Regulation (EU) No 1257/2013 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 (Text with EEA relevance)

REGULATION (EU) No 1257/2013 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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) Ships which constitute waste and which are subject to a transboundary movement for recycling are regulated by the Basel Convention of 22 March 1989 on the Control of the Transboundary Movements of Hazardous Wastes and their Disposal (‘the Basel Convention’) and Regulation (EC) No 1013/2006 of the European Parliament and of the Council[(3)]. Regulation (EC) No 1013/2006 implements the Basel Convention as well as an amendment[(4)] to that Convention adopted in 1995, which has not yet entered into force at international level, and which establishes a ban on exports of hazardous waste to countries that are not members of the Organisation for Economic Cooperation and Development (OECD). Such ships are generally classified as hazardous waste and prohibited from being exported from the Union for recycling in facilities in countries that are not members of the OECD.

(2) The mechanisms for monitoring the application of, and enforcing the current Union and international law are not adapted to the specificities of ships and international shipping. Efforts involving inter-agency cooperation between the International Labour Organisation (ILO), the International Maritime Organisation (IMO) and the Secretariat of the Basel Convention have been successful in reaching agreement on the introduction of mandatory requirements, at global level, aimed at ensuring an efficient and effective solution to unsafe and unsound ship recycling practices in the form of the Hong Kong

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International Convention for the Safe and Environmentally Sound Recycling of Ships ('the Hong Kong Convention').

(3) Current ship recycling capacity in OECD countries which is legally accessible to ships flying the flag of a Member State is insufficient. Current safe and environmentally sound ship recycling capacity in countries which are not members of the OECD is sufficient to treat all ships flying the flag of a Member State and is expected to expand further by 2015 as the results of actions taken by recycling countries to meet the requirements of the Hong Kong Convention.

(4) The Hong Kong Convention was adopted on 15 May 2009 under the auspices of the International Maritime Organization. The Hong Kong Convention will enter into force only 24 months after the date of ratification by at least 15 states representing a combined merchant fleet of at least 40 per cent of the gross tonnage of the world's merchant shipping and whose combined maximum annual ship recycling volume during the preceding 10 years constitutes not less than three per cent of the gross tonnage of the combined merchant shipping of the same states. That Convention covers the design, the construction, the operation and the preparation of ships with a view to facilitating safe and environmentally sound recycling without compromising ship safety and operational efficiency. It also covers the operation of ship recycling facilities in a safe and environmentally sound manner, and the establishment of an appropriate enforcement mechanism for ship recycling.

(5) This Regulation is aimed at facilitating early ratification of the Hong Kong Convention both within the Union and in third countries by applying proportionate controls to ships and ship recycling facilities on the basis of that Convention.

(6) The Hong Kong Convention provides explicitly for its Parties to take more stringent measures consistent with international law, with respect to the safe and environmentally sound recycling of ships, in order to prevent, reduce or minimise any adverse effects on human health and the environment. Taking that into account, this Regulation should provide protection from the possible adverse effects of hazardous materials on board all ships calling at a port or anchorage of a Member State while ensuring compliance with the provisions applicable to those materials under international law. In order to ensure the monitoring of compliance with the requirements relating to hazardous materials under this Regulation, Member States should apply national provisions to implement Directive 2009/16/EC of the European Parliament and of the Council[(5)]. Currently, port State control inspectors are tasked with the inspection of certification and with active testing for hazardous materials, including asbestos, under the International Convention for the Safety of Life at Sea ('SOLAS'). The Paris Memorandum of Understanding on Port State Control provides a harmonised approach for those activities.

(7) The purpose of this Regulation is also to reduce disparities between operators in the Union, in OECD countries and in relevant third countries in terms of health and safety at the workplace and environmental standards and to direct ships flying the flag of a Member State to ship recycling facilities that practice safe and environmentally sound methods of dismantling ships instead of directing them to substandard sites as is currently the practice. The competitiveness of safe and environmentally sound

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recycling and treatment of ships in ship recycling facilities located in a Member State would thereby also be increased. The establishment of a European List of ship recycling facilities ('the European List') fulfilling the requirements set out in this Regulation would contribute to those objectives as well as to better enforcement by facilitating the control of ships going for recycling by the Member State whose flag the ship is flying. Those requirements for ship recycling facilities should be based on the requirements of the Hong Kong Convention. In this regard, ship recycling facilities approved in accordance with this Regulation should meet the necessary requirements to ensure protection of the environment, the health and safety of workers and the environmentally sound management of the waste recovered from recycled ships. For ship recycling facilities located in a third country, the requirements should achieve a high level of protection of human health and the environment that is broadly equivalent to that in the Union. Ship recycling facilities which do not meet those minimum requirements should therefore not be included in the European List.

(8) The principle of equality in Union law should be applied and its application monitored, in particular when establishing and updating the European List in respect of ship recycling facilities located in a Member State and ship recycling facilities located in a third country fulfilling the requirements set out in this Regulation.

(9) Member States are encouraged to adopt appropriate measures to ensure that ships excluded from the scope of this Regulation act in a manner that is consistent with this Regulation, in so far as is reasonable and practicable.

(10) In order to avoid duplication, it is necessary to exclude ships flying the flag of a Member State falling under the scope of this Regulation from the scope of application of Regulation (EC) No 1013/2006 and of Directive 2008/98/EC of the European Parliament and of the Council[(6)] respectively. Regulation (EC) No 1013/2006 applies to shipments of waste from the Union, subject to exclusions for certain categories of waste where an alternative regime applies. This Regulation subjects ships within its scope to controls throughout their life-cycle and aims to secure recycling of those ships in an environmentally sound manner. It is therefore appropriate to specify that a ship subject to the alternative control regime throughout its life-cycle under this Regulation should not be subject to Regulation (EC) No 1013/2006. Ships neither covered by the scope of the Hong Kong Convention nor by this Regulation, and any waste on board of a ship other than operationally generated waste, should continue to be subject to Regulation (EC) No 1013/2006 and to Directives 2008/98/EC and 2008/99/EC of the European Parliament and of the Council[(7)], respectively.

(11) It is also acknowledged that ships continue to be subject to other international conventions to ensure their safe operation at sea during the operational part of their life-cycle and, although they can exercise certain navigational rights and freedoms, ships are required to provide prior notice of entry into ports. Member States should be able to choose to apply further controls in accordance with other international treaties. Additional transit controls are therefore not considered necessary under this Regulation.

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(12) When interpreting the requirements of this Regulation, consideration should be given to the guidelines developed by the IMO ('IMO guidelines') to support the Hong Kong Convention.

(13) For the purposes of this Regulation, the term 'recycling' should not have the same meaning as defined in Directive 2008/98/EC. This Regulation should therefore introduce a specific definition for the term 'ship recycling'.

(14) Regulation (EC) No 1272/2008 of the European Parliament and of the Council[(8)] implements at Union level the Globally Harmonised System for the classification and labelling of chemicals. That Regulation, together with Council Directive 67/548/EEC[(9)] and Directive 1999/45/EC of the European Parliament and of the Council[(10)], provides useful guidance in determining what constitutes a hazardous material.

(15) Keeping an inventory of hazardous materials on board a ship throughout its life-cycle is a key requirement laid down in the Hong Kong Convention and in this Regulation. In accordance with Regulation 8(2) of the Hong Kong Convention, a ship destined to be recycled should minimise the amounts of operationally generated waste in the period prior to entering the ship recycling facility. If the operationally generated waste is intended for delivery with the ship to a ship recycling facility, the approximate quantities and locations of that waste should be listed in Part II of the inventory.

(16) Member States should take measures to prevent circumvention of ship recycling rules and to enhance transparency of ship recycling. As provided for in the Hong Kong Convention, Member States should report information concerning ships to which an inventory certificate has been issued, ships for which a statement of completion has been received and information regarding illegal ship recycling and follow-up actions that they have undertaken.

(17) Member States should lay down rules on penalties applicable to infringements of this Regulation and ensure that those penalties are applied so as to prevent circumvention of ship recycling rules. The penalties, which may be of a civil or administrative nature, should be effective, proportionate and dissuasive.

(18) In accordance with the case-law of the Court of Justice, the courts of the Member States are required to interpret, to the fullest extent possible, the procedural rules relating to the conditions to be met in order to bring administrative or judicial proceedings in accordance with the objectives of Article 9(3) of the Aarhus Convention.

(19) In the interest of protecting human health and the environment and having regard to the 'polluter pays' principle, the Commission should assess the feasibility of establishing a financial mechanism applicable to all ships calling at a port or anchorage of a Member State, irrespective of the flag they are flying, to generate resources that would facilitate the environmentally sound recycling and treatment of ships without creating an incentive to out-flag.

(20) In order to take into account developments regarding the Hong Kong Convention, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the updating

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of Annexes I and II to this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(21) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[(11)].

(22) Since the objective of this Regulation, namely to prevent, reduce or eliminate adverse effects on human health and the environment caused by the recycling, operation and maintenance of ships flying the flag of a Member State, cannot be sufficiently achieved by the Member States due to the international character of shipping and ship recycling, but can rather by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

TITLE I

SUBJECT-MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter and purpose

The purpose of this Regulation is to prevent, reduce, minimise and, to the extent practicable, eliminate accidents, injuries and other adverse effects on human health and the environment caused by ship recycling. The purpose of this Regulation is to enhance safety, the protection of human health and of the Union marine environment throughout a ship′s life-cycle, in particular to ensure that hazardous waste from such ship recycling is subject to environmentally sound management.

This Regulation also lays down rules to ensure the proper management of hazardous materials on ships.

This Regulation also aims to facilitate the ratification of the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009 (‘the Hong Kong Convention’).