Commission Delegated Directive (EU) 2019/171 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 cadmium and its compounds in electrical contacts (Text with EEA relevance)

COMMISSION DELEGATED DIRECTIVE (EU) 2019/171

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 cadmium and its compounds in electrical contacts

(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 (categories 1 to 11) are listed in Annex I to that Directive.

(3) Cadmium is a restricted substance listed in Annex II to Directive 2011/65/EU. The use of cadmium and its compounds in electrical contacts was, however, exempted from the restriction and is currently listed in entry 8(b) of Annex III to that Directive. The expiry date of that exemption was, for categories 1 to 7 and 10, 21 July 2016.

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

(5) Electrical contact materials containing cadmium are used in many electromechanical devices as components which can carry current intermittently through contact surfaces. Devices concerned are in particular power switching of electric motors, relays and contactors, switches for power tools, appliance switches, circuit breakers for switching equipment, power packs, occupancy/time delay sensors, and lighting control panels.

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(6) Cadmium in electrical contacts provides essential properties such as superior performance, arc-quenching, higher conductivity, less contact erosion and relatively easy manufacture compared to the alternatives.

(7) For certain applications covered by the current exemption, a substitution or elimination of cadmium is still scientifically and technically impracticable due to the lack of reliable substitutes or requires more time to ensure the reliability of the available substitutes. The exemption does not weaken the environmental and health protection afforded by Regulation (EC) No 1907/2006 of the European Parliament and of the Council[(2)]. It should therefore be renewed for those particular applications.

(8) For all other applications currently covered by the exemption, the conditions for renewal are not fulfilled. The exemption for those applications should continue to apply for 12 months after the date of entry into force of this Delegated Directive in accordance with Article 5(6) of Directive 2011/65/EU.

(9) Since, for the applications concerned by that renewal, no reliable alternatives are available on the market or more time is needed to ensure the reliability of such alternatives, the exemption for those applications should be renewed for categories 1 to 7 and 10 for the maximum duration 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, 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 clarity, the dates of expiry should be added in Annex III to that Directive.

(11) 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.

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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