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[...](2016) **XXX** draft

COMMISSION REGULATION (EU) .../...

of **XXX**

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)

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THE EUROPEAN COMMISSION,

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- (4) Directive 67/548/EEC was repealed from 1 June 2015 and replaced by Regulation (EC) No 1272/2008⁴. This 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 and already placed on the market before 1 June 2015.

¹ OJ L 312, 22.11.2008, p. 3.

² Commission Decision 2000/532 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).

- (5) Annex III to Directive 2008/98/EC was replaced by Commission Regulation (EU) No 1357/2014⁵ in order to align, where appropriate, the definitions of the hazardous properties with Regulation (EC) No 1272/2008, and replace the references to Directive 67/548/EEC by references to Regulation (EC) No 1272/2008.
- (6) The definition of 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 possible impacts of an alignment of the assessment of hazardous property HP 14 ('Ecotoxic') with 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 the Annex 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.
- (7) 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 apply to substances in waste in order to reduce the classification burden.
- (8) When a test is performed to assess waste for hazardous property HP14 'Ecotoxic', it is appropriate to apply the relevant methods established in Commission Regulation (EC) No 440/2008⁶ or other internationally recognised test methods and guidelines. 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.
- (9) It is appropriate to allow companies and competent authorities sufficient time to adapt to the new requirements.
- (10) The measures provided for in this Regulation are in accordance with the opinion of the Committee provided for in Article 39 of Directive 2008/98/EC,

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) ≥ 0.1%]

⁵ 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 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 L142, 31.5.2008, p.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" 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 [6 months after 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 Commission
The President
Jean-Claude JUNCKER

