

Message 202

Communication from the Commission - SG(2006) D/51261
Directive 98/34/EC
Translation of the message 201
Notification: 2005/0649/S

Forwarding of the response of the Member State notifying a draft (Sweden) to comments (8.2) of France, detailed opinion (9.2) of United Kingdom, Commission.

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1. MSG 202 IND 2005 0649 S EN 23-02-2006 02-06-2006 S ANSWER
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5. Articles 8(2) and 9(2) of Directive 98/34/EC

6. Reply from Sweden to the detailed opinions issued by the Commission and the United Kingdom and to the comments issued by France.

In accordance with paragraph four of Article 8(1) of Directive 98/34/EC, in its notification to the Commission Sweden both described the scope and contents of the draft and included the necessary risk and impact assessments. In this way, Sweden did give an account of the facts on which the draft is based. Sweden is thus of the opinion that the notification contains sufficient information but nevertheless wishes to comply with the Commission's views by means of further clarifying which studies its notification was based on.

The draft is justified by and based on the preliminary conclusions of the health and environmental risk assessments for decaBDE drawn up by the United Kingdom and France within the framework of the EU's programme for existing substances. The Swedish Government interpreted the risk assessments to mean that there is a risk of the substance having negative effects on humans and the environment and that it is therefore both necessary and justified under Article 30 of the EC Treaty to prevent further entry of the substance into the Swedish environment. The Scientific Committee on Health and Environmental Risks (SCHER) has also provided a similar interpretation and strongly recommended that steps be taken to reduce the risks in relation to decaBDE. The Swedish Government did not interpret the release data reported in the assessments in the same way as France has done. The Swedish Government believes that the release data reported in the risk assessments shows that emissions from textiles during use are greater than the release amounts from the textiles industry. Moreover, it believes that the assessments show that decaBDE is also emitted from textiles in the waste chain.

It can also be seen from Sweden's notification that the expert authority within Sweden, the Swedish Chemicals Inspectorate, has been empowered to issue administrative provisions on exemptions or to grant dispensation from the ban in individual cases. It is also doubtful whether the draft will in the end cover any plastics products. The largest field of use for decaBDE in plastics is those electrical and electronic products covered by Directive 2002/95/EC of the European Parliament and of the Council of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (the RoHS Directive). These products, however, do not fall within the scope of the draft.

In its detailed opinion, the Commission emphasises Sweden's obligation to submit a summary of known and available substitute products where such data is available. The United Kingdom states that it is questionable whether, on the basis of the studies thus far produced, there are any suitable alternatives to decaBDE.

The Swedish Government's position on this issue was given in the impact assessment included in the notification. The stated conclusions that there are alternative flame retardants for textiles are based, amongst other things, on a report from the national research institute IFP Research (Survey and technical assessment of alternatives to decaBDE in textile applications, published as KemI PM No 5/04) and, in the case of other applications, on the experience of the Swedish Chemicals Inspectorate from a supervision project on flame retardants carried out in 2003 (KemI PM No 2/04). The IFP Research report and the Swedish Chemicals Inspectorate's 2003 memorandum on the supervision project are included with this communication.

For the reasons stated above, the Swedish Government does not share the view of the Commission and of the United Kingdom that the notified draft new Order contravenes Article 28 of the EC Treaty. The communications from the Commission, the United Kingdom and from France therefore do not cause any change in Sweden's position.

Sweden looks forward to receiving the Commission's views on this reply soon.

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