed to the shipowner) is to be the Shipping Company responsible for compliance. The European Commission will determine *"a list of shipping companies... specifying the administering authority for each shipping company"* before 1 February 2024 by way of implementing acts. In other words, it will be the European Commission who decides which Shipping Company goes on the list and this, in turn, will determine the allocation of the relevant Administering Authority (relevant, amongst other things, to opening a registry compliance account). Consequently, the European Commission is likely to play an important role in the coming months as the practical operation of the EU ETS is worked out. What is clear, however, is that charterers under a time or voyage charterparty will not be the Shipping Company, and therefore will not have primary responsibility for compliance with the EU ETS (i.e. surrendering EUAs). By extension, time and voyage charterers will not be directly subject to fines/sanctions for non-compliance with the EU ETS. On the other hand, the burden and responsibility of technical ship managers could be *increased* by the application of the EU ETS. Careful consideration and review of ship management agreements will therefore be imperative to ensure that cost, risk and responsibility is allocated appropriately under those contracts, especially where the cost of compliance is to be allocated pursuant to an underlying physical transport contract, to which a Shipping Company may not be party.

Legislation	Comments
(b) Costs of Compliance	
The costs of the EU ETS may be transferred from the Shipping Company to another entity in the following circumstances: *"Member States shall take the necessary measures to ensure that when the ultimate responsibility for the purchase of the fuel, or the operation of the ship, or both, is assumed by an entity other than the shipping company pursuant to a contractual arrangement, the shipping company is entitled to reimbursement from that entity for the costs arising from the surrender of allowances."* 'Operation of the ship' is defined as "determining the cargo carried or the route and the speed of the ship".	In light of these provisions, where a third party has assumed responsibility for purchasing the fuel and/or the operation of the vessel under an underlying physical transport contract, that third party will be liable to reimburse the Shipping Company for its EU ETS costs, and Member States shall make necessary arrangements under their national law to enable the Shipping Company to recover these costs by way of a statutory entitlement. It is now clear that time charterers will qualify as a third party, whereas the position in relation to voyage charterparties or contracts of affreightment (COA) is likely to be more nuanced. Whilst charterers under those contracts will not be responsible for the purchase of fuel, the question of whether they are 'responsible' for (i) the cargo carried; or (ii) the route and speed of the vessel will be dictated by the terms of the relevant contract, which may vary from case to case. In any case, the commercial reality for voyage charterparties and COAs from 2024 onwards may be that freight rates are increased to account for the additional EU ETS costs, alternatively an additional surcharge may be introduced by owners. However, this may not necessarily be straightforward, and parties should consider agreeing express contractual terms allocating the risk and cost of the EU ETS in advance. As the EU ETS legislation is a Directive, the precise scope and operation of the "necessary measures" will be determined by individual Member States as a matter of national law and outcomes may vary between Member States. For example, it remains to be seen which types of contracts will qualify for statutory reimbursement (and against which entity if there is a contractual chain where it could be argued that "ultimate responsibility" flows down) and the scope of EU ETS 'costs' recoverability permitted in practice. It may be that an interested Shipping Company is not a party to the underlying physical transport contract. Regardless of the transfer of EU ETS costs liability, overriding responsibility for EU ETS compliance will rest with the Shipping Company.

Legislation	Comments
(3) ADMINISTRATION	
(a) Administering Authority	
The Administering Authority depends on the profile of the relevant Shipping Company: (1) If the relevant Shipping Company is based in the EU, it will be the Member State in which it is registered. (2) If the relevant Shipping Company is not registered in the EU, it will be the Member State where the Shipping Company's relevant vessel made the greatest number of port calls in the four previous monitoring years. (3) If the Shipping Company is not registered in a Member State and there have been no ports of call in the four previous monitoring years, it will be the Member State where the Shipping Company's vessel arrived or started its first voyage that falls under the scope of the EU ETS. Before 1 February 2024, and before 1 February every two years thereafter, the European Commission will publish a list identifying the Administering Authority to which each Shipping Company has been allocated. More detailed rules for Administering Authorities are to be adopted by the European Commission by way of implementing acts.	The aim is for a Shipping Company to be allocated to the Administering Authority to which it is most closely connected, with a primary focus on the domicile of the relevant company rather than a specific vessel. The identity of the Administering Authority may therefore change in future years depending on the Shipping Company's domicile, trade and / or other factors.
(b) Monitoring of GHG Emissions	
A Shipping Company is required to monitor and report the CO2, CH4 and N2O emissions of each vessel under its responsibility in accordance with the EU MRV Regulation. An emissions report will need to be submitted on an annual basis to the European Commission. The reported emissions will be assessed and verified by an independent verifier.	There are currently 11 approved verification companies, listed here.
(c) Surrender of EUAs	
A Shipping Company must surrender the requisite amount of EUAs to cover the relevant vessel's verified emissions (or, for 2024 and 2025, the relevant proportion of such emissions) within **30 September** each year.	This has been changed from the current surrender date of 30 April. In practice, this means that the first deadline for the surrender of EUAs (for the reporting period of 2024) will be 30 September 2025.

Legislation	Comments
(d) Market Access	
EUAs can be transferred between persons (legal and natural) within the EU without restrictions.	During 'trialogue' negotiations, the European Parliament had sought to restrict market access to *"regulated entities"* or natural persons/legal entities authorised on their behalf. These proposals have not been adopted. Therefore, the position remains that EUAs can be purchased: (i) at auction on the European Energy Exchange (the formal common auction platform nominated by the EU which hosts weekly auctions); (ii) from spot and futures markets; (iii) brokers or traders; or (iv) directly on an over-the-counter basis from other EU ETS participants and traders (e.g. banks and market intermediaries). Shipping Companies will be allocated an account for holding EUAs in the Union Registry: a Union Registry Account (**URA**). How URAs are administered will be clarified later in EU delegated legislation, although the manner in which the EU ETS is currently administered in relation to other sectors is likely to be instructive. Brokers, charterers or other entities which do not qualify as a Shipping Company can open trading accounts for EUAs. This may be of particular interest to those shipowners, charterers and other industry actors who intend to build an alternative stream of income from trading EUAs on the market. However, only a Shipping Company can open a URA. It is from this account that EUAs will be surrendered each year in order to achieve compliance. As these matters will be impacted significantly by EU regulatory requirements and local Member State laws, specialist legal advice is strongly recommended. Further, EUAs are classified as financial instruments by the Directive on Markets in Financial Instruments (**MiFID 2**). This classification creates specific obligations for entities trading in the EU carbon market which cannot be overlooked.
(e) Free Allocation	
There will be no free allocation of EUAs for maritime transport and no EUAs 'ringfenced' for use only by Shipping Companies. All EUAs required by Shipping Companies will need to be acquired from the market.	This is in contrast to the aviation sector, which was allocated 'aviation allowances'. However, free allowances are generally being phased out for all sectors covered by the EU ETS. Instead of free allowances, the EU has opted to phase in the application of the EU ETS for maritime transport over two years from 2024 (see above).

Legislation	Comments
(4) PENALTIES/SANCTIONS	
(a) Fines	
A Shipping Company which fails to surrender sufficient EUAs to meet the verified CO2 emissions of a vessel in a given calendar year will be liable to: (1) meet any shortfall in EUAs due; and (2) pay an excess emissions penalty, currently set at EUR 100 per tonne of excess CO2 equivalent emissions. Member States are also required to publish the name of any Shipping Company that is in breach of the requirement to surrender sufficient EUAs.	It remains to be seen what the scale of non-compliance might be within maritime transport, although it is understood that data recently published by the EU shows the non-compliance rate for existing sectors covered by the EU ETS to be around 3%. Further, the allocation of risk and liability in respect of any fines as between the Shipping Company and any third parties could be the subject of express terms in commercial contracts.
(b) Expulsion Orders	
Where a Shipping Company fails to surrender the required EUAs for two or more years in a row, a Member State of an EU port of entry can issue an expulsion order. This will mean that all Member States (apart from the vessel's flag state) will refuse entry to both the offending vessel and all other vessels *"under the responsibility of the Shipping Company"*.	An expulsion order may have potentially significant implications for Shipping Companies that are responsible for the compliance of a fleet of vessels under the EU ETS. Those impacted by expulsion orders could include technical managers who are appointed in relation to (and hold the DOC for) a number of separately owned vessels. In those circumstances, and leaving aside any obvious reputational risks, an expulsion order may significantly impact vessels owned by otherwise unrelated entities. Careful consideration of ship management agreements is therefore recommended.