Commission Implementing Decision (EU) 2020/1778 of 26 November 2020 concerning the extension of the action taken by the French Ministry for the Ecological Transition 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(2020) 8133) (Only the French text is authentic)

COMMISSION IMPLEMENTING DECISION (EU) 2020/1778

of 26 November 2020

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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 products[(1)], and in particular the third subparagraph of Article 55(1) thereof,

Whereas:

(1) On 28 April 2020 the French Ministry for the Ecological Transition (the ‘competent authority’) adopted a decision in accordance with the first subparagraph of Article 55(1) of Regulation (EU) No 528/2012 to permit until 2 November 2020 the making available on the market and use by professional users of the biocidal product BIOBOR JF for the preventive and curative antimicrobial treatment of fuel tanks and fuel systems of parked aircraft (‘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 the second subparagraph of Article 55(1) of that Regulation.

(2) According to the information provided by the competent authority, the action was necessary in order to protect public health. 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 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.

(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), 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 included in the work programme[(2)] for the systematic examination of all existing active substances contained in biocidal products referred to in Regulation (EU) No 528/2012, they have to be assessed and approved before biocidal products containing them can be authorised at national or Union level.

(4) On 12 August 2020, the Commission received a reasoned request from the competent authority to extend the action in accordance with the third subparagraph of Article 55(1) of Regulation (EU) No 528/2012. The reasoned request was made on the basis of concerns that air transport safety might continue to be endangered by microbiological contamination of aircraft fuel tanks and fuel systems and the argument that BIOBOR JF is essential in order to control such microbiological contamination.

(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 was withdrawn from the market in March 2020 on account of severe engine behaviour anomalies noticed after the treatment with that product.

(6) As indicated by the competent authority, the mechanical treatment of microbiological contamination of aircraft fuel tanks and fuel system entails setting up of regular purge operations and microbiological testing of purged samples, requiring additional staff and the establishment of complex procedures for sampling and laboratory testing of samples, which do not appear to be suitable for the size of the French airline fleet. Moreover, the manual cleaning of contaminated tanks would expose workers to toxic gases and should therefore be avoided.

(7) According to the information provided by the competent authority, 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 early 2021. The approval of the active substances and subsequent authorisation of the biocidal product would represent a permanent solution for the future, but a significant amount of time will be needed for the completion of those procedures.

(8) As the lack of control of microbiological contamination of aircraft fuel tanks and fuels systems might endanger the air transport safety and that danger cannot be adequately contained by using another biocidal product or by other means, it is appropriate to allow the competent authority to extend the action for a period not exceeding 550 days starting from the day following the expiry of the initial period of 180 days permitted in the decision of the competent authority of 28 April 2020 and under certain conditions.

(9) Considering that the action has lapsed since 3 November 2020, this Decision should have retroactive effect.