

II

(Non-legislative acts)

DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2021/1690

of 20 September 2021

concerning the extension of the action taken by Malta Competition and Consumer Affairs Authority 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) 6691)

(Only the English and Maltese texts are 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 13 May 2020 Malta Competition and Consumer Affairs Authority ('the competent authority') adopted a decision 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 9 November 2020 ('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 aircraft 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.

⁽¹⁾ OJ L 167, 27.6.2012, p. 1.

- (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), which are 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 those substances and they have to be assessed and approved before biocidal products containing them can be authorised also at national level.
- (4) On 12 May 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 based on concerns that air transport safety might still 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. Since Malta is an island, it is highly dependent on air traffic for both passenger and cargo transportation.
- (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 in March 2020 due to safety incidents that occurred after the treatment with that product.
- (6) According to the competent authority, the mechanical treatment of microbiological contamination of aircraft fuel tanks and fuel systems is not always possible and procedures recommended by engine manufacturers require the treatment with a biocidal product even when mechanical cleaning is possible. Moreover, mechanical treatment would expose workers to toxic gases and should therefore be avoided.
- (7) 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 mid-2022. 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 competent authority to extend the action.
- (9) Considering that the action expired on 9 November 2020, this Decision should have retroactive effect.
- (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

Malta Competition and Consumer Affairs Authority may extend until 14 May 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.

⁽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).

Article 2

This Decision is addressed to Malta Competition and Consumer Affairs Authority.

It shall apply from 10 November 2020.

Done at Brussels, 20 September 2021.

For the Commission
Stella KYRIAKIDES
Member of the Commission
