

BILAG 2

E-3423/06EN
Answer given by Mr. Verheugen
on behalf of the Commission
(21.9.2006)

The Commission is aware that the term "placing on the market" is not coherently used throughout internal market legislation and it is currently exploring possibilities to tackle this problem in the context of its initiative to revise the horizontal elements of the New Approach.

Pending a solution at a horizontal level, the meaning of "placing on the market" has to be determined in accordance with the definition provided in the specific legal instrument, or, in the absence of such a definition, in the light of the general context and objectives of the instrument.

Directive 2005/84/EC of the European Parliament and of the Council of 14 December 2005 concerning the use of phthalates in toys amends for the 22nd time Council Directive 76/769/EEC of 27 July 1976 on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations¹. Council Directive 76/769/EEC does not contain any definition of the term "placing on the market". However, any rules concerning the placing on the market of dangerous substances and preparations must aim at protecting the public, and particular persons using such substances and preparations.

The Commission has become aware that Member States' opinions differ with regard to the interpretation of the term "placing on the market" in the application of Directive 2005/84/EC. In order to avoid as far as possible problems linked to these diverging interpretations, the Commission proposed a common approach at a meeting of the competent authorities of the Member States responsible for the implementation of Council Directive 76/769/EEC on 12 July 2006. In an attempt to find a pragmatic solution, the Commission recommended that Member States follow the guidance provided in the context of the New and the Global Approach and accept for at least three more months the presence of toys which do not conform to Directive 2005/84/EC, on the shelves of distributors and retailers, provided that their first placing on the market had already taken place prior to 16 January 2007.

At the meeting on 12 July 2006, it became clear that the Member States could not agree to the Commission's proposed solution. In their transpositions of the Directive, some Member States define "placing on the market" as every placing on the market and have consequently decided to strictly apply the restrictions contained in Directive 2005/84/EC to toys and childcare articles from 16 January 2007. Others interpret "placing on the market" as the first placing on the market only and regard articles in warehouses and on shelves of distributors as already placed on the market.

The Commission considers that the application of the restrictions to products on the market as of 16 January 2007 is in line with the objectives and provisions of Directive 2005/84/EC. It is not of the opinion that its impacts are disproportionate to the objectives sought regarding toys containing the six phthalates. The Parliament and the Council based their decision to ban the use of the phthalates in toys and childcare articles on an extensive Programme of risk assessments and opinions of the responsible Scientific Committee (CSTEE) which identified risks to children that have been addressed by the Directive.

¹ OJ L 262, 27.9.1976

While the different timing of the application of the provisions of the Directive to toys on the shelves and in warehouses is not optimal for the toys industry and retailers, the Commission would like to point out that the restrictions of Directive 2005/84/EC have been foreseeable for a considerable period of time. The first Commission proposal to ban the use of the six phthalates in certain toys and childcare articles dates back to 1999¹. Following this proposal, the issue of phthalates in toys was publicly debated at Community level for more than five years. Moreover, when Parliament adopted its compromise with the Council on 5 July 2005, it was widely reported throughout the European press. Industry therefore had sufficient time to pro-actively prepare the use of other materials or to use other substances as plasticisers.

The Commission is reflecting on possible ways to avoid this problem in relevant cases for future restrictions on marketing and use of dangerous chemicals. One solution could be to set a transition period for articles containing a restricted or banned substance that have already entered the distribution chain but are yet to be made available to the general public.

¹ COM (99) 577 final