



EUROPEAN COMMISSION
 DIRECTORATE-GENERAL
 ENVIRONMENT
 Directorate B - Circular Economy & Green Growth

Brussels,
 MC/YA env.a.2(2016)2367864

EXPLANATORY MEMORANDUM

Review of EU waste classification legislation

A. Background information

A comprehensive review of Annex III of the 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 which render it hazardous 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 (hereafter '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.

It is timely to amend Annex III with regard to HP 14 "Ecotoxic" as we are in a legal vacuum as concerns the assessment of ecotoxicity (the current 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HP 14 is to be made on the basis of the criteria laid down in Annex VI to Council Directive 67/548/EEC, which has been repealed as of 1 June 2015).

B. Assessment of the proposed amendments

A study to gather further knowledge for the assessment of HP 14 "Ecotoxic" was undertaken by consultants on behalf of DG ENV, and was closely monitored with colleagues in DG GROW. That study concluded that that a calculation method aligned, to the extent to which it is feasible, with the CLP Regulation, is the most appropriate method to assess HP 14 "Ecotoxic".

This study included consultation of stakeholders via questionnaires and a stakeholder workshop – attended by industry and Member State authorities.

Once the study was finalised, it was sent for comments to the Member States' experts part of the Technical Adaptation Committee established under the Waste Framework Directive (hereafter 'the Waste Committee'). Comments to the study's conclusions were received from five Member States (BE, FI, NL, SE, UK) and a few industry associations (Eurometaux, FEAD and the Dutch Waste Management Association). The only potentially controversial issue raised by NL, UK, and the Dutch Waste Management

Association is a change of classification from non-hazardous to hazardous concerning one specific type of waste, incineration bottom ash, IBA (the ash that is left over after waste is burnt in an incinerator). If the method recommended by the study is applied, 14% of the IBA classified today as non-hazardous is likely to become hazardous (roughly 20 million tons of IBA are produced in the EU). Nevertheless, hazardous waste can be recycled and, if needed, it can be stabilised, so change of classification should not be an obstacle to recycling.

Two Member States (UK and NL) also suggested adding for reasons of proportionality and workability, generic cut-off values, as defined in the CLP Regulation. As this suggestion is in line with that Regulation and thus brings further alignment, the Commission services agreed that generic cut-off values, as defined in Article 2 (31) and Annex I, Table 1.1 of CLP, should be taken into account for substances in waste, in determining the hazard classification of waste for hazard property HP14.

The annex to Decision 2000/532/EC, as amended by Decision 2014/955/EU establishes that "*Where a hazardous property of a 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, in line with the spirit of the provision defined in Article 7(2) of the WFD, which allows a Member State to deviate from classifying a given waste as hazardous if it has evidence that the waste in question does not display any of the hazardous properties, it is appropriate to clarify in a recital of the measure that, in justified cases, subject to the consideration of the competent authority, operators may deviate from the standard classification approach, based on a "calculation method" and use other approaches, based on testing. Such tests may include the use of ecotoxicity tests defined in Regulation (EC) No 440/2008, or other internationally recognised test methods and guidelines, or adaptations to the classification methodology, already possible under article 12 of CLP, which take into account the lack of bioavailability of the hazardous substances in the form in which they are present in waste.

Overall, the study analysis shows that the proposed amendment will entail the smallest change on the amounts and the types of wastes to be classified as hazardous, as compared to current practice in the Member States, out of all options considered. It is thus appropriate to amend Annex III of the Waste Framework Directive to include an assessment method aligned, to the extent possible, with the CLP Regulation for the attribution of hazardous property HP 14 "Ecotoxic". This amendment is highly opportune as we are in a legal vacuum as concerns the assessment of ecotoxicity which leads to lack of harmonisation (the current 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).

C. Next steps:

Adoption of the amendment: The amendment of Annex III to Directive 2008/98/EC with regard to the attribution of HP 14 "Ecotoxic" shall be presented to the Waste Committee and subject to a vote at its meeting of 25 October 2016.