Regulation (EC) No 782/2003 of the European Parliament and of the Council of 14 April 2003 on the prohibition of organotin compounds on ships

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on the prohibition of organotin compounds on ships

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission[(1)],

Having regard to the opinion of the European Economic and Social Committee[(2)],

Having consulted the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty[(3)],

Whereas:

(1) The Community is seriously concerned by the harmful environmental effects of organotin compounds used as anti-fouling systems on ships, and in particular of tributyltin (TBT) coatings.

(2) An International Convention on the control of harmful anti-fouling systems on ships (AFS-Convention) was adopted on 5 October 2001 at a Diplomatic Conference (AFS-Conference) held under the aegis of the International Maritime Organisation (IMO) with the attendance of Member States of the Community.

(3) The AFS-Convention is a framework convention allowing the prohibition of harmful anti-fouling systems used on ships in accordance with well-defined procedures and having due regard to the precautionary principle expressed in the Rio Declaration on Environment and Development.

(4) The AFS-Convention, at this stage, only prohibits the application of organotin compounds on ships.

(5) Fixed application dates have been included in the AFS-Convention: 1 January 2003 for the prohibition of the application of organotin compounds on ships and 1 January 2008 for the elimination of the presence of organotin compounds on ships.

(6) The AFS-Convention will only enter into force 12 months after its ratification by at least 25 States representing at least 25 % of the world's tonnage.

(7) Member States should ratify the AFS-Convention at the earliest opportunity.

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(8) Member States should be put in the best possible position for a speedy ratification of the AFS-Convention. Any obstacles which might impede such ratification should be removed.

(9) The AFS-Conference, aware that the time remaining until 1 January 2003 might not be sufficient to enable the entry into force of the AFS-Convention by that date, and desiring that organotin compounds should effectively cease to be applied in shipping as from 1 January 2003, requested in AFS-Conference Resolution No 1 that IMO Member States do their utmost to prepare for implementing the AFS-Convention as a matter of urgency, and urged the relevant industries to refrain from the marketing, sale and application of organotin compounds by that date.

(10) As an immediate follow-up to the AFS-Conference the Commission adopted Commission Directive 2002/62/EC of 9 July 2002 adapting to technical progress for the ninth time Annex I to Council Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations (organostannic compounds)[(4)] in order to prohibit, with effect from 1 January 2003, the marketing and use of organostannic compounds in anti-fouling systems for all ships, irrespective of their length.

(11) In the light of AFS-Conference Resolution No 1, additional steps are necessary for the implementation of measures concerning organotin compounds in order to ensure a general ban on TBT coating used on ships throughout the Community and its surrounding seas on the dates provided for by the AFS-Convention.

(12) A Regulation is the appropriate legal instrument as it imposes on shipowners and Member States, directly and within a short time frame, precise requirements to be implemented at the same time and in the same manner throughout the Community. This Regulation, which should seek solely to prohibit organotin compounds, should not duplicate the AFS-Convention.

(13) This Regulation should not affect the restrictions on the marketing and use of certain dangerous substances and preparations (organostannic compounds) laid down in Directive 76/769/EEC[(5)].

(14) Uncertainty regarding the total prohibition of active TBT coatings should not be accepted at Community level; the world-wide shipping industry, which has to programme the maintenance of its ships, should be made aware clearly and in due time that, as from 1 January 2008, ships bearing an active TBT coating on their hulls will no longer be allowed in Community ports.

(15) Third countries, particularly if they cannot benefit from the added value of a supranational regulation, might experience legal technical difficulties in imposing, through their national legislation, the prohibition on applying TBT coatings to their ships from the day on which the prohibition enters into force under this Regulation. The application of the prohibition in this Regulation on applying TBT coatings should therefore be suspended as regards ships sailing under the flag of a third State for an

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interim period beginning on 1 July 2003 and ending on the date of entry into force of the AFS-Convention.

(16) Flag States which have banned the use of TBT coatings on their ships have an economic interest in ensuring that the AFS-Convention enters into force as soon as possible, in order to ensure a world-wide level playing field. This Regulation, which prohibits, as soon as possible, all ships flying the flag of a Member State from applying TBT coatings should constitute an incentive for flag States to ratify the AFS-Convention.

(17) The definitions used and requirements imposed in this Regulation should as far as possible be based upon those used in the AFS-convention.

(18) In order to ensure its application to offshore platforms, this Regulation should also apply to ships operating under the authority of a Member State. It should not apply to any warships or other government ships since the treatment of those ships is adequately covered under the AFS-Convention.

(19) Imposing, as from 1 July 2003, the prohibition of active TBT coatings on all ships which are entitled to fly the flag of a Member State and whose anti-fouling system has been applied, changed or replaced after that date, should be an incentive for the shipping industry to implement the recommendation of AFS-Conference Resolution No 1.

(20) It is appropriate to establish the same survey and certification regime as that provided for by the AFS-Convention. Under this Regulation all ships of 400 gross tonnage and above, irrespective of the nature of their voyage, should be surveyed, whilst ships of 24 metres or more in length but less than 400 gross tonnage should only have to carry a declaration of compliance with this Regulation or with the AFS-Convention. The Community should have the right to introduce a harmonised survey regime for these ships, if this proves necessary at a later stage.

(21) For ships less than 24 metres in length, it is not necessary to provide for a specific survey or declaration since these ships, mainly recreational craft and fishing vessels, will be adequately covered under the provisions of Directive 76/769/EEC.

(22) Certificates and documents issued in conformity with this Regulation, as well as AFS-Certificates and AFS-Declarations issued by Parties to the AFS-Convention, should be recognised.

(23) If the AFS-Convention has not entered into force by 1 January 2007, the Commission should be permitted to adopt appropriate measures allowing ships flying the flag of a third State to demonstrate their compliance with this Regulation, as well as measures to control the implementation of these provisions.

(24) The most appropriate regime for controlling the implementation of the prohibition of TBT coatings on ships and the requirements of the AFS-Convention is that laid down in Council Directive 95/21/EC of 19 June 1995 concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control)[6] and amendments should be made to that Directive at the appropriate time. Having regard to the specific scope

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of that Directive, equivalent provisions should be applied to ships flying the flag of a Member State during the interim period.

(25) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down procedures for the exercise of implementing powers conferred on the Commission[7].

(26) In order to assess the achievement of the objective of this Regulation, the Commission should report to the European Parliament and the Council and propose, if necessary, any appropriate adjustments to the Regulation.

(27) The entry into force of this Regulation should be such as to allow the effective prohibition of organotin compounds on ships as soon as possible,

HAVE ADOPTED THIS REGULATION:

Article 1

Objective

The purpose of this Regulation is to reduce or eliminate adverse effects on the marine environment and human health caused by organotin compounds, which act as active biocides in anti-fouling systems used on ships flying the flag of, or operating under the authority of, a Member State, and on ships, regardless of the flag they fly, sailing to or from ports of the Member States.

Article 2

Definitions

For the purpose of this Regulation:

1. ‘anti-fouling system’ means a coating, paint, surface treatment, surface, or device that is used on a ship to control or prevent attachment of unwanted organisms;

2. ‘gross tonnage’ means the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex 1 to the International Convention on Tonnage Measurement of Ships, 1969, or any successor Convention;

3. ‘length’ means the length as defined in the International Convention on Load Lines, 1966, as modified by the Protocol of 1988 relating thereto, or any successor Convention;

4. ‘ship’ means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft, fixed or floating platforms, floating storage units (FSUs) and floating production storage and off-loading units (FPSOs);

5. ‘AFS-Convention’ means the International Convention on the control of harmful anti-fouling systems on ships, adopted on 5 October 2001, irrespective of its entry into force;

6. ‘recognised organisation’ means a body recognised in accordance with the provisions of Council Directive 94/57/EC of 22 November 1994 on common rules and standards

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for ship inspection and survey organisations and for the relevant activities of maritime administrations[8];

7. 'AFS-Certificate' means the certificate issued to ships in conformity with the provisions of Annex 4 to the AFS-Convention or, during the interim period, a certificate issued in accordance with the format laid down in Annex II to this Regulation, when it is issued by the administration of any Member State or by a recognised organisation acting on its behalf;

8. 'AFS-Declaration' means a declaration drawn up under the provisions of Annex 4 to the AFS-Convention or, during the interim period, a declaration signed by the owner or the owner's authorised agent and drawn up in accordance with the format laid down in Annex III to this Regulation;

9. **[**F1'European AFS-Statement of Compliance' means a document recording compliance with Annex 1 to the AFS-Convention, issued by a recognised organisation on behalf of the administration of a Member State;**]**

10. 'interim period' means the period beginning on 1 July 2003 and ending on the date of entry into force of the AFS-Convention.

Textual Amendments

F1 Substituted by Commission Regulation (EC) No 536/2008 of 13 June 2008 giving effect to Article 6(3) and Article 7 of Regulation (EC) No 782/2003 of the European Parliament and of the Council on the prohibition of organotin compounds on ships and amending that Regulation.

Article 3

Scope

1 This Regulation shall apply to:

a ships flying the flag of a Member State,

b ships not flying the flag of a Member State but operating under the authority of a Member State, and

c ships that enter a port or offshore terminal of a Member State but do not fall within points (a) or (b).

2 This Regulation shall not apply to any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on government non-commercial service.

Article 4

Prohibition of the application of organotin compounds which act as biocides

As from 1 July 2003, organotin compounds which act as biocides in anti-fouling systems shall not be applied or re-applied on ships.

However, during the interim period this provision shall only apply to ships referred to in points (a) or (b) of Article 3(1).