

COMMISSION IMPLEMENTING DECISION (EU) 2022/2325**of 24 November 2022****not approving 1,2-benzisothiazol-3(2H)-one (BIT) as an active substance for use in biocidal products of product-type 10 in accordance with Regulation (EU) No 528/2012 of the European Parliament and of the Council****(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 9(1), point (b), thereof,

Whereas:

- (1) Pursuant to Article 11(1) of Directive 98/8/EC of the European Parliament and of the Council ⁽²⁾, an application for approval of 1,2-benzisothiazol-3(2H)-one (BIT) for use in biocidal products of product-type 10, masonry preservatives, as described in Annex V of that Directive, corresponding to product-type 10, construction material preservatives, as described in Annex V to Regulation (EU) No 528/2012, was submitted to the competent authority of Spain on 22 December 2009.
- (2) Pursuant to Article 90(2), first subparagraph, of Regulation (EU) No 528/2012, applications submitted for the purposes of Directive 98/8/EC for which the Member States' evaluation in accordance with Article 11(2) of Directive 98/8/EC has not been completed by 1 September 2013 are to be evaluated by the competent authorities in accordance with the provisions of that Regulation.
- (3) On 1 October 2019, during the evaluation of the active substance by the evaluating competent authority, the applicant withdrew its application and no longer requests the approval of BIT as an active substance for use in biocidal products of product-type 10.
- (4) BIT is not included for product-type 10 in Annex II to Commission Delegated Regulation (EU) No 1062/2014 ⁽³⁾, which lists the active substance/product-type combinations included in the work programme for the examination of existing biocidal active substances contained in biocidal products. Biocidal products of product-type 10 containing BIT are therefore not covered by the transitional provisions laid down in Article 89(2) of Regulation (EU) No 528/2012 and may therefore not be made available or used on the Union market.
- (5) However, in accordance with the transitional provision set out in Article 94(1), point (a), of Regulation (EU) No 528/2012, a treated article treated with or intentionally incorporating one or more biocidal products containing only active substances that are under examination for the relevant product-type in the work programme referred to in Article 89(1) of that Regulation on 1 September 2016 or for which an application for approval for the relevant product-type is submitted by that date, or containing only a combination of such substances and active substances included in the list drawn up in accordance with Article 9(2) of that Regulation for the relevant product-type and use or included in Annex I, may be placed on the market until the date falling 180 days after a decision not to approve one of the active substances for the relevant use, when such decision is adopted after 1 September 2016.

⁽¹⁾ OJ L 167, 27.6.2012, p. 1.

⁽²⁾ 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 (OJ L 123, 24.4.1998, p. 1).

⁽³⁾ 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 the applicant has withdrawn the application for approval of BIT for use in biocidal products of product-type 10, there is no biocidal product to be evaluated. Consequently, the competent authority did not finalise the assessment report and the European Chemicals Agency did not prepare an opinion. Finally, as there is no biocidal product of product-type 10 containing BIT that may be expected to meet the criteria laid down in Article 19(1), point (b), of Regulation (EU) No 528/2012, the conditions laid down in Article 4(1) of that Regulation are not met. Considering also the need to ensure that treated articles treated with or intentionally incorporating BIT for product-type 10 are no longer placed on the Union market, it is appropriate not to approve BIT for use in biocidal products of product-type 10.
- (7) 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

1,2-benzisothiazol-3(2H)-one (BIT) (EC No: 220-120-9; CAS No: 2634-33-5) is not approved as an active substance for use in biocidal products of product-type 10.

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, 24 November 2022.

For the Commission
The President
Ursula VON DER LEYEN
