



Council of the
European Union

Brussels, 24 January 2017
(OR. en)

5569/17

Interinstitutional File:
2017/0010 (NLE)

ENV 50
COMPET 37

PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	19 January 2017
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2017) 23 final
Subject:	Proposal for a Council Regulation amending Annex III to Directive 2008/98/EC of the European Parliament and of the Council as regards the hazardous property HP 14 ('Ecotoxic')

Delegations will find attached document COM(2017) 23 final.

Encl.: COM(2017) 23 final



EUROPEAN
COMMISSION

Brussels, 19.1.2017
COM(2017) 23 final

2017/0010 (NLE)

Proposal for a

COUNCIL REGULATION

amending Annex III to Directive 2008/98/EC of the European Parliament and of the Council as regards the hazardous property HP 14 ('Ecotoxic')

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

A comprehensive review of Annex III to Directive 2008/98/EC on waste (Waste Framework Directive), which establishes properties of waste which render it hazardous, was undertaken in 2014 through Commission Regulation (EU) No 1357/2014. The main aims of that review were to adapt the properties of waste to technical and scientific progress and to align, to the extent possible, the identification of hazardous wastes with the criteria of the Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures (the CLP Regulation).

The only hazardous property not amended during that review was hazardous property HP 14 “Ecotoxic”, as it was considered that the knowledge basis for the assessment of that property needed to be further improved.

At present we are in a legal vacuum as concerns the assessment of ecotoxicity: the existing "Note" in Annex III to the Waste Framework Directive states that the attribution of hazardous property HP 14 is to be made on the basis of the criteria laid down in Annex VI to Council Directive 67/548/EEC which has been repealed as of 1 June 2015.

To address the legal vacuum and the lack of harmonisation concerning the attribution of hazardous property HP 14 “Ecotoxic”, the Commission submitted a draft Regulation for vote in the Committee established under Article 39 of the Waste Framework Directive. The Committee did not give a favourable opinion on the draft Regulation in its meeting of 25 October 2016.

The main concerns expressed by the Committee related to (1) the need to clarify that Member States may still apply test methods to assess ecotoxicity and (2) the likelihood that the calculation formulae envisaged by the Commission would lead to a change of classification from non-hazardous to hazardous of certain wastes types and that would impact negatively on the recycling of those wastes due to increasing costs of managing the waste. The waste types mentioned in this context were incineration bottom ash and shredder residues.

Thus, in accordance with the procedure set out in Article 5a of Council Decision 1999/468/EC, a Proposal for a Council Regulation is submitted to Council and forwarded to the European Parliament.

Proposal for a

COUNCIL REGULATION

amending Annex III to Directive 2008/98/EC of the European Parliament and of the Council as regards the hazardous property HP 14 ('Ecotoxic')

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives¹, and in particular Article 38(2) thereof,

Whereas:

- (1) Annex III to Directive 2008/98/EC lists properties of waste which render it hazardous.
- (2) Directive 2008/98/EC states that the classification of waste as hazardous should be based, inter alia, on the Union legislation on chemicals, in particular concerning the classification of mixtures as hazardous, including concentration limit values used for that purpose. Commission Decision 2000/532/EC² established a list of the types of waste in order to encourage a harmonised classification of waste and to ensure the harmonised determination of hazardous properties of waste within the Union.
- (3) Annex III to Directive 2008/98/EC provides that the attribution of the hazardous property HP 14 ('Ecotoxic') is to be made on the basis of the criteria laid down by Annex VI to Council Directive 67/548/EEC³.
- (4) Directive 67/548/EEC was repealed from 1 June 2015 and replaced by Regulation (EC) No 1272/2008 of the European Parliament and of the Council⁴. That Directive

¹ OJ L 312, 22.11.2008, p. 3.

² Commission Decision 2000/532/EC of 3 May 2000 replacing Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste (OJ L 226, 6.9.2000, p. 3).

³ Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (OJ 196, 16.8.1967, p. 1).

⁴ Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (OJ L 353, 31.12.2008, p. 1).

may, however, continue to apply to some mixtures until 1 June 2017, in case they were classified, labelled and packaged in accordance with Directive 1999/45/EC of the European Parliament and of the Council⁵ and already placed on the market before 1 June 2015.

- (5) Annex III to Directive 2008/98/EC was replaced by Commission Regulation (EU) No 1357/2014⁶ in order to align, where appropriate, the definitions of the hazardous properties with Regulation (EC) No 1272/2008, and replace references to Directive 67/548/EEC by references to Regulation (EC) No 1272/2008.
- (6) The definition of the hazardous property HP 14 ('Ecotoxic') was not amended by Regulation (EU) No 1357/2014 as an additional study was needed in order to ensure completeness and representativeness as regards the information on the possible impact of an alignment of the assessment of the hazardous property HP 14 ('Ecotoxic') with the criteria laid down in Regulation (EC) No 1272/2008. That study being completed, it is appropriate to reflect its recommendations in the assessment of hazardous property HP 14 ('Ecotoxic') for waste set out in Annex III to Directive 2008/98/EC, and to align that assessment, to the extent possible, with the criteria laid down in Regulation (EC) No 1272/2008 for the assessment of ecotoxicity of chemicals. When determining the hazard classification of waste for hazardous property HP14 ('Ecotoxic') by applying calculation formulae, generic cut-off values, as defined in Regulation (EC) No 1272/2008, should be applied.
- (7) When a test is performed to assess waste for the hazardous property HP14 'Ecotoxic', it is appropriate to apply the relevant methods established in Commission Regulation (EC) No 440/2008⁷ or other internationally recognised test methods and guidelines. Decision 2000/532/EC provides that, where a hazardous property of waste has been assessed by a test and by using the concentrations of hazardous substances as indicated in Annex III to Directive 2008/98/EC, the results of the test shall prevail. Furthermore, Article 12 of Regulation (EC) No 1272/2008, in particular Article 12(b) and the methodologies for its application, should be taken into account.
- (8) It is appropriate to allow companies and competent authorities sufficient time to adapt to the new requirements.
- (9) The Committee referred to in Article 39 of Directive 2008/98/EC did not deliver an opinion on the measures provided for in this Regulation. The measures should therefore be adopted by the Council in accordance with Article 5a(4) of Council Decision 1999/468/EC⁸,

⁵ Directive 1999/45/EC of the European Parliament and of the Council of 31 May 1999 concerning the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations (OJ L 200, 30.7.1999, p. 1).

⁶ Commission Regulation (EU) No 1357/2014 of 18 December 2014 replacing Annex III to Directive 2008/98/EC of the European Parliament and of the Council on waste and repealing certain Directives (OJ L 365, 19.12.2014, p. 89).

⁷ Commission Regulation (EC) No 440/2008 of 30 May 2008 laying down test methods pursuant to Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) (OJ L 142, 31.5.2008, p. 1).

⁸ Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ L 184, 17.7.1999, p. 23).

HAS ADOPTED THIS REGULATION:

Article 1

Annex III to Directive 2008/98/EC is amended as follows:

(1) The entry for HP 14 'Ecotoxic' is replaced by the following:

"HP 14 'Ecotoxic': waste which presents or may present immediate or delayed risks for one or more sectors of the environment.

Waste which fulfils any of the following conditions shall be classified as hazardous by HP 14:

- Waste which contains a substance classified as ozone depleting assigned the hazard statement code H420 in accordance with Regulation (EC) No 1272/2008 of the European Parliament and of the Council* and the concentration of such a substance equals or exceeds the concentration limit of 0.1%.

$$[c(H420) \geq 0.1\%]$$

- Waste which contains one or more substances classified as aquatic acute assigned the hazard statement code H400 in accordance with Regulation (EC) No 1272/2008 and the sum of the concentrations of those substances equals or exceeds the concentration limit of 25%. A cut-off value of 0.1% shall apply to such substances.

$$[\sum c (H400) \geq 25 \%]$$

- Waste which contains one or more substances classified as aquatic chronic 1, 2 or 3 assigned to the hazard statement code(s) H410, H411 or H412 in accordance with Regulation (EC) No 1272/2008, and the sum of the concentrations of all substances classified as aquatic chronic 1 (H410) multiplied by 100 added to the sum of the concentrations of all substances classified as aquatic chronic 2 (H411) multiplied by 10 added to the sum of the concentrations of all substances classified as aquatic chronic 3 (H412) equals or exceeds the concentration limit of 25%. A cut-off value of 0.1% applies to substances classified as H410 and a cut-off value of 1% applies to substances classified as H411 or H412.

$$[100 \times \sum c (H410) + 10 \times \sum c (H411) + \sum c (H412) \geq 25\%]$$

- Waste which contains one or more substances classified as aquatic chronic 1, 2, 3 or 4 assigned the hazard statement code(s) H410, H411, H412 or 413 in accordance with Regulation (EC) No 1272/2008, and the sum of the concentrations of all substances classified as aquatic chronic equals or exceeds the concentration limit of 25%. A cut-off value of 0.1% applies to substances classified as H410 and a cut-off value of 1% applies to substances classified as H411, H412 or H413.

$$[\sum c H410 + \sum c H411 + \sum c H412 + \sum c H413 \geq 25 \%]$$

Where: \sum = sum and c = concentrations of the substances.

* Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (OJ L 353, 31.12.2008, p. 1)."

(2) The note below the entry for HP 15 is deleted.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 12 months after the date of its publication in the OJ.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Council
The President*