

COMMISSION DECISION**of 24 June 2014****concerning the placing on the market for essential use of biocidal products containing copper***(notified under document C(2014) 4062)***(Only the Danish, Dutch, English, Estonian, Finnish, French, German, Italian, Latvian, Maltese, Polish and Swedish texts are authentic)**

(2014/395/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Commission Regulation (EC) No 1451/2007 of 4 December 2007 on the second phase of the 10-year work programme referred to in Article 16(2) of Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market ⁽¹⁾, and in particular Article 5(3) thereof,

Whereas:

- (1) Pursuant to Article 4 of Commission Regulation (EC) No 1896/2000 of 7 September 2000 on the first phase of the programme referred to in Article 16(2) of Directive 98/8/EC of the European Parliament and of the Council on biocidal products ⁽²⁾, copper was notified for use, i.a., in product-types 2, 5 and 11, as defined in Annex V to Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market ⁽³⁾.
- (2) No complete dossier was submitted in support of the inclusion of copper in Annex I, IA or IB to Directive 98/8/EC within any of the relevant deadlines. Pursuant to Commission Decision 2012/78/EU of 9 February 2012 concerning the non-inclusion of certain substances in Annex I, IA or IB to Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market ⁽⁴⁾ read in combination with Article 4(2) of Regulation (EC) No 1451/2007, copper is no longer to be placed on the market for use in product-types 2, 5 or 11 as of 1 February 2013.
- (3) Pursuant to Article 5 of Regulation (EC) No 1451/2007, Ireland, Estonia, Italy, Poland, France, Belgium, the United Kingdom, Germany, Latvia, Finland, Luxembourg, Sweden, Denmark and Malta have submitted separate applications to the Commission for permission to allow the placing on the market of biocidal products containing copper for a number of uses.
- (4) The Commission made the applications publicly available by electronic means.
- (5) It follows from the applications that transmission of Legionella has been associated, in particular, with use of water such as drinking water, bathing water, showering water and water in cooling towers. Furthermore, it follows that Legionella can be fatal, especially in vulnerable groups such as hospital patients. According to the applications, selection of a suitable system for legionella control is complex and depends on a number of parameters such as system design, age, complexity and water chemistry.

⁽¹⁾ OJ L 325, 11.12.2007, p. 3.

⁽²⁾ OJ L 228, 8.9.2000, p. 6.

⁽³⁾ OJ L 123, 24.4.1998, p. 1.

⁽⁴⁾ OJ L 38, 11.2.2012, p. 48.

- (6) It also follows from some of the applications, that biocidal products containing copper are used to prevent growth of organisms in water used in swimming pools that can lead to a wide variety infections.
- (7) Furthermore, it follows from some of the applications, that biocidal products containing copper are used to prevent growth of organisms in the main water inlet for offshore oil and gas platforms as well as other marine and coastal installations, where that use is essential to avoid blocking the inlet of water used for, i.a., processing, drinking water and bathing water production, and fire fighting, since blocking that inlet could be fatal for the health and safety of the staff at the installation.
- (8) Lastly, it follows from some of the applications, that biocidal products containing copper are used to prevent growth of organisms in the main water inlet ships, where that use is essential to avoid blocking the inlet of water used throughout the entire pipework and waterway system of a ship. This includes the internals of all pipework, like the fire suppression system, vital to the safe operation of the ship.
- (9) No comments were received during the public consultation on these applications. The Member States having submitted the applications have argued that, in their territories, it is necessary to have an adequate range of technical and economic feasible alternatives available to control legionella, or other harmful organisms, and, where relevant, to reduce the risk of blocking the main water inlet for offshore installations, other marine and coastal installations, or on ships.
- (10) It therefore appears likely that not allowing use for Legionella control or other harmful organisms, or where relevant for preventing growth of organisms in the water inlet for offshore oil and gas platforms, other marine and coastal installations, or on ships, in those Member States would currently pose a serious risk for public health. In addition, the cost, logistical and practical feasibility of turning off or substituting current copper-based systems on ships may be prohibitive in many cases. If feasible, the substitution may take some time. The requested derogations for essential use are therefore currently necessary.
- (11) However, unless a complete application for approval of copper for use in the relevant product-types is submitted without undue delay, users of biocidal products containing copper should implement alternative methods for Legionella control or organism growth prevention. It is therefore appropriate to require that, in such a case, users in those Member States are actively informed in due time to allow them to ensure that those alternative methods are effective before the biocidal products containing copper have to be withdrawn from the market,

HAS ADOPTED THIS DECISION:

Article 1

1. Subject to the conditions provided for by Article 5(3) of Regulation (EC) No 1451/2007, Ireland, Estonia, Italy, Poland, France, Belgium, the United Kingdom, Germany, Latvia, Finland, Luxembourg, Sweden, Denmark and Malta may allow the placing on the market of biocidal products containing copper (EC No 231-159-6; CAS No 7440-50-8) for the uses indicated in the Annex to this Decision.

2. If dossiers for the approval of copper for the product-types relevant to those uses have been submitted and validated as complete by the evaluating Member State by 31 December 2014 at the latest, Ireland, Estonia, Italy, Poland, France, Belgium, the United Kingdom, Germany, Latvia, Finland, Luxembourg, Sweden, Denmark and Malta may continue allowing that placing on the market until the deadlines provided for in Article 89 of 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⁾ for cases where a substance is or is not approved.

3. In other cases than those provided for in paragraph 2, Ireland, Estonia, Italy, Poland, France, Belgium, the United Kingdom, Germany, Latvia, Finland, Luxembourg, Sweden, Denmark and Malta may continue allowing that placing on the market until 31 December 2017 provided that those Member States ensure, as of 1 January 2015, that users are actively informed about the immediate need to effectively implement alternative methods for the relevant purposes.

⁽¹⁾ OJ L 167, 27.6.2012, p. 1.

Article 2

This Decision is addressed to the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, Ireland, the French Republic, the Italian Republic, the Republic of Latvia, the Grand Duchy of Luxembourg, Republic of Malta, the Republic of Poland, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 24 June 2014.

For the Commission
Janez POTOČNIK
Member of the Commission

ANNEX

USES WHICH THE MEMBER STATES LISTED HEREUNDER MAY ALLOW, SUBJECT TO COMPLIANCE WITH THE CONDITIONS OF ARTICLE 1

No	Member State	A Product-type 2	B Product-type 5	C Product-type 11
1	Ireland	For control of Legionella in water for human use, such as bathing and showering water.	For control of Legionella in drinking water.	—
2	Estonia	—	—	For the prevention of biofouling of the water inlet/pumps and throughout the entire pipework and waterway system of a ship.
3	Italy	For control of Legionella in water for human use, such as bathing and showering water.	For control of Legionella in drinking water.	For control of Legionella in cooling towers water. For the prevention of biofouling in the water inlet/pumps and throughout the entire pipework and waterway system of offshore oil and gas platforms, and other marine and costal installations. For the prevention of biofouling of the water inlet/pumps and throughout the entire pipework and waterway system of a ship.
4	Poland	—	—	For the prevention of biofouling of the water inlet/pumps and throughout the entire pipework and waterway system of a ship.
5	France	For control of Legionella and other harmful organisms in water for private swimming pools.	—	For the prevention of biofouling of the water inlet/pumps and throughout the entire pipework and waterway system of a ship.
6	Belgium	For control of Legionella in water for human use, such as bathing and showering water.	For control of Legionella in drinking water.	For control of Legionella in cooling towers water. For the prevention of biofouling in the water inlet/pumps and throughout the entire pipework and waterway system of offshore oil and gas platforms, and other marine and costal installations. For the prevention of biofouling of the water inlet/pumps and throughout the entire pipework and waterway system of a ship.
7	The United Kingdom	For control of Legionella and other harmful organisms in water for swimming pools and animal pools.	—	For the prevention of biofouling in the water inlet/pumps and throughout the entire pipework and waterway system of offshore oil and gas platforms, and other marine and costal installations For the prevention of biofouling of the water inlet/pumps and throughout the entire pipework and waterway system of a ship.

No	Member State	A	B	C
		Product-type 2	Product-type 5	Product-type 11
8	Germany	—	—	For the prevention of biofouling in the water inlet/pumps and throughout the entire pipework and waterway system of offshore oil and gas platforms, and other marine and costal installations. For the prevention of biofouling of the water inlet/pumps and throughout the entire pipework and waterway system of a ship.
9	Latvia	—	—	For the prevention of biofouling of the water inlet/pumps and throughout the entire pipework and waterway system of a ship.
10	Finland	—	—	For the prevention of biofouling of the water inlet/pumps and throughout the entire pipework and waterway system of a ship.
11	Luxembourg	—	—	For the prevention of biofouling of the water inlet/pumps and throughout the entire pipework and waterway system of a ship.
12	Sweden	—	—	For the prevention of biofouling of the water inlet/pumps and throughout the entire pipework and waterway system of a ship.
13	Denmark	—	—	For the prevention of biofouling in the water inlet/pumps and throughout the entire pipework and waterway system of offshore oil and gas platforms, and other marine and costal installations. For the prevention of biofouling of the water inlet/pumps and throughout the entire pipework and waterway system of a ship..
14	Malta	For control of Legionella in water for human use, such as bathing and showering water.	—	For the prevention of biofouling in the water inlet/pumps and throughout the entire pipework and waterway system of offshore oil and gas platforms, and other marine and costal installations. For the prevention of biofouling of the water inlet/pumps and throughout the entire pipework and waterway system of a ship.