Commission Delegated Directive (EU) 2019/178 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 in bearings and bushes applied in certain non-road professional use equipment (Text with EEA relevance)

COMMISSION DELEGATED DIRECTIVE (EU) 2019/178

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 in bearings and bushes applied in certain non-road professional use equipment

(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 Commission received, in accordance with Article 5(3) of Directive 2011/65/EU, in July 2015 an application for granting an exemption for category 11, to be listed in Annex III, for use of lead in bearings and bushes of diesel or gaseous fuel powered internal combustion engines applied in non-road professional use equipment.

(4) Lead containing bearings and bushes are necessary to achieve satisfactory reliability in terms of seizure resistance, conformability, embedability and debris resistance in large size engines and those operating in harsh or demanding environments to be used in professional use non-road equipment, such as mobile air compressors, mobile welding equipment and mobile cranes.

(5) Currently, there are no lead-free alternatives available on the market which would provide sufficient level of reliability for application areas of professional use non-road equipment engines.

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(6) Due to the lack of reliable substitutes, a substitution or elimination of lead is scientifically and technically impracticable for certain professional use non-road equipment engines. 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 in bearings and bushes of certain diesel or gaseous fuel powered internal combustion engines applied in non-road professional use equipment should therefore be granted, adding a new entry 42 to Annex III to Directive 2011/65/EU. To avoid overlapping scopes of exemptions within Annex III and to ensure legal clarity, it should be added that applications covered by entry 6(c) of Annex III are excluded from the new entry 42 to Annex III to Directive 2011/65/EU.

(7) Since, for the applications concerned, no reliable alternatives are yet available on the market or are likely to be available on the market in the near future, the exemption for category 11 of Annex I to Directive 2011/65/EU should be granted for the maximum validity period of five years starting from 22 July 2019, which is the date that category 11 enters into the scope of Article 4(1) 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.

(8) 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 21 July 2019 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 22 July 2019.

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.