

Regulating TBT from an European perspective

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Different legal environments

- ◆ International level
- ◆ Regional (EC) level
- ◆ National level

International Level

- ◆ Subjects
 - Sovereign States

Form

- Treaties

- ◆ AFS Convention

International Level

- ◆ Sovereign State

- Legal limits to state territory (Land and Sea territory)
- Jurisdiction within controlled territory
- Exceptions e.g. The right of innocent passage

International Level

- ◆ The International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001 (AFS)
 - Not yet in force - Article 18 (1)
 - Flag/Port state control - Article 3
 - Prohibition mechanism - Article 4 and Annex 1
 - Handling of residues - Article 5
 - Violations of the convention - Article 12

EC Level

◆ Subjects

- Member States
- Legal Persons (Companies)

◆ Form

- Regulations - EC Treaty Art.249
Directly applicable
- Directives - EC Treaty Art.249
Need not be addressed to all Member States
Binding with regard to the intended result (leeway)
- Decisions - EC Treaty Art.249
Binding on the addressee
Requires notification
- Opinions
Non-binding instrument
Info on exercise of discretion (Commission)
- Guidelines
Non-binding instrument

EC Policy on Biocides

- ◆ Regulation No 782/2003 on the prohibition of organotin compounds on ships
- ◆ Directive 98/8/EC concerning the placing of biocidal products on the market
- ◆ Regulation No 1896/2000 on the first phase of the program referred to in article 16(2) of Directive 98/8/EC
- ◆ Regulation No 2032/2003 on the second phase of the 10-year work program referred to in article 16(2) of Directive 98/8/EC, and amending Regulation (EC) No 1896/2000

EC Policy on Biocides

- ◆ A development from peaceful management of resources to an intricate system of law regulating other areas such as health and environment
 - ◆ The Single European Act article 174-176 enumerates the objectives of EC environmental policy
 - precautionary principle
 - Environmental damage should be rectified at the source
 - ◆ The Amsterdam Treaty (1997)
 - "sustainable development"
- EC is party to many different international conventions protecting the marine environment inter alia;
 - 1982 UNCLOS
 - 1974 Baltic Convention
 - 1976 Barcelona convention

EC Policy on Biocides

- ◆ Directive 98/8/EC (Substance and Product approval)
 - ◆ Into force 2000
 - ◆ Definition: "active substances and preparations containing one or more active substances, put up in the form in which they are supplied to the user, intended to destroy, deter, render harmless, prevent the action of, or otherwise exert a controlling effect of any harmful organism by chemical or biological means." - article 2 1(a), product type 21 annex 5 (anti-fouling products).
 - ◆ Biocidal substances are approved a Community Level -article 11 (only approved substance are allowed to in biocidal products)
 - ◆ A biocidal product can only be put on the market if it complies with the terms of the directive - article 3 and 8
 - ◆ The product must be evidenced not to have unacceptable effects on target organisms, on human or animal health and on the environment - article 5(b)

EC Policy on Biocides

- ◆ Directive 98/8/EC cont.
 - Time limited substance approval (10 years) - article 3.6
 - The product authorization can be reviewed (e.g. new info) - article 7
 - Can be mutually recognized - article 4

EC Policy on Biocides

◆ “The Ten-Year Program”

- ◆ EC Regulation 1896/2000
- ◆ EC Regulation 2032
- ◆ Aimed at establishing a list of the biocide substances on the market on the 14th of May 2000
- ◆ Producers of these substances must notify their interest to be included in this program (latest 31 January 2003) - a condition for authorization dir.98/8/EC article 5

EC Policy on Biocides

- ◆ Regulation 782/2003 on the prohibition of organotin compounds on ships
 - ◆ Reason for adoption - Put pressure on Member States to sign and ratify the AFS Convention (preamble)
 - ◆ The regulation contains two prohibitions i.e.
 - ◆ firstly, a prohibition to apply and re-apply organotin compounds which act as biocides (flag of a Member State)
 - ◆ secondly, a prohibition to bear organotin compounds which act as biocides (total ban from 1st of January 2008 both foreign and domestic flags)
 - ◆ Control mechanism (article 3) a combination of port and state control. Port state is "safety net".(Detention)
 - ◆ The regulation is complemented by other EC law e.g. Waste legislation and directive on control of ships.

National Level

- ◆ The single Member States possibility to create policies
 - ◆ The right to legislate is restricted - not in competence areas delegated to the EC and no interfering with the internal market or other international obligations (environment, trade etc.)
 - ◆ Room for voluntary initiatives by private parties e.g. Consumer and business organizations (Rent skepp)

Conclusions

- ◆ The AFS Convention functions as a lever when in force due to port state control
- ◆ The EC legislation already functions as such...

The AFS Convention lists the forbidden anti-fouling systems whereas the EC legislation lists the approved ones. Best precautionary measure?

Questions?