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## I

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

## REGULATIONS

## COUNCIL REGULATION (EC) No 442/2007

of 19 April 2007

**imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Ukraine following an expiry review pursuant to Article 11(2) of Regulation (EC) No 384/96**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community<sup>(1)</sup> (the basic Regulation) and in particular Article 11(2) thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

**A. PROCEDURE**

**1. Measures in force**

- (1) On 22 January 2001 the Council imposed, by Regulation (EC) No 132/2001<sup>(2)</sup>, a definitive anti-dumping duty (the existing measures) of EUR 33,25 per tonne on imports of ammonium nitrate (AN) falling within CN codes 3102 30 90 and 3102 40 90 and originating, *inter alia*, in Ukraine. The investigation that led to these measures will be referred to as the original investigation.
- (2) On 17 May 2004, following a partial interim review, by Regulation (EC) No 993/2004<sup>(3)</sup> the Council exempted

from the anti-dumping duties imposed by Regulation (EC) No 132/2001 imports to the Community of the product concerned produced by companies from which undertakings would be accepted by the Commission. By Commission Regulation (EC) No 1001/2004<sup>(4)</sup>, undertakings were accepted for a period until 20 May 2005. The purpose of these undertakings was to take account of certain consequences of the enlargement of the European Union to 25 Member States.

- (3) By Regulation (EC) No 945/2005, following an interim review limited in scope to the definition of the product concerned, the Council decided that the definition of the product concerned should be clarified and that the measures in force should apply to the product concerned when incorporated in other fertilizers, in proportion to their content of ammonium nitrate, together with other marginal substances and nutrients.

**2. Request for a review**

- (4) On 25 October 2005, a request for an expiry review pursuant to Article 11(2) of the basic Regulation was lodged following the publication of a notice of impending expiry on 5 May 2005<sup>(5)</sup>. This request was lodged by the European Fertilizer Manufacturers Association (EFMA) (the applicant) on behalf of producers representing a major proportion, in this case more than 50 %, of the total Community production of AN.
- (5) The applicant alleged and provided sufficient *prima facie* evidence that there is a likelihood of recurrence of dumping and injury to the Community industry with regard to imports of AN originating in Ukraine (the country concerned).

<sup>(1)</sup> OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).

<sup>(2)</sup> OJ L 23, 25.1.2001, p. 1. Regulation as last amended by Regulation (EC) No 945/2005 (OJ L 160, 23.6.2005, p. 1).

<sup>(3)</sup> OJ L 182, 19.5.2004, p. 28.

<sup>(4)</sup> OJ L 183, 20.5.2004, p. 13.

<sup>(5)</sup> OJ C 110, 5.5.2005, p. 15.

- (6) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 25 January 2006, by a notice of initiation published in the *Official Journal of the European Union* <sup>(1)</sup>, the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation.

### 3. Investigation

#### 3.1. Investigation period

- (7) The investigation of continuation or recurrence of dumping covered the period from 1 January to 31 December 2005 (review investigation period or RIP). The examination of the trends relevant for the assessment of a likelihood of a continuation or recurrence of injury covered the period from 2002 to the end of the review investigation period (period considered).

#### 3.2. Parties concerned by the investigation

- (8) The Commission officially advised the exporting producers, importers and users known to be concerned and their associations, the representatives of the exporting country, the applicant and the Community producers, of the initiation of the expiry review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation.

- (9) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

- (10) In view of the large number of Community producers and of importers in the Community, it was considered appropriate, in conformity with Article 17 of the basic Regulation, to examine whether sampling should be used. In order to enable the Commission to decide whether sampling would indeed be necessary and, if so, to select a sample, the above parties were requested, pursuant to Article 17(2) of the basic Regulation, to make themselves known within 15 days of the initiation of the investigation and to provide the Commission with the information requested in the notice of initiation.

- (11) After examination of the information submitted, and given that 10 Community producers indicated their willingness to cooperate, it was decided that sampling was necessary with regard to Community producers. Only one importer provided the information requested in the notice of initiation and expressed its willingness to

further cooperate with the Commission services. However, this importer was located outside the Community and had no imports of the product concerned in the Community market during the RIP. It was therefore decided that sampling was not necessary with regard to importers.

- (12) 10 Community producers properly completed the sampling form within the deadline and formally agreed to cooperate further in the investigation. With regard to those 10 Community producers, the Commission selected, in accordance with Article 17 of the basic Regulation, a sample based on the largest representative volume of production and sales of AN in the Community which can reasonably be investigated within the time available. The four sampled Community producers accounted for 76 % of the total production of the Community industry, as defined in recital (51) below, during the RIP, whilst the above 10 Community producers accounted for 70 % of the total Community production during the RIP.

- (13) In accordance with Article 17(2) of the basic Regulation, the parties concerned were consulted on the sample chosen and raised no objection thereto.

- (14) Questionnaires were sent to the four sampled Community producers and to all known exporting producers.

- (15) Replies to the questionnaires were received from the four sampled Community producers and three producers, thereof two exporting producers, in the country concerned, as well as from one related trader.

- (16) Moreover, one producer in the analogue country provided a complete questionnaire reply.

- (17) The Commission sought and verified all the information it deemed necessary for a determination of the likely recurrence of dumping and resulting injury and of the Community interest. Verification visits were carried out at the premises of the following companies:

(a) related trader to the Ukrainian producer Stirol:

— IBE Trading, New York, New York, USA;

(b) producer in the analogue country:

— Terra Industries, Sioux City, Iowa, USA;

<sup>(1)</sup> OJ C 18, 25.1.2006, p. 2.

(c) sampled Community producers:

- Terra Nitrogen Limited, Stockton, United Kingdom,
- Grande Paroisse SA, Paris, France,
- Zakłady Azotowe Anwil SA, Poland,
- Yara SA, Brussels, Belgium and its related producer Yara Sluiskil BV, Sluiskil, the Netherlands.

## B. PRODUCT CONCERNED AND LIKE PRODUCT

### 1. Product concerned

(18) The product concerned is solid fertilizers with an ammonium nitrate content exceeding 80 % by weight originating in Ukraine, falling within CN codes 3102 30 90, 3102 40 90, ex 3102 29 00, ex 3102 60 00, ex 3102 90 00, ex 3105 10 00, ex 3105 20 10, ex 3105 51 00, ex 3105 59 00 and ex 3105 90 91. Ammonium nitrate (AN) is a solid nitrogen fertiliser commonly used in agriculture. It is manufactured from ammonia and nitric acid, and its nitrogen content exceeds 28 % by weight in prilled or granular form.

(19) It should be noted that the scope of the product concerned was clarified in Regulation (EC) No 945/2005.

### 2. Like product

(20) As established in the original investigation, this review investigation confirmed that AN is a pure commodity product, and its quality and basic physical characteristics are identical whatever the country of origin. The product concerned and the products manufactured and sold by the exporting producers on their domestic market and to third countries, as well as those manufactured and sold by the Community producers on the Community market and by the producer in the analogue country on the domestic market of the analogue country have thus been found to have the same basic physical and chemical characteristics and essentially the same uses and are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

## C. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

### 1. General

(21) Three Ukrainian producers of the product concerned cooperated in the investigation. Two of the cooperating

producers exported the product concerned during the RIP. There is at least one known non-cooperating producer of the product concerned in Ukraine.

(22) The comparison of the data concerning exports to the Community provided by the exporting producers and the total volume of imports as reported by Eurostat indicated that the two exporting producers accounted for around 60 % of all Community imports from Ukraine during the RIP. It could, however, be established that the vast majority of the remaining 40 % of imports of the product concerned was invoiced in December 2004 (and therefore not reported by the cooperating producers), but entered the Community during the RIP (and was therefore included in the import statistics). Exports invoiced in December 2005 and entering the Community in January 2006, on the other hand, were insignificant. On the basis of this, it was concluded that 85 to 90 % of all Community imports from Ukraine during the RIP have been made by cooperating producers. The level of cooperation is therefore high.

(23) Total imports of the product concerned from Ukraine were small, i.e. less than 1 % when compared to the Community market as a whole.

### 2. Dumping of imports during the investigation period

#### 2.1. Analogue country

(24) Since Ukraine was not yet considered a market economy country at the time of the lodging of the request for the expiry review <sup>(1)</sup>, the normal value had to be determined on the basis of data obtained from a producer in a market economy third country, in accordance with Article 2(7) of the basic Regulation. In the notice of initiation, the USA and Romania were envisaged as appropriate analogue countries. It should be recalled that in the original investigation, Poland was selected as an analogue country. Since Poland entered the European Union in May 2004, it is no longer a possible choice. All interested parties were given the opportunity to comment on the choice of the USA and Romania as analogue countries.

(25) However, the analysis carried out subsequent to the publication of the notice of initiation showed that the Romanian market for AN was dominated by imports from Ukraine and Russia, while Romanian producers were very export oriented, selling only insignificant quantities on their domestic market. On the basis of this, it was concluded that, because of the abovementioned structure of its domestic market, Romania cannot be considered the most appropriate choice for the analogue country.

<sup>(1)</sup> Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17), Article 2.

(26) Only one cooperating producer submitted comments. This cooperating producer proposed Algeria as a better option, given their access to the main raw material, gas. In this respect, it should be pointed out that whether a country has extraction sites of natural gas or not, is not a key element to the choice of the analogue country. The main issue is whether gas prices reflect market value. The existence of dual gas pricing in Algeria is a clear indication that this is not the case and thus makes Algeria a less suitable choice for an analogue country. It is further noted that both the USA and Ukraine are producers and net importers of natural gas, while Algeria is a net exporter of natural gas. In this respect, the USA is more similar to Ukraine than Algeria.

(27) It was furthermore claimed that the USA would not be an appropriate analogue country, as they faced excessive domestic gas prices during the RIP. In this respect, it has to be said that although there were very high gas prices in the fourth quarter of the RIP due to natural disasters, this is a situation which can be easily adjusted for as described in recital (35) below.

(28) The choice of the USA was also contested in respect of the production process. It was alleged that the Algerian production process is more similar to the one in Ukraine. However, the producer failed to substantiate the claim.

(29) In addition, it was claimed that Algeria has a more similar level of production, consumption and consumer demand to Ukraine. According to available information, both the Algerian production<sup>(1)</sup> and domestic consumption<sup>(2)</sup> are insignificant. On the other hand, both Ukraine and the USA have a significant production and large domestic markets.

(30) As regards the USA, despite the fact that there were anti-dumping measures in force on imports of AN originating in the country concerned, it was found that it is an open competitive market, where a significant number of domestic producers face a considerable level of competition from foreign imports originating from other third countries. Furthermore, USA producers have representative domestic sales, and have a similar access to raw materials as Ukrainian producers.

(31) Therefore, the investigation established that the USA should be used as an appropriate analogue country.

<sup>(1)</sup> Excluding AN production further processed within vertically integrated producers.

<sup>(2)</sup> Source: IFADATA statistics online, International Fertilizer Industry Association.

Consequently, calculations were based on the verified information from the sole USA cooperating producer, which provided a complete questionnaire reply.

## 2.2. Normal value

(32) Since Ukraine was not yet considered a market economy country at the time of the lodging of the request for the expiry review, the normal value for Ukraine had to be determined on the basis of data obtained from a producer in the USA, as explained in recital (31) above.

(33) The representativity of domestic sales by the sole cooperating producer of the like product in the analogue country was assessed on the basis of the exports of the two cooperating exporting producers to the Community. It should be noted that only one type of product was exported to the Community. No analysis by product type was therefore carried out.

(34) The domestic sales of the sole cooperating producer of the like product in the analogue country were found to be representative, as they significantly exceeded the volumes of AN exported to the Community by the two Ukrainian cooperating exporting producers.

(35) In order to establish whether domestic sales of the USA producer were made in the ordinary course of trade, domestic sales prices were compared with cost of production. When assessing the cost of production of the USA producer, it was found that it was affected in the fourth quarter by natural disasters. According to information published by this same producer, 'hurricanes in the U.S. Gulf during the third quarter wreaked havoc with natural gas markets and negatively affected our fourth quarter and full year results<sup>(3)</sup>.' Indeed, quoted US gas prices<sup>(4)</sup> doubled between August<sup>(5)</sup> and October<sup>(6)</sup>, while in between Hurricanes Katrina (23 to 31 August 2005) and Rita (17 to 26 September 2005) hit the US Gulf coast. As natural gas is the main costing element for producing AN, the effect was significant and would have led to an artificially high constructed normal value. It was therefore decided to establish the cost of production for the fourth quarter 2005 on the basis of the average of the gas prices paid by the producer during the first three quarters of 2005.

<sup>(3)</sup> Terra Industries 2005 Annual Report — from 10-K, p. 6.

<sup>(4)</sup> Nymex Gas Futures as quoted by Heren EGM.

<sup>(5)</sup> August futures quoted on 30 June 2005, Nymex Gas Futures, Heren EGM.

<sup>(6)</sup> October futures quoted on 29 September 2005, Nymex Gas Futures, Heren EGM.

(36) On the basis of the above, the vast majority of domestic sales were found to be profitable, and consequently normal value was established on domestic sales prices to the first independent domestic customer. As the Ukrainian exporting producers only exported one product type to the Community during the RIP, the analysis was limited to this product type.

### 2.3. Export price

(37) In accordance with Article 2(8) of the basic Regulation, the export price was established by reference to the price actually paid or payable for the product concerned when sold for export to the Community. All sales from the cooperating exporting producers were made directly to independent customers in the Community.

### 2.4. Comparison

(38) The normal value and export price were compared on an ex-works basis. For the purpose of ensuring a fair comparison, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2(10) of the basic Regulation. Accordingly, adjustments were made for differences in transport, handling, loading and ancillary costs, credit and commissions, where applicable and supported by verified evidence.

### 2.5. Dumping margin

(39) As Ukraine is not considered a market economy for the purpose of this investigation, a country-wide dumping margin was established on the basis of a comparison of a weighted average normal value with a weighted average export price, in accordance with Article 2(11) and (12) of the basic Regulation. As stated in recital (22) above, cooperation was high.

(40) The above comparison showed that dumping (around 30 to 40 %) took place during the RIP at a slightly lower level than in the original investigation. However, given the limited Ukrainian exports to the Community during the RIP the main focus of the analysis was concentrated on the likelihood of continuation or recurrence of dumping.

## 3. Development of imports should measures be repealed

### 3.1. Spare capacity

(41) The three cooperating producers kept production stable during the period considered. Production capacity during

the same period remained stable as well. They have a spare capacity of around 600 000 to 700 000 tonnes (8 to 10 % of Community consumption) to increase exports to the Community market in considerable volumes should measures be repealed. In addition, there is at least one other known Ukrainian producer of the product concerned who did not cooperate with the investigation. Although the spare capacity of this non-cooperating producer is unknown, it cannot be excluded that this is also considerable, as the three cooperating producers had, on average, a spare capacity of 30 %.

(42) Domestic sales of the three cooperating producers, during the period considered, represented on average 30 to 40 % of production capacity. It therefore appears difficult that the Ukrainian domestic market can absorb most of this spare production capacity and therefore any increase in production is likely to be exported.

(43) Therefore, in the absence of anti-dumping measures, a considerable part of that spare capacity could be exported to the Community.

### 3.2. Relationship between Ukrainian sales prices on other markets and the sales price in the Community

(44) An analysis of export sales of the cooperating Ukrainian producers to third countries showed, when compared at a DAF/FOB Ukrainian border level, that such sales have on average been made at prices 20 to 30 % lower than sales prices to the Community during the RIP. In addition, domestic sales have been made at prices 20 to 30 % lower than sales prices to the Community as well. From information relating to the RIP it would therefore appear that there would be an incentive for exports to third countries to be re-directed to the Community, should measures be repealed, in order to benefit from higher prices and better margins.

(45) It is, however, noted that Ukrainian import prices for natural gas have significantly increased since the RIP. As natural gas is the main costing element for producing AN, it cannot be excluded that Ukrainian producers will have to increase their export prices to third countries, thereby significantly reducing the price difference between sales to third countries and sales to the Community mentioned in recital (44) above. Preliminary evidence <sup>(1)</sup> points indeed to the narrowing of this gap.

<sup>(1)</sup> Ukrainian export statistics, 2005 and first semester 2006.

#### 4. Conclusion on the likelihood of continuation or recurrence of dumping

- (46) The investigation has shown that two of the cooperating producers continued their dumping practices despite the measures in force. In addition, the re-direction of quantities currently sold to third countries to the Community cannot be excluded.
- (47) Furthermore, the weighted average export prices of the cooperating exporting producers to third country markets are also considerably lower than the prevailing price level in the Community. Taken together with the significant spare capacity, there is therefore an incentive for Ukrainian exporting producers to shift AN to the Community market at likely dumped prices, should measures be repealed.

- Fertiberia SA (Spain),
- Grande Paroisse SA (France),
- Nitrogénművek Rt (Hungary),
- Terra Nitrogen Limited (United Kingdom),
- Yara (Germany, Italy, the Netherlands and the United Kingdom),
- Zakłady Azotowe w Tarnowie (Poland).

#### D. DEFINITION OF THE COMMUNITY INDUSTRY

- (48) Within the Community, the like product is manufactured by 14 producers whose output constitutes the total Community production of the like product within the meaning of Article 4(1) of the basic Regulation.
- (49) It should be noted that as compared to the original investigation, the 'Hydro Agri' companies have been renamed 'Yara'. 5 of the 14 companies became part of the Community industry due to the enlargement of the European Union in 2004.
- (50) Out of the 14 Community producers, 10 companies cooperated with the investigation, all of them mentioned in the review request. The remaining four producers (other Community producers) made themselves known within the time limits and sent the information requested for the purpose of sampling. However, they did not offer any further cooperation. Accordingly, the following 10 producers agreed to cooperate:

- Achema AB (Lithuania),
- Zakłady Azotowe Anwil SA, (Poland),
- BASF AG (Germany),
- DSM Agro (the Netherlands),

- (51) As these 10 Community producers accounted for 70 % of the total Community production during the RIP, it is therefore considered that the above 10 Community producers account for a major proportion of the total Community production of the like product. They are therefore deemed to constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation and will hereinafter be referred to as the 'Community industry'.
- (52) As indicated under recitals (11) and (14) above, a sample consisting of four companies was selected. All sampled Community producers cooperated and sent questionnaire replies within the deadlines. In addition, the remaining six cooperating producers duly provided certain general data for the injury analysis.

#### E. SITUATION IN THE COMMUNITY MARKET

##### 1. Consumption in the Community market

- (53) The apparent Community consumption was established on the basis of the sales volumes of the Community industry on the Community market, the sales volumes of the other Community producers on the Community market, and Eurostat data for all EU imports. Given the enlargement of the European Union in 2004, for the sake of clarity and consistency of the analysis the consumption was established on the basis of the EU-25 market throughout the period considered.



- (54) Between 2002 and the RIP, Community consumption decreased slightly by 1 %. The 4 % increase recorded in 2003 settled down in 2004 indicating a stabilisation, whereas the further decrease (- 1 %) recorded in the RIP points to a slightly downward trend.

	2002	2003	2004	RIP
Total EC consumption in tonnes	7 757 697	8 099 827	7 775 470	7 641 817
Index (2002 = 100)	100	104	100	99

## 2. Volume, market share and prices of imports from Ukraine

- (55) The volumes, market shares and average prices of the imports from Ukraine developed as set out below. The following quantity and price trends are based on Eurostat.

	2002	2003	2004	RIP
Volume of imports (tonnes)	212 827	123 477	51 031	62 077
Market share	2,7 %	1,5 %	0,7 %	0,8 %
Prices of imports (EUR/tonne)	88	83	112	122
Index (2002 = 100)	100	94	127	139

- (56) The volume of imports from Ukraine decreased consistently throughout the period considered. Their market share also dropped from 2,7 % in 2002 to 0,8 % in the RIP. The prices evolved positively from 88 to 122 EUR/tonne during the period considered. This evolution reflects the favourable market conditions described also in recital (73) below.
- (57) For the purpose of calculating the level of price undercutting during the RIP, Community industry's ex-works prices to unrelated customers have been compared with the cif Community frontier import prices of cooperating exporting producers of the country concerned, duly adjusted in order to reflect a landed price. The comparison showed that imports from Ukraine were undercutting the prices of the Community industry by 10 to 15 %.

## 3. Imports from other countries

- (58) The volume of imports from other third countries during the period considered are shown in the table below. The following quantity and price trends are also based on Eurostat.

	2002	2003	2004	RIP
Volume of imports from Russia (tonnes)	690 233	528 609	504 026	257 921
Market share	8,9 %	6,5 %	6,5 %	3,4 %
Prices of imports from Russia (EUR/tonne)	79	77	106	123
Volume of imports from Georgia (tonnes)	86 517	100 025	132 457	153 844
Market share	1,1 %	1,2 %	1,7 %	2,0 %
Prices of imports from Georgia (EUR/tonne)	103	113	137	164
Volume of imports from Romania (tonnes)	186 834	14 114	107 585	111 126
Market share	2,4 %	0,2 %	1,4 %	1,5 %
Prices of imports from Romania (EUR/tonne)	117	113	126	144
Volume of imports from Bulgaria (tonnes)	160 423	140 677	79 716	73 441
Market share	2,1 %	1,7 %	1,0 %	1,0 %
Prices of imports from Bulgaria (EUR/tonne)	133	139	157	176
Volume of imports from Egypt (tonnes)	63 368	133 427	16 508	46 249
Market share	0,8 %	1,6 %	0,2 %	0,6 %
Prices of imports from Egypt (EUR/tonne)	148	142	193	199
Volume of imports from all other countries (tonnes)	94 915	128 213	54 510	17 752
Market share	1,2 %	1,6 %	0,7 %	0,2 %
Prices of imports from all other countries (EUR/tonne)	124	124	141	169

- (59) Firstly, it should be noted that all the countries above decreased their export volumes from 2002 to the RIP with the exception of Georgia, which increased moderately its Community market share from 1,1 % in 2002 to 2 % in the RIP. As for the export prices, all the above countries have exported to the Community at prices higher than the Community industry prices in the RIP and in some cases throughout the period considered, with the exception of Russia and Romania. In the case of imports from Russia, since April 2002, by Regulation (EC) No 658/2002 <sup>(1)</sup>, they are subject to an anti-dumping duty of EUR 47,07 per tonne. In this respect, it should be noted that the import prices were consistently lower than those from Ukraine, throughout the period considered with the exception of the RIP. As to the Romanian prices, they were lower than the Community industry's prices, but the export volumes decreased from 187 000 tonnes in 2002 to 111 000 tonnes in the RIP, representing a decrease from a low market share of 2,4 % in 2002 to 1,5 % in the RIP.

#### 4. Economic situation of the Community industry

- (60) Pursuant to Article 3(5) of the basic Regulation, the Commission examined all relevant economic factors and indices having a bearing on the state of the Community industry.

<sup>(1)</sup> OJ L 102, 18.4.2002, p. 1. Regulation as amended by Regulation (EC) No 945/2005.

#### 4.1. Preliminary remarks

- (61) Three of the cooperating Community industry producers were found to use the like product for further processing to blended or synthetic fertiliser products which are further downstream nitrogenous fertilisers containing, in addition to the nitrogen, water-soluble phosphorus, and/or water-soluble potassium, which are the other primary fertiliser nutrients. These products, with ammonium nitrate content less than 80 % by weight, do not compete on the market with the like product.
- (62) Such internal captive transfers of AN production do not enter the open market and thus are not in direct competition with imports of the product concerned. It was therefore examined whether and to what extent the subsequent use of the Community industry's production of the like product had to be taken into account in the analysis. As the investigation showed that the captive use represents an insignificant fraction of the Community industry's production, i.e. up to 2 %, it was not considered necessary to distinguish the free and the captive market. For the sake of clarity and transparency, however, the volumes of AN produced by the Community industry and used as captive transfers are mentioned in recital (64) below.
- (63) Where recourse is made to sampling, in accordance with established practice, certain injury indicators (production, production capacity, stocks, sales, market share, growth and employment) are analysed for the Community industry as a whole (C.I. in the enclosed tables), while those injury indicators relating to the performances of individual companies, i.e. prices, costs of production, profitability, wages, investments, return on investment, cash flow, ability to raise capital are examined on the basis of information collected at the level of the sampled Community producers (S.P. in the enclosed tables).

#### 4.2. Data relating to the Community industry as a whole

##### (a) Production

- (64) The Community industry's production increased by 7 % between 2002 and the RIP, i.e. from a level of around 5,1 million tonnes in 2002 to a level of around 5,4 million tonnes in the RIP. As for the production used for captive transfers, it remained practically stable and very low throughout the period considered, showing thus that it cannot affect the injury picture of the Community industry.

	2002	2003	2004	RIP
C.I. production (tonnes)	5 075 456	5 424 732	5 358 283	5 446 307
Index (2002 = 100)	100	107	106	107
C.I. production used for captive transfers	83 506	83 911	93 187	107 461
As % of total production	1,6 %	1,5 %	1,7 %	2,0 %

Source: Complainants, sampling questionnaire replies and verified questionnaire replies.

##### (b) Capacity and capacity utilisation rates

- (65) Production capacity remained practically stable throughout the period considered. In view of the growth in production, the resulting capacity utilisation increased, from a level of 52 % in 2002 to a level of 56 % in the RIP. As already noted in the original investigation, capacity utilisation for this type of production and industry can be affected by the production of other products which can be produced on the same production equipment and is therefore less meaningful as an injury indicator.

	2002	2003	2004	RIP
C.I. Production capacity (tonnes)	9 813 156	9 843 266	9 681 968	9 718 866
C.I. Capacity utilisation	52 %	55 %	55 %	56 %

## (c) Stocks

- (66) The level of closing stocks of the Community industry decreased by 10 percentage points from 2002 to the RIP. A sharp decrease registered in 2003 and 2004 was due to an increase in sales, in particular the exports of the Community industry (see recital below), rather than in production volumes.

	2002	2003	2004	RIP
C.I. Closing stocks (tonnes)	312 832	216 857	163 824	282 942
Index (2002 = 100)	100	69	52	90

## (d) Sales volume

- (67) Sales by the Community industry on the Community market increased by 13 % between 2002 and the RIP. This development has to be seen against the background of a slightly shrinking consumption on the Community market.

	2002	2003	2004	RIP
C.I. EC sales volume (tonnes)	4 499 898	5 045 582	4 975 864	5 074 188
Index (2002 = 100)	100	112	111	113
S.P. sales volume to third countries (tonnes)	420 588	528 437	522 349	373 106
Index (2002 = 100)	100	126	124	89

## (e) Market share

- (68) The market share held by the Community industry increased between 2002 and the RIP. Specifically, the Community industry gained more than 8 percentage points of market share during the period considered.

	2002	2003	2004	RIP
Market share of Community industry	58,0 %	62,3 %	64,0 %	66,4 %
Index (2002 = 100)	100	107	110	114

## (f) Growth

- (69) The Community industry gained market share in a slightly shrinking market over the period considered.

## (g) Employment

- (70) The level of employment of the Community industry decreased by 5 % between 2002 and the RIP, while production increased, thus reflecting the concern of the industry to continuously increase its productivity and competitiveness.

	2002	2003	2004	RIP
C.I. Employment product concerned	1 653	1 613	1 593	1 572
Index (2002 = 100)	100	98	96	95

## (h) Productivity

- (71) The output per person employed by the Community industry per year increased substantially between 2002 and the RIP, thus showing the combined positive impact of reduced employment and increase in production of the Community industry.

	2002	2003	2004	RIP
C.I. Productivity (tonnes per employee)	3 071	3 362	3 364	3 464
Index (2002 = 100)	100	109	110	113

## (i) Magnitude of dumping margin

- (72) As concerns the impact on the Community industry of the magnitude of the actual margin of dumping, given the currently small volume of imports from Ukraine, this impact is considered not to be significant and the indicator not meaningful.

## 4.3. Data relating to the sampled Community producers

## (a) Sales prices and factors affecting domestic prices

- (73) The sampled Community industry producers' average net sales price increased substantially in 2004 and the RIP reflecting the prevailing favourable international market conditions of AN during the same period.

	2002	2003	2004	RIP
S.P. Unit price EC market (EUR/tonne)	132	133	146	167
Index (2002 = 100)	100	101	111	127

## (b) Wages

- (74) Between 2002 and the RIP, the average wage per employee increased by 9 %, as the table below shows. In the light of the inflation rate and the overall reduced employment, this increase of wages is considered to be moderate.

	2002	2003	2004	RIP
S.P. Annual labour cost per employee (000 EUR)	46,5	46,8	46,7	50,5
Index (2002 = 100)	100	101	100	109

## (c) Investments

- (75) Annual investments in the like product made by the four sampled producers developed positively during the period considered, i.e. increased by 69 %, although they showed some fluctuations. These investments related mainly to modernisation of machinery. This shows the efforts of the Community industry to continuously improve its productivity and competitiveness. The results are apparent in the evolution of productivity which increased substantially (see recital (71) above) during the same period.

	2002	2003	2004	RIP
S.P. Net investments (000 EUR)	21 079	16 751	22 287	35 546
Index (2002 = 100)	100	79	106	169

## (d) Profitability and return on investments

- (76) Profitability of the sampled producers shows a gradual improvement notably since 2003 and reached the level of 8,2 % during the RIP. In this respect, it is noted that in the original investigation, a profit margin of 8 % that may be reached in the absence of injurious dumping had been established. The return on investments (ROI), expressed as the profit in per cent of the net book value of investments, broadly followed the profitability trend over the whole period considered.

	2002	2003	2004	RIP
S.P. Profitability of EC sales to unrelated customers (% of net sales)	3,9 %	5,5 %	7,6 %	8,2 %
Index (2002 = 100)	100	139	194	209
S.P. ROI (profit in % of net book value of investment)	10,1 %	14,0 %	20,0 %	25,5 %
Index (2002 = 100)	100	139	197	252

## (e) Cash flow and ability to raise capital

- (77) Cash flow has increased by 13 percentage points during the period considered. This development is in line with the development of the overall profitability during the period considered.

	2002	2003	2004	RIP
S.P. Cash flow (000 EUR)	59 631	61 446	69 848	67 216
Index (2002 = 100)	100	103	117	113

- (78) The investigation did not reveal any difficulties encountered by the sampled Community producers in raising capital. In this respect, it should be noted that as several of these companies are part of large groups, they finance their activities within the group to which they belong either through cash-pooling schemes or through intra-group loans granted by the mother companies.

## 5. Conclusion

- (79) Between 2002 and the RIP, all injury indicators developed positively: production volume of the Community industry increased, unit sales prices and sales volumes of the Community industry increased, and profitability improved substantially and in line with the prices. Return on investment and cash-flow evolved positively as well. Wages developed moderately and the Community industry continued to invest.
- (80) Moreover, the Community market share increased by 9 % in a slightly shrinking market. Productivity also increased substantially reflecting the positive evolution of production and the efforts of the Community industry to improve it through investments.
- (81) Overall, the situation of the Community industry has improved significantly as compared to its situation prior to the imposition of the anti-dumping measures on imports of AN from the country concerned in 2001. The measures had therefore a clear positive impact on the economic situation of the Community industry.
- (82) It is therefore concluded that the situation of the Community industry has improved gradually during the period considered, as compared to the period preceding the imposition of measures.

## F. LIKELIHOOD OF RECURRENCE OF INJURY

### 1. General

- (83) Since there is no continuation of material injury caused by imports from the country concerned, the analysis focused on the likelihood of recurrence of injury. In this respect, two main parameters were analysed: (i) possible export volumes and prices of the country concerned and (ii) the effect of those projected volumes and prices from the country concerned on the Community industry.

### 2. Possible export volumes and prices of the country concerned

- (84) As it is shown in recital (41), there is a known spare capacity of around 600 000 to 700 000 tonnes of the cooperating Ukrainian producers, representing 8 to 10 % of the Community market. This surplus capacity indicates that Ukrainian producers have the possibility to increase their current production and thus also their exports of AN.
- (85) Moreover, given the relatively small domestic market, Ukrainian producers are heavily dependent on exports to third countries. As demonstrated in the table below, Ukrainian exports to third countries in 2005 were about 847 000 tonnes in total, representing about 11 % of the Community market.

Ukrainian exports to third countries:		2004	2005
Turkey	Volume in tonnes	295 436	292 943
	Price in EUR/tonne (*)	98	98
Egypt	Volume in tonnes	81 522	183 248
	Price in EUR/tonne (*)	95	97
Morocco	Volume in tonnes	92 541	62 879
	Price in EUR/tonne (*)	96	94
India	Volume in tonnes	42 456	48 256
	Price in EUR/tonne (*)	77	106
Syria	Volume in tonnes	50 851	41 143
	Price in EUR/tonne (*)	100	110
Brazil	Volume in tonnes	8 000	38 870
	Price in EUR/tonne (*)	74	91
Malaysia	Volume in tonnes	—	35 913
	Price in EUR/tonne (*)		101
Argentina	Volume in tonnes	28 790	28 815
	Price in EUR/tonne (*)	99	97
Other countries	Volume in tonnes	140 225	114 783
	Price in EUR/tonne (*)	90	106
Total exports to third countries	Volume in tonnes	739 821	846 849
	Price in EUR/tonne (*)	95	99

Source: Ukrainian statistics.

(\*) The unit price is based on the customs value of the product at the Ukrainian border. This value can be considered comparable to the value of imports into the Community originating in Ukraine based on Eurostat.

(86) As can be seen from the table, Ukraine increased its exported volume of AN to third countries from 2004 to 2005. These exports were made at prices substantially lower than the exports to the Community.

(87) In the above context, the Community market would appear to be attractive for the Ukrainian exporting producers in terms of prices as compared to all other export markets. On this basis, it is reasonably expected that a considerable part of the volumes exported to third countries would be very likely directed toward the Community market, should the measures be allowed to lapse, despite the early indications of the narrowing of the gap of the price difference between sales to third

countries and sales to the Community mentioned in recital (45) above. The relative proximity of the Community market, as compared to other export markets, would also render the Community market more attractive and would therefore lead to the redirection of current exports by Ukrainian producers to third countries.

(88) Given the currently weak market position of Ukrainian products in the EC, the Ukrainian exporters would however need to regain lost market share or broaden their customer base and are likely to do so at dumped prices as established during the RIP.



(89) The applicant argued that the Community industry's profit was actually very poor over the period considered and that only during the RIP it reached the rate of 8 %. It further argued that a capital intensive industry such as the fertilizers industry could not survive over the long-term, i.e. maintain and replace capital and all operations on such profit rate. In this respect, it should be noted that the non-injurious profit rate of 8 %, established in the original investigation was considered to be a normal profit that this kind of industry should expect to reach in the absence of injurious dumping. However, also during that original investigation, it was established that due to injurious dumping from, *inter alia*, the Ukraine, profitability had deteriorated to -12,4 %. Therefore, should measures be repealed, there is a serious risk that profitability be reduced to a percentage considerably below the non-injurious rate).

(90) It is to be noted that around 80 % of total Ukrainian exports to the Community market during the RIP were made under a price undertaking. Nevertheless, the prices were 20 to 25 % above the minimum import price of this undertaking. It should, however, be noted that the undertaking was subject to a quantitative ceiling, and that therefore it was not possible to draw a general conclusion as to what would have been the price behaviour of the exporters in the absence of such a quantitative ceiling.

(91) On the basis of the above, it would therefore be likely that significant volumes of AN produced in Ukraine would be redirected to the Community market at dumped prices which substantially undercut Community industry's prices, if measures are allowed to lapse.

### 3. Impact on the Community industry of the projected export volumes and price effects in case of repeal of measures

(92) In view of the above established likelihood of significant increase of export volumes from Ukraine into the Community market at dumped and undercutting prices, the Community industry would have to significantly decrease its sales prices to maintain its customers. This is particularly true as AN is a volatile commodity for which prices can be significantly affected by an import volume at dumped prices undercutting the Community industry's prices. Therefore profits would strongly decrease, as the current improvement of the Community industry's performance is due to sales

prices reflecting mainly the favourable market conditions prevailing in particular during 2004 and the RIP.

(93) With regard to the favourable market conditions during the last two years of the period considered, it should be noted that they played an important role in keeping the prices at a high level, in addition to the applicable anti-dumping measures. Indeed, during that period, a tight worldwide supply-and-demand balance resulted in high prices for all nitrogen fertilisers. AN is, like the other nitrogen fertilisers, a commodity whose pricing is influenced by numerous factors ranging from the volatile gas price having a considerable impact on the supply as being the most important costing element, to the weather conditions, crops and grain stock levels resulting in reduced or increased demand. With particular regard to the Community market, the demand of nitrogen fertilisers is expected to slightly decrease in the forthcoming years<sup>(1)</sup>. The maintenance of such high prices depends therefore on a tight supply, which is nevertheless very unlikely, as the investigation showed, given the spare export capacity of the country concerned and the likelihood that part of its exports to third countries during the RIP would be redirected to the Community, should the measures lapse. Given that the prices practiced by the Ukrainians were significantly undercutting the prices of the Community industry, the likely increase in import volumes from Ukraine will force the Community industry either to significantly lower its prices, and thereby its profits, or to lose significant market share and thus revenue, or both. The successful restructuring process of the Community industry could probably only partially counterbalance such a likely price depression and the whole recovery process would be put in danger. Therefore, a deterioration of the Community industry's overall performance is likely to result from the repeal of the measures.

### 4. Conclusion on likelihood of recurrence of injury

(94) The above leads to the conclusion that should measures lapse, exports from the country concerned would very likely occur in significant volumes and at dumped prices that would undercut the Community industry's prices. This would in all likelihood have the effect of introducing a price-depressive trend on the market, with an expected negative impact on the economic situation of the Community industry. This would, in particular, impede the financial recovery that was achieved in 2004 and the RIP, leading to a likely recurrence of injury.

<sup>(1)</sup> Source: 'Global fertilisers and raw materials supply and supply/demand balances: 2005 to 2009', A05/71b, June 2005, International Fertiliser Industry Association (IFA).

## G. COMMUNITY INTEREST

### 1. Introduction

- (95) According to Article 21 of the basic Regulation, it was examined whether maintenance of the existing anti-dumping measures would be against the interest of the Community as a whole. The determination of the Community interest was based on an appreciation of all various interests involved.
- (96) It should be recalled that, in the original investigation, the adoption of measures was considered not to be contrary to the interest of the Community. Furthermore, the fact that the present investigation is a review, thus analysing a situation in which anti-dumping measures have already been in place, allows the assessment of any undue negative impact on the parties concerned by the current anti-dumping measures.
- (97) On this basis, it was examined whether, despite the conclusions on the likelihood of recurrence of injurious dumping, compelling reasons existed which would lead to the conclusion that it is not in the Community interest to maintain measures in this particular case.

### 2. Interest of the Community industry

- (98) The Community industry has proven to be a structurally viable industry. This was confirmed by the positive development of its economic situation observed after the imposition of anti-dumping measures in 2001. In particular, the Community industry improved its profit situation between 2002 and the RIP and restructured itself successfully.
- (99) It can thus reasonably be expected that the Community industry will continue to benefit from the measures currently imposed and further recover by maintaining and stabilising its profitability. Should the measures not be maintained, it is likely that increased imports at dumped prices from the country concerned will occur, thereby causing injury to the Community industry by exerting a downward pressure on the sales prices which will endanger its currently positive financial situation.

### 3. Interest of importers

- (100) As mentioned in recital (11) above, only one importer indicated its willingness to be included in the sample and provided the basic information required in the sampling form. However, the said importer did not have any import activity during the RIP.

- (101) It is recalled that in the original investigation it was found that the impact of the imposition of measures would not be significant to the extent that imports would continue to take place albeit at non-injurious prices and that as a rule, importers do not only deal in AN but also, to a significant extent, in other fertilisers. The downward trend in imports from the country concerned during the period considered leads to the conclusion that some importers may indeed have had negative consequences from the imposition of measures, as indicated in recital (52) of Commission Regulation (EC) No 1629/2000 <sup>(1)</sup>. However, in the absence of cooperation of importers and thus of any conclusive evidence allowing to assess any significant negative consequences, it was concluded that the imposition of measures appears to have had an overall limited impact on the majority of importers/traders.
- (102) There is no reliable information available indicating that the maintenance of the measures will have a significant negative effect on importers or traders.

### 4. Interest of users

- (103) Users of AN are farmers in the Community. In the original investigation, it was concluded that given the small incidence of the cost of AN on the farmers, any increase in these costs was unlikely to have a significant adverse effect on them. The fact that no users or user association provided any information contradicting the above finding in the framework of the current review investigation seems to confirm that: (i) AN represents a very small part of total production costs for the farmers; (ii) the measures currently in force did not have any substantial negative effect on their economic situation; and (iii) the continuation of measures would not adversely affect the financial interests of the farmers.

### 5. Conclusion on Community interest

- (104) Given the above, it is concluded that there are no compelling reasons against the maintenance of the current anti-dumping measures.

## H. ANTI-DUMPING MEASURES

- (105) All parties were informed of the essential facts and considerations on the basis of which it is intended to recommend that the existing measures be maintained. They were also granted a period to make representations subsequent to this disclosure.

<sup>(1)</sup> OJ L 187, 26.7.2000, p. 12.

(106) It follows from the above that, as provided for by Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of AN originating in Ukraine should be maintained. It is recalled that these measures consist of specific duties.

(107) As indicated in recital (45), the Ukrainian import prices for natural gas have significantly increased since the RIP and they are likely to progressively converge with international prices in the coming years. Moreover, as explained in recital (32), the dumping findings were based on a normal value determined on the basis of data obtained from a producer in a market economy third country. Subsequent to the lodging of the request for the expiry review, Ukraine obtained market economy status. Given this, and that natural gas is the main cost element for producing AN, it is possible that should dumping be revised at a later stage on the basis of normal value data of the Ukrainian exporters, the findings would differ from those established in the current review. Likewise, the potentially injurious effects of that revised dumping would also be affected by the

impact on export prices of the production costs increases caused by the evolution of domestic gas prices. Therefore it is considered prudent to limit the maintenance of the measures to two years, without prejudice to the other provisions of Article 11 of the basic Regulation,

HAS ADOPTED THIS REGULATION:

*Article 1*

1. A definitive anti-dumping duty is hereby imposed on imports of solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, falling within CN codes 3102 30 90, 3102 40 90, ex 3102 29 00, ex 3102 60 00, ex 3102 90 00, ex 3105 10 00, ex 3105 20 10, ex 3105 51 00, ex 3105 59 00 and ex 3105 90 91, and originating in Ukraine.

2. The rate of anti-dumping duty shall be a fixed amount of euro per tonne as shown below:

Product description	CN code	TARIC code	Amount of duty (EUR/tonne)
Ammonium nitrate other than in aqueous solutions	3102 30 90	—	33,25
Mixtures of ammonium nitrate with calcium carbonate or other inorganic non-fertilising substances, with a nitrogen content exceeding 28 % by weight	3102 40 90		33,25
Double salts and mixtures of ammonium sulphate and ammonium nitrate — solid fertilisers with an ammonium nitrate content exceeding 80 % by weight	3102 29 00	10	33,25
Double salts and mixtures of calcium nitrate and ammonium nitrate — solid fertilisers with an ammonium nitrate content exceeding 80 % by weight	3102 60 00	10	33,25
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight	3102 90 00	10	33,25
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, with no phosphorus and no potassium content	3105 10 00	10	33,25
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P <sub>2</sub> O <sub>5</sub> and/or a potassium content evaluated as K <sub>2</sub> O of less than 3 % by weight	3105 10 00	20	32,25
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P <sub>2</sub> O <sub>5</sub> and/or a potassium content evaluated as K <sub>2</sub> O of 3 % by weight or more but less than 6 % by weight	3105 10 00	30	31,25
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P <sub>2</sub> O <sub>5</sub> and/or a potassium content evaluated as K <sub>2</sub> O of 6 % by weight or more but less than 9 % by weight	3105 10 00	40	30,26

Product description	CN code	TARIC code	Amount of duty (EUR/tonne)
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P <sub>2</sub> O <sub>5</sub> and/or a potassium content evaluated as K <sub>2</sub> O of 9 % by weight or more but not exceeding 12 % by weight	3105 10 00	50	29,26
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P <sub>2</sub> O <sub>5</sub> and a potassium content evaluated as K <sub>2</sub> O of less than 3 % by weight	3105 20 10	30	32,25
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P <sub>2</sub> O <sub>5</sub> and a potassium content evaluated as K <sub>2</sub> O of 3 % by weight or more but less than 6 % by weight	3105 20 10	40	31,25
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P <sub>2</sub> O <sub>5</sub> and a potassium content evaluated as K <sub>2</sub> O of 6 % by weight or more but less than 9 % by weight	3105 20 10	50	30,26
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P <sub>2</sub> O <sub>5</sub> and a potassium content evaluated as K <sub>2</sub> O of 9 % by weight or more but not exceeding 12 % by weight	3105 20 10	60	29,26
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P <sub>2</sub> O <sub>5</sub> of less than 3 % by weight	3105 51 00	10	32,25
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P <sub>2</sub> O <sub>5</sub> of 3 % by weight or more but less than 6 % by weight	3105 51 00	20	31,25
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P <sub>2</sub> O <sub>5</sub> of 6 % by weight or more but less than 9 % by weight	3105 51 00	30	30,26
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P <sub>2</sub> O <sub>5</sub> of 9 % by weight or more but not exceeding 10,40 % by weight	3105 51 00	40	29,79
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P <sub>2</sub> O <sub>5</sub> of less than 3 % by weight	3105 59 00	10	32,25
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P <sub>2</sub> O <sub>5</sub> of 3 % by weight or more but less than 6 % by weight	3105 59 00	20	31,25
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P <sub>2</sub> O <sub>5</sub> of 6 % by weight or more but less than 9 % by weight	3105 59 00	30	30,26
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a phosphorus content evaluated as P <sub>2</sub> O <sub>5</sub> of 9 % by weight or more but not exceeding 10,40 % by weight	3105 59 00	40	29,79
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a potassium content evaluated as K <sub>2</sub> O of less than 3 % by weight	3105 90 91	30	32,25
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a potassium content evaluated as K <sub>2</sub> O of 3 % by weight or more but less than 6 % by weight	3105 90 91	40	31,25

Product description	CN code	TARIC code	Amount of duty (EUR/tonne)
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a potassium content evaluated as K <sub>2</sub> O of 6 % by weight or more but less than 9 % by weight	3105 90 91	50	30,26
Solid fertilisers with an ammonium nitrate content exceeding 80 % by weight, and a potassium content evaluated as K <sub>2</sub> O of 9 % by weight or more but not exceeding 12 % by weight	3105 90 91	60	29,26

3. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93 <sup>(1)</sup>, the amount of anti-dumping duty, calculated on the amounts set above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

4. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

#### Article 2

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union*. It shall be in force for a period of two years.

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

Done at Luxembourg, 19 April 2007.

For the Council  
The President  
B. ZYPRIES

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<sup>(1)</sup> OJ L 253, 11.10.1993, p. 1.

**COMMISSION REGULATION (EC) No 443/2007****of 23 April 2007****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

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

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

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

HAS ADOPTED THIS REGULATION:

*Article 1*

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

*Article 2*

This Regulation shall enter into force on 24 April 2007.

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

Done at Brussels, 23 April 2007.

*For the Commission*

Jean-Luc DEMARTY

*Director-General for Agriculture and  
Rural Development*

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

## ANNEX

**to Commission Regulation of 23 April 2007 establishing the standard import values for determining the entry price of certain fruit and vegetables**

(EUR/100 kg)

CN code	Third country code <sup>(1)</sup>	Standard import value
0702 00 00	MA	65,3
	TN	139,0
	TR	136,5
	ZZ	113,6
0707 00 05	JO	171,8
	MA	46,9
	TR	138,4
	ZZ	119,0
0709 90 70	MA	35,8
	TR	114,1
	ZZ	75,0
0709 90 80	EG	242,2
	ZZ	242,2
0805 10 20	CU	40,0
	EG	41,3
	IL	68,4
	MA	45,6
	TN	52,2
	ZZ	49,5
0805 50 10	AR	37,2
	IL	54,7
	TR	42,8
	ZZ	44,9
0808 10 80	AR	82,2
	BR	79,3
	CA	105,7
	CL	86,1
	CN	84,0
	NZ	127,3
	US	128,3
	UY	48,2
	ZA	94,7
	ZZ	92,9
0808 20 50	AR	75,9
	CL	80,0
	CN	36,6
	ZA	85,5
	ZZ	69,5

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

**COMMISSION REGULATION (EC) No 444/2007****of 23 April 2007****amending Council Regulation (EC) No 41/2007 as regards catch limits for the stock of herring in ICES zones I and II**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to Council Regulation (EC) No 41/2007 of 21 December 2006 fixing for 2007 the fishing opportunities and associated conditions for certain fish stocks, and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required <sup>(1)</sup>, and in particular Annex IB thereto,

Whereas:

- (1) Regulation (EC) No 41/2007 fixes for 2007 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required.
- (2) Pursuant to consultations between the Community, the Faroe Islands, Iceland, Norway and the Russian Federation on 18 January 2007, an agreement on the fishing opportunities for the Atlanto-Scandian (Norwegian spring-spawning) herring stock in the

north-east Atlantic was reached. The overall catch limitation for 2007 is fixed at a level of 1 280 000 tonnes in full conformity with the scientific advice from the International Council for the Exploration of the Sea (ICES). That agreement should be implemented into Community law.

- (3) Regulation (EC) No 41/2007 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

*Article 1*

Annex IB to Regulation (EC) No 41/2007 is amended in accordance with the Annex to this Regulation.

*Article 2*

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

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

Done at Brussels, 23 April 2007.

*For the Commission*

Joe BORG

*Member of the Commission*

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<sup>(1)</sup> OJ L 15, 20.1.2007, p. 1.



## ANNEX

In Annex IB to Regulation (EC) No 41/2007 the entry concerning the species Herring in EC and international waters of ICES zones I and II is replaced by the following:

Species:	Herring <i>Clupea harengus</i>	Zone:	EC and International waters of I and II HER/1/2.
Belgium	30		
Denmark	28 550		
Germany	5 000		
Spain	94		
France	1 232		
Ireland	7 391		
The Netherlands	10 217		
Poland	1 445		
Portugal	94		
Finland	442		
Sweden	10 580		
United Kingdom	18 253		
EC	83 328		
Norway	74 995 <sup>(1)</sup>		
TAC	1 280 000		

Analytical TAC  
Article 3 of Regulation (EC) No 847/96 does not apply.  
Article 4 of Regulation (EC) No 847/96 does not apply.  
Article 5(2) of Regulation (EC) No 847/96 applies.

<sup>(1)</sup> Catches taken against this quota are to be deducted from Norway's share of the TAC (access quota). This quota may be fished in EC waters north of 62 °N.

**Special conditions:**

Within the limits of the abovementioned quotas, no more than the quantities given below may be taken in the zones specified:

	Norwegian waters north of 62 °N and the fishery zone around Jan Mayen (HER/*2AJMN)
Belgium	30 <sup>(2)</sup>
Denmark	28 550 <sup>(2)</sup>
Germany	5 000 <sup>(2)</sup>
Spain	94 <sup>(2)</sup>
France	1 232 <sup>(2)</sup>
Ireland	7 391 <sup>(2)</sup>
The Netherlands	10 217 <sup>(2)</sup>
Poland	1 445 <sup>(2)</sup>
Portugal	94 <sup>(2)</sup>
Finland	442 <sup>(2)</sup>
Sweden	10 580 <sup>(2)</sup>
United Kingdom	18 253 <sup>(2)</sup>

<sup>(2)</sup> When the sum of the catches of all Member States have reached 74 995 tonnes no further catches shall be permitted.

## COMMISSION REGULATION (EC) No 445/2007

of 23 April 2007

laying down certain detailed rules for the application of Council Regulation (EC) No 2991/94 laying down standards for spreadable fats and of Council Regulation (EEC) No 1898/87 on the protection of designations used in the marketing of milk and milk products

(Codified version)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2991/94 of 5 December 1994 laying down standards for spreadable fats <sup>(1)</sup>, and in particular Article 8 thereof,

Having regard to Council Regulation (EEC) No 1898/87 of 2 July 1987 on the protection of designations used in the marketing of milk and milk products <sup>(2)</sup>, and in particular Article 4(2) thereof,

Whereas:

- (1) Commission Regulation (EC) No 577/97 of 1 April 1997 laying down certain detailed rules for the application of Council Regulation (EC) No 2991/94 laying down standards for spreadable fats and of Council Regulation (EEC) No 1898/87 on the protection of designations used in the marketing of milk and milk products <sup>(3)</sup> has been substantially amended several times <sup>(4)</sup>. In the interests of clarity and rationality the said Regulation should be codified.
- (2) Regulation (EC) No 2991/94 provides that the sales descriptions of the products referred to in Article 1 thereof must be those indicated in the Annex thereto. There are exceptions to that rule. The rule does not apply in particular to designations where the exact nature of the product is clear from traditional usage and/or where the designation is clearly used to describe a characteristic quality of the product. Certain detailed rules should be laid down for the application of that provision.
- (3) Article 1(3) of Regulation (EC) No 2991/94, which stipulates that that Regulation is to be applied without prejudice in particular to Regulation (EEC) No 1898/87,

must be complied with. The aim of the two Regulations is essentially the same, namely to avoid any confusion in the mind of the consumer as to the true nature to the products in question. Therefore, in order to ensure the consistency of Community legislation, the detailed rules for applying Regulations (EC) No 2991/94 and (EEC) No 1898/87 regarding the use of the designation 'butter' should be laid down in a single text.

- (4) In order to identify clearly the scope of the derogations referred to in Regulation (EC) No 2991/94, an exhaustive list of the designations concerned should be drawn up, together with a description of the products to which they refer.
- (5) The first criterion of the derogation provided for in the first indent of the third subparagraph of Article 2(2) of Regulation (EC) No 2991/94 relates to the traditional character of a designation. Such traditional character may be considered proven where the designation has been used for a period preceding 9 April 1997, at least equal to the duration usually attributed to a human generation. The derogation must be limited to those products for which the designation has actually been used so that such traditional character is not lost.
- (6) The second criterion of the that derogation relates to the use of the designations in the Annex to Regulation (EC) No 2991/94 to describe a characteristic feature of the marketed products. In this case, the exception relates logically to products which are not listed as such in that Annex.
- (7) That derogation should be restricted to products which were marketed on 9 April 1997. The Member States forwarded to the Commission, before that date, the list of products which they considered as meeting the criteria of that derogation within their territory.
- (8) Commission Decision 88/566/EEC of 28 October 1988 listing the products referred to in the second subparagraph of Article 3(1) of Council Regulation (EEC) No 1898/87 <sup>(5)</sup> already contains exceptions with regard to the designation 'butter'. Account should be taken of them.

<sup>(1)</sup> OJ L 316, 9.12.1994, p. 2.

<sup>(2)</sup> OJ L 182, 3.7.1987, p. 36. Regulation as last amended by the 1994 Act of Accession.

<sup>(3)</sup> OJ L 87, 2.4.1997, p. 3. Regulation as last amended by Regulation (EC) No 568/1999 (OJ L 70, 17.3.1999, p. 11).

<sup>(4)</sup> See Annex IV.

<sup>(5)</sup> OJ L 310, 16.11.1988, p. 32. Decision amended by Decision 98/144/EC (OJ L 42, 14.2.1998, p. 61).

(9) In the Community list provided for in Regulation (EC) No 2991/94, the designations of the products in question should be listed only in the Community language in which those designations may be used.

(10) The designations on the labelling of foodstuffs containing products as defined in the Annex to Regulation (EC) No 2991/94 or concentrated products as defined in the second indent of the third subparagraph of Article 2(2) of that Regulation may refer to the corresponding designations given in that Annex, provided that Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs<sup>(1)</sup> is complied with. There is therefore no need for the list of the above-mentioned exceptions to mention such foodstuffs.

(11) In view of present technical conditions, any obligation to indicate the exact fat content without any tolerance would involve considerable practical difficulties. Therefore, certain special rules should be laid down in that regard.

(12) Regulations (EC) No 2991/94 and (EEC) No 1898/87 cover composite products of which an essential part is butter. Therefore, those products should be dealt with consistently, whilst adhering to the approach employed in Article 2(3) of Regulation (EEC) No 1898/87. The scope of that paragraph should therefore be defined more clearly with regard to composite products of which an essential part is butter, by laying down an objective criterion for determining whether an essential part of the composite products is actually butter and whether the designation 'butter' is therefore justified. A minimum milk-fat content of 75 % in the final product seems to be the most appropriate criterion.

(13) The second subparagraph of Article 2(2) of Regulation (EC) No 2991/94 provides that the sales descriptions listed in the Annex thereto are to be reserved for products which meet the criteria set out in that Annex. Therefore, trade marks which employ those designations may continue to be used in the future solely for products which meet those criteria.

(14) Actual market conditions will show whether or not it will be appropriate to lay down measures at a later date with regard to composite products of which the main ingredient is margarine or composite fats.

(15) The measures provided for in this Regulation are in accordance with the opinion of the Management Committees concerned,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

1. The list of products covered by the derogation provided for in the first indent of the third subparagraph of Article 2(2) of Regulation (EC) No 2991/94 shall be as shown in Annex I hereto.

2. The designations listed in the Annex to Decision 88/566/EEC which contain the word 'butter' in one of the Community languages shall not be affected by this Regulation.

#### *Article 2*

1. The indication of the fat content as provided for in Article 3(1)(b) of Regulation (EC) No 2991/94 shall comply with the following rules:

(a) the average fat content shall be declared without the use of decimals;

(b) the average fat content may not differ by more than one percentage point from the percentage declared. Individual samples may not differ by more than two percentage points from the percentage declared;

(c) in all cases, the average fat content must comply with the limits laid down in the Annex to Regulation (EC) No 2991/94.

2. Notwithstanding paragraph 1, the fat content declared in respect of the products referred to in Parts A(1), B(1) and C(1) of the Annex to Regulation (EC) No 2991/94 shall correspond to the minimum fat content of the product.

3. The procedure to be applied to verify compliance with paragraph 1 shall be as set out in Annex II.

#### *Article 3*

1. The designation 'butter' may be used for composite products of which an essential part within the meaning of Article 2(3) of Regulation (EEC) No 1898/87 is butter if the end product contains at least 75 % milk fat and has been manufactured solely from butter within the meaning of Part A(1) of the Annex to Regulation (EC) No 2991/94 and the other added ingredient(s) mentioned in the description.

<sup>(1)</sup> OJ L 109, 6.5.2000, p. 29. Directive as last amended by Commission Directive 2006/142/EC (OJ L 368, 23.12.2006, p. 110).

2. The designation 'butter' may be used for composite products containing less than 75 % but at least 62 % milk fat if the other requirements specified in paragraph 1 are met and if the product designation includes the term 'butter preparation'.

3. By derogation from paragraphs 1 and 2, the designation 'butter' may be used in association with a word or words to designate the products listed in Annex III containing at least 34 % milk fat.

4. The use of the designation 'butter' under paragraphs 1, 2 and 3 shall be subject to the requirement to indicate in the labelling and presentation of the products the milk fat content and, if the other added ingredients contain fat, the total fat content.

5. The term 'butter preparation' in paragraph 2 and the indications in paragraph 4 must appear in a conspicuous place and be easily visible and clearly legible.

*Article 4*

Regulation (EC) No 577/97 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex V.

*Article 5*

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

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

Done at Brussels, 23 April 2007.

*For the Commission*  
*The President*  
José Manuel BARROSO

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## ANNEX I

- I. (Spanish) 'Mantequilla de Soria' or 'Mantequilla de Soria dulce', 'Mantequilla de Soria azucarada': for a sweetened aromatised milk product with a minimum milk-fat content of 39 %
- II. (Danish)
- III. (German) — 'Butterkäse': for cow's milk cheese which has a semi-soft, fatty consistency and a minimum milk-fat content in the dry matter of 45 %  
— 'Kräuterbutter': for a butter-based preparation containing herbs and a minimum milk-fat content of 62 %  
— 'Milchmargarine': for margarine containing at least 5 % whole milk, skimmed milk or other suitable milk products
- IV. (Greek)
- V. (English) — 'Brandy butter', 'Sherry butter' or 'Rum butter': for a sweetened, alcoholic product with a minimum milk-fat content of 20 %  
— 'Buttercream': for a sweetened product with a minimum milk-fat content of 22,5 %
- VI. (French) 'Beurre d'anchois, de crevettes, de langouste, de homard, de crabe, de langoustine, de saumon, de saumon fumé, de coquille Saint-Jacques, de sardine': for products containing sea foods and a minimum milk-fat content of 10 %
- VII. (Italian)
- VIII. (Dutch)
- IX. (Portuguese)
- X. (Finnish) 'Munavoi': for a product containing eggs and a minimum milk-fat content of 35 %
- XI. (Swedish) — 'flytande margarin': for a product of a liquid consistency containing at least 80 % vegetable fats such as margarine yet whose composition is such that the product is not spreadable  
— 'messmör': for a whey-based milk product, whether or not sweetened, of a minimum milk-fat content of 2 %  
— 'vitlökssmör', 'persiljesmör' or 'pepparrotssmör': for a product containing foodstuffs having a flavouring effect and of a minimum milk-fat content of 66 %
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## ANNEX II

**Verification of the declared fat content of spreadable fats**

Five samples are to be taken randomly from the batch to be checked and analysed. The following two procedures are to be applied:

- A. The arithmetical mean of the five results obtained is compared with the declared fat content. The declared fat content is deemed to comply if the arithmetical mean content does not differ by more than one percentage point from the declared fat content.
- B. The five individual results are compared with the tolerance ( $\pm$  two percentage points of the declared fat content) shown in Article 2(1)(b). If the difference between the maximum value and the minimum value of the five individual results is less than or equal to four percentage points, the requirements of Article 2(1)(b) are deemed to be met.

Where compliance with the conditions set out under A and B is established, the batch being checked is deemed to comply with the requirements of Article 2(1)(b) even where one of the five values falls outside the tolerance range of  $\pm$  two percentage points.

## ANNEX III

**Products referred to in Article 3(3)**

Type of product	Composition of product	Minimum milk fat content
Alcoholic butter (butter containing alcoholic beverages)	Butter, alcoholic beverage, sugar	34 %

## ANNEX IV

**Repealed Regulation with list of its successive amendments**

Commission Regulation (EC) No 577/97	(OJ L 87, 2.4.1997, p. 3)
Commission Regulation (EC) No 1278/97	(OJ L 175, 3.7.1997, p. 6)
Commission Regulation (EC) No 2181/97	(OJ L 299, 4.11.1997, p. 1)
Commission Regulation (EC) No 623/98	(OJ L 85, 20.3.1998, p. 3)
Commission Regulation (EC) No 1298/98	(OJ L 180, 24.6.1998, p. 5)
Commission Regulation (EC) No 2521/98	(OJ L 315, 25.11.1998, p. 12)
Commission Regulation (EC) No 568/1999	(OJ L 70, 17.3.1999, p. 11)

## ANNEX V

**Correlation Table**

Regulation (EC) No 577/97	This Regulation
Articles 1 to 3	Articles 1 to 3
Article 5	—
Article 5a	—
—	Article 4
Article 6	Article 5
Annexes I-III	Annexes I-III
—	Annex IV
—	Annex V

## COMMISSION REGULATION (EC) No 446/2007

of 23 April 2007

amending Regulation (EC) No 2273/2002 laying down detailed rules for the application of Council Regulation (EC) No 1254/1999 as regards the survey of prices of certain bovine animals on representative Community markets

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal <sup>(1)</sup>, and in particular Article 41 thereof,

Whereas,

- (1) Commission Regulation (EC) No 2273/2002 <sup>(2)</sup> lays down provisions on the recording of prices on the representative markets of the Member States for various categories of bovine animals. Detailed rules on the information to be provided for the price survey for each of these categories are provided in the Annexes to that Regulation.
- (2) On the request of Ireland, Annexes I and II to Regulation (EC) No 2273/2002 should be partly revised in light of how marketing of cattle in that Member State has developed, thereby ensuring that the price survey continues to be based on representative markets.
- (3) Regulation (EC) No 2273/2002 should therefore be amended accordingly.

- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Beef and Veal,

HAS ADOPTED THIS REGULATION:

*Article 1*

Regulation (EC) No 2273/2002 is amended as follows:

1. in Annex I, Part E, point 1 is replaced by the following:

**'1. Representative markets**

Minimum 2 markets';

2. in Annex II, Part D, point 1 is replaced by the following:

**'1. Representative markets**

Minimum 2 markets'.

*Article 2*

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

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

Done at Brussels, 23 April 2007.

*For the Commission*

Mariann FISCHER BOEL

*Member of the Commission*

<sup>(1)</sup> OJ L 160, 26.6.1999, p. 21. Regulation as last amended by Regulation (EC) No 1913/2005 (OJ L 307, 25.11.2005, p. 2).

<sup>(2)</sup> OJ L 347, 20.12.2002, p. 15. Regulation as amended by Regulation (EC) No 2172/2003 (OJ L 326, 13.12.2003, p. 8).



## COMMISSION REGULATION (EC) No 447/2007

of 23 April 2007

**amending Regulation (EC) No 1043/2005 implementing Council Regulation (EC) No 3448/93 as regards the system of granting export refunds on certain agricultural products exported in the form of goods not covered by Annex I to the Treaty, and the criteria for fixing the amount of such refunds**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3448/93 of 6 December 1993 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products<sup>(1)</sup>, and in particular the first subparagraph of Article 8(3) thereof,

Whereas:

- (1) Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector<sup>(2)</sup> has been repealed and replaced by Council Regulation (EC) No 318/2006 of 20 February 2006 on the common organisation of the markets in the sugar sector<sup>(3)</sup>. It is appropriate to amend several provisions of Commission Regulation (EC) No 1043/2005<sup>(4)</sup> which still contain references to Regulation (EC) No 1260/2001, in order to take account of this development.
- (2) Article 3 of Regulation (EC) No 1043/2005 establishes the basic products to which certain agricultural products and products derived from the processing of basic products shall be assimilated for the purposes of granting of export refunds in accordance with that Regulation.
- (3) The products which are to be assimilated to whole milk powder (Product Group 3) are listed in Article 3(4) of Regulation (EC) No 1043/2005. However, the second subparagraph of Article 3(4) allows the competent authority, on request from the party concerned, to assimilate the products listed in that paragraph to a

combination of skimmed milk powder (Product Group 2), for their non-fat dry matter content, or to butter (Product Group 6), for their milk fat content when determining the refund to be paid.

- (4) The rapid decrease in refund rates for whole milk powder and skimmed milk powder relative to the refund rate applicable in respect of butter raises the prospect that operators will increasingly request to avail of the provisions of the second subparagraph of Article 3(4) in order to claim refund in respect of the milk fat element of products which in the normal course would have been assimilated to whole milk powder. This prospect risks the payment of higher refund in respect of agricultural products exported in the form of Non Annex I goods than would be applicable in respect of such products exported without further processing and is therefore not consistent with Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products<sup>(5)</sup> and in particular with the second subparagraph of Article 31(1) thereof.
- (5) Accordingly, it is appropriate to delete the second subparagraph of Article 3(4) of Regulation (EC) No 1043/2005, without prejudice to the possibility of introducing a similar measure if the risk in question ceases to exist. Nevertheless, in circumstances where Commission Regulation (EC) No 61/2007 of 25 January 2007 fixing the export refunds on milk and milk products<sup>(6)</sup> has reduced to zero, with effect from 26 January 2007, the export refund rate for whole milk powder, some Member States may already have deemed that it was no longer appropriate to agree to new requests from operators to avail of the derogation provided for in the second subparagraph of Article 3(4) of Regulation (EC) No 1043/2005. In the interest of harmonising the responses of Member States to the requests received since 26 January 2007 it is useful to establish a specific date after which Member States should not agree to new request for assimilation under that provision.
- (6) Article 43 of Regulation (EC) No 1043/2005 provides that, other than for food aid operations, applications for refund certificates are valid only if a security equal to 25 % of the amount applied for has been lodged. This security is lodged so as to guarantee that the holder of the refund certificate applies for refunds equal to the

<sup>(1)</sup> OJ L 318, 20.12.1993, p. 18. Regulation as last amended by Regulation (EC) No 2580/2000 (OJ L 298, 25.11.2000, p. 5).

<sup>(2)</sup> OJ L 178, 30.6.2001, p. 1.

<sup>(3)</sup> OJ L 58, 28.2.2006, p. 1. Regulation as last amended by Commission Regulation (EC) No 247/2007 (OJ L 69, 9.3.2007, p. 3).

<sup>(4)</sup> OJ L 172, 5.7.2005, p. 24. Regulation as last amended by Regulation (EC) No 1792/2006 (OJ L 362, 20.12.2006, p. 1).

<sup>(5)</sup> OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Regulation (EC) No 1913/2005 (OJ L 307, 25.11.2005, p. 2).

<sup>(6)</sup> OJ L 19, 26.1.2007, p. 8.

amount for which the certificate has been issued on goods exported during the validity period of the refund certificate. The rate of guarantee was set at a time when the level of certificate applications was considerably greater than the amount which could be granted. Following from the ongoing reduction of refund rates payable in respect of agricultural products exported in the form of Non Annex I goods the level of certificate application has eased considerably. In the circumstances the prospect of operators lodging applications for speculative reasons has reduced. It is appropriate to reduce the level of security accordingly.

- (7) Annex VIII to Regulation (EC) No 1043/2005 contains entries in twenty-one of the twenty-three languages of the Community. That Annex should also contain those entries in the two other languages, namely Irish and Maltese.
- (8) Regulation (EC) No 1043/2005 should therefore be amended accordingly.
- (9) The Management Committee on horizontal questions concerning trade in processed agricultural products not listed in Annex I has not delivered an opinion in the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

*Article 1*

Regulation (EC) No 1043/2005 is amended as follows:

1. In Article 1, paragraph 1 is amended as follows:

- (a) In the first subparagraph, 'Regulation (EC) No 1260/2001' is replaced by:

'Council Regulation (EC) No 318/2006 (\*)

(\*) OJ L 58, 28.2.2006, p. 1.'

- (b) In the second subparagraph, point (c) is replaced by the following:

'(c) Annex VII to Regulation (EC) No 318/2006.'

2. Article 3 is amended as follows:

- (a) In paragraph 4, the second subparagraph is deleted.

- (b) Paragraph 8 is amended as follows:

- (i) In the introductory words, 'Regulation (EC) No 1260/2001' is replaced by 'Regulation (EC) No 318/2006';

- (ii) Points (c) and (d) are replaced by the following:

'(c) the products referred to in Article 1(1)(c) of Regulation (EC) No 318/2006, excluding mixtures obtained partly using products covered by Regulation (EC) No 1784/2003;

(d) the products referred to in Article 1(1)(d) and (g) of Regulation (EC) No 318/2006, excluding mixtures obtained partly using products covered by Regulation (EC) No 1784/2003.'

3. In the first subparagraph of Article 43, '25 %' is replaced by '15 %'.

4. In the first subparagraph of Article 44(4), '25 %' is replaced by '15 %'.

5. In Annex II, footnote 4 concerning column 6, 'Sugar, molasses or isoglucose', is replaced by the following:

'<sup>(4)</sup> Council Regulation (EC) No 318/2006 (OJ L 58, 28.2.2006, p. 1).'

6. In Annex III, under the description for Code NC 2905 43 00 Mannitol, the first paragraph is replaced by the following:

'Obtained from sucrose covered by Regulation (EC) No 318/2006'.

7. Annex VIII is amended as follows:

- (a) After the entry for the French language the following indent is inserted:

'— in Irish: cearta arna n-aistriú ar ais chuig an seallbhóir ainmniúil ar an [dáta]'.

- (b) After the entry for the Hungarian language the following indent is inserted:

'— in Maltese: drittijiet li jkunu trasferiti lura lid-detentur titolari fid- [data]'.

*Article 2*

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

However, the second subparagraph of Article 3(4) of Regulation (EC) No 1043/2005 shall continue to apply in respect of products having obtained, with the agreement of the relevant competent authority, the assimilation referred to in that provision before 17 February 2007 and exported under cover of refund certificates for which advanced fixing, in accordance with Article 29 of that Regulation, was requested before 1 March 2007.

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

Done at Brussels, 23 April 2007.

*For the Commission*  
Günter VERHEUGEN  
*Vice-President*

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## DIRECTIVES

## COMMISSION DIRECTIVE 2007/25/EC

of 23 April 2007

**amending Council Directive 91/414/EEC to include dimethoate, dimethomorph, glufosinate, metribuzin, phosmet and propamocarb as active substances**

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

(1) Commission Regulations (EC) No 451/2000 <sup>(2)</sup> and (EC) No 703/2001 <sup>(3)</sup> lay down the detailed rules for the implementation of the second stage of the programme of work referred to in Article 8(2) of Directive 91/414/EEC and establish a list of active substances to be assessed, with a view to their possible inclusion in Annex I to Directive 91/414/EEC. That list includes dimethoate, dimethomorph, glufosinate, metribuzin, phosmet and propamocarb.

(2) For those active substances the effects on human health and the environment have been assessed in accordance with the provisions laid down in Regulations (EC) No 451/2000 and (EC) No 703/2001 for a range of uses proposed by the notifier. Moreover, those Regulations

designate the rapporteur Member States which have to submit the relevant assessment reports and recommendations to the European Food Safety Authority (EFSA) in accordance with Article 8(1) of Regulation (EC) No 451/2000. For dimethoate, the rapporteur Member State was the United Kingdom and all relevant information was submitted on 4 August 2004. For dimethomorph and metribuzin, the rapporteur Member State was Germany and all relevant information was submitted on 11 June 2004 and 23 August 2004 respectively. For glufosinate, the rapporteur Member State was Sweden and all relevant information was submitted on 3 January 2003. For phosmet, the rapporteur Member State was Spain and all relevant information was submitted on 23 August 2004. For propamocarb, the rapporteur Member State was Ireland and all relevant information was submitted on 5 October 2004.

(3) The assessment reports have been peer reviewed by the Member States and the EFSA and presented to the Commission on 14 March 2005 for glufosinate, on 12 May 2006 for phosmet and propamocarb, on 23 June 2006 for dimethoate and dimethomorph, and on 28 July 2006 for metribuzin, in the format of the EFSA Scientific Reports <sup>(4)</sup>. These reports have been reviewed by the Member States and the Commission within the Standing Committee on the Food Chain and Animal Health and finalised on 24 November 2006 in the format of the Commission review reports for dimethoate, dimethomorph, glufosinate, metribuzin, phosmet and propamocarb.

<sup>(4)</sup> EFSA Scientific Report (2005) 27, 1-81, Conclusion regarding the Peer review of the pesticide risk assessment of the active substance glufosinate (finalised: 14 March 2005).

EFSA Scientific Report (2006) 75, 1-72, Conclusion regarding the Peer review of the pesticide risk assessment of the active substance phosmet (finalised: 12 May 2006).

EFSA Scientific Report (2006) 78, 1-72, Conclusion regarding the Peer review of the pesticide risk assessment of the active substance propamocarb (finalised: 12 May 2006).

EFSA Scientific Report (2006) 84, 1-102, Conclusions on the peer review of the pesticide risk assessment of the active substance dimethoate (finalised: 23 June 2006).

EFSA Scientific Report (2006) 82, 1-69, Conclusions on the peer review of the pesticide risk assessment of the active substance dimethomorph (finalised: 23 June 2006).

EFSA Scientific Report (2006) 88, 1-74, Conclusions on the peer review of the pesticide risk assessment of the active substance metribuzin (finalised: 28 July 2006).

<sup>(1)</sup> OJ L 230, 19.8.1991, p. 1. Directive as last amended by Commission Directive 2007/21/EC (OJ L 97, 12.4.2007, p. 42).

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

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

(4) It has appeared from the various examinations made that plant protection products containing dimethoate, dimethomorph, glufosinate, metribuzin, phosmet and propamocarb may be expected to satisfy, in general, the requirements laid down in Article 5(1)(a) and (b) of Directive 91/414/EEC, in particular with regard to the uses which were examined and detailed in the Commission review reports. It is therefore appropriate to include these active substances in Annex I, in order to ensure that in all Member States the authorisations of plant protection products containing these active substances can be granted in accordance with the provisions of that Directive.

(5) Without prejudice to that conclusion, it is appropriate to obtain further information on certain specific points concerning dimethoate, glufosinate, metribuzin and phosmet. Article 6(1) of Directive 91/414/EEC provides that inclusion of a substance in Annex I may be subject to conditions. Therefore it is appropriate to require that dimethoate, glufosinate, metribuzin and phosmet should be subjected to further testing for confirmation of the risk assessment for some issues and that such studies should be presented by the notifiers.

(6) A reasonable period should be allowed to elapse before an active substance is included in Annex I in order to permit Member States and the interested parties to prepare themselves to meet the new requirements which will result from the inclusion.

(7) Without prejudice to the obligations defined by Directive 91/414/EEC as a consequence of including an active substance in Annex I, Member States should be allowed a period of six months after inclusion to review existing authorisations of plant protection products containing dimethoate, dimethomorph, glufosinate, metribuzin, phosmet and propamocarb to ensure that the requirements laid down by Directive 91/414/EEC, in particular in its Article 13 and the relevant conditions set out in Annex I, are satisfied. Member States should vary, replace or withdraw, as appropriate, existing authorisations, in accordance with the provisions of Directive 91/414/EEC. By way of derogation from the above deadline, a longer period should be provided for the submission and assessment of the complete Annex III dossier of each plant protection product for each intended use in accordance with the uniform principles laid down in Directive 91/414/EEC.

(8) The experience gained from previous inclusions in Annex I to Directive 91/414/EEC of active substances assessed

in the framework of Commission Regulation (EEC) No 3600/92 <sup>(1)</sup> has shown that difficulties can arise in interpreting the duties of holders of existing authorisations in relation to access to data. In order to avoid further difficulties it therefore appears necessary to clarify the duties of the Member States, especially the duty to verify that the holder of an authorisation demonstrates access to a dossier satisfying the requirements of Annex II to that Directive. However, this clarification does not impose any new obligations on Member States or holders of authorisations compared to the directives which have been adopted until now amending Annex I.

(9) It is therefore appropriate to amend Directive 91/414/EEC accordingly.

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

HAS ADOPTED THIS DIRECTIVE:

#### Article 1

Annex I to Directive 91/414/EEC is amended as set out in the Annex to this Directive.

#### Article 2

Member States shall adopt and publish by 31 March 2008 at the latest the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions from 1 April 2008.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

<sup>(1)</sup> OJ L 366, 15.12.1992, p. 10. Regulation as last amended by Regulation (EC) No 2266/2000 (OJ L 259, 13.10.2000, p. 27).

*Article 3*

1. Member States shall in accordance with Directive 91/414/EEC, where necessary, amend or withdraw existing authorisations for plant protection products containing dimethoate, dimethomorph, glufosinate, metribuzin, phosmet and propamocarb as active substances by 31 March 2008.

By that date they shall in particular verify that the conditions in Annex I to that Directive relating to dimethoate, dimethomorph, glufosinate, metribuzin, phosmet and propamocarb are met, with the exception of those identified in part B of the entry concerning that active substance, and that the holder of the authorisation has, or has access to, a dossier satisfying the requirements of Annex II to that Directive in accordance with the conditions of Article 13 of that Directive.

2. By way of derogation from paragraph 1, for each authorised plant protection product containing dimethoate, dimethomorph, glufosinate, metribuzin, phosmet and propamocarb as either the only active substance or as one of several active substances all of which were listed in Annex I to Directive 91/414/EEC by 30 September 2007 at the latest, Member States shall re-evaluate the product in accordance with the uniform principles provided for in Annex VI to Directive 91/414/EEC, on the basis of a dossier satisfying the requirements of Annex III to that Directive and taking into account part B of the entry in Annex I to that Directive concerning dimethoate, dimethomorph, glufosinate, metribuzin, phosmet and propamocarb respectively. On the basis of that evaluation, they shall determine whether the product satisfies the conditions set out in Article 4(1)(b), (c), (d) and (e) of Directive 91/414/EEC.

Following that determination Member States shall:

- (a) in the case of a product containing dimethoate, dimethomorph, glufosinate, metribuzin, phosmet and propamocarb as the only active substance, where necessary, amend or withdraw the authorisation by 30 September 2011 at the latest; or
- (b) in the case of a product containing dimethoate, dimethomorph, glufosinate, metribuzin, phosmet and propamocarb as one of several active substances, where necessary, amend or withdraw the authorisation by 30 September 2011 or by the date fixed for such an amendment or withdrawal in the respective directive or directives which added the relevant substance or substances to Annex I to Directive 91/414/EEC, whichever is the latest.

*Article 4*

This Directive shall enter into force on 1 October 2007.

*Article 5*

This Directive is addressed to the Member States.

Done at Brussels, 23 April 2007.

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

## ANNEX

The following entry shall be added at the end of the table in Annex I to Directive 91/414/EEC:

No	Common Name, Identification Numbers	IUPAC Name	Purity (1)	Entry into force	Expiration of inclusion	Specific provisions
155	Dimethoate CAS No 60-51-5 CIPAC No 59	O,O-Dimethyl-S-(N-methylcarbamoylmethyl)phosphorodithioate; 2-Dimethoxy-phosphinothioylthio-N-methylacetamide	≥ 950 g/kg Impurities: — omethoate: not more than 2 g/kg — isodimethoate: not more than 3 g/kg	1 October 2007	30 September 2017	Part A Only uses as insecticide may be authorised.  Part B For the implementation of the uniform principles of Annex VI, the conclusions of the review report on dimethoate, and in particular Appendices I and II thereof, as finalised in the Standing Committee on the Food Chain and Animal Health on 24 November 2006 shall be taken into account.  In this overall assessment Member States: — must pay particular attention to the protection of birds, mammals, aquatic organisms and other non-target arthropods. Conditions of authorisation should include risk mitigation measures, where appropriate, such as buffer zones and reduction of run-off and drainage inputs to surface water;  — must pay particular attention to the dietary exposure of consumers;  — must pay particular attention to the operator safety and ensure that conditions of use prescribe the application of adequate personal protective equipment.  The Member States concerned shall request the submission of further studies to confirm the risk assessment for birds, mammals and non-target arthropods, as well as to confirm the toxicological assessment on metabolites potentially present in crops.  They shall ensure that the notifier at whose request dimethoate has been included in this Annex provides such studies to the Commission within two years from the entry into force of this Directive.

No	Common Name, Identification Numbers	IUPAC Name	Purity (1)	Entry into force	Expiration of inclusion	Specific provisions
156	Dimethomorph CAS No 110488-70-5 CIPAC No 483	(E,Z) 4-[3-(4-chloro-phenyl)-3-(3,4-dimethoxy-phenyl)acryloyl]morpholine	≥ 965 g/kg	1 October 2007	30 September 2017	<p>Part A</p> <p>Only uses as fungicide may be authorised.</p> <p>Part B</p> <p>For the implementation of the uniform principles of Annex VI, the conclusions of the review report on dimethomorph, and in particular Appendices I and II thereof, as finalised in the Standing Committee on the Food Chain and Animal Health on 24 November 2006 shall be taken into account.</p> <p>In this overall assessment Member States must pay particular attention to:</p> <ul style="list-style-type: none"> <li>— the operators and workers safety. Authorised conditions of use must prescribe the application of adequate personal protective equipment;</li> <li>— to the protection of birds, mammals and aquatic organisms.</li> </ul> <p>Conditions of authorisation should include risk mitigation measures, where appropriate.</p>



No	Common Name, Identification Numbers	IUPAC Name	Purity (1)	Entry into force	Expiration of inclusion	Specific provisions
157	Glufosinate CAS No 77182-82-2 CIPAC No 437.007	ammonium(DL)-homo- alanin-4-yl(methyl) phosphinate	950 g/kg	1 October 2007	30 September 2017	<p>Part A</p> <p>Only uses as herbicide may be authorised.</p> <p>Part B</p> <p>In assessing applications to authorise plant protection products containing glufosinate for uses other than in apple orchards, notably as regards the operator and consumer exposure, Member States shall pay particular attention to the criteria in Article 4(1)(b), and shall ensure that any necessary data and information is provided before such an authorisation is granted.</p> <p>For the implementation of the uniform principles of Annex VI, the conclusions of the review report on glufosinate, and in particular Appendices I and II thereof, as finalised in the Standing Committee on the Food Chain and Animal Health on 24 November 2006 shall be taken into account. In this overall assessment Member States must pay particular attention to:</p> <ul style="list-style-type: none"> <li>— the operators, workers and bystanders safety. Conditions of authorisation should include protective measures, where appropriate;</li> <li>— the potential for groundwater contamination, when the active substance is applied in regions with vulnerable soil and/or climatic conditions;</li> <li>— the protection of mammals, non-target arthropods and non-target plants.</li> </ul> <p>Conditions of authorisation should include risk mitigation measures, where appropriate.</p> <p>The Member States concerned shall request the submission of further studies to confirm the risk assessment for mammals and non-target arthropods in apple orchards. They shall ensure that the notifier at whose request glufosinate has been included in this Annex provide such studies to the Commission within two years from the entry into force of this Directive.</p>

No	Common Name, Identification Numbers	IUPAC Name	Purity (1)	Entry into force	Expiration of inclusion	Specific provisions
158	Metribuzin CAS No 21087-64-9 CIPAC No 283	4-amino-6-tert-butyl-3-methylthio-1,2,4-triazin-5(4H)-one	≥ 910 g/kg	1 October 2007	30 September 2017	<p>Part A</p> <p>Only uses as herbicide may be authorised.</p> <p>Part B</p> <p>In assessing applications to authorise plant protection products containing metribuzin for uses other than in post-emergence selective herbicide in potatoes Member States shall pay particular attention to the criteria in Article 4(1)(b), and shall ensure that any necessary data and information is provided before such an authorisation is granted.</p> <p>For the implementation of the uniform principles of Annex VI, the conclusions of the review report on metribuzin, and in particular Appendices I and II thereof, as finalised in the Standing Committee on the Food Chain and Animal Health on 24 November 2006 shall be taken into account.</p> <p>In this overall assessment Member States:</p> <ul style="list-style-type: none"> <li>— must pay particular attention to the protection of algae, aquatic plants, non-target plants outside the treated field and must ensure that the conditions of authorisation include, where appropriate, risk mitigation measures.</li> <li>— must pay particular attention to the operator safety and ensure that conditions of use prescribe the application of adequate personal protective equipment.</li> </ul> <p>The Member States concerned shall request the submission of further data to confirm the risk assessment for groundwater. They shall ensure that the notifiers at whose request metribuzin has been included in this Annex provide such studies to the Commission within two years from the entry into force of this Directive.</p>

No	Common Name, Identification Numbers	IUPAC Name	Purity (1)	Entry into force	Expiration of inclusion	Specific provisions
159	Phosmet CAS No 732-11-6 CIPAC No 318	O,O-dimethyl S-phthalimidithioate; N-(dimethoxyphosphorothioyl)phthalimide	≥ 950 g/kg Impurities: — phosmet oxon: not more than 0,8 g/kg — iso phosmet: not more than 0,4 g/kg	1 October 2007	30 September 2017	<p>Part A</p> <p>Only uses as insecticide and acaricide may be authorised.</p> <p>Part B</p> <p>For the implementation of the uniform principles of Annex VI, the conclusions of the review report on phosmet, and in particular Appendices I and II thereof, as finalised in the Standing Committee on the Food Chain and Animal Health on 24 November 2006 shall be taken into account.</p> <p>In this overall assessment Member States:</p> <ul style="list-style-type: none"> <li>— must pay particular attention to the protection of birds, mammals, aquatic organisms, bees and other non-target arthropods. Conditions of authorisation should include risk mitigation measures, where appropriate, such as buffer zones and reduction of run-off and drainage inputs to surface water,</li> <li>— must pay particular attention to the operator safety and ensure that conditions of use prescribe the application of adequate personal and respiratory protective equipment.</li> </ul> <p>The Member States concerned shall request the submission of further studies to confirm the risk assessment for birds (acute risk) and herbivorous mammals (long term risk). They shall ensure that the notifier at whose request phosmet has been included in this Annex provides such studies to the Commission within two years from the entry into force of this Directive.</p>

No	Common Name, Identification Numbers	IUPAC Name	Purity (1)	Entry into force	Expiration of inclusion	Specific provisions
160	Propamocarb CAS No 24579-73-5 CIPAC No 399	Propyl 3-(dimethylamino)propylcarbamate	≥ 920 g/kg	1 October 2007	30 September 2017	<p>Part A</p> <p>Only uses as fungicide may be authorised.</p> <p>Part B</p> <p>In assessing applications to authorise plant protection products containing propamocarb for uses other than foliar applications, Member States shall pay particular attention to the criteria in Article 4(1)(b), as regards worker exposure and shall ensure that any necessary data and information is provided before such an authorisation is granted.</p> <p>For the implementation of the uniform principles of Annex VI, the conclusions of the review report on propamocarb, and in particular Appendices I and II thereof, as finalised in the Standing Committee on the Food Chain and Animal Health on 24 November 2006 shall be taken into account.</p> <p>In this overall assessment Member States must pay particular attention to:</p> <ul style="list-style-type: none"> <li>— the operators and workers safety. Conditions of authorisation should include protective measures, where appropriate;</li> <li>— the transfer of soil residues for rotating or succeeding crops;</li> <li>— the protection of surface and groundwater in vulnerable zones;</li> <li>— the protection of birds, mammals and aquatic organisms. Conditions of authorisation should include risk mitigation measures, where appropriate.</li> </ul>

(1) Further details on identity and specification of active substance are provided in the review report.

## II

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

## DECISIONS

## COUNCIL

## COUNCIL DECISION

of 27 March 2007

**on the conclusion of the Scientific and Technological Cooperation Agreement between the European Community and the Government of the Republic of Korea**

(2007/241/EC)

THE COUNCIL OF THE EUROPEAN UNION,

HAS DECIDED AS FOLLOWS:

Having regard to the Treaty establishing the European Community, and in particular Article 170, in conjunction with the first sentence of the first subparagraph of Article 300(2) and the first subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament <sup>(1)</sup>,

Whereas:

(1) The Agreement on the Scientific and Technological Cooperation between the European Community and the Government of the Republic of Korea was signed on behalf of the Community on 22 November 2006 subject to its possible conclusion at a later date, in conformity with the Decision of the Council on the signature of the Scientific and Technological Cooperation Agreement between the European Community and the Government of the Republic of Korea <sup>(2)</sup>.

(2) The Agreement should be approved,

*Article 1*

The Agreement on the Scientific and Technological Cooperation between the European Community and the Government of the Republic of Korea is hereby approved on behalf of the Community.

The text of the Agreement is attached to this Decision <sup>(\*)</sup>.

*Article 2*

The President of the Council shall, acting on behalf of the Community, give the notification provided for in Article 12(1) of the Agreement <sup>(3)</sup>.

Done at Brussels, 27 March 2007.

*For the Council*  
*The President*  
P. STEINBRÜCK

<sup>(1)</sup> Opinion of 1 February 2007 (not yet published in the Official Journal).

<sup>(2)</sup> See page 44 of this Official Journal.

<sup>(\*)</sup> See page 44 of this Official Journal.

<sup>(3)</sup> The date of entry into force of the Agreement will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

**AGREEMENT****on the Scientific and Technological Cooperation between the European Community and the Government of the Republic of Korea**

THE EUROPEAN COMMUNITY,

(hereinafter referred to as the Community), and

THE GOVERNMENT OF THE REPUBLIC OF KOREA,

(hereinafter referred to as Korea),

(hereinafter jointly referred to as the Parties);

CONSIDERING that the Community and Korea are pursuing research, technological development and demonstration activities in a number of areas of common interest, and being aware of the rapid expansion of scientific knowledge and its positive contribution in promoting bilateral and international cooperation;

WISHING to broaden the scope of scientific and technological cooperation in a number of areas of common interest through the creation of a productive partnership for peaceful purposes and mutual benefits;

NOTING that such cooperation and the application of the results of such cooperation will contribute to the economic and social development of the Parties; and

DESIRING to establish a formal framework to implement the overall cooperative activities that will strengthen cooperation in science and technology between the Parties,

HAVE AGREED AS FOLLOWS:

*Article 1***Purpose and principles**

1. The Parties shall encourage, develop and facilitate cooperative activities under this Agreement in the areas of science and technology for peaceful purposes, in accordance with this agreement and the laws and regulations of both Parties.
2. The cooperative activities under this Agreement shall be carried out on the basis of the following principles:
  - (a) Mutual and equitable contributions and benefits;
  - (b) Mutual access of the research and technological development programmes, projects and facilities of each Party by visiting researchers of the other Party;
  - (c) Timely exchange of information which may concern cooperative activities;
  - (d) Promotion of a knowledge-based society for the benefit of an economic and social development of the Parties; and
  - (e) Protection of intellectual property rights in accordance with Annex II of this Agreement.

*Article 2***Definitions**

For the purpose of this Agreement:

1. 'direct cooperative activities' mean cooperative activities between the Parties;
2. 'indirect cooperative activities' mean activities between legal entities established in Korea and the Community through the participation of Korean legal entities in the Community Framework Programme under Article 166 of the Treaty establishing the European Community (hereinafter referred to as the Framework Programme) and the reciprocal participation of the legal entities established in the Community in Korean research programmes or projects in science and technology fields similar to those covered by the Framework Programme;
3. 'cooperative activities' include both direct and indirect cooperative activities;
4. 'legal entity' means any natural person or any legal person created under the national law of its place of establishment or under Community law, having legal personality and being entitled to the rights and subjected to the obligations of any kind in its own name.

*Article 3***Cooperative activities**

1. The direct cooperative activities under this Agreement may include:
  - (a) Meetings of various forms, including those of experts, to discuss and exchange information on scientific and technological topics of a general or specific nature and to identify research and development projects and programmes that may be undertaken on a cooperative basis;
  - (b) Exchange of information on activities, policies, practices, laws and regulations concerning research and development;
  - (c) Visits and exchanges of scientists, technical personnel and other experts on general or specific subjects;
  - (d) Implementation of cooperative projects and programmes which may be decided upon by the Joint Committee, referred to in Article 6 in accordance with the respective laws and regulations of the Parties; and
  - (e) Other forms of activities in the areas of science and technology, which may be decided upon by the Joint Committee, referred to in Article 6 in accordance with the respective laws and regulations of the Parties.
2. For the purpose of developing indirect cooperative activities, and subject to the Annexes to this agreement, any legal entity established in Korea or the Community may participate in research programmes or projects operated by the other Party and opened to its legal entities, in accordance with the respective laws and regulations of the Parties.

*Article 4***Implementation procedures**

1. Implementation of arrangements, which set forth the details and procedures of cooperative activities under this Agreement, may be concluded between the Parties.
2. Each Party may delegate the implementation of scientific and technological cooperative activities of the Parties to specific institutions for direct implementation or support of scientific and technological cooperative activities between the Parties.
3. Scientific and technological cooperative activities not based on specific agreements that have been encouraged, developed and facilitated by the Parties and have been commenced and not completed by the date of entry into force of this Agreement, shall be incorporated under this Agreement as of that date.

*Article 5***Enhancement of cooperation**

1. Each Party shall make every effort to accord with the legal entities carrying out cooperative activities under this Agreement, all potential facilities with a view of facilitating the works and visits of researchers participating in these cooperative activities along with the entry and exit from its territory of materials, data and equipments intended for use in these cooperative activities.
2. With regard to the cooperative activities under this Agreement, the Parties may allow, if appropriate and for peaceful purposes, the participation of researchers and organisations from all sectors of the research establishment including the private sector.

*Article 6***Joint Committee**

1. The coordination and facilitation of cooperative activities under this Agreement shall be carried out, on behalf of Korea, by the Ministries of Korea responsible for Science and Technology and, on behalf of the Community, by the services of the Commission of the European Communities (Directorate General for Science, Research and Development), who shall be acting as executive agents.
2. For the purpose of ensuring the effective implementation of this Agreement, the executive agents shall establish a Joint Committee on Scientific and Technological Cooperation (hereinafter referred to as the Joint Committee). The Joint Committee shall consist of official representatives of each Party and shall be co-chaired by the representatives of both Parties. The Joint Committee shall establish its own rules of procedure by mutual consent.
3. The functions of the Joint Committee shall be:
  1. Exchanging views and information on scientific and technological policy issues;
  2. Reviewing and discussing the cooperative activities and accomplishments under this Agreement;
  3. Making recommendations to the Parties with regard to the implementation of this Agreement, which may include the identification and proposal of the cooperative activities hereunder and the encouragement of their implementation;
  4. Providing a report to the Parties on the status, the achievements and the effectiveness of the cooperative activities under this Agreement. This report shall be transmitted to the EU-Korea Joint Committee under the Framework Agreement for Trade and Cooperation.
4. Decisions of the Joint Committee shall be reached by mutual consent.

5. The expenses of participant for the meetings of the Joint Committee, such as travel costs and accommodation shall be borne by the Parties to whom they relate. Any other costs associated with these meetings shall be borne by the host Party.

6. The Joint Committee shall meet alternately in Korea and the Community with the time of the meetings arranged upon mutual agreement, preferably annually.

#### Article 7

##### **Funding**

1. Implementation of this Agreement shall be subject to the availability of appropriated funds and the applicable laws and regulations of each Party.

2. The costs of the cooperative activities under this Agreement shall be borne as decided upon by mutual consent.

3. When specific cooperative schemes of one Party provide financial support to the participants from the other Party, any grants and financial or other contributions from one Party to the participants of the other Party in support of those activities shall be granted tax and customs exemption in accordance with the relevant laws and regulations in force in the territories of each Party at the time such grants and financial or other contributions are made.

#### Article 8

##### **Information and intellectual property rights**

1. Scientific and technological information of a non-proprietary nature arising from direct cooperative activities may be made available to the public by either Party through customary channels and in accordance with its general procedures.

2. Intellectual property rights and other proprietary rights created or introduced in the course of the cooperative activities under this Agreement shall be treated in accordance with the provisions of Annex II of this Agreement.

#### Article 9

##### **Territorial application**

This Agreement shall apply, on the one hand, to the territories in which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty and, on the other hand, to the Territory of Korea. This shall not prevent the conduct of cooperative activities in the high seas, outer space or the territory of third countries, in accordance with international law.

#### Article 10

##### **Dispute settlement**

1. The provisions of this Agreement shall not prejudice the rights and obligations of existing and/or future agreements on cooperation between the Parties or between the Governments of

any Member State of the Community and the Government of Korea.

2. All questions or disputes related to the interpretation or implementation of this Agreement shall be settled by consultation between the Parties.

#### Article 11

##### **Annexes**

Annexes I (on terms and conditions for participation) and II (on intellectual property rights) constitute an integral part of this Agreement.

#### Article 12

##### **Entry into force and termination**

1. This Agreement shall enter into force on the date on which the Parties exchange diplomatic notes informing each other of the completion of their respective internal procedures necessary for the entry into force of this Agreement.

2. This Agreement shall remain in force for five years and shall continue to be in force thereafter unless terminated by either Party.

3. At the end of the initial five-year period or at any time later, this Agreement may be terminated through written notice, at least six months in advance to the other Party.

4. Each Party may evaluate the impact and activities of this Agreement every five years. Each Party shall make every effort to facilitate the evaluation conducted by the other Party and the Party which conducts the evaluation shall inform the other Party of the evaluation results.

5. This Agreement may be amended with the mutual consent of the Parties through the exchange of diplomatic notes. Amendments shall enter into force following the same procedure as mentioned in paragraph 1, except as otherwise agreed by the Parties.

6. The termination of this Agreement shall be without prejudice to the cooperative activities undertaken under this Agreement and not fully executed at the time of the termination of this Agreement or to any specific rights and obligations that have accrued in compliance with the Annexes to this Agreement.

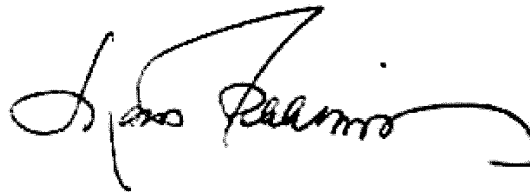
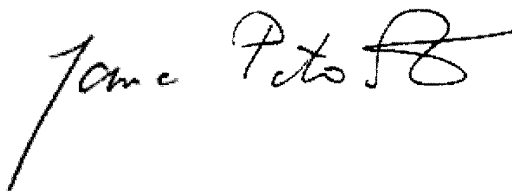
IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by the European Community and the Government of the Republic of Korea respectively, have signed this Agreement.

DONE in duplicate at Brussels on the twenty-second day of November in the year two thousand and six, in the Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Slovak, Slovenian, Spanish, Swedish and Korean languages, each text being equally authentic.



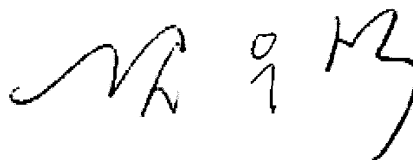
Por la Comunidad Europea  
 Za Evropské společenství  
 For Det Europæiske Fællesskab  
 Für die Europäische Gemeinschaft  
 Euroopa Ühenduse nimel  
 Για την Ευρωπαϊκή Κοινότητα  
 For the European Community  
 Pour la Communauté européenne  
 Per la Comunità europea  
 Eiropas Kopienas vārdā  
 Europos bendrijos vardu  
 az Európai Közösség részéről  
 Għall-Komunità Ewropea  
 Voor de Europese Gemeenschap  
 W imieniu Wspólnoty Europejskiej  
 Pela Comunidade Europeia  
 Za Európske spoločenstvo  
 Za Evropsko skupnost  
 Euroopan yhteisön puolesta  
 På Europeiska gemenskapens vägnar

**구주공동체를 위하여**

Por el Gobierno de la República de Corea  
 Za vládu Korejské republiky  
 For Republikken Koreas regering  
 Für die Regierung der Republik Korea  
 Korea Vabariigi Valitsuse nimel  
 Για την Κυβέρνηση της Δημοκρατίας της Κορέας  
 For the Government of the Republic of Korea  
 Pour le gouvernement de la République de Corée  
 Per il governo della Repubblica di Corea  
 Korejas Republikas vārdā  
 Korėjos Respublikos Vyriausybės vardu  
 A Koreai Köztársaság kormánya részéről  
 Għall-Gvern tar-Repubblika tal-Korea  
 Voor de Regering van de Republiek Korea  
 W imieniu Rządu Republiki Korei  
 Pelo Governo da República da Coreia  
 Za vládu Kórejskej republiky  
 Za Vlado Republike Koreje  
 Korean tasavallan hallituksen puolesta  
 På Republiken Koreas regerings vägnar

**대한민국 정부를 위하여**



## ANNEX I

**Terms and conditions for the participation of legal entities established in the European Community and Korea**

Within the framework of this Agreement, in case one Party concludes a contract with a legal entity of the other Party for an indirect cooperative activity, the other Party, upon request, shall endeavour to provide any reasonable and feasible assistance as may be necessary or helpful to the former Party for smooth implementation of such contract.

**1. TERMS AND CONDITIONS FOR THE PARTICIPATION OF LEGAL ENTITIES ESTABLISHED IN KOREA IN INDIRECT COOPERATIVE ACTIVITIES UNDER THE RESEARCH FRAMEWORK PROGRAMME OF THE COMMUNITY (HEARINAFTER REFERRED TO AS 'THE FRAMEWORK PROGRAMME')**

- (a) Legal entities established in Korea may participate in indirect cooperative activities under the Framework Programme of the European Community for research, technological development and demonstration activities subject to the conditions and limitations laid down in the Regulation of the European Parliament and the Council concerning the rules for participation of undertakings, research centres and universities and for the dissemination of research results for the implementation of the framework programme of the European Community.
- (b) Without prejudice to paragraph (a), the participation of legal entities established in Korea for indirect cooperative activities under the Framework Programmes shall be in accordance with the Rules.

**2. TERMS AND CONDITIONS FOR THE PARTICIPATION OF LEGAL ENTITIES ESTABLISHED IN THE EUROPEAN COMMUNITY IN KOREA'S RESEARCH PROGRAMMES AND PROJECTS**

- (a) Legal entities established in the Community may participate in the research and development projects or programmes funded by the Korean Government.
  - (b) Legal entities established in the Community shall participate in Korea's research and development projects or programmes in accordance with the relevant laws and regulations of Korea and the relevant rules of participation in such projects or programmes.
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## ANNEX II

**Principles concerning the allocation of intellectual property rights****1. DEFINITION**

For the purpose of this Agreement, 'intellectual property' shall have the meaning given in Article 2 of the Convention establishing the World Intellectual Property Organisation, done at Stockholm on 14 July 1967.

**2. INTELLECTUAL PROPERTY RIGHTS OF THE PARTIES IN DIRECT COOPERATIVE ACTIVITIES**

(a) Except if otherwise specifically agreed by the Parties, the following rules shall apply to intellectual property rights, except copyrights and related rights, generated by the Parties in the course of direct cooperative activities carried out under Article 3.1 of this Agreement:

1. The Party generating intellectual property shall have full ownership. In case the intellectual property has been jointly generated and the respective share of the work by the two Parties cannot be ascertained, the Parties shall have joint ownership of the intellectual property;
2. The Party owning the intellectual property shall grant the other Party the access rights to carry out any direct cooperative activities. Such access rights shall be granted on a royalty-free basis.

(b) Except if otherwise specifically agreed by the Parties, the following rules shall apply to copyrights and related rights of the Parties:

1. When a Party publishes scientific and technical data, information or results by means of journals, articles, reports, books or in other forms, including video tapes and software, arising from and relating to cooperative activities under this Agreement, the Party shall make utmost efforts to obtain, for the other Party, non-exclusive, irrevocable, royalty-free licences in all countries where copyright protection is available, in order to translate, reproduce, adapt, transmit and publicly distribute such works;
2. All publicly distributed copies of a copyrighted work under the provisions of paragraph (b)(1) shall indicate the name(s) of the author(s) of the work unless the author(s) explicitly declines to be named. They shall also display a clearly visible acknowledgement of the cooperative support of the Parties.

(c) Except if otherwise specifically agreed by the Parties, the following rules shall apply to the undisclosed information of the Parties:

1. When communicating to the other Party on the information necessary to carry out direct cooperative activities, each Party shall identify the information which it wishes to remain undisclosed;
2. The Party receiving the information may, under its own responsibility, communicate undisclosed information to its agencies or persons employed through these agencies for the specific purposes of implementing this Agreement.
3. With the prior written consent of the Party providing the undisclosed information, the other Party may disseminate such undisclosed information more widely than otherwise permitted in paragraph (c)(2). The Parties shall cooperate with each other in developing procedures to request and obtain prior written consent for such wider dissemination, and each Party shall grant such approval to the extent permitted by its laws and regulations;
4. Information arising from seminars, meetings, assignments of staff and of the use of facilities arranged under this Agreement shall remain confidential when the recipient of such information is requested by its provider to protect its confidential or privileged character at the time such communication is made, according to paragraph (c)(1);
5. If one Party becomes aware that it will be, or may be reasonably expected to become, unable to meet the restrictions and conditions of dissemination of Article 2(c), it shall immediately inform the other Party. The Parties shall thereafter consult to define an appropriate course of action.

### 3. INTELLECTUAL PROPERTY RIGHTS OF LEGAL ENTITIES OF THE PARTIES IN INDIRECT COOPERATIVE ACTIVITIES

- (a) Each Party shall ensure that the intellectual property rights of legal entities of one Party, participating in the research and development programmes operated by the other Party, and the related rights and obligations arising from such participation, shall be consistent with the relevant laws and regulations and international conventions, including the Agreement on Trade-Related Aspects of Intellectual Property Rights, Annex 1C of the Marrakech Agreement Establishing the World Trade Organisation as well as the Paris Act of 24th July 1971 of the Berne Convention for the Protection of Literary and Artistic Works and the Stockholm Act of 14th July 1967 of the Paris Convention for the Protection of Industrial Property.
  
  - (b) Each Party shall ensure that, under its applicable laws and regulations, the legal entities of one Party, participating in the research and development programmes operated by the other Party, shall have the same rights and obligations with regard to intellectual property as possessed by the legal entities of the other Party, in the same indirect cooperative activity.
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**COUNCIL DECISION**  
**of 23 April 2007**  
**implementing Article 7(2) of Regulation (EC) No 423/2007 concerning restrictive measures against**  
**Iran**  
(2007/242/EC)

THE COUNCIL OF THE EUROPEAN UNION,

HAS DECIDED AS FOLLOWS:

*Article 1*

Having regard to Council Regulation (EC) No 423/2007 of 19 April 2007 <sup>(1)</sup>, and in particular Article 15(2) thereof,

The persons, entities and bodies appearing in the Annex to this Decision shall be listed under Annex V of Regulation (EC) No 423/2007.

Whereas:

*Article 2*

This Decision shall take effect on the day of its publication.

(1) On 19 April 2007, the Council adopted Regulation (EC) No 423/2007 concerning restrictive measures against Iran. Article 15(2) of that Regulation provides that the Council shall establish, review and amend the list of persons, entities and bodies referred to in Article 7(2) of that Regulation.

*Article 3*

This Decision shall be published in the *Official Journal of the European Union*.

(2) The Council has determined that certain persons, entities and bodies fulfil the conditions laid down in Article 7(2) of Regulation (EC) No 423/2007 and that they should therefore be listed in Annex V of that Regulation for the individual and specific reasons set out therein,

Done at Luxembourg, 23 April 2007.

*For the Council*  
*The President*  
F.-W. STEINMEIER

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<sup>(1)</sup> OJ L 103, 20.4.2007, p. 1.

## ANNEX

## 'A. Legal persons, entities and bodies

	Name	Identifying information	Reasons
1.	Aerospace Industries Organisation (AIO)	AIO, 28 Shian 5, Lavizan, Tehran	The AIO oversees Iran's production of missiles, including the Shahid Hemmat Industrial Group, the Shahid Bagheri Industrial Group and the Fajr Industrial Group, which were all designated under UNSCR 1737 (2006). The head of the AIO and two other senior officials were also designated under UNSCR 1737 (2006).
2.	Armament Industries	Pasdaran Av., PO Box 19585/777, Tehran	A subsidiary of the DIO (Defence Industries Organisation).
3.	Defence Technology and Science Research Centre (DTSRC) — also known as the Educational Research Institute/Moassese Amozeh Va Tahgiaghati (ERI/MAVT Co.)	Pasdaran Av., PO Box 19585/777, Tehran	Responsible for R&D. A subsidiary of the DIO. The DTSRC handles much of the procurement for the DIO.
4.	Jaber Ibn Hayan	AEOI JIHRD, PO Box 11365-8486, Tehran; 84, 20th Av., Entehaye Karegar Shomali Street, Tehran	Jaber Ibn Hayan is an AEOI (Atomic Energy Organisation of Iran) laboratory involved in fuel cycle activities. Located within the Tehran Nuclear Research Centre (TNRC), it was not declared by Iran under its safeguards agreement prior to 2003, although conversion work was being carried out there.
5.	Marine Industries	Pasdaran Av., PO Box 19585/777, Tehran	A subsidiary of the DIO.
6.	Nuclear Fuel Production and Procurement Company (NFPC)	AEOI-NFPD, PO Box 11365-8486, Tehran, Iran	The Nuclear Fuel Production Division (NFPD) of the AEOI is involved in research and development in the field of the nuclear fuel cycle, including uranium exploration, mining, milling and conversion and nuclear waste management. The NFPC is the successor to the NFPD, the subsidiary company under the AEOI that runs research and development in the nuclear fuel cycle, including conversion and enrichment.
7.	Special Industries Group	Pasdaran Av., PO Box 19585/777, Tehran	A subsidiary of the DIO.
8.	TAMAS Company		TAMAS is involved in enrichment-related activities, which Iran is required by the IAEA Board and the Security Council to suspend. TAMAS is the overarching body, under which four subsidiaries have been established, including one doing uranium extraction to concentration and another in charge of uranium processing, enrichment and waste.

## B. Natural persons

	Name	Identifying information	Reasons
1.	Reza AGHAZADEH	Date of birth: 15.3.1949. Passport number: S4409483, valid 26.4.2000-27.4.2010. Issued: Tehran. Place of birth: Khoy.	Head of the Atomic Energy Organisation of Iran (AEOI). The AEOI oversees Iran's nuclear programme and is designated under UNSCR 1737 (2006).
2.	Amir Moayyed ALAI		Involved in managing the assembly and engineering of centrifuges. Iran is required by the IAEA Board and the Security Council to suspend all enrichment-related activities. This includes all centrifuge-related work. On 27 August 2006 Alai received a special award from President Ahmadinejad for his role in managing the assembly and engineering of centrifuges.
3.	Mohammed Fedai ASHIANI		Involved in the production of ammonium uranyl carbonate (AUC) and the management of the Natanz enrichment complex. Iran is required to suspend all enrichment-related activities. On 27 August 2006 Ashiani received a special award from President Ahmadinejad for his role in the AUC production process and for his role in the management of and engineering design for the enrichment complex at the Natanz (Kashan) site.
4.	Haleh BAKHTIAR		Involved in the production of magnesium at a concentration of 99,9%. On 27 August 2006 Bakhtiar received a special award from President Ahmadinejad for her role in producing magnesium at a concentration of 99,9%. Magnesium of this purity is used to produce uranium metal, which can be cast into material for a nuclear weapon. Iran has refused to provide the IAEA with access to a document on the production of uranium metal hemispheres, only applicable for nuclear weapons use.
5.	Morteza BEHZAD		Involved in making centrifuge components. Iran is required to suspend all enrichment-related activities. This includes all centrifuge-related work. On 27 August 2006 Behzad received a special award from President Ahmadinejad for his role in making complex and sensitive centrifuge components.
6.	Dr Hoseyn (Hossein) FAQIHIAN	Address of the NFPC: AEOI-NFPD, PO Box 11365-8486, Tehran, Iran.	Deputy and Director General of the Nuclear Fuel Production and Procurement Company (NFPC), part of the AEOI. The AEOI oversees Iran's nuclear programme and is designated under UNSCR 1737 (2006). The NFPC is involved in enrichment-related activities, which Iran is required by the IAEA Board and the Security Council to suspend.
7.	Seyyed Hussein (Hossein) HUSSEINI (HOSSEINI)		An AEOI official involved in the heavy water research reactor (IR40) project at Arak. UNSCR 1737 (2006) required Iran to suspend all work on heavy water related projects.

	Name	Identifying information	Reasons
8.	Javad KARIMI SABET		Head of the Novin Energy Company. In August 2006 Karimi Sabet received an award from President Ahmadinejad for his role in designing, producing, installing and using nuclear equipment at the Natanz site.
9.	Said Esmail KHALILIPOUR		Deputy Head of the AEOI. The AEOI oversees Iran's nuclear programme and is designated under UNSCR 1737 (2006).
10.	Ali Reza KHANCHI	Address of the NRC: AEOI-NRC, PO Box 11365-8486, Tehran, Iran; Fax (+9821) 8021412.	Head of the AEOI's Tehran Nuclear Research Centre. The IAEA is continuing to seek clarification from Iran about plutonium separation experiments carried out at the TNRC, including about the presence of HEU particles in environmental samples taken at the Karaj Waste Storage Facility, where containers used to store depleted uranium targets used in those experiments are located. The AEOI oversees Iran's nuclear programme and is designated under UNSCR 1737 (2006).
11.	Hamid-Reza MOHAJERANI		Involved in production management at the Uranium Conversion Facility (UCF) at Esfahan. On 27 August 2006 Mohajerani received a special award from President Ahmadinejad for his role in production management at the UCF and in planning, building and installing the UF6 unit (UF6 is the feed material for enrichment).
12.	Houshang NOBARI		Involved in the management of the Natanz enrichment complex. Iran is required by the IAEA Board and the Security Council to suspend all enrichment-related activities. These include activities at the enrichment complex at Natanz (Kashan). On 27 August 2006 Nobari received a special award from President Ahmadinejad for his role in the successful management and execution of the Natanz (Kashan) site plan.
13.	Dr Javad RAHIQI		Head of the AEOI's Esfahan Nuclear Technology Centre. This oversees the uranium conversion plant at Esfahan. Iran is required by the IAEA Board and the Security Council to suspend all enrichment-related activities. This includes all uranium conversion work. The AEOI oversees Iran's nuclear programme and is designated under UNSCR 1737 (2006).
14.	Abbas RASHIDI		Involved in enrichment work at Natanz. Iran is required by the IAEA Board and the Security Council to suspend all enrichment-related activities. On 27 August 2006 Rashidi received a special award from President Ahmadinejad for his management and notable role in the successful operation of the 164-centrifuge enrichment cascade at Natanz.
15.	Abdollah SOLAT SANA		Managing Director of the Uranium Conversion Facility (UCF) in Esfahan. This is the facility that produces the feed material (UF6) for the enrichment facilities at Natanz. On 27 August 2006 Solat Sana received a special award from President Ahmadinejad for his role.



# COMMISSION

## COMMISSION DECISION

of 18 April 2007

**excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF)**

*(notified under document number C(2007) 1663)*

**(only the Spanish, Danish, German, Greek, English, French, Italian, Dutch, Portuguese, Finnish and Swedish texts are authentic)**

**(Text with EEA relevance)**

(2007/243/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy <sup>(1)</sup>, and in particular Article 5(2)(c) thereof,

Having regard to Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy <sup>(2)</sup>, and in particular Article 7(4) thereof,

Having consulted the Committee on the Agricultural Funds,

Whereas:

(1) Under Article 5 of Council Regulation (EEC) No 729/70, Article 7 of Regulation (EC) No 1258/1999, and Article 8(1) and (2) of Commission Regulation (EC) No 1663/95 of 7 July 1995 laying down detailed rules for the application of Regulation (EEC) No 729/70 regarding the procedure for the clearance of the accounts of the EAGGF Guarantee Section <sup>(3)</sup>, the Commission is to carry out the necessary verifications, communicate to the Member States the results of these verifications, take note of the comments of the Member States, initiate a bilateral discussion so that an agreement may be reached with the Member States in question, and formally communicate its conclusions to them.

(2) The Member States have had an opportunity to request the launch of a conciliation procedure. That opportunity has been used in some cases and the report issued on the outcome has been examined by the Commission.

(3) Under Articles 2 and 3 of Regulation (EEC) No 729/70 and Article 2 of Regulation (EC) No 1258/1999, only refunds on exports to third countries and intervention to stabilise agricultural markets, granted and undertaken respectively according to Community rules within the framework of the common organisation of the agricultural markets, may be financed.

(4) In the light of the verifications carried out, the outcome of the bilateral discussions and the conciliation procedures, part of the expenditure declared by the Member States does not fulfil these requirements and cannot, therefore, be financed under the EAGGF Guarantee Section.

(5) The amounts that are not recognised as being chargeable to the EAGGF Guarantee Section should be indicated. Those amounts do not relate to expenditure incurred more than twenty-four months before the Commission's written notification of the results of the verifications to the Member States.

(6) As regards the cases covered by this Decision, the assessment of the amounts to be excluded on grounds of non-compliance with Community rules was notified by the Commission to the Member States in a summary report on the subject.

<sup>(1)</sup> OJ L 94, 28.4.1970, p. 13. Regulation as last amended by Regulation (EC) No 1287/95 (OJ L 125, 8.6.1995, p. 1).

<sup>(2)</sup> OJ L 160, 26.6.1999, p. 103.

<sup>(3)</sup> OJ L 158, 8.7.1995, p. 6. Regulation as last amended by Regulation (EC) No 465/2005 (OJ L 77, 23.3.2005, p. 6).

(7) This Decision is without prejudice to any financial conclusions that the Commission may draw from the judgments of the Court of Justice in cases pending on 25 January 2007 and relating to its content,

HAS ADOPTED THIS DECISION:

*Article 1*

The expenditure itemised in the Annex hereto that has been incurred by the Member States' accredited paying agencies and declared under the EAGGF Guarantee Section shall be excluded from Community financing because it does not comply with Community rules.

*Article 2*

This Decision is addressed to the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the

Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 18 April 2007.

*For the Commission*

Mariann FISCHER BOEL

*Member of the Commission*

## ANNEX

## Total corrections — Budget item 6 7 0 1

MS	Measure	FY	Reason	Type	%	Currency	Amount	Deductions already made	Financial impact
AT	Financial audit — Overshooting	2005	Overshooting of financial ceilings	one-off		EUR	- 577,47	- 577,47	0,00
	<b>Total AT</b>					<b>EUR</b>	<b>- 577,47</b>	<b>- 577,47</b>	<b>0,00</b>
BE	Clearance of accounts	2001	Clearance of 2001 accounts	one-off		EUR	- 45 922,50	- 45 922,50	0,00
BE	Clearance of accounts	2003	Clearance of 2003 accounts	one-off		EUR	- 53 786,11	- 29 109,11	- 24 677,00
	<b>Total BE</b>					<b>EUR</b>	<b>- 99 708,61</b>	<b>- 75 031,61</b>	<b>- 24 677,00</b>
DE	Clearance of accounts	2003	Clearance of 2003 accounts	one-off		EUR	- 2 372 552,57	0,00	- 2 372 552,57
DE	Clearance of accounts	2004	Clearance of 2004 accounts	one-off		EUR	- 848 720,33	0,00	- 848 720,33
DE	Clearance of accounts	2005	Clearance of 2005 accounts	one-off		EUR	- 1 475 549,22	0,00	- 1 475 549,22
DE	Financial audit — Late payments	2005	Failure to meet payment deadlines	one-off		EUR	- 123 145,69	- 188 245,69	65 100,00
DE	Financial audit — Overshooting	2004	Overshooting of financial ceilings	one-off		EUR	- 134 267,39	0,00	- 134 267,39
	<b>Total DE</b>					<b>EUR</b>	<b>- 4 954 235,20</b>	<b>- 188 245,69</b>	<b>- 4 765 989,51</b>
DK	Export Refunds	2000	Inadequate implementation of substitution checks	flat-rate	2 %	DKK	- 4 042 587,64	0,00	- 4 042 587,64
DK	Export Refunds	2000	Inadequate implementation of substitution checks	flat-rate	5 %	DKK	- 1 694 642,72	0,00	- 1 694 642,72
DK	Export Refunds	2001	Inadequate implementation of substitution checks	flat-rate	2 %	DKK	- 11 636 374,73	0,00	- 11 636 374,73
DK	Export Refunds	2001	Inadequate implementation of substitution checks	flat-rate	5 %	DKK	- 5 847 108,45	0,00	- 5 847 108,45
DK	Export Refunds	2002	Inadequate implementation of substitution checks	flat-rate	2 %	DKK	- 14 620 538,05	0,00	- 14 620 538,05
DK	Export Refunds	2002	Inadequate implementation of substitution checks	flat-rate	5 %	DKK	- 6 732 926,94	0,00	- 6 732 926,94
DK	Export Refunds	2003	Inadequate implementation of substitution checks	flat-rate	2 %	DKK	- 3 239 587,36	0,00	- 3 239 587,36

MS	Measure	FY	Reason	Type	%	Currency	Amount	Deductions already made	Financial impact
DK	Export Refunds	2003	Inadequate implementation of substitution checks	flat-rate	5 %	DKK	-1 450 243,99	0,00	-1 450 243,99
DK	Financial audit — Overshooting	2004	Overshooting of financial ceilings	one-off		EUR	- 68 177,57	- 68 177,57	0,00
	<b>Total DK</b>					<b>DKK</b>	<b>-49 264 009,88</b>	<b>0,00</b>	<b>-49 264 009,88</b>
	<b>Total DK</b>					<b>EUR</b>	<b>- 68 177,57</b>	<b>-68 177,57</b>	<b>0,00</b>
ES	Financial audit — Late payments	2004	Failure to meet payment deadlines	one-off		EUR	-9 070 409,96	-9 197 146,98	126 737,02
ES	Financial audit — Late payments	2005	Failure to meet payment deadlines	one-off		EUR	-7 923 714,21	-7 940 441,61	16 727,40
ES	Financial audit — Overshooting	2005	Overshooting of financial ceilings	one-off		EUR	339 296,14	339 296,14	0,00
ES	Fruit and Veg — Nuts (other measures)	2003	Non-respect of payment deadlines	one-off		EUR	-28 111 606,97	0,00	-28 111 606,97
ES	Fruit and Veg — Nuts (other measures)	2004	Non-respect of payment deadlines	one-off		EUR	-32 542 235,13	0,00	-32 542 235,13
ES	Fruit and Veg — Tomato Processing	2003	Tomatoes delivered outside the regular daytime working hours of the competent authorities could not be adequately controlled, insufficient reconciliation of records with official bookkeeping	flat-rate	5 %	EUR	-1 850 032,92	0,00	-1 850 032,92
ES	Fruit and Veg — Tomato Processing	2004	Tomatoes delivered outside the regular daytime working hours of the competent authorities could not be adequately controlled, insufficient reconciliation of records with official bookkeeping	flat-rate	5 %	EUR	-2 240 283,54	0,00	-2 240 283,54
ES	Promotional Measures	2003	Ineligibility of a programme	one-off		EUR	-20 244,02	0,00	-20 244,02
ES	Promotional Measures	2004	Ineligibility of a programme	one-off		EUR	-70 997,92	0,00	-70 997,92
ES	Promotional Measures	2003	Deficiencies in accounting and technical controls	flat-rate	10 %	EUR	-438 782,10	0,00	-438 782,10
ES	Promotional Measures	2004	Deficiencies in accounting and technical controls	flat-rate	10 %	EUR	-500 158,94	0,00	-500 158,94

MS	Measure	FY	Reason	Type	%	Currency	Amount	Deductions already made	Financial impact
ES	Promotional Measures	2005	Deficiencies in accounting and technical controls	flat-rate	10 %	EUR	- 262 486,51	0,00	- 262 486,51
ES	Promotional Measures	2006	Deficiencies in accounting and technical controls	flat-rate	10 %	EUR	- 32 893,85	0,00	- 32 893,85
	<b>Total ES</b>					<b>EUR</b>	<b>- 82 724 549,93</b>	<b>- 16 798 292,45</b>	<b>- 65 926 257,48</b>
FR	OTMS	2001	Deficient and missing physical control of the operations	flat-rate	10 %	EUR	- 2 150 231,66	0,00	- 2 150 231,66
FR	OTMS	2002	Deficient and missing physical control of the operations	flat-rate	10 %	EUR	- 4 742 809,12	0,00	- 4 742 809,12
FR	OTMS	2003	Deficient and missing physical control of the operations	flat-rate	10 %	EUR	- 1 792 725,04	0,00	- 1 792 725,04
FR	Fruit and Veg — Peaches & Pears Processing	2003	Several payments have been made outside the regulatory deadline	one-off		EUR	- 22 494,75	0,00	- 22 494,75
FR	Public Storage of Alcohol	2001	Non-respect of payment deadlines	one-off		EUR	- 2 226,40	0,00	- 2 226,40
FR	Public Storage of Alcohol	2002	Non-respect of payment deadlines	one-off		EUR	- 14 188,94	0,00	- 14 188,94
FR	RD Guarantee new measures	2003	Weaknesses in secondary controls	flat-rate	2 %	EUR	- 1 995 633,00	0,00	- 1 995 633,00
FR	RD Guarantee new measures	2003	Weaknesses in the control system for subsidized-interestloans: insufficient control of payment proofs and of the reality of investments	flat-rate	5 %	EUR	- 2 931 588,00	0,00	- 2 931 588,00
FR	RD Guarantee new measures	2004	Weaknesses in secondary controls	flat-rate	2 %	EUR	- 2 568 245,00	0,00	- 2 568 245,00
	<b>Total FR</b>					<b>EUR</b>	<b>- 16 220 141,91</b>	<b>0,00</b>	<b>- 16 220 141,91</b>
GR	Direct Payments	2004	LPIS was not fully operational to the standard required and the on-the-spot checks were still carried out too late to be fully effective	flat-rate	5 %	EUR	- 14 991 119,26	0,00	- 14 991 119,26

MS	Measure	FY	Reason	Type	%	Currency	Amount	Deductions already made	Financial impact
GR	Direct Payments	2004	LPIS was not fully operational to the standard required and the on-the-spot checks were still carried out too late to be fully effective	flat-rate	10 %	EUR	- 20 792 615,42	0,00	- 20 792 615,42
GR	Direct Payments	2005	LPIS was not fully operational to the standard required and the on-the-spot checks were still carried out too late to be fully effective	flat-rate	5 %	EUR	- 27 702,71	0,00	- 27 702,71
GR	Direct Payments	2005	LPIS was not fully operational to the standard required and the on-the-spot checks were still carried out too late to be fully effective	flat-rate	10 %	EUR	- 30 657,51	0,00	- 30 657,51
GR	Fruit and Veg — Tomato Processing	2003	Data indicated in the records have not been reconciled with the official accounts of the producer organisation; data was transmitted by a producer organisation without the information regarding the yield	flat-rate	5 %	EUR	- 1 231,08	0,00	- 1 231,08
GR	Fruit and Veg — Tomato Processing	2004	Data indicated in the records have not been reconciled with the official accounts of the producer organisation; data was transmitted by a producer organisation without the information regarding the yield	flat-rate	5 %	EUR	- 417 259,82	0,00	- 417 259,82
GR	POSEI	2003	Insufficient proof that the benefit of the aid has been passed on to the end-user, insufficient controls at arrival of products to the island, absence of IACS	flat-rate	5 %	EUR	- 952 833,44	0,00	- 952 833,44
GR	POSEI	2004	Insufficient proof that the benefit of the aid has been passed on to the end-user, insufficient controls at arrival of products to the island, absence of IACS	flat-rate	5 %	EUR	- 952 833,58	0,00	- 952 833,58
GR	RD Guarantee Accompanying Measures	2001	Total of monthly declarations exceeds the amount of the annual declaration	one-off		EUR	- 67 732,00	0,00	- 67 732,00
	<b>Total GR</b>					<b>EUR</b>	<b>- 38 233 984,82</b>	<b>0,00</b>	<b>- 38 233 984,82</b>

MS	Measure	FY	Reason	Type	%	Currency	Amount	Deductions already made	Financial impact
IE	Financial audit — Late payments	2004	Failure to meet payment deadlines	one-off		EUR	-1 021 717,84	-1 232 358,00	210 640,16
IE	Financial audit — Overshooting	2004	Overshooting of financial ceilings	one-off		EUR	-122 295,66	-122 295,66	0,00
IE	Milk Powder for Casein	2002	Insufficient control of production process	flat-rate	5 %	EUR	-676 675,34	0,00	-676 675,34
IE	Milk Powder for Casein	2003	Insufficient control of production process	flat-rate	5 %	EUR	-1 444 677,65	0,00	-1 444 677,65
IE	Milk Powder for Casein	2004	Insufficient control of production process	flat-rate	5 %	EUR	-378 635,48	0,00	-378 635,48
	<b>Total IE</b>					<b>EUR</b>	<b>-3 644 001,97</b>	<b>-1 354 653,66</b>	<b>-2 289 348,31</b>
IT	Financial audit — Late payments	2004	Failure to meet payment deadlines	one-off		EUR	-48 554 937,39	-48 865 275,10	310 337,71
IT	Financial audit — Overshooting	2004	Overshooting of financial ceilings	one-off		EUR	-47 896,46	-47 896,46	0,00
IT	RD Guarantee new measures	2003	Insufficient controls on the minimum standards, incomplete risk analysis for the selection of beneficiaries to be checked on-the-spot	flat-rate	2 %	EUR	-292 013,00	0,00	-292 013,00
IT	Wine — Restructuring	2003	Overestimation of the vine growing area	one-off		EUR	-791 044,51	0,00	-791 044,51
IT	Wine — Restructuring	2004	Overestimation of the vine growing area	one-off		EUR	-1 587 599,85	0,00	-1 587 599,85
	<b>Total IT</b>					<b>EUR</b>	<b>-51 273 491,21</b>	<b>-48 913 171,56</b>	<b>-2 360 319,65</b>
LU	Financial audit — Late payments	2005	Failure to meet payment deadlines	one-off		EUR	-89 099,53	-89 099,53	0,00
LU	Financial audit — Overshooting	2004	Overshooting of financial ceilings	one-off		EUR	-132 471,39	-42 350,66	-90 120,73
LU	Financial audit — Overshooting	2005	Overshooting of financial ceilings	one-off		EUR	-14 637,53	-14 637,53	0,00
	<b>Total LU</b>					<b>EUR</b>	<b>-236 208,45</b>	<b>-146 087,72</b>	<b>-90 120,73</b>
NL	Clearance of accounts	2003	Clearance of 2003 accounts	one-off		EUR	-159 196,13	0,00	-159 196,13
NL	Export Refunds	1999	Insufficient number of substitution controls	flat-rate	5 %	EUR	-1 337 421,43	0,00	-1 337 421,43

MS	Measure	FY	Reason	Type	%	Currency	Amount	Deductions already made	Financial impact
NL	Export Refunds	2000	Insufficient number of substitution controls	flat-rate	5 %	EUR	- 15 460 584,91	0,00	- 15 460 584,91
NL	Export Refunds	2001	Insufficient number of substitution controls	flat-rate	5 %	EUR	- 9 866 616,71	0,00	- 9 866 616,71
	<b>Total NL</b>					<b>EUR</b>	<b>- 26 823 819,18</b>	<b>0,00</b>	<b>- 26 823 819,18</b>

**Total corrections — Budget item 05 07 01 07**

MS	Measure	FY	Reason	Type	%	Currency	Amount	Deductions already made	Financial impact
FI	Financial audit — Late payments	2005	Failure to meet payment deadlines	one-off		EUR	- 59 957,06	- 930 760,36	870 803,30
FI	Financial audit — Overshooting	2004	Overshooting of financial ceilings	one-off		EUR	- 4 383,80	- 4 383,80	0,00
	<b>Total FI</b>					<b>EUR</b>	<b>- 64 340,86</b>	<b>- 935 144,16</b>	<b>870 803,30</b>
GB	Financial audit — Late payments	2003	Failure to meet payment deadlines	one-off		EUR	- 18 692,31	0,00	- 18 692,31
GB	Financial audit — Late payments	2004	Failure to meet payment deadlines	one-off		EUR	- 53 718 181,34	- 54 438 176,05	719 994,71
GB	Financial audit — Overshooting	2004	Overshooting of financial ceilings	one-off		EUR	- 177 600,74	- 177 600,74	0,00
GB	Financial audit — Overshooting	2004	Overshooting of financial ceilings	one-off		GBP	- 5 043,95	- 5 043,95	0,00
GB	Recoveries	2003	Incorrect classification of irregularities	one-off		GBP	- 23 387,80	0,00	- 23 387,80
	<b>Total GB</b>					<b>EUR</b>	<b>- 53 914 474,39</b>	<b>- 54 615 776,79</b>	<b>701 302,40</b>
	<b>Total GB</b>					<b>GBP</b>	<b>- 28 431,75</b>	<b>- 5 043,95</b>	<b>- 23 387,80</b>
PT	Financial audit — Late payments	2005	Failure to meet payment deadlines	one-off		EUR	- 400 433,43	- 521 198,20	120 764,77
PT	Financial audit — Overshooting	2003	Overshooting of financial ceilings	one-off		EUR	- 30 352,11	0,00	- 30 352,11
PT	Financial audit — Overshooting	2004	Overshooting of financial ceilings	one-off		EUR	- 139,80	- 139,80	0,00
	<b>Total PT</b>					<b>EUR</b>	<b>- 430 925,34</b>	<b>- 521 338,00</b>	<b>90 412,66</b>



## III

*(Acts adopted under the EU Treaty)*

## ACTS ADOPTED UNDER TITLE V OF THE EU TREATY

## COUNCIL DECISION 2007/244/CFSP

of 23 April 2007

**implementing Joint Action 2005/557/CFSP on the European Union civilian-military supporting action to the African Union mission in the Darfur region of Sudan**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Council Joint Action 2005/557/CFSP of 18 July 2005 on the European Union civilian-military supporting action to the African Union mission in the Darfur region of Sudan <sup>(1)</sup>, and in particular the second subparagraph of Article 8(1) thereof, in conjunction with Article 23(2) of the Treaty on European Union,

Whereas:

- (1) On 17 October 2006, the Council adopted Decision 2006/725/CFSP <sup>(2)</sup> concerning the implementation of Joint Action 2005/557/CFSP on the European Union civilian-military supporting action to the African Union mission in the Darfur region of Sudan, which extended the financing for its civilian component until 30 April 2007.
- (2) Pending transition of the African Union (AU) mission to a UN/AU hybrid operation, the Council has, in accordance with Article 2 of Decision 2006/486/CFSP <sup>(3)</sup>, decided to continue the European Union civilian-military supporting action to the African Union mission in the Darfur region of Sudan.
- (3) Therefore, as concerns the civilian component, the Council should decide on the financing of the continuation of this supporting action.

- (4) The supporting action will be conducted in the context of a situation which may deteriorate and could harm the objectives of the Common Foreign and Security Policy as set out in Article 11 of the Treaty,

HAS DECIDED AS FOLLOWS:

*Article 1*

1. The financial reference amount intended to cover the expenditure related to the implementation of Section II of Joint Action 2005/557/CFSP from 1 May 2007 until 31 October 2007 shall be EUR 2 125 000. This amount shall cover the period of the current mandate of the AU Mission in the Darfur region of Sudan (AMIS) and a subsequent transitional period leading to a possible transition to a UN/AU hybrid operation.
2. The expenditure financed by the amount stipulated in paragraph 1 shall be managed in accordance with the European Community procedures and rules applicable to the general budget of the European Union, with the exception that any pre-financing shall not remain the property of the Community.

Nationals of third states shall be allowed to tender for contracts.

3. The expenditure shall be eligible from 1 May 2007.

*Article 2*

The Council shall, no later than 30 June 2007, evaluate whether the EU supporting action should be continued.

<sup>(1)</sup> OJ L 188, 20.7.2005, p. 46.

<sup>(2)</sup> OJ L 296, 26.10.2006, p. 24.

<sup>(3)</sup> Council Decision 2006/486/CFSP of 11 July 2006 concerning the implementation of Joint Action 2005/557/CFSP on the European Union civilian-military supporting action to the African Union mission in the Darfur region of Sudan (OJ L 192, 13.7.2006, p. 30).

*Article 3*

This Decision shall take effect on the date of its adoption.

*Article 4*

This Decision shall be published in the *Official Journal of the European Union*.

Done at Luxembourg, 23 April 2007.

*For the Council*  
*The President*  
F.-W. STEINMEIER

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**COUNCIL JOINT ACTION 2007/245/CFSP**

**of 23 April 2007**

**amending Joint Action 2005/557/CFSP on the European Union civilian-military supporting action to the African Union mission in the Darfur region of Sudan with regard to the inclusion of a military support element providing assistance to the setting up of the African Union Mission in Somalia (AMISOM)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 14 thereof,

Whereas:

(1) The Council on 18 July 2005 adopted Joint Action 2005/557/CFSP on the European Union civilian-military supporting action to the African Union mission in the Darfur region of Sudan <sup>(1)</sup>.

(2) On 19 January 2007, the African Union Peace and Security Council stated its intentions to deploy for a period of six months a mission to Somalia (AMISOM), aimed essentially at contributing to the initial stabilisation phase in Somalia.

(3) On 20 February 2007, the United Nations Security Council adopted Resolution 1744 (2007) authorising Member States of the African Union to establish for a period of six months a mission in Somalia and urging UN Member States to provide personnel, equipment and services if required, for the successful deployment of AMISOM.

(4) On 7 March 2007, the African Union submitted a request to the European Union for expertise to on a temporary basis assist the AMISOM military planning cell situated at the AU Headquarters in Addis Ababa.

(5) On 20 March 2007, the Political and Security Committee (PSC) agreed to respond positively to the request of the African Union and to conduct the AMISOM support within the framework of the EU Supporting Action to the African Union Mission in the Darfur region of Sudan (AMIS).

(6) By letter of 29 March 2007, the SG/HR informed the AU that EU would be ready to provide planning experts on a

temporary basis and requested that EU personnel working for AMISOM be covered by the General Convention on the Privileges and Immunities of the OAU.

(7) Joint Action 2005/557/CFSP should be amended accordingly,

HAS ADOPTED THIS JOINT ACTION:

*Article 1*

Joint Action 2005/557/CFSP is hereby amended as follows:

1. The title shall be replaced by the following:

‘Council Joint Action on the European Union civilian-military supporting action to the African Union missions in the Darfur region of Sudan and in Somalia’.

2. Article 1 shall be replaced by the following:

*‘Article 1*

The European Union hereby establishes an EU civilian-military supporting action to AMIS II, with an additional military support element to AMISOM, hereby named “AMIS/AMISOM EU Supporting Action”.

The main objective of the EU supporting action is to ensure effective and timely EU assistance to support the AMIS II enhancement and in addition to support the setting up of AMISOM. The EU shall respect and support the principle of African ownership and the EU supporting action shall be to support the AU and its political, military and police efforts to address the crisis in the Darfur region of Sudan and in Somalia.

The EU supporting action shall include a civilian and military component.’

3. In articles 3(1), 4(1), 5(2), 10 and 11(1)(a) ‘AMIS II’ shall be replaced by ‘AMIS II and AMISOM’.

<sup>(1)</sup> OJ L 188, 20.7.2005, p. 46.

4. Article 5(1) shall be replaced by the following:

'1. The SG/HR shall take all necessary measures to ensure coordination of EU activities to support AMIS II enhancement and AMISOM and the coordination between the General Secretariat of the Council (GSC) and the EU Coordination Cell in Addis Ababa (ACC). The GSC shall provide guidance and support to the ACC in its duties of managing the day-to-day coordination to ensure coherent and timely EU support to AMIS II across its political, military, police and other civilian supporting actions as well as to the setting up of AMISOM. The GSC shall provide situation reports and updates and assessment of both EU support to AMIS II, the AMIS II enhancement and AMISOM to the relevant Council bodies and ensure coordination at the strategic level with other donors, in particular the UN and NATO.'

the planning of the AU mission, including the drafting of the AMISOM deployment plan.'

*Article 2*

This Joint Action shall enter into force on the date of its adoption.

*Article 3*

This Joint Action shall be published in the *Official Journal of the European Union*.

Done at Luxembourg, 23 April 2007.

5. In Article 9, the following paragraph shall be inserted:

'1a. The military support element to the AMISOM planning shall mainly assist the strategic planning cell in

*For the Council*

*The President*

F.-W. STEINMEIER

**COUNCIL COMMON POSITION 2007/246/CFSP**

**of 23 April 2007**

**amending Common Position 2007/140/CFSP concerning restrictive measures against Iran**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 15 thereof,

Whereas:

- (1) On 27 February 2007 the Council of the European Union adopted Common Position 2007/140/CFSP<sup>(1)</sup> concerning restrictive measures against Iran which implemented the United Nations Security Council Resolution 1737 (2006) ('UNSCR 1737 (2006)').
- (2) On 24 March 2007 the United Nations Security Council adopted Resolution 1747 (2007) ('UNSCR 1747 (2007)') that widened the scope of the restrictive measures imposed by UNSCR 1737 (2006).
- (3) UNSCR 1747 (2007) prohibits the procurement of arms and related materiel from Iran.
- (4) UNSCR 1747 (2007) furthermore calls upon all States to exercise vigilance and restraint in the direct or indirect supply, sale or transfer to Iran of conventional weapons as defined for the purpose of the United Nations Register on Conventional Arms as well as in the provision of technical assistance or training, financial assistance, investment, brokering or other services, and in the transfer of financial resources or services related to the supply, sale transfer, manufacture or use of such items in order to prevent a destabilising accumulation of arms. In line with these objectives of UNSCR 1747 (2007) as well as with the EU policy not to sell arms to Iran, the Council considers it appropriate to prohibit the supply, sale or transfer to Iran of all arms and related materiel, as well as the provision of related assistance, investment and services.
- (5) UNSCR 1747 (2007) extends financial and travel sanctions imposed by UNSCR 1737 (2006) to additional persons and entities engaged in, directly associated with or providing support for Iran's proliferation sensitive nuclear activities or for the development of nuclear weapon delivery systems.
- (6) UNSCR 1747 (2007) furthermore calls upon all States and international financial institutions not to enter into new commitments for grants, financial assistance and concessional loans to the Government of Iran, except for humanitarian and developmental purposes.
- (7) The Council has also identified persons and entities that fulfil the criteria set out in Articles 4(1)(b) and 5(1)(b) of Common Position 2007/140/CFSP. These persons and entities should therefore be listed in Annex II of that Common Position.
- (8) Common Position 2007/140/CFSP should be amended accordingly.
- (9) Action by the Community is needed in order to implement certain measures,

HAS ADOPTED THIS COMMON POSITION:

*Article 1*

Common Position 2007/140/CFSP is hereby amended as follows:

1. in Article 1(1), the following subparagraph (c) shall be added:

'(c) arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts for the aforementioned. This prohibition shall not apply to non-combat vehicles which have been manufactured or fitted with materials to provide ballistic protection, intended solely for protective use of personnel of the EU and its Member States in Iran.;

<sup>(1)</sup> OJ L 61, 28.2.2007, p. 49.

2. the following Article shall be inserted:

*Article 2*

This Common Position shall take effect on the date of its adoption.

*Article 3a*

Member States shall not enter into new commitments for grants, financial assistance and concessional loans to the Government of Iran, including through their participation in international financial institutions, except for humanitarian and developmental purposes.;

*Article 3*

This Common Position shall be published in the *Official Journal of the European Union*.

Done at Luxembourg, 23 April 2007.

3. Annexes I and II shall be replaced by the text appearing in Annexes I and II to this Common Position.

*For the Council*

*The President*

F.-W. STEINMEIER

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## ANNEX I

**List of persons referred to in Article 4(1)(a) and of persons and entities referred to in Article 5(1)(a)****A. ENTITIES**

- (1) Ammunition and Metallurgy Industries Group (AMIG) (alias Ammunition Industries Group). Other information: AMIG controls 7th of Tir, which is designated under UNSCR 1737 (2006) for its role in Iran's centrifuge programme. AMIG is in turn owned and controlled by the Defence Industries Organisation (DIO), which is designated under UNSCR 1737 (2006).
- (2) Atomic Energy Organisation of Iran (AEOI). Other information: involved in Iran's nuclear programme.
- (3) Bank Sepah and Bank Sepah International. Other information: Bank Sepah provides support for the Aerospace Industries Organisation (AIO) and subordinates, including Shahid Hemmat Industrial Group (SHIG) and Shahid Bagheri Industrial Group (SBIG), both of which were designated under UNSCR 1737 (2006).
- (4) Cruise Missile Industry Group (alias Naval Defence Missile Industry Group). Other information: production and development of cruise missiles. Responsible for naval missiles including cruise missiles.
- (5) Defence Industries Organisation (DIO). Other information: (a) overarching MODAFL-controlled entity, some of whose subordinates have been involved in the centrifuge programme making components, and in the missile programme, (b) involved in Iran's nuclear programme.
- (6) Esfahan Nuclear Fuel Research and Production Centre (NFRPC) and Esfahan Nuclear Technology Centre (ENTC). Other information: these are parts of AEOI's Nuclear Fuel Production and Procurement Company, which is involved in enrichment-related activities. AEOI is designated under UNSCR 1737 (2006).
- (7) Fajr Industrial Group. Other information: (a) formerly Instrumentation Factory Plant, (b) subordinate entity of AIO, (c) involved in Iran's ballistic missile programme.
- (8) Farayand Technique. Other information: (a) involved in Iran's nuclear programme (centrifuge programme), (b) identified in reports from the International Atomic Energy Agency (IAEA).
- (9) Kala-Electric (alias Kalaye Electric). Other information: (a) provider for PFEP — Natanz, (b) Involved in Iran's nuclear programme.
- (10) Karaj Nuclear Research Centre. Other information: part of AEOI's research division.
- (11) Kavoshyar Company. Other information: subsidiary company of AEOI, which has sought glass fibres, vacuum chamber furnaces and laboratory equipment for Iran's nuclear programme.
- (12) Mesbah Energy Company. Other information: (a) provider for A40 research reactor — Arak, (b) involved in Iran's nuclear programme.
- (13) Novin Energy Company (alias Pars Novin). Other information: it operates within AEOI and has transferred funds on behalf of AEOI to entities associated with Iran's nuclear programme.
- (14) Parchin Chemical Industries. Other information: branch of DIO, which produces ammunition, explosives, as well as solid propellants for rockets and missiles.
- (15) Pars Aviation Services Company. Other information: this company maintains various aircraft including MI-171, used by Iranian Revolutionary Guard Corps (IRGC) Air Force.
- (16) Pars Trash Company. Other information: (a) involved in Iran's nuclear programme (centrifuge programme), (b) identified in IAEA reports.

- (17) Qods Aeronautics Industries. Other information: it produces unmanned aerial vehicles (UAVs), parachutes, para-gliders, para-motors, etc. IRGC has boasted of using these products as part of its asymmetric warfare doctrine.
- (18) Sanam Industrial Group. Other information: subordinate to AIO, which has purchased equipment on AIO's behalf for the missile programme.
- (19) 7th of Tir. Other information: (a) subordinate of DIO, widely recognised as being directly involved in Iran's nuclear programme, (b) involved in Iran's nuclear programme.
- (20) Shahid Bagheri Industrial Group (SBIG). Other information: (a) subordinate entity of AIO, (b) involved in Iran's ballistic missile programme.
- (21) Shahid Hemmat Industrial Group (SHIG). Other information: (a) subordinate entity of AIO, (b) involved in Iran's ballistic missile programme.
- (22) Sho'a' Aviation. Other information: it produces micro-lights which IRGC has claimed it is using as part of its asymmetric warfare doctrine.
- (23) Ya Mahdi Industries Group. Other information: subordinate to AIO, which is involved in international purchases of missile equipment.

#### B. NATURAL PERSONS

- (1) Fereidoun **Abbasi-Davani**. Other information: Senior Ministry of Defence and Armed Forces Logistics (MODAFL) scientist with links to the Institute of Applied Physics, working closely with Mohsen Fakhrizadeh-Mahabadi.
- (2) Dawood **Agha-Jani**. Function: Head of the PFEP (Natanz). Other information: person involved in Iran's nuclear programme.
- (3) Ali Akbar **Ahmadian**. Title: Vice Admiral. Function: Chief of Iranian Revolutionary Guard Corps (IRGC) Joint Staff.
- (4) Behman **Asgarpour**. Function: Operational Manager (Arak). Other information: person involved in Iran's nuclear programme.
- (5) Bahmanyar Morteza **Bahmanyar**. Function: Head of Finance & Budget Dept, AIO. Other information: person involved in Iran's ballistic missile programme.
- (6) Ahmad Vahid **Dastjerdi**. Function: Head of the AIO. Other information: person involved in Iran's ballistic missile programme.
- (7) Ahmad **Derakhshandeh**. Function: Chairman and Managing Director of Bank Sepah. Other information: Bank Sepah provides support for the AIO and subordinates, including SHIG and SBIG, both of which were designated under UNSCR 1737 (2006).
- (8) Reza-Gholi **Esmaeli**. Function: Head of Trade & International Affairs Dept, AIO. Other information: person involved in Iran's ballistic missile programme.
- (9) Mohsen **Fakhrizadeh-Mahabadi**. Other information: Senior MODAFL scientist and former head of the Physics Research Centre (PHRC). IAEA has asked to interview him about the activities of the PHRC over the period he was head, but Iran has refused.
- (10) Mohammad **Hejazi**. Title: Brigadier General. Function: Commander of Bassij resistance force.
- (11) Mohsen **Hojati**. Function: Head of Fajr Industrial Group. Other information: Fajr Industrial Group is designated under UNSCR 1737 (2006) for its role in the ballistic missile programme.



- (12) Mehrdada Akhlaghi **Ketabachi**. Function: Head of SBIG. Other information: SBIG is designated under UNSCR 1737 (2006) for its role in the ballistic missile programme.
- (13) Ali Hajinia **Leilabadi**. Function: Director General of Mesbah Energy Company. Other information: person involved in Iran's nuclear programme.
- (14) Naser **Maleki**. Function: Head of SHIG. Other information: SHIG is designated under UNSCR 1737 (2006) for its role in Iran's ballistic missile programme. Naser Maleki is also a MODAFL official overseeing work on the Shahab-3 ballistic missile programme. The Shahab-3 is Iran's long-range ballistic missile currently in service.
- (15) Jafar **Mohammadi**. Function: Technical Adviser to the AEOI (in charge of managing the production of valves for centrifuges). Other information: person involved in Iran's nuclear programme.
- (16) Ehsan **Monajemi**. Function: Construction Project Manager, Natanz. Other information: person involved in Iran's nuclear programme.
- (17) Mohammad Mehdi Nejad **Nouri**. Title: Lt Gen. Function: Rector of Malek Ashtar University of Defence Technology. Other information: The chemistry department of Ashtar University of Defence Technology is affiliated to MODALF and has conducted experiments on beryllium. Person involved in Iran's nuclear programme.
- (18) Mohammad **Qannadi**. Function: AEOI Vice President for Research & Development. Other information: Person involved in Iran's nuclear programme.
- (19) Amir **Rahimi**. Function: Head of Esfahan Nuclear Fuel Research and Production Centre. Other information: Esfahan Nuclear Fuel Research and Production Centre is part of the AEOI's Nuclear Fuel Production and Procurement Company, which is involved in enrichment-related activities.
- (20) Morteza **Rezaie**. Title: Brigadier General. Function: Deputy Commander of IRGC.
- (21) Morteza **Safari**. Title: Rear Admiral. Function: Commander of IRGC Navy.
- (22) Yahya Rahim **Safavi**. Title: Maj. Gen. Function: Commander, IRGC (Pasdaran). Other information: person involved in both Iran's nuclear and ballistic missile programmes.
- (23) Seyed Jaber **Safdari**. Other information: Manager of the Natanz Enrichment Facilities.
- (24) Hosein **Salimi**. Title: General. Function: Commander of the Air Force, IRGC (Pasdaran). Other information: person involved in Iran's ballistic missile programme.
- (25) Qasem **Soleimani**. Title: Brigadier General. Function: Commander of Qods force.
- (26) Mohammad Reza **Zahedi**. Title: Brigadier General. Function: Commander of IRGC Ground Forces.
- (27) General **Zolqadr**. Function: Deputy Interior Minister for Security Affairs, IRGC officer.'
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## ANNEX II

## 'A. Natural persons

	Name	Identifying information	Reasons
1.	Reza AGHAZADEH	DoB: 15.3.1949 Passport number: S4409483 valid 26.4.2000-27.4.2010 Issued: Tehran Place of birth: Khoy	Head of the Atomic Energy Organisation of Iran (AEOI). The AEOI oversees Iran's nuclear programme and is designated under UNSCR 1737 (2006).
2.	Amir Moayyed ALAI		Involved in managing the assembly and engineering of centrifuges. Iran is required by the IAEA Board and Security Council to suspend all enrichment-related activities. This includes all centrifuge-related work. On 27 August 2006, Alai received a special award from President Ahmadinejad for his role in managing the assembly and engineering of centrifuges.
3.	Mohammed Fedai ASHIANI		Involved in the production of ammonium uranyl carbonate (AUC) and the management of the Natanz enrichment complex. Iran is required to suspend all enrichment-related activities. On 27 August 2006, Ashiani received a special award from President Ahmadinejad for his role in the AUC production process and for his role in the management and engineering design for the enrichment complex at Natanz (Kashan) site.
4.	Haleh BAKHTIAR		Involved in the production of magnesium at a concentration of 99,9 %. On 27 August 2006, Bakhtiar received a special award from President Ahmadinejad for her role in producing magnesium at a concentration of 99,9 %. Magnesium of this purity is used to produce uranium metal, which can be cast into material for a nuclear weapon. Iran has refused to provide the IAEA access to a document on the production of uranium metal hemispheres, only applicable for nuclear weapons use.
5.	Morteza BEHZAD		Involved in making centrifuge components. Iran is required to suspend all enrichment-related activities. This includes all centrifuge-related work. On 27 August 2006, Behzad received a special award from President Ahmadinejad for his role making complex and sensitive centrifuge components.
6.	Dr Hoseyn (Hossein) FAQIHIAN	Address of NFPC: AEOI-NFPD, PO Box: 11365-8486, Tehran/Iran	Deputy and Director-General of the Nuclear Fuel Production and Procurement Company (NFPC), part of the AEOI. The AEOI oversees Iran's nuclear programme and is designated under UNSCR 1737 (2006). The NFPC involved in enrichment-related activities that Iran is required by the IAEA Board and Security Council to suspend.

	Name	Identifying information	Reasons
7.	Seyyed Hussein (Hossein) HUSSEINI (HOSSEINI)		AEOI official involved in the heavy water research reactor (IR40) project at Arak. UNSCR 1737 (2006) required Iran to suspend all work on heavy-water-related projects.
8.	M. Javad KARIMI SABET		Head of the Novin Energy Company. In August 2006 Karimi Sabet received an award from President Ahmadinejad for his role in designing, producing, installing and commissioning nuclear equipment at the Natanz site.
9.	Said Esmail KHALILIPOUR		Deputy Head of AEOI. The AEOI oversees Iran's nuclear programme and is designated under UNSCR 1737 (2006).
10.	Ali Reza KHANCHI	Address of NRC: AEOI-NRC PO Box: 11365-8486 Tehran/Iran Fax: (+9821) 8021412	Head of AEOI's Tehran Nuclear Research Centre. The IAEA is continuing to seek clarification from Iran about plutonium separation experiments carried out at the TNRC, including about the presence of HEU particles in environmental samples taken at the Karaj Waste Storage Facility where containers used to store depleted uranium targets used in those experiments are located. The AEOI oversees Iran's nuclear programme and is designated under UNSCR 1737 (2006).
11.	Hamid-Reza MOHAJERANI		Involved in production management at the Uranium Conversion Facility (UCF) at Esfahan. On 27 August 2006, Mohajerani received a special award from President Ahmadinejad for his role in production management at the UCF and in planning, building and installing the UF <sub>6</sub> unit (UF <sub>6</sub> is the feed material for enrichment).
12.	Houshang NOBARI		Involved in the management of the Natanz enrichment complex. Iran is required by the IAEA Board and Security Council to suspend all enrichment-related activities. These include activities at the enrichment complex at Natanz (Kashan). On 27 August 2006, Nobari received a special award from President Ahmadinejad for his role in the successful management and execution of the Natanz (Kashan) site plan.
13.	Dr Javad RAHIQI		Head of AEOI's Esfahan Nuclear Technology Centre. This oversees the uranium conversion plant at Esfahan. Iran is required by the IAEA Board and the Security Council to suspend all enrichment-related activities. This includes all uranium conversion work. AEOI oversees Iran's nuclear programme and is designated under UNSCR 1737 (2006).

	Name	Identifying information	Reasons
14.	Abbas RASHIDI		Involved in enrichment work at Natanz. Iran is required by the IAEA Board and Security Council to suspend all enrichment-related activities. On 27 August 2006, Rashidi received a special award from President Ahmadinejad for his management and notable role in the successful operation of the 164-centrifuge enrichment cascade at Natanz.
15.	Abdollah SOLAT SANA		Managing Director of the Uranium Conversion Facility (UCF) in Esfahan. This is the facility that produces the feed material ( $UF_6$ ) for the enrichment facilities at Natanz. On 27 August 2006, Solat Sana received a special award from President Ahmadinejad for his role.

#### B. Entities

	Name	Identifying information	Reasons
1.	Aerospace Industries Organisation, AIO	AIO, 28 Shian 5, Lavizan, Tehran	AIO oversees Iran's production of missiles, including Shahid Hemmat Industrial Group, Shahid Bagheri Industrial Group and Fajr Industrial Group, which were all designated under UNSCR 1737 (2006). The head of AIO and two other senior officials were also designated under UNSCR 1737 (2006).
2.	Armament Industries	Pasdaran Av., PO Box 19585/777, Tehran	A subsidiary of the DIO (Defence Industries Organisation).
3.	Defence Technology and Science Research Centre (DTSRC) — also known as the Educational Research Institute/Moassese Amozeh Va Tahgiaghati (ERI/MAVT Co.)	Pasdaran Av., PO Box 19585/777, Tehran	Responsible for R&D. A subsidiary of the DIO. The DTSRC handles much of the procurement for the DIO.
4.	Jaber Ibn Hayan	AEOI-JIHRD PO Box: 11365-8486; Tehran; 84, 20th Av. Entehaye Karegar Shomali Street; Tehran	Jaber Ibn Hayan is an AEOI (Atomic Energy Organisation of Iran) laboratory involved in fuel-cycle activities. Located within the Tehran Nuclear Research Centre (TNRC), it was not declared by Iran under its safeguards agreement prior to 2003, although conversion work was being carried out there.
5.	Marine Industries	Pasdaran Av., PO Box 19585/777, Tehran	A subsidiary of the DIO.

	Name	Identifying information	Reasons
6.	Nuclear Fuel Production and Procurement Company (NFPC)	AEOI-NFPD, PO Box: 11365-8486, Tehran/Iran	Nuclear Fuel Production Division (NFPD) of AEOI is research and development in the field of nuclear fuel cycle including: uranium exploration, mining, milling, conversion and nuclear waste management. The NFPC is the successor to the NFPD, the subsidiary company under the AEOI that runs research and development in the nuclear fuel cycle including conversion and enrichment.
7.	Special Industries Group	Pasdaran Av., PO Box 19585/777, Tehran	A subsidiary of the DIO.
8.	TAMAS Company		TAMAS is involved in enrichment-related activities, which Iran is required by the IAEA Board and Security Council to suspend. TAMAS is the overarching body, under which four subsidiaries have been established, including one doing uranium extraction to concentration and another in charge of uranium processing, enrichment and waste.'