

THE MALTA CHAMBER FEEDBACK TO CONSULTATION

European Union Greenhouse Gas Emissions Trading System for Stationary Installations, Maritime Transport and Aviation Regulations

Presented to : Ministry for Environment, Energy and Regeneration of the Grand Harbour

Date : 02/08/2024

Version : FINAL



MAIN MESSAGES

The Malta Chamber of Commerce, Enterprise and Industry notes that respondents to the consultation feel that the **legislative proposals are vague, leaving many implementation unknowns, raise questions and make it difficult for them to form an informed opinion.** Our members within the logistics, maritime and aviation sectors are conscious of the fact that this is an EU obligation at transposition stage and retroactive in nature, noting that the retroactivity factor, in itself, is a concern.

The **main messages** to convey to the Ministry from the operators' feedback are the following:

1. The current **complexity of the ETS should be simplified** to be more industry-friendly and less administratively burdensome, ensuring continued compliance.
2. It is unclear how the roll-out plan will pan out in each EU country, how **harmonised will the new systems be across the EU.**
3. Operators **already face significant increase in costs to maintain their fleets and cannot absorb additional financial pressures** as it will be directly impinging on their competitiveness.
4. The **transposition of these directives into Maltese law is fraught with difficulties**, from tight timelines and financial costs to scientific uncertainties and administrative pressures.

The Malta Chamber advocates that the transposition should **allow more time for compliance** and should not impose greater burdens than the EU directive itself, hence favouring a **minimum entry-level approach.**

INTRODUCTION

The **EU's Fit for 55 package** targets reducing net greenhouse gas emissions by at least 55% by 2030. The proposed package aims to bring EU legislation in line with the 2030 goal. The package includes a range of policies that seek to allow this to happen.

A substantial number of islands within the EU territory are exempted from the provisions of ETS if they satisfy the criterion, it being having a population which is less than 200,000 and no road or rail links with the European mainland. As a result, the port of Mgarr in Gozo is the only exempted Maltese port which is included in the relative EU implementation decision published in the Official Journal of the EU on the 19 December 2023. The Malta Chamber is of the opinion that the aforementioned criteria does not take into consideration the specifics and peculiarities of Malta - this will have serious negative implications on our competitiveness. The Malta Chamber is of the opinion that it could have been expanded enough to reflect better the geographic peculiarities of the whole country since **the cost of transportation is a key contributor to the erosion of competitiveness of local exporters, a direct impact on main business sectors and increase in costs towards the end consumer**. To alleviate this competitive erosion, two years ago, the Malta Chamber recommended:

- Establishing a **reliable national airline that provides air cargo services**; and
- Establish a **strategic connection to the major ports in the Mediterranean** providing scheduled services to and from other parts of the world through which containers leaving or destined for Malta pass, given the limitations of scheduled services at the Malta Freeport. This can be provided through a scheduled circular route using a small freighter that connects ports such as Tunis, Casa Blanca, Valenzia, Gioia Tauro, and Malta. The Malta Chamber notes that its proposal will now be included in the terms of reference of a **government-commissioned study which will quantify Malta's particular economic challenges as a small island state**. The study will assess the effects of the Emissions Trading Scheme (ETS), a new EU-wide environmental shipping tax in which carriers are obliged to purchase "allowances" to offset their carbon emissions when travelling to EU ports. The Malta Chamber remains committed to contribute towards this study if required. Having said that The Malta Chamber is reliably informed that **transshipment containers' congestion at Freeport due to Red Sea situation is escalating, compounding ETS rerouting consequential concerns**. On this point, The Malta Chamber **recommends extending the remit of this study** regarding the impact of ETS, to explain why Malta needs to help firms to retain their competitiveness to have solid and tangible arguments why such aid should not be considered to be state aid.

Malta has a strong **proportionality argument**, which goes beyond maritime, to quantify the difficulties Malta faces, compared to larger EU countries in the European mainland. The Malta Chamber firmly believes that till today we have failed to put forward this argument assiduously enough, backed with pertinent data. Concurrently, The Malta Chamber affirms that there are ongoing negotiations in the EU Council on the **Energy Tax Directive**, whereby Government should seek a permanent derogation for Malta being a peripheral island state with no road alternative to the European mainland. The proposed tax creates another unproportional burden on Maltese businesses and consumers because it creates an unlevel playing field for regional producers and processing facilities inside the Single



Market with respect to the fundamental principle of the free flow of goods and the free flow of services.

The Malta Chamber strongly expects our representatives in Brussels to lobby towards the implementing of the competitiveness check in the preparatory phases of EU legislation - this is an important outcome from the Conference on the Future of Europe and a specific recommendation by employer representatives. The Malta Chamber therefore calls for the **introduction of Territorial Proofing or an Insularity Test as part of the policymaking impact assessment process on all EU regulations and directives at both Commission stage and at Parliament stage. This will improve on what falls squarely in line with Article 175 TFEU, whereby Member States shall conduct their economic impact assessments to realistically attain the objectives set out in Article 174 TFEU.** The formulation and implementation of the Union's policies of the internal market consider the objectives set out in Article 174 and shall contribute to their achievement. Apart from the obligation for the Commission to submit an annual report the European Parliament, Council, the Economic and Social Committee and the Committee of the Regions, the article explains that *“This report shall, if necessary, be accompanied by appropriate proposals”*. The article also states that solutions need to be provided *“if necessary outside the Funds and without prejudice to the measures decided upon within the framework of the other Union policies”*.

The lack of understanding at EU level of our proportionality argument—a key principle enshrined in EU treaties – which is key for us as a micro island Member State, is crystal clear.

The feedback received from our members on the proposed Subsidiary Legislation aligns with these contextualised concerns. The Malta Chamber is therefore concerned about the impacted operators’ **uncertainty on possible scenarios affecting pricing.**

This factor may prejudice their preparation while bearing a **considerable consequential impact on competitiveness in general and the tourism and the manufacturing industry in Malta.**



MARITIME

The EU ETS, outlined in the European Directive (EU) 2023/959, came into effect on 5 June 2023, introducing a CO2 emissions taxation system for the maritime sector. **Shipping companies will be mandated to compensate for their CO2 emissions by acquiring Emission Unit Allowances (EUA) on the regulated market.** As of the January 2024, cargo and passenger ships having a gross tonnage of 5,000 tonnes or over, started to be subject to the EU ETS scheme because of which they will pay for their carbon emissions. Initially such payments will cover 40% of their emissions. This will rise to 70% in 2025 and then to 100% from 2026 onwards. [In November 2024, local industry analysts carried out a preliminary analysis of the impact](#). They calculated the **direct impact on transport costs**, projecting a surcharge of €102 per container in 2024 and a substantial increase to €255 per container by 2026.

The European Commission has recognised potential challenges related to carbon leakage towards neighbouring container transshipment ports in the Mediterranean, such as East Port Said and Tanger Med, with high risk that **lead operators would shift their activities from EU ports to non-EU ports in North Africa.**

This concern extends beyond trade diversion from EU transshipment ports, impacting European industries dependent on maritime services for import and export, especially manufacturers in remote island states and regions like Malta, Cyprus, Sicily, and Sardinia. European industry relies on direct connectivity to global maritime and logistics hubs for just-in-time delivery of critical inputs and raw materials and effective outbound links for exporting products more than continental Member States. Ships passing through the Mediterranean without stopping at EU ports will avoid ETS requirements, potentially leading to significant economic repercussions for member states and regions if **cargo destined for EU industry is offloaded at non-EU ports and brought to its final destination via feeder vessels.**

Additional disproportionate ETS costs for maritime transport are impacting global competitiveness, particularly for **island-based operators reliant solely on sea transport.** These costs compound anticipated increases from other Fit-for-55 legislation, such as the Carbon Border Adjustment Mechanism (CBAM). The proposed legislation will significantly impact shipping companies with ships registered in Malta. It is essential to ensure that the regulations do not impose excessive burdens compared to other European states.

With direct reference to the proposed legal notice, feedback is as follows:

1. Definitions:

- The definitions provided in the proposal align well with those in Directive 2003/87/EC and are therefore satisfactory. The inclusion of additional definitions not featured in the Directive is commendable, as it offers more clarity and reduces ambiguity.
- The term "shipping operator," referenced in the definition of "surrender," is not defined in either the Legal Notice Proposal or Directive 2003/87/EC. It is advisable to include a definition for this term to avoid any ambiguity.

2. Penalties for Reporting Annual Emissions:



A title 'Revision' is recommended, changing the title of Regulation 9 from "*Fines relating to reporting annual emissions*" to "*Penalties for reporting annual emissions*" to maintain consistency with the terminology used in Directive 2003/87/EC.

3. Proportionality of Penalties:

Article 16 of Directive 2003/87/EC states, "*Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive...The penalties provided for must be effective, proportionate and dissuasive.*" Although the proposed penalties seem effective and dissuasive, it is crucial to ensure they are also proportionate. We must understand the rationale behind these penalties. We ask whether discussions were held by the Malta Resources Authority, acting as the National Administrator, with other National Administrators or the European Commission to share experience. Certain questions remain on whether these penalties are arbitrary and whether we are understanding the foundations enough to ensure that these measures are justified and proportionate.

4. Compliance:

It is essential to provide clear guidance on the timeline and steps for compliance, enabling shipping and bunkering companies to adhere to the requirements efficiently.

5. Potential economic opportunities and considerations include:

- Developing ETS Trading Structures: Creating emission trading systems within Malta, turning emission credits into commercially traded investments.
- Mitigation Measures: Suggest measures to mitigate adverse effects on the industry while achieving environmental goals, ensuring that the regulations do not disproportionately burden shipping companies or make Malta less attractive as a flag state.
- Economic Impact Assessment: Evaluate the potential economic impact on the maritime industry, including the cost of purchasing emission allowances, even because the direct impact on maritime will be passed on to industries such as manufacturing through their use of shipping services.

6. Recommendations on Timeline, Phasing, Support and Resources:

- Phased Implementation: It is recommended that a phased implementation approach to allow shipping companies time to adjust to the new requirements is more suitable, over a transition period during which companies can familiarise themselves with the new systems and procedures as part of the implementation roll-out of the legal notice.
- Guidance and Training: Provision of clearly detailed guidance documents and training sessions for shipping companies would be provided to ensure that operators and enabling stakeholders would understand properly the compliance requirements.
- Technical Support: Due to anticipated increase in requests for clarification, a sufficiently resourced support system to assist companies with technical aspects of monitoring, reporting, and verification is required. The support staff must be knowledgeable, must give homogenous direction and responses must be timely.



AVIATION

The transposition of EU ETS regulatory obligations was due by end 2023. The SL obligations are therefore set to come into force **retroactively from January 2024**, presenting a tight timeline for implementation for industry. The Malta Chamber Aviation and Aerospace Business Section acknowledges that the transposition issues being raised are not unique to Malta since other several other member states which missed the deadline. The airline industry had to comply with monitoring CO2 emissions amendments as from 1st January 2024 irrespective of whether Malta, or any Member State, transposed the legislation or not. Fact remains that from an industry perspective, **the situation to handle such obligations from an implementation regulatory perspective, is untenable.**

Clarifications are also required, like for instance that **flights to and from Malta will benefit from a 100% of the remaining price differential between the use of fossil kerosene and any eligible aviation fuel that is not derived from fossil fuels** given that it is an island of an area of less than 10,000km² and that there is no road or rail link to the rest of the EU, referred to in the Directive as “mainland”.

The absence of any sort of guidance on the Sustainable Aviation Fuel (SAF) implementation obligations coming up as of January 2025 does not help either. The initial quota for a 2% blend of SAFs in fuel for departures from EU countries will kick in. SAF quotas for airlines will then gradually increase to 6% in 2030 and rise to 70% in 2050. SAF is up to five times more expensive to produce than traditional jet fuel.

This ETS EU directives, which are quite prescriptive, have created significant **challenges for the Malta Resources Authority (MRA)**, which appears overwhelmed by the complexity and scope of such new regulations. The regulatory authority is also short staffed to handle regulatory implementation with the industry operators. The fact that only Denmark transposed on time gives one reason to think that either there were significant issues relating to transposition or else the Member States themselves are not coping with the legislation they themselves negotiated. **Malta Resources Authority needs to be adequately equipped as competent authority to be able to function efficiently as a regulator given that its tasks have increased.** The fact that deadlines are being missed may be indicative that this is not the case.

The Aviation and Aerospace business section committee also notes that:

- Clarification is needed on **when aircraft operators should apply for additional allocations** (Regulation 7). Should this be part of the annual emissions report, supported by verified data? If so, operators would not receive allowances in the same year. For example, an application for 2024 would occur around 31st March 2025, post-submission of the annual emissions report and subsequent approval by the Member State and possibly the European Commission. If this is not the process, further details are required.
- Regulation 7(9) highlights the **importance of protecting commercially sensitive information for operators with small networks**, as publishing such data could harm their interests. This protection should extend beyond offsetting to include EU ETS and CORSIA reporting.
- Regulation 12 refers to **eligible units for offsetting**, referring to various credit schemes but lacks clear guidance on identifying eligible credits. This creates confusion for operators and



increases the risk of fraudulent offsets. A centralised platform listing all eligible schemes would provide clarity and reduce the potential for fraud.

From the outset, the reporting cycle set for March 2025 lacks a comprehensive guide, making compliance even more challenging. One of the key concerns is the handling of non-CO2 effects, which currently lacks a solid scientific basis. There is a call for scientific certainty in this area to ensure accurate and effective reporting and compliance. What is being proposed is very complex and not yet cast in stone. Notwithstanding this, four months before the entry into force, i.e. by end August 2024, airlines will be required to submit a monitoring plan on how they plan to do their monitoring and reporting. The timelines are just not right, and industry is expected to catch up. When the Emissions Trading Scheme for CO2 emissions entered into force for airlines, the legislation was introduced well in advance giving airlines the possibility to have at least a year dry run before the law entered into force. In this instance without the legislation being in place, let alone guidance documentation that one would expect there to be, airlines are expected to comply. With this stage not being reached yet, **The Malta Chamber Aviation Business Section advises that more time is given to allow industry to comply, with parallel support and clear guidance to help the industry navigate these changes.**



LAND

The Malta Chamber Logistics Business section committee notes that in June 2022, the EU Environment Council adopted position on the revision of the EU Emission Trading System (ETS), which included significant changes to road transport emissions. Over the past years, The Malta Chamber Logistics Business Section, has expressed specific concerns and positions regarding these revisions, which helped leading to the establishment of a separate ETS for road transport emissions providing the possibility to exempt Member States suppliers from surrendering allowances until December 2030 if they are subject to a national carbon tax equivalent to or higher than ETS II allowance prices.

The EU's new carbon pricing scheme for road and heating fuels (ETSII), starting in 2027, will lead to **higher fuel price hikes than originally expected**. Initially, lawmakers aimed to keep prices under €45 per tonne of CO₂, translating to a 10% increase per litre of diesel or petrol, however, they are now more pessimistic.

The Malta Chamber Logistics Business section committee also recalls that **towards the end of 2023, it was calculated that local companies importing goods from Genoa to Malta were set to see [a €100 surcharge per container, and these extra costs are expected to rise to €255 by 2026](#)**. This came immediately after Grimaldi, a prominent shipping company, issued an announcement on disclosing the implementation of the EU ETS surcharge.

There are significant questions about the **readiness of EU wide harmonised digital infrastructure to digitally calculate emissions** (case in point eFTI platforms pushed by the European Commission for Combined Transport). Harmonisation of such platforms is essential for the effective implementation across the single market, ensuring fairness and proportionality. The lack of these platforms in every Member State could lead to significant technical and implementation complications. **The criteria for determining exemptions based on vehicle size, emissions and age of the vehicle are not yet clear, leading to uncertainties in planning and compliance.**

Whilst The Malta Chamber is in favour to revise vehicle road license fees to reflect actual usage, by factoring in mileage covered since the previous renewal in addition to engine type, size and age of vehicle to help curb use of private vehicles to reduce traffic congestion, there are preliminary measures which Transport Malta and MRA need to ensure not to neutralise low emissions benefits for operators who started shifting to green vehicles. **A clear distinction in emissions calculation specified to the vehicle needs to be established and documented.** This might be problematic since we currently lack a fully spanned fleetwide tracking with a common emissions formula that inherently differentiates between various factors contributing to emissions. Moreover, the EU policy aims to use price signals to promote zero-emission engines, requiring regular reviews of vehicle CO₂ classifications with increasingly stringent requirements.

The main challenge here is the **lack of affordable alternative solutions for replacing existing trucks**, limiting most fleets to CO₂ class 1. Even newly acquired trucks may not meet CO₂ class 2 or 3 standards. The issue lies not in transparency but in the methodology's complexity. Classifying a vehicle involves extensive data collection and processing through a complex matrix, although some tools can determine a vehicle's CO₂ class and handle the entire registration process for toll charging. In this context, Malta has circa 55,000 licensed commercial vehicles. Most operators are just starting their



green logistics shift from purchasing older and more affordable vehicles. Traffic and unproductive costs worsen their cash flow issues, making it difficult to meet new legal obligations. Implementing these obligations without proper support systems risks unfairly burdening businesses and hindering further successful transition efforts. The Malta Chamber cautions that the ultimate result of introduced measures will be **passing the cost on to consumers, leading to another spiral of inflationary effects.**

Furthermore, nearly all the Maltese logistics sector is made up of SMEs, which may not have the resources to adapt quickly to absorb new costs of tolls associated with ETS II. Inherently, **tolls are typically applied to highways, which do not exist in Malta.** Our issue lies with overburdened road infrastructure and high car density, leading to severe congestion. The introduction of tolls in Malta will exacerbate, not lessen, the already critical congestion. Costs related to reduced productivity in traffic are compounded by the expense of tolls. Until recently, up to five delivery duties could be completed in a morning, however, just two or three is now becoming the norm. One also needs to keep in mind that Maltese logistics operators have already absorbed approximately 2-3% cost increase due to increased German tolls from January 2024 (to mention an example) and now will inevitably face additional local costs.

The Malta Chamber reiterates that the issue is not just about costs. The EU aimed to ensure toll system interoperability, but in practice, **each country implements its own complex toll solutions.** Only toll service providers offer interoperable solutions, requiring significant investment and regular updates. The fees paid by toll chargers do not cover these costs, burdening transport companies with additional expenses. Consequently, transport companies struggle to charge clients. Before implementing such laws, the road transport ecosystem should guarantee cost-effective interoperability. Additionally, non-standardised vehicle documents across the EU complicate data collection and communication, especially regarding CO₂ class determination.

This will **add up to lower productivity of deliveries' consignments due to longer transportation administration, extended times and lack of retention exacerbating the recurrent shortage of drivers.** The impact is not limited to the logistics / deliveries industry but also extends to coaches that cater to school children, catering and tourists, to mention a few examples.

The **application of the Euro Vignette for cross-border journeys remains unclear** in the Maltese context, complicating further cost management.

The Logistics Business Section therefore calls for full visibility and clarity on the impact before adopting the legal notice. **Alternative implementation scenarios should be properly assessed before the legislation is transposed.** It is evident that the EU transposition pressure is prioritised against the impact on industry and ability of operators to absorb the functional, investment and reporting obligations. More could have been done towards a seamless transition in this sense. Should the government nonetheless pursue with the transposition (as is likely to be the case), the section cautions that any introduced measures need to ascertain fair implementation, technical readiness and support for SMEs in the Maltese context.

STATIONARY INSTALLATIONS

The feedback being provided under this section is a **list of questions to provide clarity**.

1. Our understanding is that the amendment to the European Union Greenhouse Gas Emissions Trading System for Stationary Installations (Amendment) Regulations is intended to modify SL 423.50. However, **the link provided by MEER for consultation references SL 423.51**. We would like to inquire whether both will be combined into a single piece of supplementary legislation.
2. In regulation 4, **the authority responsible for permits is unclear**. Will it be the MRA or the ERA?
3. In regulation 5, (2e), the CBAM factor according to (EU) 2023/0956 refers to **metal produced in the EU**. The question is whether the importing company is still required to pay if they receive a free allocation.
4. In regulation 8, an importer of greenhouse gas might have leased tanks at their client's site. The question is whether the **greenhouse gas permit and reporting responsibilities** can be shared, either partially or fully, with the client.
5. In regulation 11 (3) (d), carbon dioxide storage sites receive no free allocation. These sites are defined as **above-ground storage or specified activities** according to Directive EU 2023/959, related to the geological storage of greenhouse gases permitted under Directive 2009/31/EC. We seek confirmation that our understanding is correct.
6. In regulation 15 (4), the deviation from monitoring in (a) is specified as "early as possible." What is the **definition of "early as possible"**?
7. In regulation 26 (8), **hospitals may be excluded from the EU ETS**. Does this imply that the responsibility will shift to the supplier?
8. In schedule 2, **nitrous oxide and hydrofluorocarbons** are also mentioned. Will the threshold be based on GWP or quantity?



THE MALTA CHAMBER

www.maltachamber.org.mt

+356 2203 2304

The Malta Chamber of Commerce,
Enterprise and Industry 64, Republic
Street Valletta, VLT 1117