

COMMISSION IMPLEMENTING DECISION (EU) 2020/1807**of 27 November 2020****concerning the extension of the action taken by the United Kingdom Health and Safety Executive 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) 8158)***(Only the English text is 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 the third subparagraph of Article 55(1) thereof, in conjunction with Article 131 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community ⁽²⁾,

Whereas:

- (1) On 30 April 2020 the United Kingdom Health and Safety Executive ('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 27 October 2020 the making available on the market and use of the biocidal product Biobor JF for the preventive and curative antimicrobial treatment of fuel tanks and fuel systems of 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. Parking and storage of aircraft allows the settling of water in the fuel. Microbiological contamination is caused by micro-organisms, such as bacteria, mould, and yeast, that grow in the settled water and feed off the hydrocarbons in the fuel at the fuel-to-water interface. If allowed to grow, the 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 ⁽³⁾ 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 20 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.

⁽¹⁾ OJ L 167, 27.6.2012, p. 1.

⁽²⁾ OJ L 29, 31.1.2020, p. 7.

⁽³⁾ Annex II to 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).

- (6) As indicated by the competent authority, the alternative procedure for treating an existing microbiological contamination is manual removal in-tank, following defueling and purging of the aircraft. This may not always be possible alongside the additional maintenance actions that are required when an aircraft is parked or stored for long periods. 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 in the near future. 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 United Kingdom authority to extend the action.
- (9) Considering that the action has lapsed since 28 October 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

The United Kingdom Health and Safety Executive may extend the permit for the making available on the market and use of the biocidal product Biobor JF for the preventive and curative antimicrobial treatment of fuel tanks and fuel systems of aircraft until the end of the transition period referred to in the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community or until 1 May 2022, whichever is earlier.

For Northern Ireland, however, it may extend that permit until 1 May 2022.

Article 2

This Decision is addressed to the United Kingdom Health and Safety Executive.

It shall apply from 28 October 2020.

Done at Brussels, 27 November 2020.

For the Commission
Stella KYRIAKIDES
Member of the Commission
