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<sup>(1)</sup> Text with EEA relevance

## I

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

## REGULATIONS

**COMMISSION REGULATION (EC) No 637/2007****of 8 June 2007****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables<sup>(1)</sup>, and in particular Article 4(1) thereof,

Whereas:

- (1) Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the

standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto.

- (2) In compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

*Article 1*

The standard import values referred to in Article 4 of Regulation (EC) No 3223/94 shall be fixed as indicated in the Annex hereto.

*Article 2*

This Regulation shall enter into force on 9 June 2007.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 8 June 2007.

*For the Commission*

Jean-Luc DEMARTY

*Director-General for Agriculture and  
Rural Development*

<sup>(1)</sup> OJ L 337, 24.12.1994, p. 66. Regulation as last amended by Regulation (EC) No 386/2005 (OJ L 62, 9.3.2005, p. 3).

## ANNEX

**to Commission Regulation of 8 June 2007 establishing the standard import values for determining the entry price of certain fruit and vegetables**

(EUR/100 kg)

CN code	Third country code <sup>(1)</sup>	Standard import value
0702 00 00	MA	64,6
	TR	94,2
	ZZ	79,4
0707 00 05	JO	167,1
	TR	162,3
	ZZ	164,7
0709 90 70	TR	98,7
	ZZ	98,7
0805 50 10	AR	54,4
	ZA	51,7
	ZZ	53,1
0808 10 80	AR	93,3
	BR	74,3
	CA	102,0
	CL	85,7
	CN	71,8
	NZ	105,2
	US	108,9
	UY	55,1
	ZA	95,3
	ZZ	88,0
0809 10 00	IL	196,3
	TR	203,0
	ZZ	199,7
0809 20 95	TR	409,4
	US	338,3
	ZZ	373,9

<sup>(1)</sup> Country nomenclature as fixed by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

**COMMISSION REGULATION (EC) No 638/2007****of 8 June 2007****amending the representative prices and additional duties for the import of certain products in the sugar sector fixed by Regulation (EC) No 1002/2006 for the 2006/2007 marketing year**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 318/2006 of 20 February 2006 on the common organisation of the markets in the sugar sector <sup>(1)</sup>,

Having regard to Commission Regulation (EC) No 951/2006 of 30 June 2006 laying down detailed rules for the implementation of Council Regulation (EC) No 318/2006 as regards trade with third countries in the sugar sector <sup>(2)</sup>, and in particular of the Article 36,

Whereas:

- (1) The representative prices and additional duties applicable to imports of white sugar, raw sugar and certain syrups

for the 2006/2007 marketing year are fixed by Commission Regulation (EC) No 1002/2006 <sup>(3)</sup>. These prices and duties have been last amended by Commission Regulation (EC) No 626/2007 <sup>(4)</sup>.

- (2) The data currently available to the Commission indicate that the said amounts should be changed in accordance with the rules and procedures laid down in Regulation (EC) No 951/2006,

HAS ADOPTED THIS REGULATION:

*Article 1*

The representative prices and additional duties on imports of the products referred to in Article 36 of Regulation (EC) No 951/2006, as fixed by Regulation (EC) No 1002/2006 for the 2006/2007 marketing year are hereby amended as set out in the Annex to this Regulation.

*Article 2*

This Regulation shall enter into force on 9 June 2007.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 8 June 2007.

*For the Commission*

Jean-Luc DEMARTY

*Director-General for Agriculture and  
Rural Development*

<sup>(1)</sup> OJ L 58, 28.2.2006, p. 1. Regulation as last amended by Commission Regulation (EC) No 2011/2006 (OJ L 384, 29.12.2006, p. 1).

<sup>(2)</sup> OJ L 178, 1.7.2006, p. 24. Regulation as amended by Regulation (EC) No 2031/2006 (OJ L 414, 30.12.2006, p. 43).

<sup>(3)</sup> OJ L 179, 1.7.2006, p. 36.

<sup>(4)</sup> OJ L 145, 7.6.2007, p. 3.

## ANNEX

**Amended representative prices and additional duties applicable to imports of white sugar, raw sugar and products covered by CN code 1702 90 99 applicable from 9 June 2007**

(EUR)

CN code	Representative price per 100 kg of the product concerned	Additional duty per 100 kg of the product concerned
1701 11 10 <sup>(1)</sup>	19,15	6,73
1701 11 90 <sup>(1)</sup>	19,15	12,54
1701 12 10 <sup>(1)</sup>	19,15	6,54
1701 12 90 <sup>(1)</sup>	19,15	12,02
1701 91 00 <sup>(2)</sup>	23,43	14,01
1701 99 10 <sup>(2)</sup>	23,43	9,00
1701 99 90 <sup>(2)</sup>	23,43	9,00
1702 90 99 <sup>(3)</sup>	0,23	0,41

<sup>(1)</sup> Fixed for the standard quality defined in Annex LIII to Council Regulation (EC) No 318/2006 (OJ L 58, 28.2.2006, p. 1).

<sup>(2)</sup> Fixed for the standard quality defined in Annex LII to Regulation (EC) No 318/2006.

<sup>(3)</sup> Fixed per 1 % sucrose content.

**COMMISSION REGULATION (EC) No 639/2007****of 8 June 2007****amending for the 78th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan<sup>(1)</sup> and in particular Article 7(1), first indent, thereof,

Whereas:

- (1) Annex I to Regulation (EC) No 881/2002 lists the persons, groups and entities covered by the freezing of funds and economic resources under that Regulation.

- (2) On 1 June 2007, the Sanctions Committee of the United Nations Security Council decided to amend the list of persons, groups and entities to whom the freezing of funds and economic resources should apply. Annex I should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

*Article 1*

Annex I to Regulation (EC) No 881/2002 is hereby amended as set out in the Annex to this Regulation.

*Article 2*This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 8 June 2007.

*For the Commission*

Eneko LANDÁBURU

*Director General for External Relations*

<sup>(1)</sup> OJ L 139, 29.5.2002, p. 9. Regulation as last amended by Commission Regulation (EC) No 553/2007 (OJ L 131, 23.5.2007, p. 16).

## ANNEX

Annex I to Regulation (EC) No 881/2002 is amended as follows:

The entry 'Abu Hafs the Mauritanian (aka Mahfouz Ould al-Walid, Khalid Al-Shanqiti, Mafouz Walad Al-Walid, Mahamedou Ouid Slahi); born 1.1.1975' under the heading 'Natural persons' shall be replaced by:

'Mahfouz Ould **Al-Walid** (*alias* (a) Abu Hafs the Mauritanian, (b) Khalid Al-Shanqiti, (c) Mafouz Walad Al-Walid). Date of birth: 1.1.1975.'

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## II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

## DECISIONS

## COMMISSION

## COMMISSION DECISION

of 21 May 2007

**concerning the non-inclusion of oxydemeton-methyl in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing that substance**

(notified under document number C(2007) 2098)

(Text with EEA relevance)

(2007/392/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market <sup>(1)</sup>, and in particular the fourth subparagraph of Article 8(2) thereof,

Whereas:

(1) Article 8(2) of Directive 91/414/EEC provides that a Member State may, during a period of 12 years following the notification of that Directive, authorise the placing on the market of plant protection products containing active substances not listed in Annex I of that Directive that are already on the market two years after the date of notification, while those substances are gradually being examined within the framework of a programme of work.

(2) Commission Regulations (EC) No 451/2000 <sup>(2)</sup> and (EC) No 703/2001 <sup>(3)</sup> lay down the detailed rules for the

implementation of the second stage of the programme of work referred to in Article 8(2) of Directive 91/414/EEC and establish a list of active substances to be assessed with a view to their possible inclusion in Annex I to Directive 91/414/EEC. That list includes oxydemeton-methyl.

(3) For oxydemeton-methyl the effects on human health and the environment have been assessed in accordance with the provisions laid down in Regulations (EC) No 451/2000 and (EC) No 703/2001 for a range of uses proposed by the notifier. Moreover, those Regulations designate the rapporteur Member States which have to submit the relevant assessment reports and recommendations to the European Food Safety Authority (EFSA) in accordance with Article 8(1) of Regulation (EC) No 451/2000. For oxydemeton-methyl the rapporteur Member State was France and all relevant information was submitted on 3 May 2004.

(4) The assessment report was peer reviewed by the Member States and the EFSA and presented to the Commission on 23 June 2006 in the format of the EFSA conclusion regarding the peer review of the pesticide risk assessment of the active substance oxydemeton-methyl <sup>(4)</sup>. This report was reviewed by the Member States and the Commission within the Standing Committee on the Food Chain and Animal Health and finalised on 29 September 2006 in the format of the Commission review report for oxydemeton-methyl.

<sup>(1)</sup> OJ L 230, 19.8.1991, p. 1. Directive as last amended by Commission Directive 2007/25/EC (OJ L 106, 24.4.2007, p. 34).

<sup>(2)</sup> OJ L 55, 29.2.2000, p. 25. Regulation as last amended by Regulation (EC) No 1044/2003 (OJ L 151, 19.6.2003, p. 32).

<sup>(3)</sup> OJ L 98, 7.4.2001, p. 6.

<sup>(4)</sup> EFSA Scientific Report (2006) 86, 1-96, *Conclusion regarding the peer review of pesticide risk assessment of oxydemeton-methyl*.

- (5) During the evaluation of this active substance, a number of concerns were identified. In particular based on the available data it has not been demonstrated that the consumer exposure is acceptable. The information available indicates concerns for metabolites which are at the same level of toxicity as the active substance, and their presence at levels which might be of toxicological concerns cannot be excluded. Moreover concerns were identified with regard to operator, worker and bystander exposure.
- (6) The Commission invited the notifier to submit its comments on the results of the peer review and on its intention or not to further support the substance. The notifier submitted its comments which have been carefully examined. However, despite the arguments advanced, the above concerns remained unsolved, and assessments made on the basis of the information submitted and evaluated during the EFSA expert meetings have not demonstrated that it may be expected that, under the proposed conditions of use, plant protection products containing oxydemeton-methyl satisfy in general the requirements laid down in Article 5(1)(a) and (b) of Directive 91/414/EEC.
- (7) Oxydemeton-methyl should therefore not be included in Annex I to Directive 91/414/EEC.
- (8) Measures should be taken to ensure that authorisations granted for plant protection products containing oxydemeton-methyl are withdrawn within a fixed period of time and are not renewed and that no new authorisations for such products are granted.
- (9) Any period of grace granted by a Member State for the disposal, storage, placing on the market and use of existing stocks of plant protection products containing oxydemeton-methyl, should be limited to 12 months in order to allow existing stocks to be used in one further growing season.
- (10) This Decision does not prejudice the submission of an application for oxydemeton-methyl according to the provisions of Article 6(2) of Directive 91/414/EEC in view of a possible inclusion in its Annex I.
- (11) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DECISION:

*Article 1*

Oxydemeton-methyl shall not be included as an active substance in Annex I to Directive 91/414/EEC.

*Article 2*

Member States shall ensure that:

- (a) authorisations for plant protection products containing oxydemeton-methyl are withdrawn by 21 November 2007;
- (b) no authorisations for plant protection products containing oxydemeton-methyl are granted or renewed from the date of publication of this Decision.

*Article 3*

Any period of grace granted by Member States in accordance with the provisions of Article 4(6) of Directive 91/414/EEC, shall be as short as possible and shall expire on 21 November 2008 at the latest.

*Article 4*

This Decision is addressed to the Member States.

Done at Brussels, 21 May 2007.

*For the Commission*

Markos KYPRIANOU

*Member of the Commission*

## COMMISSION DECISION

of 6 June 2007

## concerning the non-inclusion of diazinon in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing that substance

(notified under document number C(2007) 2339)

(Text with EEA relevance)

(2007/393/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

diazinon the rapporteur Member State was Portugal and all relevant information was submitted on 9 July 2004.

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market <sup>(1)</sup>, and in particular the fourth subparagraph of Article 8(2) thereof,

Whereas:

- (1) Article 8(2) of Directive 91/414/EEC provides that a Member State may, during a period of 12 years following the notification of that Directive, authorise the placing on the market of plant protection products containing active substances not listed in Annex I of that Directive that are already on the market two years after the date of notification, while those substances are gradually being examined within the framework of a programme of work.
- (2) Commission Regulations (EC) No 451/2000 <sup>(2)</sup> and (EC) No 703/2001 <sup>(3)</sup> lay down the detailed rules for the implementation of the second stage of the programme of work referred to in Article 8(2) of Directive 91/414/EEC and establish a list of active substances to be assessed with a view to their possible inclusion in Annex I to Directive 91/414/EEC. That list includes diazinon.
- (3) For diazinon the effects on human health and the environment have been assessed in accordance with the provisions laid down in Regulations (EC) No 451/2000 and (EC) No 703/2001 for a range of uses proposed by the notifier. Moreover, those Regulations designate the rapporteur Member States which have to submit the relevant assessment reports and recommendations to the European Food Safety Authority (EFSA) in accordance with Article 8(1) of Regulation (EC) No 451/2000. For

- (4) The assessment report was peer reviewed by the Member States and the EFSA and presented to the Commission on 23 June 2006 in the format of the EFSA conclusion regarding the peer review of the pesticide risk assessment of the active substance diazinon <sup>(4)</sup>. This report was reviewed by the Member States and the Commission within the Standing Committee on the Food Chain and Animal Health and finalised on 29 September 2006 in the format of the Commission review report for diazinon.
- (5) During the evaluation of this active substance, a number of concerns were identified. In particular based on the available data it has not been demonstrated that the operator, worker and bystander exposure is acceptable. Moreover there is insufficient information on some very toxic impurities and their presence at levels which might be of toxicological or ecotoxicological concern cannot be excluded.
- (6) The Commission invited the notifier to submit its comments on the results of the peer review and on its intention or not to further support the substance. The notifier submitted its comments which have been carefully examined. However, despite the arguments advanced, the above concerns remained unsolved, and assessments made on the basis of the information submitted and evaluated during the EFSA expert meetings have not demonstrated that it may be expected that, under the proposed conditions of use, plant protection products containing diazinon satisfy in general the requirements laid down in Article 5(1)(a) and (b) of Directive 91/414/EEC.
- (7) Diazinon should therefore not be included in Annex I to Directive 91/414/EEC.
- (8) Measures should be taken to ensure that authorisations granted for plant protection products containing diazinon are withdrawn within a fixed period of time and are not renewed and that no new authorisations for such products are granted.

<sup>(1)</sup> OJ L 230, 19.8.1991, p. 1. Directive as last amended by Commission Directive 2007/25/EC (OJ L 106, 24.4.2007, p. 34).

<sup>(2)</sup> OJ L 55, 29.2.2000, p. 25. Regulation as last amended by Regulation (EC) No 1044/2003 (OJ L 151, 19.6.2003, p. 32).

<sup>(3)</sup> OJ L 98, 7.4.2001, p. 6.

<sup>(4)</sup> EFSA Scientific Report (2006) 85, 1-73, Conclusion regarding the peer review of the pesticide risk assessment of diazinon.

- (9) Any period of grace granted by a Member State for the disposal, storage, placing on the market and use of existing stocks of plant protection products containing diazinon, should be limited to 12 months in order to allow existing stocks to be used in one further growing season.
- (10) This Decision does not prejudice the submission of an application for diazinon according to the provisions of Article 6(2) of Directive 91/414/EEC in view of a possible inclusion in its Annex I.
- (11) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DECISION:

*Article 1*

Diazinon shall not be included as an active substance in Annex I to Directive 91/414/EEC.

*Article 2*

Member States shall ensure that:

- (a) authorisations for plant protection products containing diazinon are withdrawn by 6 December 2007;
- (b) no authorisations for plant protection products containing diazinon are granted or renewed from the date of publication of this Decision.

*Article 3*

Any period of grace granted by Member States in accordance with the provisions of Article 4(6) of Directive 91/414/EEC, shall be as short as possible and shall expire on 6 December 2008 at the latest.

*Article 4*

This Decision is addressed to the Member States.

Done at Brussels, 6 June 2007.

*For the Commission*

Markos KYPRIANOU

*Member of the Commission*

## COMMISSION DECISION

of 7 June 2007

**amending Council Directive 90/377/EEC with regard to the methodology to be applied for the collection of gas and electricity prices charged to industrial end-users**

(Text with EEA relevance)

(2007/394/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 90/377/EEC concerning a Community procedure to improve the transparency of gas and electricity prices charged to industrial end-users<sup>(1)</sup>, and in particular Article 6 thereof,

Whereas:

- (1) Directive 90/377/EEC sets out details concerning the form, content and all other features of the information to be provided by undertakings which supply gas or electricity to industrial end-users.
- (2) The methodology used to collect price information needs to be kept up to date to reflect the reality of competitive markets for electricity and gas developed under Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC<sup>(2)</sup> and Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC<sup>(3)</sup>, including the fact that several suppliers are now active in each market.

(3) Directive 90/377/EEC should therefore be amended accordingly.

(4) The measures provided for in this Decision are in accordance with the opinion of the Committee referred to in Article 7 of Directive 90/377/EEC,

DECIDES:

*Article 1*

The Annexes to Directive 90/377/EEC are replaced by the text in the Annex to this Decision.

*Article 2*

This Decision shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, 7 June 2007.

*For the Commission*  
Andris PIEBALGS  
*Member of the Commission*

<sup>(1)</sup> OJ L 185, 17.7.1990, p. 16 to 24. Directive as last amended by Directive 2006/108/EC (OJ L 363, 20.12.2006, p. 414).

<sup>(2)</sup> OJ L 176, 15.7.2003, p. 37. Directive as last amended by Council Decision 2006/653/EC (OJ L 270, 29.9.2006, p. 72).

<sup>(3)</sup> OJ L 176, 15.7.2003, p. 57.

## ANNEX

## 'ANNEX I

**GAS PRICES**

Gas prices for industrial end-users <sup>(1)</sup> to be collected and compiled according to the following methodology:

- (a) Prices to be reported are prices paid by industrial end-users buying natural gas distributed through mains for their own use.
- (b) All industrial uses of gas are considered. However, the system excludes consumers who use gas:
- for electricity generation in power plants or in CHP plants,
  - in non-energy uses (e.g. in the chemical industry),
  - above 4 000 000 gigajoule (GJ) per year.
- (c) Prices recorded to be based on a system of standard consumption bands defined by a range of annual gas consumption.
- (d) Prices will be collected twice per year, at the beginning of each six-month period, (January and July) and will refer to the average prices paid by industrial end-users for gas over the previous six months. The first communication of price data to the Statistical Office of the European Communities will refer to the situation on 1 January 2008.
- (e) Prices must be expressed in national currency per gigajoule. The unit of energy used is measured on the basis of the gross calorific value (GCV).
- (f) Prices must include all charges payable: network charges plus energy consumed minus any rebates or premiums, plus other charges (meter rental, standing charges, etc.). Initial connection charges are not to be included.
- (g) Prices are to be recorded as national average prices.
- (h) The Member States develop and implement cost-effective procedures to ensure a representative data compilation system based on the following rules:
- Prices will represent weighted average prices, using the market shares of the gas supply undertakings surveyed as weighting factors. Arithmetic average prices will be provided only when weighted figures cannot be calculated. In either case, Member States will ensure that a representative share of the national market is covered by the survey.
  - Market shares should be based on the quantity of gas invoiced by the gas supply undertakings to industrial end-users. If possible, the market shares will be calculated separately for each band. The information used for calculating weighted average prices will be managed by Member States, respecting confidentiality rules.
  - In the interest of confidentiality, data relating to prices will be communicated only where there are, in the Member State concerned, at least three end-users in each of the categories referred to under point (j).
- (i) Three levels of prices are to be provided:
- Prices excluding taxes and levies.
  - Prices excluding VAT and other recoverable taxes.
  - Prices including all taxes, levies and VAT.
- (j) Gas prices will be surveyed for the following categories of industrial end-user:

Industrial End-User	Annual gas consumption (GJ)	
	Lowest	Highest
Band-I1		< 1 000
Band-I2	1 000	< 10 000
Band-I3	10 000	< 100 000
Band-I4	100 000	< 1 000 000
Band-I5	1 000 000	<= 4 000 000

<sup>(1)</sup> Industrial end-user may include other non-residential users

- (k) Once every two years, together with the January price reporting, information about the compilation system applied will be communicated to the Statistical Office of the European Communities and particularly: a description of the survey and its scope (number of supply undertakings surveyed, aggregated percentage of the market represented, etc.) and the criteria used to calculate weighted average prices as well as the aggregated consumption volumes represented by each band. The first communication related to the compilation system shall concern the situation on 1 January 2008.
- (l) Once per year, together with the January price reporting, information about the main average characteristics and factors affecting the prices reported for each consumption band will be communicated to the Statistical Office of the European Communities.

The information will include:

- Average load factors for industrial end-users corresponding to each consumption band calculated on the basis of the total energy supplied and average maximum demand.
- A description on discounts given for interruptible supplies.
- A description of standing charges, meter rentals or any other charges relevant at national level.

- (m) Once per year, together with the January reporting, the rates and method of calculation as well as a description of the taxes levied on gas sales to industrial end-users should also be reported. The description must include any non-tax levy covering system costs and public service obligations.

The description of taxes to be provided will include three clearly separated sections:

- Taxes, levies, non-tax levies, fees and any other fiscal charges not identified in the invoices provided to industrial end-users. The items described under this point will be included under the reported figures for the price level: "Prices excluding taxes and levies".
- Taxes and levies identified in the invoices provided to industrial end-users and considered as non-recoverable. The items described under this point will therefore be included under the reported figures for the price level: "Prices excluding VAT and other recoverable taxes".
- Value Added Tax (VAT) and other recoverable taxes identified in the invoices provided to industrial end-users. The items described under this point will be included under the reported figures for the price level: "Prices including all taxes, levies and VAT".

An outline of the different taxes, levies, non-tax levies, fees and fiscal charges applicable are:

- Value Added Tax.
- Concession fees. This usually refers to licences and fees for the occupation of land and public or private property by networks or other gas devices.
- Environmental taxes or levies. This usually refers either to the promotion of renewable energy sources or CHP or as a burden for CO<sub>2</sub>, SO<sub>2</sub> or another agent emissions related to climate change.
- Other taxes or levies linked with the energy sector: public service obligations/charges, levies to financing energy regulatory authorities, etc.
- Other taxes or levies not linked with the energy sector: national, local or regional fiscal taxes on energy consumed, taxes on gas distribution, etc.

Taxes on income, property related taxes, oil for motor cars, road taxes, taxes on licences for telecom, radio, advertising, fees for licences, taxes on waste, etc. will not be taken into consideration and are excluded from this description, because they are undoubtedly part of the operators costs and apply also to other industries or activities.

- (n) In Member States where one company covers all the industrial sales, the information may be communicated by that company. In Member States where more than one company operates, the information should be communicated by an independent statistical body.
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## ANNEX II

## ELECTRICITY PRICES

Electricity prices for industrial end-users <sup>(1)</sup> to be collected and compiled according to the following methodology:

- (a) Prices to be reported are prices paid by industrial end-users buying electricity for their own use.
- (b) All industrial uses of electricity are considered.
- (c) Prices recorded to be based on a system of standard consumption bands defined by a range of annual electricity consumption.
- (d) Prices will be collected twice per year, at the beginning of each six-month period, (January and July) and will refer to the average prices paid by the industrial end-user for electricity over the previous six months. The first communication of price data to the Statistical Office of the European Communities will refer to the situation on 1 January 2008.
- (e) Prices must be expressed in national currency per kWh.
- (f) Prices must include all charges payable: network charges plus energy consumed minus any rebates or premiums, plus other charges (capacity charges, commercialisation, meter rental, etc.). Initial connection charges are not to be included.
- (g) Prices are to be recorded as national average prices.
- (h) The Member States develop and implement cost-effective procedures to ensure a representative data compilation system based on the following rules:
  - Prices will represent weighted average prices, using the market share of the electricity supply undertakings surveyed as weighting factors. Arithmetic average prices will be provided only when weighted figures cannot be calculated. In either case, Member States will ensure that a representative share of the national market is covered in the survey.
  - Market shares should be based on the quantity of electricity invoiced by electricity supply undertakings to industrial end-users. If possible, the market shares will be calculated separately for each band. The information used for calculating weighted average prices will be managed by Member States, respecting confidentiality rules.
  - In the interest of confidentiality, data relating to prices will be communicated only where there are, in the Member State concerned, at least three end-users in each of the categories referred to under point (j).
- (i) Three levels of prices are to be provided:
  - Prices excluding taxes and levies.
  - Prices excluding VAT and other recoverable taxes.
  - Prices including all taxes, levies and VAT.
- (j) Electricity prices will be surveyed for the following categories of industrial end-user:

Industrial End-User	Annual electricity consumption (MWh)	
	Lowest	Highest
Band-IA		< 20
Band-IB	20	< 500
Band-IC	500	< 2 000
Band-ID	2 000	< 20 000
Band-IE	20 000	< 70 000
Band-IF	70 000	<= 150 000

<sup>(1)</sup> Industrial end-user may include other non-residential user

- (k) Once every two years, together with the January price reporting, information about the compilation system applied will be communicated to the Statistical Office of the European Communities and particularly: a description of the survey and its scope (number of supply undertakings surveyed, aggregated percentage of the market represented, etc.) and the criteria used to calculate the weighted average prices as well as the aggregated consumption volumes represented by each band. The first communication related to the compilation system shall concern the situation on 1 January 2008.
- (l) Once per year, together with the January price reporting, information about the main average characteristics and factors affecting the prices reported for each consumption band will be communicated to the Statistical Office of the European Communities.

The information to be provided will include:

- Average load factors for industrial end-users corresponding to each consumption band calculated on the basis of the total energy supplied and average maximum demand.
  - A table indicating the voltage limits per country.
  - A description of standing charges, meter rentals or any other charges relevant at national level.
- (m) Once per year, together with the January price reporting, the rates and method of calculation as well as a description of the taxes levied on electricity sales to industrial end-users should be reported. The description must include any non-tax levy covering system costs and public service obligations.

The description on taxes to be provided will include three clearly separated sections:

- Taxes, levies, non-tax levies, fees and any other fiscal charges not identified in the invoices provided to industrial end-users. The items described under this point will be included under the reported figure for the price level: "Prices excluding taxes and levies".
- Taxes and levies identified in the invoices provided to industrial end-users and considered as non-recoverable. The items described under this point will be included under the reported figures for the price level: "Prices excluding VAT and other recoverable taxes".
- Value Added Tax (VAT) and other recoverable taxes identified in the invoices provided to industrial end-users. The items described under this point will be included under the reported figures for the price level: "Prices including all taxes, levies and VAT".

An outline of the different taxes, levies, non-tax levies, fees and fiscal charges that can be applicable are:

- Value Added Tax.
- Concession fees. This usually refers to licences and fees for the occupation of land and public or private property by networks or other electricity devices.
- Environmental taxes or levies. This usually refers either to the promotion of renewable energy sources or CHP, or as a burden for CO<sub>2</sub>, SO<sub>2</sub> or another agents emissions related with the climate change.
- Nuclear and other Inspection taxes: nuclear decommissioning charges, inspection and fees for nuclear installations, etc.
- Other taxes or levies linked with the energy sector: public service obligations/charges, levies to financing energy regulatory authorities, etc.
- Other taxes or levies not linked with the energy sector: national, local or regional fiscal taxes on energy consumed, taxes on electricity distribution, etc.

Taxes on income, property related taxes, excise duties on oil products and fuels other than for electricity generation, oil for motor cars, road taxes, taxes on licences for telecom, radio, advertising, fees for licences, taxes on waste, etc. will not be taken into consideration and are excluded from this description, because they are undoubtedly part of the operators costs and apply to other industries or activities.

- (n) Once per year, together with the January price reporting, a breakdown of electricity prices into their main components will be communicated to the Statistical Office of the European Communities. This breakdown of electricity prices into their main components will be based on the following methodology:

The complete price for electricity per consumption band can be considered as the global sum of "Network" prices, "Energy and Supply" prices (i.e. from generation to commercialisation, except networks) and all taxes and levies.

- "Network" price is the ratio between the revenue related to transmission and distribution tariffs and (if possible) the corresponding volume of kWh per consumption band. If separate volumes of kWh per band are not available, estimates should be provided.
- "Energy and Supply" price, is the total price minus the "Network" price and minus all taxes and levies.
- Taxes and levies. For this component an additional breakdown will be provided:
  - Taxes and levies on "Network" prices.
  - Taxes and levies on "Energy and Supply" prices.
  - VAT and other recoverable taxes.

NOTE: If complementary services are identified separately, then they can be allocated into one of the two main components as follows:

- "Network" price will include the following costs: transmission and distribution tariffs, transmission and distribution losses, network costs, after-sale services, system service costs and meter rental.
  - "Energy and Supply" price will include the following costs: generation, aggregation, balancing energy, supplied energy costs, customer services, after-sales management, metering, and other supply costs.
  - Other specific costs. This item represents costs which are neither network costs nor Energy and Supply costs nor taxes. If this kind of costs exists, they will be reported separately.
- (o) In Member States where one company covers all the industrial sales, the information may be communicated by that company. In Member States where more than one company operates, the information should be communicated by an independent statistical body.'
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## 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,

Whereas:

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.'

## 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) <sup>(1)</sup>.

(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 <sup>(2)</sup>, the Commission decided that the Netherlands could maintain partially its national provisions until 31 December 2006.

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

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

'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.

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

## 2.1. Directive 2002/45/EC

(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 <sup>(3)</sup>, 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, C<sub>10</sub> to C<sub>13</sub>, 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 %:

— in metalworking,

— for fat liquoring of leather.

(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.

<sup>(1)</sup> OJ L 177, 6.7.2002, p. 21.

<sup>(2)</sup> OJ L 1, 3.1.2004, p. 20.

<sup>(3)</sup> 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 <sup>(1)</sup> 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 <sup>(2)</sup> 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 <sup>(3)</sup> 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 <sup>(4)</sup>. 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 <sup>(2)</sup> 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.

<sup>(1)</sup> OJ L 396, 30.12.2006, p. 1.

<sup>(2)</sup> 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).

<sup>(3)</sup> OJ L 107, 28.4.2005, p. 14.

<sup>(4)</sup> 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 <sup>(1)</sup> 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 <sup>(2)</sup> implements the provisions of two international instruments on persistent organic pollutants (POPs): the Protocol on POPs <sup>(3)</sup> from 1998 under the UNECE Convention on Long-Range Transboundary Air Pollution and the Stockholm Convention on POPs <sup>(4)</sup>.
- (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 <sup>(5)</sup>. This Decision also recommended that a draft risk profile should be prepared in accordance with Annex E to the Convention.

<sup>(1)</sup> OJ L 331, 15.12.2001, p. 1.

<sup>(2)</sup> 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).

<sup>(3)</sup> 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.

<sup>(4)</sup> 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.

<sup>(5)</sup> Available at: [http://www.pops.int/documents/meetings/poprc\\_2/meeting\\_docs/report/default.htm](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* <sup>(1)</sup> 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.

<sup>(1)</sup> 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*

## COMMISSION DECISION

of 8 June 2007

**repealing Decision 2004/409/EC recognising in principle the completeness of the dossier submitted for detailed examination in view of the possible inclusion of ethaboxam in Annex I to Council Directive 91/414/EEC**

(notified under document number C(2007) 2336)

(Text with EEA relevance)

(2007/396/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant-protection on the market <sup>(1)</sup>, and in particular Article 6(3) thereof,

Whereas:

- (1) In accordance with Article 6(2) of Directive 91/414/EEC the United Kingdom received on 30 September 2003 an application from LG Life Science Ltd, for the inclusion of the active substance ethaboxam in Annex I to Directive 91/414/EEC.
- (2) By Commission Decision 2004/409/EC <sup>(2)</sup> it was confirmed that, on preliminary examination, the dossier was 'complete', in that it could be considered as satisfying, in principle, the data and information requirements of Annex II and Annex III to Directive 91/414/EEC.
- (3) Member States were thereby given the possibility to grant provisional authorisations, for plant protection products containing ethaboxam, in accordance with Article 8(1) of Directive 91/414/EEC. No Member State has used this possibility.

(4) The United Kingdom has indicated to the Commission that a detailed examination of the dossier revealed that several significant items of data required under Annexes II and III of Directive 91/414/EEC were not present. These were mainly in relation to toxicology. Therefore the dossier in respect of ethaboxam cannot be regarded as complete.

(5) Decision 2004/409/EC should be repealed.

(6) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DECISION:

*Article 1*

Decision 2004/409/EC is repealed.

*Article 2*

This Decision is addressed to the Member States.

Done at Brussels, 8 June 2007.

*For the Commission*  
Markos KYPRIANOU  
*Member of the Commission*

<sup>(1)</sup> OJ L 230, 19.8.1991, p. 1. Directive as last amended by Commission Directive 2007/25/EC (OJ L 106, 24.4.2007, p. 34).

<sup>(2)</sup> OJ L 151, 30.4.2004, p. 25. Corrected version (OJ L 208, 10.6.2004, p. 30).

## CORRIGENDA

**Corrigendum to Commission Regulation (EC) No 613/2007 of 1 June 2007 amending Council Regulation (EC) No 2368/2002 implementing the Kimberley Process certification scheme for the international trade in rough diamonds**

(Official Journal of the European Union L 141 of 2 June 2007)

On page 61, the text of Annex II is replaced by the following:

'ANNEX II

'ANNEX III

**List of Member States' competent authorities and their tasks as referred to in Articles 2 and 19**

## BELGIUM

Federale Overheidsdienst Economie, KMO, Middenstand en Energie, Dienst Vergunningen/Service Public Fédéral Economie, PME, Classes moyennes et Energie, Service Licence,

Italiëlei 124, bus 71  
B-2000 Antwerpen  
Tel. (32-3) 206 94 70  
Fax (32-3) 206 94 90  
E-mail: kpcs-belgiumdiamonds@economie.fgov.be

In Belgium the controls of imports and exports of rough diamonds required by Regulation (EC) No 2368/2002 and the customs treatment will only be done at:

The Diamond Office  
Hovenierstraat 22  
B-2018 Antwerpen

## CZECH REPUBLIC

In the Czech Republic the controls of imports and exports of rough diamonds required by Regulation (EC) No 2368/2002 and the customs treatment will only be done at:

Generální ředitelství cel  
Budějovická 7  
140 96 Praha 4  
Česká republika  
Tel. (420-2) 61 33 38 41, (420-2) 61 33 38 59, cell (420-737) 213 793  
Fax (420-2) 61 33 38 70  
E-mail: diamond@cs.mfcr.cz

## GERMANY

In Germany the controls of imports and exports of rough diamonds required by Regulation (EC) No 2368/2002, including the issuing of Community certificates, will only be done at the following authority:

Hauptzollamt Koblenz  
— Zollamt Idar-Oberstein —  
Zertifizierungsstelle für Rohdiamanten  
Hauptstraße 197  
D-55743 Idar-Oberstein  
Tel. (49-6781) 56 27-0  
Fax (49-6781) 56 27-19  
E-Mail: poststelle@zabir.bfinv.de

For the purpose of Articles 5(3), 6, 9, 10, 14(3), 15 and 17 of this Regulation, concerning in particular reporting obligations to the Commission, the following authority shall act as competent German authority:

Oberfinanzdirektion Koblenz  
Zoll- und Verbrauchsteuerabteilung  
Vorort Außenwirtschaftsrecht  
Postfach 10 07 64  
D-67407 Neustadt/Weinstraße  
Tel. (49-6321) 89 43 49  
Fax (49-6321) 89 48 50  
E-Mail: diamond.cert@ofdko-nw.bfinv.de

#### ROMANIA

Autoritatea Națională pentru Protecția Consumatorilor  
Direcția Metale Prețioase și Pietre Prețioase  
Strada Georges Clemenceau Nr. 5, sectorul 1  
București, România,  
Cod poștal 010295  
Tel. (40-21) 3184635, 3129890, 3121275  
Fax (40-21) 3184635, 3143462  
www.anpc.ro

#### UNITED KINGDOM

Government Diamond Office  
Global Business Group  
Room W 3.111.B  
Foreign and Commonwealth Office  
King Charles Street  
London SW1A 2AH  
Tel. (44-207) 008 6903  
Fax (44-207) 008 3905  
E-mail: GDO@gtnet.gov.uk'

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**Corrigendum to Commission Regulation (EC) No 1549/2006 of 17 October 2006 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff**

*(Official Journal of the European Union L 301 of 31 October 2006)*

On page 16, first column:

*for:* '6813 20',

*read:* '6813 20, 6813 81, 6813 89'.

On page 16, second column, for CN code 8522 90:

*for:* 'Assemblies and sub-assemblies consisting of two or more parts or pieces fastened or joined together, for apparatus of subheading 8520 90',

*read:* 'Assemblies and sub-assemblies consisting of two or more parts or pieces fastened or joined together, for apparatus of subheadings 8519 81 95 and 8519 89 90'.

On page 91, second column, after CN code 0813 50 19:

*for:* '– Mixtures exclusively of dried nuts of headings 0801 and 0802;',

*read:* '– Mixtures exclusively of nuts of headings 0801 and 0802:'.

On page 151, CN code 2008 30 51, second column:

*for:* 'Grapefruit segments',

*read:* 'Grapefruit segments, including pomelos'.

On page 152, CN code 2008 30 71, second column:

*for:* 'Grapefruit segments',

*read:* 'Grapefruit segments, including pomelos'.

On page 472, the line after CN code 7306 19 90, third column:

*delete:* 'free'.

On page 396, CN code 6110 11 10, second column:

*for:* 'Jerseys and pullovers, containing at least 50 % by weight of wool and weighing 60 g or more per article'

*read:* 'Jerseys and pullovers, containing at least 50 % by weight of wool and weighing 600 g or more per article'

On page 561, the line after CN code 8486 90 10, third column:

*delete:* 'free'.

On page 640, CN code 9503 00, second column:

*for:* 'Tricycles, scooters, pedal cars and similar toys; dolls' carriages; dolls; other toys; reduced-size (scale) models and similar recreational models, working or not; puzzles of all kinds CN code Grapefruit segments',

*read:* 'Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls; other toys; reduced-size (scale) models and similar recreational models, working or not; puzzles of all kinds'.

On page 650, second column:

*for:* 'Agenzia delle Dogane  
Area Centrale Gestione Tributi e Rapporto con gli Utenti  
Ufficio per la tariffa doganale, per i dazi e per i regimi dei prodotti agricoli  
Via Mario Carucci, 71  
I-00143 Roma',

*read:* 'Agenzia delle Dogane  
Area Centrale Gestione Tributi e Rapporto con gli Utenti  
Ufficio per la tariffa doganale, per i dazi e per i regimi dei prodotti agricoli  
Via Mario Carucci, 71  
I-00143 Roma

e

Istituto Nazionale di Statistica  
Servizio Commercio con l'Estero  
Via Cesare Balbo 16  
I-00184 Roma'.

On page 853, No 60, code CN 0803 00 19:

Delete order No 60.

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