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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 2009/16/EC on port State control Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/21/EC on compliance with flag State requirements 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 Malta

Delegations will find attached comments by **Malta** on the above proposals.

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Malta's written comments on the Proposals of the Maritime Safety Package

a) **Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/21/EC on compliance with flag State requirements – doc. ST 16967/4/23 REV4**

On the points highlighted in the **Presidency paper (WK 1742/2024)**, Malta would like to submit its detailed comments as follows:

Line 79 (e-certificates) & line 22 (recital 12) – PRES compromise is not supported, and we continue to support the text of GA - only date of validity should be submitted.

Line 84 (FSI reports) – We oppose the proposed compromise and believes that the text should stick to the Council GA. We do not see any added value in this approach as it is for the flag State Administration to follow up on FSIs and take action regarding its flagged ships.

Line 97 (publication of IMO audit) - As a matter of principle, we do not support publishing of IMO audits being made mandatory in terms of EU legislation, when the audits are being conducted by an international organisation. This could also lead to possible uneven playing field between EU and non-EU flag States.

Lines 13b, 29, 53, 164 and 177 – 332 (the III Code) – We continue to support deletion of the III Code. On line 42, we maintain support for the text on the GA.

Lines 11a, 25a, 49, 58, 69, 78a, 93 (social provisions) – Line 11a – Prefer for such issues not to be included in Directive (as per previous reasons). However, as a compromise, may show flexibility to this recital. Ideally any references at all to social issues should only be in the recitals.

Line 21 (genuine link) – Malta agrees with the PRES comments. ANY kind of reference to genuine link is unacceptable.

Digitalisation & proposal for a digital portal (line 85 & PRES non-paper compromise) – we do not see major differences from the originally proposed "database". Therefore, we continue expressing support for the GA. Malta reserves the right to revert with more detailed comments in writing on this matter.

Line 28 and 134 (DONA) – Preference is towards maintaining the Council GA. We are aware that an electronic reporting tool has already been established . Thus, one questions why a legal basis is being sought at this stage rather than before the database was actually created in practice. We are concerned that such approach could set a precedent in the future for other issues, particularly in relation to possible creation of other digital systems. In any case, it is crucial that any references do not go beyond the existing reporting obligations nor create any new reporting requirements.

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Other issues (16967/4/23 REV 4):

Line 25 – we can support the Presidency compromise proposal.

Line 57b (risk-based approach: safety recommendations from AI reports) – Malta is of the view that this provision should be deleted. Not clear how this is to be calculated.

Line 104 (QMS) – Malta can support the 2 commas as indeed this clarifies. However, we oppose the addition of the last sentence. This is considered superfluous as this is already captured in the preceding sentence. It is going overboard by including such detail in this Article.

Line 30a (recital 20a), 115 & 116 (expert group) – Same position as previously expressed applies to the expert group. However, as a compromise we could consider some flexibility on line 115, but only subject to line 116 being deleted. On line 116, in line with previous comments we maintain support for GA. Cooperation between MS on issues such as training is in any case possible and does not need to be in Article of the Directive. In particular, we propose deletion of the list of “elements” as examples.

b) Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/16/EC on port State control – doc. ST 16968/3/23 REV3

On the points highlighted in the Presidency paper (WK 1743/2024), Malta would like to submit its detailed comments as follows:

- **Technical issues (B points):**

Line 70 (2 inspectors for expanded inspections) – as a compromise, we can show flexibility towards the new wording as well as the new recital 12 c.

- **Political issues: (C points):**

Line 68 & 190 (environmental parameters) – as per previous comments, we don’t support the deletion “*and whether these deficiencies are grounds for detention*”. The number of deficiencies to be taken into account as environmental parameters should be qualified to only include the more serious deficiencies, hence the detainable ones. On PRES proposal to set the threshold at >2 deficiencies, we oppose this. It is extremely problematic, to say the least, as a deficiency could be something extremely minor. We support all deficiencies to be detainable. We agree that any kind of compromise on the environmental parameters would need to be conditional on total deletion of references to CII.

Line 190a – Malta can agree with PRES to not include reference to Reg 1257/2013.

Lines 20, 21 (Fit for 55 references) – We support GA - PSC should remain primarily based on international conventions.

Line 38d (definition of “inspection”) – Malta can agree with the PRES’ suggestion.

Lines 23 & 24 (seafarers’ welfare and working conditions) - Malta can agree with the PRES’ comments.

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Line 131 (conformity check) – We strongly oppose the horizontal approach being proposed. Particularly for international shipping, it is crucial to follow international rules applying globally, rather than create loopholes to be able to derogate from international conventions. EU legislation should be coherent with international conventions.

Lines 14b-d and 139b (Ratification of fishing conventions) – Malta can agree with the PRES' comments.

Line 43 (Parallel PSC regime for fishing vessels) – Malta agrees with the PRES' comments.

- **Other issues (16968/3/23 REV3):**

Line 98 (training) – We propose the following textual change: *In cooperation with Member States and the Paris MoU and based on the expertise and the experience gained at Member State level in the Union and under the Paris MOU, the Commission shall develop a ~~harmonised Union scheme programme~~ for the training and assessment of competences of port State control inspectors by Member States.*

Line 99 (training): as a compromise, we could show flexibility to the PRES amended text.

Line 99c (pilots): we prefer to maintain text as in the current Directive – because this almost seems to impose some kind of obligation on pilots to report (outside remit of pilots). Reports concerning social issues can be done in other ways.

Line 105 (validation of inspection report) – We prefer maintaining GA.

c) **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 – doc. ST. 16969/3/23 REV3**

As regards to the compromise proposals/options put forward in WK 1621/2024, Malta's position is as follows:

a) **Exception for a discharge resulting from damage to the equipment.**

Malta agrees with the PRES' proposal to insist on the withdrawal by the EP of the exceptions listed in rows 71 & 72, since both provisions originate from MARPOL. The aim of the proposal is to align the Directive with the provisions of MARPOL.

b) **Possibility to impose fines on companies / legal persons / natural persons as well as the liability /responsibility, including the concept of secondary guilt.**

Malta agrees with the approach by the PRES to make implementation as flexible as possible for MS. In this respect, Malta can be flexible towards the text being proposed in lines 43 and 66, although it would be better and more correct if such provisions are amended to read "any company, ~~or those that may be held liable of~~ natural or other legal person".

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In addition, Malta has no objections to the deletion of the entire second sentence in row 82. Malta can also agree to the EP compromise text in row 83, i.e. *Where another natural or legal person was found liable of the infringements, based on the investigation, Member States shall ensure that penalties can be imposed on such persons.* In our view, such text provides the necessary flexibility to Member States to impose fines on the master and/or crew of the ship who could be liable for the commission of the breach.

Our main premise has always been that if it is deemed that the master and/or crew are responsible, then one cannot shift the responsibility of payment of the fine on the company if the master and/or crew fail to pay or to pay in full. This goes against the principles of natural justice – attributing fault to someone, as a last resort, without there actually being fault.

c) Effective application of penalties

We can be flexible towards the proposed text in rows 90 and 92, as long as the wording “as appropriate” and “not limited to” are maintained in row 90, since the proposed text is not imposing the quantum of the penalties but only the concept that they should not be too low. The interpretation of the concept as well as the application of penalties is still the prerogative of the individual MS.

However, with respect to the provisions related to the Implementing act (row 99), Malta cannot accept the way forward proposed by the PRES to have non-mandatory guidelines or recommendations replacing the implementing acts. Our position on this line remains to maintain the text of the Council General Approach text – no flexibility.

d) Verification rate (Rows 23, 26a, 107)

Malta can be flexible towards the wording of recital 13 (row 23) on the “definition” of the verification methods, as long as MS are allowed the required flexibility to carry out such verification activities, and that on-site verification is not mandatory.

As regards the text in recital 26a, which is very important to us, our preference would be to still maintain the text of the Council General Approach in view of the flexibilities therein. However, we would be open to a redrafting of the recital, provided that there is specific reference to logistical and technological limitations.

With respect to the text in row 107 on the actual verification rates, whilst the notion of the proposed verification of “high confidence alerts” can be accepted, one cannot impose the obligation of analysing 100% of the alerts and verifying at least 50% on the spot. Keeping also in mind the extended scope of the Directive to all MARPOL Annexes, such proposed amendments do not take into account the amount of resources and the disproportionate administrative burden that would be required noting the areas of applicability of the Directive; and the lack of technological developments to verify at source discharges, especially those relating to HNS.

Whilst Malta has a strong preference for maintaining the Council General Approach, we could be willing to show some flexibility towards the PRES’ proposed 1st option, i.e. the possibility to include a phased-in approach (for example: a verification rate of 10% within 5 years after the date of transposition, and a verification rate of 25% within 10 years after the date of transposition).

e) Exchange of experiences

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Malta would have no objection to re-instate the Commission's proposal in row 108, although our preference still is to have such wording in the recitals.

f) Evaluation and review

In principle, Malta believes that the provisions in rows 31 and 140 should remain as agreed in the Council General approach text, as the proposed new wording does not fall into the scope of this Directive and is therefore not considered appropriate. In this respect, we cannot accept the PRES' proposed compromise.

g) Transposition

Our preference would still be to maintain the Council General Approach, albeit we can express flexibility towards a compromise leaning on 3 years.