



EUROPEAN  
COMMISSION

Brussels, **XXX**  
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[...] (2018) **XXX** draft

**COMMISSION IMPLEMENTING DECISION (EU) .../...**

**of **XXX****

**pursuant to Article 3(3) of Regulation (EU) No 528/2012 of the European Parliament  
and of the Council on pepper containing sprays to be used in case of attacks by  
aggressive dogs**

(Text with EEA relevance)

*This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the Commission.*

**COMMISSION IMPLEMENTING DECISION (EU) .../...**

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**pursuant to Article 3(3) of Regulation (EU) No 528/2012 of the European Parliament and of the Council on pepper containing sprays to be used in case of attacks by aggressive dogs**

(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<sup>1</sup>, and in particular Article 3(3) thereof,

Whereas:

- (1) On 16 December 2016, Germany requested the Commission to decide whether a group of pepper sprays placed on the market to be used as repellents for aggressive dogs ("the products") are biocidal products or not within the meaning of Article 3(1)(a) of Regulation (EU) No 528/2012 .
- (2) According to the information provided by Germany, the products contain substances like *Capsicum oleoresin* or *Capsicum annum* extract. They are used against an individual aggressive dog in a specific situation where the user is being attacked by the dog.
- (3) The products are a mixture within the meaning of Article 3(2) of Regulation (EC) No 1907/2006 of the European Parliament and of the Council<sup>2</sup>. Therefore, pursuant to Article 3(2)(b) of Regulation (EU) No 528/2012, they are considered a mixture also for the purposes of that Regulation.
- (4) The products contain *Capsicum oleoresin* or *Capsicum annum* extract, which are active substances within the meaning of Article 3(1)(c) of Regulation (EU) No 528/2012. Those active substances have been subject to the relevant provisions of point (b) of Article 15, Articles 16 and 17 of Commission Delegated Regulation (EU) No 1062/2014<sup>3</sup> under product-type 19, repellents and attractants, as defined in Annex V to Regulation (EU) No 528/2012.

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<sup>1</sup> OJ L 167, 27.6.2012, p. 1.

<sup>2</sup> 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).

<sup>3</sup> Commission delegated Regulation (EU) No 1062/2014 of 4 August 2014 on the work programme for the systematic examination of all existing active substances contained in biocidal products referred to in Regulation (EU) No 528/2012 of the European Parliament and of the Council (OJ L 294, 10.10.2014, p. 1).

- (5) Aggressive dogs fall within the definition of a harmful organism within the meaning of Article 3(1)(g) of Regulation (EU) No 528/2012, since they may have an unwanted presence or a detrimental effect on humans or animals under certain circumstances.
- (6) Product-type 19, as defined in Annex V to Regulation (EU) No 528/2012, includes products used to control harmful organisms by repelling or attracting them. Since the products are used with the intention of repelling the aggressive dogs when attacking the user, such use falls under the description of product-type 19.
- (7) Therefore, the products as they are supplied to the user are biocidal products within the meaning of the first indent of Article 3(1)(a) of Regulation (EU) No 528/2012 and fall within product-type 19.
- (8) 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*

Pepper containing sprays used for the purpose of repelling aggressive dogs attacking humans or animals shall be considered biocidal products within the meaning of Article 3(1)(a) of Regulation (EU) No 528/2012.

*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,

*For the Commission*  
*The President*  
*Jean-Claude JUNCKER*