

DIRECTIVES

COMMISSION DELEGATED DIRECTIVE (EU) 2023/1437

of 4 May 2023

amending, for the purposes of adapting to scientific and technical progress, Annex IV to Directive 2011/65/EU of the European Parliament and of the Council as regards an exemption for mercury in melt pressure transducers for capillary rheometers under certain conditions

(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), point (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 certain exempted applications listed in Annex IV to that Directive.
- (2) The categories of electrical and electronic equipment to which Directive 2011/65/EU applies are listed in Annex I to that Directive.
- (3) Mercury is a restricted substance listed in Annex II to Directive 2011/65/EU.
- (4) On 26 April 2021, the Commission received an application made in accordance with Article 5(3) of Directive 2011/65/EU for an exemption to be listed in Annex IV to that Directive, for mercury in melt pressure transducers for capillary rheometers at temperatures over 300 °C and pressures over 1 000 bar ('the requested exemption').
- (5) The used pressure transducer, incorporated in capillary rheometers, consists of electrical components and is an electrical measurement device in the scope of the Directive 2011/65/EU. The capillary rheometers described in the requested exemption fall under category 9 'monitoring and control instruments' of Annex I to Directive 2011/65/EU.
- (6) The evaluation of the exemption application, which included a technical and scientific assessment study ⁽²⁾, concluded that substitution of mercury in melt pressure transducers for capillary rheometers at temperatures over 300 °C and pressures over 1 000 bar are currently scientifically and technically impracticable. The evaluation included stakeholder consultations as required by Article 5(7) of Directive 2011/65/EU.
- (7) One of the relevant conditions specified in Article 5(1), point (a), of Directive 2011/65/EU is met, namely that the elimination and substitution is scientifically or technically impracticable.

⁽¹⁾ OJ L 174, 1.7.2011, p. 88.

⁽²⁾ Study to assess requests for two (-2-) exemptions, for mercury in pressure transducer and DEHP in a PVC base material, in Annex IV of Directive 2011/65/EU (Pack 25).

- (8) It is, therefore, appropriate to grant the requested exemption by including the applications covered by it in Annex IV to Directive 2011/65/EU with respect to electrical and electronic equipment of category 9.
- (9) In order to comply with future restrictions on mercury-added products under Regulation (EU) 2017/852 of the European Parliament and of the Council ^(?), it is necessary to limit the validity period of the exemption to 31 December 2025. The period is set in accordance with Article 5(2), first subparagraph of Directive 2011/65/EU.
- (10) Directive 2011/65/EU should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Annex IV 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 January 2024 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate the text of those provisions to the Commission.

They shall apply those provisions from 1 February 2024.

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, 4 May 2023.

For the Commission
The President
Ursula VON DER LEYEN

^(?) Regulation (EU) 2017/852 of the European Parliament and of the Council of 17 May 2017 on mercury, and repealing Regulation (EC) No 1102/2008 (OJ L 137, 24.5.2017, p. 1).

ANNEX

In Annex IV to Directive 2011/65/EU, the following entry 49 is added:

'49	Mercury in melt pressure transducers for capillary rheometers at temperatures over 300 °C and pressures over 1 000 bar	Applies to category 9 and expires on 31 December 2025.'
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