COMMISSION IMPLEMENTING DECISION (EU) 2021/738

of 4 May 2021

concerning the extension of the action taken by German Federal Office for Chemicals 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) 3016)

(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 15 September 2020 the German Federal Office for Chemicals ('the competent authority') adopted a decision, applicable from 5 October 2020, in accordance with Article 55(1), first subparagraph, of Regulation (EU) No 528/2012 to permit the making available on the market for, and use by, professional users of the biocidal product Biobor JF for the antimicrobial treatment of aircraft fuel tanks and fuel systems until 3 April 2021 ('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 20 January 2021, 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 3 April 2021 and the claim that Biobor JF is essential in order to control such microbiological contamination.

(5) According to the information provided by the competent authority, the only alternative biocidal product recommended by aircraft and engine manufacturers for the treatment of microbiological contamination (Kathon™ FP 1.5) was withdrawn from the market due to safety-related incidents noticed after the treatment with that product.

([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).

(6) As indicated by the competent authority, manual cleaning of the fuel tanks is possible only when it is in accordance with the manufacturer's specifications. However, manual cleaning is often carried out in combination with biocidal treatment, as required by agreed aviation procedures, and requires the complete disposal of the contaminated aviation fuel as well as physically and mentally demanding work in the narrow fuel tank under numerous safety precautions. Manual cleaning of fuel tanks should therefore be avoided as far as possible.

(7) 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 be a permanent solution for the future, but a significant amount of time would be needed for the completion of those procedures.

(8) 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.

(9) 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 German Federal Office for Chemicals may extend until 6 October 2022 the action to permit the making available on the market for, and use by, professional users of the biocidal product Biobor JF for the antimicrobial treatment of aircraft fuel tanks and fuel systems .

Article 2

This Decision is addressed to the German Federal Office for Chemicals.

Done at Brussels, 4 May 2021.

For the Commission
Stella KYRIAKIDES
Member of the Commission