

Brussels, 29.3.2004
PMA/da A:25659/D:8481

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Mr Bernd Lange, MEP
Mr Chris Davies, MEP
Mr Jonas Sjöstedt, MEP
Mr Alexander de Roo, MEP
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European Parliament
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Dear Honourable Members,

Thank you for your letter of 10 March concerning the interpretation of Directive 2002/95/EC (RoHS).

In a letter to BSEF dated 25 February 2004, the Commission services provided the interpretation that Deca-BDE is currently covered by the exemptions to the substance ban in Article 4(1).

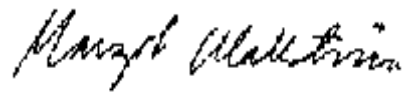
The Commission services based this interpretation on the wording of the Directive as published in the Official Journal of the European Union of 13 February 2003. In this text Deca-BDE is listed as item 10 on the list of exemptions to the substance ban in Article 4 (1). This was interpreted as meaning that Deca-BDE was exempted for the moment and would be reviewed once the results of the risk assessment were known.

There is indeed a discrepancy between the text as approved in the Conciliation Committee on 8 November 2002 and the text published in the Official Journal. In fact, in the text approved by the Conciliation Committee, Deca-BDE is not listed as a tenth exemption but is referred to in a separate (un-numbered) review clause. This shows the intention of the legislator to subject Deca-BDE to a ban. It is clear from the text agreed by the co-legislators that Deca-BDE is at present banned and that this ban will be subject to a review in the light of the risk assessment.

As a result of the confusion caused by the existence of two separate, contradictory texts, my services have already made it clear to the Technical Adaptation Committee (TAC) that they consider that Deca-BDE is currently covered by the substance ban in Article 4 (1) and they will take the appropriate steps to correct the error which has arisen over the text.

I would, of course, emphasise that a binding interpretation of Community law can only be given by the European Court of Justice.

Yours sincerely,

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

Margot WALLSTRÖM