

**To:** The Netherlands Ministry of  
Infrastructure and Water  
Management

**From:** A.P. Møller Maersk A/S

**Date:** 8/11/2022

**Summary of input to the public consultation on amendment of the  
Energy Transport Regulations; *Wijziging Regeling energie Vervoer***

A.P. Møller Maersk A/S ("Maersk" in the following) hereby forwards its answer to the public consultation by the Netherlands Ministry of Infrastructure and Water Management ("MIWM" in the following) regarding "*Amendment of the Energy Transport Regulations; Wijziging Regeling energie Vervoer*".

Maersk's key points, which are laid out in detail in the following, are:

**General points**

- The HBE system has been – and still is – instrumental in ensuring that the international maritime industry achieves immediate and immense GHG reductions. More than 90 % of all CO2 reductions achieved by the maritime industry today are contributed to the HBE system.
- The system aligns with international and regional set goals for decarbonization. Goals that the Netherlands have supported, worked for, and called for to be raised, for example at the IMO.
- Biofuels for maritime use have shown to be a safe, clean and effective way to achieve decarbonization which can be used by all types of ships and do not require the same quality as biofuels for road and aviation. Ensuring the continued development and uptake of biofuels for marine application requires further support which the HBE system, with the current multiplier, ensures.

**Points on the suggestion to reduce to the multiplication factors  
for all sectors**

- Maersk supports the suggestion to reduce the DC multiplication factors by 20% for all feedstocks as it would keep the important momentum of ensuring immediate GHG reductions from an industry that accounts for 3 % of all Global GHG emissions. It will also create a level competitive playing field and align with the coming targets of the third edition of the Renewable Energy Directive (REDIII).

**Points on the suggestion to reduce to the multiplication factor solely for seagoing shipping**

- A reduction of the multiplier in the HBE system would negate achievements made by the Netherlands and threaten its position as a clear frontrunner for decarbonization of the maritime sector and a leading example for other countries.
- A reduction of the multiplier would also go directly against the principles established by the Dutch Supreme Court in the *Urgenda* case. Principles the Dutch government are bound to adhere to.
- Maersk supports the views expressed by the MIWM to further develop the HBE system, for example in accordance with regulatory outcomes at EU level following the FitFor55 negotiations. Lowering the multiplier today would, however, discourage industry belief in the effectiveness and longevity of the new system.
- Maersk suggests increasing the overall mandate to allow for all sectors to maintain and increase their emission savings year on year.



### **Input to the public consultation regarding the suggested change to reduce to the multiplication factors for all sectors**

Maersk supports the proposal in the (revised) consultation to reduce the DC multiplication factors by 20% for all feedstocks listed in section A and B of Annex IX of the RED.

Maersk agrees that this initiative will increase the use of these energy carries which will ensure that the current momentum of creating immediate GHG reductions, also within global shipping, is continued.

It will also create a level competitive playing field across sectors and allow for a bottom-line higher reduction of GHG globally which will also benefit the Netherlands and Netherlands nationals, thus aligning with the principles set out the *Urgenda case*.<sup>1</sup>

Such a change to the HBE system would also futureproof the system better compared to proposal to amend the Renewable Energy Directive (REDIII).

### **Input to the public consultation regarding the suggested change to reduce to the multiplication factor solely for seagoing shipping**

#### **HBE system ensures immediate and immense GHG reductions in shipping which aligns with international goals and commitments**

The HBE system is a key driver to ensure that the international maritime industry achieves immediate and immense GHG reductions.

It has been established in a 2022 report on the biofuels marked<sup>2</sup> that more than 90 % of all CO2 reductions achieved by the maritime industry today are contributed to the HBE system due to the incentive for blending biofuels in key ports hubs as Rotterdam.<sup>3</sup>

This is obviously a positive development considering that the expected climate benefits from other regulatory instruments at EU and IMO are not going to result in tangible results (reductions) for years, given that the underlying regulation first needs to be developed (especially at IMO level), adopted, implemented and entered into force to have effect. Yet, GHG reductions are needed now to reach the international climate goals of, for example, the Paris Agreement, EU's Green Deal and IMO's GHG Strategy. Also, given the IPCC's reports on this, reaching the reduction goals becomes more and more challenging. In fact, the latest IPCC report from

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<sup>1</sup> ECLI:NL:HR:2019:2007. Point 5.7.2.

<sup>2</sup> *Biofuel Market Study* by Argus, February 2022 stating world global marine biofuels demand at 260,000 tons in 2020.

<sup>3</sup> HBE-rapportage, March 2022, stating marine biofuels blended in Netherlands at 13,4millions - HBE-G, equivalent to around 225,000 tons in 2021.

<https://www.emissieautoriteit.nl/onderwerpen/algemeen-hernieuwbare-energie-voor-vervoer/documenten/publicatie/2022/07/04/hbe-rapportage-juli-2022>



October this year shows the world is on a trajectory for a 2.5-degree Celsius increase in global temperatures by the end of this century instead of the envisioned limit in the Paris Agreement.<sup>4</sup>

Immediate and immense GHG reductions are therefore needed and the HBE system has been key in starting this development within an industry that accounts for the release of approx. 3 % of all global GHG Emissions.

This development would, however, be threatened by a lowering of the multiplier as it would broaden the gap between the costly development of biofuels and regular fossil fuels, thus encouraging more use of the latter.

It would also, to some extent, contradict the messages and points often made by the Netherlands at negotiations at EU and UN (incl. IMO) level calling on other nations to do more. The Netherlands has, through the implementation of the HBE system, been a clear frontrunner among States to adopt legislation that actually leads to tangible reduction results and thereby having their actions go hand-in-hand with their political statements. This status would, nonetheless, be diminished if the multiplier is lowered as it would lead to a serious decrease in the production of biofuels for marine fuels which again leads to an increase GHG emissions from shipping through the increased use of regular fossil-based fuel. Rather than lowering the maritime multiplier, we suggest looking into other solutions that would encourage the uptake of biofuels by the road transport sector without discouraging the use of biofuels in the maritime sector. For instance, instead of lowering the multiplier for the maritime sector, it could be assessed whether increasing the overall mandate for biofuel use across road, marine and aviation sectors can achieve the envisioned effect as well.

### **Marine biofuels are costly to produce, but also safe, clean, effective and very suitable for use on all vessels**

Biofuels for maritime use have been shown to be a safe fuel source and effective way to reduce less GHG, including CO<sub>2</sub>. In general, marine biofuels can be used by all vessels with a combustion engine, not just as a drop-in fuel but also as a 100% fuel source. Furthermore, recent studies by MAN Energy Solutions have shown that the use of biofuels does not entail any heightened levels of other pollutants such as Sulphur Oxides (SO<sub>x</sub>) or Nitrous Oxides (NO<sub>x</sub>), which also enabled the IMO to recently adopt a unified interpretation of international legislation<sup>5</sup> which lowered the administrative requirements for shipowners to obtain flag State permission before using it due to its easy-to-use and non-pollutant nature (while still reducing CO<sub>2</sub> emissions).

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<sup>4</sup> <https://unfccc.int/news/climate-plans-remain-insufficient-more-ambitious-action-needed-now>

<sup>5</sup> At MEPC 78 a unified interpretation (found in document MEPC 77/7/7) of Reg. 18.3.2 of MARPOL Annex VI regarding flag State approval for the use of biofuels, was adopted.

Also – and very importantly – biofuels for marine use do not require the same processing as biofuels for road and aviation. This means that the marine sector can use types of biofuels that cannot be used by other transport sectors, at least not without further refining which entails further costs and emissions.

Biofuels for marine use are currently produced exclusively with waste & residues feedstocks, in which collections, pre-treatment and production technologies are under development. HBE system offers economic incentives for continuity of expansion of waste & residues feedstocks volumes and development of new processing technologies that benefit not only the shipping industry but all transport sectors.

Nonetheless, advanced biofuels from waste & residues feedstocks are very costly to develop and produce in sufficient scales and therefore requires further support through the HBE system with the current multiplier. If the multiplier is lowered it will slow, and perhaps halt, this development and production, and thus led to increased uptake of fossil-based fuels and an increase in GHG emissions.

### **Reduction of the multiplier could conflict with the principles of the *Urgenda* case, upheld by the Dutch Supreme Court**

A reduction of the multiplier would also go directly against the principles established by the Dutch Supreme Court in the *Urgenda* case. Principles the Dutch government are bound to adhere to.

The Supreme Court stated that under Articles 2 and 8 ECHR (European Convention of Human Rights), the Netherlands is obliged to do 'its part' in order to prevent dangerous climate change, even if it is a global problem.<sup>6</sup>

This was, inter alia, followed by a reference to the responsibility of all States to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.<sup>7</sup>

If the multiplier is lowered it will, as concluded above, lead to a reduction in the production and use of marine biofuels and stimulate uptake of regular fossil based marine fuels. This will substantially heighten the emissions of GHG from shipping, far beyond the reductions achievable from deferring the HBE credits to aviation and road transport. So, from a global perspective, the Netherlands would by lowering the multiplier incur more damage on climate through the increase in GHG emissions thus contradicting the Supreme Court's ruling in the *Urgenda* case as this inflicts damage inside and outside of the country due to an activity that is under the control of the Netherlands (the multiplier in the HBE system)

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<sup>6</sup> ECLI:NL:HR:2019:2007. Point 5.7.1.

<sup>7</sup> ECLI:NL:HR:2019:2007. Point 5.7.2.

**Future regulatory frames for marine biofuels and other fuels for**

Maersk supports the views previously expressed by the MIWM – for example during the recently held meeting “*Vervolgmeeting tav implementatie RED III en rondetafelgesprekken*” – to further develop the HBE system in accordance with regulatory outcomes at EU level following the FitFor55 negotiations, especially on REDIII (Renewable Energy Directive) and Fuel EU Maritime. Developments which could keep incentivizing biofuels, but probably also encompassing the support of other green fuels such as Methanol and possibly Ammonia. Perhaps following the example set by the UK Department of Transport in the Renewable Transport Fuels Obligation. This could elevate the effectiveness of the HBE system (or that of a new/re-named system) even more in terms of further reducing GHG emissions from international shipping.

Lowering the multiplier today could, however, discourage industry belief in the effectiveness and longevity of the new system.

**Conclusion**

Maersk supports the proposal to reduce the multiplication factors by 20% for all feedstocks.

Maersk cannot support the proposal to solely reduce the multiplication factor seagoing shipping.