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## WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Shipping
N° Cion doc.:	ST 10327/21 ADD 1-3
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the use of renewable and low-carbon fuels in maritime transport and amending Directive 2009/16/EC - Comments from Member States - Finland

Delegations will find attached comments from **Finland** on the above subject.

**Finland's comments to 12813/2/21**

(FuelEU Maritime Presidency compromise on on-shore power supply)

27 January 2022

Finland would like to thank the Presidency for the opportunity to provide further written comments to draft text. Please find below Finland's general comments on the Presidency compromise, questions to the Commission (especially regarding data management systems) and finally article-to-article comments on the REV2.

General comments:

- Finland does not support removing Annex III as we think it is important for legal certainty to set out rules on the basic principles of what is considered a zero-emission technology in this Regulation. Therefore we would rather see Annex III maintained. As a compromise, we could explore expanding the definition of zero-emission technologies in Article 3 based on what has been proposed to Annex III. Our concern applies to all Articles with reference to Annex III (Articles 3(g), 5(4), 7(3)(d) and (f), 8(2)(6), and 10(2)).
- At the Shipping Working Party on 21 January, we commented on the need to allow the managing body of the port be the entity to determine whether any of the exceptions under Article 5, paragraph 3, apply. Our views are based on the fact that in Finland, where ports are private companies, there is no "port authority" but the tasks of what is a port authority in other Member States are managed by several other authorities or the port itself. We have further examined the proposals and it seems that there could be room for flexibility. However, we think it is important to try to minimize the administrative burden caused by these tasks. Therefore, we call on clarity on the procedures for the declarations from the ships in the existence of a legitimate exception as well on easily available information on the OPS connection in the port as well as the connecting devices on board the ship.
- To this end, for an authority to be able to determine whether any of the exceptions in paragraph 3 of Article 5 apply, it must have the necessary information available on the OPS connection in the port. Therefore, we suggest that such information is added in the basic information in the EU SafeSeaNet, the national maritime single windows or similar data portal.
- We also wonder if it should be clarified how the ship is to inform the competent authority (or the managing body of the port) of the application of exceptions d or e under Article 5, paragraph 3.
- The paragraphs in Article 5 could merit some reorganization for the sake of clarity. In our view, the structure should follow the logic: basic rule – exceptions – procedure for application of exceptions (what is needed of the ship, of the port and of the authority; separately for each exception/group of exceptions) – "exceptions" from exceptions (such as the proposed 5ter) – miscellaneous (such as the paragraph 7 below or provisions on the use of data/reporting systems)
- Finally, Finland is of the view that the wording on the exceptions should be clarified. There is a difference between connecting to OPS and refraining from using on-board generators. For instance, paragraph 7 mentions the use of on-board generators but the other paragraphs do not prohibit their use in any cases. We do not have a strong preference on either wording but in our view, if the use of onboard generators is prohibited, an additional exception may be needed to allow the use of on-board generators for maintenance purposes. This could be added as a new point g in paragraph 3. We would be happy to provide a drafting suggestion, if need be.

Questions to the Commission:

- Will there be new modules to Thetis or SSN for ports' OPS systems or for ships to declare exceptions?
- Has the Commission foreseen other changes or new modules to common electronic data or reporting platforms based on the proposed Regulation?

- Has the Commission considered if the term “emergency situations” is compatible with SOLAS?

Please see article-specific comments and proposals for amendments below.

Commission proposal + Slovenian Presidency compromise (REV 1)	Presidency compromise (REV 2)	Finland's comment/draft amendment
<b>ARTICLE 3</b>		
(g) ‘zero-emission technology’ means a technology fulfilling the requirements of Annex III that does not imply the release of the following greenhouse gases and air pollutants into the atmosphere by ships: carbon dioxide (CO <sub>2</sub> ), methane (CH <sub>4</sub> ), nitrous oxides (N <sub>2</sub> O), sulphur oxides (SO <sub>x</sub> ), nitrogen oxides (NO <sub>x</sub> ) and particulate matter (PM);	(g) ‘zero-emission technology’ means a technology <del>fulfilling the requirements of Annex III</del> that does not imply, <b><u>when used to provide energy</u></b> , the release of the following greenhouse gases and air pollutants into the atmosphere by ships: carbon dioxide (CO <sub>2</sub> ), methane (CH <sub>4</sub> ), nitrous oxides (N <sub>2</sub> O), sulphur oxides (SO <sub>x</sub> ), nitrogen oxides (NO <sub>x</sub> ) and particulate matter (PM);	The amendment “when used to provide energy” is a welcome one.  See general comments above on Annex III.
(new)	(r2) <b><u>‘electrical power demand at berth’ means ...<sup>1</sup>the demand in electricity from a ship at berth for powering all energy needs based on electricity on board, [including but not limited to hotel, service, cargo handling and maintenance workloads, as well as charging batteries];</u></b>	Our preliminary reaction to this amendment is positive although further scrutiny may be needed.
(v) ‘passenger ship’ means a ship that carries more than 12 passengers, including cruise ships, high speed passenger crafts, and ships with facilities to enable road or rail vehicles to roll on and roll off the vessel;	(v) ‘passenger ship’ means a ship <b><u>as defined in Article 2, point (i) of Directive 2016/802</u></b> <del>that carries more than 12 passengers, including cruise ships, high speed passenger crafts, and ships with facilities to enable road or rail vehicles to roll on and roll off the vessel;</del>	Finland supports making reference to general EU legislation on the definition instead of including a definition in this Regulation. However, we think it would be more appropriate to refer to the definition in Directive 2009/45/EC (so-called Non-SOLAS Directive) rather than the Sulphur Directive as the first sets the general rules and standards on the safety of passenger ships.
<b>ARTICLE 5</b>		
1. From 1 January 2030, a ship at berth in a port of call under the jurisdiction of a Member State shall connect to on-shore power supply and use it for <b><u>its</u></b>	1. From 1 January 2030, a ship <del>at berth</del> <b><u>moored at the quayside</u></b> in a port of call under the jurisdiction of a Member State shall connect to on-shore power supply and use it	Finland supports this proposal as it ensures that the requirement does not apply to ships at anchor- age.

<del>all energy electrical power demand needs</del> while at berth.	for <del>its</del> <del>all energy electrical power demand needs</del> while at berth.	
(b) that use zero-emission technologies; as specified in Annex III	(b) that use zero-emission technologies <b><u>for their electrical power demand at berth, while moored at the quayside;</u></b> as specified in Annex III	Finland supports this proposal.
(d) that are unable to connect to on-shore power supply due to unavailable connection points in a port;	(d) that are unable to connect to on-shore power supply due to unavailable connection points in a port <b><u>or to insufficient available power to satisfy the ship's required electrical power demand at berth;</u></b>	Finland supports this proposal.
(e) that are unable to connect to on-shore power supply because the shore installation at the port is not compatible with the on-board on-shore power equipment;	(e) that are unable to connect to on-shore power supply because the shore installation at the port is not compatible with the on-board on-shore power equipment, <b><u>provided that the installation for shore-connection onboard the ship is in accordance with recognized international standards;</u></b>	Our first reaction is positive, but we need to further scrutinize this proposal.
(new)	<b><u>3bis. A ship that uses zero-emission technologies as a substitute to on-shore power supply, in application of paragraph 3(b) above, shall declare it to the competent authority of the Member State of the port [one hour] after its mooring at the quayside is complete at the latest, using the form set out in Annex IIIbis<sup>2</sup>.</u></b>	Finland is further scrutinizing this proposal.
	4. The Commission is empowered to adopt <b><u>implementing</u></b> <del>delegated</del> acts in accordance with Article 27, <b><u>paragraph 3</u></b> <del>6 to amend Annex III</del> in order to <b><u>establish the list and technical specifications of the technologies considered as zero emission technologies within the meaning of Article 3(g), for the uniform implementation of this Regulation. The Commission shall regularly update the list in the light of the scientific and</u></b>	The industry calls for legal clarity and certainty. With impactful requirements coming from the EU and the IMO, it is important that ship owners, ship designers and shipyards and so on know what the legal framework will be. Therefore, we think that the basic principles of what qualifies as zero-emission technologies are should be retained in the regula-

	<p><b><u>technical progress to assess if new technologies can be considered as zero-emission technologies within the meaning of this Regulation.</u></b> insert references to new technologies in the list of applicable zero-emission technologies or criteria for their use, where these new technologies are found equivalent to the technologies listed in that Annex in the light of scientific and technical progress.</p>	<p>tion. With technological advancements, the annex should of course be amended.</p> <p>The same comment applies to Articles 3(g), 7(3)(d) and (f), 8(2)(6), and 10(2).</p> <p>We can support the proposed change of instrument from delegated acts to implementing acts.</p>
	<p>5. The <del>managing body</del> <b><u>competent authority of the Member State</u></b> of the port of call <b><u>or any entity duly authorized by the Member State</u></b> shall determine whether the exceptions set in paragraph 3 apply and issue or refuse to issue the certificate in accordance with the requirements set out in Annex IV.</p>	<p>Finland is further scrutinizing this proposal.</p> <p>However, the reference to paragraph 3 should probably be revisited as the certificate is only issued in cases under paragraph 3, points c to f. No certificates will or should be issued for the use of zero-emission technology or for port calls that last less than 2 hours.</p>
	<p><b><u>5bis. When a certificate is issued or refused for exceptions listed in paragraph 3, points (d) or (e), the competent authority or the duly authorized entity shall report this action to the compliance database referred to in Article 16.</u></b></p>	<p>Finland is further scrutinizing this proposal.</p>
	<p><b><u>5ter. From 1 January 2030, in ports mentioned in Article 9 of AFIR<sup>3</sup> equipped to provide the required shore-side electricity to supply a given ship type, the exceptions provided for in paragraph 3, points (d) and (e), shall not be applied to a ship of that given type, in total, more than five times or 10% of its total number of port calls in these ports, whichever is the highest, during one reporting period. A port call shall not be counted for the purpose of compliance with this provision where the company demonstrates that it</u></b></p>	<p>Our first reaction is positive, but we need to further scrutinize this proposal.</p>

	<u>could not have reasonably known that the ship will be unable to connect for the reason referred to in paragraph 3, points (d) and (e).</u>	
6. From 1 January 2035, the exceptions listed in paragraph 3, points (d) and (e), may not be applied to a given ship, in total, more than five times during one reporting year. A port call shall not be counted for the purpose of compliance with this provision where the company demonstrates that it could not have reasonably known that the ship will be unable to connect for reasons referred to in paragraph 3, points (d) and (e).	<del>6. From 1 January 2035, the exceptions listed in paragraph 3, points (d) and (e), may not be applied to a given ship, in total, more than five times during one reporting year. A port call shall not be counted for the purpose of compliance with this provision where the company demonstrates that it could not have reasonably known that the ship will be unable to connect for reasons referred to in paragraph 3, points (d) and (e).</del>	If the proposed 5ter is accepted, this paragraph should be removed.
7. Emergency situations resulting in the need to use on-board generators, referred to in paragraph 3, point (f), shall be documented and reported by the ship to the managing body of the port.	<del>76.</del> Emergency situations resulting in the need to use on-board generators, referred to in paragraph 3, point (f), shall be documented, <del>and reported by the ship to the managing body</del> <b><u>competent authority of the Member State</u></b> of the port <b><u>or the duly authorized entity, and not regarded by any means as incompliance by the ship.</u></b>	Finland is scrutinizing the proposal on the authorities.
(new)	<b><u>7. A Member State may decide, that in a port or a port area located in its jurisdiction, ships at anchorage as defined in Article 2(7) of Directive 2009/16/EC are covered by the same obligations made to ships moored at the quayside in this Article. The Member State shall notify its decision to the Commission a year prior to its application, which must start at the beginning of a reporting period. The Commission shall publish the information in the Official Journal of the European Union and provide an updated list of the concerned ports which shall be easily accessible.</u></b>	Finland supports this amendment.