

## DIRECTIVES

## COMMISSION DIRECTIVE 2010/87/EU

of 3 December 2010

## amending Council Directive 91/414/EEC to include fenbuconazole as active substance and amending Decision 2008/934/EC

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market <sup>(1)</sup>, and in particular Article 6(1) thereof,

Whereas:

(1) Commission Regulations (EC) No 451/2000 <sup>(2)</sup> and 1490/2002 <sup>(3)</sup> lay down the detailed rules for the implementation of the third stage of the programme of work referred to in Article 8(2) of Directive 91/414/EEC and establish a list of active substances to be assessed, with a view to their possible inclusion in Annex I to Directive 91/414/EEC. That list included fenbuconazole.

(2) In accordance with Article 11e of Regulation (EC) No 1490/2002 the applicant withdrew its support of the inclusion of that active substance in Annex I to Directive 91/414/EEC within two months from receipt of the draft assessment report. Consequently, Commission Decision 2008/934/EC of 5 December 2008 concerning the non-inclusion of certain active substances in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing these substances <sup>(4)</sup> was adopted on the non-inclusion of fenbuconazole.

(3) Pursuant to Article 6(2) of Directive 91/414/EEC the original notifier (hereinafter the applicant) submitted a new application requesting the accelerated procedure to be applied, as provided for in Article 14 to 19 of Commission Regulation (EC) No 33/2008 of 17 January 2008 laying down detailed rules for the

application of Council Directive 91/414/EEC as regards a regular and an accelerated procedure for the assessment of active substances which were part of the programme of work referred to in Article 8(2) of that Directive but have not been included into its Annex I <sup>(5)</sup>.

(4) The application was submitted to the United Kingdom, which had been designated rapporteur Member State by Regulation (EC) No 451/2000. The time period for the accelerated procedure was respected. The specification of the active substance and the supported uses are the same as were the subject of Decision 2008/934/EC. That application also complies with the remaining substantive and procedural requirements of Article 15 of Regulation (EC) No 33/2008.

(5) The United Kingdom evaluated the additional data submitted by the applicant and prepared an additional report. It communicated that report to the European Food Safety Authority (hereinafter 'the Authority') and to the Commission on 20 July 2009. The Authority communicated the additional report to the other Member States and the applicant for comments and forwarded the comments it had received to the Commission. In accordance with Article 20(1) of Regulation (EC) No 33/2008 and at the request of the Commission, the Authority presented its conclusion on fenbuconazole to the Commission on 18 March 2010 <sup>(6)</sup>. The draft assessment report, the additional report and the conclusion of the Authority were reviewed by the Member States and the Commission within the Standing Committee on the Food Chain and Animal Health and finalised on 28 October 2010 in the format of the Commission review report for fenbuconazole.

(6) It has appeared from the various examinations made that plant protection products containing fenbuconazole may be expected to satisfy, in general, the requirements laid down in Article 5(1)(a) and (b) of Directive 91/414/EEC, in particular with regard to the uses which have been

<sup>(1)</sup> OJ L 230, 19.8.1991, p. 1.

<sup>(2)</sup> OJ L 55, 29.2.2000, p. 25.

<sup>(3)</sup> OJ L 224, 21.8.2002, p. 23.

<sup>(4)</sup> OJ L 333, 11.12.2008, p. 11.

<sup>(5)</sup> OJ L 15, 18.1.2008, p. 5.

<sup>(6)</sup> European Food Safety Authority; Conclusion on the peer review of the pesticide risk assessment of the active substance fenbuconazole. EFSA Journal 2010; 8(4):1558. [67pp].doi:10.2903/j.efsa.2010.1558. Available online: www.efsa.europa.eu

examined and detailed in the Commission review report. It is therefore appropriate to include fenbuconazole in Annex I, in order to ensure that in all Member States the authorisations of plant protection products containing this active substance can be granted in accordance with the provisions of that Directive.

- (7) Without prejudice to that conclusion, it is appropriate to obtain further information on certain specific points. Article 6(1) of Directive 91/414/EC provides that inclusion of a substance in Annex I may be subject to conditions. Therefore, it is appropriate to require that the applicant submit confirmatory data on residues of triazole derivative metabolites (TDMs) in primary crops, rotational crops and products of animal origin. To further refine the assessment of potential endocrine disrupting properties, it is appropriate to require that fenbuconazole be subjected to further testing as soon as OECD test guidelines on endocrine disruption, or, alternatively, Community agreed test guidelines exist.
- (8) A reasonable period should be allowed to elapse before an active substance is included in Annex I in order to permit Member States and the interested parties to prepare themselves to meet the new requirements which will result from the inclusion.
- (9) Without prejudice to the obligations defined by Directive 91/414/EEC as a consequence of including an active substance in Annex I, Member States should be allowed a period of six months after inclusion to review existing authorisations of plant protection products containing fenbuconazole to ensure that the requirements laid down by Directive 91/414/EEC, in particular in its Article 13 and the relevant conditions set out in Annex I, are satisfied. Member States should vary, replace or withdraw, as appropriate, existing authorisations, in accordance with the provisions of Directive 91/414/EEC. By derogation from the above deadline, a longer period should be provided for the submission and assessment of the complete Annex III dossier of each plant protection product for each intended use in accordance with the uniform principles laid down in Directive 91/414/EEC.
- (10) The experience gained from previous inclusions in Annex I to Directive 91/414/EEC of active substances assessed in the framework of Commission Regulation (EEC) No 3600/92 of 11 December 1992 laying down the detailed rules for the implementation of the first stage of the programme of work referred to in Article 8(2) of Council Directive 91/414/EEC concerning the placing of plant protection products on the market<sup>(1)</sup> has shown that difficulties can arise in interpreting the duties of holders of existing authorisations in relation to access to data. In order to avoid further difficulties it therefore appears necessary to clarify the duties of

the Member States, especially the duty to verify that the holder of an authorisation demonstrates access to a dossier satisfying the requirements of Annex II to that Directive. However, this clarification does not impose any new obligations on Member States or holders of authorisations compared to the directives which have been adopted until now amending Annex I.

- (11) It is therefore appropriate to amend Directive 91/414/EEC accordingly.
- (12) Commission Decision 2008/934/EC of 5 December 2008 concerning the non-inclusion of certain active substances in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing these substances provides for the non-inclusion of fenbuconazole and the withdrawal of authorisations for plant protection products containing that substance by 31 December 2011. It is necessary to delete the line concerning fenbuconazole in the Annex to that Decision.
- (13) It is therefore appropriate to amend Decision 2008/934/EC accordingly.
- (14) The measures provided for in this Directive are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

Annex I to Directive 91/414/EEC is amended as set out in the Annex to this Directive.

*Article 2*

The line concerning fenbuconazole in the Annex to Decision 2008/934/EC is deleted.

*Article 3*

Member States shall adopt and publish by 31 October 2011 at the latest the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions from 1 November 2011.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

<sup>(1)</sup> OJ L 366, 15.12.1992, p. 10.

*Article 4*

1. Member States shall in accordance with Directive 91/414/EEC, where necessary, amend or withdraw existing authorisations for plant protection products containing fenbuconazole as an active substance by 1 November 2011.

By that date they shall in particular verify that the conditions in Annex I to that Directive relating to fenbuconazole are met, with the exception of those identified in part B of the entry concerning that active substance, and that the holder of the authorisation has, or has access to, a dossier satisfying the requirements of Annex II to that Directive in accordance with the conditions of Article 13 of that Directive.

2. By way of derogation from paragraph 1, for each authorised plant protection product containing fenbuconazole as either the only active substance or as one of several active substances all of which were listed in Annex I to Directive 91/414/EEC by 30 April 2011 at the latest, Member States shall re-evaluate the product in accordance with the uniform principles provided for in Annex VI to Directive 91/414/EEC, on the basis of a dossier satisfying the requirements of Annex III to that Directive and taking into account part B of the entry in Annex I to that Directive concerning fenbuconazole. On the basis of that evaluation, they shall determine whether the product satisfies the conditions set out in Article 4(1)(b), (c), (d) and (e) of Directive 91/414/EEC.

Following that determination Member States shall:

- (a) in the case of a product containing fenbuconazole as the only active substance, where necessary, amend or withdraw the authorisation by 30 April 2015 at the latest; or
- (b) in the case of a product containing fenbuconazole as one of several active substances, where necessary, amend or withdraw the authorisation by 30 April 2015 or by the date fixed for such an amendment or withdrawal in the respective Directive or Directives which added the relevant substance or substances to Annex I to Directive 91/414/EEC, whichever is the latest.

*Article 5*

This Directive shall enter into force on 1 May 2011.

*Article 6*

This Directive is addressed to the Member States.

Done at Brussels, 3 December 2010.

*For the Commission*  
*The President*

José Manuel BARROSO

## ANNEX

The following entry shall be added at the end of the table in Annex I to Directive 91/414/EC:

No	Common Name, Identification Numbers	IUPAC Name	Purity (*)	Entry into force	Expiration of inclusion	Specific provisions
320	Fenbuconazole CAS No: 114369-43-6 CIPAC No: 694	(R,S) 4-(4-chlorophenyl)-2-phenyl-2-(1H-1,2,4-triazol-1-ylmethyl)butyronitrile	≥ 965 g/kg	1 May 2011	30 April 2021	<p>PART A</p> <p>Only uses as fungicide may be authorised.</p> <p>PART B</p> <p>For the implementation of the uniform principles of Annex VI, the conclusions of the review report on fenbuconazole, and in particular Appendices I and II thereof, as finalised in the Standing Committee on the Food Chain and Animal Health on 28 October 2010 shall be taken into account.</p> <p>In this overall assessment Member States shall pay particular attention to:</p> <ul style="list-style-type: none"> <li>— the operator safety and ensure that conditions of use prescribe the application of adequate personal protective equipment where appropriate,</li> <li>— the dietary exposure of consumers to the residues of triazole derivative metabolites (TDMs),</li> <li>— the risk to aquatic organisms and mammals.</li> </ul> <p>Conditions of use shall include risk mitigation measures, where appropriate.</p> <p>The Member States concerned shall request the submission of confirmatory data on residues of triazole derivative metabolites (TDMs) in primary crops, rotational crops and products of animal origin.</p> <p>They shall ensure that the applicant provides such studies to the Commission by 30 April 2013.</p> <p>The Member States concerned shall ensure that the applicant submits to the Commission further information addressing the potential endocrine disrupting properties of fenbuconazole within two years after the adoption of the OECD test guidelines on endocrine disruption or, alternatively, of Community agreed test guidelines.'</p>

(\*) Further details on identity and specification of active substance are provided in the review report.