

FINLAND

CMI International Working Group on the Fair Treatment of Seafarers

QUESTIONNAIRE

PART I (Answers to these Questions are essential)

Question 1:

Who has responsibility for administering and enforcing maritime safety and marine pollution prevention and control in the waters under the jurisdiction of your State?

Ministry of Environment, Finnish Maritime Administration (FMA), Coast Guard, Police and Customs.

Question 2:

When maritime accidents and/or marine pollution incidents occur within the waters under the jurisdiction of your State, what process of accident investigation is legally required?

In order to establish the reason for the accident/incident a **Maritime Declaration in Court** shall be given by the Master of the Vessel by means of a court hearing in which the Master and the witnesses are heard. The FMA and public prosecution attend the court hearing.

In Finland the **Accident Investigation Board (AIB)** investigates all major accidents regardless of their nature as well as all aviation, maritime and rail accidents and their incidents.

The purpose of the investigation of accidents by the AIB is primarily to improve safety and prevent future accidents. The flow of events during the accident, its causes and results as well as the rescue operation are dealt with in the investigation. A report is prepared on the results of the investigation. The report also presents the recommendations, which are based on the conclusions of the investigation.

In Finland the AIB is located within the Ministry of Justice.

Should the maritime declaration and/or the investigation of the AIB indicate that a crime may have been committed a **pre-trial investigation** according to the Criminal Investigations Act (L 449/1987) will be conducted.

Question 3:

Do your State's maritime accident and/or marine pollution investigative processes contemplate criminal charges against any ships' personnel involved and, if so what action may be involved?

Pre-trial investigation as stated above.

Question 4:

If there is no criminal process, what other investigative process is utilized?

See above.

Question 5:

Does your State's investigative process permit detention of seafarers and, if so, under what circumstances and with what safeguards?

According to the Coercive Measures Act (L 450-1987) 3 § the suspect may be detained provided that he (as a main rule) is suspected on probable cause for the offence.

Question 6:

If seafarers are required to be present for an investigation, trial or other hearing will they be permitted to leave your State until such investigation, trial or other hearing takes place?

According to the Coercive Measures Act (L 450/1987) 3 § subsection 4) the suspect may not be able to leave the country if it is probable that he would try to escape the pre-trial investigation, the trial or the enforcement of punishment by leaving the country.

Question 7:

Does your State require a financial surety to ensure that seafarers return for any subsequent hearing and, if so, how is the amount of such a surety determined and what form is required? Seafarers may be subject to a conditional imposition of a fine in order to ensure that the seafarer returns for a subsequent hearing. This procedure is however not used often.

Question 8:

Is your State's maritime administration or other authority given legal responsibility for the protection, rights and welfare of all seafarers and, if so, how is this responsibility administered? -

PART II (Answers to these Questions would be most helpful)

Question 9:

If a maritime accident resulting in serious pollution occurs in waters under the jurisdiction of your State that involves a foreign-flag vessel with a crew of different nationalities, what is the expected role of vessel crew members held responsible in the subsequent investigative process?

As a suspect or witness in an ordinary pre-trial investigation according to the Criminal Investigations Act (L 449/1987).

Question 10:

If the accident, as outlined in Question 10, is due to negligence but not wilful misconduct by responsible crew members, will your State proceed only with pollution damage claims under the accepted international civil liability and compensation system? **No. The Penal Code 48:4 regarding environmental crimes (pollution damage due to *negligence*) might be applied. This means that the suspect has actively polluted the environment by discharging substances to the environment or passively polluted the environment by not taking appropriate measures to prevent pollution in some cases. Sanctions under rule 48:4→ fine or imprisonment for a maximum of one year.**

Question 11:

If the answer to Question 10 is 'No', what other processes or procedures will be undertaken by your State? **As stated above.**

Question 12:

If the maritime accident outlined in Question 9 occurred outside your State's Territorial Seas, although damage occurs in areas under your State's jurisdiction, would the procedures involved be different? **Environmental crimes committed in the economic zone of Finland are governed by the Penal Code 48:10. This rule (L 1067/2004) stipulates that fines may be imposed instead of jail sentences in some cases.**

Question 13:

Regardless whether your State's investigative process utilizes the criminal justice system or any other system, will the relevant vessel crew members be detained? If so:

- a. What is the legal reason for such detention? **Mainly since there is a probable cause that the suspected committed the crime, which could lead to imprisonment for two years or one year provided that it is likely that the suspect tries to escape, tamper with evidence or otherwise obstruct justice.**
- b. What rights will the accused/detained crew member have during the process, and do such rights differ from those available to citizens of your State? **No.**
- c. Will full reasons and/or charges be provided to those detained? **Yes.**
- d. What is the expected length of such detention? **According to the Coercive Measures Act 13 §: At noon on the third day after the day of detention a court hearing shall take place in order for the court to decide whether the suspect shall be declared remanded for trial.**
- e. Where and how will the seafarers involved be detained? **By the police according to law.**
- f. What access to legal advice and/or defence will such personnel have available to them? **Full access. The suspect may appoint his own legal**

counsel. Legal counsel may also be provided to him. The State might in some cases provide the legal counsel free of charge.

- g. Will the vessel's representatives, agents, family members, labour organisation representatives, or lawyers be given immediate and full access to those detained? **Yes.**
- h. Will the relevant seafarers have the legal right not to answer questions that may be considered self-incriminating, if so advised? **Yes.**

Question 14:

Does your Association have any other comments, suggestions or recommendations on this subject?

Draft response prepared by MS/IK/30.5.2005