Commission Implementing Decision (EU) 2020/1038 of 15 July 2020 postponing the expiry date of approval of creosote for use in biocidal products of product-type 8 (Text with EEA relevance)

COMMISSION IMPLEMENTING DECISION (EU) 2020/1038

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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 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 14(5) thereof,

After consulting the Standing Committee on Biocidal Products,

Whereas:

(1) The active substance creosote was included into Annex I to Directive 98/8/EC of the European Parliament and of the Council[(2)] for use in biocidal products for product-type 8, and pursuant to Article 86 of Regulation (EU) No 528/2012 is therefore considered approved under that Regulation subject to the specifications and conditions set out in Annex I to that Directive.

(2) On 27 October 2016, an application was submitted in accordance with Article 13(1) of Regulation (EU) No 528/2012 for the renewal of the approval of creosote.

(3) The expiry date of approval of creosote has been postponed to 31 October 2020 by Commission Implementing Decision (EU) 2017/2334[(3)] in order to allow sufficient time for the examination of the application.

(4) On 16 September 2019, the former evaluating competent authority of the United Kingdom submitted a recommendation on the renewal to the European Chemicals Agency ('the Agency'). The competent authority of Poland has taken over the role of evaluating competent authority on the application on 30 January 2020. As the competent authority carried out a full evaluation of the application, in accordance with Article 14(3) of Regulation (EU) No 528/2012, the Agency is to prepare and submit to the Commission an opinion on renewal of the approval of the active substance within 270 days of receipt of the recommendation from the evaluating competent authority.

(5) In addition, as creosote is classified as carcinogen category 1B in accordance with Regulation (EC) No 1272/2008 of the European Parliament and of the Council[(4)] and meets the criteria for being a persistent, bioaccumulative and toxic substance and a very

persistent and very bioaccumulative substance according to Annex XIII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council[5], it meets the exclusion criteria set out in points (a) and (e) of Article 5(1) of Regulation (EU) No 528/2012. Further examination is therefore necessary to decide whether at least one of the conditions of the first subparagraph of Article 5(2) of Regulation (EU) No 528/2012 is fulfilled, and whether the approval of creosote may therefore be renewed.

(6) Furthermore, creosote, its compounds and wood treated with them are subject to restrictions laid down in Annex XVII to Regulation (EC) No 1907/2006. Following Commission Implementing Decision (EU) 2019/961[6], France is to submit to the Agency a dossier in accordance with Annex XV to Regulation (EC) No 1907/2006, initiating a Union restrictions procedure in accordance with Articles 69 to 73 of that Regulation. Further examination needs to take place in order to ensure consistency between the assessment of the renewal of the approval of creosote as an active substance under Regulation (EU) No 528/2012 and the Union restriction procedure under Regulation (EC) No 1907/2006, and to provide for an effective control of creosote and wood treated with it.

(7) Consequently, for reasons beyond the control of the applicant, the approval of creosote for use in biocidal products of product-type 8 is likely to expire before a decision has been taken on its renewal. It is therefore appropriate to further postpone the expiry date of approval of creosote for a period of time sufficient to enable the examination of the application.

(8) Considering the period necessary for the preparation and submission of the opinion by the Agency, the period necessary to decide if at least one of the conditions of the first subparagraph of Article 5(2) of Regulation (EU) No 528/2012 is fulfilled and whether the approval of creosote may therefore be renewed, it is appropriate to postpone the expiry date of approval of creosote to 31 October 2021.

(9) Except for the expiry date of the approval, creosote remains approved subject to the specifications and conditions set out in Annex I to Directive 98/8/EC,

HAS ADOPTED THIS DECISION:

Article 1

The expiry date of approval of creosote for use in biocidal products of product-type 8 is postponed to 31 October 2021.

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*.