

DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2015/411

of 11 March 2015

pursuant to Article 3(3) of Regulation (EU) No 528/2012 of the European Parliament and of the Council on cationic polymeric binders with quaternary ammonium compounds incorporated in paints and coatings

(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 3(3) thereof,

Whereas:

- (1) Pursuant to Article 3(3) of Regulation (EU) No 528/2012, on 30 October 2013, the Netherlands submitted a request to the Commission to decide whether a series of products (cationic polymeric binders with quaternary ammonium compounds) placed on the market with a view to be incorporated in paints and coatings (hereafter referred as 'paints') and confer to those paints the property to kill harmful and pathogenic microorganisms on the paints dried surface, were biocidal products as defined under Article 3(1)(a) first indent of that Regulation, or not, and whether the paints themselves should be considered as biocidal products or not.
- (2) According to the information provided by the company placing the products on the market (hereafter referred as 'the company'), those products consist of polymers modified with quaternary ammonium groups. The polymer used varies from one product to another depending on the request of paint manufacturers. The products themselves do not have an antimicrobial activity. The company sells those products to paint manufacturers, who then mix them with other polymers used for paint manufacturing and a hardener thereby cross-linking all polymers. The cross-linked polymers form a cationic surface in the dried paint, which exerts the antimicrobial effect.
- (3) After a first round of discussions with experts from the Member States, the Commission requested on 2 February 2014 an opinion from the European Chemicals Agency in accordance with Article 75(1)(g) of Regulation (EU) No 528/2012 as to whether the products of the company contribute to the antimicrobial properties of paints in which it may be incorporated, if those properties result from the action of an active substance, and if so, what is the identity of the active substance.
- (4) The opinion of the European Chemicals Agency was formulated on 9 April 2014 by the Biocidal Product Committee.
- (5) According to that opinion, the mode of action under consideration involves an active substance as it is based on a substance, within the meaning of Article 3 of Regulation (EC) No 1907/2006 of the European Parliament and of the Council ⁽²⁾, which has an action on harmful organisms.
- (6) The active substance is formed in the paint in which it is incorporated by a chemical reaction of three constituents: the cationic polymeric binder, with quaternary ammonium groups, of variable chain length and equipped with a functional group; a polymeric dispersion equipped with the same functional group as the cationic polymeric binder and a polymeric hardener for cross-linking the above mentioned polymeric constituents.

⁽¹⁾ OJ L 167, 27.6.2012, p. 1.

⁽²⁾ Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30.12.2006, p. 1).

- (7) Furthermore, according to that opinion, the mode of action of the active substance relies on electrostatic attractions leading to modifications of physiological and biochemical mechanisms (e.g. bacterial signal transduction systems) and to the death of the target organisms. The mode of action can therefore not be considered to be merely physical or mechanical.
- (8) In accordance with Article 3(1)(a) of Regulation (EU) No 528/2012, destroying, deterring, rendering harmless, preventing the action of, or otherwise exerting a controlling effect on any harmful organism is a biocidal function.
- (9) The cationic polymeric binders are not intended to have a biocidal function in the form in which they are supplied by the company to paint manufacturers and therefore do not comply with the definition of a biocidal product.
- (10) Paints incorporating those products are mixtures, which, in the form they are supplied by paint manufacturers to their customers, generate an active substance and are intended to have a biocidal function other than by mere physical or mechanical action, and therefore comply with the definition of a biocidal product.
- (11) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Biocidal Products,

HAS ADOPTED THIS DECISION:

Article 1

The cationic polymeric binders with quaternary ammonium compounds placed on the market to be incorporated in paints and coatings (hereafter referred as 'paints') by paint manufacturers with a view to confer to those paints a biocidal function shall not be considered biocidal products.

The paints, in which the cationic polymeric binders with quaternary ammonium compounds are incorporated by paint manufacturers with a view to confer to those paints a biocidal function, shall be considered biocidal products.

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, 11 March 2015.

For the Commission
The President
Jean-Claude JUNCKER
