EUROPEAN
COMMISSION

Brussels, 30.9.2022
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COMMISSION IMPLEMENTING DECISION

of 30.9.2022

granting an authorisation under Regulation (EC) No 1907/2006 of the European Parliament and of the Council to LETI Pharma, S.L.U. for a use of 4-(1,1,3,3-tetramethylbutyl)phenol, ethoxylated (4-tert-OPnEO)

(ONLY THE ENGLISH TEXT IS AUTHENTIC)

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THE EUROPEAN COMMISSION,

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

Having regard to 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[1], and in particular Article 64(8) thereof,

Whereas:

(1) 4-(1,1,3,3-tetramethylbutyl)phenol, ethoxylated (‘4-tert-OPnEO’) is listed in Annex XIV to Regulation (EC) No 1907/2006 and uses of that substance are subject to the authorisation requirement in Article 56(1), point (a), of that Regulation.

(2) On 6 August 2020, LETI Pharma, S.L.U. ('the applicant') submitted an application in accordance with Article 62 of Regulation (EC) No 1907/2006 for authorisation for a use of 4-tert-OPnEO. The use for which authorisation was sought is in aqueous buffers during the manufacturing process of the active pharmaceutical ingredient (Protein Q) of the veterinary vaccine LetiFend®.

(3) On 23 August 2021, the Commission received the opinions on the application adopted by the Committee for Risk Assessment (RAC) and by the Committee for Socio-economic Analysis (SEAC) of the European Chemicals Agency[2] and sent to it pursuant Article 64(5), second subparagraph, of Regulation (EC) No 1907/2006.

(4) RAC concluded in its opinions that it is not possible to determine a predicted no-effect concentration for the endocrine disrupting properties of 4-tert-OPnEO for the environment in accordance with Section 6.4 of Annex I to Regulation (EC) No 1907/2006 and that therefore 4-tert-OPnEO is a substance for which it is not possible to determine a threshold for the purposes of Article 60(3), point (a), of that Regulation. As a result, Article 60(2) of Regulation (EC) No 1907/2006 does not apply to that substance and an authorisation may therefore only be granted with respect to that substance under paragraph 4 of that Article.

[1] OJ L 396, 30.12.2006, p. 1.

[2] https://echa.europa.eu/documents/10162/cfc630cb-28f5-651f-1d2d-8a133264a2bc

(5) RAC noted that risk to the environment cannot be excluded for non-threshold substances, even at low exposure levels. Consequently, RAC takes the emissions of the substance as a proxy for the risk.

(6) In its opinion, RAC concluded that the risk management measures and operational conditions described in the application are appropriate and effective to limit the risk to the environment arising from the use of 4-tert-OPnEO. In particular, RAC noted that all solid and liquid waste containing 4-tert-OPnEO is disposed of as hazardous waste for incineration and that the applicant has demonstrated that releases to environmental compartments have been prevented or minimised as far as technically and practically possible. However, RAC also identified some shortcomings due to the potential increase of the amount of 4-tert-OPnEO and lack of measurements of 4-tert-OPnEO in the wastewater, and recommended monitoring arrangements. Having evaluated the RAC assessment, the Commission agrees with its conclusion and recommendation.

(7) In its opinion, SEAC concluded that it has no substantial reservations on the quantitative and qualitative elements of the applicant's assessment of the socio-economic benefits and of the risk to the environment associated with the continued use of the substance. Taking into account SEAC's assessment, the lack of scientific knowledge at present to quantify or monetise the risk to the environment associated with the use of the substance, RAC's conclusion that there are no expected releases to the environment, the combined estimated benefits due to avoided loss of profits and jobs in the order from millions of euro to tens of millions of euro per year, the qualitatively assessed additional socio-economic benefits of the continued use of the substance due to the availability of veterinary vaccines, as well as any relevant distributional impacts, the Commission concludes that the applicant has demonstrated that the socio-economic benefits of the continued use of the substance outweigh the risk to human health and the environment arising from that use.

(8) A suitable alternative should be safer, available, and technically and economically feasible. Where suitable alternatives are available in the Union, but not technically or economically feasible for the applicant or its downstream users, an authorisation may be granted if the applicant for authorisation submits a substitution plan. An alternative that provides the functionality and level of technical performance necessary for the use applied for should be considered to be technically feasible.

(9) In its opinion, SEAC concluded that there were no suitable alternative substances or technologies available for the applicant by the sunset date. The Commission, having evaluated SEAC's assessment and all relevant information available, concludes that further research is required to establish whether the identified alternatives are compatible with the relevant manufacturing processes in terms of their capacity to break protein-protein, protein-lipid and lipid-lipid associations and thereby to facilitate selective removal of hydrophobic contaminants without denaturing the active ingredient protein. The Commission therefore considers that the identified alternatives do not allow the functionality needed for the use applied for. Thus, the Commission agrees with SEAC's conclusion and considers that the applicant has discharged its burden of proof in demonstrating the absence of suitable alternatives both in the Union and for the applicant.

(10) Therefore, having regard to the conditions laid down in Article 60(4) of Regulation (EC) No 1907/2006, it is appropriate to authorise the use of 4-tert-OPnEO described in the application, provided that the risk management measures and operational conditions described in the chemical safety report are fully applied.

(11) The Commission has based its assessment on all relevant scientific evidence currently available, as assessed by RAC and SEAC, and, after having carried out a detailed examination, based its conclusions on a sufficient amount of material and reliable information allowing it to conclude. Nevertheless, additional scientific evidence would allow the Commission to perform its assessment on a more robust or broad evidentiary base in the future. Hence, it is appropriate to require additional emission information be generated.

(12) In its opinion, SEAC recommended that the review period referred to in Article 60(9), point (e), of Regulation (EC) No 1907/2006 should be set until the end of 2030. The Commission agrees with that recommendation, taking into account the relevant elements from RAC's and SEAC's assessments and, in particular, the socio-economic benefits, the emissions, the lack of suitable alternatives within a shorter timeline, as well as the regulatory approvals necessary for pharmaceutical products.

(13) The language used to describe the risk management measures and operational conditions in the application for authorisation may be different from the official language of the Member State where the use takes place. Therefore, in order to facilitate supervision and enforcement of compliance with the authorisation, it is appropriate to require the authorisation holder to submit, upon request, a brief summary of those risk management measures and operational conditions to the competent authority of that Member State in an official language of that Member State.

(14) This Decision does not affect the obligation of the authorisation holder to ensure that a use of a substance does not adversely affect human health or the environment, having regard to the principle set out in Article 1(3) of Regulation (EC) No 1907/2006. Furthermore, this Decision does not affect the obligation of the authorisation holder under Article 60(10) of that Regulation to ensure that the exposure is reduced to as low a level as is technically and practically possible or the obligation of the employer to eliminate or reduce to a minimum risks to the health and safety of workers at work involving hazardous chemical agents in accordance with Article 5(2) of Council Directive 98/24/EC[3]. This Decision does not affect the application of Union law in the area of health and safety at work, in particular Council Directives 89/391/EEC[4], 92/85/EEC[5], 94/33/EC[6] and 98/24/EC, or any national binding occupational limit values which may be stricter than the applicable Union limit values.

(15) This Decision does not affect any obligation to comply with emission limit values or other requirements set in accordance with Directive 2008/50/EC of the European Parliament and of the Council[7] or Directive 2010/75/EU of the European Parliament

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3 Council Directive 98/24/EC of 7 April 1998 on the protection of the health and safety of workers from the risks related to chemical agents at work (fourteenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ L 131, 5.5.1998, p. 11).

4 Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ L 183, 29.6.1989, p. 1).

5 Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ L 348, 28.11.1992, p. 1).

6 Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work (OJ L 216, 20.8.1994, p. 12).

7 Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe (OJ L 152, 11.6.2008, p. 1).

and of the Council[8], nor any obligation to comply with emission limit values set to achieve compliance with the environmental quality standards established by Member States in accordance with Directive 2000/60/EC of the European Parliament and of the Council[9] or the environmental quality standards established in Directive 2008/105/EC of the European Parliament and of the Council[10]. Compliance with the provisions of this Decision does not necessarily imply compliance with emission limit values or environmental quality standards under any other provisions of Union law, which may include further or more onerous requirements.

(16) The measures provided for in this Decision are in accordance with the opinion of the Committee established by Article 133 of Regulation (EC) No 1907/2006,

HAS ADOPTED THIS DECISION:

Article 1

An authorisation is hereby granted in accordance with Article 60(4) of Regulation (EC) No 1907/2006 for the following use of 4-(1,1,3,3-tetramethylbutyl)phenol, ethoxylated (4-tert-OPnEO):

Authorisation number	Authorised use
REACH/22/30/0	In aqueous buffers during the manufacturing process of the active pharmaceutical ingredient (Protein Q) of the veterinary vaccine LetiFend®

The authorisation is granted subject to the risk management measures and operational conditions described in the chemical safety report[11].

Article 2

1. The review period shall expire on 31 December 2030.

2. The authorisation shall cease to be valid on 31 December 2030 if the review report has not been submitted in accordance with Article 61(1) of Regulation (EC) No 1907/2006 by 30 June 2029.

Article 3

1. The monitoring arrangements referred to in paragraphs 2 and 3 shall apply.

2. The authorisation holder shall conduct a mass balance analysis. That analysis shall be:

   (a) carried out at least annually;

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8 Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010, p. 17).

9 Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1).

10 Directive 2008/105/EC of the European Parliament and of the Council of 16 December 2008 on environmental quality standards in the field of water policy, amending and subsequently repealing Council Directives 82/176/EEC, 83/513/EEC, 84/156/EEC, 84/491/EEC, 86/280/EEC and amending Directive 2000/60/EC of the European Parliament and of the Council (OJ L 348, 24.12.2008, p. 84).

11 https://ec.europa.eu/docsroom/documents/48474

(b) based on measurements of the relevant waste streams potentially containing 4-tert-OPnEO;

(c) recorded as to include details of the sampling points, the analytical method, the concentrations detected and the corresponding environmental release values.

3. The authorisation holder shall act in accordance with the outcome of the mass balance analysis referred to in paragraph 2 and document the results and any actions taken.

4. Where the authorisation holder submits a review report, it shall include the information referred to in paragraph 3.

Article 4

Upon request, the authorisation holder shall submit a brief summary of the applicable risk management measures and operational conditions described in the chemical safety report to the competent authority of the Member State where the authorised use takes place in an official language of that Member State.

Article 5

This Decision is addressed to LETI Pharma, S.L.U., C/Sol, 5 P. Ind. de Tres Cantos, 28760, Tres Cantos, Madrid, Spain.

Done at Brussels, 30.9.2022

For the Commission
Thierry BRETON
Member of the Commission

CERTIFIED COPY
For the Secretary-General

Martine DEPREZ
Director
Decision-making & Collegiality
EUROPEAN COMMISSION