COMMISSION DECISION (EU) 2021/1871

of 22 October 2021

amending Decision 2014/312/EU establishing the ecological criteria for the award of the EU Ecolabel for indoor and outdoor paints and varnishes

(notified under document C(2021) 7514)

(Text with EEA relevance)

THE EUROPEAN COMMISSION

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel ([1]), and in particular Article 8(2) thereof,

After consulting the European Union Ecolabelling Board,

Whereas:

(1) Regulation (EC) No 66/2010 provides that the EU Ecolabel may be awarded to products with a reduced environmental impact during their entire life cycle. Specific EU Ecolabel criteria are to be established for each product group.

(2) Commission Decision 2014/312/EU ([2]) establishes the criteria, and related assessment and verifications requirements, for indoor and outdoor paints and varnishes.

(3) In line with the conclusions of the EU Ecolabel Fitness check (REFIT) of 30 June 2017 ([3]), the Commission services, assessed the relevance of an amendment to guarantee a high uptake of the scheme for that product group. Public stakeholders have also been consulted.

(4) That assessment confirmed that a derogation for the pigment titanium dioxide (TiO2), CAS No 13463-67-7, and to the pigment additive trimethylolpropane (TMP), CAS No 77-99-6, is necessary to ensure the criteria remain fully operational.

(5) Following the adoption of Commission Delegated Regulation (EU) 2020/217 ([4]), the pigment TiO2, in dry powder form, has been set the harmonised classification of carcinogen category 2 by inhalation, with the associated hazard code H351 and hazard statement 'suspected of causing cancer', if 1 % or more of the TiO2 particles have an aerodynamic diameter less than or equal to 10 μm. This classification will enter in force on 1 October 2021 and from that date it will no longer be possible to use titanium dioxide in EU Ecolabel paint and varnish products, in concentrations exceeding 0,010 % w/w, unless expressly derogated from the requirements of criterion 5(a)(i) set out in the Annex to Commission Decision 2014/312/EU.

(6) Based on information provided by industry stakeholders, members of the EU Ecolabelling Board and EU Ecolabel license holders, TiO2 is currently used in at least 91 % of paint and varnish products bearing the EU Ecolabel, (typical content of TiO2 is 3-30 % weight/weight (w/w) in paints and varnishes, and up to 65 % in tinting pastes). Other ISO 14024 Type I ecolabels in the Union already derogate TiO2 use regardless of concentration in liquid paints and varnishes not bearing the H351 hazard code.

([1]) OJ L 27, 30.1.2010, p. 1.

([2]) Commission Decision 2014/312/EU establishing the ecological criteria for the award of the EU Ecolabel for indoor and outdoor paints and varnishes (OJ L 164, 3.6.2014, p. 45).

([3]) Report from the Commission to the European Parliament and the Council on the review of implementation of Regulation (EC) No 122/2009 of the European Parliament and of the Council on 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS) and the Regulation (EC) No 66/2010 of the parliament and of the Council of 25 November 2009 on the EU Ecolabel (COM(2017) 355 final).

([4]) Commission Delegated Regulation (EU) 2020/217 of 4 October 2019 amending, for the purposes of its adaptation to technical and scientific progress, Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures and correcting that Regulation (OJ L 44, 18.2.2020, p. 1).

(7) TiO2 is a superior performing pigment to all other known alternatives because of its high brightness and high refractive index. In order to provide a given opacity to a coating, paints and varnishes with alternative pigments, such as zirconium oxide, zinc oxide, barium sulphate or zinc sulphate, would need to contain higher pigment contents or be applied in denser coatings, with a higher environmental impact.

(8) The derogation request for the use of TiO2 in EU Ecolabel paints and varnishes should apply only to mixtures where the presence of TiO2 does not trigger the classification of the final product with the hazard code H351. According to Delegated Regulation (EU) 2020/217, however, the label on the packaging of liquid mixtures containing 1 % or more of TiO2 particles with aerodynamic diameter equal to or below 10 μm, shall bear the EUH211 statement: 'Warning! Hazardous respirable droplets may be formed when sprayed. Do not breathe spray or mist.' as set out in Annex II, Part 2, to Regulation (EC) No 1272/2008 of the European Parliament and of the Council ([5]).

(9) In March 2020, as part of a joint submission to the classification and labelling inventory managed by the European Chemicals Agency, the pigment additive TMP has been set the classification of reprotoxicant category 2, with the associated hazard code H361fd and hazard statement 'suspected of damaging fertility or the unborn child'. TMP is not directly used by paint producers, but can be present in pigments, as an additive, in concentrations up to 1,0 % w/w of pigment (most commonly up to 0,6 %). TMP-treated pigments cannot be used in EU Ecolabel paint and varnish products if the concentration of TMP in the paint and varnish product exceeds 0,010 % w/w. To facilitate the use of TMP-treated pigments, the presence of TMP needs to be expressly derogated from the requirements of criterion 5(a) 'Overall restrictions to hazard classifications and risk phrases' of Decision 2014/312/EU.

(10) Based on information provided by industry stakeholders, members of the EU Ecolabelling Board and EU Ecolabel license holders, pigments are treated with TMP in order to improve their bulk flow during dosing and to improve dispersion during mixing. TMP-treated pigments facilitate superior dispersion levels and lower mixing times (estimated 30 % reduction), resulting in energy savings and increased plant productivity rates. Currently there are no known alternatives that provide the bulk flow and dispersion benefits of TMP. It is estimated that research and development efforts into non-hazardous or less hazardous alternatives to TMP would take at least two years with no guarantee of success. The continued use of TMP-treated pigments in paint and varnish products has already been permitted in several other ISO 14024 Type I ecolabels in the Union.

(11) The need for derogations for TiO2 and TMP after the validity period of Decision 2014/312/EU should be carefully assessed during the revision process of the related criteria. Industry is encouraged to find safer alternatives to those substances in the meantime.

(12) For clarity, in the Appendix to the Annex to Decision 2014/312/EUin point 1.(iii), it is necessary to replace the 0,0200 % threshold indicated for 2-methyl-2H-isothiazol-3one (MIT), CAS No 2682-20-4; EC No 220-239-6, with 0,0015 %, in order to harmonize the content of Criterion 5(a) of that Annex with the 13th adaptation to technical and scientific progress (ATP) to Regulation (EC) No 1272/2008 ([6]), which entered into force on 1 May 2020.

(13) The 13th ATP has in fact lowered to 0,0015 % the MIT threshold concentration that would trigger the classification of the mixture as a skin sensitiser, category 1A with the associated hazard code H317 and hazard statement 'may cause an allergic skin reaction'. Criterion 5(a) does not permit the final EU Ecolabel paint or varnish product to be classified with the hazard code H317 unless explicitly derogated. Therefore the 0,0200 % threshold indicated for MIT in the EU Ecolabel Appendix to the Annex to Decision 2014/312/EU is contradictory and should be substituted with 0,0015 %.

([5]) Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (OJ L 353, 31.12.2008, p. 1).

([6]) Commission Regulation (EU) 2018/1480 of 4 October 2018 amending, for the purposes of its adaptation to technical and scientific progress, Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures and correcting Commission Regulation (EU) 2017/776 (OJ L 251, 5.10.2018, p. 1).

(14) For clarity, in the Appendix to the Annex to Decision 2014/312/EU, in point 1.(iii), it is necessary to replace the 0,0500 % threshold indicated for substance 2-octyl-2H-isothiazol-3-one (OIT), CAS No 26530-20-1; EC No 247-761-7, with 0,0015 %, in order to harmonize the content of Criterion 5(a) of that Annex with the 15th ATP to Regulation (EC) No 1272/2008, which is to enter into force on 1 March 2022.

(15) The 15th ATP is to lower to 0,0015 % the OIT threshold concentration that would trigger the classification of the mixture as a skin sensitiser, category 1A with the associated hazard code H317 and hazard statement 'may cause an allergic skin reaction'. Criterion 5(a) does not permit the final EU Ecolabel paint or varnish product to be classified with the hazard code H317 unless explicitly derogated. Therefore the 0,0500 % threshold indicated for OIT in the EU Ecolabel Appendix would be contradictory from 1 March 2022 and should be substituted with 0,0015 %, effective from that date onwards.

(16) Decision 2014/312/EU should therefore be amended accordingly.

(17) The measures provided for in this Decision are in accordance with the opinion of the Committee established by Article 16 of Regulation (EC) No 66/2010,

HAS ADOPTED THIS DECISION:

Sole Article

The Annex to Decision 2014/312/EU is amended in accordance with the Annex to this Decision.

This Decision is addressed to the Member States.

Done at Brussels, 22 October 2021.

For the Commission
Virginijus SINKEVIČIUS
Member of the Commission

ANNEX

The Appendix to the Annex to Decision 2014/312/EU is amended as follows:

(1) the section headed '1. Preservatives added to colorants, binders and the final product, (iii) Permitted sum totals of isothiazolinone substances and compounds in the ready to use product' is amended as follows:

(a) the limit of 0,0200 % for 2-methyl-2H-isothiazol-3one is replaced by the following:

'2-methyl-2H-isothiazol-3-one: 0,0015 %';

(b) the limit of 0,0500 % for 2-octyl-2H-isothiazol-3-one is replaced by the following:

'2-octyl-2H-isothiazol-3-one: 0,0500 % (until 28 February 2022); 0,0015 % (from 1 March 2022 onwards)';

(2) in the section headed '5. Miscellaneous functional substances with general application', point (f) (Pigments) is replaced by the following:

Substance group	Scope of restriction and/or derogation	Concentration limits (where applicable)	Assessment and verification
'(f) Pigments Applicability: All products	Restriction: Pigments containing metals shall only be used where laboratory testing of the pigment shows that the metal chromophore is bonded within a crystal lattice and is insoluble. Derogation: The following metal containing pigments are derogated for use without the need for testing: — Barium sulphate — Antimony nickel within an insoluble TiO_2 lattice — Cobalt aluminate blue spinel — Cobalt chromite blue-green spinel	n/a	Verification: Test results demonstrating that the pigment chromophore is bonded within a crystal lattice and is insoluble. Test method: DIN 53770-1 or equivalent
	Derogation to criterion 5(a): Carc. Cat. 2, H351 (inhalation): — For titanium dioxide (TiO2) only, and only in cases where the presence of TiO2 does not trigger Carc. 2, H351 classification of the paint or varnish product to be licensed	n/a	Verification: The applicant shall demonstrate that both they and the TiO2 supplier have systems in place to minimise worker exposure to dry TiO2 powder in the workplace (e.g. closed dosing systems, ventilated dosing and mixing areas, personal protective equipment).
	Derogation to criterion 5(a): Repr. Cat. 2, H361fd: — For trimethylolpropane (TMP), and only when used as an additive in pigments	0,50 %	Verification: The pigment supplier shall declare that the TMP content does not exceed 0,50 % w/w of the pigment.'