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From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

Subject: Draft 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'
- Adoption

JOINT STATEMENT BY AUSTRIA AND THE CZECH REPUBLIC

Austria and the Czech Republic remain concerned about the present Council proposal amending Annex III to Directive 2008/98/EC as regards the hazardous property HP 14 'Ecotoxic'.

Austria and the Czech Republic hold the view that the proposed calculation formulae do not lead to accurate results in the classification of wastes. Certain waste streams which have not rendered hazardous yet would need to be classified as hazardous based on the results of the calculation formulae of this regulation. Yet still, as "the results of the test are to prevail" according to recital (8) substantial testing costs without significant benefits for the environment are caused to prove the opposite.

In our understanding an opportunity of establishing harmonised test methods for wastes with regard to the hazardous property HP 14 'Ecotoxic' has been missed. This regulation allows Member States to apply their own relevant test methods to assess waste for the hazardous property HP 14 'Ecotoxic'. Hence, the assessment of ecotoxicity of wastes will remain fragmented across the European Union instead of a harmonization of test methods. The addition to recital (8) and exchange of best practices is a good starting point, but does not lead to a harmonisation of test methods.

In the light of the newly defined hazardous property HP 14 'Ecotoxic', Austria and the Czech Republic think that a review and adjustment of the European List of Waste seems even more indispensable.

STATEMENT BY BELGIUM

Belgium opposes the Council Regulation (doc. 8430/17) for the following reasons:

1. First, the proposed formulas are too generic

Belgium prefers a method that represents the real toxicity: a low (severe) limit value for the most toxic substances and a higher (mild) limit value for the less toxic substances. As the present proposal uses the same limit value for a very diverse subset of ecotoxic substances, it is likely to classify too much "little toxic" waste as hazardous, and too much very toxic waste as non-hazardous.

Recital (7) states that the Commission has the possibility to reconsider the calculation method of HP14 in view of the possible inclusion of multiplying factors in that method. Belgium regrets that this wording contains no obligation or deadline for the Commission and urges the Commission to start this process without delay.

2. Secondly, Belgium considers the proposal as too indistinct as regards "testing"

Recital (8) refers to two methods to define 'ecotoxicity': biotests and a calculation method. The contrast between the legal framework for both methods is striking:

- The calculation method is described in great detail. However: this method works well only for well-known waste.
- Biotesting is by far the best option for waste of unknown composition or origin. However: it is nowhere defined which, and how many biotests should be used. This implies the users have the freedom to choose a test organism that is not sensitive for a particular substance present in the waste. Neither is it defined how the result of the biotest should be interpreted. This implies that it is up to the user to decide which percentage of mortality is to be interpreted as "hazardous".

Recital (8) states that it is appropriate to promote the exchange of best practices with regard to test methods. This statement holds no obligation and no deadline for this exchange to take place. An informal, non-binding “exchange” of information does not suffice. Belgium pleads for the development of a harmonized test battery.

3. Thirdly, Belgium is concerned about the reference in recital 8 to art. 12(b) of Regulation (EC) No 1272/2008, which allows bioavailability of substances and mixtures to be taken into account

Including the evaluation of bioavailability is in strict contrast with the evaluation of the intrinsic properties of waste, which is the basis of Annex III of the Waste Framework Directive.

CLP takes the bioavailability of chemicals and substances into account. This is justified, as the life cycle of chemical substances and mixtures is well known. This is however not the case for waste. The label “hazardous” should not, and cannot depend on the varying conditions wherein waste is to be found.