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CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on Shipping
Subject:	Proposal for a Directive of the European Parliament and of the Council amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties, including criminal penalties, for pollution offences. - Comments by Finland

Delegations will find attached comments by **Finland** on the above document.



Finland's written comments on ST 16969/2023, Proposal for a Directive of the European Parliament and of the Council amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties, including criminal penalties, for pollution offences, 4 column document REV 2 + Presidency non-paper WK 819/2024

General comments

Finland wishes to thank the Presidency for their work and effective efforts on this file. Finland trusts that the Council and the EP will come to a satisfactory agreement in due time before the elections.

The comments below focus those topics on which text has been amended. We will come back to those rows that are yet to be discussed.

Any new amendments not commented below are acceptable to Finland.

The comments below are structured based on the lettering in the Presidency non-paper.

Detailed comments

a) IMO

As a fallback, Finland can accept the Presidency proposal in row 13b. However, any consolidated versions of the MARPOL Annexes or even summaries should not be published by the EU.

b) (Recidivism – no comments)

c) Exchange of information

Finland can accept the proposal on the best practices.

d) EMSA

Finland can accept the proposed wording as it reflects the proposed change to row 103 (Article 10).

e) (Whistleblowers – no comments)

f) Allocation of responsibility for sanctions



- i) Finland would still strongly emphasize the need to maintain the needed flexibility in the formulations on the persons liable. For Finland, it is important that the fines can be directed at the first place to the company – whilst in other national legal systems no such presumption can be made. In any case, the Council (in our understanding) wants to ensure the effectiveness of the sanctioning while respecting national legal system's limitations.
 - ii) On the reversed burden of proof and the ReFuelEU Aviation: under that regulation, the setting is completely different. If an airline does not refuel or the fuel supplier does not provide the required fuels, it is the decision of the airline or the fuel supplier. It cannot be the decision of the plane's captain or some individual person working for the fuel supplier. Fuel refueling and supply requirement are by nature different from ship-source pollution offences. Therefore, Finland considers it easy to counter-argue against the EP's arguments on the reversed burden.
 - iii) Secondary liability is unacceptable in light of Finland's legal system.
- g) Effective application of penalties
- i) Finland is ready to consider deleting the "may" in the chapeau if the wildest ideas for the list below are deleted. For instance, the degree of culpability under point b (row 92) and the impacts on fishing communities under points c or ha (rows 93 or 98a) would definitely need to go.
 - ii) For row 92, see point i) above. As for row 94, Finland does not see the point in the compromise proposed by the EP. In Finland's view, the financial capacity of the natural person is just as important as that of the company account to ensure that possible penalties directed to natural persons are proportionate.
 - iii) Finland supports the Presidency in trying to find common ground with the EP without mentioning minimum or maximum penalties.
 - iv) The implementing acts proposed in Article 8, paragraph 2 remain unacceptable to Finland. Because of the principle of legality enshrined in our Constitution, it is impossible under the Finnish legal system to take into account elements in sanctioning that are not set out in the national legislation.
- h) Exchange of information and experience
- i) Finland prefers wording with no examples on the reporting as Finland would ultimately like to see the number of various reporting channels going down as much as possible due to the overlapping work caused. For instance, the Finnish Border Guard reports to HELCOM, Copenhagen Agreement and EMSA – in addition to the reports to the IMO by the Finnish Transport and Communications Agency on oil spills of over 50 square meters. In many cases this is the same information but in different tables and formats. If, however, examples need to be listed, they should be symmetrical. For instance, according our understanding, EU Member States report nothing directly to the Network of Prosecutors on Environmental



Crime in the Baltic Sea Region but that this Network receives its information from HELCOM.

- ii) (Reference to THETIS-EU – no comments)
- iii) (Information to fishing communities – no comments)

i) Reporting

Finland strongly supports the proposed amendments to rows 113 and 117.

j) Publication of information – no comments)

k) (Protection of whistleblowers – no comments)

l) Verification

Finland notes that some progress has been made and trust the Presidency to find a balanced solution. Finland remains somewhat flexible as previously stated.