Commission Regulation (EU) No 298/2010 of 9 April 2010 amending Regulation (EC) No 1451/2007 as regards the extension of the duration of derogations allowing the placing of biocidal products on the market (Text with EEA relevance)

COMMISSION REGULATION (EU) No 298/2010

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard 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[(1)], and in particular Article 16(2) thereof,

Whereas:

(1) 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[(2)] sets out, in Annex II, an exhaustive list of existing active substances to be evaluated under the work programme for the systematic examination of active substances already on the market, hereinafter referred to as the 'review programme', and prohibits the placing on the market of biocidal products containing active substances not listed in that Annex or in Annex I or IA to Directive 98/8/EC.

(2) However, Regulation (EC) No 1451/2007 enables the Commission to grant derogation from that prohibition in cases where a Member State considers that an active substance is essential for reasons of health, safety or protection of cultural heritage or is critical for the functioning of society, and where there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health and provides that Member States may allow the placing on the market of active substances consisting solely of food or feed that are intended for use as repellents or attractants of product type 19.

(3) Those derogations may currently be used until 14 May 2010, since the review programme was initially foreseen to run only until that date.

(4) Directive 98/8/EC, as amended by Directive 2009/107/EC[(3)] extended the review programme until 14 May 2014.

(5) For reasons of consistency, it is appropriate to align the duration of the derogations provided for in Articles 5 and 6 of Regulation (EC) No 1451/2007 with the duration of the review programme.

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EU) No 298/2010. (See end of Document for details)*

(6) Regulation (EC) No 1451/2007 should therefore be amended accordingly.

(7) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Biocidal Products,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1451/2007 is amended as follows:

1. Article 5(3) is replaced by the following:

3. Taking account of the comments received, the Commission may grant a derogation from Article 4(1) allowing the placing of the substance on the market of the requesting Member States until the date referred to in the first subparagraph of Article 16(2) of Directive 98/8/EC at the latest, provided that the Member States:

   a ensure that continued use is possible only if products containing the substance are approved for the intended essential use;

   b conclude that, taking into account all available information, it is reasonable to assume that continued use does not have any unacceptable effect on human or animal health or on the environment;

   c impose all appropriate risk reduction measures when granting approval;

   d ensure that such approved biocidal products remaining on the market after 1 September 2006 are relabelled in order to match the use conditions laid down by the Member States in accordance with this paragraph; and

   e ensure that, where appropriate, alternatives for such uses are being sought by the holders of the approvals or the Member States concerned, or a dossier is being prepared for submission in accordance with the procedure laid down in Article 11 of Directive 98/8/EC at the latest two years before the date referred to in the first subparagraph of Article 16(2) of Directive 98/8/EC.

2. The first paragraph of Article 6 is replaced by the following:

   By way of derogation from Article 4(1), Member States may allow until the date referred to in the first subparagraph of Article 16(2) of Directive 98/8/EC at the latest the placing on the market of active substances consisting solely of food or feed that are intended for use as repellents or attractants of product type 19.

Article 2

This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.