



**COUNCIL OF  
THE EUROPEAN UNION**

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**COVER NOTE**

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	14 March 2014
To:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union

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No. Cion doc.:	C(2014) 1645 final
Subject:	Commission Delegated Directive ../../EU of 13.3.2014 amending, for the purposes of adapting to technical progress, Annex III to Directive 2011/65/EU of the European Parliament and of the Council as regards an exemption for Mercury in hand crafted luminous discharge tubes (HLDTs) used for signs, decorative or architectural and specialist lighting and light- artwork

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Delegations will find attached document C(2014) 1645 final.

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Encl.: C(2014) 1645 final



Brussels, 13.3.2014  
C(2014) 1645 final

**COMMISSION DELEGATED DIRECTIVE ..../.../EU**

**of 13.3.2014**

**amending, for the purposes of adapting to technical progress, Annex III to Directive 2011/65/EU of the European Parliament and of the Council as regards an exemption for Mercury in hand crafted luminous discharge tubes (HLDTs) used for signs, decorative or architectural and specialist lighting and light-artwork.**

(Text with EEA relevance)

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE DELEGATED ACT

Subject: Commission Delegated Directive amending, for the purposes of adapting to technical progress, Annex III of the Directive 2011/65/EU of the European Parliament and of the Council as regards an exemption for applications containing mercury.

Directive 2011/65/EU of the European Parliament and of the Council of 8 June 2011 (RoHS 2) restricts the use of certain hazardous substances (lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls, polybrominated diphenyl ethers) in electrical and electronic equipment. RoHS 2 (recast) entered into force on 21 July 2011.

RoHS 2 Annexes III and IV list exemptions of materials and components from the RoHS 2 substance restrictions. Article 5 provides for the adaptation (inclusion and deletion of exemptions) of the Annexes to scientific and technical progress. Pursuant to Article 5, exemptions shall be included in Annexes III and IV, provided that such inclusion does not weaken the environmental and health protection afforded by Regulation (EC) No 1907/2006 and where any of the following conditions is fulfilled: their elimination or substitution 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; the reliability of substitutes is not ensured; or the total negative environmental, health and consumer safety impacts caused by substitution are likely to outweigh the total environmental, health and consumer safety benefits thereof.

RoHS 2 Article 5 establishes a procedure for the adaptation of the Annexes to scientific and technical progress. RoHS 2 Article 5(1)(a) provides that the Commission shall include materials and components of EEE for specific applications in the lists in Annexes III and IV by means of individual delegated acts.

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

In line with the provisions for granting, renewing or revoking an exemption, which allow stakeholders to apply for an exemption from the substance restrictions (Article 5(3)), the Commission has received more than 40 requests for new exemptions since the publication of RoHS 2. With a view to the evaluation of the requested exemptions, the Commission commissioned a study and carried out the requisite technical and scientific assessment including an official stakeholder consultation.<sup>1</sup> The final study is available on the consultants' webpage; stakeholders and Member States were notified.<sup>2</sup> The project page is accessible via the DG Environment webpage.

Subsequently, the Commission consulted the official expert group for delegated acts under RoHS 2. A meeting with consultants and experts was held on 28 June 2013, a consolidated recommendation with all necessary background information was sent out on 20 September

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<sup>1</sup> The consultation list is regularly updated and maintained by the consultants in cooperation with the Commission, and includes electronics related industry organisations, manufacturers and suppliers, recyclers, consumer associations, NGOs, academia, Member States' representatives, etc.

<sup>2</sup> [http://rohs.exemptions.oeko.info/fileadmin/user\\_upload/RoHS\\_VII/20130930\\_RoHS-2\\_Exemption\\_Evaluation\\_Pack-2.pdf](http://rohs.exemptions.oeko.info/fileadmin/user_upload/RoHS_VII/20130930_RoHS-2_Exemption_Evaluation_Pack-2.pdf) (pages 93-118).

2013 and experts were invited to comment on the proposal by 15 November 2013. The expert group unanimously supported the proposal. Only one expert commented on a technical detail. All necessary steps pursuant to Article 5(3) to (7) have been performed. Council and Parliament were notified of all activities.

Technical background information (for further information see footnote 2):

Handcrafted luminous discharge tubes (HLDTs) exist in a broad variety; some examples are neon signs, individual architectural illumination and special light emitters in the chemical analytical research. Each HLDT is handmade; HLDT industry is a traditional and small scaled industry.

There is almost no light output in HLDTs without or with insufficient mercury in the lamp, hence a minimum small quantity of mercury needs to be added. As these HLDTs are used for indoor and outdoor applications and with an individual colour spectrum composition, they have to work reliably under sensitive and cold conditions with very high life expectations because they are often difficult to access. The longevity of HLDT is closely related to its mercury content. HLDTs can operate for up to 20 years which is equivalent to 130,000 hours without replacement, thereby outperforming any other light source in efficiency, life span and versatility regarding shape and light spectrum. LED technology is not equivalent to mercury containing HLDT technology, which means that for many applications adequate substitutes are not available.

In summary it can be said that the elimination or substitution of mercury in HLDTs and the complete substitution of HLDTs with other technologies is scientifically and technically impracticable. Therefore an exemption for mercury in HLDTs used for signs, decorative or architectural and specialist lighting and light-artwork should be granted. The use of mercury should be limited however to the absolutely necessary minimum amount and the validity period should be limited to the end of 2018, in order to avoid adverse impacts on innovation.

The specific exemption does not weaken the environmental and health protection afforded by Regulation (EC) No 1907/2006 (REACH).

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

The proposed act grants an exemption from the substance restrictions in Annex II of Directive 2011/65/EU (RoHS 2), to be listed in Annex III, for the use of mercury in specific applications.

The proposed instrument is a delegated directive.

The draft delegated directive implements Directive 2011/65/EU, and in particular Article 5(1)(a) thereof.

The objective of the proposed act is to ensure legal certainty and sustainable market conditions for electronic manufacturers, by allowing specific applications of otherwise banned substances in line with the provisions of RoHS 2 and the therein established procedure for the adaption of the Annexes to scientific and technical progress.

In accordance with the principle of proportionality, the measure does not go beyond what is necessary to achieve its objective.

The proposal has no implications for the EU budget.

COMMISSION DELEGATED DIRECTIVE ../.../EU

of 13.3.2014

**amending, for the purposes of adapting to technical progress, Annex III to Directive 2011/65/EU of the European Parliament and of the Council as regards an exemption for Mercury in hand crafted luminous discharge tubes (HLDTs) used for signs, decorative or architectural and specialist lighting and light-artwork.**

(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>3</sup> and in particular Article 5(1)(a) thereof,

Whereas:

- (1) Directive 2011/65/EU prohibits the use of mercury in electrical and electronic equipment placed on the market.
- (2) Handcrafted luminous discharge tubes (HLDTs) are handmade special purpose lamps which exist in a broad variety. Examples are neon signs, individual architectural illumination and special light emitters in the chemical analytical research. As HLDTs are used for indoor and outdoor applications and with an individual colour spectrum composition, they have to work reliably under sensitive and cold conditions with very high life expectations because they are often difficult to access. In order to function properly under these conditions, HLDTs require a minimum quantity of mercury.
- (3) The elimination or substitution of mercury in HLDTs and the complete substitution of HLDTs with other technologies such as LED is scientifically and technically impracticable. The use of mercury in HLDTs used for signs, decorative or architectural and specialist lighting and light-artwork should therefore be exempted from the prohibition. The use of mercury should be limited to the necessary minimum amount and the validity period should end 31 December 2018, in order to avoid adverse impacts on innovation.
- (4) Directive 2011/65/EU should therefore be amended accordingly,

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<sup>3</sup> OJ L 174, 1.7.2011, p. 88.

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 bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by the last day of the sixth month after entry into force at the latest. They shall forthwith communicate to the Commission the text of those provisions.

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, 13.3.2014

*For the Commission  
The President  
José Manuel BARROSO*