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COMMISSION IMPLEMENTING DECISION

of 1.2.2022

determining whether a product containing Alkyl (C₁₂₋₁₆) dimethylbenzyl ammonium chloride is a biocidal product, pursuant to Article 3(3) of Regulation (EU) No 528/2012 of the European Parliament and of the Council

(Text with EEA relevance)

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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 products¹, and in particular Article 3(3) thereof,

Whereas:

- (1) On 2 July 2020, Denmark requested the Commission to decide whether a product which contains Alkyl (C₁₂₋₁₆) dimethylbenzyl ammonium chloride (ADBAC/BKC (C₁₂-C₁₆)) in a concentration of 2,4% and is marketed in Denmark by the manufacturer as a long-acting cleaning agent for removing layers of build-up on timber, brickwork, roofing slabs, paving stones, and other surfaces (“the product”), is a biocidal product as defined in Article 3(1), point (a), of Regulation (EU) No 528/2012.
- (2) Alkyl (C₁₂₋₁₆) dimethylbenzyl ammonium chloride (ADBAC/BKC (C₁₂-C₁₆)) is listed in Annex II to Commission Delegated Regulation (EU) No 1062/2014² on the work programme for the systematic examination of all existing active substances. ADBAC/BKC (C₁₂-C₁₆) is included in the review programme for, among others, product-type 2, namely, ‘disinfectants and algacides not intended for direct application to humans or animals’, as defined in Annex V to Regulation (EU) No 528/2012. The product therefore contains an active substance as defined in Article 3(1), point (c), of that Regulation.
- (3) As held by the Court of Justice, in its judgment of 19 December 2019, in Case C-592/18 *Darje*³, “the concept of ‘biocidal product’, within the meaning of Article 3(1)(a) of Regulation No 528/2012, is broad [...]. That broad interpretation is supported by the objective set out in Article 1 of that regulation, based on the precautionary principle, to ensure ‘a high level of protection of human and animal health and the environment’”⁴.
- (4) As also noted by the Court, the categorisation as “biocidal product” for the purposes of Article 3(1), point (a), of Regulation (EU) No 528/2012 is subject, among other things,

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).

³ Judgment of the Court of Justice of 19 December 2019, *Darje*, C-592/18, ECLI:EU:C:2019:1140.

⁴ See C-592/18 *Darje*, op. cit., paragraph 42.

to the fact that the product has the “intention of destroying, deterring, rendering harmless, preventing the action of or otherwise exerting a controlling effect on, any harmful organism”⁵.

- (5) In its judgment of 19 December 2019, in Case C-592/18 *Darje*, the Court also stressed that “detergent products are not excluded from the scope of Regulation No 528/2012. Moreover, as is apparent from recital 21 of Regulation No 648/2004, a product can be described both as a ‘detergent’ within the meaning of Article 2(1) of that regulation and as a ‘biocidal product’ within the meaning of Article 3(1)(a) of Regulation No 528/2012”⁶. In any event, a product can be considered as a biocidal product within the meaning of Article 3(1), point (a), of Regulation (EU) No 528/2012 regardless of whether it falls within the scope of Regulation (EC) No 648/2004⁷.
- (6) If the fact that a product is claimed by the manufacturer to be a “cleaning” product was sufficient to conclude that that product has no biocidal purpose and, therefore, is not a biocidal product, the requirements of Regulation (EU) No 528/2012 could be easily circumvented and its objectives undermined. Such an approach would contradict the interpretation of the notion of “biocidal product” provided by the Court of Justice. Therefore, all information provided by the manufacturer, by distributors and at points of sale should be taken into account to assess whether a product is placed on the market with a biocidal intent within the meaning of Article 3(1), point (a), of Regulation (EU) No 528/2012.
- (7) The presence of active substances above certain levels of concentration in a product imply in practice that the product will have a controlling effect on one or several harmful organisms. Therefore, such levels of concentration may provide a significant indication that the product is placed on the market with a biocidal intent within the meaning of Article 3(1), point (a), of Regulation (EU) No 528/2012.
- (8) Based on the information submitted by Denmark, the product contains the active substance ADBAC/BKC (C₁₂-C₁₆) at a concentration of 2,4% and can be used undiluted or used diluted at 50%, and this concentration is similar to the one for the same active substance in algae-removing biocidal products authorised in the Netherlands when the latter are diluted for use in line with their use instructions.
- (9) According to the information submitted by Denmark, the manufacturer describes the product as a long-acting cleaning agent for removing layers of build-up on timber, brickwork, roofing slabs, paving stones, and other surfaces and, in the technical datasheet, it indicates that the product is to be used only outdoors. The manufacturer also states that heavily soiled surfaces should first be cleaned using a detergent from the same manufacturer before the surface is treated with the product. Denmark further submitted information from a distributor and from online points of sale. The distributor claims that the product breaks down growth and provides protection from regrowth. According to the distributor, such growth can be seen as a green build-up on the surface or as dark stains – particularly in places which are shaded from the sun by trees or shrubs, on north-facing sides, and where there is a lot of moisture. The distributor specifies that this build-up of growth does not directly damage the timber, but spreads into a large, continuous mass, which prevents moisture from escaping. In

⁵ See C-592/18 *Darje*, op.cit., paragraph 32; see also judgment of the Court of Justice of 14 October 2021, *Biofa*, C-29/20, ECLI:EU:C:2021:843, paragraph 26.

⁶ See C-592/18, *Darje*, op. cit., paragraph 48.

⁷ Regulation (EC) No 648/2004 of the European Parliament and of the Council of 31 March 2004 on detergents (OJ L 104, 8.4.2004, p. 1).

an online point of sale, it is claimed that the product has preventive effects. Denmark also submitted that, in another online point of sale, the product is included in a category of products aimed at cleaning wood, paving and roofs and which are described as having a direct effect on algae on surfaces.

- (10) It therefore appears that the product is intended to prevent and control the growth of unwanted algae, which meet the definition of a harmful organism as set out in Article 3(1), point (g), of Regulation (EU) No 528/2012.
- (11) Given that the product contains an active substance and is intended to exert a controlling effect on a harmful organism by a mode of action that is not merely physical or mechanical, the product should be considered a biocidal product as defined in Article 3(1), point (a), of Regulation (EU) No 528/2012.
- (12) Since product-type 2, as defined in Annex V to Regulation (EU) No 528/2012, covers products used as algaecides not intended for direct application to humans or animals, the product should fall within product-type 2.
- (13) 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

A product containing the active substance Alkyl (C₁₂₋₁₆) dimethylbenzyl ammonium chloride in a concentration of 2,4% and which, based on the information provided by the manufacturer or by distributors, is intended to be used against algae, shall be considered a biocidal product within the meaning of Article 3(1), point (a), of Regulation (EU) No 528/2012 and shall fall within product-type 2 as defined in Annex V to that Regulation.

Article 2

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, 1.2.2022

For the Commission
The President
Ursula VON DER LEYEN