

# DIRECTIVES

## COMMISSION DELEGATED DIRECTIVE (EU) 2023/171

of 28 October 2022

**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 hexavalent chromium as an anticorrosion agent in gas absorption heat pumps**

(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 <sup>(1)</sup>, 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 III 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) Hexavalent chromium is a restricted substance listed in Annex II to Directive 2011/65/EU.
- (4) On 23 December 2020, 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 III to that Directive, for the use of hexavalent chromium as an anticorrosion agent in the working fluid of the carbon steel sealed circuit of gas absorption heat pumps ('the requested exemption').
- (5) Gas absorption heat pumps require electricity for auxiliary functions like pumping a working fluid through the system. The gas absorption heat pumps described in the requested exemption fall under category 1 'large household appliances' of Annex I to Directive 2011/65/EU.
- (6) The evaluation of the exemption application, which included a technical and scientific assessment study <sup>(2)</sup>, concluded that substitution of hexavalent chromium in the refrigerant solution is currently scientifically and technically impracticable, and other heating technologies eliminating the use of hexavalent chromium in the form of sodium chromate cannot offer equivalent functionality and performance. Gas absorption heat pumps can indeed provide higher energy efficiency than condensing boiler technologies, can help to replace those systems and can lead

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

<sup>(2)</sup> Study to assess requests for renewal of 12 exemptions to Annex IV of Directive 2011/65/EU - Review of request for amendment of exemption III-9: final report.

to carbon dioxide emission savings. That evaluation thus concluded that at least one of the relevant conditions specified in Article 5(1), point (a), of Directive 2011/65/EU is met, namely that the total negative environmental, health and consumer safety impacts of substituting hexavalent chromium in the uses covered by the exemption application are likely to outweigh the total environmental, health and consumer safety benefits thereof. The evaluation included stakeholder consultations as required by Article 5(7) of Directive 2011/65/EU. The comments received during those consultations were made publicly available on a dedicated website.

- (7) A maximum concentration of 0,7 % hexavalent chromium by weight in the refrigerant solution is considered as sufficient for the requested exemption.
- (8) The placing on the market for a use and the use of substances listed in Annex XIV to Regulation (EC) No 1907/2006 of the European Parliament and of the Council <sup>(7)</sup> are subject to an authorisation requirement under that Regulation. That Annex lists a number of hexavalent chromium compounds, including sodium chromate. Regulation (EC) No 1907/2006 and Directive 2011/65/EU apply without prejudice to each other. The use of a hexavalent chromium compound listed in Annex XIV to Regulation (EC) No 1907/2006 and its placing on the market for a use is subject to authorisation under that Regulation. The granting of an exemption under Directive 2011/65/EU does not affect that authorisation requirement under Regulation (EC) No 1907/2006, nor would the granting of an authorisation under Regulation (EC) No 1907/2006 affect the need to obtain an exemption under Directive 2011/65/EU. No reasons have been found according to which granting the requested exemption under Directive 2011/65/EU would weaken the environmental and health protection afforded by Regulation (EC) No 1907/2006.
- (9) It is, therefore, appropriate to grant the requested exemption by including the applications covered by it in Annex III to Directive 2011/65/EU with respect to electrical and electronic equipment of category 1.
- (10) Research efforts to find possibilities for reducing the hexavalent chromium content and/or to substitute or eliminate the use of hexavalent chromium will foreseeably require more than 5 years. Thus, it is appropriate to grant the requested exemption until 31 December 2026, in accordance with Article 5(2), first subparagraph, of Directive 2011/65/EU.
- (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 31 August 2023 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 September 2023.

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.

<sup>(7)</sup> Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30.12.2006, p. 1).

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, 28 October 2022.

*For the Commission*  
*The President*  
Ursula VON DER LEYEN

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## ANNEX

In Annex III to Directive 2011/65/EU, the following entry 9(a)-III is inserted:

'9(a)-III	Up to 0,7 % hexavalent chromium by weight, used as an anticorrosion agent in the working fluid of the carbon steel sealed circuit of gas absorption heat pumps for space and water heating	Applies to category 1 and expires on 31 December 2026.'
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