

Guest Commentary: Nick Walker, Partner, and Valentina Keys, Counsel  
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## *Are you FuelEU ready or just coasting?*

On 1 January FuelEU Maritime came into force. Aimed at reducing the greenhouse gas intensity of energy used in ships trading at EU/EEA ports it imposes obligations on «shipping companies», with penalties for non-compliance. We are observing the usual reaction in the maritime sector; some are ready or preparing and the rest are putting it off or waiting for a market standard to develop.

### What »ready« looks like

Early adopters have a clear and ambitious FuelEU compliance strategy, have drawn up projections for 2026 and beyond and know whether they will be in deficit or in surplus across their operations. They have entered or are entering into contracts with charterers, ship managers and even fuel suppliers to create clear allocations of roles and liabilities for FuelEU. Costs will follow polluter pays where possible, with penalty risks covered to maintain credit worthiness and balance sheets for ISM companies.

Tackling these tricky issues now allows time to focus on the FuelEU surplus – either agreements between owner and charterer for vessels in surplus or securing access to a pool for those in deficit. There's no market standard strategy for the FuelEU yet but waiting for one to develop risks missing out. Anything assumed but not contractually agreed may lead to lengthy and costly disputes when FuelEU really starts to bite.

### Routes to compliance

For those facing a deficit, it's crucial to develop strategies to minimise or neutralise penalties. The deadline for verified reports is

31 March 2026, while the deadline for verifier approval for borrowing, banking and »pooling« will be the end of April 2026 (our overview). As we approach the first verification period and beyond, the cost of »pooling« with over-compliant vessels is expected to rise. Moreover, »pooling« as a concept comes with almost no guidance from the EU, with additional regulatory requirements to be met and no direct equivalent in the EU ETS. As such, those entering pools are completely reliant on contractual arrangements, and would be sensible to develop a strategy long before next year's deadlines.

### Bimco

In November 2024, BIMCO published its FuelEU Maritime Clause for Charter Parties. These provide a useful starting point but many of the positions taken in it are commercial, and not expressly set out in the Regulation. For instance, the ownership of a surplus is not designated to charterer or owner. Much depends on what is agreed commercially so care must be taken when doing so.

### Polluter doesn't always pay

Lack of clarity persists in the identity of the party responsible for compliance with the FuelEU. For the time being it seems that, for the purposes of compliance, the ISM is the »shipping company«, but this is contrary to the »polluter pays« principle all other EU environmental law is based upon. The European Commission are well aware of this discrepancy and are working with WFW and other stakeholders to resolve it. We will provide a further update accordingly. ■



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