4.3. To achieve the targets set by the directive, the Committee calls on the Commission to take more account of the proposals and suggestions presented in its opinion of 28 April 1999 (1) and in this opinion, in particular:

— amendment of the scope of the exclusions by stating explicitly that the directive applies to documents held by public museums and public and university libraries, Europe’s common cultural heritage;
— liability of all public bodies or institutions where deliberately false or incomplete information is provided;
— charging principle which should lead to the general adoption of the 'low-cost method';
— making available free of charge the 'essential information' held by the public administrations of the Member States, with the ambition of extending this measure to all the public bodies of the Member States.

4.4. Finally the Committee calls on the Commission to involve the Committee in the review provided for in Article 12, when it should be possible to assess actual response times and to supplement the directive with a view to further harmonising practices and charging methods.


The President
of the European Economic and Social Committee
Roger BRIESCH

Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council on the Prohibition of Organotin Compounds on Ships'

(COM(2002) 396 final — 2002/0149 (COD))

(2003/C 85/07)

On 30 July 2002 the Council decided to consult the European Economic and Social Committee under Article 80 (2) of the Treaty establishing the European Community, on the above-mentioned proposal.

The Specialised Section for Transport, Energy, Infrastructure and the Information Society which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 31 October 2002. The rapporteur was Dr Bredima-Savopoulou.

At its 395th plenary session (meeting of 11 December 2002) the European Economic and Social Committee adopted the following opinion with 98 votes in favour and three abstentions.

1. Background

1.1. For many decades, organotins have been used in anti-fouling paints on ships. Tributyltin (TBT) has been used as a paint additive since the 1970s to prevent the fouling (e.g. growth of tubeworms, algae, barnacles) of ship hulls and in nets for fish farming. Their detrimental effects on the environment were first noticed in oyster farms on the Atlantic coast of France in the late 1970s. Since then, increased levels of organotins have been found world-wide in marine organisms further up the food chain, such as fish, seabirds and marine mammals. These chemicals have been shown to have hormone-disrupting properties in some species, and humans could also face health risks if they consume contaminated fish.
1.2. Environmental concerns over the potential impact of TBT-based antifouling paints in the past have led to regulatory measures in the United States and around the world. Some countries put in place more stringent TBT regulations than others (e.g. Japan has banned the use of TBT-based paints altogether).

1.3. TBT-Self Policing Copolymer (SPC) based paints are the world standard in commercial marine antifoulant coatings, representing over 70 % (by volume) of the antifouling paints used by the world fleet (1). At present, no proven bottom-paint alternatives minimize fouling as effectively as TBT-SPC based paints; only TBT-SPC based paints are guaranteed effective for up to five years. The alternative TBT-free paints protect ship bottoms for at most three years, requiring more frequent dry-docking and re-painting and they may not offer protection equivalent to TBT-SPC based paints and have unknown environmental effects.

1.4. Although alternatives to TBT-based paints are sold on the world market, they have received insufficient examination. The toxicity of these compounds has been evaluated only on a short-term basis, not on the long-term basis that is applicable to the continuous exposure to antifouling paints.

1.5. The EU decided already in December 1989 to ban on its territory the marketing of organostannic compounds used as biocides to prevent fouling of hulls of ships of less than 25 metres in length.

1.6. In 1990 the International Maritime Organization (IMO) adopted a resolution that recommended governments to adopt measures restricting the use of TBT-based antifouling paints. In 1999 the IMO called for a global prohibition of the application of organotin compounds which act as biocides in anti-fouling systems on ships by 1 January 2003 and a complete prohibition of the presence of these organotin compounds on ships by 1 January 2008.

1.7. On 5 October 2001 the IMO adopted the Convention on the control of harmful anti-fouling systems on ships (AFS-Convention). The Convention will prohibit the use of harmful organotins in anti-fouling paints used on ships and will establish a mechanism to prevent the potential future use of other harmful substances in anti-fouling systems.

1.8. The Convention will be open for signature since 1 February 2002. It will enter into force 12 months after 25 States representing 25 % of the world's merchant shipping tonnage have ratified it.

1.9. Resolution 1 of the International Conference on the Control of Harmful Anti-Fouling Systems on Ships recognized that the time remaining until 1 January 2003, may not be sufficient to enable entry into force of the Convention by that date. Desiring that organotin compounds will effectively cease to be applied in shipping as from January 2003, the Conference requested the IMO Member States to accept the provisions of the Convention as a matter of urgency. In parallel, the industry has been urged to refrain from the marketing, sale and application of organotin compounds by that date.

1.10. Immediately after the AFS Conference, the International Chamber of Shipping (ICS) stressed that ‘whether or not the Convention enters into force by January 2003 is perhaps somewhat academic as the fixed dates of January 2003 and 1 January 2008 should be regarded as firm for any ship operating in international trade’. Despite the willingness to ratify the AFS Convention before 1 January 2003, few States will be able to do so.

2. The Commission’s proposal

2.1. The proposed Regulation is based on the basic requirements of the AFS Convention and refrains from duplicating the implementation provisions which the Member States have to adopt under their obligations as contracting parties to the AFS Convention. Furthermore, as opposed to the AFS Convention which has been drafted as a framework convention based on the precautionary principle, the Regulation is restricted to organotin compounds only.

2.2. The objective of the proposed Regulation is to reduce or eliminate adverse effects on the marine environment and human health caused by organotin compounds, which act as biocides in anti-fouling systems used on ships. The European Commission proposes to adopt, before the end of 2002, the Regulation prohibiting the application of such organotins on ships flying the flag of an EU Member State as from 1 January 2003 and a general prohibition of active organotin on ships sailing to or from Community ports on 1 January 2008, irrespective of the entry into force of the Convention.

2.3. Before the entry into force of the AFS Convention the prohibition will be suspended for ships not flying the flag of a Member State. The European Commission asserts that the

(1) CEFIC 1996.
most appropriate regime for the control of implementation of the prohibition of TBT on ships is laid down in Directive 95/21/EC on Port State Control (1). However, this Directive can only be applied with respect to third-flag ships once the AFS Convention has entered into force.

2.4. Consistent with the AFS Convention, the Regulation prescribes survey and certification requirements for ships depending on their size.

2.5. The European Commission acknowledges that in the interim period from 1 January 2003 until the date of entry into force of the AFS Convention there will be competitive disadvantages for both the EU shipowners and yards. It expects such disadvantages to be avoided through voluntary compliance of third-flag ships. Furthermore, it is proposing a procedure by which, and depending on the extent of their voluntary compliance, third-flag ships will also be covered by the Regulation.

3. General comments

3.1. As a matter of principle the EESC maintains the view that shipping, as a global industry should be regulated by global standards, primarily developed and agreed at international level through the IMO. The EU's role should be to encourage the development of high international standards and to ensure their effective enforcement within the EU.

3.2. The EESC recalls past intentions to extend the scope of Directive 76/769/EEC (2) and the subsequent agreement to await developments in IMO and welcomes the approach of the Commission regarding the implementation of the AFS Convention, namely:

— to recommend to Member States signature and ratification of the AFS Convention at the earliest possible opportunity;

— to amend Directive 76/769/EEC; and

— to propose the Regulation based on the AFS Convention principles.

Against this background the EESC fully supports the principle of the proposal to restrict the scope to EU-flag vessels and not to seek extraterritorial jurisdiction over third-country vessels.

3.3. However, the EESC notes with concern the potential commercial disadvantages for EU flag ships and yards during the interim period. The EESC stresses that higher priority should be given to ensure rapid ratifications of the AFS Convention by the EU Member States, Norway and Iceland and the 13 applicant countries which together represent 30 countries with not less than 30.9% of the world tonnage, well beyond the conditions for entry into force of the AFS Convention. It is noteworthy that in the 13 applicant countries important maritime nations (Malta, Cyprus) as well as countries with considerable tonnage (Poland, Romania, Bulgaria) are included.

3.4. For States which would not be able to ratify the AFS Convention before 1 January 2003, the retroactive implementation of the ‘1 January 2003’ requirement, laid down in the Convention and in the Regulation, might create an impediment for the ratification process according to their national legislation. Conversely, for new buildings scheduled to be delivered in 2003 and contracted to be painted with TBT paints and for ships scheduled to be dry-docked and re-painted in 2003 with TBT paints, the retroactive requirement will have considerable financial implications. In order to minimize the impact to EU shipping, the Regulation should exempt such ships, and provide for more flexible deadlines of its application.

4. Specific comments

4.1. Article 3

4.1.1. The EESC proposes to amend points (a) and (b) in Article 3 paragraph 1 by adding the words ‘that enter a port or offshore terminal of a Member State’. By not imposing a general requirement for EU ships and excluding those operating outside EU waters, the impact will be lesser. A considerable percentage of the EU fleet operates in non-EU trades and would be able to take advantage of this temporary exemption.
4.1.2. The EESC proposes to include in paragraph 2 of Article 3 of the proposed Regulation, the requirement of Article 3 paragraph 2 (second sentence) of the AFS Convention, namely:

‘However, each Member State shall ensure, by the adoption of appropriate measures not impairing operations or operational capabilities of such ships owned or operated by them, that such ships act in a manner consistent, so far as reasonable and practicable, with this Regulation.’

4.2. Article 5

The EESC supports the option in Article 5 paragraph 1 of coating the hull to prevent leaching from the underlying TBT paint. This provision reflects the identical provision of the AFS Convention. Coating should be preferred to the removal of TBT paints and sandblasting due to the environmental impact of the residues of the removed TBT paint.

4.3. Article 6

Paragraph 3 seems to be pessimistic, contrary to the expectation for rapid entry into force of the AFS Convention, and therefore, it should be deleted. In any case, the notion is covered by Article 10.

4.4. Article 7

With respect to the second paragraph same comment as under Article 6.


4.5. Article 11

The EESC proposes to provide for entry into force in 1 January 2004, thus allowing for the smoother phasing out of the TBT paints in terms of ship compliance and market availability of new paints. The one year period will also allow for the evaluation of the State of compliance under Article 10 without undue burdening of the EU shipping.

5. Conclusions

5.1. The EESC shares the common desire to reduce the negative environmental impact of harmful anti-fouling paints used on ships and believes that the EU action should be consistent with the principles of the AFS Convention of IMO with due regard to legal constraints and commercial considerations.

5.2. Governments negotiating and adopting international instruments should set realistic targets and fulfil their commitments so as to avoid unwarranted implications. The Member States should urgently ratify the AFS Convention, assess the extent of compliance and the market prospects and define a realistic scope for the complementary action.

5.3. Early and total ban of TBT paints should be based on the firm belief that the new paints will not be equally or more harmful. Presently there is no evidence either way. The need for more experience justifies a conservative approach and a degree of flexibility.

5.4. A gradual application of the TBT paints phase out in the interim reconciles the environmental concerns with the need to preserve the competitiveness of the EU fleet worldwide.

The President
of the European Economic and Social Committee

Roger BRIESCH