

In the matter of the competence of the EU in respect of the adoption of amendments to Annex VI to the International Convention for the Prevention of Pollution from Ships (MARPOL)

ADVICE

1. I am instructed to advise in relation to the competence of the EU in relation to the adoption of amendments to Annex VI to The International Convention for the Prevention of Pollution from Ships (“**the MARPOL Convention**”), the Net Zero Framework (“**the NZF**”). The NZF was to be adopted at an Extraordinary Session of the Marine Environment Protection Committee (“**MEPC**”) in its October 2025 session (“**the October meeting**”). However, Contracting States voted to delay the adoption for one year. All EU states, save for Greece and Cyprus, voted against the delay.
2. The MARPOL Convention is an IMO Convention, which was concluded in 1973 and entered into force on 2 October 1983. All Member States of the EU are parties to the MARPOL Convention, and 25 Member States are also parties to Annex VI,¹ which entered into force on 18 May 2005.
3. The Union is not a party to the MARPOL; membership of the IMO is only open to States. The relationship of the European Commission with the IMO is based on the IMO Resolution A.1168(32). This is, in effect, a cooperation agreement. Based on that and further arrangements, the European Commission participates as an observer in all the IMO Committee and sub-Committee meetings.
4. I am instructed that EU Member States typically negotiate and act as a bloc, with agreement on position reached in advance. For example, Council Decision 2025/2093 of 10 October 2025 *on the position to be taken on behalf of the European Union within the International Maritime Organization’s Marine Environment Protection Committee at its second extraordinary session as*

¹ As at 5 December 2025 Austria and Hungary had not yet ratified Annex VI of MARPOL.

regards the adoption of amendments to the International Convention for the Prevention of Pollution from Ships (MARPOL) (“**the Decision**”),² preceding the October meeting.³

5. I have been asked to address questions relating to the consequences of the above Decision and in particular, the question of whether EU Member States are obliged to give effect to the jointly adopted EU position, as provided in Council Decisions, when exercising their voting rights as members of the IMO/MARPOL. As explained below, Member States are obliged to comply with Council Decisions in all circumstances, save where a Decision has been quashed by the European Court of Justice.
6. I set out below my views on the questions I have been asked to address.

Does the EU have exclusive competence in the area of GHG emissions reductions from shipping?

7. In its Proposal for a Council Decision COM (2025) 431 Final of 20 July 2025 (“**the Commission Proposal**”) the Commission stated its view that the EU had exclusive competence under Article 3(2) Treaty on the Functioning of the European Union (“**TFEU**”) in respect of the envisaged acts:⁴

“The subject matter of the envisaged acts concerns an area for which the Union has exclusive external competence by virtue of the last limb of Article 3(2) TFEU, as the envisaged acts are liable to ‘affect common rules or alter their scope’.⁵

8. Article 3(2) of the TFEU provides:

“2. The Union shall also have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the

² [Council decision 2025/2093 \(October 2025\)](#)

³ Other Council Decisions, include: [Council Decision 2024/990 \(March 2024\)](#) relating to MEPC 81 to support amendments improving the granularity and accessibility of ship fuel oil consumption data in the IMO DCS ; [Council Decision 2024/3106 \(December 2024\)](#) relating to MESC 109 regarding amendments to the IGF Code to enhance safety for ships using low-flashpoint fuels and supporting the transition to alternative fuels like methanol, hydrogen, and ammonia.

⁴ see Explanatory Memorandum in respect of Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the International Maritime Organization during the second extraordinary session of the Marine Environment Protection Committee on the adoption of amendments to the International Convention for the Prevention of Pollution from Ships (MARPOL) COM(2025)431 final

⁵ P. 11/16 §4.2

Union or is necessary to enable the Union to exercise its internal competence, or in so far as its conclusion may affect common rules or alter their scope.⁶

9. Whether EU competence is exclusive in respect of any element of the Annex VI amendments will turn on the question of whether it can properly be said that those amendments may affect common EU rules, such that exclusive competence arises under Article 3(2) TFEU: see OPINION 2/15 of the full Court 16 May 2017 §192.⁷
10. The Commission sets out the basis for its claim of exclusive EU competence in detail in the Explanatory Memorandum, where the potential interaction of the proposed amendments to Annex VI to MARPOL with EU legislative measures is explained. At §4.1.3 the Commission sets out how common EU rules may be affected by the introduction of the NZF, that is, by the introduction of the new chapter 5 to MARPOL Annex VI. It is worth setting that out in full here:

“Regulation (EU) 2015/757 on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport, and amending Directive 2009/16/EC establishes the legal framework for an EU system to monitor, report and verify GHG emissions and energy efficiency from shipping (MRV Regulation). The regulation aims to deliver robust and verifiable GHG emissions data, inform policy makers and stimulate the market uptake of energy efficient technologies and behaviours. It does so by addressing market barriers such as the lack of information.

The EU Climate Law⁸ 14 sets a binding Union climate targets (compared to 1990) of a reduction of net greenhouse gas emissions – emissions after deduction of removals – by at least 55% by 2030 and by 90% by 2040 (proposal by the Commission). It also includes the aim of climate neutrality by 2050 and an aspirational goal for net negative emissions after this time.

Based on the Commission’s proposals of the Fit for 55 package to reduce GHG emissions, the EU legislators adopted the following legal acts specifically targeting GHG emissions from the shipping sector:

6 INTERNATIONAL AGREEMENTS

Article 216

1. The Union may conclude an agreement with one or more third countries or international organisations where the Treaties so provide or where the conclusion of an agreement is necessary in order to achieve, within the framework of the Union’s policies, one of the objectives referred to in the Treaties, or is provided for in a legally binding Union act or is likely to affect common rules or alter their scope.

⁷ <https://infocuria.curia.europa.eu/tabs/document?source=document&text=&docid=190727&doclang=EN>

⁸ Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (‘European Climate Law’); OJ L 243, 9.7.2021, p. 1–17

·the revision of the EU Emission Trading System (ETS) Directive 2003/87/EC⁹ by Directive (EU) 2023/959¹⁰ to extend the EU ETS to the maritime transport sector to apply as of 1 January 2024, (together with the necessary amendments to the EU MRV Regulation,¹¹ to revise monitoring and reporting rules, also through the revision of the relevant implementing and delegated acts).

·Regulation (EU) 2023/1805¹² (Fuel EU Maritime Regulation) focuses on the use of renewable and low-carbon fuels in the maritime sector and mandates the uptake thereof by ships calling at EU ports to apply as of 1 January 2025.

Compliance with the new obligations stemming from the extension of the EU ETS to maritime transport and the Fuel EU Maritime Regulation will build on the monitoring, reporting, and verification system established by the EU MRV Regulation.

Both the EU ETS Directive and the Fuel EU Maritime Regulation contain review clauses for the event that IMO adopts a global fuel standard or a market-based measure. More precisely:

·The Fuel EU Maritime Regulation in its Article 30(5) stipulates that in the event of the adoption by the IMO of a global GHG fuel standard or global GHG intensity limits for the energy used on board by ships, the Commission shall present a report to the European Parliament and to the Council. In that report, the Commission shall examine that global measure as regards its ambition in light of the objectives of the Paris Agreement and its overall environmental integrity. It shall also examine any issue related to the possible articulation or alignment of this Regulation with that global measure, including the need to avoid duplicating regulation of GHG emissions from maritime transport at Union as well as international level. Where appropriate, that report may be accompanied by a legislative proposal to amend this Regulation, consistent with the Union economy-wide GHG emission commitments, and with the aim of preserving the environmental integrity and effectiveness of the Union climate action.

·the EU ETS Directive in its Article 3gg(1) stipulates that In the event of the adoption by IMO of a global market-based measure to reduce greenhouse gas emissions from maritime transport, the Commission shall review this Directive in light of that adopted measure. To that end, the Commission shall submit a

⁹ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (Text with EEA relevance) OJ L 275, 25.10.2003, p. 32–46

¹⁰ Directive (EU) 2023/959 of the European Parliament and of the Council of 10 May 2023 amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union and Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading system, OJ L 130, 16.5.2023, p. 134–202

¹¹ Regulation (EU) 2023/957 of the European Parliament and of the Council of 10 May 2023 amending Regulation (EU) 2015/757 in order to provide for the inclusion of maritime transport activities in the EU Emissions Trading System and for the monitoring, reporting and verification of emissions of additional greenhouse gases and emissions from additional ship types, OJ L 130, 16.5.2023, p. 105–114

¹² Regulation (EU) 2023/1805 of the European Parliament and of the Council of 13 September 2023 on the use of renewable and low-carbon fuels in maritime transport, and amending Directive 2009/16/EC, OJ L 234, 22.9.2023, p. 48–100

report to the European Parliament and to the Council within 18 months of the adoption of such a global market-based measure and before it becomes operational. In that report, the Commission shall examine the global market-based measure as regards: (a) its ambition in light of the objectives of the Paris Agreement; (b) its overall environmental integrity, including in comparison with the provisions of this Directive covering maritime transport; and (c) any issue related to the coherence between the EU ETS and that measure. Where appropriate, the Commission may accompany the report with a legislative proposal to amend this Directive in a manner that is consistent with the Union 2030 climate target and the climate-neutrality objective set out in Regulation (EU) 2021/1119, and with the aim of preserving the environmental integrity and effectiveness of Union climate action, in order to ensure coherence between the implementation of the global market-based measure and the EU ETS, while avoiding any significant double burden.

Any IMO measure on GHG matters, which will require the monitoring, verification and reporting of GHG emissions from shipping, could affect the EU MRV Regulation as well as the EU ETS Directive and the Fuel EU Maritime Regulation.

Therefore, the new chapter 5 to Annex VI of MARPOL on the IMO Net-zero framework is capable of decisively affecting the requirements applicable under Regulation (EU) 2015/757, Regulation (EU) 2023/1805 and Directive (EU) 2023/959." (emphasis added)

11. The Decision, which was adopted by the Council of the EU pursuant to the Commission Proposal appears to have accepted that approach. Thus, recital 4 of the Decision provides:

"It is appropriate to establish the position to be taken on the Union's behalf at MEPC/ES.2, as some of the envisaged amendments to MARPOL are capable of decisively influencing the content of Union law, namely Directive (EU) 2016/802 of the European Parliament and of the Council¹³, Regulation (EU) 2015/757, Directive (EU) 2023/959 and Regulation (EU) 2023/1805."

12. Further, Article 2 of the Decision makes clear that the proposed approach set out in Article 1, namely "to agree to the adoption of ...(c) the introduction of the new chapter 5 of Annex VI to MARPOL concerning the IMO Net-Zero Framework, as set out in the Annex to IMO document MEPC/ES.2/2" applies "the proposed amendments to the extent that those amendment fall under the exclusive competence of the Union and to the extent that they may affect Union common rules". Thus, Member States are "authorised to give their consider to be bound, in the interest of the Union by the proposed amendments, to the extent that those amendments fall under the exclusive competence of the Union": Article 3. The Decision was necessary therefore, to enable Member States to agree to

¹³ Directive (EU) 2016/802 of the European Parliament and of the Council of 11 May 2016 relating to a reduction in the sulphur content of certain liquid fuels

the adoption of the relevant measures, to the extent that those measures fall within the exclusive competence of the EU.

13. In that regard, the position in relation to MARPOL is somewhat unusual; whilst the Commission appears to have exclusive competence in the relevant area, it cannot sign the agreement since the EU is not and cannot be a party to MARPOL. For that reason, permission by way of Council Decision was necessary, as provided in Article 2(1) TFEU. Thus, Member States were mandated by the Decision to agree to the MARPOL amendments and to do so on behalf of the EU.¹⁴ Thus, Article 2 of the Decision provided that:

“The position shall be expressed by the Member States, which are all members of the IMO, acting jointly in the interest of the Union.”

14. It follows that the position of the Commission and the Council is that the EU has exclusive competence in respect of the adoption of the NZF and that Member States must vote for the amendments on behalf of the EU.

Are there any limitations or carve outs to this competence? Could a Member State seek a derogation from this competence, and if so, how?

15. I do not believe there is any basis for seeking a derogation in this context. Nor is there any carve out. The only way that a State could act independently of the EU joint position would be to succeed in arguing that the matter was one of shared competence under Article 4(2) of the TFEU.

If the EU does have exclusive competence, are or can Member States be compelled to act according to the agreed EU position? For example, could a Member State be compelled to vote in favour of the NZF?

16. The Decision is not conclusive on the question of whether the EU has sole competence; it would be open to a Member State to argue that competence was in fact shared, as provided in Article 4(2) TFEU. However, as regards the Decision at least, the Member State would have had to have challenged the Decision, including by arguing that the mandate on Member States to vote in favour of the NZF in Article 2 of the Decision was unlawful. Such a challenge to

¹⁴ Cf the position in relation to the EU-Singapore Free Trade Agreement, where the request for an opinion of the Court related to whether the envisaged agreement could be signed and concluded by the European Union alone or whether, it had to be signed and concluded both by the European Union and by each of its Member States (a ‘mixed’ agreement): Opinion 2/15 judgment of 16 May 2017 and Opinion of AG of 21 December 2016.

the Decision would have had to have been brought within two months of its publication: Article 263 TFEU. Absent a successful challenge, the Decision constitutes a legislative measure that is legally binding on Member States: Article 288 TFEU.

17. The Decision was specifically adopted for the purposes of the October meeting. Arguably, therefore, it is no longer applicable – and binding on Member States. However, an argument could be made that the Decision it entails in relation to competence at least, still stands and can no longer be legally challenged, time having expired.
18. Assuming such an argument failed, however, and it was said that the Decision did not have legally binding effect, such that a Member State could now argue shared competence, I am unable to assess the likelihood of such a challenge succeeding. Without an in-depth analysis of all the relevant measures – and the potential impact of the NZF on those measures, it is not possible to assess whether such an argument has any real prospect of success. However, in light of the view adopted by the Commission, and Council in the Decision, as well as the widening of exclusive competence by the Court in Opinion 2/15 (cited above), it is in my view likely that the EU has exclusive competence here.
19. Where the EU has exclusive competence, a Member State infringes EU law in failing to comply with the approach adopted by the EU. In this case it might be argued that the Decision remains extant (albeit the October 2025 meeting has passed), such that any State seeking to argue against the position in the Decision and in particular, not to vote for the NZF as mandated by the Decision, would infringe its obligations under the Decision. Accordingly, a State acting in that way could be subject to infraction proceedings initiated by the European Commission under Article 258 TFEU, or brought by another Member State under Article 259 TFEU. In the context of those proceedings, the Commission can set out what it requires the relevant State to do – in this case it would be a requirement that the non-compliant state adopt the relevant amendment to MARPOL.
20. Should the case go to the Court of Justice, the Court can compel the state to take any necessary measures to comply with the finding of the Court, which could in my view include requiring it to desist from objecting to the NZF and requiring it to agree to the adoption of the NZF. The state may also be subjected to a fine for non-compliance with EU obligations: Article 260(2) TFEU

21. In my view, were an EU Member State to abstain or vote against the EU's position, this would likely give rise to an infringement of EU law since its obligation to agree to the adoption of the NZF is an obligation it has to act on behalf of the EU – rather than on its own behalf, which arises pursuant to the Decision (albeit, arguably a further Decision may be needed); the state would be discharging the exclusive competence of the EU.
22. It is more difficult to assess the position were a state to issue a paper objecting to the amendments but nevertheless agree to their adoption. Such conduct, would it seems to me, constitute a breach of the duty of sincere co-operation in Article 4(3) of the Treaty on the European Union (“TEU”) and also constitute a breach of the rules relating to competence. It would certainly be arguable that such action constitutes an infringement of EU law.

Conclusion

23. For the reasons set out above, it seems to me that there is a good argument that no Member State is entitled either to object to the EU position in relation to the NZF, or to fail to vote for its adoption.

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19 March 2026.