



Council of the
European Union

Brussels, 16 November 2017
(OR. en)

14012/17

MAR 180
OMI 42
ENV 893

COVER NOTE

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 16 November 2017

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

No. Cion doc.: SWD(2017) 377 final

Subject: COMMISSION STAFF WORKING DOCUMENT For the Council Shipping
Working party IMO – Union submission to be submitted to the 5th session
of the Sub-Committee on Pollution Prevention and Response (PPR 5) of
the IMO in London from 5 - 9 February 2018 concerning an initial proposal
to amend the Anti-Fouling Systems Convention (AFS 2001) to include
controls on Cybutryne

Delegations will find attached document SWD(2017) 377 final.

Encl.: SWD(2017) 377 final



Brussels, 15.11.2017
SWD(2017) 377 final

COMMISSION STAFF WORKING DOCUMENT

For the Council Shipping Working party

IMO – Union submission to be submitted to the 5th session of the Sub-Committee on Pollution Prevention and Response (PPR 5) of the IMO in London from 5 - 9 February 2018 concerning an initial proposal to amend the Anti-Fouling Systems Convention (AFS 2001) to include controls on Cybutryne

COMMISSION STAFF WORKING DOCUMENT
For the Council Shipping Working party

IMO – Union submission to be submitted to the 5th session of the Sub-Committee on Pollution Prevention and Response (PPR 5) of the IMO in London from 5 – 9 February 2018 concerning an initial proposal to amend the Anti-Fouling Systems Convention (AFS 2001) to include controls on Cybutryne

PURPOSE

The document in Annex contains a draft Union submission to the 5th session of the Sub-Committee on Pollution Prevention and Response (PPR 5) of the IMO concerning an initial proposal to amend the Anti-Fouling Systems Convention (AFS 2001) to include controls on Cybutryne. It is hereby submitted to the appropriate technical body of the Council with a view to achieving agreement on transmission of the document to the IMO prior to the required deadline of 1 December 2017¹.

Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products² establishes a harmonised system in the EU concerning the placing on the market and use of biocidal active substances and biocidal products. In particular, it aims at establishing at Union level a list of active substances which may be used in biocidal products. Pursuant to Article 9 of Regulation (EU) No 528/2012, decisions to approve or ban an active substance are adopted at EU level by the Commission. The non-approval Decision (EU) 2016/107³ was adopted to ban cybutryne for use in antifouling paints, and antifouling paints containing cybutryne cannot be placed on the market nor used in EU as from 27 January 2017. The said draft Union submission, aiming at further restricting the use of cybutryne in antifouling at international level by its incorporation into the Convention on the Control of Harmful Anti-Fouling Systems on Ships, therefore falls under EU exclusive competence.

¹ The submission of proposals or information papers to the IMO, on issues falling under external exclusive EU competence, are acts of external representation. Such submissions are to be made by an EU actor who can represent the Union externally under the Treaty, which for non-CFSP (Common Foreign and Security Policy) issues is the Commission or the EU Delegation in accordance with Article 17(1) TEU and Article 221 TFEU. IMO internal rules make such an arrangement absolutely possible as regards existing agenda and work programme items. This way of proceeding is in line with the General Arrangements for EU statements in multilateral organisations endorsed by COREPER on 24 October 2011.

² OJ L 167, 27.6.2012, p. 1.

³ OJ L 21, 28.1.2016, p. 81.

CONSIDERATION OF AN INITIAL PROPOSAL TO AMEND ANNEX 1 TO THE AFS CONVENTION TO INCLUDE CONTROLS ON CYBUTRYNE

Submitted by the European Commission on behalf of the European Union

SUMMARY

Executive summary: This document contains the required elements for an initial proposal to amend the Anti-Fouling Systems Convention (AFS 2001). The proposal refers the documented scientific evidence understood to include all the elements required for an Initial Proposal as listed in Annex 2 of the AFS Convention.

Strategic direction: 7.1

High-level action: 7.1.2

Output: No related provisions

Action to be taken: Paragraphs 12-14

Related documents: International Convention on the Control of Harmful Anti-Fouling Systems on Ships 2001 (AFS 2001); Resolutions A.900(21), PPR 5/INF.*, MEPC 71/14

Background and Introduction

1 This document is submitted in accordance with paragraph 6.12.1 of the *Guidelines on the organization and method of work of the Maritime Safety Committee and the Marine Environment Protection Committee and their subsidiary bodies* (MSC-MEPC.1/Circ.5).

2 MEPC 71 considered document MEPC 71/14 (Austria et al.), having agreed to include a new output on “Consideration of the initial proposal to amend Annex 1 to the AFS Convention to include controls on Cybutryne” in PPR’s biennial agenda for 2018-2019 and in the provisional agenda for PPR 5 with a target completion year of 2018.

3 The present submission follows invitation by MEPC for submission of initial proposal containing information required by Annex 2 of the AFS Convention. In this respect this

document includes all the necessary information and further scientific evidence that highlight the need to control Cybutryne through Annex 1 of the AFS Convention.

In addition to the present submission, additional information on the elements required for an Initial Proposal is included in the information paper PPR5/INF [reference to be inserted].

Elements required for an initial proposal

4 The following paragraphs are included as reference indicators to the information required by Annex 2 of the AFS Convention.

5 *1(a) Identification of the antifouling system addressed in the proposal: name of the anti-fouling system; name of the active ingredients and Chemical Abstract Services Registry Number (CAS number), as applicable; or components of the system which are suspected of causing the adverse effects of concern:*

Referring to paragraph 15 of document MEPC 71/14, Cybutryne is the common name for N'-tert-butyl-N-cyclopropyl-6-(methylthio)-1, 3, 5-triazine-2, 4-diamine (CAS number 28159-98-0). Usually in the form of a white powder, Cybutryne is one of the herbicides and algaecides within the triazine family which acts to reduce plant photosynthetic ability. Its mode of action consists of inhibiting the photosystem-II (PSII) by interfering with the photosynthetic electron capture transport in chloroplasts. Cybutryne is available under the commercial names Irgarol 1051, Irgarol 1071 and Irgaguard D1071. Cybutryne has been used since the mid-1980s *Hall et al., (1999)*. It is applied at marine as well as at inland freshwater sites and is more effective against freshwater and seawater algae than aquatic animal organisms *Yebra, (2004)*. It is often combined with copper or copper compounds in anti-fouling paints.

6 *1(b) Characterization of the information which suggests that the anti-fouling system or its transformation products may pose a risk to human health or may cause adverse effects in non-target organisms at concentrations likely to be found in the environment (e.g., the results of toxicity studies on representative species or bioaccumulation data:*

Extensive scientific studies presented in detail in Chapter I of document PPR5/INF [reference to be inserted] showed that Cybutryne has the potential to cause adverse effects to non-target organisms. The results from the toxicity studies have concluded that Cybutryne is highly toxic to aquatic species irrespectively of whether a marine or water specie was tested. Hereby, the adverse effect of Cybutryne can be ranked to extremely toxic, very toxic and moderately toxic in respect to the various species that were studied. Furthermore, tests have been conducted for algae and aquatic macrophytes and found that the inhibition of the photosynthetic activity occurs in photo-system II (PSII), where the incorporation CO₂ in organic molecules is inhibited resulting to reduced growth. In addition the main degradation product of Cybutryne, 2-methylthio-4-tert-butylamino-6-amino-s-triazine (metabolite known as M1 or GS26575), has also been found to be toxic to aquatic plants and algae, although less toxic than Cybutryne itself.

7 *1(c) Material supporting the potential of the toxic components in the anti-fouling system, or its transformation products, to occur in the environment at concentrations which could result in adverse effects to non-target organisms, human health, or water quality (e.g., data on*

persistence in the water column sediments and biota; the release rate of toxic components from treated surfaces in studies or under actual use conditions or monitoring data, if available):

Several studies have been conducted and are summarized in detail in Chapter II of document PPR5/INF [reference to be inserted]. These studies have shown that Cybutryne has a potential to accumulate both in fish (BCF 250 L/kg) and in macro algae (BCF 5200 L/kg) since Cybutryne's absorption characteristics in combination with its resistance towards biodegradation contribute significantly to bioaccumulation. Furthermore, this antifouling active substance threatens a variety of habitats, from coral reefs and seagrass beds to open moorings. Its primarily algacide properties makes coral zooxanthellae, phytoplankton and periphyton particularly vulnerable. Cybutryne is toxic and persistent. The long term exposure to this substance can lead to reduced photochemical efficiency of algae which, for corals, may lead to breakdown of the coral- zooxanthellae symbiosis (ie. bleaching of coral reefs), demanding lengthy recovery times.

8 *1(d) An analysis of the association between the anti-fouling system, the related adverse effects and the environmental concentrations observed or anticipated;*

Various scientific studies were concluded independently by researchers and companies from different IMO Member States, and are presented in detail in Chapter III of document PPR5/INF [reference to be inserted]. These studies have shown that Cybutryne is responsible for changes in species populations causing significant adverse environmental impacts. The gathered monitoring data were obtained from marinas, commercial harbours and also from offshore stations. In one of the cases studied in the UK, the study has shown that 4 years after Cybutryne was banned at a national level, the concentration levels in the environment were still above the Predicted no-effect concentration (PNEC). Combined with the long term adverse effects of the substance, this it is a serious indication that the use of Cybutryne can irreversible harm the environment and specially the aquatic ecosystems.

9 *1(e) A preliminary recommendation on the type of restrictions that could be effective in reducing the risks associated with the anti-fouling;*

The long term environmental adverse effects that can be associated with the use of Cybutryne lead to the conclusion that the only appropriate measure to mitigate the risks resulting from the use of this substance is to recommend to permanently prohibit its use in Anti-Fouling Systems on all type of ships, and include it into the Annex 1 of the AFS Convention.

Proposed way forward

10 Evidence has been provided evidence of the unacceptable risks identified for the environment relating to the use of anti-fouling paints that contain Cybutryne and proposed the control of this chemical substance through an amendment to Annex 1 of the AFS Convention. Provisions prescribed in Article 6 of the AFS Convention have been followed.

11 In this respect, in particular, the Subcommittee is requested to deliberate on the merits of the present Initial Proposal and to advise MEPC accordingly.

The scientific data in this document and document PPR5/INF* indicate that Cybutryne is a substance that is causing significant adverse effects to the environment, especially to aquatic

ecosystems. Therefore, in line with Article 6 of the AFS Convention, a Comprehensive Proposal containing the information required in Annex 3 of the Convention can be provided, to be submitted, following good consideration of the Subcommittee, to MEPC for subsequent confirmation.

Action requested by the Subcommittee

12 The Subcommittee is invited to consider the information provided in this document and in document PPR5/INF* containing the information required by Annex 2 of the AFS Convention.

13 Accounting for the significant scientific data presented the Subcommittee is further invited to advise MEPC on the merit of the proposal, allowing further for a Comprehensive Proposal to be elaborated and submitted.