

COMMISSION DECISION

of 7 June 2007

concerning national provisions on the use of short-chain chlorinated paraffins notified by the Kingdom of the Netherlands under Article 95(4) of the EC Treaty

(notified under document number C(2007) 2361)

(Only the Dutch text is authentic)

(Text with EEA relevance)

(2007/395/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

(...)

Having regard to the Treaty establishing the European Community, and in particular Article 95(6) thereof,

6. The Commission shall, within six months of the notification approve or reject the national provisions involved after having verified whether or not they are a means of arbitrary discrimination or a disguised restriction to trade between Member States and whether or not they shall constitute an obstacle to the functioning of the internal market.'

Whereas:

I. FACTS

(1) By letter of the Permanent Representation of the Kingdom of the Netherlands to the European Union of 8 December 2006, the Dutch Government, referring to Article 95(4) of the Treaty, notified to the Commission its national provisions on the use of short-chain chlorinated paraffins (hereinafter referred to as SCCPs) that it deems necessary to maintain after the adoption of Directive 2002/45/EC of the European Parliament and of the Council of 25 June 2002 amending for the 20th time Council Directive 76/769/EEC relating to restrictions on the marketing and use of certain dangerous substances and preparations (short-chain chlorinated paraffins) ⁽¹⁾.

2. Directive 2002/45/EC and the national provisions

2.1. Directive 2002/45/EC

(2) The notification of 8 December 2006 is the second notification of the Kingdom of the Netherlands concerning derogation from the provisions of Directive 2002/45/EC. A first request for maintaining existing national provisions was submitted on 17 January 2003. In Decision 2004/1/EC ⁽²⁾, the Commission decided that the Netherlands could maintain partially its national provisions until 31 December 2006.

(4) 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 preparations ⁽³⁾, as amended, establishes rules restricting the marketing and use of certain dangerous substances and preparations. According to Article 1(1), the Directive applies to the dangerous substances and preparations listed in Annex I.

(5) Adopted on the legal basis of Article 95 of the Treaty, Directive 2002/45/EC has inserted in Annex I to Directive 76/769/EEC a new point 42 concerning alkanes, C₁₀ to C₁₃, chloro (SCCPs), laying down rules on the marketing and use of these substances. According to point 42.1, SCCPs may not be placed on the market for use as substances or as constituents of other substances or preparations in concentrations higher than 1 %:

1. Article 95(4) and (6) of the Treaty

(3) Article 95(4) and (6) of the Treaty provides:

— in metalworking,

— for fat liquoring of leather.

'4. If, after the adoption by the Council or by the Commission of a harmonisation measure, a Member State deems it necessary to maintain national provisions on grounds of major needs referred to in Article 30, or relating to the protection of the environment or the working environment, it shall notify the Commission of these provisions as well as the grounds for maintaining them.

(6) Point 42.2 provides that before 1 January 2003 all remaining uses of SCCPs will be reviewed by the European Commission, in cooperation with the Member States and the OSPAR Commission, in the light of any relevant new scientific data on risks posed by SCCPs to health and the environment and that the European Parliament will be informed of the outcome of this review.

⁽¹⁾ OJ L 177, 6.7.2002, p. 21.

⁽²⁾ OJ L 1, 3.1.2004, p. 20.

⁽³⁾ OJ L 262, 27.9.1976, p. 201. Directive as last amended by Commission Directive 2006/139/EC (OJ L 384, 29.12.2006, p. 94).

- (7) Article 2(1) provides that Member States shall apply the measures transposing the Directive from 6 January 2004 at the latest.
- (8) Directive 76/769/EEC will be repealed on 1 June 2009 and replaced by Regulation (EC) No 1907/2006 of the European Parliament and of the Council ⁽¹⁾ concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH). The group of SCCPs substances is listed in Annex XVII of Regulation (EC) No 1907/2006 under point 42 with the restrictions as provided for under Directive 2002/45/EC.

2.2. National provisions

- (9) The national provisions notified by the Netherlands were introduced by the Decision of 3 November 1999, laying down rules prohibiting certain uses of short-chain chlorinated paraffins (Chlorinated Paraffins Decision, Chemicals Substances Act (WMS)) (Staatsblad van het Koninkrijk der Nederlanden, Jaargang 1999, 478).
- (10) Article 1 provides that the Decision applies to chlorinated alkanes with a chain of from 10 to 13 inclusive carbon atoms and a chlorination degree of not less than 48 % by weight. Under Article 2(1), SCCPs referred to in Article 1 may not be used:
- (a) as plasticisers in paints, coatings or sealants;
 - (b) in metal-working fluids;
 - (c) as flame-retardants in rubber, plastics or textiles.
- (11) A detailed description of SCCPs, their uses and the outcome of the risk assessment carried out in the framework of Council Regulation (EEC) No 793/93 of 23 March 1993 on the evaluation and control of the risks of existing substances ⁽²⁾ is contained in Section I.4 of Decision 2004/1/EC. This section focuses only on new information that has become available since January 2004.
- (12) Following the outcome of the earlier risk assessment and its reviews by the Scientific Committee on Toxicity, Ecotoxicity and the Environment (CSTEE), the Commission adopted pursuant to Article 10 of Regulation (EEC) No 793/93, Commission Regulation (EC) No 642/2005 ⁽³⁾ imposing testing and information requirements on the importers or manufacturers of certain priority substances. This regulation requires the industry to provide additional information on environmental exposure and biodegradation simulation to determine half-life in the marine environment, which were deemed necessary in order to allow for a more reliable assessment of the risks.
- (13) The relevant industry association (Euro Chlor) submitted information in 2004 indicating that there had been a further decrease in the use of SCCPs in all applications since 2001. The EU consumption in textiles and rubber had decreased in 2003 to a third of the level in 2001, with further decreases occurring (particularly in use in textiles, paints and sealants and adhesives) in 2004. The consumption in paints and sealants/adhesives also decreased by 50 % over the same time period. Some use in metal working fluids was still occurring in 2003, but this use stopped in 2004 following the entry into force of Directive 2002/45/EC. The overall amount of short-chain chlorinated paraffins used in all applications was less than 1 000 tonnes in 2003 and less than 600 tonnes in 2004 ⁽⁴⁾. In reaction to Regulation (EC) No 642/2005, industry performed further analytical laboratory tests. Preliminary results of this analysis seem to suggest that SCCPs could meet the criteria of Persistent Bioaccumulating and Toxic substances (PBT). The final test report will be submitted to the UK authorities acting as rapporteur according to the Regulation (EEC) No 793/93, as soon as the final results are confirmed by the laboratory.
- (14) The United Kingdom, acting as rapporteur for SCCPs, prepared an update to the SCCPs environmental risk assessment (hereafter called the updated risk assessment) in August 2005, which was discussed and agreed at the third Technical Committee on New and Existing Substances meeting in 2005 (TCNES III 2005). For some of the scenarios, the earlier conclusions were changed and new risks were identified for applications such as flame-retardant in back-coatings for textiles, industrial use of paints and coatings, combined compounding and conversion of rubber for certain different environmental endpoints. However, the refinement of this assessment based on 2004 tonnage data for SCCPs led to modified conclusions indicating risk for textile back-coating application and rubber compounding/conversion. The agreed updated risk assessment will be published soon by the Commission. The updated risk assessment will be sent for evaluation to the Scientific Committee on Health and Environmental Risks (SCHER) in the second half of 2007, if appropriate.

3. Background information on SCCPs

- (11) A detailed description of SCCPs, their uses and the outcome of the risk assessment carried out in the framework of Council Regulation (EEC) No 793/93 of 23 March 1993 on the evaluation and control of the risks of existing substances ⁽²⁾ is contained in Section I.4 of Decision 2004/1/EC. This section focuses only on new information that has become available since January 2004.

⁽¹⁾ OJ L 396, 30.12.2006, p. 1.

⁽²⁾ OJ L 84, 5.4.1993, p. 1. Regulation as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

⁽³⁾ OJ L 107, 28.4.2005, p. 14.

⁽⁴⁾ Figures from draft revised risk assessment report on SCCPs, August 2005.

- (15) In addition to the Community measures and actions described above, SCCPs are covered by other Community legislation. Decision No 2455/2001/EC of the European Parliament and of the Council of 20 November 2001 establishing the list of priority substances in the field of water policy and amending Directive 2000/60/EC ⁽¹⁾ included SCCPs among the priority hazardous substances within the meaning of Article 16(3) of the Water Framework Directive. Under the Water Framework Directive, the Commission shall submit proposals of controls for the cessation or phasing out of discharges, emissions and losses within 20 years after their adoption, and proposals for quality standards applicable to the concentrations in surface water, sediment and biota.
- (16) On 17 July 2006, the Commission adopted a proposal for a Directive on environmental quality standards in the field of water policy, and amending Directive 2000/60/EC. This proposal maintains the classification of SCCPs as priority hazardous substances and sets environmental quality standards applicable to the concentrations of these substances in surface water. The proposal does not contain specific control measures for any priority substance as many environmental protection measures fall under the scope of other existing Community legislation, and as it seems more cost-effective and proportionate for Member States to include, where necessary and in addition to the implementation of existing Community legislation, appropriate control measures in the programme of measures to be developed for each river basin in accordance with Article 11 of Directive 2000/60/EC.
- (17) Regulation (EC) No 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants and amending Directive 79/117/EEC ⁽²⁾ implements the provisions of two international instruments on persistent organic pollutants (POPs): the Protocol on POPs ⁽³⁾ from 1998 under the UNECE Convention on Long-Range Transboundary Air Pollution and the Stockholm Convention on POPs ⁽⁴⁾.
- (18) Neither Regulation (EC) No 850/2004, nor the two international Conventions contain specific rules regarding SCCPs. However, both Conventions contain mechanisms to propose further substances for inclusion and procedures for evaluating proposed candidates.
- (19) The Commission, on behalf of the European Community, together with the Member States which are Parties to the POPs Protocol, proposed on 9 September 2005 to amend the relevant Annex II of the Protocol by adding SCCPs. During its meeting in September 2006, the Task Force set up under the Protocol to review proposals for adding further substances supported the conclusion of the dossier that SCCPs be considered POPs in the context of the Protocol and that the risk profile provided sufficient information showing that SCCPs had the potential for Long-Range Transboundary Atmospheric Transport (LRAT). The Task Force generally concluded that the hazard characteristics, together with the monitoring information, were indicative of the potential for environmental effects due to LRAT. The information contained in the track B review (risk management options) of SCCP were considered accurate by the Task Force, though supplementary information was needed for many aspects of a socioeconomic evaluation of various risk management actions. On December 2006 the Parties to the Protocol took note of the conclusions proposed by the Task Force on the technical content of the dossier on SCCPs and they agreed that this substance should be considered as a POP as defined under the Protocol and requested that the Task Force continues with the Track B review of SCCPs and explores a risk management strategy.
- (20) In addition, the European Commission on behalf of the European Community, together with the Member States which are Parties to the Stockholm Convention proposed on 29 June 2006 to amend the relevant Annexes of the Convention by adding SCCPs. During its second meeting from 6 to 10 November 2006, the POP Review Committee concluded that SCCPs meet the screening criteria listed in Annex D to the Convention as reported in Decision POPRC-2/8 ⁽⁵⁾. This Decision also recommended that a draft risk profile should be prepared in accordance with Annex E to the Convention.

⁽¹⁾ OJ L 331, 15.12.2001, p. 1.

⁽²⁾ OJ L 158, 30.4.2004, p. 7, corrected by OJ L 229, 29.6.2004, p. 5. Regulation as last amended by Commission Regulation (EC) No 323/2007 (OJ L 85, 27.3.2007, p. 3).

⁽³⁾ The 1979 Convention on Long-range Transboundary Air Pollution which addresses environmental problems of the UNECE region through scientific collaboration and policy negotiation, has been extended by eight protocols that identify specific measures to be taken by Parties to cut their emissions of air pollutants. The Protocol on Persistent Organic Pollutants (POPs) signed in 1998, entered into force on 23 October 2003. This protocol was ratified by the European Community on 30 April 2004.

⁽⁴⁾ The Stockholm Convention of 22 May 2001 is a global treaty with the objective to eliminate or reduce the release of persistent organic pollutants (POPs) into the environment. It entered into force on 17 May 2004. The European Community ratified this Convention on 16 November 2004.

⁽⁵⁾ Available at: http://www.pops.int/documents/meetings/poprc_2/meeting_docs/report/default.htm

- (21) In case SCCPs will eventually be included in the Stockholm Convention under one of the relevant Annexes, the European Commission will propose corresponding measures either under Directive 76/769/EEC or under Regulation (EC) No 850/2004 that would lead to a tightening of the existing restrictions.

II. PROCEDURE

- (22) The procedural steps linked to the first notification by the Kingdom of The Netherlands of 17 January 2003, in accordance with Article 95(4) of the Treaty are described in Section II of Decision 2004/1/EC.
- (23) On 16 December 2003, pursuant to 95(6), the Commission notified the Kingdom of the Netherlands of its Decision 2004/1/EC of the same date, whereby the Commission approved the national provisions on SCCPs notified by the Netherlands on 21 January 2003 in so far as they do not apply to the use of SCCPs as constituents of other substances and preparations in concentrations lower than 1 % intended for use as plasticisers in paints, coatings, or sealants, and flame retardants in rubbers or textiles. This derogation was valid until 31 December 2006.
- (24) After the adoption of Decision 2004/1/EC authorising the Netherlands to partially maintain their national provisions, the Netherlands has not amended the national measures in order to comply with the provisions of that Decision.
- (25) Instead, the Netherlands have requested before the European Court of Justice the annulment of Decision 2004/1/EC on the basis of Article 230 of the Treaty (reference T-234/04, ex-case C-103/04) and this case is still pending before the Court of First Instance. In their request, the Netherlands contest the fact that an authorisation is necessary for the implementation of the national measures concerning applications of SCCPs which are not referred to in Directive 2002/45/EC.
- (26) By letter of 8 December 2006 of the Permanent Representation of the Kingdom of The Netherlands to the European Union, the Dutch Government, referring to Article 95(4) of the Treaty, notified for the second time to the Commission its national provisions on the use of SCCPs that it intends to maintain after the adoption of Directive 2002/45/EC.
- (27) The notification of 8 December 2006 has the same object as the notification of 17 January 2003, which is the approval of the provisions of the Chlorinated Paraffins Decision of the Dangerous Substances Act. As the Netherlands have not submitted new national

provisions in their notification, the Commission assumes that the national measures notified are those notified in January 2003: the Decision of 3 November 1999, laying down rules prohibiting certain uses of short-chain chlorinated paraffins.

- (28) By letters of 15 December 2006 and 20 December 2006, the Commission informed the Dutch Government that it had received the notification under Article 95(4) of the Treaty and that the six-month period for its examination under Article 95(6) started on 9 December 2006, the day following the day on which the notification was received.
- (29) By letter of 30 January 2007, the Commission informed the other Member States of the notification received from the Netherlands. The Commission also published a notice regarding the notification in the *Official Journal of the European Union* ⁽¹⁾ in order to inform other interested parties of the national provisions that the Netherlands intends to maintain as well as of the grounds invoked to that effect. At the end of the commenting period (30 days after publication) no Member State or other stakeholder had submitted comments.

III. ASSESSMENT

1. Consideration of Admissibility

- (30) In Recitals 38 and 39 of Decision 2004/1/EC, the Commission concluded that the application submitted by the Kingdom of the Netherlands was admissible. Reference is made to that Decision for the purposes of the present Decision. It is nonetheless useful to recall the aspects in which the notified national provisions are incompatible with the requirements of Directive 2002/45/EC.
- (31) In summary, the notified national provisions departs from the requirements of Directive 2002/45/EC in the following respects:
- the use of SCCPs with a chlorination degree of not less than 48 % as plasticising substances in paints, coatings or sealants and as flame-retardant substances in rubber, plastics or textiles, which is not subject to restrictions on marketing and use under the Directive, is prohibited in the Netherlands,
 - the use in metal working fluids of substances and preparations in which SCCPs with a chlorination degree of not less than 48 % are present as constituents, which is not subject to restrictions on marketing and use under the Directive if SCCPs are present in a concentration below 1 %, is prohibited in the Netherlands.

⁽¹⁾ OJ C 21, 30.1.2007, p. 5.

2. Merits

(32) In accordance with Article 95(4) and (6), first subparagraph, of the Treaty, the Commission must ascertain that all the conditions enabling a Member State to maintain its national provisions derogating from a Community harmonisation measure provided for in that Article are fulfilled.

(33) In particular, the Commission has to assess whether or not the national provisions are justified by the major needs referred to in Article 30 of the Treaty or relating to the protection of the environment or the working environment and do not exceed what is necessary to attain the legitimate objective pursued. In addition, when the Commission considers that the national provisions fulfil the above conditions, it must verify, pursuant to Article 95(6), whether or not the national provisions are a means of arbitrary discrimination or a disguised restriction on trade between Member States and whether or not they constitute an obstacle to the functioning of the internal market.

(34) It has to be noted that, in the light of the time frame established by Article 95(6) of the EC Treaty, the Commission, when examining whether the national measures notified under Article 95(4) are justified, has to take as a basis 'the grounds' put forward by the notifying Member State. This means that, according to the provisions of the EC Treaty, the responsibility of proving that the national measures are justified lies with the requesting Member State which seeks to maintain them. Given the procedural framework established by Article 95 paragraph 4 and 6 of the EC Treaty, including in particular a strict deadline for a decision to be adopted, the Commission normally has to limit itself to examining the relevance of the elements which are submitted by the requesting Member State, without having to seek itself possible reasons of justifications.

(35) However, where the Commission is in the possession of information in the light of which the Community harmonisation measure from which the notified national provisions derogate may need to be reviewed, it can take such information into consideration in the assessment of the notified national provisions.

2.1. Justification on grounds of major needs

(36) The justification of the national provisions on grounds of major needs have been examined at great length in section III.2 of Decision 2004/1/EC. According to the findings in that Decision (Recitals 55 and 56), the national provisions, in so far as they prohibit the use of SCCPs as a constituent of other substances and preparations in metal-working can be justified by the need to protect the environment. In the absence of any

further information suggesting the legitimate objective pursued can be attained by less restrictive measures, such as, in particular, a lower concentration limit for SCCPs as constituents of other substances and preparations, it was concluded that the national provisions do not appear to exceed what is necessary to attain that objective.

(37) Furthermore, Decision 2004/1/EC concluded in Recital 66 concerning the remaining uses of SCCPs as substances that taking into account the precautionary principle, the national provisions, in so far as they prohibit the remaining uses of SCCPs, could remain in place for a limited period of time in order not to interrupt existing measures that may appear justified in the light of a forthcoming risk assessment.

(38) Decision 2004/1/EC concluded in Recital 68 concerning the prohibition of use of SCCPs as constituents of other substances and preparations based on the opinion of the SCTEE of 3 October 2003, that the national provisions are not justified, except in plastics, where possible problems might occur.

(39) In summary, Decision 2004/1/EC authorised the national provisions in so far as they did not apply to the use of SCCPs as constituents of other substances and preparations in concentrations lower than 1 % intended for use as plasticisers in paints, coatings or sealants, and flame retardants in rubber or textiles. The Decision was based on the scientific evidence available at the time and the precautionary principle.

(40) In their new request, the Netherlands do not submit any new information compared to the request of 2003.

(41) On the other hand, there have been further developments at European level that have increased the available knowledge base. The results of the biodegradation testing required under Regulation (EC) No 642/2005 seem to suggest that the mineralisation rate is slow so that the persistence criterion of PBT substances will be met.

(42) The updated draft risk assessment presented by the UK authorities during the TCNES III meeting in 2005 indicated that for certain applications new risks were identified and also based on the most recent consumption data of SCCP. The UK Rapporteur has in particular identified new risks from the use of SCCPs in textile back-coating application and rubber compounding/conversion. The updated risk assessment was agreed by written procedure and will be published soon by the Commission. It will be sent to the SCHER for review, if appropriate.

(43) If the new risks identified require additional risk management measures for some uses of SCCPs other than metal working and fat liquoring of leather, the Commission will adopt other risk reduction measures in addition to those already adopted in Directive 2002/45/EC. The precise scope of any such further restrictions is currently unclear. Furthermore, the ongoing evaluations of the Community notifications of SCCPs as candidates under the UNECE POPs Protocol and the Stockholm Convention on POPs, respectively, and the possible inclusion of the substances into one or both international agreements might lead to further restrictions in the framework of Regulation (EC) No 850/2004.

(44) In any case, it is possible that such further restrictions would concern applications that are currently still allowed under Community legislation but are already prohibited under the Dutch national legislation.

(45) In these circumstances and taking into account the precautionary principle, the national provisions applied by Netherlands can be considered justified in their entirety until such time that Community measures, taking full account of the latest scientific data, will be adopted under Directive 76/769/EEC, or under Regulation (EC) No 850/2004.

2.2. *Absence of arbitrary discrimination or of any disguised restriction on trade between Member States and of any obstacle to the functioning of the internal market*

2.2.1. *Absence of arbitrary discrimination*

(46) Article 95(6) obliges the Commission to verify that the envisaged measures are not a means of arbitrary discrimination. According to the jurisprudence of the Court of Justice, in order for there to be no discrimination, similar situations must not be treated in different ways and different situations must not be treated in the same way.

(47) The national provisions are general and apply to the uses of SCCPs regardless of whether the substances are manufactured in the Netherlands or are imported from other Member States. In the absence of any evidence to the contrary, it can be concluded that the national provisions are not a means of arbitrary discrimination.

2.2.2. *Absence of a disguised restriction on trade*

(48) National measures which restrict the use of products to a greater extent than a Community Directive would

normally constitute a barrier to trade, in so far as products that are legally placed on the market and used in the rest of the Community are not expected, as a result of the prohibition on use, to be placed on the market in the Member State concerned. The pre-conditions laid down in paragraph 6 of Article 95 are intended to prevent restrictions based on the criteria set out in paragraphs 4 and 5 thereof from being applied for inappropriate reasons, and constituting in effect economic measures to impede the importation of products from other Member States, that is to say, a means of indirectly protecting national production.

(49) As previously established, the true aim of the national provisions is the protection of the environment from the risks associated with the uses of SCCPs. In the absence of any evidence suggesting that the national provisions constitute in effect a measure intended to protect national production, it can be concluded that they are not a disguised restriction to trade between Member States.

2.2.3. *Absence of obstacles to the functioning of the internal market*

(50) This condition cannot be interpreted in such a way that it precludes the approval of any national measure likely to affect the establishment of the internal market. Indeed, any national measure derogating from a harmonisation measure aiming at the establishment and operation of the internal market constitutes in substance a measure likely to affect the internal market. Consequently, in order to preserve the useful character of the procedure laid down in Article 95 of the Treaty, the concept of obstacle to the functioning of the internal market must, in the context of Article 95(6), be understood as a disproportionate effect in relation to the pursued objective.

(51) It has been established that the national provisions can be temporarily maintained on grounds relating to the protection of the environment and that, on the basis of the available information, they appear to constitute the only available measure to ensure the maintenance of the high level of protection pursued by the Netherlands. The Commission therefore considers that, pending the identification of appropriate risk reduction measures, it can conclude that the condition relating to the absence of obstacles to the functioning of the internal market is fulfilled.

IV. CONCLUSION

- (52) As reported in Section I.3 of the present Decision, a number of initiatives were taken at Community level to gather the information necessary to remove or to reduce the uncertainties surrounding the risk evaluation of SCCPs at the time when Decision 2004/1/EC was adopted. The results of the updated risk assessment indicate that additional risks exist which will probably require adequate risk management measures to be adopted by the Commission.
- (53) Under both the Stockholm Convention and the UNECE Protocol on Persistent Organic Pollutants (POPs) a review of SCCPs is ongoing, which may lead to their inclusion into these international instruments. This would trigger Community measures in the framework of Regulation (EC) No 850/2004.
- (54) As such new measures to be adopted at Community level might well concern uses of SCCPs that are currently still allowed under Directive 76/769/EEC, but are already prohibited under the Dutch national legislation and taking into account the precautionary principle, it can be concluded that the national provisions can be temporarily maintained on grounds relating to the protection of the environment and do not exceed what is necessary to attain the objective pursued in so far as they prohibit the use of SCCPs as constituents of other substances and preparations in metal working fluids, as flame retardants in rubber, plastics and textile, as plasticisers in paints, coatings and sealants. Derogation should therefore be granted for the national provisions in their entirety.
- (55) In addition, the national provisions, in so far as they can be temporarily maintained, are not a means of arbitrary discrimination or a disguised restriction on trade between

Member States and do not constitute an obstacle to the functioning of the internal market.

- (56) The Commission therefore considers that the national provisions, to the extent specified above, can be approved. However, the Commission considers that their approval has to expire when Community measures concerning SCCPs will be adopted either under the frame of Directive 76/769/EEC or under Regulation (EC) No 850/2004 which ever is the most appropriate instrument,

HAS ADOPTED THIS DECISION:

Article 1

The national provisions on SCCPs notified by the Netherlands on 8 December 2006 pursuant to Article 95(4) are approved.

Article 2

This Decision is addressed to the Kingdom of the Netherlands and shall expire on the earlier of the following two dates:

- entry into force of a Commission Directive adapting Annex I of Council Directive 76/769/EEC as regards SCCPs,
- entry into force of a Regulation amending Regulation (EC) No 850/2004 concerning SCCPs.

Done at Brussels, 7 June 2007.

For the Commission
Günter VERHEUGEN
Vice-President