COMMISSION IMPLEMENTING DECISION (EU) 2022/2326

of 24 November 2022

not approving epsilon-metofluthrin as an active substance for use in biocidal products of product-type 19 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 epsilon-metofluthrin for use in biocidal products of product-type 19, repellents and attractants, as described in Annex V of that Directive, corresponding to product-type 19, repellents and attractants, as described in Annex V to Regulation (EU) No 528/2012, was in January 2011 submitted to the competent authority of the United Kingdom, replaced by the competent authority of Spain as of 1 February 2020.

(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 24 October 2019, during the preparation of the opinion on the approval by the European Chemicals Agency, the applicant withdrew its application and no longer requests the approval of epsilon-metofluthrin as an active substance for use in biocidal products of product-type 19.

(4) Epsilon-metofluthrin is not included for product-type 19 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 19 containing epsilon-metofluthrin 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 epsilon-metofluthrin for use in biocidal products of product-type 19, there is no biocidal product to be evaluated. Consequently, the European Chemicals Agency did not prepare an opinion. Finally, as there is no biocidal product of product-type 19 containing epsilon-metofluthrin 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 epsilon-metofluthrin for product-type 19 are no longer placed on the Union market, it is appropriate not to approve epsilon-metofluthrin for use in biocidal products of product-type 19.

(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

Epsilon-metofluthrin (CAS No: 240494-71-7) is not approved as an active substance for use in biocidal products of product-type 19.

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