

COMMISSION DECISION (EU) 2016/397**of 16 March 2016****amending Decision 2014/312/EU establishing the ecological criteria for the award of the EU Ecolabel for indoor and outdoor paints and varnishes***(notified under document C(2016) 1510)***(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 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel ⁽¹⁾, and in particular Article 8(2) thereof,

After consulting the European Union Ecolabelling Board,

Whereas:

- (1) Commission Decision 2014/312/EU ⁽²⁾ established ecological criteria for the award of the EU Ecolabel for indoor and outdoor paints and varnishes. After the adoption of Decision 2014/312/EU a registration was made as a joint submission to the European Chemicals Agency in accordance with Regulation (EC) No 1907/2006 of the European Parliament and of the Council ⁽³⁾ by DPx Fine Chemicals Austria GmbH, LSR Associates Ltd and Novasol S.A. That registration dossier containing revised self-classifications for an important adhesion promoter and cross linker, Adipic acid dihydrazide (ADH). That submission indicated that ADH had been self-classified as hazardous to the aquatic environment (Chronic Category 2) with the associated hazard statement H411 (Toxic to aquatic life with long lasting effects). ADH is contained in polymer dispersions used frequently in water based paint and varnish formulations, prolonging the product life span. Paints with a prolonged lifetime have lower overall environmental impacts along their product life cycle due to reduced repaints. According to available information equally efficient and effective alternatives are not yet available on the market. It is therefore necessary to grant a derogation from criterion 5 of Decision 2014/312/EU for the use of ADH in Ecolabel awarded paints and varnishes in situations where it is not technically feasible to use alternative materials because the paint product would not provide the required level of functionality to the consumer.
- (2) In addition, another substance Methanol has harmonised CLP classifications acute toxicity (Category 3) with the associated hazard statements H301 (Toxic if swallowed), H311 (Toxic in contact with skin) and H331 (Toxic if inhaled) and specific target organ toxicity after single exposure (Category 1) with the associated hazard statement H370 (Causes damage to organs) and is present as residual in polymer dispersions used in paints and varnishes. Methanol can originate as a reaction product or impurity from various raw materials within polymer dispersions and its content depends on the binder content in the paint. Therefore, in many cases it exceeds the current limit set for residuals in Decision 2014/312/EU. Those raw materials are used to achieve important paint properties, like for instance increased wet scrub performance, which is a requirement of the EU Ecolabel. Moreover, those properties contribute to increase the paint durability resulting in reduced overall environmental impacts along the paint life cycle due to less repaints. Those classifications of ADH and Methanol currently prevent a significant number of paints and varnishes that were awarded the EU Ecolabel pursuant to Commission Decision 2009/543/EC ⁽⁴⁾ and Commission Decision 2009/544/EC ⁽⁵⁾ from renewing their EU Ecolabel licence, according to market information submitted by EU Ecolabel license holders. It is therefore necessary to grant derogation from criterion 5 of Decision 2014/312/EU for the use of Methanol in Ecolabel awarded paints and

⁽¹⁾ OJ L 27, 30.1.2010, p. 1.

⁽²⁾ Commission Decision 2014/312/EU of 28 May 2014 establishing the ecological criteria for the award of the EU Ecolabel for indoor and outdoor paints and varnishes (OJ L 164, 3.6.2014, p. 45).

⁽³⁾ 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 (OJ L 396 30.12.2006, p. 1).

⁽⁴⁾ Commission Decision 2009/543/EC of 13 August 2008 establishing the ecological criteria for the award of the Community eco-label to outdoor paints and varnishes (OJ L 181, 14.7.2009, p. 27).

⁽⁵⁾ Commission Decision 2009/544/EC of 13 August 2008 establishing the ecological criteria for the award of the Community eco-label to indoor paints and varnishes (OJ L 181, 14.7.2009, p. 39).

varnishes in situations where it is not technically feasible to substitute functional raw materials which may give rise to the presence of methanol in the product.

- (3) After the adoption of Decision 2014/312/EU an important dry film preservative for outdoor paints and varnishes, 3-iodo-2-propynyl butylcarbamate (IPBC), was given a harmonised CLP classification of hazardous to the aquatic environment (Acute Category 1) with the associated hazard statement H400 (Very toxic to aquatic life) and hazardous to the aquatic environment (Chronic Category 1) with the associated hazard statement H410 (Very toxic to aquatic life with long lasting effects). That preservative is used in outdoor products, especially in humid climate, to prevent the product from microbial growth. Its essential function and the absence of substitutes were known at the moment of the adoption of that decision, and its presence in EU Ecolabel paints was therefore permitted under a derogation. However, the new harmonised classification resulted in the final product being classified as hazardous for the aquatic environment (Chronic Category 3) with a labelling requirement to carry the associated hazard statement H412 (Harmful to aquatic life with long lasting effect) when IPBC is present above the concentration of 0,25 % w/w. Final product classification as hazardous to the aquatic environment is currently prohibited under Decision 2014/312/EU even if the maximum concentration limit for the use of IPBC is 0,65 %. In order to allow the use of IPBC in paint products at the required concentration up to 0,65 % it is necessary to allow the labelling of the final product with H412.
- (4) For reasons of consistency and based on the definition specified in point (20) of Article 2 of Decision 2014/312/EU in which 'transparent' and 'semi-transparent' are synonyms, the text of criterion 3(a) and the associated reference in table 2 should be amended.
- (5) Criterion 5 and Appendix entries 1(a), (b) and (c) of Decision 2014/312/EU placed restrictions on and laid down rules for the use of preservatives with reference to their status according to Regulation (EU) No 528/2012 of the European Parliament and of the Council⁽¹⁾, which establishes the Union's system of approval for active substances in specific types of biocide products. In order to ensure that these restrictions and rules are consistent and harmonised with Regulation (EU) No 528/2012 clarifications should be made in Decision 2014/312/EU to the following aspects: (a) The definitions of 'in-can preservatives' and 'dry-film preservatives' should be with reference to Article 3(1)(c) of Regulation (EU) No 528/2012; (b) It should be clarified that in point 1 of the Appendix the rules and conditions relating to in-can and dry film preservatives should apply to active substances which are under examination for approval or have been approved for use in specific biocide product-types, and to which approval conditions may apply; (c) Reference to Directive 98/8/EC of the European Parliament and of the Council⁽²⁾ within point 1 of the Appendix should be deleted as this Directive has now been repealed; (d) In the verification requirements laid down in Appendix 1(a), (b) and (c) the reference to Article 58(3) in Regulation (EU) No 528/2012 should be deleted because this refers to specific cases only.
- (6) Decision 2014/312/EU should therefore be amended accordingly.
- (7) The measures provided for in this Decision are in accordance with the opinion of the Committee established by Article 16 of Regulation (EC) No 66/2010,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2014/312/EU is amended as follows:

- (1) in Article 2, the definitions of 'in-can preservatives' and 'dry-film preservatives' in points (10) and (11) are replaced as follows:

'(10) "In-can preservatives" are active substances within the meaning of Article 3(1)(c) of Regulation (EU) No 528/2012 of the European Parliament and of the Council (*) that are for use in product-type 6 as described in Annex V to that Regulation. They are in particular used for the preservation of manufactured products during storage by the control of microbial deterioration to ensure their shelf life and used for the preservation of tints that will be dispensed from machines

(1) 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).

(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).

- (11) “Dry-film preservatives” are active substances within the meaning of Article 3(1)(c) of Regulation (EU) No 528/2012 that are for use in product-type 7 as described in Annex V to that Regulation, in particular for the preservation of films or coatings by the control of microbial deterioration or algal growth in order to protect the initial properties of the surface of materials or objects;

(*) 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).;

- (2) the Annex is amended as set out in the Annex to this Decision.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 16 March 2016.

For the Commission
Karmenu VELLA
Member of the Commission

ANNEX

The Annex to Decision 2014/312/EU is amended as follows:

- (1) in criterion 3(a) 'Spreading rate', the fifth paragraph is replaced by the following: "Opaque primers and undercoats shall have a spreading rate of at least 8 m² per litre of product. Opaque primers with specific blocking/sealing, penetrating/binding properties and primers with special adhesion properties shall have a spreading rate of at least 6 m² per litre of product.";
- (2) in criterion 3 (Efficiency in use), Table 2, in the eighth and ninth columns referring to 'Primer (g)' and 'Undercoat and primer (h)', the text '6 m²/L (without opacity)' is replaced in both columns by the following: '6 m²/L (without having specific properties)';
- (3) the Appendix is amended as follows:
 - (a) in the Hazardous Substance Restriction and Derogation List the entry '1. Preservatives added to colourants, binders and the final product' the section '(i) Rules relating to biocide authorisation status' is replaced by the following:

(i) Rules relating to the approval status of preservatives

(i) Rules relating to the approval status of preservatives

The paint formulation shall only contain active substances (within the meaning of Article 3(1)(c) of Regulation (EU) No 528/2012) that meet the requirements of 1a, 1b and 1c (as applicable) and are approved in accordance with Article 9(2) of Regulation (EU) No 528/2012 for use in product-type 6 in the case of 1a and 1b or product-type 7 in the case of 1c, or are included in Annex I to that Regulation. Furthermore, a risk assessment for professional and consumer (non-professional) use shall have been provided in the Assessment Report. Applicants should consult the most current approved active substance list of the EU (*) and Annex I to that Regulation.

Paint formulations may contain preservatives for which a dossier has been submitted and which are under examination pending a decision on approval in the interim period up until the adoption of a positive decision to approve the active substance or to include it in Annex I to that Regulation.

(*) ECHA, Biocidal active substances — list of approved active substances, <http://www.echa.europa.eu/web/guest/information-on-chemicals/biocidal-active-substances>;

- (b) in the Hazardous Substance Restriction and Derogation List the entries '1(a) In-can preservatives' and '1(b) Tinting (colourant) machine preservatives' are replaced by the following:

<p>'(a) In-can preservatives</p> <p><i>Applicability:</i></p> <p>All products unless specified otherwise</p>	<p>In-can preservatives classified with the following derogated hazard classifications may be used in ecolabelled products:</p> <p><i>Derogated classifications:</i> H331 (R23), H400 (R50), H410 (R50/53), H411 (R51/53), H412 (R52/53), H317 (R43)</p> <p>In-can preservatives classified with these derogated classifications shall also meet the following derogation conditions:</p> <p>— The sum total concentration shall not exceed 0,060 % w/w</p>	<p><i>In-can preservatives</i></p> <p><i>Sum total in the final product:</i> 0,060 % w/w</p>	<p><i>Verification:</i></p> <p>Declaration by the applicant and their binder supplier supported by CAS numbers and classifications for the active substance in the final product and its binder.</p> <p>This shall include calculation by the applicant of the concentration of the active substance in the final product.</p> <p>All manufactured active substances for which 50 % or more of the particles in the number size distribution have one or more external dimensions in the size range 1 nm-100 nm shall be identified.</p>
--	---	--	--

	<p>— Substances classified with H400 (R50) and/or H410 (R50/53) shall be non-bioaccumulative. Non-bioaccumulative substances shall have a Log Kow $\leq 3,2$ or a Bioconcentration Factor (BCF) ≤ 100.</p> <p>— For those substances that are approved for use or are included in Annex I to Regulation (EU) No 528/2012 evidence shall be provided that the approval conditions are respected for the paint product.</p> <p>— Where preservatives that are formaldehyde donors are used then formaldehyde content and emissions from the final product must meet the requirements in substance restriction 7(a)</p> <p>Specific concentration limits applies to the following preservatives:</p> <p>(i) Zinc pyrithione</p> <p>(ii) N-(3-aminopropyl)-N-dodecylpropane-1, 3-diamine</p>	<p><i>Concentration limit</i></p> <p>0,050 %</p> <p>0,050 %</p>	
(b) Tinting (colourant) machine preservatives	<p>The derogated hazard classifications and the derogation conditions listed under 1(a) shall apply also to preservatives used to protect colour tints whilst stored in machines prior to mixing with base paints.</p> <p>Preservatives added to protect tints that will be dispensed from machines shall not exceed a sum total of 0,20 % w/w.</p> <p>The following preservatives are subject to specific maximum concentration limits contributing to the sum total of preservatives in the colourant:</p> <p>(i) 3-iodo-2-propynyl butylcarbamate (IPBC)</p> <p>(ii) Zinc pyrithione</p> <p>(iii) N-(3-aminopropyl)-N-dodecylpropane-1, 3-diamine</p>	<p><i>Sum total preservatives in the colourant:</i></p> <p>0,20 % w/w</p> <p>0,10 %</p> <p>0,050 %</p> <p>0,050 %</p>	<p><i>Verification:</i></p> <p>Declaration by the applicant and/or their tint supplier supported by CAS numbers and classifications for the active substance in the final product and its binder.</p> <p>This shall include calculation of the concentration of the active substance in the final tint product.</p> <p>All manufactured active substances for which 50 % or more of the particles in the number size distribution have one or more external dimensions in the size range 1 nm-100 nm shall be identified.'</p>

(d) in the Hazardous Substance Restriction and Derogation List an entry '8. Substances in binders and polymer dispersions' is added as follows:

'8. Substances in binders and polymer dispersions

<p>(a) Binders and cross linking agents</p> <p><i>Applicability:</i></p> <ul style="list-style-type: none"> — Interior/exterior trim — Decoration, protection and coating of wood — Metal coatings — Floor coating — High gloss coating — Architectural and decorative coating 	<p>Adipic acid dihydrazide (ADH) used as adhesion promoter or as a cross linking agent</p>	<p>1,0 % w/w</p>	<p><i>Verification:</i></p> <p>A declaration shall be provided by the applicant and their raw material suppliers supported by calculations or by an analytical test report.</p>
<p>(b) Reaction products and residues</p> <p><i>Applicability:</i></p> <p>Products with polymer binder systems</p>	<p>The presence of residual methanol is restricted depending on the content of binder in the final product.</p> <ul style="list-style-type: none"> — more than 10 % and up to 20 % binder content in the final product — more than 20 % and up to 40 % binder content in the final product — more than 40 % binder content in the final product 	<p>0,02 % w/w</p> <p>0,03 % w/w</p> <p>0,05 % w/w</p>	<p><i>Verification:</i></p> <p>A declaration shall be provided by the applicant and their raw material suppliers supported by calculations or by an analytical test report.'</p>