



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 6 November 2013
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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: | 18 October 2013 |
| To: | Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union |

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| No. Cion doc.: | C(2013) 6837 final |
| Subject: | COMMISSION DELEGATED DIRECTIVE .../.../EU of 18.10.2013 amending, for the purposes of adapting to technical progress, the Annex III to Directive 2011/65/EU of the European Parliament and of the Council as regards an exemption for 3,5 mg mercury per lamp in single capped compact fluorescent lamps for general lighting purposes < 30 W with a lifetime equal to or above 20 000 h |

Delegations will find attached document C(2013) 6837 final.

Encl.: C(2013) 6837 final



Brussels, 18.10.2013
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COMMISSION DELEGATED DIRECTIVE ../.../EU

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amending, for the purposes of adapting to technical progress, the Annex III to Directive 2011/65/EU of the European Parliament and of the Council as regards an exemption for 3,5 mg mercury per lamp in single capped compact fluorescent lamps for general lighting purposes < 30 W with a lifetime equal to or above 20 000 h

(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 30 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.¹ The final study is available on the consultants' webpage; stakeholders and Member States were notified.² 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 8 February 2013, and experts

¹ 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.

²

http://rohs.exemptions.oeko.info/fileadmin/user_upload/RoHS_VI/20130412_RoHS2_Evaluati on_Proj2_Pack1_Ex_Requests_1-11_Final.pdf.

were invited to comment on the proposal by 24 March 2013. The expert group supported the proposal. Only one expert raised objections about a technical aspect of the exemption (minimum lifetime); these concerns were however removed by the consultants in writing. All necessary steps pursuant to Article 5(3) to (7) have been performed. Council and Parliament were notified of all activities.

With respect to the inclusion of an exemption for 3,5 mg mercury per lamp in single capped compact fluorescent lamps for general lighting purposes < 30 W with a lifetime equal to or above 20 000 h, the evaluation results show that the relevant criteria specified in Article 5(1)(a) are fulfilled and the inclusion of the specific application in the exemptions listed in Annex III is justified. The exemption does not weaken the environmental and health protection afforded by Regulation (EC) No 1907/2006.

The major aspects are that:

- The use of long life lamps (with a lifetime equal or above 20 000 h) is directed to areas where lamp replacement is difficult and expensive due to high ceilings, special luminaire design for critical application requirements, or too much disturbance of processes with long operating hours, as well as applications where the safety of people is at stake, e.g. heavy duty industry halls, the chemical industry and oil platforms requiring very reliable long life specifications.
- The current exemption limits the mercury content to 2,5 mg per burner after 31 December 2012. This is suitable for lamps < 30 Watts with life times less than 20 000 hours. For long life lamps, 3,5 mg mercury is needed to avoid light output failures during the life of the product. The ROHS 2 limit of 2,5 mg max, after 31 December 2012, is scientifically impracticable in view of this application.
- An alternative would be to install multiple normal standard lamps consecutively over the equivalent period, instead of using one long life lamp. Assuming that two lamps (with the maximum admissible mercury content) would be used, the total amount of mercury dosed for two lamps during lifetime would then be 5 mg and therefore even higher than the 3,5 mg of mercury used in the one long life lamp.
- LED lamps are not always superior with regard to environmental impacts. In some cases LED lamps may exist that could be used with existing luminaires as a comparable product, but the electrical compatibility is not ensured which would not allow for a full retrofit.
- Elimination through substitute technology is not possible; suitable substitutes do not exist at this time.

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.

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amending, for the purposes of adapting to technical progress, the Annex III to Directive 2011/65/EU of the European Parliament and of the Council as regards an exemption for 3,5 mg mercury per lamp in single capped compact fluorescent lamps for general lighting purposes < 30 W with a lifetime equal to or above 20 000 h

(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,³ 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) Single capped compact fluorescent lamps for general lighting purposes < 30 W with a lifetime equal to or above 20 000 h need 3,5 mg mercury to avoid light output failures during the life of the product. Suitable substitutes do not exist at this time.
- (3) 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 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.

³ OJ L 174, 1.7.2011, p. 88.

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, 18.10.2013

For the Commission
The President
José Manuel BARROSO

ANNEX

3. In Annex III to Directive 2011/65/EU the following point is inserted:

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| 1(g) | For general lighting purposes < 30 W with a lifetime equal or above 20 000 h: 3,5 mg | Expires on 31 December 2017 |
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