

COMMISSION DIRECTIVE 2009/94/EC
of 31 July 2009
amending Directive 98/8/EC of the European Parliament and of the Council to include boric acid as
an active substance in Annex I thereto

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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 the second subparagraph of 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⁾ establishes a list of active substances to be assessed, with a view to their possible inclusion in Annex I, IA or IB to Directive 98/8/EC. That list includes boric acid.

(2) Pursuant to Regulation (EC) No 1451/2007, boric acid has been evaluated in accordance with Article 11(2) of Directive 98/8/EC for use in product-type 8, wood preservatives, as defined in Annex V to Directive 98/8/EC.

(3) The Netherlands was designated as Rapporteur Member State and submitted the competent authority report, together with a recommendation, to the Commission on 7 July 2006 in accordance with Article 14(4) and (6) of Regulation (EC) No 1451/2007.

(4) The competent authority report was reviewed by the Member States and the Commission. In accordance with Article 15(4) of Regulation (EC) No 1451/2007, the findings of the review were incorporated, within the Standing Committee on Biocidal Products on 20 February 2009, in an assessment report.

(5) It appears from the examinations made that biocidal products used as wood preservatives and containing boric acid may be expected to satisfy the requirements laid down in Article 5 of Directive 98/8/EC. It is therefore appropriate to include boric acid in Annex I,

in order to ensure that in all Member States authorisations for biocidal products used as wood preservatives and containing boric acid can be granted, modified, or cancelled in accordance with Article 16(3) of Directive 98/8/EC.

(6) However, unacceptable risks were identified for the *in situ* treatment of wood outdoors and for treated wood exposed to weathering. Therefore, authorisations for these uses should not be granted unless data have been submitted in order to demonstrate that the products can be used without unacceptable risks to the environment.

(7) Not all potential uses have been evaluated at the Community level. It is therefore appropriate that Member States assess those risks to the compartments and populations that have not been representatively addressed in the Community level risk assessment and, when granting product authorisations, ensure that appropriate measures are taken or specific conditions imposed in order to mitigate the identified risks to acceptable levels.

(8) In the light of the findings of the assessment report, it is appropriate to require that specific risk mitigation measures are applied at product authorisation level to products containing boric acid and used as wood preservatives. In particular, appropriate measures should be taken to protect the soil and aquatic compartments since unacceptable risks to these compartments have been identified during the evaluation. Products should also be used with appropriate protective equipment if the risk identified for professional and industrial users cannot be reduced by other means.

(9) It is important that the provisions of this Directive be applied simultaneously in all the Member States in order to ensure equal treatment of biocidal products on the market containing the active substance boric acid and also to facilitate the proper operation of the biocidal products market in general.

(10) A reasonable period should be allowed to elapse before an active substance is included in Annex I in order to permit Member States and the interested parties to prepare themselves to meet the new requirements entailed and to ensure that applicants who have prepared dossiers can benefit fully from the 10-year period of data protection, which, in accordance with Article 12(1)(c)(ii) of Directive 98/8/EC, starts from the date of inclusion.

⁽¹⁾ OJ L 123, 24.4.1998, p. 1.

⁽²⁾ OJ L 325, 11.12.2007, p. 3.

- (11) After inclusion, Member States should be allowed a reasonable period to implement Article 16(3) of Directive 98/8/EC, and in particular, to grant, modify or cancel authorisations of biocidal products in product-type 8 containing boric acid to ensure that they comply with Directive 98/8/EC.
- (12) Directive 98/8/EC should therefore be amended accordingly.
- (13) The measures provided for in this Directive are in accordance with the opinion of the Standing Committee on Biocidal Products,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Annex I to Directive 98/8/EC is amended in accordance with the Annex to this Directive.

Article 2

1. Member States shall adopt and publish, by 31 August 2010 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive.

They shall apply those provisions from 1 September 2011.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 31 July 2009.

For the Commission

Stavros DIMAS

Member of the Commission

ANNEX

The following entry 'No 22' is inserted in Annex I to Directive 98/8/EC:

No	Common Name	IUPAC Name Identification Numbers	Minimum purity of the active substance in the biocidal product as placed on the market	Date of inclusion	Deadline for compliance with Article 16(3) (except for products containing more than one active substance, for which the deadline to comply with Article 16(3) shall be the one set out in the last of the inclusion decisions relating to its active substances)	Expiry date of inclusion	Product type	Specific provisions (*)
22	boric acid	boric acid EC No: 233-139-2 CAS No: 10043-35-3	990 g/kg	1 September 2011	31 August 2013	31 August 2021	8	<p>When assessing the application for authorisation of a product in accordance with Article 5 and Annex VI, Member States shall assess, when relevant for the particular product, the populations that may be exposed to the product and the use or exposure scenarios that have not been representatively addressed at the Community level risk assessment.</p> <p>When granting product authorisation, Member States shall assess the risks and subsequently ensure that appropriate measures are taken or specific conditions imposed in order to mitigate the identified risks.</p> <p>Product authorisation can only be granted where the application demonstrates that risks can be reduced to acceptable levels.</p> <p>Member States shall ensure that authorisations are subject to the following conditions:</p> <ol style="list-style-type: none"> 1. Products authorised for industrial and professional use must be used with appropriate personal protective equipment, unless it can be demonstrated in the application for product authorisation that risks to industrial and/or professional users can be reduced to an acceptable level by other means. 2. In view of the risks identified for the soil and aquatic compartments, products shall not be authorised for the in situ treatment of wood

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								outdoors or for wood that will be exposed to weathering, unless data is submitted to demonstrate that the product will meet the requirements of Article 5 and Annex VI, if necessary by the application of appropriate risk mitigation measures. In particular, labels and/or safety-data sheets of products authorised for industrial use shall indicate that freshly treated timber must be stored after treatment under shelter and/or on impermeable hard standing to prevent direct losses to soil or water and that any losses must be collected for reuse or disposal.

(*) For the implementation of the common principles of Annex VI, the content and conclusions of assessment reports are available on the Commission website: <http://ec.europa.eu/comm/environment/biocides/index.htm>