

COMMISSION IMPLEMENTING DECISION (EU) 2022/1497

of 8 September 2022

determining whether a product containing ‘*Capsicum oleoresin expeller pressed*’ is a biocidal product, pursuant to Article 3(3) of 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 3(3) thereof,

Whereas:

- (1) On 8 September 2021, Belgium requested the Commission to decide whether a product which contains, as indicated by the manufacturer, ‘*Capsicum oleoresin expeller pressed*’ and is marketed in Belgium by the manufacturer as a repellent against cats and dogs (‘the product’), is a biocidal product as defined in Article 3(1), point (a), of Regulation (EU) No 528/2012.
- (2) According to the information provided by Belgium, the product is a spray for use on outdoor surfaces (such as terraces, paths, walls, fences, etc.) in order to deter cats and dogs from those surfaces. The intended use of the product is different from that of sprays containing the same or similar ingredients and intended to be used against aggressive animals for purposes of self-defence.
- (3) In accordance with Article 3(2) of Regulation (EU) No 528/2012, the definition of ‘substance’ for the purposes of that Regulation is the one laid down in Article 3(1) of Regulation (EC) No 1907/2006 of the European Parliament and of the Council ⁽²⁾, which defines a substance as a chemical element and its compounds in the natural state or obtained by any manufacturing process.
- (4) According to the guidance of the European Chemicals Agency ⁽³⁾, whole living or unprocessed dead organisms or parts thereof (for instance, branches, fruits or flowers etc.) are not considered as substances within the meaning of Regulation (EC) No 1907/2006.
- (5) ‘*Capsicum oleoresin expeller pressed*’ is an oily organic resin obtained by expeller pressing from the fruits of plants of the *Capsicum* genus. Consequently, ‘*Capsicum oleoresin expeller pressed*’ is made of compounds of chemical elements in the natural state, but is not a whole living or unprocessed dead organism or parts thereof.
- (6) ‘*Capsicum oleoresin expeller pressed*’ should therefore be considered as a substance within the meaning of Article 3(1) of Regulation (EC) No 1907/2006, and consequently, in accordance with Article 3(2), point (a), of Regulation (EU) No 528/2012, it should be considered also as a substance within the meaning of that Regulation.

⁽¹⁾ OJ L 167, 27.6.2012, p. 1.

⁽²⁾ 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).

⁽³⁾ Guidance for Annex V - Exemptions from the obligation to register (see page 19), available at https://echa.europa.eu/documents/10162/2324906/annex_v_en.pdf/8db56598-f7b7-41ba-91df-c55f9f626545

- (7) Under certain circumstances, cats and dogs may have an unwanted presence or a detrimental effect on humans, their activities or the products they use or produce and, therefore, could fall within the definition of a harmful organism within the meaning of Article 3(1), point (g), of Regulation (EU) No 528/2012. Since 'Capsicum oleoresin expeller pressed' contained in the product is intended to have an action against such harmful organisms, it is an active substance within the meaning of Article 3(1), point (c), of that Regulation.
- (8) Given that the product contains an active substance and is intended to deter harmful organism by a mode of action that is not merely physical or mechanical, the product should be considered a biocidal product as defined in Article 3(1), point (a), of Regulation (EU) No 528/2012.
- (9) Product-type 19, as defined in Annex V to Regulation (EU) No 528/2012, includes products used to control harmful organisms by repelling or attracting them. Since the product is used with the intention of repelling cats and dogs, such use falls under the description of product-type 19.
- (10) 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

A product containing 'Capsicum oleoresin expeller pressed' used on outdoor surfaces for the purpose of repelling cats and dogs from those surfaces, shall be considered a biocidal product within the meaning of Article 3(1), point (a), of Regulation (EU) No 528/2012 and shall fall within product-type 19 as defined in Annex V to that Regulation.

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, 8 September 2022.

For the Commission
The President
Ursula VON DER LEYEN
