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European Union

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**ENV 242**  
**COMPET 169**

**NOTE**

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From: General Secretariat of the Council  
To: Delegations

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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')  
- Presidency compromise text

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Following the meeting of the Working Party on the Environment on 7 February 2017 and comments received, delegations will find in the Annex a Presidency compromise text on the above.

Amendments to the Commission proposal are indicated in **bold**.

Delegations are invited to examine the Presidency compromise text and to indicate their **voting intentions** (YES, NO, ABSTAIN) on this basis, by **Friday 10 March at noon (CET)** at the very latest. Responses are to reach the Presidency (edward.vernon@gov.mt) and the General Secretariat of the Council (adrian.mifsud@consilium.europa.eu and aline.maretto@consilium.europa.eu) **by email only**.

Delegations who do not respond within this deadline will be considered as intending to vote **YES**.

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 Directives<sup>1</sup>, 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/EC<sup>2</sup> 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.

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<sup>1</sup> OJ L 312, 22.11.2008, p. 3.

<sup>2</sup> 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) 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/EEC<sup>3</sup>.
- 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 Council<sup>4</sup>. That Directive 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 Council<sup>5</sup> 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 1357/2014<sup>6</sup> 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.

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<sup>3</sup> 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 L 196, 16.8.1967, p. 1).

<sup>4</sup> 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).

<sup>5</sup> 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).

<sup>6</sup> 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).

- 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.
- 6a) **Annex VI to Regulation (EC) No 1272/2008 contains harmonised multiplying factors assigned to a limited number of substances classified as 'hazardous to the aquatic environment, acute category 1' or 'hazardous to the aquatic environment, chronic category 1', which are used to derive the classification of a mixture in which such substances are present. In light of progress made in establishing such multiplying factors, the Commission may, in accordance with article 38(2) of Directive 2008/98/EC, review the calculation method for the assessment of substances with regard to the hazardous property HP 14 ('Ecotoxic') in view of the possible inclusion of multiplying factors in that method.**

- 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 440/2008<sup>7</sup> 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. **It is appropriate for the Commission to promote the exchange of best practices with regard to test methods for the assessment of substances as concerns the hazardous property of HP 14 ('Ecotoxic') with a view to their possible harmonisation.**
- 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/EC<sup>8</sup>,

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<sup>7</sup> 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).

<sup>8</sup> 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%.

[  $c(\text{H420}) \geq 0.1\%$  ]

- 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.

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

- 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 H413 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.

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\* 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*

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