

Development of Legislation and Other Instruments

BPC-37: Minority opinion on BPC opinion on renewal of creosote (PT 8)

The Swedish Chemicals Agency does not agree with the opinion for creosote as adopted by the Biocidal Products Committee in December 2020 since it lacks restrictions that are necessary to minimise exposure to humans, animals and the environment as far as possible, in case the substance is going to be approved according to Article 5(2).

Given that creosote meets several exclusion criteria, the substance should not normally be approved, unless one of the conditions for derogation in Article 5(2) is met. In light of this and the lack of a conclusive assessment of endocrine disrupting properties (ED assessment), creosote should only be approved if, at the same time, the maximum practically possible measures are put in place in order to minimise exposure of humans, animals and the environment as far as possible. In other words, it should be ensured that if creosote had been identified as having endocrine-disrupting properties, this would not have led to additional or stricter restrictions. Only under these circumstances can Sweden consider it justified to refrain from requesting an ED assessment

Wood treated with or incorporating creosote shall not be placed on the market unless at least one of the conditions set in Article 5(2) of Regulation (EU) No 528/2012 is met in the Member State in which they are placed on the market. The extent to which Member States consider these conditions fulfilled varies considerably and while some Member States may still identify a need for the use of creosote-treated wood in their territory, others do not. One of the measures necessary to achieve an effective minimization of exposure to humans, animals and the environment that is missing as a condition of the proposed substance approval in the majority opinion is that the above restriction on the use of treated wood shall apply not only to wood treated within the EU with authorised wood preservatives, but also to wood treated with creosote and imported from third countries. The Swedish Chemicals Agency also identifies a need to introduce restrictions in the proposed approval conditions on the trade of creosote-treated wood between Member States. The opinion could state that products may only be used to treat wood for use in another Member State for purposes that have been authorised in the receiving Member State.

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Swedish Chemicals Agency

Mailing address	Visit & delivery	Invoicing address	Phone & fax	Internet	VAT No
Box 2 SE-172 13 Sundbyberg Sweden	Esplanaden 3A SE-172 67 Sundbyberg Sweden	FE 124 SE-838 80 Frösön Sweden	Phone +46 8 519 41 100 Fax +46 8 735 76 98	www.kemi.se kemi@kemi.se	SE202100388001

The Swedish Chemicals Agency notes that some of the main constituents of creosote, namely anthracene and PAHs are priority hazardous substances listed in the Directive 2013/39/EU as regards priority substances in the field of water policy (a daughter directive to the Water Framework Directive, WFD, 2000/60/EC). The WFD states that the Commission shall submit proposals for control measures for the cessation or phasing-out of discharges, emissions, and losses of the concerned substances to surface waters. We note that the Biocidal Products Regulation (Annex VI point 67) requires that decisions taken should not undermine the achievement of compliance with the standards laid down in Directive WFD, 2000/60/EC, among other Directives related to water protection. Therefore, the opinion should contain a proposal to restrict as far as possible the use of creosote to treat wood that can be expected to be used in contact with, above or in the vicinity of surface waters, accompanied by an appropriate labelling requirement.

Since the opinion does not contain such restrictions Sweden voted against the proposed BPC opinion and is submitting a minority opinion.

We believe that the issues Sweden raised during the meeting of the Committee are of such principal importance that they should be further considered by the Commissions in preparation of its proposal for a decision on approval to the Standing Committee.