

COMMISSION IMPLEMENTING DECISION (EU) 2021/737**of 4 May 2021**

concerning the extension of the action taken by the Austrian Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology permitting the making available on the market and use of the biocidal product Biobor JF in accordance with Article 55(1) of Regulation (EU) No 528/2012 of the European Parliament and of the Council

(notified under document C(2021) 3015)

(Only the German text is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 products ⁽¹⁾, and in particular Article 55(1), third subparagraph, thereof,

Whereas:

- (1) On 24 June 2020 the Austrian Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology ('the competent authority') adopted a decision in accordance with Article 55(1), first subparagraph, of Regulation (EU) No 528/2012 to permit the making available on the market and use of the biocidal product Biobor JF for antimicrobial treatment of aircraft fuel tanks and fuel systems until 22 December 2020 ('the action'). The competent authority informed the Commission and the competent authorities of the other Member States about the action and the justification for it, in accordance with Article 55(1), second subparagraph, of that Regulation.
- (2) According to the information provided by the competent authority, the action was necessary in order to protect public health. The microbiological contamination of aircraft fuel tanks and fuel systems can lead to malfunctions of the aircraft engine and endanger its airworthiness, thus endangering the safety of passengers and crew. The Covid-19 pandemic and the ensuing flight restrictions led to numerous aircraft being temporarily parked. The immobility of aircraft is an aggravating factor of microbiological contamination.
- (3) Biobor JF contains 2,2'-(1-methyltrimethylenedioxy)bis-(4-methyl-1,3,2-dioxaborinane) (CAS number 2665-13-6) and 2,2'-oxybis (4,4,6-trimethyl-1,3,2-dioxaborinane) (CAS number 14697-50-8), active substances for use in biocidal products of product-type 6 as preservatives for products during storage as defined in Annex V to Regulation (EU) No 528/2012. As those active substances are not listed in Annex II to Commission Delegated Regulation (EU) No 1062/2014 ⁽²⁾, they are not included in the work programme for the systematic examination of all existing active substances contained in biocidal products referred to in Regulation (EU) No 528/2012. Article 89 of that Regulation therefore does not apply to them and they have to be assessed and approved before biocidal products containing them can be authorised also at national level.
- (4) On 7 December 2020, the Commission received a reasoned request from the competent authority to extend the action in accordance with Article 55(1), third subparagraph, of Regulation (EU) No 528/2012. The reasoned request was made on the basis of concerns that air transport safety might continue to be endangered by microbiological contamination of aircraft fuel tanks and fuel systems after 22 December 2020 and the claim that Biobor JF is essential in order to control such microbiological contamination.

⁽¹⁾ OJ L 167, 27.6.2012, p. 1.

⁽²⁾ Commission Delegated Regulation (EU) No 1062/2014 of 4 August 2014 on the work programme for the systematic examination of all existing active substances contained in biocidal products referred to in Regulation (EU) No 528/2012 of the European Parliament and of the Council (OJ L 294, 10.10.2014, p. 1).

- (5) According to the information provided by the competent authority, Biobor JF is the only product available for the treatment of microbiological contamination. The only alternative biocidal product recommended by aircraft and engine manufacturers for that use (Kathon™ FP 1.5) is no longer made available on the market.
- (6) As indicated by the competent authority, mechanical treatment of the fuel tanks and fuel systems is possible only to a limited extent and, according to manufacturers' specifications, it often has to be accompanied by the addition of a biocidal product after the cleaning of the tank. Mechanical tank treatment could take up to over 200 person-hours, depending on the aircraft type, meaning a maintenance downtime of the aircraft of several days.
- (7) In addition, mechanical treatment implies that aircraft mechanics have to work in a tight tank with numerous safety precautions, which is extremely demanding physically and mentally, and should be reduced to a minimum.
- (8) According to the information available to the Commission, the manufacturer of Biobor JF has taken steps towards the regular authorisation of the product and an application for approval of the active substances it contains is expected to be submitted in the near future. The approval of the active substances and subsequent authorisation of the biocidal product would constitute a permanent solution for the future, but a significant amount of time would be needed for the completion of those procedures.
- (9) The lack of control of microbiological contamination of aircraft fuel tanks and fuel systems might endanger the air transport safety and that danger cannot be adequately contained by using another biocidal product or by other means. It is therefore appropriate to allow the competent authority to extend the action.
- (10) Considering that the action expired on 22 December 2020, this Decision should have retroactive effect.
- (11) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Biocidal Products,

HAS ADOPTED THIS DECISION:

Article 1

The Austrian Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology may extend the action to permit the making available on the market and use of the biocidal product Biobor JF for antimicrobial treatment of aircraft fuel tanks and fuel systems until 26 June 2022.

Article 2

This Decision is addressed to the Austrian Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology.

It shall apply from 23 December 2020.

Done at Brussels, 4 May 2021.

For the Commission
Stella KYRIAKIDES
Member of the Commission
