COMMISSION IMPLEMENTING DECISION (EU) 2022/326

of 24 February 2022

amending Implementing Decision (EU) 2019/961 authorising a provisional measure taken by the French Republic in accordance with Article 129 of Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) to restrict the use and the placing on the market of certain wood treated with creosote and other creosote-related substances

(notified under document C(2022) 1074)

(Only the French text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC ([1]), and in particular Article 129(2) thereof,

Whereas:

(1) On 7 June 2019, the Commission adopted Implementing Decision (EU) 2019/961 ([2]) ('the Decision') authorising a provisional measure taken by France in accordance with Article 129 of Regulation (EC) No 1907/2006 to restrict the use and the placing on the market of certain wood treated with creosote and other creosote-related substances.

(2) Pursuant to Article 1(1) of the Decision, the provisional measure was authorised for a duration of 27 months from the date of effect of the Decision, ending thus on 7 September 2021.

(3) The duration of 27 months was intended to provide sufficient time to conclude the restriction procedure which Article 129(3) of Regulation (EC) No 1907/2006 obliged France to initiate by submitting to the European Chemicals Agency (the Agency) a dossier in accordance with Annex XV thereto ('Annex XV dossier'), within three months of the Decision.

(4) By Commission Implementing Decision (EU) 2021/1839 ([3]), the expiry date of approval of creosote for use in biocidal products of product-type 8 was postponed to 31 October 2022. That was done in order to take into account the time necessary for the preparation and submission of the opinion of the Agency as well as the time necessary to decide if at least one of the conditions of Article 5(2), first subparagraph, of Regulation (EU) No 528/2012 of the European Parliament and of the Council ([4]) is fulfilled and whether the approval of creosote may therefore be renewed.

(5) France did not initiate the restriction procedure within three months of the Decision. France argues that the scope and content of the Annex XV dossier to be submitted is closely linked to the conclusions from the discussions on the renewal or non-renewal of the approval of creosote under Regulation (EU) No 528/2012, so as to ensure the legal consistency of a possible restriction under Regulation (EC) No 1907/2006 with the conclusions of those discussions. It has undertaken to submit the Annex XV dossier by 1 February 2022, so as to be able to take into account the conclusions from those discussions.

([1]) OJ L 396, 30.12.2006, p. 1.

([2]) Commission Implementing Decision (EU) 2019/961 of 7 June 2019 authorising a provisional measure taken by the French Republic in accordance with Article 129 of Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) to restrict the use and the placing on the market of certain wood treated with creosote and other creosote-related substances (OJ L 154, 12.6.2019, p. 44).

([3]) Commission Implementing Decision (EU) 2021/1839 of 15 October 2021 postponing the expiry date of approval of creosote for use in biocidal products of product-type 8 (OJ L 372, 20.10.2021, p. 27).

([4]) 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 (OJ L 167 27.6.2012, p. 1).

(6) The duration for which the provisional measure is authorised should allow for the restriction procedure to be concluded. Considering the timelines involved in the restriction procedure, the duration for which the provisional measure is authorised should therefore be extended by the same period as the one calculated in the Decision, that is 27 months from the date of submission of the Annex XV dossier.

(7) The reasons for authorising the provisional measure as described in Implementing Decision (EU) 2019/961 remain unchanged. Consequently, the provisional measure should continue to be authorised.

(8) In order to avoid the legal uncertainty that would result from the expiry of the authorisation of the French provisional measure before the conclusion of the restriction procedure, it is necessary to extend, with retroactive effect, the duration for which the provisional measure is authorised. The duration should therefore be calculated from 8 September 2021 rather than from the expected date of submission of the Annex XV dossier, and an additional five months should accordingly be added, bringing the total extension of the duration to 32 months.

(9) Implementing Decision (EU) 2019/961 should therefore be amended accordingly.

(10) This Decision is in accordance with the opinion of the Committee established under Article 133 of Regulation (EC) No 1907/2006,

HAS ADOPTED THIS DECISION:

Article 1

In Article 1(1) of Implementing Decision (EU) 2019/961 '27 months' is replaced by '59 months'.

Article 2

This Decision shall apply from 8 September 2021.

Article 3

This Decision is addressed to the French Republic.

Done at Brussels, 24 February 2022.

For the Commission
Thierry BRETON
Member of the Commission