

ESG THROUGHOUT THE VESSEL'S LIFECYCLE

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OUTLINE

- Overview on ESG
- The role of private actors through ESG frameworks and standards, coalitions, policies and contracts
- ESG and the vessel's lifecycle:
 - Birth - sustainable ship finance (Poseidon Principles for Financial Institutions)
 - Life – ship's energy efficiency / emissions reduction
 - End of life - green ship recycling

E

Environmental

Goal: to reduce environmental impact

Measures: pollution prevention, emissions reduction/energy efficiency, waste management

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S

Social

Goal: to favour fair and equal working environment

Measures: H&S, training, compliance with labour standards, D&I, human rights in supply chain

...

G

Governance

Goal: to foster ethical behaviour and transparency

Measures: anti-corruption, regulatory compliance (GDPR, AML, sanctions, reporting)

...

DOUBLE MATERIALITY

EU DIRECTIVES AND REGULATIONS ON ESG

- Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting («**CSRD**»)
- Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 («**CSDDD**»)
- Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector («**SFDR**»)
- Regulation (EU) 202/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 («**Taxonomy Regulation**»)



“**Omnibus Simplification Package**” (European Commission proposal)

ESG REPORTING FRAMEWORKS AND STANDARDS AND COALITIONS

Voluntary – non-binding

(Global Reporting Initiative - Sustainability Accounting Standards Boards (SASB) (SASB Marine Transportation Standard) - Responsible Ship Recycling Standards – Getting to Zero Coalition - Ship Recycling Transparency Initiative)

POLICIES

Internal – non-binding statements of intent

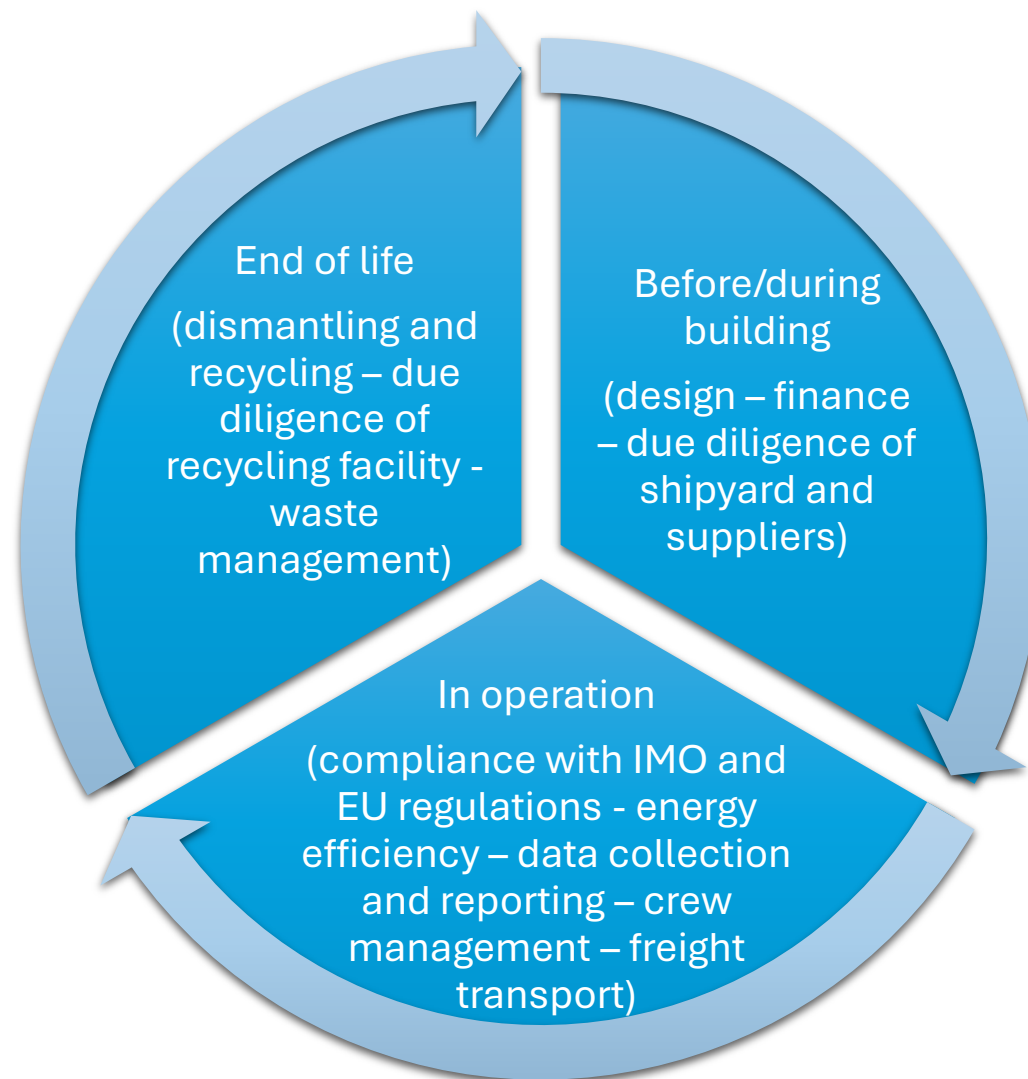
ESG CONTRACTUAL CLAUSES / COVENANTS

Level of commitment: regulatory compliance – adherence to policy – result obligation

Definite parameters: specific key performance indicators – reference to global standards - other goals

Check on compliance: audit – reporting – verification → certification

Remedies: penalties and damages – ESG escrows and step-in rights – event of default/termination



BIRTH – SUSTAINABLE SHIP FINANCE

POSEIDON PRINCIPLES FOR FINANCIAL INSTITUTIONS

- Launched in 2019 by 11 founders – Now 35 signatories
- Traditional bilateral and syndicated loans granted by banks, guarantees issued by export credit agencies, finance leases/vessels of 5,000 and above GT - international trade.
- Four pillars:

Assessment of **climate alignment** (=measure of carbon intensity - **AER**)

Accountability (=data collection and reporting through IMO DCS – classification societies/Recognised Organizations)

Enforcement (contractual covenants to commit borrowers to share data)*

Transparency (= scoring in Poseidon Principles and corporate reporting)

* **Standard Covenant Clause**

«The [Owner] shall, upon request of [any Lender] and at the cost of the [Owner], on or before [31st July] in each calendar year, supply or procure the supply to [the Facility Agent] [such Lender] of **all information** necessary in order for [any Lender] to comply with its obligations under the Poseidon Principles in respect of the preceding year, including, without limitation, all ship fuel oil consumption data required to be collected and reported **in accordance with Regulation 27 of Annex VI** and any Statement of Compliance, in each case relating to the [Vessel] for the preceding calendar year provided always that [no Lender] shall publicly disclose such information with the identity of the [Vessel] without the prior written consent of the [Owner].».

Other (non-overlapping) instruments: green/social loans (use of proceeds l.)
– sustainability-linked loans (improvement of sustainability performance).

LIFE – SHIP'S ENERGY EFFICIENCY – EMISSIONS REDUCTION

- **IMO: MARPOL 73/78 ANNEX VI (Ch. 4): EEXI (R. 23-25) – CII (R. 28) – SEEMP (R. 26) - DCS (fuel oil consumption) (R. 27)**
- **EU: EU Reg. no. 2015/2017 (MRV) - Directive (EU) 2023/959 (EU ETS to include maritime transport) - Regulation (EU) 2023/1805 («FuelEU Maritime Regulation»)**

New mandatory rules increase the risk of dispute between owners and charterers and managers on costs and liabilities for compliance, especially on operational changes for CII, purchase of emission allowances (and fines) and limited availability/high costs of compliant fuels.

Standard clauses in time and voyage charter-parties and management contracts do not always fit the special needs of the parties + legislation definitions and provisions must be carefully considered = need for a case-by-case analysis and tailored solutions.

END OF LIFE – SHIPRECYCLING

- 1989 UN Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their disposal («**Basel Convention**») and 2019 Ban Amendment
- 2011 Hong Kong International Convention for the safe and Environmentally Sound Recycling of Ships («**Hong Kong Convention**»)
- Regulation (EU) of the European Parliament and of the Council of 20 November 2013 on ship recycling and amending Regulation (EC) No 1013/2006 and Directive 2009/16/EC («**EU Ship Recycling Regulation**»)
- Directive (EU) 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC («**Environmental Crime Directive**») (art. 3.2(h)).

Legal issues/benchmarks to consider

- Standard recycling contracts (from “Salescrap 87” through “Demolishcon 2001” to “Recyclecon 2012” under review)
- BIMCO “Further Trading Clause 2023” in sale-purchase contracts
- Intersection with sanctions regime
- Scope of financing ↔ Fleetwide clauses - legal methods ↔ standards going beyond (e.g. beaching issue)
- Request to recycling shipyards to disclose ESG standards during bidding process
- Insurers due diligence for wreck removals/recycling costs.

TAKE AWAY POINTS

ESG is here to stay:

- need to improve enforcement mechanism.

Reporting frameworks, standards and coalitions to support ESG compliance:

- are they working in practice ?
- are goals too ambitious ?