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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	15 January 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	C(2021) 50 final
Subject:	COMMISSION DELEGATED DIRECTIVE (EU) .../… of 15.1.2021 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 certain lead and hexavalent chromium compounds in electric and electronic initiators of explosives for civil (professional) use

Delegations will find attached document C(2021) 50 final.

Encl.: C(2021) 50 final

EUROPEAN
COMMISSION

Brussels, 15.1.2021
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COMMISSION DELEGATED DIRECTIVE (EU) .../…

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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 certain lead and hexavalent chromium compounds in electric and electronic initiators of explosives for civil (professional) use

(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)[1] (RoHS) as regards an exemption for specific applications containing lead and hexavalent chromium.

RoHS 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 currently restricted substances as listed in Annex II to RoHS are the following: 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 to RoHS list the materials and components of electrical and electronic equipment (EEE) for specific applications exempted from the substance restriction of RoHS Article 4(1).

Article 5 provides 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 (REACH)[2] 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.

Decisions on exemptions, and their duration, are furthermore to take into account the availability of substitutes and the socioeconomic impact of substitution; and decisions on the duration of exemptions shall take into account any potential impact on innovation. Life-cycle thinking on the overall impacts of the exemption shall apply, where relevant.

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.

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1 OJ L 174, 1.7.2011, p. 88.
2 OJ L 396, 30.12.2006, p. 1.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

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

The Commission received a request for a new exemption for use of lead and hexavalent chromium compounds in electric and electronic initiators of explosives for civil (professional) use in January 2018 (request no. 2018-2).

With a view to evaluating the application for exemption, the Commission launched a study to carry out the required technical and scientific assessment, including a seven-week online open-ended stakeholder consultation[4] on the application. Two contributions were made to the stakeholder consultation.

The final report containing the assessment of the application was published[5]; stakeholders were notified.

Subsequently, the Commission consulted the Member States expert group for delegated acts under RoHS during an expert meeting on 21 October 2019. The experts agreed with the draft presented, with a large group of experts remaining silent. All necessary steps relating to exemptions from the substance restriction pursuant to Articles 5(3) to 5(7) have been performed.[6] 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. No comments were received. The Council and the European Parliament were notified of all activities.

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

- Electric and electronic initiators (EEI) are a part of electric and electronic detonators that are primarily used for mining of minerals (e.g. building stones, ores and precious metals) as well as for construction and demolition activities (e.g. tunnelling, demolition of chimneys and buildings). EEI are also used in components of integrated rescue systems to deal with e.g. impacts after floods, snow-caps, ice-bumps or fallen trees. Lead and hexavalent chromium compounds are contained in essential parts of the EEI, such as electric fuseheads, primary explosive charges and pyrotechnic delay charges.

- Currently, there are no alternatives for lead diazide, lead styphnate, lead dipicramate, orange lead (lead tetroxide), lead dioxide in EEI and for barium chromate in long time pyrotechnic delay charges of EEI available on the market which would meet all essential requirements to ensure safe operation of EEI.

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3 The list is given at: http://ec.europa.eu/environment/waste/rohs_eee/adaptation_en.htm

4 Consultation period: from 31 October 2018 until 19 December 2018.

5 https://op.europa.eu/en/publication-detail/-/publication/7e6bf135-f0b9-11e9-a32c-01aa75ed71a1/language-en/format-PDF/source-120742148

6 A list of the required administrative steps is available on the Commission website. 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 applications concerned by the exemption request fall in category 11[7]; the exemption request therefore relates to Annex III of Directive 2011/65/EU. To ensure that the requested exemption does not weaken the environmental and health protection afforded by the REACH Regulation, in accordance with Article 5 of Directive 2011/65/EU, the relevant lead and hexavalent chromium compounds shall be specified in the wording of the exemption. Furthermore, at least one of the relevant criteria specified in Article 5(1)(a) is met by the exemption request: Since for the applications concerned, no reliable alternatives are available today or are likely to come on the market soon, granting the exemption with the maximum validity period of five years is justified. As reliable substitutes are not yet available, no negative socioeconomic impacts of substitution are to be anticipated for this period. The granted validity period is also not expected to have adverse impacts on innovation.

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 specific lead and hexavalent chromium compounds 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 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 delegated directive has no implications for the EU budget.

[7] The categories listed in Annex I of Directive 2011/65/EU are namely: 1. Large household appliances; 2. Small household appliances; 3. IT and telecommunications equipment; 4. Consumer equipment; 5. Lighting equipment; 6. Electrical and electronic tools; 7. Toys, leisure and sports equipment; 8. Medical devices; 9. Monitoring and control instruments including industrial monitoring and control instruments; 10. Automatic dispensers; 11. Other EEE not covered by any of the categories above.

COMMISSION DELEGATED DIRECTIVE (EU) .../…

of 15.1.2021

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 certain lead and hexavalent chromium compounds in electric and electronic initiators of explosives for civil (professional) use

(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[1], 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 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) Lead and hexavalent chromium are restricted substances listed in Annex II to Directive 2011/65/EU.

(4) On 19 January 2018, the Commission received an application made in accordance with Article 5(3) of Directive 2011/65/EU for an exemption to be listed in Annex III to that Directive, for the use of lead and hexavalent chromium compounds in electric and electronic initiators of explosives for civil (professional) use ("the requested exemption").

(5) The evaluation of the request included stakeholder consultations in accordance with Article 5(7) of Directive 2011/65/EU. The comments received during these consultations were made publicly available on a dedicated website.

(6) Certain lead and hexavalent chromium compounds are used in essential parts of electric and electronic initiators (EEI), such as electric fuseheads, primary explosive

[1] OJ L 174, 1.7.2011, p. 88.

charges and pyrotechnic delay charges. EEI are a part of electric and electronic detonators that are primarily used for mining of minerals, construction and demolition activities, as well as in components of integrated rescue systems.

(7) Currently, there are no alternatives for lead diazide, lead styphnate, lead dipicramate, orange lead (lead tetroxide), lead dioxide in EEI and for barium chromate in long time pyrotechnic delay charges of EEI available on the market which would meet all essential requirements in order to ensure safe operation of EEI.

(8) Due to the lack of alternatives, a substitution or elimination of lead diazide, lead styphnate, lead dipicramate, orange lead (lead tetroxide), lead dioxide and barium chromate is scientifically and technically impracticable in certain EEI components. The exemption is consistent with Regulation (EC) No 1907/2006 of the European Parliament and of the Council[2] and thus does not weaken the environmental and health protection afforded by it.

(9) It is, therefore, appropriate to grant the requested exemption by including the applications covered by it in Annex III to Directive 2011/65/EU with respect to electrical and electronic equipment of category 11.

(10) The requested exemption should be granted for a duration of 5 years starting from [the date of the publication of this Directive in the Official Journal], in accordance with the first subparagraph of Article 5(2) 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 5th 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.

[2] 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).

They shall apply those provisions from [the last day of the 5th 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, 15.1.2021

For the Commission
The President
Ursula VON DER LEYEN