

Brussels, **XXX**
[...] (2020) **XXX** draft

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

of **XXX**

**amending Regulation (EC) No 1272/2008 of the European Parliament and of the Council
on classification, labelling and packaging of substances and mixtures in order to
improve the workability of information requirements related to emergency health
response**

(Text with EEA relevance)

This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the Commission.

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

According to Article 45(1) of Regulation (EC) No 1272/2008, Member States' appointed bodies shall be responsible for receiving information from importers and downstream users on the hazardous chemical mixtures they place on the market. Commission Regulation (EU) 2017/542 amended Regulation (EC) 1272/2008 by adding an Annex harmonising the information to be provided relating to emergency health response (“Annex VIII”)¹.

Annex VIII was adopted in March 2017. After adoption, Member States and industry stakeholders called for amendments of Annex VIII before its compliance date, for reasons of serious workability concerns². The Commission services commissioned a study to assess the legitimacy of the claims and the impact on duty holders and concluded that an amendment of Annex VIII was indeed necessary. The amendment would constitute a second amendment to the Regulation, after the adoption of Regulation (EU) 2020/11, which deferred the compliance date for mixtures for consumer use and aimed at a more streamlined interpretation of the rules, improving internal coherence and mitigating some unintended consequences that had only become apparent since the adoption of Regulation (EU) 2017/542.

The Commission is now proposing to add paragraph (8) to Article 25 as well as to amend Annex VIII of Regulation (EC) 1272/2008 in order to solve the workability issues.

In line with the empowerments given under Regulation (EC) No 1272/2008, amended through Regulation (EU) 2019/1243, and in particular Article 53c thereof, the Commission shall adopt a separate delegated act in respect of each power delegated to it. Since powers delegated for the amendment of Article 25 and Annex VIII are different, the Commission is proposing two separate delegated acts.

This proposed act contains the amendment of Annex VIII and addresses the concerns raised, i.e. the difficulty or impossibility of knowing the exact composition of products in cases where raw materials with highly variable or unknown composition are used, where multiple suppliers are being used for components that are stored in the same recipient, or where complex supply chains are involved, as well as the impossibility to know in advance which exact bespoke mixtures will be placed on the market.

This proposed act introduces a general solution with the concept of an interchangeable component group, as well as more sector specific solutions for gypsum, ready mixed concrete, cement and fuels and bespoke paints.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

Pursuant to Article 53a(4) of Regulation (EC) No 1272/2008, experts designated by each Member State were consulted in the relevant expert group CARACAL (Competent Authorities for REACH and CLP (E02385)) according to the rules of the Interinstitutional Agreement on

¹ OJ L 78, 23.3.2017, p. 1–12.

² Notably the difficulty or impossibility of knowing the exact composition of products in cases where raw materials with highly variable or unknown composition are used, where multiple suppliers are being used for components that are stored in the same recipient, or where complex supply chains are involved.

Better Law-Making of 13 April 2016³. This included also members of the European Association of Poison Centres and Clinical Toxicologists (EAPCCT).

[Furthermore, the initiative was published for feedback during the period [insert] under the title [insert] (link). The public feedback received can be summarised as follows.

[insert part on public feedback mechanism after ISC]

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The legal act amends Regulation (EC) No 1272/2008. The legal basis of this delegated act is Article 45(4) of Regulation (EC) 1272/2008.

For the readers' convenience, this version of Annex VIII entirely repeals and replaces the previous version.

³ OJ L 123, 12.5.2016, p. 1.

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amending Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures in order to improve the workability of information requirements related to emergency health response

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) 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) 1907/2006⁴, and in particular Article 45(4) thereof,

Whereas:

- (1) Regulation (EC) No 1272/2008 was amended by Commission Regulation (EU) 2017/542⁵ to add certain requirements for the submission of information relating to emergency health response and for the inclusion of a ‘unique formula identifier’ in the supplemental information provided on the label of a hazardous mixture. The requirements were amended by Commission Delegated Regulation (EU) 2020/11⁶. Importers and downstream users are required to start complying with the requirements in stages, according to a series of compliance dates depending on the use for which a mixture is placed on the market
- (2) Concerns have been raised by various industry sectors regarding the workability of the emergency health response information requirements in certain cases, notably with regard to the difficulty of knowing the exact composition of mixtures in cases where raw materials with a highly variable or unknown composition are used in the manufacture of the mixture, in cases where toxicologically very similar components supplied by multiple, different suppliers are used together in the same production line, or in cases involving complex supply chains. Concerns have also been raised, in the case of bespoke mixtures, about the impossibility of knowing in advance which exact bespoke mixtures are to be placed on the market.

⁴ OJ L 353, 31.12.2008, p.1.

⁵ Commission Regulation (EU) 2017/542 of 22 March 2017 amending Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures by adding an Annex on harmonised information relating to emergency health response (OJ L 78, 23.3.2017, p. 1).

⁶ Commission Delegated Regulation (EU) 2020/11 of 29 October 2019 amending Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures as regards information relating to emergency health response (OJ L 6, 10.1.2020, p. 8).

- (3) It is necessary to address the situation where different but toxicologically very similar components are used in a mixture, and where it is unknown which component is present in a particular mixture placed on the market at a given time. To ensure that the emergency health response requirements can be complied with properly in practice, importers and downstream users should be allowed to group toxicologically similar components of a mixture together in an interchangeable component group and provide information on the total concentration of those components present in the mixture, without having to specify their separate concentrations. In order to allow poison centres to formulate a suitable emergency health response, components should only be grouped in an interchangeable component group if their classification for health and physical effects is identical and if the hazards identification and the additional hazard information are identical for all possible combinations of the resulting final mixture incorporating those components. For components classified for certain hazard classes, it should also be necessary for them to have the same technical function and the same toxicological profile in order to be grouped.
- (4) In order to address particular difficulties encountered by the gypsum, ready-mixed concrete and cement sectors and to allow them to comply with the emergency health response requirements without reducing the level of safety, it should be possible for emergency health response information relating to certain standardised mixtures within those three sectors to be submitted by reference to a standard composition. However, in order to allow poison centres to formulate a suitable emergency health response, this option should only be available in cases where the mixture classification does not change according to the mixture's composition within the concentration ranges specified in the standard formula, and where the information on composition is at least as detailed as the information contained in the mixture's safety data sheet, drawn up in accordance with Article 31 of Regulation (EC) No 1907/2006 ("safety data sheet"). In the event that the information contained in the safety data sheet is more detailed than the information on the composition in the standard, importers and downstream users should be required to notify the information in the safety data sheet instead.
- (5) In order to address particular difficulties anticipated for certain fuels, and taking into account the facts that fuels placed on the market normally conform to a technical standard and that poison centres have communicated a low number of poisoning incidents with fuels, it should be possible, until a more suitable solution is found, to submit emergency health response information by reference to the information contained in the safety data sheet, as well as any other known information on the products' chemical composition.
- (6) In order to satisfy customer demand for very specific paint shades, formulators are sometimes asked to formulate and supply paints on a bespoke basis at the point of sale. These bespoke paints could have an almost unlimited number of different compositions. Therefore, without any mitigating measures, compliance with the emergency health response requirements in Annex VIII to Regulation (EC) No 1272/2008 would require formulators of bespoke paints either to submit information and create unique formula identifiers (UFIs) in advance for an extremely large number of paints of all possible colour combinations, many of which might never be supplied in reality, or to postpone each supply until the information had been submitted and the UFI had been created. Either approach would place a disproportionate burden on the bespoke paints industry, in particular small and medium sized enterprises, without improving the level of safety significantly.

- (7) Poison centres have not communicated a significant number of accidents related to paints. In light of the apparently lower risks compared to other mixtures, it is justified to allow a more flexible approach, as this would not be reducing the current level of safety.
- (8) It is therefore appropriate to provide for the possibility to exempt bespoke paints from the notification obligations in Annex VIII and from the requirement to create a UFI. However, in that case, in order to allow poison centres to formulate a suitable emergency health response, the individual mixtures contained in bespoke paints should remain subject to all the requirements of that Annex. Alongside this Regulation, Commission Delegated Regulation (EU) YYYY/XXX [*OP: Please insert reference to the act amending Article 25 of Regulation (EC) No 1272/2008 of the European Parliament and of the Council on the classification, labelling and packaging of substances and mixtures as regards bespoke paints*] amends Article 25 of Regulation (EC) No 1272/2008 to add a new rule, in the case of bespoke paints for which no submission in accordance with Annex VIII has been made and no corresponding UFI has been created, requiring the UFIs of all the individual mixtures contained in the bespoke paint to be indicated on the label of the bespoke paint, together with the specific concentration of each such mixture with a UFI that is present in a concentration exceeding 5%.
- (9) Given the number of changes to Annex VIII to Regulation (EC) No 1272/2008, it is appropriate to replace the whole Annex for the sake of legal clarity.
- (10) Regulation (EC) No 1272/2008 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Annex VIII to Regulation (EC) No 1272/2008 is replaced by the text in the Annex to this Regulation.

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*.

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

Done at Brussels,

*For the Commission
The President
Ursula von der Leyen*