

## **CO2 emission information and declaration: a new European regulation (EU) 2015/757 adds to the current existing obligations of shipping companies whose vessels call in France**

Following the agreement reached between the negotiators of the European Parliament and the European Council on the regulation setting out new EU-wide rules for monitoring, reporting and verification of CO2 emissions from vessels, last 17 December<sup>1</sup>, a new regulation (EU) 2015/757 on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport, and amending directive 2009/16/EC was adopted on 29 April 2015 and entered into force on 1 July 2015.

This new regulation will be applicable to shipping activities carried out from 1 January 2018 in relation to vessels above 5,000 gross tonnes calling in a European member state. It will oblige the shipowners or operators of such vessels, whatever the flag of the vessel, wherever their registered office is based, to monitor and to report CO2 emissions for each vessel on a per voyage and annual basis. The annual reports will be verified by an independent entity (the “verifiers”), which shall issue a document of compliance to be kept on board the vessel. Prior to the actual monitoring, shipping companies will also have to submit to the verifiers a monitoring plan for each of their ships by 31 August 2017. Some information included in the reports will also be made available to the public.

It is also expressly provided that the European member states will have to set up a system of penalties for failure to comply with these new obligations.

There were previously no European obligations in relation to the provision of CO2 information or declarations imposed on the shipping industry as the European regulation 525/2013<sup>2</sup> had excluded shipping from its scope. However, this does not mean no CO2 information or declarations are compulsory until 2018.

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<sup>1</sup> See press release of the European Council dated 17 December 2014 ([http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/envir/146374.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/envir/146374.pdf))

<sup>2</sup> ER 525/2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change

Certain countries, such as France, have enacted legislation in advance of European laws to show their commitment to the protection of the environment – France will be hosting at the end of this year the international Climate Conference COP 21<sup>3</sup> – and has already enacted certain provisions regarding CO2 emissions which have come into force as from 1 October 2013 and are applicable, amongst others, to maritime carriers.

The relevant French legal provisions<sup>4</sup> essentially provide for the obligation of all carriers, whether of goods or passengers, to supply to cargo interests or passengers, information relating to the quantity of carbon dioxide emitted by the mode(s) of transport used to provide this service, so long as the carriage has its origin or its destination in the French territory (which also includes French overseas departments and territories). The fact the carrier is registered abroad does not exonerate it from these obligations.

The CO2 information to be provided - at the latest 2 months after the end of the carriage - is the total quantity of CO2 emitted for both the “upstream” and “operating” phases of carriage. The CO2 emitted for the “upstream phase” of the carriage (i.e. before the fuel is actually consumed) includes - for fuels - any CO2 emitted to extract the crude oil, its refining operations and any fuel transport operations. The “operating phase” includes all operations of carriage from the origin to the destination, as well as the emissions during the repositioning of the vessel, the movements made while the vessel is in ballast, and emissions while the vessel is stopped, with the engine functioning, linked to these operations.

There are various methods of calculation that may be used to determine the CO2 emissions information to be provided, which are more or less complicated, and the French government has issued guidance to assist carriers. Upon request from the passenger / cargo interests, the carrier has to advise the method of calculation.

While these provisions have been in force for more than a year now, it is obvious that a large number of operators have not started implementing procedures allowing them to provide the CO2 information on a regular basis. This is probably due to the administrative burden the provision of the CO2 information creates. However, the fact there are currently no

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<sup>3</sup> COP 21 will take place from 30 November to 15 December 2015 in Paris

<sup>4</sup> Article L. 1431-3 of the Code of Transport and decree 2011-1336 of 24 October 2011

criminal or financial sanctions/penalties for failure to comply with the obligations set out in the French legal provisions is also a relevant factor.

The absence of a sanction is a political decision probably linked to the fact the obligations set out in the decree place a heavy burden on all companies involved in transport and there are a number of uncertainties/difficulties to overcome before any sanction can be applied. It is planned a report is to be issued by the Ministry of Transport to evaluate the application of the law/decreet in 2016 and no sanction is to be put in place before 2016.

It is possible the French government will use the pretext of the obligation of the State members to set out penalties for non-compliance with the European regulation, to also impose sanctions for non compliance with domestic legislation on CO2 emission information.

In conclusion, while the sets of existing French provisions and the European provisions to be applicable both aim at providing users with better information on the CO2 emissions and limiting the CO2 emissions, their contents are different. It is likely that any procedure put in place to comply with French law will be helpful once the European regulation is applicable. However, it will be necessary to ascertain there are no inconsistencies between the information required to be provided under French law and that required under the European regulation, in particular as far as methods of calculation are concerned.

Author: Leïla Esnard

For further information, please refer to your usual contact, or [info@lewiscolaw.com](mailto:info@lewiscolaw.com)

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