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COMMISSION IMPLEMENTING DECISION

of 14 October 2013

authorising the 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 of ammonium salts in cellulose wadding insulation materials

(notified under document C(2013) 6658)

(Only the French text is authentic)

(Text with EEA relevance)

(2013/505/EU)

(OJ L 275, 16.10.2013, p. 52)

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(2013/505/EU)

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 14 August 2013, the French Republic informed the Commission, the European Chemicals Agency ('the Agency') and the other Member States, in accordance with Article 129(1) of Regulation (EC) No 1907/2006 (safeguard clause), that it has justifiable grounds for believing that urgent action is essential to protect the public from exposure to ammonia released from ammonium salts in cellulose wadding insulation materials used in buildings. The French Republic adopted a provisional measure on 21 June 2013 and published it in the Official Journal of the French Republic on 3 July 2013.
- (2) The Order of 21 June 2013 on the prohibition of placing on the market, import, sale and distribution and manufacture of cellulose wadding insulation materials with ammonium salts adjuvants ('the Order') prohibits the placing on the market, import, possession with a view to sale or distribution, sale or distribution and production of cellulose wadding insulation materials containing ammonium salts as additives. These products must also be withdrawn from the market in France and recalled at the expense of the person responsible for first placing them on the market.

⁽¹⁾ OJ L 396, 30.12.2006, p. 1.

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- (3) The draft Order was first submitted to the Commission under Directive 98/34/EC of the European Parliament and of the Council⁽¹⁾. In accordance with Article 9(7) of that Directive, France claimed that the Order was urgent and the Commission expressed the view that the reasons given by France for claiming urgency were satisfactory.
- (4) Following the invitation from the Commission, France resubmitted the Order in accordance with Article 129(1) of Regulation (EC) No 1907/2006. The Commission examined the Order together with the scientific and technical information also submitted. The Commission undertook a brief consultation with Member States and stakeholders about the Order.
- (5) Given the short time limit within which the Commission must take a decision in relation to the provisional measures under Article 129(2) of Regulation (EC) No 1907/2006, the Commission has to base its decision predominantly on the information submitted to it by France.
- (6) Until September 2011, cellulose wadding insulation materials in France contained boric acid, which acted as flame retardant and biocide. Following the ban of boric acid for biocidal uses, and in order to maintain the flame retardant properties of certain insulation materials (including cellulose wadding), the French industry replaced boron compounds with ammonium salts.
- (7) The French measure is justified on the basis of incidents registered by the national poison centres (several cases of people intoxicated since November 2011), and complaints registered by the professional association of producers of cellulose wadding insulation (about 150 cases). The French authorities also measured the concentration of ammonia within houses for which complaints had been received which demonstrated that the levels of exposure to ammonia are higher than the reference toxicological values for safe long-term exposure. Therefore, ammonium salts should be replaced.
- (8) The information provided by France indicates that ammonium salts in cellulose wadding insulation materials gives rise to a risk to human health which may not be adequately controlled and needs to be addressed. In this particular case, in the interests of achieving the swift harmonisation of the internal market whilst protecting human health at a high level, the measure taken by France should be deemed to have the urgency required by Article 129(1) of Regulation (EC) No 1907/2006.

⁽¹⁾ Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ L 204, 21.7.1998, p. 37).

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- (9) As the provisional measure taken by France consists in a restriction on the placing on the market or use of a substance, Article 129(3) of Regulation (EC) No 1907/2006 requires that France initiate a Union restriction procedure by submitting to the Agency a dossier, in accordance with Annex XV, within three months of the date of this Decision.
- (10) For all these reasons, the Order should be authorised.
- (11) A decision under Article 129(2) authorising a provisional measure must set a defined time period for such authorisation; in view of the deadline for the initiation of the Union restriction procedure set in Article 129(3) and in order to allow sufficient time for a decision to be taken under the normal restrictions process following the submission by France of an Annex XV dossier, without the need to extend the authorisation, this time period should be 21 months.
- (12) This Decision should not prejudice in any way a Commission decision under Article 73 of Regulation (EC) No 1907/2006 if the conditions laid down in Article 68 of that Regulation are fulfilled.
- (13) 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

1. Subject to paragraph 2, the provisional measure notified by the French Republic on 14 August 2013 is authorised for a time period of ►**M1** 36 months ◀ from the date of effect of this Decision.
2. The authorisation shall expire on the earlier of the following occasions if either occurs before the expiry of the time period specified in paragraph 1:
 - the date when an adaptation of Annex XVII to Regulation (EC) No 1907/2006 in a manner sought by the authorised provisional measure becomes applicable, or
 - six months after the restrictions procedure, set out in Articles 69 to 73 of Regulation (EC) No 1907/2006, is finalised without the Commission proposing a draft restriction.

Article 2

This Decision shall take effect on 15 October 2013.

Article 3

This Decision is addressed to the French Republic.