

.....

MILJØMINISTERIET

To the EU Environment Ministers

*MINISTER FOR THE
ENVIRONMENT*

J.no. D 302-0005

**Re: Exemption of flame retardant Deca-BDE in polymers from
the RoHS-directive**

Date - 8 APR 2005

Dear Colleagues,

- ./ Please find attached for your information my letter to the Environment Commissioner, Mr. Stavros Dimas, on the above subject. I would greatly appreciate your support towards a discussion on this issue in the Council.

Yours sincerely,


Connie Hedegaard

*Ministry of Environment
Højbro Plads 4
DK-1200 København K
Denmark*

*Phone + 45 33 92 76 00
Fax + 45 33 32 22 27
E-mail (Internet): mem@mem.dk
www.mem.dk
CVR-no.: 12-85-43-58*

Mr. Stavros Dimas
Commissioner for the Environment
European Commission
Rue de la Loi 200
B-1040 Brussels
Belgium

MINISTER FOR THE
ENVIRONMENT

J.no. D 302-0005

Date - 8 APR 2005

Dear Commissioner,

I want to draw your attention to the proposal for a Commission decision, which the Commission has tabled and put on the agenda for adaptation in a technical Committee on a meeting scheduled for 19th of April 2005.

The proposal will exempt the very controversial flame retardant Deca-BDE in polymers from the RoHS-directive.

It is highly questionable whether there is sufficient legal foundation for the proposal. There is no documentation on the lack of substitution or technical alternatives or adverse effects of such alternatives. Furthermore the risk assessment of Deca-BDE has not been finally adopted. On the contrary there are still major concerns about the impact of the substance on the environment and on human health.

Furthermore, the Scientific Committee on Health and Environmental Risks (SCHER) on the 18th of March 2005 adopted its opinion on the risk assessment of deca-BDE. The opinion strongly recommends further risk reduction, and emphasises that there is further evidence for degradation of Deca-BDE to potentially harmful compounds.

Clearly, it will not add to the feeling of legitimacy for the Community decision-making processes that a decision of this impact is taken by a technical Committee.

I will therefore strongly suggest the Commission to withdraw the proposal.

*Ministry of Environment
Højbro Plads 4
DK-1200 København K
Denmark*

*Phone +45 33 92 76 00
Fax +45 33 32 22 27
E-mail (Internet): mem@mem.dk
www.mem.dk
CVR-no.: 12-85-43-58*

Should the Commission maintain the proposal I will strongly recommend that a decision of this impact be discussed among us ministers in the Council. The decision is clearly political in nature and should not be taken by a technical Committee.

I attach a copy of a letter sent by your predecessor Commissioner Wallström to NGO's on 24 August 2004. The letter clearly states that there are still outstanding safety concerns related to deca-BDE.

Kindly be informed that I have sent a copy of this letter to my EU-colleagues.

Sincerely,

A handwritten signature in black ink, appearing to read 'Connie Hedegaard', written in a cursive style.

Connie Hedegaard

Brussels, 24.08.2004
Ref. CAB.A/27702 - D/9537

Mr John Hontelez, Secretary General
Europe Environmental Bureau
34, Blvd de Waterloo
B-1000 Brussels

Ms Mary Taylor
Safer Chemicals Campaign
Friends of the Earth Europe
Rue Blanche 15
B-1050 Brussels

Mr Jorgo Iwasaki Riss
Director
Greenpeace
Ottho Heldringstraat 5
1066 AZ Amsterdam
The Netherlands

Mr Michael Warhurst
Senior EU Toxics Programme Officer
36, avenue de Tervuren, B12
B-1040 Brussels

Dear Madam, Dear Sirs,

Thank you for your letter of 9 July concerning the stakeholder consultation on "Adaptation to scientific and technical progress under Directive 2002/95/EC (RoHS) on the restriction of the use of certain hazardous substances in electrical and electronic equipment". In your letter you express the concern on the way the consultation was conducted, more particularly regarding DecaBDE.

Let me first of all assure you that our stakeholder consultation was undertaken in agreement with the relevant Commission services, the Legal Service included. Indeed, I think Article 5(2) of the RoHS Directive is straightforward: "Before the Annex is amended pursuant to paragraph 1, the Commission should *inter alia* consult producers of electrical and electronic equipment, recyclers, treatment operators, environmental organisations and employee and consumer associations". The comments have to be forwarded to the Technical Adaptation Committee (TAC) and the Commission has to provide an account of the information received. Therefore, the process for the amendment of the Annex is carried out in a transparent manner, involving all the parties concerned.

In this context it is also worth underlining that the consultation did not address Article 5.1 (c). Maybe this clarifies a misunderstanding. Another aspect I like to mention is the fact that we need flexibility to accommodate justified requests for new exemptions. One might differ as regards the evidence for such requests, but I am very confident that the directive's committee is perfectly able to judge whether or not they have enough evidence concerning the different decisions.

However, I understand that your main concern relates to DecaBDE. The European Parliament, in second reading, after the adoption of the Common Position on RoHS stated in its justification "*In the directive....the European Parliament voted for a phase out of all PBDEs with respect to this specific application by 1 July 2006. As regards Deca BDE, it should nevertheless be possible to lift this ban depending on the results of the risk assessment currently in progress*". And the ROHS directive itself says "The Commission shall evaluate the applications,...., in order to establish whether these items are to be amended accordingly." Given the importance of DecaBDE, this evaluation had and has my fullest attention.

The meeting of the Competent Authorities (CAs) for the implementation of Regulation 793/93 on Existing Substances held in Dublin on 26 May 2004 concluded that additional information is required to address the remaining scientific uncertainties, supported the launch of an environmental monitoring programme and agreed that the most appropriate mechanism to determine which measures are best to address outstanding concerns is the risk reduction strategy procedure under Regulation 793/93.

I see therefore, like you, outstanding safety concerns related to DecaBDE and agree that proportionate precautionary measures are necessary to reduce DecaBDE's emissions in the environment. Therefore, under the current circumstances, I will not propose to the Commission that it lift the ban on DecaBDE currently existing under the RoHS Directive. I assume this meets your concerns.

Yours sincerely,


Margot WALLSTRÖM