

Biocide Directive – Relevance for the Footwear Sector

Since the adoption of EU Regulation 528/2012 (Biocide Regulation), which replaces the Biocide Directive, treated articles, which were not mentioned specifically in the former directive, are now explicitly also included in biocide legislation. Notification duties apply for treated articles. Under certain conditions, treated articles must be labelled accordingly. So far, a degree of uncertainty has surrounded the question of when the definition “treated articles” applies to products according to the text of the Regulation.

A recent information event bearing the title “Treated Articles in Biocide Legislation” held by the German Federal Institute for Occupational Health and Safety (Bundesanstalt für Arbeitsschutz und Arbeitsmedizin, BAuA) shed some light in the darkness: according to the regulation, all substances, mixtures, or products, which have been treated with one or several biocidal products or to which one or several biocidal products have been deliberately added are considered to be treated articles.

While the formulation “*treated with biocidal products*” leaves little room for interpretation, the question arises as to how the expression “*to which ... biocidal products have been deliberately added*” is to be understood. Here the definition of “*deliberately added*” has to be seen for the particular article whose production involved addition of the biocide. The use of biocides in precursors, even if deliberately added, is of no consequence for the finished article, unless the biocidal action is also relevant for that end product. In the following this is demonstrated for leather and footwear production but is equally applicable to all other products.

In leather production, biocidal products are used in the production of wet intermediate stages of leather, such as wet blue or wet white, to protect semifinished products during storage and transport. The biocides are deliberately used to protect the wet intermediate. The semifinished product is thus a treated product.

Two cases have to be distinguished in the further processing of the wet intermediate to finished leather:

A: A biocidal product is again added to the leather during retanning and finishing to protect the finished leather during storage and transport. In this case the finished leather is also considered as a treated article.

B: If no biocidal agent is added to protect the leather during further production processes then the leather is not considered to be a treated article. Since leather is, in principle, stable and does not need protection, the use of biocidal agents for the wet intermediates does not count as deliberate use in leather. Furthermore, it is not relevant whether processing chemicals are used which are protected by

biocidal products (in-can preservation) since in-can preservation of chemicals/colouring agents cannot be regarded as deliberate use in leather.

If the above interpretation of the term “deliberately added” is applied to everyday shoes then these are not deemed to be treated articles, even if the starting materials (leather/textiles) do fall within the definition of treated articles. There are, however, various cases in which shoes are considered to be treated articles:

- Shoes for use in hygienic areas and deliberately treated with biocidals for that reason
- footwear treated or fumigated with biocidal products during transport/storage if residues of the fumigant remain in the footwear
- footwear cleaned up with biocidal products after mould attack
- footwear claiming to have a biocidal property (for example, “prevents odour formation”)

The Biocide Regulation requires that information is provided to the end consumer in the case of treated articles. Similar to the duty to inform for the SVHC candidate list stipulated by the REACH Regulation, the Biocide Regulation states that an end consumer must be informed about which active biocidal agent is present in a treated article within 45 days of submission of a request for information. Products that are not covered by the definition of a treated article lie outside the scope of biocide law and there is thus no obligation to inform.

Further information

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