COMMISSION DELEGATED DIRECTIVE (EU) 2019/177

of 16 November 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 activator in the fluorescent powder of discharge lamps containing phosphors

(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 certain hazardous substances listed in Annex II to that Directive. That requirement does not apply to the applications listed in Annex III to Directive 2011/65/EU.

(2) The different categories of electrical and electronic equipment for which Directive 2011/65/EU applies are listed in Annex I to that Directive.

(3) Lead is a restricted substance listed in Annex II to Directive 2011/65/EU. The use of lead as activator in the fluorescent powder (1 % lead by weight or less) of discharge lamps when used as sun tanning lamps containing phosphors such as BSP (BaSi2O5:Pb) was, however, exempted from the restriction and is as such currently listed in entry 18(b) of Annex III to that Directive. The original expiry date of that exemption was, for categories 1 to 7 and 10, 21 July 2016, in accordance with the second subparagraph of Article 5(2) of that Directive.

(4) The Commission received an application for renewal of that exemption before 21 January 2015, in accordance with the first subparagraph of Article 5(5) of Directive 2011/65/EU. That exemption remains valid until a decision on that application has been adopted, in accordance with the second subparagraph of that Article.

(5) Moreover, the Commission received in January 2015 a request no. 2015-3 for a new exemption to be added to Annex IV for discharge lamps when used as phototherapy lamps (medical equipment) containing phosphors. As the assessment showed that it is mechanically possible that a lamp intended for medical use can fit in tanning equipment and vice versa, it was decided to merge these exemption requests under the assessment of exemption under entry 18(b) in Annex III.

(6) Lead activator in the fluorescent powder is required to allow the barium silicate phosphor to fluoresce. It transforms the 254 nm radiation to the designed UV (290 nm-400 nm) radiation and it is used in over 95 % of the indoor low pressure mercury vapour fluorescent lamps in tanning and certain medical applications. It provides UV intensity at the wavelength of 350 nm that is crucial in order to initiate skin pigmentation.

(7) Tanning equipment is strictly regulated in the Union and any possible alternative to lead would have to fulfil criteria on reliability, safety and health risk concerns. Currently, there are no such alternatives available.

(8) Due to the lack of reliable substitutes, a substitution or elimination of lead is still scientifically and technically impracticable for certain discharge lamps containing phosphors. 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. The exemption for the use of lead as activator in the fluorescent powder (1 % lead by weight or less) of discharge lamps when used as sun tanning lamps containing phosphors should therefore be renewed.

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

([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 (OJ L 396, 30.12.2006, p. 1).

(9) Since, for the applications concerned, no reliable alternatives are yet available on the market, the exemption for categories 1 to 7 and 10 of Annex I to Directive 2011/65/EU should be renewed for the maximum validity period of five years until 21 July 2021. 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.

(10) For categories other than 1 to 7 and 10 of Annex I to Directive 2011/65/EU, the existing exemption remains valid as per the validity periods set out in the second subparagraph of Article 5(2) of Directive 2011/65/EU. For reasons of legal clarity, the dates of expiry should be specified in Annex III to that Directive.

(11) In view of request no. 2015-3 and the fact that it is mechanically possible for a lamp intended for medical use to fit in tanning equipment and vice versa, a new sub-entry 18(b)-I should be added in Annex III to Directive 2011/65/EU specific to medical applications with the exception of those covered by entry 34 of Annex IV to Directive 2011/65/EU. This sub-entry should apply to categories 5 and 8 and be valid until 21 July 2021.

(12) 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 29 February 2020 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 1 March 2020.

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, 16 November 2018.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

In Annex III, entry 18(b) is replaced by the following:

'18(b)	Lead as activator in the fluorescent powder (1 % lead by weight or less) of discharge lamps when used as sun tanning lamps containing phosphors such as BSP (BaSi2O5:Pb)	Expires on: — 21 July 2021 for categories 1-7 and 10; — 21 July 2021 for categories 8 and 9 other than in vitro diagnostic medical devices and industrial monitoring and control instruments; — 21 July 2023 for category 8 in vitro diagnostic medical devices; — 21 July 2024 for category 9 industrial monitoring and control instruments, and for category 11.
18(b)-I	Lead as activator in the fluorescent powder (1 % lead by weight or less) of discharge lamps containing phosphors such as BSP (BaSi2O5:Pb) when used in medical phototherapy equipment	Applies to categories 5 and 8, excluding applications covered by entry 34 of Annex IV, and expires on 21 July 2021.'