



## GREEN AGENDA FOR 2021

Several new green initiatives affecting the shipping industry are likely to be introduced in 2021. Below we give a brief introduction to two initiatives that may impact our members; the amendment of the MARPOL Annex VI to apply to existing ships and the EU initiative to include shipping in the EU Emissions Trading System.

### **MARPOL Energy Efficiency Design Index**

Since 2013, all new build ships must meet the Energy Efficiency Design Index (EEDI) for their type, which is set out in MARPOL Annex VI. The EEDI requires a minimum energy efficiency level per capacity mile in grams of CO<sub>2</sub> for different ship types and size segments. The aim of MARPOL Annex VI is to promote the use of more energy efficient and less polluting equipment and engines. The EEDI will be tightened at regular intervals to stimulate technical

development and innovation of the components influencing the fuel efficiency of a ship.

There is real possibility that the energy efficiency requirements in MARPOL Annex VI will become applicable to existing ships, as an amendment to

the MARPOL Energy Efficiency Existing Ship Index is expected to be adopted by the IMO in June 2021 and enter into force in 2023. The amendments for existing ships aim to address both technical measures – how the ship is retrofitted and equipped – and operational measures – how the ship operates.

The amendments are expected to introduce an Energy Efficiency Existing Ship Index (EEXI), which will be a one-off calculation individual to a ship, based on a required reduction factor. The EEXI will be verified by Class and a new Energy Efficiency Certificate will be issued at the first International Air Pollution Survey on or after January 2023.

All cargo and cruise ships above 5,000 GT will need to calculate a Carbon Intensity Indicator (CII), given in grams CO<sub>2</sub> per dwt mile, which will give a Required CII for the ship. An annual assessment of the ship's performance against the Required CII will be done, resulting in an annual rating (A to E, where A is best and E is inferior). Ports and administrations are encouraged to provide incentives to ships rated A to B. If a ship is rated D for three consecutive years or an E rating for a single year, a corrective action plan needs to be developed. The rating thresholds for the Required CII will become more stringent towards 2030.



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In addition, all ships above 400 GT must have an approved Ship Energy Efficiency Management Plan (SEEMP) on board. The implementation of the SEEMP will be subject to audits. For ships above 5,000 GT there will be certain mandatory content, including a plan on how the ship is to achieve the CII targets.

If these amendments are approved by the IMO, the effectiveness of the implementation of the CII and the EEXI requirements is expected to be reviewed within a few years, with potential further amendments to follow.

For our members, the new amendments to the MARPOL Annex VI may require that either existing ships are modified or that the ships steam more slowly by slow steaming or resetting the engine power limits. The latter approaches are likely to be the cheaper alternatives, but members should be cautious of their potential obligations under existing time charterparties to maintain their ships in a certain state with certain capabilities, conduct voyages with due dispatch as well as performance warranties. Off-hire provisions in time charterparties may also be relevant to consider before the ship decides to slow steam.

The consequences of the MARPOL Annex VI amendments should be addressed in new charterparties to be entered into and members are encouraged to seek advice as to the potential consequences on their existing charterparties.

### EU Emissions Trading System

As part of the EU strategy for reducing greenhouse gas emissions from the shipping industry, the EU Parliament in September 2020 approved draft legislation to include emissions from ships in the EU Emissions Trading System (ETS) Directive. The legislation will be subject to negotiation with the EU member states. It is currently uncertain what the legislation will look like and how it will work within



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the shipping industry, beyond the goal of reducing greenhouse gas emissions. Including shipping in the ETS will likely be linked to the EU's Monitoring, Reporting and Verification Regulation for shipping emissions already in place.

The existing ETS puts a cap on the overall greenhouse gas emissions of participants and creates allowances which are either received for free, or which must be bought. The total cap on emissions will be reduced over time. Emission allowances can be traded among participants, so those with allowances left over at the end of the end of the year can sell them on the market.

On the flipside, if a participant's emissions are outside its allowances, fines may be imposed, incentivising participants to keep emissions within their allowances (free or purchased). The fine for exceeding the allowances is currently set at EUR 100 per tonne of excess CO<sub>2</sub>. We understand that the revenue generated by the inclusion of shipping in the ETS is contemplated to (partly) go towards a Maritime Transport Decarbonisation Fund.

When shipping is included in the ETS, it is assumed that the amendments will force parties to reduce emissions and or purchase carbon emission allowances and settle these against emissions generated during a calendar year/a voyage – any trading touching the EEA area will come at a cost of emitting greenhouse gases.

From what has been reported on the current proposals, the ETS regime will apply to all greenhouse emissions from ships arriving at, within or departing from ports under the EEA area, regardless of the flag of the ship, registered owner or how many port calls the participant performs during a year. This means that a ship calling at the EEA area only once whether that occurs at the beginning or very end of a year, will be covered by the ETS with a requirement to keep emissions within its allowance.

One potential consequence of this appears to be that any owner (or the party responsible under the ETS) who has a ship on charter with worldwide trading will have to anticipate the risk it will be sent to an EEA port and take steps to comply with the ETS for the entire year. Otherwise, an unexpected call to an EEA port at the end of a reporting year could lead to the need to purchase or obtain additional allowances on the market at short notice, or risk fines.

The current draft, as reported, does not specify who will be responsible for compliance with the ETS. If the ETS is aligned with the EU's Monitoring, Reporting and Verification Regulation for shipping emissions, it can be expected that the scope will

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be broad, making both bareboat and time charterers as well as vessel owners and managers responsible for compliance with emissions caps and allowances for voyages touching the EEA area.

Members should be aware of the likely inclusion of shipping in the ETS, for voyages touching the EEA area going forward when entering into new charterparties.

A challenge with both the modification to the MARPOL Annex VI and the inclusion of the shipping industry in the ETS, is that the draft legislation is not currently publicly available and little information is provided on how the legislation will operate and how it will be enforced. It is therefore difficult to reach any firm conclusions as to the consequences arising at this stage, but Nordisk will continue to

monitor the developments and remains available to assist members with any questions they may have.







## NORDISK 101- WHO ARE YOU CONTRACTING WITH?

Having a vessel or fleet always fixed and on charter is the Holy Grail for an owner. But sometimes, particularly in a depressed market, it can be difficult to be sure of your counterparty and their ability to perform. Over this and future articles, we will raise points for fixture teams to consider, hopefully improving the prospects of a good outcome once the subs are lifted.

Financial success is heavily dependant on the financial strength of your counterparty, and where they are based. Are you sure that your counterparty is asset rich or a man of straw? Are there hidden risks in their identity or home base? Here are a few points to ponder:

1. You charter to a solid group with international standing, so you are bound to get the hire, freight or demurrage, aren't you? Not necessarily. Just as many shipowners hold their fleet through single purpose one-ship companies, traders and charterers often have a chartering subsidiary. These frequently have few assets, the

real wealth from commodities trading, or real estate held in other companies within the group. Consider the need for a parent company guarantee.

2. A charterer incorporated in a country with an underdeveloped judicial system may render any arbitration award ineffective through delay, or unfortunately sometimes corruption. You win on paper, but not in reality. Again, consider a parent or other third-party guarantee, even from a bank, located in a place where you have confidence that awards will be quickly enforced.

3. Commercially you feel compelled to agree to accept a letter of indemnity (LOI) to discharge cargo, instead of bills of lading. Can the charterer demonstrate it has the ability to meet any possible indemnity? What is the likely value of the cargo? Try not to agree such an LOI clause in the charter but if that is not possible, look for spreading the risk through other guarantees, and more signatories to the LOI, such as shipper and receivers.

4. A person who contracts may not always be acting on its own behalf. If it is clear that your counterparty is an agent for another, the agent has no liability towards you, only the principal.



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You cannot rely on the agent's good standing when things go wrong.

5. How well do you KYC? (Know your Customer). Are they a front for, or engaging in sanctioned trading? Always try to include a robust sanctions clause which allows you to walk away at any time.

6. Things do go wrong, and litigation may be unavoidable. Make getting the process started easier by incorporating an address for service, including email contact details, and an identified person to receive claims.

Nordisk is always available to assist members address pre-fixture issues, so get in touch if you have any questions.



## NORDISK CIRCULAR BACK CATALOGUE

As many of you know, Nordisk has been publishing its Medlemsblad newsletter for over 130 consecutive years, keeping our members and clients up to date on legal developments and other matters of interest relevant to the maritime industry.

Originally published as a booklet, the Medlemsblad has been distributed only by e-mail in recent years, in the form of the Nordisk Circular.

This edition, along with previous circulars, are archived on our website – click here to [browse](#). You will also find general Nordisk news, Nordisk Annual Reports as well as brochures detailing the capabili-

ties of the FD&D, Offshore Energy and Transaction teams here at Nordisk.

**Did you know?** Nordisk also has a LinkedIn page - click [here](#) to follow us.

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