Commission Delegated Directive (EU) 2020/365 of 17 December 2019 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 in solders and termination finishes used in certain hand-held combustion engines (Text with EEA relevance)

COMMISSION DELEGATED DIRECTIVE (EU) 2020/365

of 17 December 2019

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 in solders and termination finishes used in certain hand-held combustion engines

(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 the exempted applications listed in Annex III 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) Lead is a restricted substance listed in Annex II to Directive 2011/65/EU.

(4) By Delegated Directive (EU) 2014/72/EU[(2)], the Commission granted an exemption for the use of lead in solders and termination finishes of electrical and electronic components and finishes of printed circuit boards used in ignition modules and other electrical and electronic engine control systems, which for technical reasons must be mounted directly on or in the crankcase or cylinder of hand-held combustion engines (classes SH:1, SH:2, SH:3 of Directive 97/68/EC of the European Parliament and of the Council[(3)]) ("the exemption") by including those applications in Annex III to Directive 2011/65/EU. The exemption was to expire for categories 1 to 7 and 10 on 31 December 2018, in accordance with the second subparagraph of Article 5(2) of that Directive.

(5) The Commission received an application for renewal of the exemption for categories 6 and 11 ("the renewal request") on 30 June 2017, that is within the time limit laid

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down in Article 5(5) of Directive 2011/65/EU. In accordance with that provision, the exemption remains valid until a decision on the renewal request has been adopted.

(6) The evaluation of the renewal request included stakeholder consultations in accordance with Article 5(7) of Directive 2011/65/EU.

(7) Lead is a common alloying element in solder material to control the melting point. Alternative materials to replace the restricted substance have been successfully tested. However, additional time is needed to confirm the reliability of the lead-free products.

(8) Currently, there are no lead-free alternatives available on the market which would provide sufficient level of reliability for the applications covered by the exemption.

(9) Due to the lack of reliable alternatives, a substitution or elimination of lead is currently scientifically and technically impracticable for certain hand-held combustion engines. It is, therefore, appropriate, to renew the exemption. The renewal of the exemption is consistent with Regulation (EC) No 1907/2006 of the European Parliament and of the Council[(4)] and thus does not weaken the environmental and health protection afforded by it.

(10) The exemption for categories 1 to 7, 10 and 11 should be renewed until 31 March 2022, in accordance with Article 4(3) and 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) For categories 8 and 9, 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.

(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 31 March 2021 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 April 2021.

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*.