Commission Implementing Decision (EU) 2019/1331 of 5 August 2019 on the terms and conditions of the authorisation of a biocidal product containing peppermint oil and citronellal referred by the United Kingdom in accordance with Article 36(1) of Regulation (EU) No 528/2012 of the European Parliament and Council (notified under document C(2019) 5691) (Text with EEA relevance)

COMMISSION IMPLEMENTING DECISION (EU) 2019/1331

of 5 August 2019

on the terms and conditions of the authorisation of a biocidal product containing peppermint oil and citronellal referred by the United Kingdom in accordance with Article 36(1) of Regulation (EU) No 528/2012 of the European Parliament and Council

(notified under document C(2019) 5691)

(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 36(3) thereof,

Whereas:

(1) On 24 November 2017, the company Bird Free Ltd (‘the applicant’) submitted an application for authorisation of the biocidal product ‘Bird Free’ under the simplified authorisation procedure to the competent authority of the United Kingdom. The product was authorised in the United Kingdom on 5 June 2018. ‘Bird Free’ is a bird-repellent of product-type 19 and the two active substances contained in it, peppermint oil and citronellal, are included in Annex I of Regulation (EU) No 528/2012 without restrictions.

(2) ‘Bird Free’ is a gel which may be used to deter feral pigeons from roosting on buildings and other structures. In accordance with Article 27(1) of Regulation (EU) No 528/2012 the authorisation holder notified the Member States on whose territory it intended to place the product on the market on 12 June 2018.

(3) Pursuant to the first subparagraph of Article 27(2) of Regulation (EU) No 528/2012, France and Germany referred objections to the coordination group on 12 July 2018, indicating that the contested biocidal product does not meet the requirements laid down in Article 25 of that Regulation.

(4) In its objection France considers that ‘Bird Free’ seems to repel birds by visual aversion due to UV light emission and considers that this effect should have been reported in the application. It also considers that an additional negative control, i.e. testing of a

formulation of the product without the active substances is required in order to ensure that the biocidal effect is caused by the active substances. France questions the efficacy of the active substances in 'Bird Free' because of the low quantities thereof present in the product and the decrease of concentration of citronellal during storage of the product. Therefore France considers that new tests should be carried out in order to demonstrate that the efficacy of 'Bird Free' is the result of an olfactory aversion due to the presence of the active substances.

(5) In its objection Germany considers the efficacy data provided by the applicant not acceptable as the biocidal product without the active substances was not used in the control groups. Germany considers that without such a control it cannot be confirmed that the active substances have a repellent effect on pigeons. It also considers that it is unclear which mode of action is causing the repellent effect.

(6) The coordination group secretariat invited the Member States and the applicant to submit written comments about the referral. The referral was discussed in the meeting of the coordination group on 25 September 2018 and a teleconference on 12 October 2018.

(7) As no agreement was reached in the coordination group, the United Kingdom referred the unresolved objections to the Commission pursuant to Article 36(1) of Regulation (EU) No 528/2012 on 31 October 2018. The United Kingdom thereby provided the Commission with a detailed statement of the matters on which Member States were unable to reach agreement and the reasons for their disagreement. A copy of that statement was forwarded to the Member States concerned and the applicant.

(8) On 27 November 2018, the Commission requested an opinion from the European Chemicals Agency ('the Agency') pursuant to Article 36(2) of Regulation (EU) No 528/2012 on a number of questions concerning the unresolved objections.

(9) The Agency adopted its opinion[(2)] on 1 March 2019 after having given the opportunity to the applicant to provide written comments pursuant to Article 38(2) of Regulation (EU) No 528/2012.

(10) According to the Agency, the biocidal product 'Bird Free' is sufficiently effective and therefore meets the condition for granting an authorisation in accordance with the simplified authorisation procedure laid down in Article 25(d) of Regulation (EU) No 528/2012.

(11) In light of the opinion of the Agency, the contested biocidal product is considered as sufficiently effective as required under Article 25(d) of Regulation (EU) No 528/2012.

(12) 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

The biocidal product 'Bird Free', identified by the case number BC-RG035397-31 in the Register for Biocidal Products, meets the condition laid down in Article 25(d) of Regulation (EU) No 528/2012.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 5 August 2019.

For the Commission

Vytenis ANDRIUKAITIS

Member of the Commission

(**1**) OJ L 167, 27.6.2012, p. 1.

(**2**) ECHA opinion of 1 March 2019 on a request according to Article 36(2) and 38 of Regulation (EU) No 528/2012 on 'Questions on unresolved objection during the notification in accordance with Article 27(1) of the Biocidal Products Regulation of a product type 19 biocidal product "Bird Free" containing peppermint oil and citronellal used to deter feral pigeons' (ECHA/BPC/224/2019).

Changes to legislation:
There are currently no known outstanding effects for the Commission Implementing Decision (EU) 2019/1331.