COMMISSION DECISION

of 3 July 2009

concerning the temporary authorisation of biocidal products containing malathion in the Department of French Guiana

(notified under document number C(2009) 5349)

(2009/521/EC)

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 Article 15(1) thereof,

Whereas:

(1) The first subparagraph of Article 16(2) of Directive 98/8/EC (hereinafter referred to as the Directive) provides that the Commission shall commence a 10-year work programme for the systematic examination of all active substances already on the market on 14 May 2000 (hereinafter referred to as the review programme).

(2) Malathion (EC No 204-497-7; CAS No 121-75-5) was identified as available on the market before 14 May 2000 as an active substance of biocidal products for purposes other than those referred to in Article 2(2)(c) and (d) of the Directive.

(3) As no complete dossier was submitted in support of the inclusion of malathion in Annex I, IA or IB of the Directive within the deadline prescribed in part B of Annex V to Commission Regulation (EC) No 2032/2003 [2], the Commission decided, by Commission Decision 2007/565/EC [3], that malathion shall not be included in Annexes I, IA or IB to the Directive. In accordance with Article 4(1) of Commission Regulation (EC) No 1451/2007 [4], biocidal products containing malathion shall no longer be placed on the market.

(4) Article 15(1) of the Directive lays down the conditions under which Member States may authorise temporarily for a period not exceeding 120 days the placing on the market of biocidal products not complying with the provisions of the Directive. Such temporary authorisation may only be granted for a limited and controlled use if such a measure appears necessary because of an unforeseen danger which cannot be contained by other means. In this case, the Member State concerned shall immediately inform the other Member States and the Commission of its action and the justification for it. The temporary measure may be extended by a decision taken in accordance with the management procedure referred to in Article 28(2) of the Directive.

(5) France has informed the Commission and the other Member States about its decision of 27 February 2009 to temporarily authorise the placing on the market of biocidal products containing malathion for product type 18 as defined in Annex V of Directive 98/8/EC (insecticides, acaricides and products to control other arthropods). The authorisation was granted for a period of 120 days starting on 3 March 2009 and was only valid for vector disease control carried out by public operators in the Department of French Guiana. According to the information provided by France, the temporary authorisation of biocidal products containing malathion was necessary in view of the rapidly developing epidemic of dengue in French Guiana. The local authorities did not have other effective insecticidal products available for large-scale use against adult mosquitoes.

(6) On 28 April 2009, France requested the Commission to decide that the action may be extended or repeated in accordance with Article 15(1) of Directive 98/8/EC. The request was made based on the risk that there would still not be any appropriate alternative products for vector mosquito control available in French Guiana on 1 July 2009 when the initial authorisation expires.

(7) With regard to the importance of the dengue epidemic in the French overseas department of Guiana, the current unavailability of insecticidal products other than malathion in the said department, and the risk that alternatives will not be available when the temporary authorisation granted by France expires, it is appropriate to allow France to extend the temporary authorisation until alternative insecticidal products are available but at the latest until 1 November 2009.

(8) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Biocidal Products,

[1] OJ L 123, 24.4.1998, p. 1.
[2] OJ L 307, 24.11.2003, p. 1.
[3] OJ L 216, 21.8.2007, p. 17.
[4] OJ L 325, 11.12.2007, p. 3.

HAS ADOPTED THIS DECISION:

Article 1

In accordance with Article 15(1) of Directive 98/8/EC, France may allow the placing on the market of biocidal products containing malathion (EC No 204-497-7; CAS No 121-75-5) for product type 18 as defined in Annex V of Directive 98/8/EC (insecticides, acaricides and products to control other arthropods) for vector mosquito control in the Department of French Guiana until 1 November 2009.

Article 2

1. When allowing the placing on the market of biocidal products containing malathion in accordance with Article 1, France shall ensure that the following conditions are complied with:

(a) such biocidal products shall be used only under the control of public authorities;

(b) such biocidal products shall be used only until appropriate alternative biocidal products complying with the provisions of Directive 98/8/EC are available in the Department of French Guiana.

2. By 10 September 2009, France shall inform the Commission on the application of paragraph 1.

Article 3

This Decision is addressed to the French Republic.

Done at Brussels, 3 July 2009.

For the Commission

Stavros DIMAS

Member of the Commission