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COMMISSION

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COMMISSION IMPLEMENTING DECISION

of **XXX**

**pursuant to Article 3(3) of Regulation (EU) No 528/2012 of the European Parliament
and of the Council on monitoring traps containing attractants to insects**

(Text with EEA relevance)

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of **XXX**

pursuant to Article 3(3) of Regulation (EU) No 528/2012 of the European Parliament and of the Council on monitoring traps containing attractants to insects

(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 products¹, and in particular Article 3(3) thereof, Whereas:

- (1) On 27 January 2017, Luxembourg requested the Commission to decide, pursuant to Article 3(3) of Regulation (EU) No 528/2012, whether two monitoring traps containing attractant active substances (the "monitoring traps") that are placed on the market for the purpose of detecting the presence of specific groups of insects such as clothes moths or fruit flies (the "monitored organisms"), are biocidal products, treated articles or neither.
- (2) According to the information provided by Luxembourg, the monitoring trap for clothes moths consists of a glue trap in which the glue is impregnated with clothes moths pheromone. The one for fruit flies consists of a pre-filled, non-refillable bottle containing vinegar placed within a glue trap. In both monitoring traps, the attractant active substance ("the attractant") is claimed in the product's information to contribute to detect the monitored organisms by attracting them to the monitoring traps.
- (3) The monitored organisms meet the definition of "harmful organism" provided under Article 3(1)(g) of Regulation (EU) No 528/2012, since they may have an unwanted presence or a detrimental effect on humans or the products they use.
- (4) Since the attractant meets the definition of "substance" pursuant to Article 3(2)(a) of Regulation (EU) No 528/2012 and it has an action on the monitored organisms, the attractant also meets the definition of "active substance" under Article 3(1)(c) of that Regulation. As such, clothes moths pheromone is an active substance listed under category 5 of Annex I to Regulation (EU) No 528/2012 and vinegar is an existing active substance subject to the provisions in Articles 15(b), 16 and 17 of Commission delegated Regulation (EU) No 1062/2014².
- (5) In accordance with Article 3(1)(a) of Regulation (EU) No 528/2012, destroying, deterring, rendering harmless, preventing the action of, or otherwise exerting a controlling effect on any harmful organism is a biocidal function.

¹ OJ L 167, 27.6.2012, p. 1.

² Commission delegated Regulation (EU) No 1062/2014 of 4 August 2014 on the work programme for the systematic examination of all existing active substances contained in biocidal products referred to in Regulation (EU) No 528/2012 of the European Parliament and of the Council (OJ L 294, 10.10.2014, p. 1).

- (6) 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 attractant is used in the monitoring traps with the intention of attracting the monitored organisms to it, such use falls under the description of product-type 19.
- (7) Regarding the monitoring trap for fruit flies, it i) contains vinegar, which meets the definition of an active substance; ii) vinegar is used with the intention of attracting fruit flies to the monitoring trap; iii) fruit flies are harmful organisms the presence of which is unwanted. Since the monitoring trap is supplied to the user as a single device consisting of the glue trap and the container with vinegar, it meets the definition of a biocidal product provided under the first indent of Article 3(1)(a) of Regulation (EU) No 528/2012 and shall fall within product-type 19.
- (8) Regarding the monitoring trap for clothes moths, it meets the definition of "article" pursuant to Article 3(2)(c) of Regulation (EU) No 528/2012. Since it has been treated with, or intentionally incorporates, one or more biocidal products containing the attractant, it also meets the definition of "treated article" within the meaning of Article 3(1)(l) of that Regulation.
- (9) In accordance with Article 3(1)(a) of Regulation (EU) No 528/2012, a treated article that has a primary biocidal function is a biocidal product. It is therefore essential to establish whether or not the monitoring trap for clothes moths has a primary biocidal function, in order to conclude whether it is a treated article or a biocidal product. In this context, consideration of the criteria established in agreed Union guidance³ may be useful.
- (10) Since (i) the monitored organisms are not harmful to the monitoring trap itself; (ii) the concentration of the attractant in the monitoring trap is comparable to that in biocidal products used for the same purpose; (iii) the mode of action of the active substance in the monitoring trap is identical to that of a biocidal product; (iv) first importance and greater prominence is given in the product's information to the attractant than to the physical or mechanical action of the trap (e.g. the sticky properties), the monitoring trap for clothes moths can be considered to have a primary biocidal function.
- (11) Therefore, the monitoring trap for clothes moths meets the definition of a biocidal product provided under the last subparagraph of Article 3(1)(a) of Regulation (EU) No 528/2012 and shall fall within product-type 19.
- (12) The Commission also notes that a pheromone trap containing the active substance on carton covered with sticky glue was the representative use of the biocidal product assessed in the context of the examination of one pheromone for product-type 19⁴.
- (13) 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 monitoring trap that, in the form in which it is supplied to the user, contains, or has been treated with, or intentionally incorporates, an active substance for the purpose of attracting

³ Note for guidance on Frequently asked questions on treated articles (Question 11), available at <https://circabc.europa.eu/w/browse/d7363efd-d8fb-43e6-8036-5bcc5e87bf22>

⁴ Assessment Report of the active substance (Z,E)-Tetradeca-9,12-dienyl acetate for product-type 19, available at <http://dissemination.echa.europa.eu/Biocides/factsheet?id=0058-19>

harmful organisms towards that monitoring trap, shall be considered as a biocidal product in accordance with Article 3(1)(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,

For the Commission
The President
Jean-Claude JUNCKER