

COMMISSION DECISION

of 7 October 2013

authorising Germany to maintain the limit values for antimony, arsenic, barium, lead and mercury beyond the entry into application of the limit values for chemical substances according to Article 55, 2nd sentence of Directive 2009/48/EC of the European Parliament and of the Council on the safety of toys in application of the Order of the President of the General Court of 15 May 2013 (T-198/12R)

(notified under document C(2013) 6387)

(Only the German text is authentic)

(Text with EEA relevance)

(2013/492/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 266 thereof,

Having regard to the Order of the President of the General Court of 15 May 2013 in Case T-198/12R,

Whereas:

- (1) Directive 2009/48/EC of the European Parliament and of the Council ⁽¹⁾ lays down rules on the safety of toys and on their free movement in the Union. According to Article 54 of that Directive, Member States must bring into force national provisions complying with Directive 2009/48/EC by 20 January 2011, and they have to apply them as from 20 July 2011. According to the second sentence of Article 55 of that Directive, Part III of Annex II to Directive 2009/48/EC on chemical properties is applicable as from 20 July 2013. Part III of that Annex includes migration limits for 19 elements.
- (2) On 20 January 2011, Germany requested the Commission, pursuant to Article 114(4) TFEU, the permission to retain the existing provisions provided in German law for the elements: lead, arsenic, mercury, barium and antimony, as well as for nitrosamines and nitrosatable substances released from toy material, beyond the date of entry into force of Annex II, Part III, to Directive 2009/48/EC.
- (3) By Commission Decision 2012/160/EU ⁽²⁾, the Commission granted the German Government's request and approved the maintenance of the national provisions

for nitrosamines and nitrosatable substances. As regards the limit values for arsenic, antimony and mercury – which correspond to the limit values which had been established by Council Directive 88/378/EEC ⁽³⁾ – the Commission did not approve the maintenance of the German national provisions. As regards the limit values for lead and barium – which also correspond to the values which had been established by Directive 88/378/EEC – the Commission provisionally approved the maintenance of the German national provisions, until the entry into force of new Union limit values for lead and barium or until 21 July 2013, whichever date came first.

- (4) On 14 May 2012, the German Government brought an action for annulment of the Commission Decision of 1 March 2012 before the General Court. In addition, on 13 February 2013, the German Government applied for interim relief requesting the provisional approval of the national provisions maintaining the limit values for antimony, arsenic, barium, lead and mercury, pending the Court's decision on the main action.
- (5) By Order of 15 May 2013 in Case T-198/12R, the President of the General Court granted the interim relief measure sought by the German Government. The President considered that under paragraphs 4 and 6 of Article 114 TFEU only the Commission is competent to authorise applications to maintain limit values submitted to it by the Member States ⁽⁴⁾. Accordingly, the Commission was ordered to authorise that the national provisions notified by the Federal Republic of Germany concerning limit values for antimony, arsenic, barium, lead and mercury in toys be maintained pending the Court's decision in the main proceedings.
- (6) On 26 July 2013, the Commission lodged an appeal against the Order of the President of the General Court (C-426/13P(R)). In accordance with Article 60 of the Statute of the Court of Justice of the European Union, an appeal does not have suspensory effect.

⁽¹⁾ Directive 2009/48/EC of the European Parliament and of the Council of 18 June 2009 on the safety of toys (OJ L 170, 30.6.2009, p. 1).

⁽²⁾ Commission Decision 2012/160/EU of 1 March 2012 concerning the national provisions notified by the German Federal Government maintaining the limit values for lead, barium, arsenic, antimony, mercury and nitrosamines and nitrosatable substances in toys beyond the entry into application of Directive 2009/48/EC of the European Parliament and of the Council on the safety of toys (OJ L 80, 20.3.2012, p. 19).

⁽³⁾ Council Directive 88/378/EEC of 3 May 1988 on the approximation of the laws of the Member States concerning the safety of toys (OJ L 187, 16.7.1988, p. 1).

⁽⁴⁾ Paragraph 39 of the Order.

- (7) The Commission hereby complies with the Order of 15 May 2013 in case T-198/12R and, as required, authorises that the provisions notified by the Federal Republic of Germany concerning limit values for antimony, arsenic, barium, lead and mercury be maintained. The Commission however continues to pursue legal action against the measures notified by the Federal Republic of Germany before the General Court with the main proceedings (T-198/12R) and before the Court of Justice with the appeal to the Order of 15 May 2013 (C-426/13 P(R)),

HAS ADOPTED THIS DECISION:

Article 1

In accordance with the Court's Order of 15 May 2013 in case T-198/12R, the Commission authorises that the national provisions notified by the Federal Republic of Germany concerning limit values for antimony, arsenic, barium, lead and mercury in toys be maintained beyond 20 July 2013.

Article 2

This Decision is provisional.

It is only valid until the General Court has rendered its judgment in case T-198/12R or the Court of Justice has decided on the Commission's appeal against the President of the General Court's order of 15 May 2013 in case T-198/12R (Case C-426/13 P(R)) whichever of the two events occurs earlier.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 7 October 2013.

For the Commission

Antonio TAJANI

Vice-President
