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COMMISSION REGULATION (EC) No 1/2004**of 23 December 2003****on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises active in the production, processing and marketing of agricultural products**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid⁽¹⁾, and in particular Article 1(1)(a)(i) thereof,

Having published a draft of this Regulation⁽²⁾,

Having consulted the Advisory Committee on State aid,

Whereas:

- (1) Regulation (EC) No 994/98 empowers the Commission to declare, in accordance with Article 87 of the Treaty, that, under certain conditions, aid to small and medium-sized enterprises is compatible with the common market and not subject to the notification requirement of Article 88(3) of the Treaty.
- (2) Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises⁽³⁾ does not apply to activities linked to the production, processing or marketing of products listed in Annex I to the Treaty.
- (3) The Commission has applied Articles 87 and 88 of the Treaty to small and medium-sized enterprises active in the production, processing and marketing of agricultural products in numerous decisions and has also stated its policy, most recently in the Community guidelines for State aid in the agriculture sector⁽⁴⁾ (hereafter referred to as the 'agriculture guidelines'). In the light of the Commission's considerable experience in applying those Articles to small and medium-sized enterprises active in the production, processing and marketing of agricultural products, it is appropriate, with a view to ensuring efficient supervision and simplifying administration without

weakening Commission monitoring, that the Commission should make use of the powers conferred by Regulation (EC) No 994/98 also for small and medium-sized enterprises active in the production, processing and marketing of agricultural products, insofar as Article 89 of the Treaty has been declared applicable to such products. Due to the specificities of the agricultural sector, a Regulation covering only small and medium-sized enterprises active in this sector is justified.

- (4) This Regulation is without prejudice to the possibility for Member States to notify aid to small and medium-sized enterprises active in the production, processing and marketing of agricultural products. Such notifications will be assessed by the Commission in the light of this Regulation and on the basis of the agriculture guidelines. Notifications pending on the date of entry into force of this Regulation should be assessed first in the light of this Regulation and, if the conditions it lays down are not fulfilled, then on the basis of the Agriculture Guidelines. It is appropriate to lay down transitional provisions for aid which was granted before the entry into force of this Regulation and was not notified in breach of the obligation in Article 88(3) of the Treaty.
- (5) Over the coming years, agriculture will have to adapt to new realities and further changes in terms of market evolution, market policy and trade rules, consumer demand and preferences and the enlargement of the Community. These changes will affect not only agricultural markets but also local economies in rural areas in general. Rural development policy should aim at restoring and enhancing the competitiveness of rural areas and, therefore, contribute to the maintenance and creation of employment in those areas.
- (6) Small and medium-sized enterprises play a decisive role in job creation and, more generally, act as a factor of social stability and economic drive. However, their development may be limited by market imperfections. They often have difficulties in obtaining capital or credit, given the risk-shy nature of certain financial markets and the limited guarantees that they may be able to offer. Their limited resources may also restrict their access to information, notably regarding new technology and potential markets. Having regard to those considerations, the purpose of the aid exempted by this Regulation should be to facilitate the development of the economic activities of small and medium-sized enterprises,

⁽¹⁾ OJ L 142, 14.5.1998, p. 1.

⁽²⁾ OJ C 194, 15.8.2003, p. 2.

⁽³⁾ OJ L 10, 13.1.2001, p. 33.

⁽⁴⁾ OJ C 28, 1.2. 2000, p. 2. (Corrected version OJ C 232, 12.8.2000, p. 19.)

- provided that such aid does not adversely affect trading conditions to an extent contrary to the common interest. These developments should be encouraged and supported by simplification of the existing rules, as far as they apply to small and medium-sized enterprises.
- (7) The production, processing and marketing of agricultural products in the Community is largely dominated by small and medium-sized enterprises.
- (8) Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations ⁽¹⁾ has already introduced specific State aid rules for certain rural development measures receiving Member State support without any Community financing.
- (9) This Regulation should exempt any aid that meets all the requirements it lays down, and any aid scheme, provided that any aid that could be granted under such scheme meets all the relevant requirements of this Regulation. With a view to ensuring efficient supervision and simplifying administration without weakening Commission monitoring, aid schemes and individual grants outside any aid scheme should contain an express reference to this Regulation.
- (10) Aid granted towards costs linked to advertising as defined by the Community guidelines for State aid for advertising of products listed in Annex I to the EC Treaty and of certain non-Annex I products ⁽²⁾ should be excluded from the scope of this Regulation and continue to be covered only by those guidelines.
- (11) In view of the need to strike the appropriate balance between minimising distortions of competition in the aided sector and the objectives of this Regulation, it should not exempt individual grants which exceed a fixed maximum amount, whether or not made under an aid scheme exempted by this Regulation.
- (12) This Regulation should not exempt export aid or aid contingent upon the use of domestic over imported products. Such aid may be incompatible with the Community's international obligations under the World Trade Organisation (WTO) Agreement on Subsidies and Countervailing Measures and the WTO Agreement on Agriculture. Aid towards the costs of participation in trade fairs or of studies or consultancy services needed for the launch of a new or existing product on a new market should not normally constitute export aid.
- (13) In order to eliminate differences that might give rise to distortions of competition, to facilitate coordination between different Community and national initiatives concerning small and medium-sized enterprises and for reasons of administrative clarity and legal certainty, the definition of 'small and medium-sized enterprises' used in this Regulation should be that laid down in Regulation (EC) No 70/2001.
- (14) In accordance with established practice of the Commission, and with a view to ensuring that aid is proportionate and limited to the amount necessary, thresholds should normally be expressed in terms of aid intensities in relation to a set of eligible costs, rather than in terms of maximum aid amounts.
- (15) In order to determine whether or not aid is compatible with the common market pursuant to this Regulation, it is necessary to take into consideration the aid intensity and thus the aid amount expressed as a grant equivalent. The calculation of the grant equivalent of aid payable in several instalments and aid in the form of a soft loan requires the use of market interest rates prevailing at the time of grant. With a view to a uniform, transparent, and simple application of the State aid rules, the market rates for the purposes of this Regulation should be deemed to be the reference rates, provided that, in the case of a soft loan, the loan is backed by normal security and does not involve abnormal risks. The reference rates should be those which are periodically fixed by the Commission on the basis of objective criteria and published in the *Official Journal of the European Union* and on the Internet.
- (16) In accordance with established practice of the Commission for the evaluation of State aid in the agricultural sector, no differentiation between small enterprises and medium-sized enterprises is necessary. For certain types of aid, the establishment of maximum amounts of aid which a beneficiary may receive is appropriate.
- (17) Aid ceilings should be fixed, in the light of the Commission's experience, at a level that strikes the appropriate balance between minimising distortions of competition in the aided sector and the objective of facilitating the development of the economic activities of small and medium-sized enterprises in the agriculture sector. In the interests of coherence with Community-financed support measures, the ceilings should be harmonised with those fixed in the agriculture guidelines and in Regulation (EC) No 1257/1999.

⁽¹⁾ OJ L 160, 26.6.1999, p. 80.

⁽²⁾ OJ C 252, 12.9.2001, p. 5.

- (18) It is appropriate to establish further conditions that should be fulfilled by any aid scheme or individual aid exempted by this Regulation. Companies receiving investment aid should have to comply with the criteria concerning viability and respect of minimum standards provided for in Articles 5 and 26(1) of Regulation (EC) No 1257/1999. Any restrictions on production or limitations of Community support under the common market organisations should be taken into account. Having regard to Article 87(3)(c) of the Treaty, aid should not normally have the sole effect of continuously or periodically reducing the operating costs which the beneficiary would normally have to bear, and should be proportionate to the handicaps that have to be overcome in order to secure the socioeconomic benefits deemed to be in the Community interest. Unilateral State aid measures which simply seek to improve the financial situation of producers but which in no way contribute to the development of the sector, and in particular aid which is granted solely on the basis of price, quantity, unit of production or unit of the means of production is considered to constitute operating aid which is incompatible with the common market. Furthermore, such aid is also likely to interfere with the mechanisms of the common organisations of the markets. It is therefore appropriate to limit the scope of this Regulation to certain types of aid.
- (19) This Regulation should exempt aid to small and medium-sized enterprises regardless of location. Investment and job creation can contribute to the economic development of less favoured regions and of Objective 1 regions in the Community. Small and medium-sized enterprises in those regions suffer from both the structural disadvantage of the location and the difficulties deriving from their size. It is therefore appropriate that small and medium-sized enterprises in less favoured and Objective 1 regions should benefit from higher ceilings.
- (20) Because of the risk of distortions resulting from targeted investment aid and in order to offer farmers freedom to decide about products invested in, investment aid exempted under this regulation should not be limited to specific agricultural products. This condition should not prevent a Member State from excluding certain agricultural products from such aid or aid schemes, notably where no normal market outlets can be found. Also, certain types of investment should, per se, be excluded from this Regulation. Investment aid targeted at certain sectors may be justified and therefore exempted where the aid is limited to costs of the implementation of specific rules relating to the protection and improvement of the environment, the improvement of hygiene conditions of livestock enterprises or the welfare of farm animals. Investments for the processing and marketing of agricultural products undertaken at farm level, not entailing an increase in capacity and having total eligible expenses below the limit set under Article 7 of Regulation (EC) No 1257/1999, should be examined according to the rules established for investments for the production of agricultural products. On-farm investments for processing and marketing of agricultural products entailing an increase in production capacity, and/or having total eligible expenses above the limit set under Article 7 of Regulation (EC) No 1257/1999, should be examined according to the rules established for investments for the processing and marketing of agricultural products.
- (21) Where aid is granted to adapt to newly introduced standards at Community level, Member States should not be in a position to lengthen the adaptation period for farmers by delaying implementation of such rules. Therefore, the date from which new legislation can no longer be considered new should be clearly set out.
- (22) Services offered at subsidised rates are often offered to farmers by companies which cannot be freely chosen by the farmer. In order to avoid aid being granted to the providers of the service, and not to the farmer, and in order to ensure that the farmer gets the best service at a competitive price, it should normally be ensured that such providers of services are chosen and remunerated according to market principles. However, for certain services, notably controls, and due to the nature of the service or the legal basis for the provision of the service, there may be only one provider.
- (23) Certain Council Regulations in the field of agriculture provide for specific authorisations for the payment of aid by Member States, often in combination with or in addition to Community financing. However, those provisions usually do not provide for an exemption from the duty to notify under Article 88 of the Treaty, insofar as such aid fulfils the conditions of Article 87(1) of the Treaty. Since the conditions for such aid are clearly specified in those Regulations, and/or there is a duty to communicate such measures to the Commission under the special provisions of those Regulations, no further and separate notification under Article 88(3) of the Treaty is necessary in order to allow for an assessment of these measures by the Commission. For reasons of legal certainty, a reference to those provisions should be included in this Regulation, and therefore notification of those measures under Article 88 of the Treaty should not be necessary, insofar as it can be ascertained in advance that such aid is exclusively granted to small and medium-sized enterprises.

- (24) In order to ensure that the aid is necessary and acts as an incentive to develop certain activities, this Regulation should not exempt aid for activities in which the beneficiary would already engage under market conditions alone. No aid should be granted retroactively in respect of activities which have already been undertaken by the beneficiary.
- (25) This Regulation should not exempt aid cumulated with other State aid, including aid granted by national, regional or local authorities, with public support granted within the framework of Regulation (EC) No 1257/1999 or with Community assistance, in relation to the same eligible costs, when such cumulation exceeds the thresholds fixed in this Regulation.
- (26) In order to ensure transparency and effective monitoring, in accordance with Article 3 of Regulation (EC) No 994/98, it is appropriate to establish a standard format in which Member States should provide the Commission with summary information whenever, in pursuance of this Regulation, an aid scheme is implemented or an individual aid outside such schemes is granted, with a view to publication in the *Official Journal of the European Union*. For the same reasons, it is appropriate to establish rules concerning the records that Member States should keep regarding the aid exempted by this Regulation. For the purposes of the annual report to be submitted to the Commission by Member States, it is appropriate for the Commission to establish its specific requirements. In view of the wide availability of the necessary technology, the summary information and the annual report should be in computerised form.
- (27) Failure by a Member State to comply with the reporting obligations established in this Regulation may make it impossible for the Commission to perform its monitoring task under Article 88(1) of the Treaty and, in particular, to assess whether the cumulative economic effect of the aids exempted under this Regulation is such as to adversely affect trading conditions to an extent contrary to the common interest. The need to evaluate the cumulative effect of State aid is particularly high where the same beneficiary may receive aid granted by several sources, as is increasingly the case in the field of agriculture. It is therefore of primary importance that the Member State rapidly submits appropriate information before implementing aid under this Regulation.
- (28) Having regard to the Commission's experience in this area, and in particular the frequency with which it is generally necessary to revise State aid policy, it is appropriate to limit the period of application of this Regulation. Should this Regulation expire without being extended, aid schemes already exempted by this Regulation should continue to be exempt for six months,

HAS ADOPTED THIS REGULATION:

CHAPTER 1

SCOPE, DEFINITIONS AND CONDITIONS

Article 1

Scope

1. This Regulation shall apply to aid granted to small and medium-sized enterprises active in the production, processing or marketing of agricultural products.
2. This Regulation shall not apply to:
 - (a) aid granted towards costs linked to advertising as defined by the Community guidelines for State aid for advertising of products listed in Annex I to the EC Treaty and of certain non-Annex I products;
 - (b) aid granted to processing of Annex I agricultural products into non-Annex I products.
3. This Regulation shall not apply to aid for individual investments with eligible expenses in excess of EUR 12,5 million, or where the actual amount of aid exceeds EUR 6 million. Such aid shall be specifically notified to the Commission in accordance with Article 88(3) of the Treaty.
4. Without prejudice to Article 16(a) this Regulation shall not apply to:
 - (a) aid to export-related activities, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current expenditure linked to the export activity;
 - (b) aid contingent upon the use of domestic over imported goods.

Article 2

Definitions

For the purpose of this Regulation:

1. 'aid' means any measure fulfilling all the criteria laid down in Article 87(1) of the Treaty;
2. 'agricultural product' means:
 - (a) the products listed in Annex I to the Treaty, except fishery and aquaculture products covered by Council Regulation (EC) No 104/2000 ⁽¹⁾;
 - (b) products falling under CN codes 4502, 4503 and 4504 (cork products);

⁽¹⁾ OJ L 17, 21.1.2000, p. 22.

- (c) products intended to imitate or substitute milk and milk products, as referred to in Article 3(2) of Council Regulation (EEC) No 1898/87 ⁽¹⁾;
3. 'processing of an agricultural product' means an operation on an agricultural product where the product resulting from the operation is also an agricultural product;
4. 'small and medium-sized enterprises' (SME) means enterprises as defined in Annex I to Regulation (EC) No 70/2001;
5. 'gross aid intensity' means the aid amount expressed as a percentage of the project's eligible costs. All figures used shall be taken before any deduction for direct taxation. Where aid is awarded in a form other than a grant, the aid amount shall be the grant equivalent of the aid. Aid payable in several instalments shall be discounted to its value at the moment of granting. The interest rate to be used for discounting purposes and for calculating the aid amount in a soft loan shall be the reference rate applicable at the time of grant;
6. 'quality product' is a product fulfilling the criteria of Article 24b(2) or (3) of Council Regulation (EC) No 1783/2003 amending Regulation (EC) 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) ⁽²⁾;
7. 'adverse climatic events which can be assimilated to natural disasters' means weather conditions such as frost, hail, ice, rain or drought which destroy 20 % of normal production in less-favoured areas and 30 % in other areas;
8. 'less-favoured areas' means areas as defined by Member States on the basis of Article 17 of Regulation (EC) No 1257/1999;
9. 'objective 1 regions' means regions referred to in Article 3 of Council Regulation (EC) No 1260/1999 ⁽³⁾;
10. 'newly introduced minimum standards regarding the environment, hygiene and animal welfare' means:
- (a) in the case of standards which do not provide for any transitional period, standards to be made compulsory vis-à-vis operators not more than two years before the investment is actually started; or
 - (b) in the case of standards which provides for a transitional period, standards to be made compulsory vis-à-vis operators after the investment has actually been started;
11. 'young farmers' means producers of agricultural products as defined in Article 8 of Regulation (EC) No 1257/1999;
12. 'producer group' means a group which is set up for the purpose of jointly adapting, within the objectives of the common market organisations, the production and output of its members to market requirements, in particular by concentrating supply;
13. 'producer association' means an association which consists of recognised producer groups and pursues the same objectives on a larger scale.
14. 'TSE and BSE test costs' are all costs, including those for test kits, taking, transporting, testing, storing and destruction of samples necessary for tests undertaken in accordance with Annex X, Chapter C to Regulation (EC) No 999/2001 of the European Parliament and of the Council of 22 May 2001 laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies ⁽⁴⁾.

Article 3

Conditions for exemption

1. Individual aid outside any scheme, fulfilling all the conditions of this Regulation, shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that the summary information provided for in Article 19(1) has been submitted and that it contains an express reference to this Regulation, by citing its title and publication reference in the *Official Journal of the European Union*.
2. Aid schemes fulfilling all the conditions set out in this Regulation shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that:
 - (a) any aid that could be awarded under such scheme fulfils all the conditions set out in this Regulation;
 - (b) the scheme contains an express reference to this Regulation, by citing its title and publication reference in the *Official Journal of the European Union*;
 - (c) the summary information provided for in Article 19(1) has been submitted.
3. Aid granted under the schemes referred to in paragraph 2 shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that the aid granted directly fulfils all the conditions of this Regulation.

⁽¹⁾ OJ L 182, 3.7.1987, p. 36.

⁽²⁾ OJ L 270, 21.10.2003, p. 70.

⁽³⁾ OJ L 161, 26.6.1999, p. 1.

⁽⁴⁾ OJ L 147, 31.5.2001, p. 1.

CHAPTER 2

CATEGORIES OF AID

Article 4

Investment in agricultural holdings

1. Aid for investments in agricultural holdings within the Community for the production, processing and marketing of agricultural products, shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty if it fulfils the conditions set out in paragraphs 2 to 10.

2. The gross aid intensity must not exceed:

- (a) 50 % of eligible investments in less favoured areas;
- (b) 40 % of eligible investments in other regions.

In the case of investments made by young farmers within five years of setting up, the maximum aid rate shall be increased to 60 % in less-favoured areas, and 50 % in other regions.

Where investments result in extra costs relating to the protection and improvement of the environment, the improvement of hygiene conditions of livestock enterprises or the welfare of farm animals, the maximum aid rates of 50 % and 40 % referred to in points (a) and (b) of the first subparagraph may be increased by 25 and 20 percentage points, respectively. This increase may only be granted for investments which go beyond the minimum Community requirements in force, or for investments made to comply with newly introduced minimum standards. The increase must be limited to the extra eligible costs necessary and must not apply in the case of investments which result in an increase in production capacity.

3. The investment must pursue one or more of the following objectives:

- (a) reduction of production costs;
- (b) improvement and redeployment of production;
- (c) improvement in quality;
- (d) preservation and improvement of the natural environment, hygiene conditions and animal welfare standards;
- (e) promotion of the diversification of farm activities.

4. The eligible expenses may include:

- (a) the construction, acquisition or improvement of immovable property;
- (b) the purchase or lease-purchase of new machinery and equipment, including computer software up to the market value of the asset; other costs connected with a leasing

contract (tax, lessor's margin, interest refinancing costs, overheads, insurance charges, etc.) are not eligible expenditure;

- (c) general costs, such as architects, engineers and consultation fees, feasibility studies, the acquisition of patents and licences, up to 12 % of the expenditure referred to in points (a) and (b).

By way of derogation from point (b) of the first subparagraph, the purchase of second-hand equipment may be regarded as eligible expenditure in duly substantiated cases when the following conditions are met:

- (a) a declaration by the seller of the equipment confirms its exact origin and that the equipment has not already been the subject of national or Community assistance;
- (b) the purchase of the equipment represents a particular advantage for the programme or project, or is made necessary by exceptional circumstances (for example, no new equipment available on time, thus threatening proper execution of the project);
- (c) reduction of the costs involved, and therefore of the amount of aid, as compared with the costs of the same equipment purchased new, while maintaining a good cost-benefit ratio;
- (d) the second-hand equipment acquired must have the technical and/or technological characteristics necessary for the requirements of the project.

5. Aid may only be granted to viable agricultural holdings which comply with the criteria set out in Article 5 of Regulation (EC) No 1257/1999.

Aid may be granted in order to enable the beneficiary to reach newly introduced minimum standards regarding the environment, hygiene and animal welfare.

Assessment of compliance with the criteria of Article 5 of Regulation (EC) No 1257/1999 must be made at enterprise level by a public body or an independent third party, which is qualified to undertake such assessment. The rules setting up the aid scheme or the decision awarding individual aid outside such a scheme must specify how such assessment is to be made.

6. Sufficient evidence must be available that normal market outlets for the products concerned exist for the future. This must be assessed at the appropriate level determined by the Member State, in relation to the products concerned, the types of investments, and existing and expected capacities. Assessment of normal market outlets must be made by a public body or a third party, which are independent from the beneficiary of the aid and qualified to undertake such assessment. The rules setting up the aid scheme must specify how such assessment is to be made. The assessment must be based on recent data and must be made publicly available.

7. The aid must not be granted in contravention of any prohibitions or restrictions laid down in Council regulations establishing common organisations of the market, even where such prohibitions and restrictions only refer to Community support.

8. Unless it is limited to the costs of the implementation of specific rules relating to the protection and improvement of the environment, the improvement of hygiene conditions of live-stock enterprises or the welfare of farm animals, aid must not be limited to specific agricultural products. Aid must not be granted in respect of the following:

- (a) investment having as their effect increased production capacity, where the capacity increase on a farm amounts to more than 20 %, to be measured in livestock units for animal production and cultivated surface for plant production;
- (b) the purchase of production rights, animals, land other than land for construction purposes, plants or the planting of plants;
- (c) simple replacement investments.

9. The maximum expenses eligible for support must not exceed the limit for total investment eligible for support set by the Member State in accordance with Article 7 of Regulation (EC) No 1257/1999. Aid schemes must state this limit.

10. The aid must not be granted in respect of the following:

- (a) the manufacture and marketing of products which imitate or substitute for milk and milk products;
- (b) processing and marketing activities in the sugar sector.

Article 5

Conservation of traditional landscapes and buildings

1. Aid for conservation of traditional landscapes and buildings shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty if it fulfils the conditions set out in paragraphs 2 and 3.

2. Aid may be granted up to 100 % of the real costs incurred as regards investments or capital works intended for the conservation of non-productive heritage features located on agricultural holdings, such as archaeological or historical features. These costs may include reasonable compensation for the work undertaken by the farmer himself, or his workers, up to a limit of EUR 10 000 a year.

3. Aid may be granted up to 60 %, or 75 % in less favoured areas, of the real costs incurred as regards investments or capital works intended for the conservation of heritage features of productive assets on farms, such as farm buildings, provided that the investment does not entail any increase in the production capacity of the farm.

Where there is an increase in production capacity, the aid rates for investment established in Article 4(2) shall apply as regards eligible expenses resulting from undertaking the relevant work using normal contemporary materials. Additional aid may be granted at a rate of up to 100 % to cover the extra costs incurred by using traditional materials necessary to maintain the heritage features of the building.

Article 6

Relocation of farm buildings in the public interest

1. Aid for the relocation of farm buildings shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty if it is in the public interest and fulfils the conditions set out in paragraphs 2, 3 and 4.

The public interest invoked to justify the granting of aid under this Article shall be specified in the relevant provisions of the Member State.

2. Aid may be granted up to 100 % of the actual costs incurred where a relocation in the public interest simply consists of the dismantling, removal and re-erection of existing facilities.

3. Where the relocation in the public interest results in the farmer benefiting from more modern facilities, the farmer must contribute at least 60 %, or 50 % in less favoured areas, of the increase in the value of the facilities concerned after relocation. If the beneficiary is a young farmer, this contribution shall be at least 55 % or 45 % respectively.

4. Where the relocation in the public interest results in an increase in production capacity, the contribution from the beneficiary must be at least equal to 60 %, or 50 % in less favoured areas, of the expenses relating to this increase. If the beneficiary is a young farmer, this contribution shall be at least 55 % or 45 %.

Article 7

Investment in processing and marketing

1. Aid for investment in the processing and marketing of agricultural products shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty if it fulfils the conditions set out in paragraphs 2 to 7.

2. The gross aid intensity must not exceed:

- (a) 50 % of eligible investments in Objective 1 regions;
- (b) 40 % of eligible investments in other regions.

3. The eligible expenses may include:

- (a) the construction, acquisition or improvement of immovable property;
- (b) the purchase or lease-purchase of new machinery and equipment, including computer software up to the market value of the asset; other costs connected with a leasing contract (tax, lessor's margin, interest refinancing costs, overheads, insurance charges, etc.) are not eligible expenditure;
- (c) general costs, such as architects, engineers and consultation fees, feasibility studies, the acquisition of patents and licences, up to 12 % of the expenditure referred to in points (a) and (b).

By way of derogation from point (b) of the first subparagraph, the purchase of second-hand equipment may be regarded as eligible expenditure in duly substantiated cases when the following conditions are met:

- (a) a declaration by the seller of the equipment confirms its exact origin and that the equipment has not already been the subject of national or Community assistance;
- (b) the purchase of the equipment represents a particular advantage for the programme or project, or is made necessary by exceptional circumstances (for example, no new equipment available on time, thus threatening proper execution of the project);
- (c) reduction of the costs involved, and therefore of the amount of aid, as compared with the costs of the same equipment purchased new, while maintaining a good cost-benefit ratio;
- (d) the second-hand equipment acquired must have the technical and/or technological characteristics necessary for the requirements of the project.

4. Aid may only be granted to enterprises which can be demonstrated to comply with the criteria set out in Article 26(1) of Regulation (EC) No 1257/1999.

Aid may be granted in order to enable the beneficiary to reach newly introduced minimum standards regarding the environment, hygiene and animal welfare.

Assessment of compliance with the criteria set out in Article 26(1) of Regulation (EC) No 1257/199 must be made at enterprise level by a public body or an independent third party which is qualified to undertake such assessment. The rules setting up the aid scheme must specify how such assessment is to be made.

5. Sufficient evidence must be available that normal market outlets for the products concerned exist for the future. This must be assessed at the appropriate level determined by the

Member State, in relation to the products concerned, the types of investments, and existing and expected capacities. Assessment of normal market outlets must be made by a public body or a third party, which are independent from the beneficiary of the aid and qualified to undertake such assessment. The rules setting up the aid scheme must specify how such assessment is to be made. The assessment must be based on recent data and must be made publicly available.

6. The aid must not be granted in contravention of any prohibitions or restrictions laid down in Council Regulations establishing common organisations of the market, even where such prohibitions and restrictions only refer to Community support.

7. The aid must not be limited to specific agricultural products, but must however not be granted in respect of the following:

- (a) the manufacture and marketing of products which imitate or substitute for milk and milk products;
- (b) processing and marketing activities in the sugar sector.

Article 8

Aid for setting up of young farmers

Aid for the setting up of young farmers shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty under the following conditions:

- (a) the criteria set out in Articles 7 and 8 of Regulation (EC) No 1257/1999 must be fulfilled;
- (b) the combined support granted under Regulation (EC) No 1257/1999 and in the form of State aid under this Article must not exceed the maximum limits provided for in Article 8(2) of that Regulation.

Article 9

Aid for early retirement

Aid for early retirement of farmers shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty under the following conditions:

- (a) the criteria set out in Articles 10, 11 and 12 of Regulation (EC) No 1257/1999 must be fulfilled;
- (b) the cessation of commercial farming activities must be permanent and definitive.

*Article 10***Aid for producer groups**

1. Start-up aid for the constitution of producer groups or producer associations shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty if it fulfils the conditions set out in paragraphs 2 to 9.

2. The following shall be eligible for the aid referred to in paragraph 1, provided that they are entitled to financial assistance under the legislation of the Member State concerned:

- (a) producer groups or producer associations involved in the production of agricultural products; and/or
- (b) associations of producers responsible for the supervision of the use of denominations of origin or quality marks in conformity with Community law.

The internal rules of the producer group or association must provide an obligation on members to market production in accordance with the rules on supply and placing on the market drawn up by the group or association.

Those rules may permit a proportion of the production to be marketed directly by the producer. They must require producers joining the group or association to remain members for at least three years and to give at least 12 months notice of withdrawal. In addition they must provide common rules on production, in particular relating to product quality, or use of organic practices, common rules for placing goods on the market and rules on product information, with particular regard to harvesting and availability. However, producers must remain responsible for managing their holdings. The agreements concluded in the framework of the producer group or association must comply fully with all relevant provisions of competition law, in particular Articles 81 and 82 of the Treaty.

3. The eligible expenses may include the rental of suitable premises, the acquisition of office equipment, including computer hardware and software, administrative staff costs, overheads and legal and administrative fees. If premises are purchased, the eligible expenses for premises shall be limited to rental costs at market rates.

4. Aid must be temporary and degressive and must not exceed 100 % of eligible costs incurred in the first year. The aid level must be reduced by at least 20 percentage points for each year of operation, so that in the fifth year the amount of aid is limited to 20 % of actual eligible expenditure occurred in that year.

5. The aid must not be paid in respect of costs incurred after the fifth year, or paid following the seventh year after recognition of the producer organisation. This is without prejudice to grant aid towards eligible expenses limited to and resulting from a year-on-year increase in turnover of a beneficiary by at least 30 % where this is due to the accession of new members and/or the coverage of new products.

6. The aid must not be granted to production organisations such as companies or cooperatives, the objective of which is the management of one or more agricultural holdings and which are therefore in effect single producers.

7. The aid must not be granted to other agricultural associations, which undertake tasks at the level of agricultural production, such as mutual support and farm relief and farm management services, in the members' holdings without being involved in the joint adaptation of supply to the market.

8. The total amount of aid granted to a producer group or association under this Article must not exceed EUR 100 000.

9. The aid must not be granted to producer groups or associations the objectives of which are incompatible with a Council regulation setting up a common market organisation.

*Article 11***Aid towards the payment of insurance premiums**

1. Aid for insurance premiums for enterprises involved in the primary production of agricultural products shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty if it fulfils the conditions set out in paragraphs 2, 3 and 4.

2. The gross aid intensity must not exceed:

- (a) 80 % of the cost of insurance premiums where the policy specifies that it provides cover only against losses caused by adverse climatic events which can be assimilated to natural disasters;
- (b) 50 % of the cost of insurance premiums where the policy specifies that it provides cover against losses referred to in point (a) and in addition against:
 - (i) other losses caused by climatic events; and/or
 - (ii) losses caused by animal or plant diseases.

Losses caused by adverse climatic events which can be assimilated to natural disasters must be determined on the basis of the gross production of the relevant crop in the year in question compared with the gross annual production in a normal year. Gross production must be calculated by reference to the average gross production in the previous three years, excluding any year in which compensation was payable as a result of other adverse weather conditions. In the case of damage to the means of production, the effects of which are felt over several years, the percentage real loss for the first harvest following the occurrence of the adverse event in comparison with a normal year, determined in accordance with the principles set out in this subparagraph, must exceed 10 % and the percentage real loss multiplied by the number of years in which production is lost must exceed 20 % in the less-favoured areas and 30 % in other areas.

3. The aid must be granted for the cost of insurance premiums which include cover for losses caused by adverse climatic events which can be assimilated to natural disasters.

4. The aid must not constitute a barrier to the operation of the internal market for insurance services. The aid must not be limited to insurance provided by a single insurance company or group of companies, or be made subject to the condition that the insurance contract be taken out with a company established in the Member State concerned.

Article 12

Aid for land reparation

1. Aid to enterprises involved in the production of agricultural products shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty if it is granted towards and limited to the legal and administrative costs, including survey costs, of land reparation, up to 100 % of actual costs incurred.

2. Paragraph 1 shall not apply to aid for investments, including aid for land purchase.

Article 13

Aid to encourage the production and marketing of quality agricultural products

1. Aid to encourage the production and marketing of quality agricultural products shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty if it is granted towards the eligible costs listed in paragraph 2 and fulfils the conditions set out in paragraphs 3 to 7.

2. Aid may be granted to cover the costs of the following activities, insofar as they are related to the development of quality agricultural products:

- (a) up to 100 % of the costs of market research activities, product conception and design, including aid granted for the preparation of applications for recognition of denominations of origin or certificates of specific character in accordance with the relevant Community regulations;
- (b) up to 100 % of the costs of the introduction of quality assurance schemes such as ISO 9000 or 14000 series, systems based on hazard analysis and critical control points (HACCP), traceability systems, systems to assure respect of authenticity and marketing norms or environmental audit systems;
- (c) up to 100 % of the costs of training personnel to apply schemes and systems as referred to in point (b);
- (d) up to 100 % of the costs of the charges levied by recognised certifying bodies for the initial certification of quality assurance and similar systems;
- (e) up to 100 % of the costs of compulsory control measures undertaken pursuant to Community or national legislation by or on behalf of the competent authorities, unless Community legislation requires enterprises to bear such costs;
- (f) temporary and degressive aid towards the costs of control measures undertaken during the first six years following the establishment of the control system to ensure the authenticity of denominations of origin, or certificate of specific character in the framework of Council Regulations (EEC) No 2081/92 ⁽¹⁾ and (EEC) No 2082/92 ⁽²⁾; degressivity must be at least 10 percentage points per year;
- (g) up to 100 % of actual costs incurred for controls of organic production methods conducted within the framework of Council Regulation (EEC) No 2092/91 ⁽³⁾.

3. The aid must be granted in respect of controls undertaken by or on behalf of third parties, such as the competent regulatory authorities, or bodies acting on their behalf, or independent organisms responsible for the control and supervision of the use of denominations of origin, organic labels, or quality labels, provided these denominations and labels are in conformity with Community legislation.

4. The aid must not be granted towards the cost of controls undertaken by the farmer or manufacturer himself, or where Community legislation provides that the cost of control is to be met by producers, without specifying the actual level of charges.

⁽¹⁾ OJ L 208, 24.7.1992, p. 1.

⁽²⁾ OJ L 208, 24.7.1992, p. 9.

⁽³⁾ OJ L 198, 22.7.1991, p. 1.

5. The total amount of public support granted under paragraph 2 must not exceed EUR 100 000 per beneficiary over any three-year period. For the purpose of calculating the amount of aid, the beneficiary is considered to be the person receiving the services listed in that paragraph.

6. The aid must be accessible to all those eligible in the area concerned, based on objectively defined conditions. Where the provision of services listed in paragraph 2 is undertaken by producer groups or other agricultural mutual support organisations, membership of such groups or organisations must not be a condition for access to the service. Any contribution of non-members towards the administrative costs of the group or organisation concerned must be limited to the proportional costs of providing the service.

7. Where the choice of the provider of a service listed in paragraph 2 is not freely left to the beneficiary of the service, and unless there is only one possible provider due to the nature of the service or the legal basis for the provision of that service, such provider must be chosen and remunerated according to market principles, in a non-discriminatory way, where necessary using tendering procedures which are in accordance with Community law, and in any event using a degree of advertising sufficient to enable the services market to be opened up to competition and the impartiality of procurement rules to be reviewed.

Article 14

Provision of technical support in the agricultural sector

1. Aid shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty if it is granted towards the eligible costs of the technical support activities listed in paragraph 2 and fulfils the conditions set out in paragraphs 3, 4 and 5.

2. Aid may be granted to cover the following eligible costs:

- (a) concerning education and training of farmers and farm workers:
 - (i) costs of organising the training programme;
 - (ii) travel and subsistence expenses of participants;
 - (iii) cost of the provision of replacement services during the absence of the farmer or the farm worker;
- (b) concerning farm replacement services, the actual costs of the replacement of a farmer, the farmer's partner, or a farm worker, during illness and holidays;
- (c) concerning consultancy services, the fees for services which do not constitute a continuous or periodic activity nor relate to the enterprise's usual operating expenditure, such as routine tax consultancy services, regular legal services, or advertising;

(d) concerning the organisation of and participation in competitions, exhibitions and fairs:

- (i) participation fees;
- (ii) travel costs;
- (iii) costs of publications;
- (iv) the rent of exhibition premises.

3. The total amount of public support granted under paragraph 2 must not exceed EUR 100 000 per beneficiary over any three-year period, or 50 % of the eligible costs, whichever is greater. For the purpose of calculating the amount of aid, the beneficiary is considered to be the person receiving the technical support.

4. The aid must be accessible to all those eligible in the area concerned, based on objectively defined conditions. Where the provision of technical support is undertaken by producer groups or other agricultural mutual support organisations, membership of such groups or organisations must not be a condition for access to the service. Any contribution of non-members towards the administrative costs of the group or organisation concerned must be limited to the costs of providing the service.

5. Where the choice of the provider of technical support is not freely left to the beneficiary of the service, such provider must be chosen and remunerated according to market principles, in a non-discriminatory way, where necessary using tendering procedures which are in accordance with Community law, and in any event using a degree of advertising sufficient to enable the services market to be opened up to competition and the impartiality of procurement rules to be reviewed.

Article 15

Support for the livestock sector

The following aid to enterprises active in the livestock sector shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty:

- (a) aid at a rate of up to 100 % to cover the administrative costs directly linked to the establishment and maintenance of herd books;
- (b) aid at a rate of up to 70 % of the costs of tests performed by or on behalf of third parties, to determine the genetic quality or yield of livestock, with the exception of controls undertaken by the owner of the livestock and routine controls of milk quality;

- (c) aid at a rate of up to 40 % of the eligible costs listed in Article 4 for investments in animal reproduction centres and for the introduction at farm level of innovative animal breeding techniques or practices, with the exception of costs relating to the introduction or performance of artificial insemination.
- (d) aid at a rate of up to 100 % towards the costs of TSE tests.

However, as far as compulsory BSE testing of bovine animals slaughtered for human consumption is concerned, total direct and indirect support, including Community payments, may not be more than EUR 40 per test. This amount refers to the total costs of testing, comprising: test-kit, taking, transporting, testing, storing and destruction of the sample. The obligation for testing may be based on Community or national legislation.

State aid towards the cost of TSE tests has to be paid to the operator where the samples for the tests have to be taken. However, in order to facilitate administration of such State aid, payment of the aid may be made to laboratories instead, provided that the full amount of State aid is passed on to the operator. State aid directly or indirectly received by an operator where the samples for the tests have been taken must be reflected in correspondingly lower prices charged by this operator.

- (d) aid granted by Member States fulfilling all the conditions laid down in Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common market organisation of the market in milk and milk products ⁽⁴⁾, in particular Article 14(2) thereof;
- (e) aid granted by Member States fulfilling all the conditions laid down in Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal ⁽⁵⁾, in particular Articles 6(5) and 14 thereof;
- (f) aid granted by Member States in accordance with Articles 3 and 4 of Commission Regulation (EC) No 2777/2000 of 18 December 2000 adopting exceptional support measures for the beef market ⁽⁶⁾;
- (g) aid granted by Member States in accordance with Article 6(3) second subparagraph of Council Regulation (EC) No 1251/1999 of 17 May 1999 establishing a support system for producers of certain arable crops ⁽⁷⁾;
- (h) aid granted by Member States in accordance with Article 15(6) of Council Regulation (EC) 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables ⁽⁸⁾.

CHAPTER 3

COMMON AND FINAL PROVISIONS

Article 16

Aid provided for in certain Council Regulations

The following aid to small and medium-sized enterprises shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty:

- (a) Member State contributions fulfilling all the conditions laid down in Council Regulation (EC) No 2702/1999 of 14 December 1999 on measures to provide information on, and to promote, agricultural products in third countries ⁽¹⁾, in particular Article 9(3) thereof;
- (b) Member State contributions fulfilling all the conditions laid down in Council Regulation (EC) No 2826/2000 of 19 December 2000 on information and promotion actions for agricultural products on the internal market ⁽²⁾, in particular Article 9(2), (3) and (4) thereof;
- (c) aid granted by Member States fulfilling all the conditions laid down in Regulation (EC) No 999/2001 of the European Parliament and of the Council of 22 May 2001 laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies ⁽³⁾, in particular Article 13(4) thereof;

⁽¹⁾ OJ L 327, 21.12.1999, p. 7.

⁽²⁾ OJ L 328, 23.12.2000, p. 2.

⁽³⁾ OJ L 147, 31.5.2001, p. 1.

Article 17

Steps preceding grant of aid

1. In order to qualify for exemption under this Regulation, aid under an aid scheme shall only be granted in respect of activities undertaken or services received after the aid scheme has been set up and published in accordance with this Regulation.

If the aid scheme creates an automatic right to receive the aid, requiring no further action at administrative level, the aid itself may only be granted after the aid scheme has been set up and published in accordance with this Regulation.

If the aid scheme requires an application to be submitted to the competent authority concerned, the aid itself may only be granted after the following conditions have been fulfilled:

- (a) the aid scheme must have been set up and published in accordance with this Regulation;
- (b) an application for the aid must have been properly submitted to the competent authority concerned;

⁽⁴⁾ OJ L 160, 26.6.1999, p. 48.

⁽⁵⁾ OJ L 160, 26.6.1999, p. 21.

⁽⁶⁾ OJ L 321, 19.12.2000, p. 47.

⁽⁷⁾ OJ L 160, 26.6.1999, p. 1.

⁽⁸⁾ OJ L 297, 21.11.1996, p. 1.

(c) the application must have been accepted by the competent authority concerned in a manner which obliges that authority to grant the aid, clearly indicating the amount of aid to be granted or how this amount will be calculated; such acceptance by the competent authority may only be made if the budget available for the aid or aid scheme is not exhausted.

2. In order to qualify for exemption under this Regulation, individual aid outside any aid scheme shall only be granted in respect of activities undertaken or services received after the criteria in points (b) and (c) of the third subparagraph of paragraph 1 have been satisfied.

Article 18

Cumulation

1. The aid ceilings fixed in Articles 4 to 15 shall apply regardless of whether the support for the aided project or activity is financed entirely from State resources or is partly financed by the Community.

2. Aid exempted by this Regulation shall not be cumulated with any other State aid within the meaning of Article 87(1) of the Treaty, or financial contributions provided by Member States or by the Community covered by the second subparagraph of Article 51(1) of Regulation (EC) No 1257/1999, in relation to the same eligible costs, if such cumulation would result in an aid intensity exceeding the maximum laid down in this Regulation.

3. Where a Member State grants aid covered by any of Articles 8, 10, 13 or 14 of this Regulation to an enterprise, it shall inform the enterprise that such aid is granted under the respective Article of this Regulation. The Member State shall obtain from the enterprise concerned full information about other similar aid received. For aid covered by Articles 13 and 14, the information shall be given about similar aid received during the previous three years.

The Member State may only grant the new aid after having checked that this will not raise the total amount of aid granted under any of these Articles above the total amount of aid received during the relevant period to a level above the ceiling set out in the respective Article.

Article 19

Transparency and monitoring

1. At the latest 10 working days before the entry into force of an aid scheme, or the granting of individual aid outside any scheme, exempted by this Regulation, Member States shall, forward to the Commission, with a view to its publication in the *Official Journal of the European Union*, a summary of the information regarding such aid scheme or individual aid in the form laid down in Annex I. This shall be provided in computerised form. Within five working days from receiving that

summary, the Commission shall send a notice of receipt with an identification number and publish the summary on the internet.

2. Member States shall maintain detailed records regarding the aid schemes exempted by this Regulation, the individual aid granted under those schemes, and the individual aid exempted by this Regulation that is granted outside any existing aid scheme. Such records shall contain all information necessary to establish that the conditions for exemption, as laid down in this Regulation, are fulfilled, including information on the status of the company as an SME. Member States shall keep a record regarding an individual aid for 10 years from the date on which it was granted and, regarding an aid scheme, for 10 years from the date on which the last individual aid was granted under such scheme. On written request, the Member State concerned shall provide the Commission, within a period of 20 working days or such longer period as may be fixed in the request, with all the information which the Commission considers necessary to assess whether the conditions of this Regulation have been complied with.

3. Where a Member State has set up a central register of aid separately granted under Articles 8, 10, 13 or 14 respectively, containing complete information on all such aid granted by any authority within that Member State, the requirement of the first subparagraph of Article 18(3) no longer applies from the moment the register covers a period of three years.

4. Member States shall compile a report on the application of this Regulation in respect of each whole or part calendar year during which this Regulation applies, in the form laid down in Annex II, in computerised form. This report may be integrated into the annual report to be submitted by Member States pursuant to Article 21(1) of Council Regulation (EC) No 659/1999⁽¹⁾, and shall be submitted by 30 June of the year following the calendar year covered by the report.

5. As soon as an aid scheme enters into force, or an individual aid is granted outside an aid scheme exempted by this Regulation, Member States shall publish on the internet the full text of such aid scheme, or the criteria and conditions under which such individual aid is granted. The address of the websites shall be communicated to the Commission together with the summary of the information regarding the aid required pursuant to paragraph 1. It shall also be contained in the annual report submitted pursuant to paragraph 4.

Article 20

Entry into force and applicability

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

It shall apply until 31 December 2006.

⁽¹⁾ OJ L 83, 27.3.1999, p. 1.

2. Notifications pending at the time of entry into force of this Regulation shall be assessed in accordance with its provisions. Where the conditions of this Regulation are not fulfilled, the Commission shall examine such pending notifications under the Community guidelines for State aid in the agriculture sector.

Individual aid and aid schemes implemented before the date of entry into force of this Regulation and aid granted under those schemes in the absence of a Commission authorisation and in breach of the notification requirement of Article 88(3) of the Treaty shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt if

they fulfil the conditions laid down in Article 3 of this Regulation, except the requirements in paragraph 1 and paragraph 2(b) and (c) of that Article that express reference be made to this Regulation, and that the summary provided for in Article 19(1) has been submitted before granting aid. Any aid which does not fulfil those conditions shall be assessed by the Commission in accordance with the relevant frameworks, guidelines, communications and notices.

3. Aid schemes exempted under this Regulation shall remain exempt during an adjustment period of six months following the date provided for in the second subparagraph of paragraph 1.

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

Done at Brussels, 23 December 2003.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX I

Form of summary information to be provided whenever an aid scheme exempted by this Regulation is implemented and whenever an individual aid exempted by this Regulation is granted outside any aid scheme

Summary information on State aid granted in conformity with Commission Regulation (EC) No 1/2004

Member State

Region (Indicate the name of the region if the aid is granted by a subcentral authority)

Title of Aid scheme or name of company receiving an individual aid (Indicate the name of the aid scheme or in case of individual aid, the name of the beneficiary)

Legal basis (Indicate the precise national legal reference for the aid scheme or for the individual aid)

Annual expenditure planned under the scheme or overall amount of individual aid granted to the company (Amounts are to be given in euro or, if applicable, national currency. In case of an aid scheme, indicate the annual overall amount of the budget appropriation(s) or the estimated tax loss per year for all aid instruments contained in the scheme. In case of an individual aid award: indicate the overall aid amount/tax loss. If appropriate, indicate also for how many years the aid will be paid in instalments or over how many years tax losses will be incurred. For guarantees in both cases, indicate the (maximum) amount of loans guaranteed)

Maximum aid intensity (Indicate the maximum aid intensity or the maximum aid amount per eligible item)

Date of implementation (Indicate the date from which aid may be granted under the scheme or when the individual aid is granted)

Duration of scheme or individual aid award (Indicate the date (year and month) until which aid may be granted under the scheme or in case of an individual aid and if appropriate the expected date (year and month) of the last instalment to be paid)

Objective of aid (It is understood that the primary objective is aid to SME. Indicate the further (secondary) objectives pursued. Indicate which one of (Articles(s) 4 to 16) is used and the eligible costs covered by the scheme or individual aid)

Sector(s) concerned (Indicate whether the scheme applies to production and/or processing and/or marketing. Indicate the subsectors by mentioning the type of animal production (e.g. pig/poultry) or type of plant production (e.g. apple/tomato) concerned)

Name and address of the granting authority

Web-address (Indicate the internet address where the full text of the scheme or the criteria and conditions under which individual aid is granted outside of an aid scheme can be found)

Other information

ANNEX II

FORM OF THE PERIODIC REPORT TO BE PROVIDED TO THE COMMISSION**Annual reporting format on aid schemes exempted under a group exemption regulation adopted pursuant to Article 1 of Council Regulation (EC) No 994/98**

Member States are required to use the format below for their reporting obligations to the Commission under group exemption regulations adopted on the basis of Council Regulation (EC) No 994/98.

The reports shall be provided in computerised form.

Information required for all aid schemes exempted under group exemption regulations adopted pursuant to Article 1 of Council Regulation (EC) No 994/98.

1. Title of aid scheme
2. Commission exemption regulation applicable
3. Expenditure

(Separate figures have to be provided for each aid instrument within a scheme or individual aid (e.g. grant, soft loans, etc.) The figures have to be expressed in euros or, if applicable, national currency. In the case of tax expenditure, annual tax losses have to be reported. If precise figures are not available, such losses may be estimated.

These expenditure figures should be provided on the following basis.

For the year under review indicate separately for each aid instrument within the scheme (e.g. grant, soft loan, guarantee, etc.):

 - 3.1 amounts committed, (estimated) tax losses or other revenue forgone, data on guarantees, etc. for new assisted projects. In the case of guarantee schemes, the total amount of new guarantees handed out should be provided.
 - 3.2 actual payments, (estimated) tax losses or other revenue forgone, data on guarantees, etc. for new and current projects. In the case of guarantee schemes, the following should be provided: total amount of outstanding guarantees, premium income, recoveries, indemnities paid out, operating result of the scheme under the year under review;
 - 3.3 number of assisted projects and/or enterprises;
 - 3.4 (Leave blank)
 - 3.5 estimated overall amount of:
 - investment aided,
 - expenditure for conservation of traditional landscapes and buildings aided,
 - expenditure for relocation of farm buildings in the public interest aided,
 - aid granted for investment in processing and marketing,
 - aid granted for setting up of young farmers,
 - aid granted for early retirement,
 - expenditure of producer groups aided,
 - expenditure for insurance premiums aided,
 - expenditure for land reparation aided,
 - expenditure for the production and marketing of quality agricultural products aided,
 - expenditure for technical support aided.
 - 3.6 regional breakdown of amounts under points 3.1 either by regions defined at NUTS ⁽¹⁾ level 2 or below or by Article 87(3)(a) regions, Article 87(3)(c) regions and non-assisted regions, or by less-favoured areas and other areas.
 - 3.7 sectoral breakdown of amounts under 3.1 by beneficiaries' sectors of activity (if more than one sector is covered, indicate the share of each):
 - production and/or processing and/or marketing;
 - type of animal product;
 - type of plant product.
4. Other information and remarks.

⁽¹⁾ NUTS is the nomenclature of territorial unit for statistical purposes in the Community.

COMMISSION REGULATION (EC) No 2/2004
of 2 January 2004
amending the import duties in the cereals sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals ⁽¹⁾, as last amended by Regulation (EC) No 1104/2003 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1249/96 of 28 June 1996 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards import duties in the cereals sector ⁽³⁾, as last amended by Regulation (EC) No 1110/2003 ⁽⁴⁾, and in particular Article 2(1) thereof,

Whereas:

- (1) The import duties in the cereals sector are fixed by Commission Regulation (EC) No 2348/2003 ⁽⁵⁾.

- (2) Article 2(1) of Regulation (EC) No 1249/96 provides that if during the period of application, the average import duty calculated differs by EUR 5 per tonne from the duty fixed, a corresponding adjustment is to be made. Such a difference has arisen. It is therefore necessary to adjust the import duties fixed in Regulation (EC) No 2348/2003,

HAS ADOPTED THIS REGULATION:

Article 1

Annexes I and II to the amended Regulation (EC) No 2348/2003 are hereby replaced by Annexes I and II to this Regulation.

Article 2

This Regulation shall enter into force on 3 January 2004.

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

Done at Brussels, 2 January 2004.

For the Commission
J. M. SILVA RODRÍGUEZ
Agriculture Director-General

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 158, 27.6.2003, p. 1.

⁽³⁾ OJ L 161, 29.6.1996, p. 125.

⁽⁴⁾ OJ L 158, 27.6.2003, p. 12.

⁽⁵⁾ OJ L 346, 31.12.2003, p. 54.

ANNEX I

Import duties for the products covered by Article 10(2) of Regulation (EEC) No 1766/92

CN code	Description	Import duty ⁽¹⁾ (EUR/tonne)
1001 10 00	Durum wheat high quality	0,00
	medium quality	0,00
	low quality	0,00
1001 90 91	Common wheat seed	0,00
ex 1001 90 99	Common high quality wheat other than for sowing	0,00
1002 00 00	Rye	12,70
1005 10 90	Maize seed other than hybrid	42,14
1005 90 00	Maize other than seed ⁽²⁾	42,14
1007 00 90	Grain sorghum other than hybrids for sowing	12,70

⁽¹⁾ For goods arriving in the Community via the Atlantic Ocean or via the Suez Canal (Article 2(4) of Regulation (EC) No 1249/96), the importer may benefit from a reduction in the duty of:

- EUR 3 per tonne, where the port of unloading is on the Mediterranean Sea, or
- EUR 2 per tonne, where the port of unloading is in Ireland, the United Kingdom, Denmark, Sweden, Finland or the Atlantic coasts of the Iberian peninsula.

⁽²⁾ The importer may benefit from a flat-rate reduction of EUR 24 per tonne, where the conditions laid down in Article 2(5) of Regulation (EC) No 1249/96 are met.

ANNEX II

Factors for calculating duties

(period from 30 December to 31 December 2003)

1. Averages over the two-week period preceding the day of fixing:

Exchange quotations	Minneapolis	Chicago	Minneapolis	Minneapolis	Minneapolis	Minneapolis
Product (% proteins at 12 % humidity)	HRS2. 14 %	YC3	HAD2	Medium quality (*)	Low quality (**)	US barley 2
Quotation (EUR/t)	130,36 (****)	78,39	165,58 (***)	155,58 (***)	135,58 (***)	122,99
Gulf premium (EUR/t)	—	15,01	—	—	—	—
Great Lakes premium (EUR/t)	16,49	—	—	—	—	—

(*) A discount of 10 EUR/t (Article 4(3) of Regulation (EC) No 1249/96).

(**) A discount of 30 EUR/t (Article 4(3) of Regulation (EC) No 1249/96).

(***) Fob Duluth.

(****) Premium of 14 EUR/t incorporated (Article 4(3) of Regulation (EC) No 1249/96).

2. Averages over the two-week period preceding the day of fixing:

Freight/cost: Gulf of Mexico–Rotterdam: 25,67 EUR/t; Great Lakes–Rotterdam: 36,74 EUR/t.

3. Subsidy within the meaning of the third paragraph of Article 4(2) of Regulation (EC) No 1249/96: 0,00 EUR/t (HRW2)
0,00 EUR/t (SRW2).

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 16 December 2003

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(2003) 4749)

(Only the Dutch text is authentic)

(Text with EEA relevance)

(2004/1/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Whereas:

I. FACTS

- (1) By letter of the Permanent Representation of the Kingdom of the Netherlands to the European Union of 17 January 2003, 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 (SCCPs) ⁽¹⁾.

1. ARTICLE 95(4) AND (6) OF THE TREATY

- (2) 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.

(.....)

⁽¹⁾ OJ L 177, 6.7.2002, p. 21.

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.

In the absence of a Decision by the Commission within this period the national provisions referred to in paragraphs 4 (...) shall be deemed to have been approved.

When justified by the complexity of the matter and in the absence of danger for human health, the Commission may notify the Member State concerned that the period referred to in this paragraph may be extended for a further period of up to six months.'

2. DIRECTIVE 2002/45/EC

- (3) 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⁽²⁾, as amended, establishes rules restricting the marketing and use of certain dangerous substances and preparations.
- (4) According to Article 1(1), the Directive applies to the dangerous substances and preparations listed in Annex I. Article 2 provides that Member States shall take all necessary measures to ensure that the dangerous substances and preparations listed in Annex I may only be placed on the market or used subject to the conditions specified therein.
- (5) Directive 76/769/EEC has been amended on several occasions, *inter alia*, to add new dangerous substances and preparations to Annex I thereto, thereby introducing the restrictions on their marketing and/or use necessary to protect human health and/or the environment.
- (6) 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.
- (7) 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.
- (8) 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.
- (9) Article 2(1) provides that Member States shall adopt and publish, not later than 6 July 2003, the laws, regulations and administrative provisions necessary to comply with this Directive and that they shall forthwith inform the Commission thereof and that they shall apply those measures from 6 January 2004 at the latest.

⁽²⁾ OJ L 262, 27.9.1976, p. 201.

3. NATIONAL PROVISIONS

- (10) The national provisions notified by the Netherlands were introduced by 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).
- (11) 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-retardant in rubber, plastics or textiles.

However, under Article 2(2) SCCPs may continue to be used until 31 December 2004 in dam sealants or as flame-retardants in conveyor belts for exclusive use in mining.

- (12) These provisions were notified to the Commission at the draft stage on 8 March 1999 under Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998, laying down a procedure for the provision of information in the field of technical standards and regulations ⁽³⁾. The Netherlands pointed out that the introduction of the envisaged provisions was necessary in order for it to comply with its international obligations under the Convention for the prevention of marine pollution from land-based sources (the Paris Convention) and the Paris Commission (PARCOM) Decision 95/1 of June 1995 on the phasing out of SCCPs taken in implementation thereof, to which the Kingdom of the Netherlands is Contracting Party ⁽⁴⁾. Five Member States ⁽⁵⁾ and the European Commission issued observations, whereas Spain issued a detailed opinion. All these Member States except Denmark and Austria opposed the introduction of the envisaged national provisions and so did the European Commission.

4. BACKGROUND INFORMATION ON SCCPS

- (13) Chlorinated paraffins are chemical substances manufactured from the chlorination of straight chain paraffins or alkanes. They are often divided into several groups depending on the chain length of the starting material and the amount of chlorine in the final product. Three major groups are short, medium and long chained chlorinated paraffins (SCCPs, MCCPs and LCCPs, respectively). SCCPs are manufactured from straight chain paraffins of chain length C10 to C13. The commercial SCCPs can contain between 49 and 71 % chlorine as an average. They can be marketed and used in their pure form but they can also be present as impurities in other substances and preparations, especially MCCPs ⁽⁶⁾.

⁽³⁾ OJ L 204, 21.7.1998, p. 37.

⁽⁴⁾ Under the Paris Convention the Contracting Parties committed themselves to take all possible steps to prevent and combat marine pollution from land-based sources. All Member States of the European Community except Austria, Greece, Luxembourg and Italy are signatories to the Convention. The European Community is also Contracting Party. The Paris Commission (PARCOM), composed of representatives of each of the Contracting Parties, is responsible for the administration of the Convention. Article 18(3) provides that the commission can adopt programmes and measures for the prevention or the reduction of pollution from land-based sources by certain chemical substances listed in Annex A, Part I, II and III, to the Convention. Adopted on the legal basis of Article 18(3), PARCOM Decision 95/1 provides for the phasing out of certain uses of SCCPs according to the following time frame: use as plasticisers in paints and coatings, use in metal working fluids, use as flame retardants in rubber, plastics and textiles by 31 December 1999; use as plasticise in sealants and as flame retardants in conveyor belts for exclusive use in mining by 31 December 2004. Of the eleven Member States of the European Community which are Contracting Parties to the Paris Convention all but the United Kingdom have committed themselves to PARCOM Decision 95/1. The European Community is not Party to the PARCOM Decision. The Paris Convention was replaced by the new Convention for the protection of the marine environment of the North-East Atlantic (OSPAR Convention, 1992). Under the new Convention, a new OSPAR commission replaced the Paris Commission.

⁽⁵⁾ Italy, Denmark, United Kingdom, Austria and Germany.

⁽⁶⁾ Directive 2002/45/EC lays down a concentration limit of 1 % for SCCPs as constituent of other substances and preparations.

- (14) In the European Community SCCPs are mainly used as additives in metal working fluids. Other uses are as flame-retardants in rubber formulations and as additives for paints and other coating systems. Minor uses are as fattening and softening agents in the leather industry, impregnation agents in the textiles industry and as additives for sealing compounds.
- (15) Due to their toxicity and their apparent persistence and tendency to bioaccumulation, SCCPs are among the substances for which measures aimed at combating pollution are envisaged under the Paris Convention (now OSPAR Convention) ⁽⁷⁾. During the early 1990s, the Paris Commission expressed a concern over the emissions of SCCPs to the marine environment and started to consider regulatory measures on the use of these substances. At that time, the European producers submitted a proposal for a voluntary agreement with a view to phasing out the supply of SCCPs intended for metal working fluids applications and encouraging the downstream industry to use products less damaging to the aquatic environment. The negotiations were not successful and the Paris Commission (PARCOM) finally adopted Decision 95/1. The United Kingdom opposed this Decision pointing out that it was not supported by an appropriate assessment of the risks.
- (16) By Commission Regulation (EC) No 1179/94 ⁽⁸⁾, SCCPs were included in the first list of priority substances to be subjected to risk evaluation under Council Regulation (EEC) No 793/93 of 23 March 1993 on the evaluation and control of the risks of existing substances ⁽⁹⁾, with the United Kingdom acting as rapporteur.
- (17) The risk assessment report on SCCPs produced by the United Kingdom was finalised in September 1997, after review by the Member States' technical experts ⁽¹⁰⁾. The report, which considered all scientific evidence available until 1996, including that on which PARCOM Decision 95/1 was based, highlighted certain environmental risks to aquatic organisms from the use of SCCPs in metalworking and leather finishing, for which it suggested that risk reduction measures should be considered. The remaining current uses were not considered to raise a concern for both the environment and human health, although further information and testing were considered to be needed to adequately characterise certain possible environmental risks from the use of SCCPs in rubber.
- (18) The risk assessment report produced by the United Kingdom was submitted to the SCTEE (Scientific Committee on Toxicity Ecotoxicity and the Environment) for peer review. In its opinion of 27 November 1998 ⁽¹¹⁾, the CSTEE confirmed the scientific validity of the results of the risk assessment.

⁽⁷⁾ See footnote 4.

⁽⁸⁾ OJ L 131, 26.5.1994, p. 3.

⁽⁹⁾ OJ L 84, 5.4.1993, p. 1. This regulation establishes, *inter alia*, a Community procedure for the evaluation of the risks of existing substances, i.e. substances appearing on the European Inventory of Existing Commercial Substances (OJ C 146, 15.6.1990, p. 1). Under this Regulation, lists of priority substances to be subjected to Community risk evaluation are to be adopted through a Commission Regulation specifying, for each substance, the Member State responsible for the evaluation (Member State rapporteur). Specific procedures and methodologies have to be followed in carrying out the assessment of the real or potential risks to man and the environment from the substances concerned. These are specified in Commission Regulation (EC) No 1488/94 of 28 June 1994 laying down the principles for the assessment of the risks to man and the environment of existing substances in accordance with Council Regulation (EEC) No 793/93 (OJ L 161, 26.6.1994, p. 3) and further detailed in the Technical Guidance Document on risk assessment for new and existing substances (TGD — <http://ecb.jrc.it/existing-chemicals/>). The results of the risk evaluation and, where appropriate, the recommended strategy are finally adopted at Community level, normally in the form of a Commission Recommendation. On the basis of the risk evaluation and the recommended strategy so adopted, the Commission is then to decide to propose Community measures in the framework of Directive 76/769/EEC or in the framework of other relevant existing Community instruments.

⁽¹⁰⁾ The Member States' experts meet regularly in order to review risk assessment reports with a view to preparing the measures to be adopted according to the Committee procedure laid down in Council Regulation (EEC) No 793/93.

⁽¹¹⁾ Opinion of the CSTEE on the results of the risk assessment of SCCPs carried out in the framework of Council Regulation (EEC) No 793/93 on the evaluation and control of the risks of existing substances — Opinion expressed at the sixth CSTEE plenary meeting, Brussels, 27 November 1998. http://europa.eu.int/comm/food/fs/sc/sct/out23_en.html

- (19) By Commission Directive 98/98/EC ⁽¹²⁾, SCCPs have been classified as dangerous substances under Annex I to Council Directive 67/548/EEC of 27 June 1967 on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances ⁽¹³⁾. In particular, they are classified as carcinogens, category 3, and are labelled with the risk phrase R 40 (Possible risk of irreversible effects) and the symbol Xn (harmful). They are also classified as dangerous for the environment and are labelled with the risk phrase R 50/53 ('very toxic to aquatic organisms' and 'may cause long-term adverse effects in the aquatic environment') and the symbol N ('dangerous for the environment').
- (20) The risk assessment report on SCCPs was finalised in October 1999 ⁽¹⁴⁾. The results of the risk assessment of SCCPs and the corresponding risk reduction strategy were adopted at Community level through Commission Recommendation 1999/721/EC of 12 October 1999 ⁽¹⁵⁾ in accordance with under Regulation (EEC) No 793/93. The relevant parts of the Recommendation are reproduced below.

1. RISK ASSESSMENT

A. Human health

The conclusion of the evaluation of the risks to man for WORKERS, CONSUMERS and MAN EXPOSED VIA THE ENVIRONMENT is that there is at present no need for further information and/or testing or for risk reduction measures beyond those which are being applied. This conclusion is reached because:

- the risk assessment shows that risks related to the population mentioned above are not expected. The main route of potential worker exposure during production and use is via dermal exposure. Inhalation is also a potential route of exposure during use of metal working fluids and hot-melt adhesives containing the substance. Risk reduction measures already being applied in the framework of the workplace or other relevant Community legislation in force are considered sufficient,
- consumer exposure, which may occur by contact with leather goods treated with the substance and from non-professional use of metal working fluids, was considered not to be of concern.

B. Environment

The conclusion of the evaluation of the risks to the environment for AQUATIC (sediment) and TERRESTRIAL ECOSYSTEM is that there is a need for further information and/or testing. This conclusion is reached because:

- there is a need for better information to adequately characterise the risk to sediment compartment arising from production of the substance and its use in rubber, to the soil and sediment compartments arising from the formulation and use of metal working fluids and leather finishing products, and to the soil and sediment compartments at regional level.

⁽¹²⁾ OJ L 355, 30.12.1998, p. 1. This Directive adds, *inter alia*, SCCPs to Annex I to the latter Directive. This is an index of dangerous substances for which harmonised classification and labelling have been agreed at Community level according to the procedure laid down in Article 4(3) of the same Directive.

⁽¹³⁾ OJ 196, 16.8.1967, p. 1.

⁽¹⁴⁾ 'European Union Risk Assessment Report, CAS No: 85535-84-8, EINECS No: 287-476-5, alkanes, C₁₀₋₁₃, chloro, first priority list, volume: 4 — European Commission Joint Research Centre, Institute for Health and Consumer Protection, European Chemicals Bureau, Existing substances Institute for Health and Consumer Protection, Joint Research Centre, European Commission' — <http://ecb.jrc.it/existing-chemicals/>.

⁽¹⁵⁾ OJ L 292, 13.11.1999, p. 42.

The information requirements are:

- experimental determination of the K_{oc} (*),
- monitoring data in soil and sediment near sources of release,
- toxicity testing on soil and sediment dwelling organisms if the abovementioned information does not remove the concern for the abovementioned compartments.

The conclusion of the evaluation of the risks to the environment for MICRO-ORGANISMS in the SEWAGE TREATMENT PLANT and ATMOSPHERE is that there is at present no need for further information and/or testing or for risk reduction measures beyond those which are being applied. This conclusion is reached because:

- the risk assessment shows that risks related to the environmental spheres mentioned above are not expected. Risk reduction measures already being applied are considered sufficient.

The conclusion of the evaluation of the risks to the environment for AQUATIC (excluding sediment) ECOSYSTEM and NON-COMPARTMENT SPECIFIC EFFECTS RELEVANT TO THE FOOD CHAIN is that there is a need for specific measures to limit the risks. This conclusion is reached because of:

- concerns for effects on the local aquatic environmental spheres mentioned above as a consequence of exposure arising from formulation and use of metal working fluids containing the substance and leather finishing products containing the substance,
- concerns for non-compartmental specific effects relevant to the food chain arising from the formulation and use of leather finishing products containing the substance and from use of metal working fluids containing the substance.

II. STRATEGY FOR LIMITING RISKS for the ENVIRONMENT

Marketing and use restrictions should be considered at Community level for the substance to protect the environment from the use and formulation of products, in particular for use in metal working and leather finishing. Further work is necessary to establish those uses for which derogations can be justified. The measures identified to protect the environment will also reduce human exposure.

(*) Organic carbon partition coefficient, a parameter which represents the distribution of a compound between organic carbon in the soil (e.g. humic acid) and water.'

- (21) On 20 June 2000 the Commission adopted a proposal for an amendment of Directive 76/769/EC with a view to introducing the marketing and use restrictions suggested by the Community risk assessment, which finally led to the adoption of Directive 2002/45/EC.
- (22) As required by point 42.2 of Annex I to Directive 76/769/EEC, as introduced by Directive 2002/45/EC, the Commission started the review of the remaining uses of SCCPs. In this context, the Commission requested the United Kingdom, as Member State rapporteur for SCCPs in the framework of Regulation (EEC) No 793/93, to gather and review all new relevant available data and, if appropriate, to update the Community risk assessment report. Furthermore, the Commission asked the OSPAR Secretariat whether there were any new scientific data on risks posed by SCCPs which might modify the conclusions of the previous risk assessment. The Commission finally asked the SCTEE whether the latter was aware of any new available scientific evidence which could influence the results of the risk assessment and might call for a modification of its conclusions.

- (23) In its opinion of 22 December 2002, the SCTEE concluded that the review of new knowledge on SCCPs does not highlight any need to change the conclusions of the Community risk assessment ⁽¹⁶⁾.
- (24) In February 2003, a draft updated risk assessment report on SCCPs was produced by the United Kingdom as a follow-up to Directive 2002/45/EC and was subsequently submitted to the Member States' technical experts ⁽¹⁷⁾ for review. The final version was made available in late July 2003. This report reviews the data on the environmental exposure, fate and effects of SCCPs that have become available since the original risk assessment was completed and reassesses the risks from the uses other than those subject to the marketing and use restrictions laid down in Directive 2002/45/EC. The two opinions of the SCTEE referred to above (recitals 18 and 23) have also been considered. By contrast to the original risk assessment, the updated risk assessment covers the risks to the marine environment, both at local and at wider scale. The latter aspect has been evaluated in relation to the newly finalised criteria for the identification of persistent or very persistent, bioaccumulative or very bioaccumulative and toxic (PBT, vPBT, PvBT or vPvBT) substances ⁽¹⁸⁾. It also considers in detail the emissions of SCCPs over the lifetime of products containing them.
- (25) The report focuses on the environmental risks and comprises two parts. The first part illustrates the assessment carried out on the basis of the PEC/PNEC values ratios ⁽¹⁹⁾ (hereinafter referred to as 'classical risk assessment'). The second part addresses the evaluation of SCCPs against the PBT criteria and assesses the risks to the wider marine environment (hereinafter referred to as 'PBT assessment').
- (26) The results of the updated risk assessment are reproduced below:

'(x) (i) There is a need for further information and/or testing.

The worst-case PEC/PNEC ratios indicate a possible risk to surface water and sediment (from the formulation and use (application) of backcoatings for textiles), soil (from the formulation and use in rubber and textiles and from regional sources of "waste remaining in the environment") and secondary poisoning (from formulation and use in rubber and textiles, and from use in paints and coatings), as well as marine ecosystems (from all uses of short-chain chlorinated paraffins, except for use in sealants, formulation of paints and production sites). There is a need for further specific exposure information, in order to refine the release estimates. In particular, information could be provided on:

- actual releases from the compounding and conversion of rubber,
- the amounts of short-chain chlorinated paraffins used at typical textile compounding (formulation) and backcoating sites,
- releases from backcoating formulation and textile backcoating sites,
- releases from paint application sites, and
- emissions during use and disposal of products.

⁽¹⁶⁾ Opinion of the SCTEE on 'SCCPs' — Follow-up to Directive 2002/45/EC, opinion expressed at the 35th SCTEE plenary meeting, Brussels, 17 December 2002. http://europa.eu.int/comm/food/fs/sc/sct/out23_en.html

⁽¹⁷⁾ See footnote 10.

⁽¹⁸⁾ According to the TGD (see footnote 9), substances displaying PBT properties are considered to have the potential to pollute the wider marine environment, thus requiring measures to control emissions.

⁽¹⁹⁾ This risk-assessment methodology, outlined in Commission Regulation (EC) No 1488/94 and further detailed in the Technical Guidance Document (see footnote 9) consists in calculating the ratios between the predicted environmental concentration (PEC) of a given substance and the predicted no effect concentration (PNEC) of that substance in any specific environmental compartment, ratios above 1 highlighting a situation of real or potential risks, depending on the uncertainties surrounding the PEC and PNEC values.

The substance meets the screening criteria for consideration as a PBT substance, and so a simulation test for biodegradability could also be performed to determine the half-life in the marine environment. Additional toxicity data would allow the PNEC for both marine water and sediment to be revised, but the need to gather such data is less important than the determination of persistence. In addition, consideration could be given to carrying out further biodegradation testing of short-chain chlorinated paraffins in soil.

Note: Measurements indicate that the substance is widely distributed in the environment. The trend in levels is unknown, and they could be related to former uses that are now controlled. In addition, a clear risk has not been identified on the basis of these measurements. Nevertheless, the occurrence of short-chain chlorinated paraffins in the Arctic and marine predators mean that these findings remain a concern. Whilst it is not possible to say whether or not on a scientific basis there is a current or future risk to the environment, in light of:

- data indicating presence in biota,
- the apparent persistence of the substance (based on laboratory tests),
- the time it would take to gather the information, and
- the fact that it could be difficult to reduce exposure if the additional information confirmed a risk,

consideration could be given at a policy level about the need to investigate precautionary risk management options now in the absence of measured environmental half-life data, to reduce the inputs to water (and soil from the application of sewage sludge), including from “waste remaining in the environment”. This could be reconsidered should an environmental simulation test show that the persistence criterion is not fulfilled. In connection with this, it should be noted that the substance appears to meet the screening criteria for consideration as a candidate persistent organic pollutant (POP) under international conventions.

- (x) (ii) There is at present no need for further information and/or testing or for risk reduction measures beyond those that are being applied already.

This conclusion applies to the assessment of:

- the local surface water compartment for production sites, compounding and conversion of rubber, formulation and use of sealants, the formulation and use of paints and coatings, and at the regional level (it should be noted that there are some uncertainties in the PNEC for this endpoint and, if a more conservative interpretation of the data were taken, possible risks would be identified for production sites, compounding and conversion of rubber and industrial application of paints and coatings),
- the local sediment compartment for production sites, formulation and use of sealants, the formulation and use of paints and coatings, and at the regional level,
- the assessment of waste water treatment plants from all uses,
- the atmospheric compartment and wastewater treatment processes for production and all uses,
- the local terrestrial compartment for production sites and formulation and use of sealants and formulation and use of paints, and the regional agricultural soil compartment (it should be noted that there are some uncertainties in the PNEC for this endpoint and if a more conservative interpretation of the data were taken, possible risks would be identified for industrial use of paints), and
- secondary poisoning for production sites, use of sealants and formulation of paints.’

- (27) Requested by the Commission to review the updated risk assessment report and to clarify certain specific issues relevant for the assessment of the notified national provisions, on 3 October 2003 the SCTEE adopted its opinion thereof ⁽²⁰⁾. In formulating this opinion, the SCTEE considered also the study 'Ecotoxicological advice on chlorinated paraffins' commissioned by the Dutch government and the OSPAR priority substance series on SCCPs (OSPAR COMMISSION, 2001) and the UNECE ad hoc expert group substance dossier on SCCPs (Final Draft II, 2003). As regards the PBT assessment, the SCTEE considers that though there are still uncertainties associated with the classification of SCCPs as PBT substances, on the basis of weight of evidence, and taking particular note of evidence on the occurrence of SCCPs in environmental compartments and top predators in remote places, this classification is appropriate and unlikely to be changed by more work. However, the SCTEE reiterates its concerns that PBT classification cannot be the sole basis for risk management, expressing the view that more detailed analysis of risk and, minimally, the sources, routes and pathways into the marine environment are necessary to that effect. As regards the 'classical risk assessment' the SCTEE notes that this assessment, though based on a number of worst case assumptions with respect to releases and exposures, has extended the areas of concern to the risks from the aquatic environment, sediment and soil from back coating of textiles and in rubber. The SCTEE also observes that for soil and sediment, in contrast with the report, an extra factor of 10 should be applied the PEC/PNEC ratios, which would make all RQs for the soil and sediment compartments greater than 1. However, the SCTEE considers that the PNEC values used to assess the risks for these environmental compartments are not reliable. The SCTEE argues that risk management decisions would be more reliably based on experimentally derived PNEC and is of view these data could be collected relatively rapidly. The SCTEE points out further inadequacies in the assumptions associated with secondary poisoning. In conclusion, the SCTEE, though acknowledging that the uses of SCCPs not currently subject to controls under the existing Community risk reduction measures may give cause for concern in terms of environmental effects, considers that the available data are not adequate to justify risk reduction measures and suggests that further information and testing are necessary to adequately assess the risks.
- (28) As a follow-up to the above developments, the Commission, pursuant to Article 10 of Regulation (EEC) 793/93 ⁽²¹⁾, is preparing a regulation with a view to obliging industry to provide the missing data and information, thus allowing for a more reliable reassessment of the risks. Following review by the Member States' technical experts, the new updated risk assessment will, if appropriate, be subsequently submitted to the SCTEE for peer review.
- (29) In addition to the Community measures referred to above, SCCPs are considered by other Community legislation. In view of their human toxicity and aquatic toxicity, of their widely detected presence in the aquatic environment and of the fact that they are already subject to PARCOM Decision 95/1, SCCPs were included by 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 ⁽²²⁾ among the priority hazardous substances within the meaning of Article 16(3) of the latter Directive. Under this Directive, specific measures must be adopted at Community level with a view to the cessation or phasing out of discharges, emissions and losses within 20 years after their adoption. To date no such measures have been adopted as regards SCCPs.

⁽²⁰⁾ Opinion of the CSTEE on 'The scientific basis of the national provisions on short chain chlorinated paraffins (SCCPs) being more restrictive than those laid down in Directive 2002/45/EC that The Netherlands intends to maintain in accordance with Article 95(4) of the EC Treaty' — Adopted by the CSTEE by written procedure on 3 October 2003. http://europa.eu.int/comm/food/fs/sc/sct/out200_en.pdf.

⁽²¹⁾ According to the Regulation manufacturers and importers have as a general rule to submit to the rapporteur certain information or to carry out testing. Article 10 provides that when, for the purpose of risk evaluation, the rapporteur considers it necessary to request the manufacturers or importers to submit further information or to carry out further testing, it shall inform the Commission accordingly and a decision thereof is taken in accordance with the procedure laid down in Article 15.

⁽²²⁾ OJ L 331, 15.12.2001, p. 1.

II. PROCEDURE

- (30) At the time of adoption of Directive 2002/45/EC, the Dutch delegation voted against that Directive, stating, in a voting declaration made on 24 April 2002, that the implementation of a Directive on SCCPs would make it impossible for the Netherlands to discharge its international obligations under the Paris Convention and PARCOM Decision 95/1.
- (31) By letter of the Permanent Representation of the Kingdom of The Netherlands to the European Union of 17 January 2003, the Dutch Government, referring to Article 95(4) of the Treaty, notified to the Commission its national provisions on the use of SCCPs that it intends to maintain after the adoption of Directive 2002/45/EC.
- (32) By letter of 25 March 2003, 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 22 January 2003, the day following the day on which the notification was received.
- (33) By letter of 15 April 2003, 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* ⁽²³⁾ 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.
- (34) In February 2003, the United Kingdom produced the first draft of the updated risk assessment report on SCCPs referred to in Section I(4) of the present Decision.
- (35) On 17 July 2003, pursuant to Article 95(6), the Commission notified the Kingdom of the Netherlands of its Decision 2003/549/EC of the same date, whereby it extended the period referred to in the first subparagraph of the said Article to approve or reject the notified national provisions for a further period expiring on 20 December 2003. The Commission considered that, in the absence of an actual danger to human health, such an extension was justified by the need to consult the SCTEE with a view to clarifying as far as possible the issues arising out from the draft updated risk assessment report.
- (36) In late July 2003 the United Kingdom produced the final version of updated risk assessment report on SCCPs, which was subsequently submitted to the SCTEE for review, together with the evidence submitted by the Kingdom of the Netherlands in support of its notification.
- (37) On 3 October 2003 the SCTEE adopted the opinion referred to in Section I(4) of the present Decision.

III. ASSESSMENT

1. ADMISSIBILITY

- (38) In Decision 2003/549/EC referred to above, the Commission concluded that the application submitted by the Kingdom of the Netherlands is 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.
- (39) In summary, the notified national provisions depart 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 to be subjected to restrictions on the marketing and use under the Directive, is prohibited in the Netherlands,

⁽²³⁾ OJ C 100, 26.4.2003, p. 20.

- 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 to be subjected to restrictions on the marketing and use under the Directive if SCCPs are present in a concentration below 1 %, is prohibited in the Netherlands.

2. MERITS

- (40) 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.
- (41) 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.
- (42) 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 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.
- (43) 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 REFERRED TO IN ARTICLE 30 OR RELATING TO THE PROTECTION OF THE ENVIRONMENT OR THE WORKING ENVIRONMENT

- (44) The Netherlands considers that the maintenance of its national provisions is necessary to protect the aquatic environment and human health from the risks arising from the current uses of SCCPs. Reference is made to the precautionary principle. In the view of the Netherlands, this principle has to be interpreted to mean that it cannot be expected to wait until a serious problem occurs, especially in view of the importance of high-quality ground and surface water for public health. The Netherlands recalls that SCCPs are extremely dangerous substances and are classified as dangerous for both human health and the environment under Directive 67/548/EEC. They are also considered to be persistent and particularly harmful to the aquatic environment under the OSPAR Convention. In view of their presence in the environment it was decided to phase out their uses through the Paris Commission (now OSPAR Commission) Decision 95/1. The Netherlands points out that SCCPs pose a serious threat to the Dutch aquatic environment. This would be clearly highlighted in a study by a Dutch toxicology consultant enclosed in the notification submitted by the Netherlands. Public health is also claimed to be at risk due to the fact that both surface water and groundwater are widely used for the abstraction of drinking water in the Netherlands.
- (45) In assessing whether the national provisions are justified, as claimed by the Netherlands, on grounds of human health and environmental protection, the Commission previously considered in its Decision 2003/549/EC that consideration has to be given not only to the evidence submitted by the Netherlands but also to all relevant evidence in the Commission's possession and, in particular, to the results of the risk assessments carried out in the framework of Regulation (EEC) No 793/93 and all other available evidence.

- (46) In reiterating this view, the Commission recalls that since the date of that Decision the final version of the updated risk assessment report on SCCPs and the related SCTEE's opinion of 3 October 2003 referred to in Section I(4) have been made available. This information, in view of its relevance for the assessment of the national provisions, has also to be taken into consideration.
- (47) As far as the evidence submitted by the Netherlands is concerned, the Commission previously examined the Dutch study enclosed in the notification file and concluded in its Decision 2003/549/EC that, in contrast with what the Netherlands claims, it does not highlight a risk for the Dutch aquatic environment and the Dutch population and hence does not support the grounds invoked by the Netherlands for maintaining the national provisions. This study will therefore not be considered further.
- (48) Overall, the evidence considered by the Commission for the purpose of the assessment of the national provisions include: the original risk assessment of SCCPs produced by the United Kingdom in 1997 and the related SCTEE's opinion of 27 November 1998, the conclusions of the risk assessment of SCCPs, as adopted in Recommendation 1999/721/EC, the updated risk assessment of SCCPs produced by the United Kingdom in late July 2003, the outcome of the discussions thereof held by the Member States' Technical Committee and the SCTEE's opinion of 3 October 2003. It has to be noted that in formulating the latter opinion, the SCTEE, upon request from the Commission, also examined the study submitted by the Netherlands.

2.1.1. *Human health*

- (49) The original risk assessment report on SCCPs finalised in 1997 and the related opinion of the SCTEE of 27 November 1998 do not highlight concerns for human health from all uses of SCCPs that are prohibited under the national provisions. No concern for human health in relation to these uses was either expressed in the subsequent conclusions of the risk assessment adopted at Community level in 1999 ⁽²⁴⁾ or the SCTEE's opinion of 22 December 2002. It has to be noted that in formulating the latter opinion, the SCTEE considered both the new information on SCCPs as well as the foreseeable beneficial impacts resulting from the implementation of the restrictions laid down in the recently adopted Directive 2002/45/EC. Finally, the absence of concerns from human health from all remaining uses of SCCPs was confirmed by the subsequent final version of the updated risk assessment report produced by the United Kingdom in late July 2003 and the related SCTEE's opinion of 3 October 2003, which also considered the study submitted by the Netherlands.
- (50) In the light of the foregoing, and in the absence of any other evidence to the contrary, it can be concluded that the national provisions are not justified by the need to protect human health.

2.1.2. *Environment*

- (51) The national provisions have to be assessed in relation to each of the aspects in which they are more restrictive than the requirements of Directive 2002/45/EC, starting with the prohibition of the uses of SCCPs as constituent of other substances and preparations in metal-working.

⁽²⁴⁾ See recital 20 of the present Decision.

2.1.2.1. Prohibition on the use of SCCPs as constituents of other substances and preparations in metal-working

- (52) Directive 2002/45/EC allows the use of SCCPs as constituent of other substances and preparations in metal-working in concentrations up to 1 %. This limit value, not included in the original Commission's proposal, was finally introduced to prevent medium chain chlorinated paraffins (MCCPs) from falling into the scope of the Directive. MCCPs contain SCCPs as constituents or as impurities in concentrations ranging from 0,3 to 1 % and 'may have similar applications to SCCPs and are used as replacements for SCCPs as extreme pressure additives in metalworking fluids, as plasticisers in paint and as additives in sealants' ⁽²⁵⁾. The Community legislator considered that this concentration limit would ensure an adequate level of environmental protection without affecting possible future measures on MCCPs awaiting the outcome of the on-going Community risk assessment of the latter substances ⁽²⁶⁾.
- (53) Neither the original risk assessment report on SCCPs, nor the related opinion of the SCTEE of 27 November 1998 and the conclusions of the risk assessment adopted through Recommendation 1999/721/EEC ⁽²⁷⁾ clarify whether this concentration limit is sufficiently protective. In its opinion of 22 December 2002, the SCTEE, after carefully reviewing the new information on SCCPs and also expressly considering the restrictions laid down in Directive 2002/45/EC, does not call into question that concentration limit.
- (54) Requested by the Commission to clarify this issue, the CSTEE concludes in its opinion of 3 October 2003 that this use of SCCPs may still lead to unacceptable risks.
- (55) It can therefore be concluded that the national provisions, in so far as they prohibit the use of SCCPs as constituent of other substances and preparations in metal-working can be justified by the need to protect the environment.
- (56) In addition, in the absence of any further information suggesting the legitimated 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 can be concluded that the national provisions do not appear to exceed what is necessary to attain that objective.

2.1.2.2. Prohibition of the use of SCCPs as substances and as constituents of other substances and preparations in the remaining uses

- (57) The prohibition of the remaining uses of SCCPs as substances will be assessed first.
- (58) The original risk assessment report on SCCPs and the related opinion of the SCTEE of 27 November 1998 do not highlight risks to the environment from uses of SCCPs in applications other than in metal-working and for leather finishing. This conclusion is upheld by the Commission in Recommendation 1999/721/EEC ⁽²⁸⁾. No need to change these conclusions, was expressed by the SCTEE in its opinion 22 December 2002, after careful evaluation of the new information on SCCPs and also taking into account the foreseeable beneficial impacts resulting from the implementation of the restrictions laid down in the recently adopted Directive 2002/45/EC.

⁽²⁵⁾ See OSPAR Commission document on SCCPs, 2001, paragraph 33.

⁽²⁶⁾ MCCPs are subject to risk assessment in the framework of Regulation (EEC) 793/93, with the United Kingdom acting as Member State rapporteur.

⁽²⁷⁾ See recital 20 of the present Decision.

⁽²⁸⁾ See recital 20 of the present Decision.

- (59) The conclusions of the final updated risk assessment report produced by the United Kingdom in late July 2003 diverge from those of the previous assessments. This report reassesses in a more comprehensive way the environmental risks associated with these uses on the basis of new data and information. In addition to a new assessment of the environmental risks carried out using the traditional PEC/PNEC-based methodology (hereinafter referred to as 'classical risk assessment'), an evaluation is provided of the risks to the wider marine environment in relation to the criteria for the identification of PBT substances (the latter is hereinafter referred to as 'PBT assessment'). The updated report therefore supersedes the previous reports and the related subsequent opinions for the common parts, which have therefore to be disregarded for the purposes of the assessment of the national provisions.
- (60) The Commission previously examined the first version of this report, in the form of a draft, as made available to it by the United Kingdom in February 2003, and in Decision 2003/549/EC concluded that it gave unclear indications as to whether the available information constituted sufficient scientific evidence to justify the recourse to risk reduction measures. In addition, the Commission observed that the draft report did not fully identify the uses of SCCPs giving rise to concern nor the extent to which risk reduction measures could be justified to adequately address those concerns.
- (61) The final version of the report, though clarifying certain aspects of the risk assessment, still contains unclear indications. On the one hand, the results of the 'classical risk assessment' are not considered as being sufficiently reliable. Likewise, the 'PBT assessment' is not considered to be conclusive. On the other hand the view is expressed that the wide distribution of SCCPs in the environment, combined with the likely PBT properties of these substances, raise a concern which could justify recourse to precautionary control measures to reduce inputs to water and soil.
- (62) The Member States' technical experts, after reviewing the updated report and noting the remaining uncertainties, expressed the view that immediate consideration should be given to risk reduction measures.
- (63) In its opinion of 3 October 2003 the SCTEE arrives at different conclusions. Unlike the rapporteur and the Member States' technical experts, the SCTEE considers that the data and information relevant to the 'PBT assessment', though supporting the classification of SCCPs as PBT substances, do not provide a sufficient scientific basis for risk reduction measures. Turning to the results of the 'classical risk assessment', the SCTEE, despite the remaining uncertainties, agrees with the assessment that there are possible environmental risks from the use of SCCPs in textiles and rubber. In addition, the SCTEE points out that there may be concerns from all other uses of SCCPs with respect to the likely impacts on soil and sediments. However, the SCTEE does not consider that the available data and information constitute a sound scientific basis for risk reduction measures. Rather, in view of the fact that the data needed to reduce the remaining uncertainties could be collected relatively rapidly, the SCTEE expresses the view that reduction measures should await the outcome of a new reassessment conducted on the basis of adequate PEC and PNEC values.
- (64) It appears from the foregoing that there are still uncertainties in the evaluation of the risks from the remaining uses of SCCPs. While the opinions diverge as to the interpretation of the available information in terms of justification for risk reduction measures, there is agreement that all remaining uses of SCCPs, though for different reasons and to varying degrees, are identified as giving rise to potential concerns.
- (65) The Commission recalls that a situation of scientific uncertainty as to the existence of a risk may justify maintaining precautionary protective measures necessary to ensure the desired level of protection during a limited period of time to the extent that this period is necessary to resolve the scientific uncertainties⁽²⁹⁾. It is clear that such a situation exists with regard to the potential risks from the remaining uses of SCCPs. Furthermore the potential concerns expressed suggest that the Commission cannot exclude that Directive 2002/45/EC, which allows these uses, may be insufficient to ensure the level of protection pursued by the Netherlands.

⁽²⁹⁾ Communication from the Commission on the precautionary principle (COM(2000)1).

- (66) In these circumstances and taking into account the precautionary principle, it can be concluded that the national provisions, in so far as they prohibit the remaining uses of SCCPs, can 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. This conclusion appears all the more justified as SCCPs are identified as priority hazardous substances under Directive 2000/60/EC, for which measures aimed at the cessation or phasing out of discharges, emissions, and losses are recognised to be necessary in order to ensure an enhanced protection and improvement of the aquatic environment.
- (67) The conclusion above applies to the prohibition of the remaining uses of SCCPs as substances. As far as the prohibition of use of SCCPs as constituents of other substances and preparations is concerned, it has first to be noted that these uses are not covered by the updated risk assessment report. Requested by the Commission to clarify whether these uses pose a risk, the SCTEE, in its opinion of 3 October 2003, concludes for the negative, except for the use in plastics, where possible problems may occur.
- (68) It can therefore be concluded that the national provisions, in so far as they prohibit the use of SCCPs as constituents of other substances and preparations in the remaining applications, except in plastics, are not justified by the need to protect the environment.
- (69) It remains to be assessed whether the national provisions, to the extent that the Commission considers that they can be temporarily maintained, do not exceed what is necessary to attain the legitimate objective pursued. In this regard, the Commission observes that discussions are on-going in the framework of Directive 2000/60/EC in order to identify the appropriate cost-effectiveness and proportionate emissions control measures of SCCPs and that, to date, it has not been possible to identify measures less restrictive than the national provisions capable of ensuring that the level of exposure of the environment to SCCPs from the remaining current uses is effectively kept to a minimum. On the basis of the available information, the national provisions appear to constitute the only available measure to ensure the maintenance of the high level of environmental protection pursued by the Netherlands.
- (70) On the basis of the available information and pending the identification of the risk reduction measures mentioned above, it can therefore be concluded that the national provisions are not disproportionate to the legitimate objective pursued.
- (71) The Commission will examine whether to adapt Directive 2002/45/EC and/or to propose the appropriate measures as required by Directive 2000/60/EC taking into account any additional information mentioned above.

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*

- (72) 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.
- (73) 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*

- (74) 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 preconditions laid down in Article 95(6) 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.
- (75) 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*

- (76) 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.
- (77) 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

- (78) In the light of the foregoing, 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 or intended for use as flame retardants in plastics, as plasticising substances in paints, coatings and sealants, and as flame-retardant substances in textiles,
 - are not justified on grounds relating to the protection of the environment in so far as they prohibit the use of SCCPs as constituents of other substances and preparations in concentrations lower than 1 % intended for use as plasticisers in paints, coatings and sealants, and as flame-retardants in rubber or textiles.
- (79) 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.

- (80) The Commission therefore considers that the national provisions, to the extent specified above, can be approved. However, in view of the specific circumstances under which the national provisions have been assessed, the Commission considers that their approval has to be limited in time. As reported in Section I(4) of the present Decision, initiatives are under way to gather the information necessary to remove or to reduce the uncertainties surrounding the risk evaluation of SCCPs. It cannot therefore be ruled out that the national provisions will not appear to be justified in the light of the new information. The approval should extend to the time needed to gather and to carefully evaluate the necessary information. The Commission considers that a period expiring on 31 December 2006 is necessary to that effect. The approval will expire at that date,

HAS ADOPTED THIS DECISION:

Article 1

The national provisions on SCCPs notified by the Netherlands on 21 January 2003 pursuant to Article 95(4) are approved 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,
- flame retardants in rubber or textiles.

Article 2

This Decision shall apply until 31 December 2006.

Article 3

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 16 December 2003.

For the Commission

Erkki LIIKANEN

Member of the Commission
