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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 the use of mercury in cold cathode fluorescent lamps and external electrode fluorescent lamps for 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 cold cathode fluorescent lamps (CCFLs) and external electrode fluorescent lamps (EEFLs) for special purposes.

Article 4 of the RoHS Directive restricts the use of certain hazardous substances in electrical and electronic equipment (EEE). Restrictions currently apply to 10 substances, which are listed in Annex II to the Directive: 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 the materials and components of EEE for specific applications exempted from the substance restrictions under Article 4(1).

Article 5 of the Directive provides for Annexes III and IV to be adapted to scientific and technical progress, which can involve 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 are to take into account the availability of substitutes and the socioeconomic impact of substitution. Decisions on their duration are to take into account any potential impact on innovation. Life-cycle thinking on the overall impacts of the exemption is to apply, where relevant.

Article 5(1)(a) of the Directive requires the Commission to include materials and components of EEE for specific applications listed in Annexes III and IV by means of individual delegated acts. Article 5(3) and Annex V establish the procedure for submitting exemption-related applications.

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

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

The current exemption 3 (a) to (c) of Annex III permits the use of mercury in cold cathode fluorescent lamps and external electrode fluorescent lamps (CCFL and EEFL) for special purposes not exceeding (per lamp): 3(a) Short length ( $\leq 500$  mm): 3,5 mg; 3(b) Medium length ( $> 500$  mm and  $\leq 1\ 500$  mm): 5 mg; 3(c) Long length ( $> 1\ 500$  mm): 13 mg.

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

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

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

The Commission received one application for renewal of this exemption on 15 January 2015. The applicants in essence claimed the lack of availability of substitutes for applications covered by that exemption, which have extremely long effective life and can be replaced by manufacturers and professionals only.<sup>4</sup> An additional renewal application, from the same applicants, was received in January 2020. In line with the requirements of the RoHS Directive (Article 5(5), second subparagraph), the exemption remains valid until the Commission takes a decision on the renewal application.

To evaluate the application 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 on the 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 updates 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 Article 5(3) to 5(7)<sup>10</sup>. The Council and the European Parliament were notified of all activities.

The final supporting study pointed out that mercury-free substitutes in the form of light-emitting diodes (LEDs) are available and are used as lighting sources in *new* equipment coming onto the market. However, it concluded that it is not feasible to use LED lamps as replacements for the repair of EEE *originally* designed with CCFL/EEFL light sources. Therefore, the exemption should be renewed for the latter.

In conclusion, the scientific and technical assessments, including stakeholder consultations, found that:

- the exemption criteria continue to be met with regard to exemption 3(a) to (c), as it is not feasible to use LED lamps as replacements for the repair of EEE originally designed with CCFL/EEFL light sources; and
- due to the very long life of CCFLs/EEFLs, the renewal of the exemption for the maximum of a further 5 years is justified.

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<sup>4</sup> [http://rohs.exemptions.oeko.info/fileadmin/user\\_upload/RoHS\\_Pack\\_9/Exemption\\_3\\_\\_ac\\_/3a\\_3b\\_3c\\_LE\\_RoHS\\_Exemption\\_Req\\_Final.pdf](http://rohs.exemptions.oeko.info/fileadmin/user_upload/RoHS_Pack_9/Exemption_3__ac_/3a_3b_3c_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 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](https://webgate.ec.europa.eu/regdel/#/home). 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>.

The evaluation also found that the renewal would not weaken the environmental and health protection afforded by the REACH Regulation (in accordance with Article 5 of the Directive).

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

The delegated directive renews exemption 3(a) to (c) in Annex III to the RoHS Directive, for the use of mercury in specified applications.

The Commission's assessment, based on the supporting studies and consultations, concluded that the exemption request meets at least one of the criteria of Article 5(1)(a) of the RoHS Directive, which 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 exemption 3 entries (a) to (c) is to be renewed.

The dates by which the exemption is to expire are set in line with Article 5(2), first subparagraph. The evaluation concluded that the state of development of substitutes justifies renewal for the maximum period of 5 years. This is not expected to have adverse impacts on innovation.

The legal instrument is a delegated directive, as provided for by Directive 2011/65/EU, in particular to meet the requirements set out in Article 5(1)(a) 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 RoHS and the therein established procedure for the adaptation of the 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 cold cathode fluorescent lamps and external electrode fluorescent lamps (CCFL and EEFL) for special purposes ('the exemption'), which is now listed as exemption 3(a), 3(b) and 3(c) in Annex III to Directive 2011/65. 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 a heterogeneous 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 followed in 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 from the same applicant. In accordance with Article 5(5) of Directive 2011/65/EU, the exemption remains valid until a decision on the renewal request has been adopted.

- (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. However, that evaluation highlighted that mercury-free substitutes in the form of light emitting diodes lamps (LED) are available, and that they are used as lighting sources in new equipment coming on the market. The 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 for a maximum period of five years, in accordance with Article 5(2), first subparagraph, of Directive 2011/65/EU, only for those lamps used in the electrical and electronic equipment that was placed on the market before the adoption of this Directive. In accordance with the first subparagraph of Article 5(2) of Directive 2011/65/EU, the duration of the exemption is established in light of unavailability of substitutes for EEE originally designed with CCFL/EEFL light sources, and is unlikely to have adverse impacts on innovation.
- (10) 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 [\[the last day of the sixth month after the date of entry into force of this Directive + 1 day\]](#).

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.

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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) and 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).

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*