Council Regulation (EU) 2017/997 of 8 June 2017 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)

COUNCIL REGULATION (EU) 2017/997

of 8 June 2017

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[(1)], and in particular Article 38(2) thereof,

Having regard to the proposal from the European Commission,

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[(2)] 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 in Annex VI to Council Directive 67/548/EEC[(3)].

(4) Directive 67/548/EEC was repealed with effect from 1 June 2015 and replaced by Regulation (EC) No 1272/2008 of the European Parliament and of the Council[(4)]. 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[(5)] 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[(6)] in order to align, where appropriate, the definitions of hazardous properties with Regulation (EC) No 1272/2008, and replace references to Directive 67/548/EEC by references to Regulation (EC) No 1272/2008.

Changes to legislation: *There are outstanding changes not yet made to Council Regulation (EU) 2017/997. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(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 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 HP 14 'Ecotoxic' by applying calculation formulae, generic cut-off values, as defined in Regulation (EC) No 1272/2008, should be applied.

(7) 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.

(8) When a test is performed to assess waste for the hazardous property HP 14 'Ecotoxic', it is appropriate to apply the relevant methods established in Commission Regulation (EC) No 440/2008[(7)] 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 are to 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 HP 14 'Ecotoxic' with a view to their possible harmonisation.

(9) It is appropriate to allow companies and competent authorities sufficient time to adapt to the new requirements.

(10) 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[(8)],

HAS ADOPTED THIS REGULATION:

Article 1

Annex III to Directive 2008/98/EC is amended in accordance with the Annex to this Regulation.

***Changes to legislation:** There are outstanding changes not yet made to Council Regulation (EU) 2017/997. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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 5 July 2018.

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

Done at Luxembourg, 8 June 2017.

For the Council

The President

K. SIMSON