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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

**on the exercise of the power to adopt delegated acts conferred on the Commission
pursuant to Directive 2011/65/EU on the restriction of the use of certain hazardous
substances in electrical and electronic equipment**

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the exercise of the power to adopt delegated acts conferred on the Commission pursuant to Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment

1. INTRODUCTION

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 equipment¹ (the RoHS Directive) lays down rules on the restriction of the use of hazardous substances in electrical and electronic equipment (EEE) with a view to contributing to the protection of human health and the environment, including the environmentally sound recovery and disposal of waste EEE.

RoHS Directive Annex II lists restricted substances; RoHS Directive Annex III and IV list applications exempted from the restriction provided in the Directive's Article 4(1).

The Directive empowers the Commission to adopt delegated acts with regard to three different provisions, in view of:

- the specification of detailed rules for complying with maximum concentration values by weight in homogeneous materials as specified in Annex II of the Directive, as provided for in RoHS Article 4(2);
- the adaptation of Annexes III and IV to scientific and technical progress, both for inclusion and deletion of exemptions from the restriction provided in Article 4(1), as provided for in the RoHS Directive Article 5(1);
- the review and amendment of the list of restricted substances in its Annex II, as provided for in Article 6(3).

2. LEGAL BASIS

The present report is required under Article 20(1) of the RoHS Directive. Pursuant to this provision, the power to adopt delegated acts is conferred on the Commission for a period of five years from 21 July 2011 and the Commission is required to prepare a report in respect of delegated powers, at the latest 6 months before the end of the five-year period. The delegation of power shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it in accordance with Article 21.

3. EXERCISE OF THE DELEGATION

The exercise of the delegated power was necessary during the reporting period with respect to several provisions foreseen by the Directive.

3.1. Rules for complying with maximum concentration values, Article 4(2)

¹ OJ L 174, 1.7.2011, p. 88

Work for the specifications of detailed rules for complying with maximum concentration values by weight in homogeneous materials as specified in RoHS Annex II has started, but developments are still ongoing. Therefore, the Commission has not yet adopted a delegated act to provide for those rules in accordance with RoHS article 4(2).

3.2. Exemptions from the restriction provided for in Article 4(1), under Article 5(1)

During the period covered by this report, the Commission received around 140 applications for the adaptation of the Directive's Annexes III and IV to scientific and technical progress in accordance with RoHS Article 5. Following a thorough scientific and technical assessment of each application in line with the requirements of Article 5, the Commission adopted 29 individual delegated directives to amend exemptions from the restriction under Article 4(1) in Annex III and IV of the Directive. The Commission is currently carrying out the evaluation of 98 applications.

Neither the European Parliament nor the Council objected to 28 Commission delegated directives within the period provided for in Article 22 of the RoHS Directive. On the expiry of the scrutiny period, each delegated act was published in the Official Journal of the European Union² and entered into force on the date therein specified. One Commission delegated directive was however recently objected³ by the European Parliament in

² Commission Delegated Directive 2012/50/EU of 10 October 2012, OJ L 348, 18.12.2012, p. 16
Commission Delegated Directive 2012/51/EU of 10 October 2012, OJ L 348, 18.12.2012, p. 18
Commission Delegated Directive 2014/1/EU of 18 October 2013, OJ L 4, 9.1.2014, p. 45
Commission Delegated Directive 2014/2/EU of 18 October 2013, OJ L 4, 9.1.2014, p. 47
Commission Delegated Directive 2014/3/EU of 18 October 2013, OJ L 4, 9.1.2014, p. 49
Commission Delegated Directive 2014/4/EU of 18 October 2013, OJ L 4, 9.1.2014, p. 51
Commission Delegated Directive 2014/5/EU of 18 October 2013, OJ L 4, 9.1.2014, p. 53
Commission Delegated Directive 2014/6/EU of 18 October 2013, OJ L 4, 9.1.2014, p. 55
Commission Delegated Directive 2014/7/EU of 18 October 2013, OJ L 4, 9.1.2014, p. 57
Commission Delegated Directive 2014/8/EU of 18 October 2013, OJ L 4, 9.1.2014, p. 59
Commission Delegated Directive 2014/9/EU of 18 October 2013, OJ L 4, 9.1.2014, p. 61
Commission Delegated Directive 2014/10/EU of 18 October 2013, OJ L 4, 9.1.2014, p. 63
Commission Delegated Directive 2014/11/EU of 18 October 2013, OJ L 4, 9.1.2014, p. 65
Commission Delegated Directive 2014/12/EU of 18 October 2013, OJ L 4, 9.1.2014, p. 67
Commission Delegated Directive 2014/13/EU of 18 October 2013, OJ L 4, 9.1.2014, p. 69
Commission Delegated Directive 2014/14/EU of 18 October 2013, OJ L 4, 9.1.2014, p. 71
Commission Delegated Directive 2014/15/EU of 18 October 2013, OJ L 4, 9.1.2014, p. 73
Commission Delegated Directive 2014/16/EU of 18 October 2013, OJ L 4, 9.1.2014, p. 75
Commission Delegated Directive 2014/69/EU of 13 March 2014, OJ L 148, 20.5.2014, p. 72
Commission Delegated Directive 2014/70/EU of 13 March 2014, OJ L 148, 20.5.2014, p. 74
Commission Delegated Directive 2014/71/EU of 13 March 2014, OJ L 148, 20.5.2014, p. 76
Commission Delegated Directive 2014/72/EU of 13 March 2014, OJ L 148, 20.5.2014, p. 78
Commission Delegated Directive 2014/73/EU of 13 March 2014, OJ L 148, 20.5.2014, p. 80
Commission Delegated Directive 2014/74/EU of 13 March 2014, OJ L 148, 20.5.2014, p. 82
Commission Delegated Directive 2014/75/EU of 13 March 2014, OJ L 148, 20.5.2014, p. 84
Commission Delegated Directive 2014/76/EU of 13 March 2014, OJ L 148, 20.5.2014, p. 86
Commission Delegated Directive (EU) 2015/573 of 30 January 2015, OJ L 94, 10.4.2015, p. 4
Commission Delegated Directive (EU) 2015/574 of 30 January 2015, OJ L 94, 10.4.2015, p. 6

³ European Parliament resolution of 20 May 2015 on the Commission delegated directive of 30 January 2015 amending, for the purposes of adapting to technical progress, Annex III to Directive 2011/65/EU of the

accordance with RoHS Article 22. As a consequence, the still pending applications concerned are currently being re-evaluated by the Commission, to take into account recent developments in the availability of alternatives to the substance-use in question.

3.3. Amendment of the list of restricted substances, Article 6(3)

The Commission evaluated the substances of highest priority as referred to in the Recital 10 of the RoHS Directive. Following a thorough scientific and technical assessment of the substances concerned, including similar substances, the Commission adopted a delegated directive in accordance with Article 6, thus restricting 4 additional substances, namely Bis(2-ethylhexyl) phthalate (DEHP), Butyl benzyl phthalate (BBP), Dibutyl phthalate (DBP), Diisobutyl phthalate (DIBP). Neither the European Parliament nor the Council objected to the Commission delegated directive within the period provided for in Article 22 of the RoHS Directive. Consequently, the delegated directive was published in the Official Journal of the European Union⁴ and entered into force on the date therein specified.

3.4. General considerations related to the exercise of delegated powers under the RoHS Directive

For the preparation and adoption of each delegated directive concerning either the evaluation of an application for exemptions or of a new substance restriction, a number of steps have to be carried out to comply with the requirements of the Directive and the Commission's Better regulation principles. These include in particular: the scientific and technical assessment outsourced to an external consultant, extensive stakeholder consultations, the consultation of the Member States' Expert Group convened for the preparation of Delegated Acts pursuant to the RoHS Directive, the two-month notification to the WTO committee on technical barriers to trade, as well as the European Parliament and Council two-month scrutiny period.

While no specific deadline is provided for the adoption of delegated acts concerning applications for new exemptions, the Commission is required to take a decision on applications for renewal of existing exemptions within 12 months after the submission of the application, unless specific circumstances justify other deadlines (Article 5(5)). Complying with this deadline has been challenging. In fact, the need to follow the procedural steps listed in the previous paragraph means that, in practice, it is not possible for the Commission to adopt a delegated act within 12 months. The Commission will therefore consider including in its upcoming legislative proposal on the RoHS scope review an extension of the deadline for the adoption of delegated acts concerning the renewal of existing exemptions.

4. CONCLUSION

Over the past five years, the Commission has exercised properly the delegated powers conferred to it under Directive 2011/65/EU. It invites the European Parliament and the Council to take note of this report.

European Parliament and of the Council as regards an exemption for cadmium in illumination and display lighting applications (C(2015)00383 – 2015/2542(DEA))

⁴ Commission Delegated Directive (EU) 2015/863 of 31 March 2015, OJ L 137, 4.6.2015, p. 10