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**Objection to a delegated act: exemption for cadmium in illumination and display lighting applications**

**European Parliament resolution of 20 May 2015 on the Commission delegated directive of 30 January 2015 amending, for the purposes of adapting to technical progress, Annex III to Directive 2011/65/EU of the European Parliament and of the Council as regards an exemption for cadmium in illumination and display lighting applications (C(2015)00383 — 2015/2542(DEA))**

(2016/C 353/04)

*The European Parliament,*

- having regard to the Commission delegated directive (C(2015)00383),
- having regard to Article 290 of 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, and in particular Articles 4, 5(1)(a) and 22 thereof <sup>(1)</sup>,
- having regard to Rule 105(4) of its Rules of Procedure,
- A. whereas Article 4(1) of Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment ('RoHS') restricts inter alia the use of cadmium in electrical and electronic equipment (see the listing in Annex II to the RoHS Directive);
- B. whereas Annex III to the RoHS Directive provides for exemptions from the restrictions laid down in Article 4(1);
- C. whereas point 39 of Annex III lists a derogation for 'Cadmium in colour converting II-VI LEDs (< 10 µg Cd per mm<sup>2</sup> of light-emitting area) for use in solid state illumination or display systems' with an expiry date of 1 July 2014;
- D. whereas Article 5 provides for the adaptation to scientific and technical progress of Annex III for the inclusion and deletion of exemptions;
- E. whereas the Commission indicated that it received, in December 2012, an application to renew exemption 39 and, in May 2013, a related application for a narrower, more specific exemption for cadmium in quantum dots in displays;
- F. whereas, pursuant to Article 5(1)a, exemptions shall be included in Annex III, provided that such inclusion does not weaken the environmental and health protection afforded by Regulation (EC) No 1907/2006 and where any of the following conditions is fulfilled: their elimination or substitution via design changes or materials and components which do not require any of the materials or substances listed in Annex II is scientifically or technically impracticable; the reliability of substitutes is not ensured; or the total negative environmental, health and consumer safety impacts caused by substitution are likely to outweigh the total environmental, health and consumer safety benefits thereof;
- G. whereas the Commission delegated directive extends exemption 39 until 30 June 2017, relabelling it exemption 39(a), and introduces a new more specific exemption 39(b) on 'Cadmium in downshifting cadmium based semiconductor nanocrystal quantum dots for use in display lighting applications (< 0,2 µg Cd per mm<sup>2</sup> of display screen area)', with an expiry date of 30 June 2018;

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<sup>(1)</sup> OJ L 174, 1.7.2011, p. 88.

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- H. whereas the extension of exemption 39 and the new exemption 39(b) both concern cadmium quantum dots, even though a specific reference to quantum dots is given only in exemption 39(b);
- I. whereas the extension of exemption 39 concerns two different applications of cadmium quantum dots: one concerns the use in solid state illumination (hereafter referred to as 'lighting'), while the other concerns display systems;
- J. whereas the new exemption 39(b) only concerns displays;
- K. whereas the Commission states explicitly that quantum dot (cadmium and cadmium-free) LEDs for lighting are not available yet, and admits that the positive environmental impact thereof could therefore not be demonstrated; whereas the Commission nevertheless extended the generic exemption for cadmium quantum dot-based lighting applications until 30 June 2017 to allow the lighting industry to apply for a specific exemption since such applications would already be in the pre-production phase;
- L. whereas the independent consultants who assessed the applications on behalf of the Commission concluded that the information provided did not allow a conclusion that an exemption for lighting would be justified at present, and therefore explicitly recommended against it <sup>(1)</sup>;
- M. whereas the informal information circulated by the Commission on 12 May 2015 does not change the situation, as no proof is given of the availability of these products on the European market and no assessment of their properties against the conditions of Article 5(1)(a) is provided;
- N. whereas in the absence of any relevant lighting products being available, the applicant was unable to prove that any of the conditions of Article 5(1)(a) were fulfilled for the use of cadmium quantum dots in lighting; whereas it is therefore unjustified to grant an extension of the exemption for lighting;
- O. whereas such an exemption may be relevant in the future, but can only be granted on the basis of a proper assessment, which has not yet been made;
- P. whereas, in its delegated directive, the Commission furthermore granted a new specific exemption for cadmium quantum dots in displays, arguing that they were already in use in displays, that this would have a positive overall impact due to their low energy consumption, and that cadmium-free quantum dots were not yet technically available;
- Q. whereas the independent consultants who assessed the applications on behalf of the Commission recommended in April 2014 granting a specific exemption for cadmium quantum dots in displays for a shorter period than that applied for (until 30 June 2017, i.e. one year less than the period adopted by the Commission), in light of the understanding that applications resulting in the reduction of cadmium quantities as well as cadmium-free substitutes are in the final stages of research; whereas, in other words, the recommendation was based on the absence of cadmium-free quantum dots in displays at that time;
- R. whereas, however, there have been important market developments since; whereas in 2015 one of the world's leading TV manufacturers placed a whole line of new models of televisions on the Union market based on cadmium-free quantum dots, available at major retail outlets in several Member States (at least Germany, the UK and Belgium);
- S. whereas on the other hand, there no longer seem to be any TVs with cadmium quantum dots on the Union market, and whereas it is difficult to find any retailer for the one and only notebook the display of which is based on cadmium quantum dot technology;

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<sup>(1)</sup> Öko-Institut, Fraunhofer, Eunomia (2014): Assistance to the Commission on technological socio-economic and cost-benefit assessment related to exemptions from the substance restrictions in electrical and electronic equipment (p. 89) — [http://rohs.exemptions.oeko.info/fileadmin/user\\_upload/RoHS\\_IX/20140422\\_RoHS2\\_Evaluation\\_Ex\\_Requests\\_2013-1-5\\_final.pdf](http://rohs.exemptions.oeko.info/fileadmin/user_upload/RoHS_IX/20140422_RoHS2_Evaluation_Ex_Requests_2013-1-5_final.pdf)

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- T. whereas it can be expected that the energy-saving properties of cadmium-free quantum dots are similar to those of cadmium quantum dots; whereas, according to eco-labelling information, when comparing same-sized TVs, a TV display with cadmium-free quantum dots showed lower energy consumption as compared to a model based on cadmium quantum dots; whereas according to industry information, testing of the colour performance against the relevant standard showed it to be equal if not superior for displays based on cadmium-free quantum dots;
- U. whereas the key justification by the Commission for granting the new specific exemption is that 'cadmium-free quantum dots are not yet technically available';
- V. whereas this justification is manifestly incorrect, as not only are cadmium-free quantum dots technically available, but a whole line of TVs based on this technology has become widely available on the Union market, on offer by well-known major retailers;
- W. whereas the informal information circulated by the Commission on 12 May 2015 does not change that situation; whereas the examples listed by the Commission for products with displays with cadmium quantum dots are either currently unavailable (TCL 55" TV), or are only available in the US (ASUS Notebook, Sony TVs), or only concern products to be launched (Konka, Phillips, AOC);
- X. whereas both the extension of current exemption 39 and the introduction of a new exemption 39(b) fail to fulfil any of the conditions of Article 5(1)(a) and are therefore unjustified; whereas relatively short expiry periods cannot justify non-compliance with the conditions of Article 5(1)(a);
- Y. whereas, according to Article 5(5) of the RoHS Directive, the existing exemption 39 shall remain valid until a decision on the renewal application is taken by the Commission;
- Z. whereas according to Article 5(6) of the RoHS Directive, in the event that an application for renewal of an exemption is rejected or an exemption is revoked, the exemption period shall expire at the earliest 12 months and at the latest 18 months after the date of the decision;
- AA. whereas a rejection of the delegated directive therefore does not ban cadmium quantum dots, but only triggers a new assessment; whereas there are therefore no market distortions, as the current exemption stays valid until revocation, with an additional grace period to be granted thereafter;
- AB. whereas there have been important new developments with regard to the commercial availability of products based on cadmium-free quantum dot technology which require a new assessment,
1. Objects to the Commission delegated directive;
  2. Instructs its President to forward this resolution to the Commission and to notify it that the delegated directive cannot enter into force;
  3. Considers that the Commission delegated directive fails to comply with the conditions laid down in Article 5(1)(a) of Directive 2011/65/EU, for both exemptions it inserts in points 39(a) and 39(b) of Annex III to Directive 2011/65/EU;
  4. Considers in particular that the justification given for the exemption in point 39(b) is based on an outdated situation with regard to the practicability of replacement of cadmium in quantum dots; therefore calls for a swift reassessment of the existing exemption in point 39 of Annex III to Directive 2011/65/EU against the conditions of Article 5(1)(a) thereof with a view to its revocation;
  5. Calls on the Commission to submit a new delegated act which takes into account the position of Parliament;
  6. Instructs its President to forward this resolution to the Council and to the governments and parliaments of the Member States.
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