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**COMMISSION DELEGATED DIRECTIVE (EU) .../...**

**of XXX**

**amending, for the purposes of adapting to scientific and technical progress, Annex III to Directive 2011/65/EU of the European Parliament and of the Council as regards an exemption for mercury in fluorescent lamps for other general lighting and special purposes**

(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**

This Commission Delegated Directive amends, for the purpose of adapting to technical and scientific progress, Annex III to Directive 2011/65/EU of the European Parliament and of the Council on the restriction of the use of certain hazardous substances in electrical and electronic equipment (recast)<sup>1</sup> (the RoHS Directive). The amendment concerns an exemption for specified applications containing mercury in fluorescent lamps for other general lighting and special purposes.

The RoHS Directive restricts the use of certain hazardous substances in electrical and electronic equipment (EEE), as specified in Article 4. Ten substances are currently restricted and listed in Annex II to the RoHS: lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls (PBB), polybrominated diphenyl ethers (PBDE), bis (2-ethylhexyl) phthalate (DEHP), butyl benzyl phthalate (BBP), dibutyl phthalate (DBP) and diisobutyl phthalate (DIBP). Annexes III and IV list EEE materials and components for specific applications that are exempt from the substance restrictions laid down in Article 4(1).

Article 5 of the Directive provides for the adaptation of Annexes III and IV to scientific and technical progress, which can include granting, renewing and revoking exemptions. Pursuant to Article 5(1)(a), exemptions are to be included in Annexes III and IV only if this does not weaken the environmental and health protection afforded by Regulation (EC) No 1907/2006 (REACH)<sup>2</sup> and only if they meet any of the following conditions: (i) elimination or substituting the substance via design changes or materials and components which do not require any of the materials or substances listed in Annex II is scientifically or technically impracticable; (ii) the reliability of substitutes is not ensured; (iii) the total negative environmental, health and consumer safety impacts caused by substituting the substance are likely to outweigh the total environmental, health and consumer safety benefits thereof.

Decisions on exemptions, and their duration, must also take into account the availability of substitutes and the socioeconomic impact of substitution. Decisions on the duration of exemptions must take into account any potential impact on innovation. Life-cycle thinking on the overall impacts of the exemption must be applied, where relevant.

Article 5(1)(a) also specifies that, to include materials and components of EEE for specific applications listed in Annexes III and IV, the Commission must adopt individual delegated acts. Article 5(3) and Annex V describe the procedure for submitting exemption-related applications.

### **2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT**

The Commission received requests<sup>3</sup> from economic operators to grant or renew exemptions under Article 5(3) and Annex V to the RoHS Directive.

The current Annex III exemption 2(b)(4) permits the use of mercury in other fluorescent lamps for other general lighting and special purposes (e.g. induction lamps).

The Commission received one application to renew this exemption on 15 January 2015. The applicant claimed that, due to a vast range of parameters relevant to lamps falling under

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<sup>1</sup> OJ L 174, 1.7.2011, p. 88.

<sup>2</sup> OJ L 396, 30.12.2006, p. 1.

<sup>3</sup> The list is available at: [http://ec.europa.eu/environment/waste/rohs\\_eee/adaptation\\_en.htm](http://ec.europa.eu/environment/waste/rohs_eee/adaptation_en.htm).

exemption 2(b)(4), e.g. form, length or spectrum, these lamps cannot be easily replaced with light-emitting diodes (LED) alternatives.<sup>4</sup> That application was renewed in January 2020, providing largely the same argumentation. In line with the requirements of the RoHS Directive (Article 5(5), second subparagraph), an exemption remains valid until the Commission takes a decision on the renewal application.

To evaluate the applications to renew that exemption, the Commission launched a study in June 2015<sup>5</sup>, concluded in 2016, to carry out the required technical and scientific assessment, including an eight-week online stakeholder consultation.<sup>6</sup> Further to that study assessing the extensive technical and scientific data and contributions received, as documented in the study report, the Commission carried out two complementary studies/updates, including stakeholder involvement. The study published in 2019<sup>7</sup> focused on the socioeconomic assessment and availability of substitutes, whilst an update based on recent figures and modelling was carried out in 2020<sup>8</sup>. The final reports of the study and of the socioeconomic assessment update were published<sup>9</sup>; stakeholders were notified.

The Commission consulted the Member State expert group for delegated acts under the RoHS Directive during the expert meetings of 1 September 2016, 29 October 2018 and 21 October 2019 to collect Member States' views on an envisaged course of action in line with the conclusions of the evaluations. It carried out all the requisite procedural steps relating to exemptions from the substance restriction under Articles 5(3) to 5(7).<sup>10</sup> The Council and the European Parliament were notified of all activities.

The supporting study highlighted that:

- this exemption covers a wide range of lamps with different functions;
- data on the specific lamp types covered by this exemption is currently insufficient and information on the substitution of mercury in this broad range of applications is lacking. The current exemption should be extended for three years to allow industry to prepare more detailed information to justify the exemption for specific types of lamps that are understood to be covered by the term 'other general lighting and special purposes';
- there is sufficient information that substituting mercury in two specific applications covered by this exemption, namely (i) lamps emitting light in the non-visible spectrum and (ii) emergency lamps, is technically impracticable, hence the study recommended renewing the exemption for these applications for the maximum duration of five years.

<sup>4</sup> [http://rohs.exemptions.oeko.info/fileadmin/user\\_upload/RoHS\\_Pack\\_9/Exemption\\_2\\_b\\_34\\_Lighting\\_Europe/2b4\\_LE\\_RoHS\\_Exemption\\_Req\\_Final.pdf](http://rohs.exemptions.oeko.info/fileadmin/user_upload/RoHS_Pack_9/Exemption_2_b_34_Lighting_Europe/2b4_LE_RoHS_Exemption_Req_Final.pdf).

<sup>5</sup> The final report of the study is available at <https://op.europa.eu/en/publication-detail/-/publication/a3fdcc8c-4273-11e6-af30-01aa75ed71a1>.

<sup>6</sup> Consultation period: 21 August 2015 to 16 October 2015, <http://rohs.exemptions.oeko.info>.

<sup>7</sup> [https://rohs.exemptions.oeko.info/fileadmin/user\\_upload/reports/FWCW\\_RoHS\\_Lamps\\_SEA\\_20190729\\_Final.pdf](https://rohs.exemptions.oeko.info/fileadmin/user_upload/reports/FWCW_RoHS_Lamps_SEA_20190729_Final.pdf)

<sup>8</sup> <https://op.europa.eu/en/publication-detail/-/publication/f44f2383-dd0a-11ea-adf7-01aa75ed71a1/language-en/format-PDF/source-146144383>, starting on page 92.

<sup>9</sup> [https://ec.europa.eu/environment/waste/rohs\\_eee/studies\\_rohs1\\_en.htm](https://ec.europa.eu/environment/waste/rohs_eee/studies_rohs1_en.htm).

<sup>10</sup> A list of the required administrative steps is available on the [Commission website](#). The current stage of the procedure can be viewed for each draft delegated act in the Interinstitutional Registry of Delegated Acts at <https://webgate.ec.europa.eu/regdel/#/home>.

In conclusion, the scientific and technical assessments, including stakeholder consultations, detailed that the exemption criteria continue to be met with regard to exemption 2(b)(4) as reliable substitutes are not yet available. The evaluation results also showed that the exemption, as reviewed, would not weaken the environmental and health protection afforded by the REACH Regulation, in accordance with Article 5 of Directive 2011/65/EU.

### **3. LEGAL ELEMENTS OF THE DELEGATED ACT**

The delegated directive renews exemption 2(b)(4) listed in Annex III to Directive 2011/65/EU for the use of mercury in fluorescent lamps for other general lighting and special purposes, by setting new validity periods, including for certain specified applications covered by that exemption.

The Commission's assessment, based on the supporting studies and consultations, concluded that the exemption request meets at least one of the relevant criteria laid down in Article 5(1)(a) of the RoHS Directive, that justifies extending the exemption: mercury cannot be reliably substituted in the lamp categories covered by this exemption.

In summary, the conditions for the exemption are fulfilled, and the exemption under 2(b)(4) is to be renewed. The assessment also concluded that the scope of the exemption should be narrowed to further specified applications on one hand, and, on the other hand, to shorten the duration of the current broad exemption as follows: (I) to three years for other general lighting and special purposes lamps and to five years for (II) lamps emitting light in the non-visible spectrum and (III) emergency lamps.

The expiry dates for this exemption are set in line with Article 5(2) (first subparagraph). The validity periods are not expected to have an adverse impact on innovation.

The legal instrument is a delegated directive, which is in line with the enabling legal act, Directive 2011/65/EU, in particular with the delegation set out in Article 5(1) and 20 thereof.

The objective of the delegated directive is to contribute to the protection of human health and the environment and to align the provisions for the functioning of the internal market in the field of electrical and electronic equipment, by allowing the use of otherwise banned substances for specific applications, with the provisions and under the conditions of the RoHS and the procedure for adapting Annexes III and IV to scientific and technical progress.

The delegated directive has no implications on the EU budget.

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2011/65/EU of the European Parliament and of the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment<sup>1</sup>, and in particular Article 5(1), point (a), thereof,

Whereas:

- (1) Directive 2011/65/EU requires Member States to ensure that electrical and electronic equipment placed on the market does not contain the hazardous substances listed in Annex II to that Directive. That restriction does not apply to certain exempted applications listed in Annex III to that Directive.
- (2) The categories of electrical and electronic equipment to which Directive 2011/65/EU applies are listed in Annex I to that Directive.
- (3) Mercury is a restricted substance listed in Annex II to Directive 2011/65/EU.
- (4) By Decision 2010/571/EU<sup>2</sup>, the Commission granted, among other things, an exemption for the use of mercury in other linear fluorescent lamps for other general lighting and special purposes (e.g. induction lamps) ('the exemption'), which is now listed as exemption 2(b)(4) in Annex III to Directive 2011/65/EU. The exemption was to expire on 21 July 2016, in accordance with Article 5(2), second subparagraph, point (a), of that Directive.
- (5) The exemption covers an inhomogeneous group of lamps of different shapes, technologies, applications, and purposes. Mercury is used in the discharge tube, which is essential to convert electrical energy to light.
- (6) On 15 January 2015, the Commission received an application for renewal of the exemption ('the renewal application'), that is within the time limit laid down in Article 5(5) of Directive 2011/65/EU, which was updated on 20 January 2020 by an additional

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<sup>1</sup> OJ L 174, 1.7.2011, p. 88.

<sup>2</sup> Commission Decision 2010/571/EU of 24 September 2010 amending, for the purposes of adapting to scientific and technical progress, the Annex to Directive 2002/95/EC of the European Parliament and of the Council as regards exemptions for applications containing lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls or polybrominated diphenyl ethers (OJ L 251, 25.9.2010, p. 28).

renewal application. In accordance with Article 5(5) of that Directive, the exemption remains valid until a decision on the renewal application has been taken.

- (7) The evaluation of the renewal application, which took into account the availability of substitutes and the socioeconomic impact of substitution, concluded that the substitution or elimination of mercury in the applications concerned is currently technically impracticable. That evaluation included stakeholder consultations in accordance with Article 5(7) of Directive 2011/65/EU. The comments received during those consultations were made publicly available on a dedicated website.
- (8) The exemption is consistent with Regulation (EC) No 1907/2006 of the European Parliament and of the Council<sup>3</sup> and thus does not weaken the environmental and health protection afforded by it.
- (9) It is therefore appropriate to grant the renewal of the exemption taking into account the general aim that exemptions from the restriction for certain specific materials or components should be limited in their scope and duration, in order to achieve a gradual phase-out of hazardous substances in EEE.
- (10) In order to allow for a timely reassessment of the availability of mercury-free replacement lamps for the wide variety of lamp types covered by this exemption, it is appropriate to grant the renewal of the exemption for a limited period of three years. However, for specific lamp categories, namely lamps emitting light in the non-visible spectrum (new sub-entry 2(b)(4)-II of Annex III) and emergency lamps (new sub-entry 2(b)(4)-III of Annex III), there is sufficient information that substitution is technically impracticable in the next years and for those categories of lamps, a validity period of five years should be justified, in accordance with Article 5(2), first subparagraph, of Directive 2011/65/EU. In view of the results of the ongoing efforts to find a reliable substitution, the duration of the exemption is unlikely to have adverse impacts on innovation.
- (11) Directive 2011/65/EU should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

#### *Article 1*

Annex III to Directive 2011/65/EU is amended as set out in the Annex to this Directive.

#### *Article 2*

1. Member States shall adopt and publish, by [\[the last day of the sixth month after the date of entry into force of this Directive\]](#) at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from [\[the last day of the sixth month after the date of entry into force of this Directive + 1 day\]](#).

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<sup>3</sup> Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30.12.2006, p. 1).

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

#### *Article 3*

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

#### *Article 4*

This Directive is addressed to the Member States.

Done at Brussels,

*For the Commission*  
*Ursula VON DER LEYEN*  
*The President*