



1st April 2008

- **EU Court Ruling Does not Question Safety or Science of Important Flame Retardant**
- **Industry calls on EU to Resolve Contradiction between EU Science on Deca-BDE and EU RoHS Directive**

The European Court of Justice (ECJ) today ruled that procedural errors, and not a lack of scientific support or safety data, has led to the annulment of an exemption to the EU RoHS Directive¹ that was granted in 2005 for an important flame retardant².

The Court stressed that its decision rests primarily on “the dispute (which) has essentially arisen over the manner in which the Directive was drafted”³. The Court’s decision does not call into question the safety of the flame retardant Deca-BDE, one of the most studied and effective chemical flame retardants available for electrical and electronic equipment and which contributes to saving thousands of lives per year. On the contrary, the Court has specifically provided that the exemption remains in place until 30 June 2008 to allow time for regulatory and marketplace adaptations.

“This is an important public policy and fire safety issue and we encourage the European Commission to examine Deca-BDE applications in electrical and electronic equipment ‘as a matter of priority’ under the RoHS and reconcile the inconsistency between the risk assessment, which found no need for restrictions on the use of Deca-BDE,⁴ and the provisions of the RoHS Directive, which would impose restrictions” said Dr Michael Spiegelstein, Chairman of the Bromine Science and Environmental Forum.

“We believe the Commission should either propose a new exemption for Deca-BDE, which we are confident meets the RoHS Directive criteria, or amend the RoHS and delete Deca-BDE altogether from its scope. The Court’s decision establishes a clear “road map” for re-examining

¹ 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, OJ L37, page 19, 13 February 2003.

² Commission Decision of 15 October 2005 exempting Deca-BDE from the RoHS Directive : http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/oj/2005/l_271/l_27120051015en00480050.pdf

³ Judgment of the European Court of Justice on Joint Cases C-14/06 and C-295/06, page I-17, point 86. The judgment will be able to be downloaded from the ECJ website: <http://curia.europa.eu/en/actu/communiqués/index.htm>

⁴ Commercial Deca-BDE has been subject to an EU risk assessment under Regulation 793/93/EC which identified no significant risks and on the basis of which no restrictions are justified or required. In December 2007, the EU chemical Competent Authorities confirmed this conclusion after reviewing an updated risk assessment, which now covers over 1,000 environmental and health studies. None of the alternative chemicals to commercial Deca-BDE have been subject to anywhere near the level of testing for which Deca-BDE has undergone.

BSEF is the international organisation of the bromine chemical industry, whose remit is to inform stakeholders and commission science on brominated chemicals such as flame retardants.

this matter, and we look forward to co-operating with the Commission, the Parliament and the EU Member States in such a review.”

Asked to comment on the ruling, former ECJ Judge Sir David Edward⁵ said:

“The Court has found that the Commission used an incorrect criterion, an EU risk assessment, as the basis for exemption since that is not one of the criteria provided for by the RoHS Directive. The Court did not question, nor was it asked to decide on the correctness or otherwise of the risk assessment for Deca-BDE, and that risk assessment is unaffected by the judgment. It is the RoHS Directive exemption, and only that exemption, which has been annulled and not the risk assessment. This means that flaws in the previous exemption process can be reviewed and corrected. It is important to stress that the exemption remains in force in order to allow this review to be carried out as a matter of urgency”.

Statement ends

⁵ Professor Sir David Alexander Ogilvy Edward, KCMG, QC, FRSE sat as a Judge of the Court of Justice of the European Communities between 1992 and 2004. He is a Vice-President of the British Institute of International and Comparative Law, and has written extensively on a range of legal issues. He is a past President of the Council of Bars and Law Societies of Europe. At Edinburgh University he is an Honorary Professor in its School of Law and Chairman of its Europa Institute.