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ENVIRONMENT  
Directorate G - Sustainable Development and Integration  
ENV.G.4 - Sustainable Production & Consumption

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**Subject: Scope of the exemption provided by item "DecaBDE in polymeric applications" in the Annex to Directive 2002/95/EC on the restriction of the use of certain hazardous substances in electrical and electronic equipment**

Dear colleagues,

As you know there have been calls for clarification with regard to the scope of the exemption in subject. I would like to bring to your attention the opinion of the Commission services.

Directive 2002/95/EC (the "RoHS" Directive) prohibits the use of polybrominated diphenyl ethers ("PBDEs") in electrical and electronic equipment. The maximum concentration of these chemicals tolerated is 0.1% by weight in any homogeneous material (Decision 2005/618/EC). By its Decision 2005/717/EC the Commission exempted one of these chemicals, decaBDE, from the prohibition for use in polymeric applications.

However, commercial decaBDE contains around 3% impurities of nonaBDE. Since commercial decaBDE is often used in high concentrations in polymers this can result in nonaBDE concentrations above the tolerated maximum concentration level. For example, using 10% of decaBDE would result in 0.3% nonaBDE.

The Commission services are of the opinion that - with the exception of decaBDE - all PBDEs, including nonaBDE that is introduced into a material as part of decaBDE, have to comply with the substance ban of Article 4 of the Directive and with the maximum tolerance levels set by Decision 2005/618/EC. Homogeneous materials containing above 0.1% by weight of nonaBDE therefore do not comply with the provisions of the Directive.

Please note that this opinion of the Commission services is not legally binding since a legally binding interpretation of Community legislation is, under the Treaty, the exclusive competence of the European Court of Justice.

Yours sincerely,

Klaus KÖGLER  
Acting Head of Unit