

COMMISSION IMPLEMENTING DECISION (EU) 2023/687**of 24 March 2023****concerning the extension of the action taken by the Dutch Ministry of Infrastructure and Water Management permitting the making available on the market and use of the biocidal product Biobor JF in accordance with Regulation (EU) No 528/2012 of the European Parliament and of the Council***(notified under document C(2023) 1865)***(Only the Dutch 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 19 October 2022, the Dutch Ministry of Infrastructure and Water Management ('the Dutch competent authority') adopted, in accordance with Article 55(1), first subparagraph, of Regulation (EU) No 528/2012, a decision to permit, until 2 March 2023, 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 ('the action'). The Dutch competent authority informed the Commission and the competent authorities of the other Member States of 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 Dutch competent authority, the action was necessary in order to protect public health. Microbiological contamination of aircraft fuel tanks and fuel systems is caused by micro-organisms, such as bacteria, mould and yeast, that grow in the settled water and feed off the hydrocarbons in the fuel at the fuel-to-water interface. If left untreated, 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 prevention and treatment of microbiological contamination, when detected, are therefore crucial in order to avoid operational problems in aircraft.
- (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) as active substances. Biobor JF is a biocidal product of product-type 6, namely 'preservative for products during storage', as defined in Annex V to Regulation (EU) No 528/2012. 2,2'-(1-methyltrimethylenedioxy)bis-(4-methyl-1,3,2-dioxaborinane) and 2,2'-oxybis (4,4,6-trimethyl-1,3,2-dioxaborinane) have not been evaluated for use in biocidal products of product-type 6. As those 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 those active substances, and they have to be assessed and approved before biocidal products containing them can be authorised also at national level.
- (4) On 28 October 2022, the Commission received a reasoned request from the Dutch competent authority to allow the extension of the action in accordance with Article 55(1), third subparagraph, of Regulation (EU) No 528/2012. The reasoned request was based on concerns that air transport safety might continue to be endangered by microbiological contamination of aircraft fuel tanks and fuel systems and on the argument 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 Dutch competent authority, the only alternative biocidal product recommended by aircraft and aircraft engine manufacturers for the treatment of microbiological contamination (Kathon™ FP 1.5) was withdrawn from the market in March 2020 due to severe behaviour anomalies in aircraft engines that were noticed after the treatment with that product. Biobor JF is therefore the only available product for that use recommended by aircraft and aircraft engine manufacturers.
- (6) As indicated by the Dutch competent authority, the alternative procedure for treating an existing microbiological contamination, that is manual removal in-tank, is not always possible to perform. Moreover, such treatment would expose workers to toxic gases and therefore should be avoided.
- (7) According to the information provided to the Commission, the manufacturer of Biobor JF has taken steps towards a regular authorisation of the product. An application for approval of the active substances that Biobor JF contains is expected to be submitted in mid-2023. 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.
- (8) The lack of control of microbiological contamination of aircraft fuel tanks and fuel systems might endanger 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 Dutch competent authority to extend the action.
- (9) Since the action has expired on 2 March 2023, this Decision should apply retroactively.
- (10) 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 Dutch Ministry of Infrastructure and Water Management may extend until 3 September 2024 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 Dutch Ministry of Infrastructure and Water Management.

It shall apply from 3 March 2023.

Done at Brussels, 24 March 2023.

For the Commission
Stella KYRIAKIDES
Member of the Commission
