

COMMISSION IMPLEMENTING DECISION (EU) 2016/1943**of 4 November 2016****pursuant to Article 3(3) of Regulation (EU) No 528/2012 of the European Parliament and of the Council on the use of paraffin oil for coating eggs to control the population size of nesting birds****(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 3(3) thereof,

Whereas:

- (1) On 3 March 2016, the United Kingdom requested the Commission to decide, pursuant to Article 3(3) of Regulation (EU) No 528/2012, whether paraffin oil used for coating the eggs of nesting birds such as geese and gulls in order to control their population sizes and limit the possibility of birds striking aircraft in and around airfields and airports is a biocidal product for the purposes of Article 3(1)(a) of that Regulation.
- (2) According to the information provided by the United Kingdom, egg oiling deprives the developing embryo of oxygen by physically blocking the pores in egg shells, resulting in the asphyxiation of the bird embryo.
- (3) It is important to consider first whether paraffin oil used for egg oiling meets the definition of a biocidal product as provided for in Article 3(1)(a) of Regulation (EU) No 528/2012.
- (4) Paraffin oil meets the condition under Article 3(1)(a) of that Regulation to be a 'substance' or a 'mixture' within the meaning of Article 3(2) of Regulation (EC) No 1907/2006 of the European Parliament and of the Council ⁽²⁾.
- (5) Paraffin oil is intended to control the population size of nesting birds such as geese and gulls which meet the definition of a harmful organism laid down in Article 3(1)(g) of Regulation (EU) No 528/2012 since they may have a detrimental effect on animals or humans.
- (6) The information provided indicates that paraffin oil is used in egg oiling operations with the intention of destroying, deterring, rendering harmless, preventing the action of, or otherwise exerting a controlling effect on harmful organisms.
- (7) As paraffin oil only constitutes a physical contact barrier to the respiratory capabilities of the target organism and no chemical or biological action of paraffin oil occurs at any moment, it cannot be regarded as being intended to act chemically on that organism.
- (8) Since paraffin oil exerts a controlling effect on harmful organisms by mere physical or mechanical action, it does not meet the definition of a biocidal product as provided for under Article 3(1)(a) of Regulation (EU) No 528/2012.
- (9) 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

Paraffin oil, when used for coating eggs in order to control the population size of nesting birds, is not a biocidal product for the purposes of Article 3(1)(a) of Regulation (EU) No 528/2012.

⁽¹⁾ OJ L 167, 27.6.2012, p. 1.⁽²⁾ 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 (OJ L 396, 30.12.2006, p. 1).

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, 4 November 2016.

For the Commission
The President
Jean-Claude JUNCKER
