Directive (EU) 2017/2102 of the European Parliament and of the Council of 15 November 2017 amending Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment (Text with EEA relevance)

DIRECTIVE (EU) 2017/2102 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 15 November 2017

amending Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) Directive 2011/65/EU of the European Parliament and of the Council[(3)] on the restriction of the use of certain hazardous substances in electrical and electronic equipment (EEE) contains a request that the Commission examine the need to amend the scope of that Directive in respect of the EEE covered therein and, if appropriate, present a legislative proposal with respect to any additional exclusions related to that EEE.

(2) Secondary market operations for EEE, which involve repair, replacement of spare parts, refurbishment and reuse, and retrofitting, should be facilitated to promote a circular economy in the Union. A high level of protection of human health and the environment should be ensured, including through the environmentally sound recovery and disposal of waste EEE. Any unnecessary administrative burden on market operators should be avoided. Directive 2011/65/EU allows EEE that fell outside the scope of the previous Directive 2002/95/EC of the European Parliament and of the Council[(4)], but which would not comply with Directive 2011/65/EU, to continue to be made available on the market until 22 July 2019. After that date, however, both the first placing on the market and secondary market operations of non-compliant EEE are prohibited. Such prohibition of secondary market operations is inconsistent with the general principles

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underlying Union measures for the approximation of laws relating to products and should therefore be removed.

(3) Certain niche product groups should be excluded from the scope of Directive 2011/65/EU as their inclusion would bring negligible environmental or health benefits and introduce unresolvable compliance problems or market distortions that cannot effectively be addressed through the exemption mechanism provided for in that Directive.

(4) Pipes in organs are built using a specific type of lead-based alloy, for which no alternative has been found so far. Most pipe organs are kept in the same place for centuries and their turnover rate is negligible. Pipe organs should therefore be excluded from the scope of Directive 2011/65/EU as their inclusion would bring negligible benefit in terms of the substitution of lead.

(5) Directive 2011/65/EU does not apply to non-road mobile machinery with an on-board power source, which is made available exclusively for professional use. However, for certain types of non-road mobile machinery, two versions are produced in the same production line, with the power source (either on-board or external) being the only difference. Those versions should be treated in the same way under that Directive. Non-road mobile machinery with a traction drive powered by an external power source should therefore also be excluded from the scope of Directive 2011/65/EU.

(6) For all relevant EEE categories, as set out in Annex I to Directive 2011/65/EU, the conditions for the exemption of reused spare parts, recovered from EEE, should be clearly specified. Likewise, since exemptions from the restriction of the use of certain hazardous substances should have a limited duration, the maximum validity period for existing exemptions should also be clearly specified for all relevant EEE categories, including for category 11.

(7) When an application for renewal of an exemption is submitted, the Commission is required to take a decision no later than 6 months before the expiry date of the existing exemption, unless specific circumstances justify a different deadline. No deadline is specified for the Commission to take a decision on applications for new exemptions. According to the report of 18 April 2016 from the Commission to the European Parliament and the Council on the exercise of the power to adopt delegated acts conferred on the Commission pursuant to Directive 2011/65/EU, that deadline has proven to be unfeasible in practice, due to the need to follow several mandatory procedural steps for the evaluation of an application for renewal of an exemption. While the deadline brings no additional value to the existing procedure for the evaluation of applications for renewal, it entails uncertainties for businesses and other stakeholders due to its impracticability. On the other hand, business continuity is ensured since market operators are able to rely on an existing exemption remaining valid until a decision is taken on the application for renewal. Therefore, the provision related to the deadline should be removed. However, the Commission should provide to the applicant, the Member States and the European Parliament, shortly after the receipt of an application, a timeline for the adoption of its decision on the application. Furthermore, the general review of Directive 2011/65/EU to be carried out by the Commission no

later than 22 July 2021 should include the specification of a realistic deadline for a decision by the Commission on an application for renewal of an exemption before the expiry of the relevant exemption.

(8) Since the objectives of this Directive, which are to contribute to the protection of human health and the environmentally sound recovery and disposal of waste EEE by means of the restriction of the use of hazardous substances in EEE, cannot be sufficiently achieved by the Member States because disparities between the laws or administrative measures adopted by the Member States could create barriers to trade and distort competition in the Union and thus have a direct impact on the internal market, but can rather, by reason of the scale of the problem and its implications in respect of other Union legislation on recovery and disposal of waste and areas of common interest, such as human health protection, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 2011/65/EU is amended as follows:

(1) Article 2 is amended as follows:

(a) paragraph 2 is deleted;

(b) in paragraph 4, the following point is added:

(k) pipe organs.;

(2) in Article 3, point (28) is replaced by the following:

(28) "non-road mobile machinery made available exclusively for professional use" means machinery, with an on-board power source or with a traction drive powered by an external power source, the operation of which requires either mobility or continuous or semi-continuous movement between a succession of fixed working locations while working, and which is made available exclusively for professional use.;

(3) Article 4 is amended as follows:

(a) paragraph 3 is replaced by the following:

3. Paragraph 1 shall apply to medical devices and monitoring and control instruments which are placed on the market from 22 July 2014, to in vitro diagnostic medical devices which are placed on the market from 22 July 2016, to industrial monitoring and control instruments which are placed on the market from 22 July 2017, and to all other EEE that was outside the scope of Directive 2002/95/EC and which is placed on the market from 22 July 2019.;

(b) in paragraph 4, the following point is inserted: