



Brussels, **XXX**  
[...] (2019) **XXX** draft

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

**of **XXX****

**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 cadmium and lead in plastic profiles in electrical and electronic windows and doors containing recovered polyvinyl chloride**

(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 cadmium and 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 currently restricted substances as listed in Annex II to RoHS 2 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 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.

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.

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 Commission received a request for a new exemption for use of cadmium and lead in plastic profiles in electrical and electronic windows and doors containing recovered polyvinyl

---

<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)

chloride (PVC) in December 2015 (request no. B-2016). The exemption concerns electrical and electronic equipment listed in category 11 of Annex I<sup>4</sup>.

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. Eighteen 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 the expert meetings on 22 September 2017 and on 21 October 2019. One expert explicitly supported the granting of the exemption, two Member State experts expressed their opposition, stressing mainly the need for alignment with Regulation (EC) No 1907/2006 (REACH) as well as to apply the same requirements to virgin and recycled material. In addition, one of the comments asked for removal of the symbol with “PVC” from the wording. This comment was accepted and the draft Delegated Directive subsequently amended accordingly. The remainder of experts remained silent. 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. Two comments were received, both supporting the draft proposal while requesting an exemption validity period of fifteen years. Furthermore, one of the comments questioned the applicability of the RoHS Directive to electrical and electronic windows and doors. All necessary steps relating to exemptions from the substance restriction pursuant to Articles 5(3) to 5(7) have been performed.<sup>7</sup> The Council and the European Parliament were notified of all activities.

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

- Cadmium and lead are used in PVC frame material for windows and door sets for the purpose of polymer stabilisation of the PVC profiles.
- While lead- and cadmium-free technologies used in virgin PVC are available on the market, use of recovered PVC<sup>8</sup> requires lower amounts of energy and natural resources (such as water, petroleum and natural salt) than would be otherwise needed for use of virgin PVC. The use of recovered PVC is thus associated with socio-economic benefits in particular with regard to decarbonisation, circular economy and raw material availability.
- At least one of the relevant criteria specified in Article 5(1)(a) is met by the application subject to the exemption request: the total negative environmental, health

---

<sup>4</sup> 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. Category 11 enters in scope of Directive 2011/65/EU on 22 July 2019, as per Article 4(3) to that Directive.

<sup>5</sup> [Consultation period](#): from 28 October until 22 December 2016.

<sup>6</sup> <https://publications.europa.eu/en/publication-detail/-/publication/e8c8a008-3e99-11e7-a08e-01aa75ed71a1>

<sup>7</sup> 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>.

<sup>8</sup> ‘Recovered PVC’ refer to mixtures produced from PVC waste.

and consumer safety impacts by substitution (i.e. use of virgin PVC not containing lead and cadmium associated with high use of raw material and primary energy) are likely to outweigh the total environmental, health and consumer safety benefits thereof (avoidance of lead and cadmium in EEE to be placed on the market).

The evaluation results show the specific exemption would at this point 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. Under REACH, there is a restriction process on lead in PVC ongoing since 2016. The recent publication of a draft restriction proposal under REACH<sup>9</sup> provides sufficient indications with regard to recovered PVC in order to proceed with the decision under RoHS. In any case, in light of the ongoing REACH restriction process, the exemption should be granted for a short validity period of 2 years to ensure alignment with REACH once the restriction process is concluded. The validity period for the exemption being very short, it 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 cadmium and 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.

---

<sup>9</sup> Draft Commission Regulation amending Annex XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) as regards lead and its compounds is available here: [http://ec.europa.eu/growth/tools-databases/tbt/en/search/?tbtaction=search.detail&Country\\_ID=EU&num=668&dspLang=en&basdatedeb=10/07/2019&basdatefin=18/07/2019&baspays=&basnotifnum=&basnotifnum2=&bastypepays=ANY&baskeywords=.](http://ec.europa.eu/growth/tools-databases/tbt/en/search/?tbtaction=search.detail&Country_ID=EU&num=668&dspLang=en&basdatedeb=10/07/2019&basdatefin=18/07/2019&baspays=&basnotifnum=&basnotifnum2=&bastypepays=ANY&baskeywords=)

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

**of XXX**

**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 cadmium and lead in plastic profiles in electrical and electronic windows and doors containing recovered polyvinyl chloride**

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

Whereas:

- (1) Article 4(1) of 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 the applications listed in Annex III and IV to Directive 2011/65/EU.
- (2) The categories of electrical and electronic equipment to which Directive 2011/65/EU applies are listed in Annex I to that Directive.
- (3) Cadmium and lead are restricted substances listed in Annex II to Directive 2011/65/EU.
- (4) On 14 December 2015, the Commission received an application made in accordance with Article 5(3) of Directive 2011/65/EU for granting an exemption for the use of cadmium and lead in electrical and electronic windows and doors containing recovered polyvinyl chloride (PVC) ("the requested exemption").
- (5) The assessment of the request included stakeholder consultations in accordance with Article 5(7) of Directive 2011/65/EU.
- (6) Cadmium and lead are used in recovered PVC frame material for windows and door sets for the purpose of polymer stabilisation of the PVC profiles.
- (7) While lead- and cadmium-free virgin PVC is available on the market, use of recovered PVC requires lower amounts of energy and natural resources (such as water, petroleum and natural salt) than the amounts that would be otherwise needed for use of virgin PVC. Therefore, the total negative environmental, health and consumer safety impacts by substitution are likely to outweigh the total environmental, health and consumer safety benefits thereof.
- (8) The exemption does not weaken the environmental and health protection afforded by Regulation (EC) No 1907/2006 of the European Parliament and of the Council.<sup>2</sup> In

---

<sup>1</sup> OJ L 174, 1.7.2011, p. 88.

light of the restriction process on lead in PVC provided for in Regulation (EC) No 1907/2006, the exemption should be granted for a short validity period of 2 years to ensure full alignment with that Regulation once the relevant restriction process is concluded.

- (9) It is, therefore, appropriate to grant the exemption by including the applications covered by that exemption in Annex III to Directive 2011/65/EU with respect to electrical and electronic equipment of category 11 of Annex I to Directive 2011/65/EU.
- (10) The exemption should be granted for the duration of 2 years starting from [the date of the publication of the Delegated 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 5<sup>th</sup> 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 5<sup>th</sup> 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.

---

<sup>2</sup> 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 (OJ L 396, 30.12.2006, p. 1).

Done at Brussels,

*For the Commission*  
*The President*  
[\[...\]](#)