Commission Delegated Directive (EU) 2020/361 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 hexavalent chromium as an anticorrosion agent of the carbon steel cooling system in absorption refrigerators (Text with EEA relevance)

COMMISSION DELEGATED DIRECTIVE (EU) 2020/361

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 hexavalent chromium as an anticorrosion agent of the carbon steel cooling system in absorption refrigerators

(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) Hexavalent chromium is a restricted substance listed in Annex II to Directive 2011/65/EU.

(4) An exemption from the restriction for the use of hexavalent chromium as an anticorrosion agent of the carbon steel cooling system in absorption refrigerators up to 0,75 % by weight in the cooling solution (‘the exemption’) is included in Annex III to Directive 2011/65/EU. For categories 1 to 7 and 10, the exemption was to expire on 21 July 2016 in accordance with the second subparagraph of Article 5(2) of that Directive.

(5) The Commission received an application for renewal of the exemption (‘the renewal request’) on 20 January 2015, that is within the time limit laid 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. The evaluation, taking into account the

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Commission Decisions on authorisations for the placing on the market for the use and/or for use of substances listed in Annex XIV to Regulation (EC) No 1907/2006[(2)], led to the conclusion that the current exemption with regard to categories 1 to 7 and 10 is to be divided into two sub-entries with wording clearly reflecting the scientific and technical progress as regards to substitution of hexavalent chromium, which differs depending on the type of application.

(7) Hexavalent chromium (Cr(VI)) acts as an anticorrosion agent of the carbon steel cooling system in absorption refrigerators. It is used to create a layer on the interior surface of the steel tubes to protect them from the cooling solution that contains corrosive ammonia.

(8) For applications with power input ≥ 75 W and for systems fully operating with non-electrical heaters (corresponding to high boiler temperature applications) which are covered by the current exemption, a substitution or elimination of hexavalent chromium is still scientifically and technically impracticable due to the lack of reliable substitutes. An exemption for these applications is in line with Regulation (EC) No 1907/2006 of the European Parliament and of the Council[(3)] and thus does not weaken the environmental and health protection afforded by it.

(9) It is, therefore, appropriate to grant the requested renewal for applications using high boiler temperatures until 21 July 2021, in accordance with Article 4(3) and the second 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.

(10) For applications with power input < 75 W (corresponding to low boiler temperature) currently covered by the exemption, the conditions for renewal set out in Article 5(1) of Directive 2011/65/EU are no longer fulfilled and therefore, the renewal request should be rejected. In accordance with Article 5(6) of that Directive, the exemption for those applications should expire 12 months after the date of entry into force of this Directive.

(11) For categories 8, 9 and 11, 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.

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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, 17 December 2019.

For the Commission

The President

Ursula VON DER LEYEN