

BIMCO CARBON INTENSITY INDICATOR OPERATIONS CLAUSE FOR TIME CHARTER PARTIES 2022 AND VOYAGE CHARTER PARTIES 2023

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This article examines the Baltic and International Maritime Council's Carbon Intensity Indicator clauses and discusses its impact on owners and charterers, and particularly the onus placed on charterers in respect of the Time Charter Party Clause.

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1 The Carbon Intensity Indicator (“CII”) is a rating system for ships developed by the International Maritime Organization (“IMO”). The International Convention for the Pollution from Ships (MARPOL) which addresses air pollution from ocean-going ships, in particular, Resolution MEPC 328(76) (together with associated guidelines) (“The MARPOL Carbon Intensity Regulations”) requires that as of 1 January 2023, all applicable vessels must start collecting data for the reporting of their annual operational CII and CII rating. This requirement impacts all vessels that are above 5,000 gross tonnes and trading internationally.¹

2 The CII is a measure of operational efficiency (*ie*, how efficiently a ship transports goods or passengers) and expressed

1 BIMCO, “CII Operations Clause for Time Charter Parties 2022” <<https://www.bimco.org/contracts-and-clauses/bimco-clauses/current/cii-operations-clause-2022>> (accessed 5 February 2024).

in grams of carbon dioxide (“CO₂”) emitted per cargo-carrying capacity and nautical mile:²

$$CII = \frac{\text{Annual Fuel Consumption} \times \text{CO}_2 \text{ Emissions Factor}}{\text{Distance Sailed} \times \text{DWT Capacity}}$$

3 The yearly CII is calculated based on the vessel’s reported Annual Efficiency Ratio (“AER”). Vessels, based on their performance, will receive an environmental rating of A (major superior), B (minor superior), C (moderate), D (minor inferior) or E (inferior performance level). The rating thresholds will become increasingly stringent towards 2030.³ For ships that register a D rating for three consecutive years or an E rating for a single year, a corrective action plan needs to be developed as part of the Ship Energy Efficiency Management Plan (“SEEMP”) and approved.⁴ Come March 2024, new CII ratings will be assigned.⁵

4 Some methods to maintain a good CII rating include the practice of slow steaming, retrofitting energy-saving machinery, adopting smart tools to enable shipowners to have the necessary data to reduce carbon intensity, improving voyage planning and switching to low or zero carbon fuels.

5 In 2022, the Baltic and International Maritime Council (“BIMCO”) developed a CII Operations Clause for Time Charter Parties 2022 (the “Time CP Clause”) to “assist both the owners and the charterers to navigate the CII obligation contractually

2 BIMCO, “CII Operations Clause for Time Charter Parties 2022” <<https://www.bimco.org/contracts-and-clauses/bimco-clauses/current/cii-operations-clause-2022>> (accessed 5 February 2024).

3 DNV, “CII – Carbon Intensity Indicator” <<https://www.dnv.com/maritime/insights/topics/CII-carbon-intensity-indicator/index.html>> (accessed 5 February 2024).

4 DNV, “CII Overview – Frequently Asked Questions (FAQs)” <<https://www.dnv.com/maritime/insights/topics/CII-carbon-intensity-indicator/answers-to-frequent-questions.html>> (accessed 5 February 2024).

5 Gard, “New CII Clause – Advice to Owners and Charterers” <<https://www.gard.no/web/articles?documentId=36164784>> (accessed 5 February 2024).

within a time charter party context”. It is said that the Time CP Clause:⁶

... seeks to promote collaboration, transparency and flexibility between the parties, especially in circumstances where the commercial activities and employment of a ship as determined by the charterers and, traditionally, outside of the owners’ control, and likely to have a direct and significant impact on a ship’s carbon intensity and it also appreciates the role that the owners play in maintaining the energy efficiency of the vessel. Reducing carbon intensity is a shared responsibility which needs to be reflected clearly in a time charter party context.

6 Instinctively, compliance with the Time CP Clause should primarily be the responsibility of the owners since they have control over the maintenance and upkeep of the vessel. However, BIMCO appears to be shifting the bulk of CII responsibilities to the charterers in its drafting of the clause.

7 In 2023, BIMCO published the CII Clause for Voyage Charter Parties 2023 (the “Voyage CP Clause”), modelled on the original BIMCO Slow Steaming Clause for Voyage Charter Parties 2012. The Voyage CP Clause is far shorter, simpler and more straightforward than the Time CP Clause.

8 We will now examine the Time CP Clause in detail, before discussing the Voyage CP Clause.

I. CII Operations Clause for Time Charter Parties 2022

A. Subclause (a) of the Time CP Clause

(a) The Parties acknowledge and accept that as from the Effective Date the Vessel is required to comply with the MARPOL Carbon Intensity Regulations and that this Clause shall govern the relationship between the Parties and their obligations relating to those regulations.

6 BIMCO, “CII Operations Clause for Time Charter Parties 2022” <<https://www.bimco.org/contracts-and-clauses/bimco-clauses/current/cii-operations-clause-2022>> (accessed 5 February 2024).

9 The first question that arises from sub-cl (a) is: What are the charterers' obligations towards CII? This clause assumes that as charterers are responsible for the employment of the vessel, they now assume responsibility for CII.

B. Subclause (b) of the Time CP Clause

(b) During the Charter Party, the Parties shall cooperate and work together in good faith to:

- (i) share any findings and best practices that they may identify on potential improvements to the Vessel's energy efficiency; and
- (ii) collect, share and report on a daily basis any relevant data that may assist the monitoring and assessment of the Vessel's compliance with the MARPOL Carbon Intensity Regulations and for planning prospective voyages.

10 Subclause (b) conveys the fundamental principle drafters of the Clause had in mind, that is, that the parties need to operate transparently, share data and work together to optimise the commercial use of the vessel.

11 Subclause (b) ignores the reality that during the time charter, the owners' crew operate the vessel and maintain the vessel's operating efficiency, technical operations, navigation, insurance, crew and all other related matters. The charterer, while issuing employment orders, in reality has limited say in the day-to-day running of the vessel. In fact, charterers may find themselves at the mercy of owners who possess all the data required to determine CII, exercising "good faith" in sharing that data. Owners should be subject to a stricter duty to share data in real time as this may assist charterers in route planning and their employment orders. In fact, the notion that parties are now to co-operate and work together in good faith may in future change parties' responsibilities in charterparties.

C. Subclause (c) of the Time CP Clause

(c)(i) As from the Effective Date or date of the commencement of the Charter Party, whichever is the later, the Charterers shall:

(1) operate and employ the Vessel (including the planning of voyages and supply and selection of fuel) in a manner which is consistent with the MARPOL Carbon Intensity Regulations and subclause (c)(i)(2), which may require alternative or adjusted voyage or employment orders, instructions or sailing directions to be issued to and performed by the Vessel from time to time during the charter period; and

(2) not permit the C/P Attained CII to exceed the Agreed CII by the end of each relevant calendar year or, if the charter period or period remaining under this Charter Party is less than a full calendar year, by the time of redelivery, but always subject to the provisions of subclause (g).

(ii) Any existing warranties as to despatch, speed and consumption or to maintain the Vessel's description for elsewhere in the Charter Party shall continue to apply to the Charter Party. In the event of any breach of such warranties, the Charterers shall be entitled to pursue a separate claim against the Owners, save that any such breach shall not be relied upon by the Charterers as a basis to avoid meeting their obligations under this Clause, including where subclause (g) has been validly invoked.

12 Charterers now bear two duties. First the responsibility to “operate and employ the Vessel ... in a manner consistent with MARPOL Carbon Intensity Regulations”. This may require operational adjustments including the issuance of alternative employment orders. Second, charterers bear the additional duty of ensuring that the Charterparty Attained CII (“C/P Attained CII”) does not exceed the Agreed CII by the end of each calendar year. Charterers will now have to carefully consider their employment orders, *ie*, voyage, speed orders and sailing directions, to keep within the Agreed CII.

13 In truth, charterers' employment orders are only partially responsible for the CII rating of a vessel, given that the state of the machinery of the vessel is also a determining factor. However, charterers now need to consider the impact of their employment orders on the CII rating of the vessel.

14 That said, charterers maintain their right to sue for breaches of warranties as to despatch, speed and consumption.

But even as the charterers may sue for such breaches, they are not absolved from their obligations under this clause. Therefore, charterparty warranties may need to be updated to include the vessel's CII rating at delivery. Performance warranties will also need to be adjusted to take into account any energy efficiency devices installed on board. This would be of particular importance should the breakdown of such devices result in a decrease in the vessel's efficiency and potentially increase the carbon intensity of the voyage.

15 Further, given the importance of the vessel's efficiency in reducing the carbon intensity of each voyage, it may be useful to have an agreed schedule for maintenance of the vessel, such as for hull and propeller cleaning, to be carried out on a regular basis to ensure that the vessel's machinery is in proper working state. Weather routing and voyage optimisation will likely assist in reducing the carbon intensity of each voyage.

16 However, even the right of the charterers to pursue a separate claim against owners is revoked where sub-cl (g) is validly invoked (see below, *eg*, when trajectory of Attained CII deviates from Agreed CII), giving the final discretion in employment of the vessel and achievement of CII rating to the owners.

17 On the other hand, should the Agreed CII be breached and the vessel receives a poor rating, sub-cl (j) gives owners a right of recourse against charterers for "any losses, damages, liabilities, claims, fines, costs, expenses, actions, proceedings, suits or demands suffered by the Vessel and/or the Owners".

18 External factors such as adverse weather, port waiting times, port infrastructure and *force majeure* can affect the CII. The closure of the Suez Canal in 2021 affected shipping lanes for a week and the resulting port congestion issues continued for months afterwards. Such an event would cause a vessel's CII rating to deteriorate. Charterers are recommended to script in a *force majeure* clause to protect themselves against the occurrence of such events.

D. Subclause (d) of the Time CP Clause

(d)(i) The Agreed CII by calendar year shall be as follows:

Year	Agreed CII values*	Corresponding to a predicted CII Rating
2023		
2024		
2025		
2026		

* BIMCO recommends that Parties agree that the Agreed CII values should be the Required CII or better, consistent with the MARPOL Carbon Intensity Regulations.

(ii) Where the Parties fail to agree in writing the Agreed CII for the relevant calendar year(s) of the charter period or otherwise fail to populate the above table with such values for the relevant calendar year(s), then the Parties expressly agree and acknowledge that the default Agreed CII for the Vessel shall, subject to subclause (d)(iii), be the Required CII.

(iii) If the Charter Party extends beyond 31 December 2026 the Parties shall review and incorporate the Agreed CII in accordance with any new annual carbon intensity targets under the MARPOL Carbon Intensity Regulations as set by the IMO for the remaining calendar years under the Charter Party.

(iv) Upon delivery, the Owners shall provide the Charterers with the Delivery Attained CII together with details of the types and quantities of fuels consumed and distance travelled to date for the current calendar year. The data provided to the Charterers pursuant to this subclause shall, to the best of the Owners' knowledge, be accurate and complete.

19 The Agreed CII is the key factor for the charterers to consider as this is the principal yardstick against which their obligations will be measured. The Agreed CII is a fixed figure to be agreed between the owners and charterers for the relevant year(s) of the charter and charterers, in considering a suitable Agreed CII, should request for performance data well in advance. There is a warranty from the owners that data provided under this subclause is accurate and complete to the best of the owners' knowledge.

20 Parties should incorporate a suitable margin to account for unexpected events, such as unpredicted port stays and delays, off hire and adverse weather. To that end, BIMCO recommends that parties agree to CII values which are the Required CII or, better still, consistent with MARPOL Carbon Intensity Regulations which require improvements in a ship's carbon intensity year by year equivalent to a 2% annual reduction from the original base line of 2019.⁷

E. Subclause (e) of the Time CP Clause

(e)(i) The Charterers may at their discretion provide, in writing to the Master, orders or instructions to adjust the Vessel's speed or RPM (main engine Revolutions Per Minute) to meet a specified time of arrival, or closest thereto, at a particular destination or to proceed at a specified main engine fuel consumption, which shall constitute the Charterers' orders with which the Master shall comply, but subject always to:

- (1) the Charterers complying with their obligations under this Clause; and
- (2) the Master's obligations in respect of the safety of the Vessel, crew and cargo and the protection of the marine environment.

(ii) The Charterers shall not be entitled to request an adjustment of speed or consumption or RPM outside the existing safe operational limits of the Vessel or which shall result in the Vessel's engine(s) and/or equipment operating outside the manufacturers'/designers' recommendations as published from time to time.

21 Subclause (e) provides charterers with the flexibility they require to meet their CII obligations during the charterparty period. The commercial activities of a ship – in particular, the operating speed – are likely to directly and significantly contribute to the carbon intensity of a ship. A reduction in speed lowers fuel consumption which, in turn, reduces emissions. If a shorter route can be found, it means that a ship will use less fuel because not only is the distance shorter, but also the ship can

7 BIMCO, "CII Operations Clause for Time Charter Parties 2022" <<https://www.bimco.org/contracts-and-clauses/bimco-clauses/current/cii-operations-clause-2022>> (accessed 5 February 2024).

reduce speed to arrive at the same time. Furthermore, due to the nature of the AER metric (applied by MARPOL to calculate CII), longer trips can, in certain circumstances, be more favourable to CII than shorter trips. It is to be noted also that “the most fuel-efficient route”⁸ may not always be the most favourable CII route in the relevant circumstances.

22 Currently, there are no exceptions from CII calculations and/or correction factors for time spent in port and at anchor or time spent in yards or being laid-up, *etc.* Instead, it is presumed that the amount of fuel consumed while a ship is stationary (“hotel load”) is likely, in most cases, to be minimal.

23 It is likely that vessels will reduce speed to comply with CII regulations.

F. Subclause (f) of the Time CP Clause

- (f) From the Effective Date, the Owners shall:
 - (i) exercise due diligence to ensure that the Vessel is operated in a manner which minimises fuel consumption, including but not limited to:
 - (1) maintaining the Vessel, its engines and hull, and any of its equipment relevant to the Vessel’s energy efficiency, in accordance with the Charter Party and the MARPOL Carbon Intensity Regulations/SEEMP, subject to any express provisions elsewhere in the Charter Party that place maintenance obligations on the Charterers, and reporting any associated deficiencies to the Charterers;
 - (2) when passage planning, adjusting the Vessel’s trim and operating the Vessel’s main engine(s) and auxiliary engine(s);
 - (3) making optimal use of the Vessel’s navigation equipment and any additional aids provided by the Charterers, such as weather routing, voyage optimisation and performance monitoring systems; and

8 See sub-cl (f) of the CII Operations Clause for Time Charter Parties 2022.

(4) unless otherwise instructed by the Charterers, proceeding by the most fuel-efficient route, but the Master may deviate from the route if he has reasonable grounds to believe that such a route shall compromise the safe navigation of the Vessel or the safety of the Vessel, crew or operation of equipment.

(ii) monitor and calculate the actual consumption of the Vessel on a daily basis and provide the Charterers with details of the types and quantities of fuels consumed and distance travelled as required by the Charterers and any other relevant data the Charterers may reasonably request for the purpose of this Clause. This data shall be used to calculate the C/P Attained CII value which shall be compared against the Agreed CII for the relevant calendar year or charter period and shared with the Charterers. The Owners undertake that the data provided to the Charterers pursuant to this subclause shall, to the best of their knowledge, be accurate and complete; and

(iii) comply with the SEEMP, provided always that the Charterers adhere to their obligations under this Clause.

24 The owners are responsible for the continuous monitoring and calculation of the actual fuel consumption and distance travelled by the ship and sharing the relevant data on a daily basis with the charterers. This is of utmost importance to the ongoing dialogue between the parties and to ensure the parties are on the same page when it comes to calculating the C/P Attained CII. For this reason, sub-cl (f)(ii) stipulates an undertaking by the owners that the data provided to the charterers is accurate and complete to the best of their knowledge.

25 There are a considerable number of measures available to owners to optimise fuel consumption, such as various retrofitting options, modern hull coating technologies, energy management, engine tuning, draft/deadweight increase, trim optimisation, high-tech lubes and additives and intensive engine crew training. However, owners' responsibility to simply exercise "due diligence" in the operation of the vessel while the charterers are solely responsible for keeping within the Agreed

CII seems grossly disproportionate. With such a clause, owners may not be sufficiently incentivised to improve the efficiency of their vessels and do their fair share of decarbonisation efforts.

G. Subclause (g) of the Time CP Clause

(g) If, at any time, based on the data shared in accordance with this Clause, the trajectory of the C/P Attained CII is deviating from the Agreed CII, the Owners shall give the Charterers advance warning of this. If, despite such warning, the C/P Attained CII continues to deviate from the Agreed CII and this indicates that there is a reasonable likelihood that the Charterers may fail to meet their obligations under subclause (c), then:

(i) The Owners shall request in writing and the Charterers shall provide to the Owners within two (2) working days of Owners' written request, a written plan detailing any proposed commercial operation of the Vessel for at least the next voyage.

(ii) If, upon assessment of a Charterers' written plan, the Owners can reasonably show that following this written plan will result in the Charterers failing to meet their obligations under subclause (c) and that, on the basis of the Projected Attained CII, the Agreed CII for the relevant calendar year (or for the charter period should redelivery be sooner than the end of the calendar year) would be exceeded, then the Owners shall communicate this in writing to the Charterers within two (2) working days of receipt of the Charterers' written plan. The Parties shall cooperate and work together in good faith to agree within two (2) working days thereafter an adjusted written plan for the next voyage or voyages which brings the C/P Attained CII in line with the Agreed CII. Any such adjusted written plan agreed between the Parties shall be deemed to constitute the Charterers' orders as if they had been given by the Charterers at the outset.

(iii) Until such time that the Parties agree an adjusted written plan (or where a written plan is not received from the Charterers as per subclause (g)(i)), the Owners shall, where they have validly exercised their rights under this subclause (g), be entitled:

(1) not to follow a Charterers' order and/or a written plan and/or an adjusted written plan (which has not been agreed), without being in

breach of any of the Owners' obligations under the Charter Party, and with the Vessel remaining on hire throughout, and instead

(2) to reduce the Vessel's speed or, where a speed reduction is anticipated by the Owners to be insufficient, to require the Charterers to provide all requisite instructions, orders and sailing directions to the Vessel which bring the C/P Attained CII in line with the Agreed CII for the relevant calendar year (or the charter period should redelivery be sooner than the end of the calendar year).

26 For situations where the Attained CII deviates from the Agreed CII, sub-cl (g) effectively gives the owners the full right to disregard the charterers' employment orders in favour of achieving the Agreed CII where parties have not agreed on the adjusted written plan or where the charterers have not submitted an adjusted written plan. The implication of the reduction of speed by owners to meet the Agreed CII has all sorts of repercussions for the charterers, *eg*, delay and demurrage claims which, by virtue of sub-cl (i), remains solely the responsibility of the charterers.

27 Further, some charterers (perhaps many, where a vessel is "tramping") do not know at all times what their planned commercial operation for the vessel is for the next voyage – it will depend on a number of factors, including when and where she becomes free. Such charterers may be genuinely unable to produce the initial written plan, let alone agree a revised one. In the meantime, owners would be at liberty to ignore existing orders or reduce the ship's speed under sub-cl (g)(iii)(2).⁹

28 Charterers should thus monitor the shared data and be alert to warnings given by owners of the trajectory of the C/P Attained CII deviating from the Agreed CII.

9 MaritimeCyprus, "BIMCO CII Clause for Time Charter Parties – Division of Responsibility" <<https://maritimecyprus.com/2023/05/24/bimco-cii-clause-for-time-charter-parties-division-of-responsibility/>> (accessed 5 February 2024).

H. Subclause (h) of the Time CP Clause

(h) Compliance with any Charterers' orders, a Charterers' written plan or an adjusted written plan validly issued and agreed in accordance with subclause (g) shall not:

(i) be deemed a breach by the Owners of any of the Owners' obligations under this Charter Party, but shall be considered due fulfilment of this Charter Party; and/or

(ii) in any way lessen the Charterers' responsibility to comply with their obligations under this Clause.

29 Subclause (h) seeks to protect owners acting in accordance with sub-cl (g) and, at the same time, emphasise charterers' responsibility towards CII.

I. Subclause (i) of the Time CP Clause

(i) *The Charterers shall ensure that the terms of the bills of lading, waybills or other documents evidencing contracts of carriage issued by or on behalf of the Owners provide that compliance by the Owners with this Clause does not constitute a breach of the contract of carriage. The Charterers shall indemnify the Owners against all consequences and liabilities that may arise from bills of lading, waybills or other documents evidencing contracts of carriage being issued as presented to the extent that the terms of such bills of lading, waybills or other documents evidencing contracts of carriage impose or result in breach of the Owners' obligation to proceed with due despatch or are to be held to be a deviation or the imposition of more onerous liabilities upon the Owners than those assumed by the Owners pursuant to this Clause.

* Subclause (i) not applicable in the liner trade.

30 This is a pro-owners clause which protects owners from any breach of the contract of carriage in favour of achieving the Agreed CII.

J. Subclause (j) of the Time CP Clause

(j) The Owners shall be entitled to claim from the Charterers any losses, damages, liabilities, claims, fines, costs, expenses, actions, proceedings, suits or demands suffered by the Vessel

and/or the Owners which have been caused by any breach by the Charterers of their obligations under this Clause.

31 This subclause is unduly wide and may subject charterers to unforeseen liabilities and potential abuse by owners such as speculative loss of profits.

II. Voyage CP Clause

A. Subclause (a) of the Voyage CP Clause

(a) With a view to reducing the carbon intensity of the Vessel, the Owners/the Master are/is entitled to adjust course and/or to reduce speed or RPM (main engine Revolutions Per Minute) provided that the Vessel's speed, basis good weather conditions (which shall mean [parties to insert definition here]), shall not fall below [X] knots during any voyage(s) performed under the Charter Party.

32 Subclause (a) of the Voyage CP Clause allows the owners or master to adjust the vessel's course, speed or main engine Revolutions Per Minute (RPM) to reduce the carbon intensity provided that the vessel's speed (as agreed between parties), shall not fall below a minimum in good weather conditions (as defined by parties).

33 Including this right in sub-voyage charters will be particularly important for two groups: first, for vessel owners who charter out their vessels, but want to be entitled to take steps to maintain their vessels' CII ratings; and second, for charterers who take vessels in on time charter and then charter out the vessels. If their time charters apply the BIMCO CII Clause for Time Charter Parties (or something similar), then the master of the vessel is generally required to proceed "by the most fuel-efficient route".¹⁰ Owners have also additional rights to alter course when the trajectory of the vessel's CII starts deviating from the contractually agreed rating. In that case, the charterer

10 See sub-cl (f) of the CII Operations Clause for Time Charter Parties 2022.

needs to ensure the owners' actions do not result in a breach of the voyage charterparty.¹¹

B. Subclause (b) of the Voyage CP Clause

(b) Where the Vessel proceeds in accordance with subclause (a), this shall constitute compliance with, and there shall be no breach of, any obligation requiring the Vessel to proceed by the usual/customary route and/or with utmost and/or due despatch (or any other such similar/equivalent expressions) [or any speed and consumption warranties under the Charter Party]. The Laycan as agreed under the Charter Party shall remain unaffected by this Clause.

34 This provides that compliance with sub-cl (a) shall constitute compliance with any obligation of the owners to proceed by the usual or customary route and/or with utmost or due despatch. The laycan date is expressly excluded from the effect of the clause, so that it will remain the same even if the vessel reduces speed or changes course.

C. Subclause (c) of the Voyage CP Clause

(c) The Charterers shall ensure that the terms of the bills of lading, waybills or other documents evidencing contracts of carriage issued by or on behalf of the Owners provide that the exercise by Owners of their rights under this Clause does not constitute a breach of the contract of carriage. The Charterers shall indemnify the Owners against all consequences and liabilities that may arise from bills of lading, waybills or other documents evidencing contracts of carriage being issued as presented to the extent that the terms of such bills of lading, waybills or other documents evidencing contracts of carriage impose or result in the imposition of more onerous liabilities upon the Owners than those assumed by the Owners pursuant to this Clause.

35 This mirrors sub-cl (i) in the Time CP Clause and protects owners from breaches of contract of carriage as a result of pursuing its CII interests.

11 Gard, "New CII Clause – Advice to Owners and Charterers" <<https://www.gard.no/web/articles?documentId=36164784>> (accessed 5 February 2024).

D. Subclause (d) of the Voyage CP Clause

(d) This Clause shall be without prejudice to any other express or implied rights under this Charter Party entitling the Vessel to proceed at speeds below the minimum speed stated in subclause (a).

36 Similarly, this clause also protects the owner's CII interests.

E. Subclause (e) of the Voyage CP Clause

(e) Within [X]* days after completion of final discharge of the cargo carried under the Charter Party, the Owners shall make available to the Charterers: (i) details of the types and quantities of fuels consumed under the Charter Party; and (ii) distance travelled with respect to both the ballast and laden voyages.

*If number of days is not inserted in this subclause (e), the default shall be 7 (seven) days.

37 This clause allows charterers to perform their own CII calculations or use the information for environmental analysis or reporting.

III. Conclusion

38 BIMCO being a shipowners' organisation whose members control 60% of the global fleet has proposed the Time CP Clause which places the obligation to comply with CII largely on charterers and is heavily biased towards owners – owners are being given unprecedented contractual powers to force charterers to make operational changes that would improve the CII rating or at least maintain it.

39 On the other hand, there seems little incentive for charterers to agree to the Time CP Clause in full because it requires considerable interference with their freedom to operate the vessel as deemed necessary to meet commercial needs and deadlines. Whilst charterers may find data-monitoring and data-sharing requirements commercially acceptable, it is difficult for them to accept operational changes, especially in instances

where the voyages are 18 months or less, or where their trading routes would be somehow limited or interrupted.¹²

40 The Voyage CP Clause on the other hand, is less contentious, reflecting the different relationship between an owner and voyage charterer, including the more limited scope for the voyage charterer to control vessel operations and speed once the charterparty has been entered into. This clause does not cover demurrage, which is left to market determination.

41 Overall, there has been a lot of criticism for CII. For now, there are no penalties for CII non-compliance. Vessels that are rated a D for three consecutive years or an E in any year must make a plan of corrective actions, but there is no guidance on what these corrective actions should be, and neither will these vessels have their environmental certificates revoked. The only risk to poorly ranked vessels is that in time to come, some ports may restrict access to allow only vessels with CII ratings A, B or C, or they may charge higher port fees for vessels with D and E ratings.

42 IMO CII regulations are meant to reduce emissions but in reality, they have the opposite effect. More shipowners will likely slow steam their ships to achieve a compliant CII grade with ships expected to spend more time in transit and less time loading cargoes, or simply by adding a ballast leg. Paradoxically, when considering voyage distances and port waiting times, ships with longer travel distances can produce more emissions but have a better CII rating when compared with vessels travelling shorter distances and producing lesser emissions. The result may be that newer and more energy-efficient ships are used in trades with long port stays while older ships are used in trades with long voyages and ballast legs.

43 Ultimately, co-operation between owners and charterers remains the key to maintaining the Agreed CII. Since operating

12 Watson Farley & Williams, “BIMCO CII Clause Finally Released: Does it Make Any Sense of CII?” <<https://www.wfw.com/articles/bimco-cii-clause-finally-released-does-it-make-any-sense-of-cii/>> (accessed 5 February 2024).

information remains the purview of owners, sharing the vessel's CII, particularly the historical CII with charterers is critical. A subsequent charterer may be unfairly penalised when taking on a vessel with a poor CII record, thus becoming liable for the vessel's high CII in the course of his use and operation of the vessel.

44 The benefits of the BIMCO CII clauses will need some time to play out. With greater use and awareness of these clauses, owners and charterers will hopefully find it easier to reach a consensus on how to best manage and maintain the vessel's Agreed CII.