



Brussels, **XXX**
[...] (2021) **XXX** draft

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

of **XXX**

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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

This Commission Delegated Directive amends, for the purpose of adapting to technical and scientific progress, Annex III to 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 (the RoHS Directive). The amendment concerns an exemption for specified applications containing mercury in single capped (compact) fluorescent lamps for general lighting purposes < 30 W with a lifetime equal to or above 20 000 h.

The RoHS Directive restricts the use of certain hazardous substances in electrical and electronic equipment (EEE), as specified in Article 4. Ten substances are currently restricted and listed in Annex II to the Directive: 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 list EEE materials and components for specific applications that are exempt from the substance restrictions laid down in Article 4(1).

Article 5 of the Directive provides for the adaptation of Annexes III and IV to scientific and technical progress, which can include granting, renewing or revoking the exemptions. 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: (i) elimination or substituting the substance 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; (ii) the reliability of substitutes is not ensured; (iii) the total negative environmental, health and consumer safety impacts caused by substituting the substance are likely to outweigh the total environmental, health and consumer safety benefits thereof.

Decisions on exemptions, and their duration, must also take into account the availability of substitutes and the socioeconomic impact of substitution. Decisions on the duration of exemptions must take into account any potential impact on innovation. Life-cycle thinking on the overall impacts of the exemption must be applied, where relevant.

Article 5(1) also specifies that, to include or, where applicable, delete materials and components of EEE for specific applications in the lists in Annexes III and IV, the Commission must adopt individual delegated acts. Article 5(3) and Annex V describe the procedure for submitting exemption-related applications.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The Commission receives³ requests from economic operators to grant or renew exemptions under Article 5(3) and Annex V to the RoHS Directive.

The current Annex III exemption 1(g) permits the use of mercury in single capped (compact) fluorescent lamps not exceeding the following values (per burner):

1(g) For general lighting purposes < 30 W with a lifetime equal or above 20 000 h: 3,5 mg.

¹ OJ L 174, 1.7.2011, p. 88.

² OJ L 396, 30.12.2006, p. 1.

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

The Commission received one application to renew this exemption on 28 June 2016, which was renewed with additional information by the same applicant on 17 January 2020. The applicant in essence claimed that mercury-free substitutes were not available.⁴ In line with the requirements of the RoHS Directive (Article 5(5), second subparagraph), the exemption remains valid until a decision on the renewal application is taken by the Commission.

To evaluate the application to renew that exemption, the Commission launched in June 2017 a study⁵, concluded in 2018, to carry out the required technical and scientific assessment, including an eight-week online stakeholder consultation. One contribution was received during the consultations, followed up by exchanges documented in the study report. The study included extensive information on the availability of substitutes, including 2020 estimates.

The Commission consulted the Member State expert group for delegated acts under the RoHS Directive during the expert meeting of 29 October 2018 and received their views on a proposed course of action. It carried out all the requisite procedural steps relating to exemptions from the substances restriction under Articles 5(3) to 5(7).⁶ The Council and the European Parliament were notified of all activities.

The supporting study highlighted the following:

- mercury-free reliable light-emitting diode (LED) alternatives are available for the lamp categories covered by this exemption;
- data shows that, in terms of environmental, health and consumer safety impacts, the substitution would prevent the placing on the market of mercury contained in the applications, whilst also reducing energy consumed for lighting;
- regarding the socio-economic impacts of substitution, the costs estimated are only expected to incur prematurely in comparison with costs expected from the natural phase-out already underway and are not to be perceived as additional costs generated due to a forced phase-out.

In conclusion, the scientific and technical assessments, including stakeholder consultations, detailed that none of the exemption criteria are met with regard to exemption 1(g).

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The delegated directive revokes exemption 1(g) listed in Annex III to Directive 2011/65/EU for the use of mercury in specific applications.

The Commission's assessment of the exemption request, based on the supporting studies and consultations, concluded that the request for an exemption does not meet any of the criteria laid down in Article 5(1)(a) that justify a further extension of the exemption. The substitution of mercury, with reliable substitutes, in the lamp categories concerned by this exemption is scientifically and technically practicable, and evidence is provided that the overall impact of

⁴ Available at http://rohs.exemptions.oeko.info/fileadmin/user_upload/RoHS_pack_13/Annex_1g/1g_LE_RoHS_Exemption_Req_Final.pdf.

⁵ The final report of the study is available at <https://op.europa.eu/en/publication-detail/-/publication/4ae54b9e-e070-11e8-b690-01aa75ed71a1/language-en/format-PDF/source-84895526>.

⁶ A list of the required administrative steps is available on the [Commission website](#). The current stage of the procedure can be viewed for each draft delegated act in the Inter-institutional Registry of Delegated Acts at <https://webgate.ec.europa.eu/regdel/#/home>.

substitution, in terms of the environmental, health and consumer safety, largely outweighs any negative impacts.

In summary, the conditions for granting the exemption are no longer fulfilled, and exemption 1(g) is to be deleted, in accordance with Article 5(1)(b).

The date by which this exemption will expire is to be set in line with Article 5(6) of the RoHS Directive, according to which, in the event an exemption is revoked, the exemption shall expire at the earliest 12 months, and at the latest 18 months, after the date of that decision.

In setting the expiry date, it is to be taken into account that a small share of the lamp types⁷ covered by this exemption are subject to the criteria, laid down in Annex II of Commission Regulation (EU) 2019/2020 laying down ecodesign requirements for light sources and separate control gears, which are applicable as of 1 September 2021. Having to meet these requirements will lead to the concerned lamps not being placed on the market beyond that date. This is also coherent with the Commission's assessment under the RoHS Directive, including the socioeconomic analysis, which concluded that sufficiently reliable mercury-free substitutes for the lamp types covered by the exemption are already widely available and that the substitution of mercury in these lamps is scientifically and technically practicable. With regard to the exemption entry as a whole under the RoHS Directive, it is however to be taken into account that the vast majority of lamps covered by that exemption, namely compact fluorescent lamps without integrated control gear, are not affected by the criteria under the above-mentioned Ecodesign Regulation. Hence, the maximum possible expiry date of 18 months following the decision is to be set in function of the specific situation for this predominant part of lamps covered by the exemption, as it is necessary to take into account the circumstances relating to these lamps, and is needed to avoid unnecessarily high socio-economic costs for market participants linked to the substitution, in particular with respect to lamps that require a replacement that is more complex.

The legal instrument is a delegated directive, which is in line with the enabling legal act, Directive 2011/65/EU, in particular with the delegation set out in Article 5(1) and 20 thereof.

The objective of the delegated directive is to contribute to the protection of human health and the environment and align the provisions for the functioning of the internal market in the field of electrical and electronic equipment, by revoking an exemption granted for the use of otherwise banned substances for specific applications, with the provisions and under the conditions of the RoHS Directive and the established procedure for adapting Annexes III and IV to scientific and technical progress.

The delegated directive has no implications on the EU budget.

⁷ The products in scope are also regulated by Commission Regulation (EU) 2019/2020 of 1 October 2019 laying down ecodesign requirements for light sources and separate control gears that applies from 1 September 2021. Differently from Directive 2011/65/EU, the ecodesign legislation does not restrict substances in products but sets energy efficiency requirements to be respected in order for the products to be placed on the market. CFL with integrated control gear (CFLi) will not *de facto* be placed on the market from 1 September 2021 due to their non-compliance with these energy efficiency requirements. Commission Regulation (EU) 2019/2020 identifies mercury content as a significant environmental aspect in the life-cycle of a light source, but acknowledges that the use of hazardous substances, including mercury in light sources, is governed by Directive 2011/65/EU.

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

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 equipment¹, and in particular Article 5(1), point (b), 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 the 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) Mercury is a restricted substance listed in Annex II to Directive 2011/65/EU.
- (4) By Delegated Directive 2014/14/EU², the Commission granted an exemption for the use of mercury, with a maximum content of 3,5 mg, in single capped (compact) fluorescent lamps for general lighting purposes < 30 W with a lifetime equal or above 20 000 h ('the exemption'), which is now listed as exemption 1(g) in Annex III to Directive 2011/65/EU. The exemption was to expire on 31 December 2017, in accordance with Annex III to Directive 2014/14/EU.
- (5) Mercury is used in single capped (compact) fluorescent lamps to produce ultraviolet light, which is then converted into visible light by the fluorescent coating on the lamp bulb.
- (6) On 28 June 2016, the Commission received an application for renewal of the exemption ('the renewal application'), that is within the time laid down in Article 5(5) of Directive 2011/65/EU, that was updated with a renewed application on 17 January 2020. In accordance with Article 5(5) of Directive 2011/65/EU, the exemption remains valid until a decision on the renewal application has been adopted.

¹ OJ L 174, 1.7.2011, p. 88.

² Commission Delegated Directive 2014/14/EU of 18 October 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 (OJ L 4, 9.1.2014, p. 71).

- (7) The evaluation of the renewal application, which took into account the availability of substitutes and the socioeconomic impact of substitution, concluded that sufficiently reliable mercury-free substitutes for the lamp types covered by the exemption are available and that the substitution is scientifically and technically practicable. Furthermore, that evaluation concluded that the benefits of substitution will clearly outweigh any negative impact. The evaluation 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.
- (8) As the conditions set out in Article 5(1), point (a), of Directive 2011/65/EU are no longer fulfilled, the exemption should be revoked.
- (9) An expiry date for this exemption should be set in accordance with Article 5(6) of Directive 2011/65/EU. While a small share of the lamp types³ covered by this exemption are subject to the ecodesign criteria laid down in Annex II of Commission Regulation (EU) 2019/2020⁴, which are applicable as of 1 September 2021, and will hence not be placed on the market any longer, the vast majority of lamps covered by the current exemption are not affected by the criteria under the above-mentioned Ecodesign Regulation. Consequently, the maximum possible expiry date of 18 months following the decision should be set with regard to the entire exemption entry in order to avoid unnecessary high socio-economic costs by market participants directly linked to the substitution of the latter category.
- (10) 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 [\[the last day of the sixth month after the date of entry into force of this Directive\]](#) 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 [\[the last day of the sixth month after the date of entry into force of this Directive + 1 day\]](#).

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.

³ CFL with integrated control gear (CFLi) are covered by the entry “Other light sources in scope not mentioned above” in Table 1 of Annex II of Commission Regulation (EU) 2019/2020 from 1 September 2021.

⁴ As stated in Recitals 9 and 10 of Commission Regulation (EU) 2019/2020, no specific ecodesign requirements on mercury content are to be set in that Regulation.

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,

For the Commission
The President
Ursula VON DER LEYEN