COMMISSION DIRECTIVE 2009/151/EC

of 27 November 2009

amending Directive 98/8/EC of the European Parliament and of the Council to include tolylfluanid as an active substance in Annex I thereto

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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 market [1], 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 market [2] 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 tolylfluanid.

(2) Pursuant to Regulation (EC) No 1451/2007, tolylfluanid 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 Directive 98/8/EC.

(3) Finland was designated as Rapporteur Member State and submitted the competent authority report, together with a recommendation, to the Commission on 24 April 2006 in accordance with Article 14(4) and (6) of Regulation (EC) No 1451/2007.

(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 15 May 2009, in an assessment report.

(5) It appears from the examinations made that biocidal products used as wood preservatives and containing tolylfluanid may be expected to satisfy the requirements laid down in Article 5 of Directive 98/8/EC. It is therefore appropriate to include tolylfluanid in Annex I, in order to ensure that in all Member States authorisations for biocidal products used as wood preservatives and containing tolylfluanid can be granted, modified, or cancelled in accordance with Article 16(3) of Directive 98/8/EC.

(6) However, unacceptable risks were identified for the *in situ* treatment of wood outdoors and for treated wood exposed to weathering. Therefore, products containing tolylfluanid and used as wood preservatives should not be authorised for those uses.

(7) In the light of the findings of the assessment report, it is appropriate to require that risk mitigation measures are applied at product authorisation level to products containing tolylfluanid and used as wood preservatives to ensure that risks are reduced to an acceptable level in accordance with Article 5 of Directive 98/8/EC and Annex VI thereto. In particular, it is appropriate to require that products intended for industrial or professional use be used with appropriate protective equipment unless it can be demonstrated that risks for industrial or professional users can be reduced by other means. Appropriate measures should be taken to protect the soil and aquatic compartments since unacceptable risks to these compartments have been identified during the evaluation. Instructions should therefore be provided to indicate that treated timber must be stored after treatment under shelter and/or on impermeable hard standing and that any losses must be collected for reuse or disposal.

(8) It is important that the provisions of this Directive be applied simultaneously in all the Member States in order to ensure equal treatment of biocidal products on the market containing the active substance tolylfluanid and also to facilitate the proper operation of the biocidal products market in general.

[1] OJ L 123, 24.4.1998, p. 1.
[2] OJ L 325, 11.12.2007, p. 3.

(9) A reasonable period should be allowed to elapse before an active substance is included in Annex I in order to permit Member States and the 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.

(10) After inclusion, Member States should be allowed a reasonable period to implement Article 16(3) of Directive 98/8/EC, and in particular, to grant, modify or cancel authorisations of biocidal products in product-type 8 containing tolylfluanid to ensure that they comply with Directive 98/8/EC.

(11) Directive 98/8/EC should therefore be amended accordingly.

(12) 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 30 September 2010 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive.

They shall apply those provisions from 1 October 2011.

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.

Article 3

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 27 November 2009.

For the Commission

Stavros DIMAS

Member of the Commission

ANNEX

The following entry 'No 29' is inserted in Annex I to Directive 98/8/EC:

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 (*)
'29	tolylfluanid	Dichloro-N-[(dimethylamino)sulphonyl]fluoro-N-(p-tolyl)methanesulphenamide EC No: 211-986-9 CAS No: 731-27-1	960 g/kg	1 October 2011	30 September 2013	30 September 2021	8	Products shall not be authorised for the *in situ* treatment of wood outdoors or for wood that will be exposed to weathering. Member States shall ensure that authorisations are subject to the following conditions: 1. In view of the assumptions made during the risk assessment, products authorised for industrial or professional use must be used with appropriate personal protective equipment, unless it can be demonstrated in the application for product authorisation that risks to industrial or professional users can be reduced to an acceptable level by other means. 2. In view of the risks identified for the soil and aquatic compartments, appropriate risk mitigation measures must be taken to protect those compartments. In particular, labels and/or safety-data sheets of products authorised for industrial or professional use shall indicate that freshly treated timber must be stored after treatment under shelter and/or on impermeable hard standing to prevent direct losses to soil or water and that any losses must be collected for reuse or disposal.'

(*) 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