



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 9 October 2012

14688/12

ENV 755

ENT 241

COVER NOTE

from: European Commission
date of receipt: 4 October 2012
to: General Secretariat of the Council of the European Union

No Cion doc.: D022409/02

Subject: Commission Directive ../.../EU of XXX amending Directive 98/8/EC of the European Parliament and of the Council to include Alkyl (C12-16) dimethylbenzyl ammonium chloride as an active substance in Annex I thereto

Delegations will find attached Commission document D022409/02.

Encl.: D022409/02



EUROPEAN COMMISSION

Brussels, XXX
D022409/02 CA-Sept12-Doc.3.7 Rev.1
post CA
[...] (2012) XXX draft

COMMISSION DIRECTIVE/.../EU

of XXX

amending Directive 98/8/EC of the European Parliament and of the Council to include Alkyl (C₁₂₋₁₆) dimethylbenzyl ammonium chloride as an active substance in Annex I thereto

(Text with EEA relevance)

COMMISSION DIRECTIVE ../.../EU

of XXX

amending Directive 98/8/EC of the European Parliament and of the Council to include Alkyl (C₁₂₋₁₆) dimethylbenzyl ammonium chloride as an active substance in Annex I thereto

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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 market¹, 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 market² 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 Quaternary ammonium compounds, benzyl-C₁₂₋₁₆-alkyldimethyl, chlorides, which is synonymous with Alkyl (C₁₂₋₁₆) dimethylbenzyl ammonium chloride.
- (2) Pursuant to Regulation (EC) No 1451/2007, Alkyl (C₁₂₋₁₆) dimethylbenzyl ammonium chloride 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 that Directive.
- (3) Italy was designated as Rapporteur Member State and submitted the competent authority report, together with a recommendation, to the Commission on 14 August 2007 in accordance with Article 10(5) and (7) of Commission Regulation (EC) No 2032/2003 of 4 November 2003 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, and amending Regulation (EC) No 1896/2000³.

¹ OJ L 123, 24.4.1998, p. 1.

² OJ L 325, 11.12.2007, p. 3.

³ OJ L 307, 24.11.2003, p.1.

- (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 21 September 2012, in an assessment report.
- (5) It appears from the evaluations that biocidal products used as wood preservatives and containing Alkyl (C₁₂₋₁₆) dimethylbenzyl ammonium chloride may be expected to satisfy the requirements laid down in Article 5 of Directive 98/8/EC. It is therefore appropriate to include Alkyl (C₁₂₋₁₆) dimethylbenzyl ammonium chloride for use in product type 8 in Annex I to that Directive.
- (6) Not all potential uses and exposure scenarios have been evaluated at Union level. For example, neither use by non-professionals, nor exposure of food or feeding stuff were assessed. It is therefore appropriate to require that Member States assess those uses or exposure scenarios and those risks to human populations and to environmental compartments that have not been representatively addressed in the Union level risk assessment and, when granting product authorisations, ensure that appropriate measures are taken or specific conditions imposed in order to reduce the identified risks to acceptable levels.
- (7) In view of the risks identified for human health, it is appropriate to require that safe operational procedures are established, that products are used with appropriate personal protective equipment, and that products are not applied on wood with which children may enter in direct contact, unless it can be demonstrated in the application for product authorisation that risks can be reduced to an acceptable level.
- (8) In view of the risks identified for the environment, it is appropriate to require that industrial or professional application is conducted within a contained area or on impermeable hard standing with bunding, that freshly treated timber is stored after treatment on impermeable hard standing to prevent direct losses to soil or water, and that any losses from the application of products used as wood preservatives and containing Alkyl (C₁₂₋₁₆) dimethylbenzyl ammonium chloride are collected for reuse or disposal.
- (9) Unacceptable risks for the environment were identified for situations where wood treated with Alkyl (C₁₂₋₁₆) dimethylbenzyl ammonium chloride was continually exposed to the weather or subject to frequent wetting (use class 3 as defined by OECD⁴), was used for outdoor constructions near or above water (the 'bridge' scenario in use class 3, as defined by OECD⁵) or was in contact with fresh water (use class 4b as defined by OECD⁶). It is therefore appropriate to require that products are not authorised for the treatment of wood intended for those uses, unless data is submitted demonstrating that the product will meet the requirements of both Article 5 of and Annex VI to Directive 98/8/EC, if necessary by the application of appropriate risk mitigation measures.

⁴ OECD series on emission scenario documents, Number 2, Emission Scenario Document for Wood Preservatives, part 2, p. 64.

⁵ Ibid.

⁶ Ibid.

- (10) The provisions of this Directive should be applied simultaneously in all Member States in order to ensure equal treatment on the Union market of biocidal products of product-type 8 containing the active substance Alkyl (C₁₂₋₁₆) dimethylbenzyl ammonium chloride and also to facilitate the proper operation of the biocidal products market in general.
- (11) A reasonable period should be allowed to elapse before an active substance is included in Annex I to Directive 98/8/EC, in order to permit Member States and 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.
- (12) After inclusion, Member States should be allowed a reasonable period to implement Article 16(3) of Directive 98/8/EC.
- (13) Directive 98/8/EC should therefore be amended accordingly.
- (14) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011⁷, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments.
- (15) 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 January 2014 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive.

They shall apply those provisions from 1 February 2015.

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.

⁷ OJ C 369, 17.12.2011, p. 14.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the Commission
The President
José Manuel BARROSO

ANNEX

In Annex I to Directive 98/8/EC, the following entry is added:

| 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 (*) |
|--|--|--|---|----------------------|---|-----------------------------|-----------------|--|
| "(**) [OPOC E: please insert substan ce number] | Alkyl (C ₁₂₋₁₆) dimethyl benzyl ammoni um chloride; C ₁₂₋₁₆ - ADBAC | IUPAC name: Not applicable EC No: 270-325-2 CAS No: 68424-85-1 | Dry weight: 940 g/kg | 1 February 2015 | 31 January 2017 | 31 January 2025 | 8 | The Union level risk assessment did not address all potential uses and exposure scenarios; certain uses and exposure scenarios, such as use by non-professionals and exposure of food or feed, were excluded. When assessing the application for authorisation of a product in accordance with Article 5 and Annex VI, Member States shall assess, where relevant for the particular product, those uses or exposure scenarios and those risks to human populations and to environmental compartments that have not been representatively addressed in the Union level risk assessment. Member States shall ensure that authorisations are subject to the following conditions: |

| 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 (*) |
|----|-------------|--------------------------------------|--|-------------------|---|--------------------------|--------------|---|
| | | | | | | | | <p>(1) for industrial or professional users safe operational procedures shall be established, and products shall be used with appropriate personal protective equipment, unless it can be demonstrated in the application for product authorisation that risks can be reduced to an acceptable level by other means;</p> <p>(2) products shall not be used for treatment of wood with which children may enter in direct contact, unless it can be demonstrated in the application for product authorisation that risks can be reduced to an acceptable level;</p> <p>(3) labels and, where provided, safety data sheets of products authorised shall indicate that industrial or professional application shall be conducted within a contained area or on impermeable hard standing</p> |

| 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 (*) |
|----|-------------|-----------------------------------|--|-------------------|---|--------------------------|--------------|---|
| | | | | | | | | <p>with bunding, and that freshly treated timber shall be stored after treatment on impermeable hard standing to prevent direct losses to soil or water, and that any losses from the application of the product shall be collected for reuse or disposal;</p> <p>(4) products shall not be authorised for treatment of wood that will be in contact with fresh water or used for outdoor constructions near or above water, continually exposed to the weather or subject to frequent wetting, 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 mitigation measures."</p> |

(*) 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>