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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	1 March 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	COMMISSION DELEGATED DIRECTIVE (EU) .../... of 1.3.2018 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 lead as an alloying element in aluminium

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Delegations will find attached document C(2018) 1092 final.

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Encl.: C(2018) 1092 final



Brussels, 1.3.2018  
C(2018) 1092 final

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

**of 1.3.2018**

**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 lead as an alloying element in aluminium**

(Text with EEA relevance)

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE DELEGATED ACT**

This Commission Delegated Directive amends, for the purpose of adapting to technical progress, Annex III of 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> (RoHS 2) as regards an exemption for specific applications containing lead.

RoHS 2 restricts the use of certain hazardous substances in electrical and electronic equipment, as provided for in its Article 4. It entered into force on 21 July 2011.

The restricted substances are listed in Annex II to RoHS 2. While the restrictions of lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls, and polybrominated diphenyl ethers are in force to date, the restrictions of bis(2-ethylhexyl) phthalate (DEHP), butyl benzyl phthalate (BBP), dibutyl phthalate (DBP), diisobutyl phthalate (DIBP) shall apply from 22 July 2019 or later. Annexes III and IV to RoHS 2 list the materials and components of electrical and electronic equipment (EEE) for specific applications exempted from the substance restriction of RoHS 2 Article 4(1).

Article 5 makes provision for the adaptation to scientific and technical progress (inclusion, renewal, amendments and revoking of exemptions) of Annexes III and IV. Pursuant to Article 5(1)(a), exemptions are to be included in Annexes III and IV only if such inclusion does not weaken the environmental and health protection afforded by Regulation (EC) No 1907/2006<sup>2</sup> 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.

Furthermore, Article 5(1) provides that the European Commission (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 in accordance with Article 20. Article 5(3) and Annex V establish the procedure for submitting applications for granting, renewing, or revoking an exemption.

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

Since the publication of RoHS 2, the Commission has received numerous<sup>3</sup> requests from economic operators, according to the provisions in Article 5(3) and Annex V, for both granting new and renewing existing exemptions.

The current Annex III exemption 6(b) permits the use of lead as an alloying element in aluminium containing up to 0,4 % lead by weight. The Commission received two applications for renewal of this exemption in December 2014 and January 2015. While exemption 6(b) had 21 July 2016 as expiration date for categories 1 to 7 and 10<sup>4</sup>, in line with the requirements of

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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 given at: [http://ec.europa.eu/environment/waste/rohs\\_eee/adaptation\\_en.htm](http://ec.europa.eu/environment/waste/rohs_eee/adaptation_en.htm).

<sup>4</sup> These categories are namely: 1. Large household appliances; 2. Small household appliances; 3. IT and telecommunications equipment; 4. Consumer equipment; 5. Lighting equipment; 6. Electrical and

the RoHS Directive (Article 5(5), second subparagraph), it continues to apply until a decision on the renewal application is taken by the Commission.

With a view to evaluating the application for exemption, the Commission launched a study to carry out the required technical and scientific assessment, including an eight-week online open-ended stakeholder consultation<sup>5</sup> on the application. Five contributions were made to the stakeholder consultation.

The final report containing the assessment of the application was published<sup>6</sup>; stakeholders were notified.

Subsequently, the Commission consulted the Member States expert group for delegated acts under RoHS 2 during an expert meeting on 15 December 2016, which also involved presentations from the applicants and stakeholders most concerned. The experts agreed with the draft presented by the Commission, with a large majority of absent or silent members. In accordance with the Better Regulation Guidelines, the draft Delegated Directive was published on the Better Regulation Portal for a four-week public feedback period. Four comments were received, all supporting the draft act, with one comment proposing a longer validity period. All necessary steps relating to exemptions from the substance restriction pursuant to Articles 5(3) to 5(7) have been performed. Due to the large amount of simultaneous exemption requests and connected administrative requirements, the Commission decision procedure followed alternative deadlines as per Article 5(5). The Council and the European Parliament were notified of all activities.

The final report highlighted in particular the following technical information and assessment:

- The use of leaded aluminium alloys can be differentiated into aluminium alloys where the lead content is unintentional due to the use of secondary raw material from aluminium scrap (cast alloys) and into aluminium alloys (wrought alloys), where lead is intentionally added for machining purposes.
- As for the unintentional presence of lead, its elimination from the aluminium recycling stream is not yet technically practicable. Furthermore, the recycling of aluminium requires about 95% less energy than that required to produce primary aluminium. Thus the use of recycled aluminium results in a significantly lower environmental impact due to the reduced energy consumption.
- As for lead in aluminium alloys for machining purposes, lead-free substitutes have been recently made available on the market for which reliability is claimed by certain alloy producers. However, further assessments are necessary on to what degree these new developments and subsequently a broad range substitution are practicable.

The evaluation results for categories 1 to 7 and 10 show that at least one of the relevant criteria specified in Article 5(1)(a) is met by the exemption request relating to entry 6(b) in Annex III. To reflect the difference between aluminium alloys where lead is not intentionally introduced and aluminium alloys where lead is added to obtain certain properties as recommended by the consultant, the current wording of the exemption 6(b) has been accordingly split in two subentries. In case of unintentional presence of lead stemming from lead-bearing aluminium scrap recycling, the impracticability of lead elimination and the lower

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electronic tools; 7. Toys, leisure and sports equipment; 10. Automatic dispensers. EEE categories are listed in Annex I of the RoHS Directive.

<sup>5</sup> [Consultation period](#): from 21.08.2015 to 16.10.2015.

<sup>6</sup> <https://bookshop.europa.eu/en/assistance-to-the-commission-on-technological-socio-economic-and-cost-benefit-assessment-related-to-exemptions-from-the-substance-restrictions-in-electrical-and-electronic-equipment-pbKH0416554/>.

environmental impact of recycled aluminium justifies granting an exemption until 21 July 2021. Regarding lead in aluminium alloys for machining purposes, it is proposed to grant an exemption with the duration of three years after the publication of the Delegated Directive in the Official Journal to allow the industry to carry out necessary assessments of the performance of lead-free alternatives available on the market and adapt to possible changes. As reliable substitutes are not yet available, no negative socioeconomic impacts of substitution are to be anticipated for the stated exemption period. It is also not expected to have adverse impacts on innovation.

For categories other than categories 1 to 7 and 10, the existing exemption remains as per the validity periods set out in Article 5(2). The specific exemption does not weaken the environmental and health protection afforded by Regulation (EC) No 1907/2006 (REACH), in accordance with Article 5 of Directive 2011/65/EU.

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

The Delegated Directive grants an exemption from the restrictions in Article 4(1), to be listed in Annex III of Directive 2011/65/EU, for the use of lead in specific applications.

The instrument is a Delegated Directive, as provided for by Directive 2011/65/EU, and in particular meeting the relevant requirements of Article 5(1)(a) thereof.

The objective of the Delegated Directive is to contribute to the protection of human health and the environment and approximate 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, in line with the provisions and under the conditions of RoHS 2 and the therein established procedure for the adaptation of the Annexes III and IV 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 1.3.2018

**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 lead as an alloying element in aluminium**

(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>7</sup> and in particular Article 5(1)(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 lead.
- (2) Point 6(b) of Annex III to Directive 2011/65/EU exempted the use of lead as an alloying element in aluminium containing up to 0,4 % lead by weight until 21 July 2016. The Commission received an application for renewal of this exemption in relation to categories 1 to 7 and 10 before 21 January 2015, in accordance with Article 5(5) of Directive 2011/65/EU.
- (3) Lead is intentionally added to aluminium as a machinability enhancer for industrial production. Certain lead-free alternatives have been recently made available on the market. The technical practicability and reliability of these alternatives are still unclear.
- (4) Furthermore, while lead-bearing aluminium scrap recycling is environmentally advantageous, the elimination of this unintentionally introduced lead from the aluminium recycling stream is not yet technically practicable.
- (5) Aluminium alloys where lead is not intentionally introduced and aluminium alloys, where lead is added to obtain certain properties should be differentiated in the wording of point 6(b) of Annex III to Directive 2011/65/EU, in accordance with Article 5(1)(a) of that Directive.
- (6) In case of unintentional presence of lead stemming from lead-bearing aluminium scrap recycling, the impracticability of lead elimination and the lower environmental impact of recycled aluminium justifies granting an exemption until 21 July 2021 for categories 1 to 7 and 10. Regarding lead in aluminium alloys for machining purposes, an exemption for categories 1 to 7 and 10 with the duration of three years after the publication of this Directive in the *Official Journal of the European Union* should be granted to allow the industry to carry out necessary assessments of the performance of lead-free alternatives available on the market and adapt to possible changes. For

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<sup>7</sup> OJ L 174, 1.7.2011, p. 88.

categories other than categories 1 to 7 and 10, the existing exemption is valid as per the validity periods set out in the second subparagraph of Article 5(2) of Directive 2011/65/EU.

- (7) 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 12th 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 12th 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.

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, 1.3.2018

*For the Commission*  
*The President*  
*Jean-Claude JUNCKER*

