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I

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

REGULATIONS

COUNCIL REGULATION (EC) No 41/2008

of 14 January 2008

amending Regulation (EC) No 1371/2005 imposing a definitive anti-dumping duty on imports of grain oriented flat-rolled products of silicon-electrical steel originating in the United States of America and Russia

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⁽¹⁾ (the basic Regulation), and in particular Article 11(3) thereof,

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

Whereas:

A. MEASURES IN FORCE

- (1) By Regulation (EC) No 1371/2005⁽²⁾, the Council imposed a definitive anti-dumping duty on imports of grain oriented flat-rolled products of silicon-electrical steel (GOES) originating in the United States of America (USA) and Russia (the definitive Regulation).
- (2) By Decision 2005/622/EC⁽³⁾, the Commission accepted price undertakings offered by two cooperating exporting producers that were imposed a company specific duty of 31,5 % (AK Steel Corporation, USA) and 11,5 % (Novolipetsk Iron and Steel Corporation (NLMK), Russia) respectively. The country-wide anti-dumping duties applicable to all other companies, except Viz Stal, Russia, subject to a duty of 0 %, are 37,8 % for USA and 11,5 % for Russia.

⁽¹⁾ 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).

⁽²⁾ OJ L 223, 27.8.2005, p. 1.

⁽³⁾ OJ L 223, 27.8.2005, p. 42.

B. PRESENT INVESTIGATION

- (3) The information at the Commission's disposal indicated that certain GOES which typically have a thickness of up to 0,1 mm and due, *inter alia*, to their high electro-magnetic efficiency, low weight and low heat development associated with their use possess properties which are not present in other types of GOES. As a result of these characteristics, the use of these products is also considered different and found typically in the aircraft and medical engineering industries. Therefore, it was considered appropriate to review the case as far as the scope of the product is concerned.
- (4) Having determined, after consulting the Advisory Committee, that sufficient evidence existed to justify the initiation of a partial interim review, the Commission, by a notice published in the *Official Journal of the European Union*, initiated a partial interim review in accordance with Article 11(3) of the basic Regulation⁽⁴⁾. The investigation was limited in scope to the definition of the product subject to the measures in force in order to assess the need for amendment of the product scope.

C. PRODUCT UNDER REVIEW

- (5) The product under review is grain oriented flat-rolled products of silicon-electrical steel, currently classifiable within CN codes 7225 11 00 (of a width of 600 mm or more) and 7226 11 00 (of a width of less than 600 mm). These codes are given only for information.
- (6) GOES are produced from hot-rolled coils of silicon alloyed steel of different thicknesses of which the particular grain structure is uniformly directed in order to allow for magnetic conductivity with a high degree of efficiency. Inefficiency with regard to this magnetic conductivity is called 'core loss', which is the prime indicator of the quality of the product.

⁽⁴⁾ OJ C 254, 20.10.2006, p. 10.

- (7) The market is typically divided into high conductivity or high permeability grades and regular grades. The high permeability grades allow achieving lower core losses for any given thickness of the sheets. Such characteristics are especially relevant for industrial producers of electrical power transformers.

D. INVESTIGATION

- (8) The Commission advised the Community producers of GOES, all known Community importers and users as well as all known exporting producers in the USA and Russia of the initiation of the review.
- (9) The Commission requested information from all the abovementioned parties and from those other parties who made themselves known within the time limit set in the notice of initiation of the investigation. The Commission also gave the interested parties the opportunity to make their views known in writing and to request a hearing.
- (10) The following companies cooperated in the investigation and provided relevant information to the Commission:

Community producers

- ThyssenKrupp Electrical Steel GmbH, Gelsenkirchen, Germany,
- Orb Electrical Steels Limited — Cogent Power Limited, Newport, United Kingdom,

GOES-producers in the USA

- AK Steel Corporation, Butler, Pennsylvania,
- Allegheny Technologies Incorporated, Pittsburgh, Pennsylvania,

GOES-producers in Russia

- Novolipetski Iron & Steel Corporation (NLMK), Lipetsk,
- VIZ Stal, Ekaterinburg,

Thin GOES-producer in the USA

- Arnold Magnetic Technologies, Marengo, Illinois,

Thin GOES-importer in the Community

- Gebrüder Waasner GmbH, Forchheim, Germany,

Thin GOES-users in the Community

- Gebrüder Waasner GmbH, Forchheim, Germany,
- Sangl GmbH, Erlangen, Germany,
- Vacuumschmelze GmbH, Hanau, Germany.

E. RESULTS OF THE INVESTIGATION

1. Different identity of 'ordinary' versus 'thin' GOES producers

- (11) None of the producers of GOES, which were investigated in the framework of the procedure leading to the imposition of the measures in force, produce GOES of the thickness as targeted by the current product scope investigation.
- (12) Neither ThyssenKrupp Electrical Steel GmbH, nor Orb Electrical Steels Limited (Cogent) produce thin GOES and the same situation applies to the US producers, i.e. AK Steel Corporation and Allegheny Technologies Incorporated, and the Russian producers VIZ Stal and NLMK. Consequently, none of these producers had a direct interest and none of them objected to a possible exclusion of thin GOES from the scope of the measures.
- (13) The production of thin GOES requires a process of re-rolling, which is performed by specialised companies of which only two are known to the Commission in the countries concerned: the US producer Arnold Magnetic Technologies and the Russian producer Ileo (Asha), of which only the former company cooperated. As indicated in recitals 10 and 11, there is no such production known in the Community.

2. Product differentiation

- (14) AK Steel Corporation produced thin GOES until 1971, as so-called T-grades. The production process started from fully finished GOES grades (both regular and high permeability), from which the mill coating was removed and where the sheets were re-rolled, re-annealed and re-coated. Specific end-uses were found in the aircraft industry, transformers and a wide variety of electro-technical applications, for which size and the weight of the material is of a decisive importance. It was found that such thin GOES are not interchangeable with other GOES.

- (15) It was also examined whether such T-grades consisted of a product which could be distinguished from 'ordinary' GOES on the basis of technical characteristics. It was found that the re-rolling production process (consisting of a cold mechanical stretching and flattening process), with re-annealing and re-coating, fundamentally alters the technical specifications of the product, an observation that is corroborated by the disappearance of the original manufacturers' product guarantee.
- (16) It was also found that the physical characteristic of thickness is not limited to 0,10 mm which was the maximal thickness mentioned in the notice of initiation. Most commercially occurring thicknesses are 0,1016 mm and 0,1524 mm which in the USA are commonly referred to as 4 'mil' and 6 'mil'. One 'mil' stands for a thousandth of an inch or 0,0254 mm.
- (17) The product definition of thin GOES therefore has to be specified as GOES which are re-rolled to a thickness of maximum 0,16 mm, re-annealed and re-coated.

F. RETROACTIVE APPLICATION

- (18) In view of the above findings that thin GOES have different basic physical and technical characteristics and end-uses than other GOES, it is considered appropriate to exempt imports of GOES of a thickness of maximum 0,16 mm from the anti-dumping measures in force.
- (19) Consequently, for goods not covered by Article 1(1) of Regulation (EC) No 1371/2005 as amended by this Regulation, the definitive anti-dumping duties paid or entered in the accounts pursuant to Article 1(1) of Regulation (EC) No 1371/2005 in its initial version should be repaid or remitted.
- (20) Repayment or remission must be requested from national customs authorities in accordance with applicable customs legislation.

- (21) Since the present review investigation is limited to the clarification of the product and since it was not intended this product type be covered by the original measures, in order to prevent any consequent prejudice to importers of the product, it is considered appropriate that the findings be applied from the date of the entry into force of the definitive Regulation. Moreover, in particular in view of the relatively recent entry into force of the original Regulation and of the expected limited number of requests for refunds, there is no overriding reason not to provide for such retro-active application.
- (22) This review does not affect the date on which Regulation (EC) No 1371/2005 will expire pursuant to Article 11(2) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1(1) of Regulation (EC) No 1371/2005 shall be replaced by the following:

'1. A definitive anti-dumping duty is hereby imposed on imports of grain oriented flat-rolled products of silicon-electrical steel of a thickness of more than 0,16 mm, originating in the United States of America and Russia, falling within CN codes ex 7225 11 00 (products of a width of 600 mm or more) (TARIC code 7225 11 00 10) and ex 7226 11 00 (products of a width of less than 600 mm) (TARIC codes 7226 11 00 11 and 7226 11 00 91).'

Article 2

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

It shall apply from 28 August 2005.

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

Done at Brussels, 14 January 2008.

For the Council
The President
D. RUPEL

COMMISSION REGULATION (EC) No 42/2008
of 18 January 2008
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 1580/2007 of 21 December 2007 laying down implementing rules of Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector ⁽¹⁾, and in particular Article 138(1) thereof,

Whereas:

- (1) Regulation (EC) No 1580/2007 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 138 of Regulation (EC) No 1580/2007 shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 19 January 2008.

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

Done at Brussels, 18 January 2008.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 350, 31.12.2007, p. 1.

ANNEX

to Commission Regulation of 18 January 2008 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	IL	206,7
	MA	56,8
	TN	129,8
	TR	102,4
	ZZ	123,9
0707 00 05	JO	184,6
	MA	48,4
	TR	109,8
	ZZ	114,3
0709 90 70	MA	97,6
	TR	149,8
	ZZ	123,7
0709 90 80	EG	313,6
	ZZ	313,6
0805 10 20	EG	49,0
	IL	51,9
	MA	74,4
	TN	56,4
	TR	74,0
	ZA	52,9
	ZZ	59,8
0805 20 10	MA	103,8
	TR	101,8
	ZZ	102,8
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	CN	62,3
	IL	58,0
	JM	120,0
	TR	82,5
	ZZ	80,7
0805 50 10	BR	76,4
	EG	102,1
	IL	123,3
	TR	127,9
	ZA	54,7
	ZZ	96,9
0808 10 80	CA	96,2
	CN	76,6
	MK	36,0
	US	120,2
	ZA	59,7
0808 20 50	ZZ	77,7
	CN	64,1
	TR	126,4
	US	100,7
	ZZ	97,1

⁽¹⁾ 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 43/2008**of 18 January 2008****fixing the allocation coefficient to be applied to applications for import licences lodged 15 January 2008 under the Community tariff quota for manioc starch opened by Regulation (EC) No 2402/96**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals ⁽¹⁾,

Having regard to Commission Regulation (EC) No 1301/2006 of 31 August 2006 laying down common rules for the administration of import tariff quotas for agricultural products managed by a system of import licences ⁽²⁾, and in particular Article 7(2) thereof,

Whereas:

- (1) Commission Regulation (EC) No 2402/96 ⁽³⁾ has opened an annual import tariff quota of 10 000 tonnes and an additional autonomous annual tariff quota of 500 tonnes of manioc starch (order number 09.4064).
- (2) Based on the notification made under Article 10 of Regulation (EC) No 2402/96, the applications lodged on 15 January 2008 until 13.00 (Brussels time) in accordance with Article 9 of that Regulation, relate to quantities in

excess of those available. The extent to which import licences may be issued should therefore be determined and the allocation coefficient laid down to be applied to the quantities applied for.

- (3) Import licences should no longer be issued under Regulation (EC) No 2402/96 for the current quota period,

HAS ADOPTED THIS REGULATION:

Article 1

1. Each import licence application for manioc starch under the quota referred to in Regulation (EC) No 2402/96 and lodged on 15 January 2008 until 13.00 (Brussels time) shall give rise to the issue of a licence for the quantities applied for, multiplied by an allocation coefficient of 5,133291 %.

2. The issue of licences for the quantities applied for from 15 January 2008 1 p.m. (Brussels time) is hereby suspended for the current quota year.

Article 2

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

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

Done at Brussels, 18 January 2008.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 270, 21.10.2003, p. 78. Regulation as last amended by Regulation (EC) No 735/2007 (OJ L 169, 29.6.2007, p. 6). Regulation (EEC) No 1784/2003 will be replaced by Regulation (EC) No 1234/2007 (OJ L 299, 16.11.2007, p. 1) as from 1 July 2008.

⁽²⁾ OJ L 238, 1.9.2006, p. 13. Regulation as amended by Regulation (EC) No 289/2007 (OJ L 78, 17.3.2007, p. 17).

⁽³⁾ OJ L 327, 18.12.1996, p. 14. Regulation as last amended by Regulation (EC) No 1884/2006 (OJ L 364, 20.12.2006, p. 44).

COMMISSION REGULATION (EC) No 44/2008**of 18 January 2008****determining the extent to which the applications for import licences lodged during the first 10 days of January 2008 for butter originating in New Zealand under quota numbers 09.4195 and 09.4182 can be accepted**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾,

Having regard to Commission Regulation (EC) No 2535/2001 of 14 December 2001 laying down detailed rules for applying Council Regulation (EC) No 1255/1999 as regards the import arrangements for milk and milk products and opening tariff quotas ⁽²⁾, and in particular Article 35a(3) thereof,

Whereas:

Applications for import licences, lodged from 1 to 10 January 2008 for butter originating in New Zealand under quotas numbers 09.4195 and 09.4182 referred to in Annex IIIA to

Regulation (EC) No 2535/2001 and notified to the Commission by 15 January 2008, concern quantities greater than those available. Allocation coefficients should therefore be fixed for the quantities applied for,

HAS ADOPTED THIS REGULATION:

Article 1

Applications for import licences for butter originating in New Zealand under the quota numbers 09.4195 and 09.4182 lodged pursuant to Regulation (EC) No 2535/2001 from 1 to 10 January 2008 and notified to the Commission by 15 January 2008 shall be accepted subject to the application of the allocation coefficients set out in the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 18 January 2008.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ 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). Regulation (EC) No 1255/1999 will be replaced by Regulation (EC) No 1234/2007 (OJ L 299, 16.11.2007, p. 1) as from 1 July 2008.

⁽²⁾ OJ L 341, 22.12.2001, p. 29. Regulation as last amended by Regulation (EC) No 1565/2007 (OJ L 340, 22.12.2007, p. 37).

ANNEX

Quota number	Allocation coefficient
09.4195	12,685836 %
09.4182	100 %

COMMISSION REGULATION (EC) No 45/2008**of 18 January 2008****amending the representative prices and additional duties for the import of certain products in the sugar sector fixed by Regulation (EC) No 1109/2007 for the 2007/08 marketing year**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

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

for the 2007/08 marketing year are fixed by Commission Regulation (EC) No 1109/2007 ⁽³⁾. These prices and duties have been last amended by Commission Regulation (EC) No 37/2008 ⁽⁴⁾.

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

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and additional duties on imports of the products referred to in Article 36 of Regulation (EC) No 951/2006, as fixed by Regulation (EC) No 1109/2007 for the 2007/08 marketing year are hereby amended as set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 19 January 2008.

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

Done at Brussels, 18 January 2008.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 58, 28.2.2006, p. 1. Regulation as last amended by Regulation (EC) No 1260/2007 (OJ L 283, 27.10.2007, p. 1). Regulation (EC) No 318/2006 will be replaced by Regulation (EC) No 1234/2007 (OJ L 299, 16.11.2007, p. 1) as from 1 October 2008.

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

⁽³⁾ OJ L 253, 28.9.2007, p. 5.

⁽⁴⁾ OJ L 15, 18.1.2008, p. 20.

ANNEX

Amended representative prices and additional duties applicable to imports of white sugar, raw sugar and products covered by CN code 1702 90 95 applicable from 19 January 2008

(EUR)

CN code	Representative price per 100 kg of the product concerned	Additional duty per 100 kg of the product concerned
1701 11 10 ⁽¹⁾	23,38	4,61
1701 11 90 ⁽¹⁾	23,38	9,84
1701 12 10 ⁽¹⁾	23,38	4,42
1701 12 90 ⁽¹⁾	23,38	9,41
1701 91 00 ⁽²⁾	22,77	14,47
1701 99 10 ⁽²⁾	22,77	9,33
1701 99 90 ⁽²⁾	22,77	9,33
1702 90 95 ⁽³⁾	0,23	0,41

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

⁽²⁾ Fixed for the standard quality defined in Annex I.II to Regulation (EC) No 318/2006.

⁽³⁾ Fixed per 1 % sucrose content.

COMMISSION REGULATION (EC) No 46/2008**of 18 January 2008****amending for the 90th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

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

- (2) On 21 December 2007, the Sanctions Committee of the United Nations Security Council decided to amend the list of persons, groups and entities to whom the freezing of funds and economic resources should apply. Annex I should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on the day following 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, 18 January 2008.

For the Commission

Eneko LANDÁBURU

Director-General for External Relations

⁽¹⁾ OJ L 139, 29.5.2002, p. 9. Regulation as last amended by Commission Regulation (EC) No 1389/2007 (OJ L 310, 28.11.2007, p. 6).

ANNEX

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

- (1) The entry 'Al-Itihaad Al-Islamiya (AIAI)' under the heading 'Legal persons, groups and entities' shall be replaced by:

'Al-Itihaad Al-Islamiya (AIAI). Other information: (a) Reported to operate in Somalia and Ethiopia, (b) Leadership include Hassan Abdullah Hersi Al-Turki and Hassan Dahir Aweys.'

- (2) The entry 'Moustafa **Abbes**. Address: Via Padova, 82 — Milan, Italy (domicile). Date of birth: 5.2.1962. Place of birth: Osniers, Algeria' under the heading 'Natural persons' shall be replaced by:

'Moustafa **Abbes**. Address: Via Padova 82, Milan, Italy (domicile). Date of birth: 5.2.1962. Place of birth: Osniers, Algeria. Other information: Sentenced to three years and six months of imprisonment by the Tribunal of Naples on 19.5.2005. Released on 30.1.2006 due to an order suspending the sentence.'

- (3) The entry 'Tarek Ben Al-Bechir Ben Amara **Al-Charaabi** (alias (a) Tarek **Sharaabi**, (b) Haroun, (c) Frank). Address: Viale Bligny 42, Milan, Italy. Date of birth: 31.3.1970. Place of birth: Tunis, Tunisia. Nationality: Tunisian. Passport No: L579603 (Tunisian passport number issued in Milan on 19.11.1997 which expired on 18.11.2002). National identification No: 007-99090. Other information: (a) Italian fiscal code: CHRTRK70C31Z352U, (b) His mother's name is Charaabi Hedia' under the heading 'Natural persons' shall be replaced by:

'Tarek Ben Al-Bechir Ben Amara **Al-Charaabi** (alias (a) Tarek **Sharaabi**, (b) Haroun, (c) Frank). Address: Viale Bligny 42, Milan, Italy. Date of birth: 31.3.1970. Place of birth: Tunis, Tunisia. Nationality: Tunisian. Passport No: L579603 (Tunisian passport number issued in Milan on 19.11.1997, expired on 18.11.2002). National identification No: 007-99090. Other information: (a) Italian fiscal code: CHRTRK70C31Z352U, (b) His mother's name is Charaabi Hedia, (c) Released from prison in Italy on 28.5.2004. The Milan judicial authority issued an arrest warrant against him on 18.5.2005. Fugitive as of October 2007.'

- (4) The entry 'Said Ben Abdelhakim Ben Omar **Al-Cherif** (alias (a) Djallal, (b) Youcef, (c) Abou Salman). Address: Corso Lodi 59, Milan, Italy. Date of birth: 25.1.1970. Place of birth: Menzel Temime, Tunisia. Nationality: Tunisian. Passport No: M307968 (Tunisian passport issued on 8.9.2001 which expires on 7.9.2006)' under the heading 'Natural persons' shall be replaced by:

'Said Ben Abdelhakim Ben Omar **Al-Cherif** (alias (a) Djallal, (b) Youcef, (c) Abou Salman). Address: Corso Lodi 59, Milan, Italy. Date of birth: 25.1.1970. Place of birth: Menzel Temime, Tunisia. Nationality: Tunisian. Passport No: M307968 (Tunisian passport issued on 8.9.2001, expired on 7.9.2006). Other information: Sentenced by the Court of first instance of Milan to four years and six months of imprisonment on 9.5.2005 and to six years of imprisonment on 5.10.2006. Detained in Italy as of September 2007.'

- (5) The entry 'Noureddine Ben Ali Ben Belkassem **Al-Drissi**. Address: Via Plebiscito 3, Cremona, Italy. Date of birth: 30.4.1964. Place of birth: Tunis, Tunisia. Nationality: Tunisian. Passport No: L851940 (Tunisian passport issued on 9.9.1998 which expired on 8.9.2003)' under the heading 'Natural persons' shall be replaced by:

'Noureddine Ben Ali Ben Belkassem **Al-Drissi**. Address: Via Plebiscito 3, Cremona, Italy. Date of birth: 30.4.1964. Place of birth: Tunis, Tunisia. Nationality: Tunisian. Passport No: L851940 (Tunisian passport issued on 9.9.1998, expired on 8.9.2003). Other information: sentenced to seven years and six months of imprisonment by the Court of first instance of Cremona on 15.7.2006. This sentence was appealed and a new trial will be held by the Court of Appeal of Brescia. Detained in Italy as of September 2007.'

- (6) The entry 'Fethi Ben Hassen Ben Salem **Al-Haddad**. Address: (a) Via Fulvio Testi 184, Cinisello Balsamo (MI), Italy, (b) Via Porte Giove 1, Mortara (PV), Italy (domicile). Date of birth: 28.6.1963. Place of birth: Tataouene, Tunisia. Nationality: Tunisian. Passport No: L183017 (Tunisian passport issued on 14.2.1996 which expired on 13.2.2001). Other information: Italian fiscal code: HDDFTH63H28Z352V' under the heading 'Natural persons' shall be replaced by:

'Fethi Ben Hassen Ben Salem **Al-Haddad**. Address: (a) Via Fulvio Testi 184, Cinisello Balsamo (MI), Italy, (b) Via Porte Giove 1, Mortara (PV), Italy (domicile). Date of birth: 28.6.1963. Place of birth: Tataouene, Tunisia. Nationality: Tunisian. Passport No: L183017 (Tunisian passport issued on 14.2.1996, expired on 13.2.2001). Other information: (a) Italian fiscal code: HDDFTH63H28Z352V, (b) Sentenced to five years of imprisonment by the Tribunal of Naples on 19.5.2005. Released on 22.3.2007 due to an order suspending the sentence.'

- (7) The entry 'Abd Al Wahab **Abd Al Hafiz** (*alias* (a) Ferdjani Mouloud, (b) Mourad, (c) Rabah Di Roma). Address: Via Lungotevere Dante — Rome, Italy. Date of birth: 7.9. 1967. Place of birth: Algiers, Algeria' under the heading 'Natural persons' shall be replaced by:

'Abd Al Wahab **Abd Al Hafiz** (*alias* (a) Ferdjani Mouloud, (b) Mourad, (c) Rabah Di Roma). Address: Via Lungotevere Dante, Rome, Italy (domicile). Date of birth: 7.9.1967. Place of birth: Algiers, Algeria. Other information: sentenced in absentia to five years of imprisonment by the Tribunal of Naples on 19.5.2005. Fugitive as of September 2007.'

- (8) The entry 'Kamal Ben Maoeldi Ben Hassan **Al-Hamraoui** (*alias* (a) Kamel, (b) Kimo). Address: (a) Via Bertesi 27, Cremona, Italy, (b) Via Plebiscito 3, Cremona, Italy. Date of birth: 21.10.1977. Place of birth: Beja, Tunisia. Nationality: Tunisian. Passport No: P229856 (Tunisian passport issued on 1.11.2002 which expires on 31.10.2007)' under the heading 'Natural persons' shall be replaced by:

'Kamal Ben Maoeldi Ben Hassan **Al-Hamraoui** (*alias* (a) Kamel, (b) Kimo). Address: (a) Via Bertesi 27, Cremona, Italy, (b) Via Plebiscito 3, Cremona, Italy. Date of birth: 21.10.1977. Place of birth: Beja, Tunisia. Nationality: Tunisian. Passport No: P229856 (Tunisian passport issued on 1.11.2002, expired on 31.10.2007). Other information: sentenced to three years and four months of imprisonment in Brescia on 13.7.2005. Subject to a decree of expulsion, suspended on 17.4.2007 by the European Court of Human Rights. Free as of September 2007.'

- (9) The entry 'Aweys, Hassan Dahir (aka Ali, Sheikh Hassan Dahir Aweys) (aka Awes, Shaykh Hassan Dahir); date of birth 1935; citizen of Somalia' under the heading 'Natural persons' shall be replaced by:

'Hassan Dahir **Aweys** (*aka* (a) Ali, Sheikh Hassan Dahir Aweys, (b) Awes, Shaykh Hassan Dahir, (c) Hassen Dahir Aweys, (d) Ahmed Dahir Aweys, (e) Mohammed Hassan Ibrahim, (f) Aweys Hassan Dahir). Title: (a) Sheikh, (b) Colonel. Date of birth: 1935. Nationality: Somalia. Other information: (a) Reported to be in Eritrea as of 12 November 2007; (b) Family background: from the Hawiya, Habergdir, Ayr clan; (c) Senior leader of Al-Itihaad Al-Islamiya (AIAI).'

- (10) The entry 'Nessim Ben Mohamed Al-Cherif Ben Mohamed **Saleh Al-Saadi** (*alias* Abou Anis). Address: (a) Via Monte Grappa 15, Arluno (Milan), Italy, (b) Via Cefalonia 11, Milan, Italy. Date of birth: 30.11.1974. Place of birth: Haidra Al-Qasreen, Tunisia. Nationality: Tunisian. Passport No: M788331 (Tunisian passport issued on 28.9.2001 which expires on 27.9.2006)' under the heading 'Natural persons' shall be replaced by:

'Nessim Ben Mohamed Al-Cherif Ben Mohamed **Saleh Al-Saadi** (*alias* (a) Saadi Nassim, (b) Abou Anis). Address: (a) Via Monte Grappa 15, Arluno (Milan), Italy, (b) Via Cefalonia 11, Milan, Italy (domicile). Date of birth: 30.11.1974. Place of birth: Haidra Al-Qasreen, Tunisia. Nationality: Tunisian. Passport No: M788331 (Tunisian passport issued on 28.9.2001, expired on 27.9.2006). Other information: Sentenced to four years and six months of imprisonment, and to be deported, by the Court of first Instance of Milan on 9.5.2005. Released on 6.8.2006. Appeal by the Prosecutor of Milan, pending as of September 2007.'

- (11) The entry 'Faraj Faraj Hussein **Al-Sa'idi** (*alias* (a) Mohamed Abdulla **Imad**, (b) Muhamad Abdullah **Imad**, (c) Imad Mouhamed **Abdellah**, (d) Faraj Farj **Hassan Al Saadi**, (e) Hamza "the Libyan" **Al Libi**, (f) Abdallah **Abd al-Rahim**). Address: Viale Bligny 42, Milan, Italy (Imad Mouhamed **Abdellah**). Date of birth: 28.11.1980. Place of birth: (a) Libya, (b) Gaza (Mohamed Abdulla **Imad**), (c) Jordan (Mohamed Abdullah **Imad**), (d) Palestine (Imad Mouhamed **Abdellah**). Nationality: Libyan' under the heading 'Natural persons' shall be replaced by:

'Faraj Faraj Hussein **Al-Sa'idi** (*alias* (a) Mohamed Abdulla **Imad**, (b) Muhamad Abdullah **Imad**, (c) Imad Mouhamed **Abdellah**, (d) Faraj Farj **Hassan Al Saadi**, (e) Hamza **Al Libi**, (f) Abdallah **Abd al-Rahim**). Address: Viale Bligny 42, Milan, Italy (Imad Mouhamed **Abdellah**). Date of birth: 28.11.1980. Place of birth: (a) Libyan Arab Jamahiriya, (b) Gaza (Mohamed Abdulla **Imad**), (c) Jordan (Muhamad Abdullah **Imad**), (d) Palestine (Imad Mouhamed **Abdellah**). Nationality: Libyan. Other information: sentenced to five years of imprisonment by the Court of first instance of Milan on 18.12.2006.'

- (12) The entry 'Hassan Abdullah Hersi Al-Turki (*alias* Hassan Turki). Date of birth: circa 1944. Place of birth: Region V (Ogaden), Ethiopia. Other information: member of the Reer-Abdille subclan of the Ogaden clan' under the heading 'Natural persons' shall be replaced by:

'Hassan Abdullah Hersi **Al-Turki** (*alias* Hassan Turki). Title: Sheikh. Date of birth: Approximately 1944. Place of birth: Region V, Ethiopia (the Ogaden Region in eastern Ethiopia). Nationality: Somali. Other information: (a) Reported to be active in Southern Somalia, lower Juba near Kismayo, mainly in Jilibe and Burgabo as of November 2007; (b) Family background: from the Ogaden clan, Reer-Abdille subclan; (c) Part of the Al-Itihaad Al-Islamiya (AIAI) leadership; (d) Believed to have been involved in the attacks on the United States embassies in Nairobi and Dar es Salaam in August 1998.'

- (13) The entry 'L'Hadi **Bendebka** (*alias* (a) Abd Al Hadi, (b) Hadi). Address: (a) Via Garibaldi, 70 — San Zenone al Po (PV), Italy, (b) Via Manzoni, 33 — Cinisello Balsamo (MI), Italy (Domicile). Date of birth: 17.11.1963. Place of birth: Algiers, Algeria. Other information: address at (a) used as of 17.12.2001' under the heading 'Natural persons' shall be replaced by:

L'Hadi **Bendebka** (*alias* (a) Abd Al Hadi, (b) Hadi). Address: (a) Via Garibaldi 70, San Zenone al Po (PV), Italy, (b) Via Manzoni 33, Cinisello Balsamo (MI), Italy (domicile). Date of birth: 17.11.1963. Place of birth: Algiers, Algeria. Other information: (a) address at (a) used as of 17.12.2001, (b) Sentenced to eight years of imprisonment by the Court of Appeal of Naples on 16.3.2004. Detained in Italy as of September 2007.'

- (14) The entry 'Othman **Deramchi** (*alias* Abou Youssef). Address: (a) Via Milanese, 5 — Sesto San Giovanni, Italy, (b) Piazza Trieste, 11 — Mortara, Italy (domicile). Date of birth: 7.6.1954. Place of birth: Tighennif, Algeria. Fiscal code: DRMTMN54H07Z301T' under the heading 'Natural persons' shall be replaced by:

Othman **Deramchi** (*alias* Abou Youssef). Address: (a) Via Milanese 5, 20099 Sesto San Giovanni (MI), Italy, (b) Piazza Trieste 11, Mortara, Italy (domicile as of October 2002). Date of birth: 7.6.1954. Place of birth: Tighennif, Algeria. Other information: (a) Fiscal code: DRMTMN54H07Z301T, (b) Sentenced to eight years of imprisonment by the Tribunal of Naples on 19.5.2005. Detained in Italy as of September 2007.'

- (15) The entry 'Radi Abd El Samie Abou El Yazid EL AYASHI, (*alias* MERA'I), Via Cilea 40, Milan, Italy. Place of birth: El Gharbia (Egypt). Date of birth: 2 January 1972' under the heading 'Natural persons' shall be replaced by:

Radi Abd El Samie Abou El Yazid **El Ayashi**, (*alias* Mera'I). Address: Via Cilea 40, Milan, Italy (domicile). Date of birth: 2.1.1972. Place of birth: El Gharbia (Egypt). Other information: sentenced to 10 years of imprisonment by the Court of first instance of Milan on 21.9.2006. In custody in Italy as of September 2007.'

- (16) The entry 'Ahmed El Bouhali (*alias* Abu Katada). Address: vicolo S. Rocco, 10 — Casalbuttano (Cremona), Italy. Date of birth: 31.5.1963. Place of birth: Sidi Kacem, Morocco. Nationality: Moroccan. Other information: Italian fiscal code LBHHMD63E31Z330M' under the heading 'Natural persons' shall be replaced by:

Ahmed **El Bouhali** (*alias* Abu Katada). Address: vicolo S. Rocco 10, Casalbuttano (Cremona), Italy. Date of birth: 31.5.1963. Place of birth: Sidi Kacem, Morocco. Nationality: Moroccan. Other information: (a) Italian fiscal code LBHHMD63E31Z330M, (b) Acquitted by the Cremona Court of assizes on 15.7.2006.'

- (17) The entry 'Ali El Heit (*alias* (a) Kamel Mohamed, (b) Ali Di Roma). Address: (a) via D. Fringuello 20, Rome, Italy, (b) Milan, Italy (domicile). Date of birth: (a) 20.3.1970, (b) 30.1.1971. Place of birth: Rouiba, Algeria' under the heading 'Natural persons' shall be replaced by:

Ali **El Heit** (*alias* (a) Kamel Mohamed, (b) Ali Di Roma). Address: (a) via D. Fringuello 20, Rome, Italy, (b) Milan, Italy (domicile). Date of birth: (a) 20.3.1970, (b) 30.1.1971 (Kamel Mohamed). Place of birth: Rouiba, Algeria. Other information: Sentenced to five years of imprisonment by the Tribunal of Naples on 19.5.2005. Released on 5.10.2006. Arrested again on 11.8.2006 for terrorist offences. Detained in Italy as of September 2007.'

- (18) The entry 'Sami Ben Khamis Ben Saleh **Elsseid** (*alias* (a) Omar El Mouhajer, (b) Saber). Address: Via Dubini 3, Gallarate (VA), Italy. Date of birth: 10.2.1968. Place of birth: Menzel Jemil Bizerte, Tunisia. Nationality: Tunisian. Passport No: K929139 (Tunisian passport issued on 14.2.1995 which expired on 13.2.2000). National identification No: 00319547 issued on 8.12.1994. Other information: (a) Italian fiscal code: SSDSBN68B10Z352F, (b) his mother's name is Beya Al-Saidani, (c) sentenced to a five year prison term, currently detained in Italy' under the heading 'Natural persons' shall be replaced by:

Sami Ben Khamis Ben Saleh **Elsseid** (*alias* (a) Omar El Mouhajer, (b) Saber). Address: Via Dubini 3, Gallarate (VA), Italy. Date of birth: 10.2.1968. Place of birth: Menzel Jemil Bizerte, Tunisia. Nationality: Tunisian. Passport No: K929139 (Tunisian passport issued on 14.2.1995, expired on 13.2.2000). National identification No: 00319547 (issued on 8.12.1994). Other information: (a) Italian fiscal code: SSDSBN68B10Z352F, (b) his mother's name is Beya Al-Saidani, (c) sentenced to five years of imprisonment, reduced to one year and eight months by the Court of Appeal of Milan on 14.12.2006. The Milan judicial authority issued an arrest warrant against him on 2.6.2007. Detained in Italy as of October 2007.'

- (19) The entry 'Mohammed Tahir HAMMID (*alias* ABDELHAMID AL KURDI), Via della Martinella 132, Parma, Italy. Place of birth: Poshok (Iraq). Date of birth: 1 November 1975. Title: Imam' under the heading 'Natural persons' shall be replaced by:

'Mohammad Tahir **Hammid** (*alias* Abdelhamid Al Kurdi). Title: Imam. Address: Via della Martinella 132, Parma, Italy. Date of birth: 1.11.1975. Place of birth: Poshok, Iraq. Other information: sentenced to one year and 11 months of imprisonment by the Italian judicial authority on 19.4.2004. Released on 15.10.2004. A deportation order was issued on 18.10.2004. Fugitive as of September 2007.'

- (20) The entry 'Ali Ahmed Nur **Jim'ale** (*alias* (a) Jimale, Ahmed Ali; (b) Jim'ale, Ahmad Nur Ali; (c) Jumale, Ahmed Nur; (d) Jumali, Ahmed Ali). Address: PO Box 3312, Dubai, UAE. Nationality: Somali. Other information: profession: accountant, Mogadishu, Somalia' under the heading 'Natural persons' shall be replaced by:

'Ali Ahmed Nur **Jim'ale** (*alias* (a) Jimale, Ahmed Ali; (b) Jim'ale, Ahmad Nur Ali; (c) Jumale, Ahmed Nur; (d) Jumali, Ahmed Ali). Address: P.O. Box 3312, Dubai, United Arab Emirates. Date of birth 1954. Nationality: Somali. Other information: (a) Profession: accountant, Mogadishu, Somalia; (b) Associated with Al-Itihaad Al-Islamiya (AIAl).'

- (21) The entry 'Abderrahmane **Kifane**. Address: via S. Biagio 32 or 35 — Sant'Anastasia (NA), Italy. Date of birth: 7.3.1963. Place of birth: Casablanca, Morocco. Other information: Sentenced for a 20 months prison term in Italy on 22 July 1995 for providing support to Armed Islamic Group (GIA)' under the heading 'Natural persons' shall be replaced by:

'Abderrahmane **Kifane**. Address: via S. Biagio 32 or 35, Sant'Anastasia (NA), Italy. Date of birth: 7.3.1963. Place of birth: Casablanca, Morocco. Other information: Sentenced for a 20 months prison term in Italy on 22.7.1995 for providing support to the Armed Islamic Group (GIA). Sentenced to three years and six months of imprisonment by the Court of Appeal of Naples on 16.3.2004. A new trial will be held by decision of the Supreme Court.'

- (22) The entry 'Abdelkader Laagoub. Address: via Europa, 4 — Paderno Ponchielli (Cremona), Italy. Date of birth: 23.4.1966. Place of birth: Casablanca, Morocco. Nationality: Moroccan. Other information: Italian fiscal code LGBBLK66D23Z330U' under the heading 'Natural persons' shall be replaced by:

'Abdelkader **Laagoub**. Address: via Europa 4, Paderno Ponchielli (Cremona), Italy. Date of birth: 23.4.1966. Place of birth: Casablanca, Morocco. Nationality: Moroccan. Other information: (a) Italian fiscal code LGBBLK66D23Z330U, (b) Acquitted by the Cremona Court of assizes on 15.7.2006 and released the same day.'

- (23) The entry 'Fazul Abdullah **Mohammed** (*alias* (a) Abdalla, Fazul, (b) Abdallah, Fazul, (c) Ali, Fadel Abdallah Mohammed, (d) Fazul, Abdalla, (e) Fazul, Abdallah, (f) Fazul, Abdallah Mohammed, (g) Fazul, Haroon, (h) Fazul, Harun, (i) Haroun, Fadhil, (j) Mohammed, Fazul, (k) Mohammed, Fazul Abdilahi, (l) Mohammed, Fouad, (m) Muhamad, Fadel Abdallah, (n) Abdullah Fazhl, (o) Fazhl Haroun, (p) Fazil Haroun, (q) Faziul Abdallah, (r) Fazul Abdalahi Mohammed, (s) Haroun Fazil, (t) Harun Fazul, (u) Khan Fazhl, (v) Farun Fahdl, (w) Harun Fahdl, (x) Aisha, Abu, (y) Al Sudani, Abu Seif, (z) Haroon, (aa) Harun, (bb) Luqman, Abu (cc) Haroun). Date of birth (a) 25.8.1972, (b) 25.12.1974, (c) 25.2.1974, (d) 1976, (e) February 1971. Place of birth: Moroni, Comoros Islands. Nationality: (a) Comoros, (b) Kenya' under the heading 'Natural persons' shall be replaced by:

'Fazul Abdullah **Mohammed** (*alias* (a) Abdalla, Fazul, (b) Abdallah, Fazul, (c) Ali, Fadel Abdallah Mohammed, (d) Fazul, Abdalla, (e) Fazul, Abdallah, (f) Fazul, Abdallah Mohammed, (g) Fazul, Haroon, (h) Fazul, Harun, (i) Haroun, Fadhil, (j) Mohammed, Fazul, (k) Mohammed, Fazul Abdilahi, (l) Mohammed, Fouad, (m) Muhamad, Fadel Abdallah, (n) Abdullah Fazhl, (o) Fazil Haroun, (p) Faziul Abdallah, (r) Fazul Abdalahi Mohammed, (s) Haroun Fazil, (t) Harun Fazul, (u) Khan Fazhl, (v) Farun Fahdl, (w) Harun Fahdl, (x) Abdulah Mohamed Fadl, (y) Fadel Abdallah Muhammad, (z) Abdallah Muhammad Fadhul, (aa) Fedel Abdullah Mohammad Fazul, (ab) Fadl Allah Abd Allah, (ac) Haroon Fadl Abd Allah, (ad) Mohamed Fadl, (ae) Abu Aisha, (af) Abu Seif Al Sudani, (ag) Haroon, (ah) Harun, (ai) Abu Luqman, (aj) Haroun, (ak) Harun Al-Qamry, (al) Abu Al-Fazul Al-Qamari, (am) Haji Kassim Fumu, (an) Yacub). Date of birth (a) 25.8.1972, (b) 25.12.1974, (c) 25.2.1974, (d) 1976, (e) February 1971. Place of birth: Moroni, Comoros Islands. Nationality: (a) Comoros, (b) Kenya. Other information: (a) Reported to operate in Southern Somalia as of November 2007; (b) Reported to carry Kenyan and Comorian passports. (c) Believed to have been involved in the attacks on the United States embassies in Nairobi and Dar es Salaam in August 1998, and further attacks in Kenya in 2002; (d) Has reportedly undergone plastic surgery.'

- (24) The entry 'Yacine Ahmed **Nacer** (*alias* Yacine Di Annaba). Date of birth: 2.12.1967. Place of birth: Annaba, Algeria. Address: (a) rue Mohamed Khemisti, 6 — Annaba, Algeria, (b) vicolo Duchessa, 16 — Naples, Italy, (c) via Genova, 121 — Naples, Italy (domicile)' under the heading 'Natural persons' shall be replaced by:

'Yacine Ahmed **Nacer** (*alias* Yacine Di Annaba). Date of birth: 2.12.1967. Place of birth: Annaba, Algeria. Address: (a) rue Mohamed Khemisti 6, Annaba, Algeria, (b) vicolo Duchessa 16, Naples, Italy, (c) via Genova 121, Naples, Italy (domicile). Other information: Sentenced to five years of imprisonment by the Tribunal of Naples on 19.5.2005. Arrested in France on 5.7.2005 and extradited on 27.8.2005 to Italy. Detained as of September 2007.'

- (25) The entry 'Al-Azhar Ben Khalifa Ben Ahmed **Rouine** (*alias* (a) Salmame, (b) Lazhar). Address: Vicolo S. Giovanni, Rimini, Italy. Date of birth: 20.11.1975. Place of birth: Sfax (Tunisia). Nationality: Tunisian. Passport No: P182583 (Tunisian passport issued on 13.9.2003 which expires on 12.9.2007)' under the heading 'Natural persons' shall be replaced by:

'Al-Azhar Ben Khalifa Ben Ahmed **Rouine** (*alias* (a) Salmame, (b) Lazhar). Address: Vicolo S. Giovanni, Rimini, Italy (domicile). Date of birth: 20.11.1975. Place of birth: Sfax, Tunisia. Nationality: Tunisian. Passport No: P182583 (Tunisian passport issued on 13.9.2003, expired on 12.9.2007). Other information: sentenced to two years and six months of imprisonment by the Court of first instance of Milan on 9.5.2005. Appeal pending at Milan's Appeal Court as of September 2007. Free as of September 2007.'

- (26) The entry 'Ahmed Salim Swedan **Sheikh** (*alias* (a) Ally, Ahmed (b) Suweidan, Sheikh Ahmad Salem, (c) Swedan, Sheikh, (d) Swedan, Sheikh Ahmed Salem, (e) Ally Ahmad, (f) Muhamed Sultan, (g) Sheik Ahmed Salim Sweden, (h) Sleyum Salum, (i) Ahmed The Tall, (j) Bahamad, (k) Bahamad, Sheik, (l) Bahamadi, Sheikh, (m) Sheikh Bahamad). Date of birth: (a) 9.4.1969, (b) 9.4.1960, (c) 4.9.1969. Place of birth: Mombasa, Kenya. Nationality: Kenya. Passport No: A163012 (Kenyan passport). National identification No: 8534714 (Kenyan identity card issued on 14.11.1996)' under the heading 'Natural persons' shall be replaced by:

'Ahmed Salim Swedan **Sheikh** (*alias* (a) Ally, Ahmed, (b) Suweidan, Sheikh Ahmad Salem, (c) Swedan, Sheikh, (d) Swedan, Sheikh Ahmed Salem, (e) Ally Ahmad, (f) Muhamed Sultan, (g) Sheik Ahmed Salim Sweden, (h) Sleyum Salum, (i) Sheikh Ahmed Salam, (j) Ahmed The Tall, (k) Bahamad, (l) Bahamad, Sheik, (m) Bahamadi, Sheikh, (n) Sheikh Bahamad). Title: Sheikh. Date of birth: (a) 9.4.1969, (b) 9.4.1960, (c) 4.9.1969. Place of birth: Mombasa, Kenya. Nationality: Kenyan. Passport No: A163012 (Kenyan passport). National identification No: 8534714 (Kenyan identity card issued on 14.11.1996). Other information: believed to have been involved in the attacks on the United States embassies in Nairobi and Dar es Salaam in August 1998.'

II

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

DECISIONS

COMMISSION

COMMISSION DECISION

of 12 October 2007

relating to Articles 111 and 172 of the Polish Draft Act on Genetically Modified Organisms, notified by the Republic of Poland pursuant to Article 95(5) of the EC Treaty as derogations from the provisions of Directive 2001/18/EC of the European Parliament and of the Council on the deliberate release into the environment of genetically modified organisms

(notified under document number C(2007) 4697)

(Only the Polish text is authentic)

(Text with EEA relevance)

(2008/62/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

shall constitute an obstacle to the functioning of the internal market.'

Having regard to the Treaty establishing the European Community, and in particular Article 95(5) and (6) thereof,

Whereas:

1. PROCEDURE

(1) Article 95(5) and (6) of the Treaty provides:

'5. (...) If, after the adoption by the Council or by the Commission of a harmonisation measure, a Member State deems it necessary to introduce national provisions based on new scientific evidence relating to the protection of the environment or the working environment on grounds of a problem specific to that Member State arising after the adoption of the harmonisation measure, it shall notify the Commission of the envisaged provisions as well as the grounds for introducing them.

6. The Commission shall, within six months of the notifications as referred to in paragraphs (...) 5, approve or reject the national provisions involved after having verified whether or not they are a means of arbitrary discrimination or a disguised restriction on trade between Member States and whether or not they

(2) In a letter dated 13 April 2007, the Polish Permanent Representation to the European Union notified the Commission, in accordance with Article 95(5) of the EC Treaty, of Articles 111 and 172 of a draft Act on Genetically Modified Organisms, in derogation of the provisions of Directive 2001/18/EC of the European Parliament and the Council ⁽¹⁾ on the deliberate release into the environment of genetically modified organisms (hereinafter: Directive 2001/18/EC).

(3) By a letter of 9 July 2007, the Commission informed the Polish authorities that it had received the notification under Article 95(5) of the EC Treaty and that the six-month period for its examination pursuant to Article 95(6) had begun following this notification.

(4) The Commission published a notice regarding the request in the *Official Journal of the European Union* ⁽²⁾ to inform the other parties concerned of the draft national measures that Poland intended to adopt ⁽³⁾.

⁽¹⁾ OJ L 106, 17.4.2001, p. 1. Directive as last amended by Regulation (EC) No 1830/2003 (OJ L 268, 18.10.2003, p. 24).

⁽²⁾ OJ C 173, 26.7.2007, p. 8.

⁽³⁾ The observations were issued from Lithuania, EuropaBio, the European Seed Association and Greenpeace. Observations were also made by individuals, professional associations and Polish institutions.

2. RELEVANT COMMUNITY LEGISLATION

2.1. Directive 2001/18/EC on the deliberate release into the environment of genetically modified organisms

- (5) Directive 2001/18/EC is based on Article 95 of the EC Treaty. It aims at approximating legislation and procedures in Member States for the authorisation of GMOs intended for deliberate release into the environment. In accordance with its Article 34, Member States were required to transpose it into national law by 17 October 2002.
- (6) Directive 2001/18/EC puts in place a step-by-step approval process on a case-by-case assessment of the risks to human health and the environment before any GMO or product consisting of or containing GMOs or genetically modified micro-organisms (GMMs) can be released into the environment or placed on the market. The Directive provides for two different procedures, for experimental releases (referred to as part B releases) and for placing on the market releases (referred to as part C releases). Part B releases require an authorisation at national level, whereas part C releases are subject to a Community procedure, with an eventual decision being valid throughout the European Union. Directive 2001/18/EC provides for the placing on the market and experimental release into the environment of transgenic animals on the basis that they are classified as GMOs. Whilst no transgenic animals or fish have as yet been approved for these purposes, the Directive does provide for this possibility. In addition to the above provisions regarding the authorisation procedures, Article 23 of Directive 2001/18/EC contains a 'safeguard clause'. The provisions of this Article mainly foresee that, 'where a Member State, as a result of new or additional information made available since the date of the consent and affecting the environmental risk assessment or reassessment of existing information on the basis of new or additional scientific knowledge, has detailed grounds for considering that a GMO as or in a product which has been properly notified and has received written consent under this Directive constitutes a risk to human health or the environment, that Member State may provisionally restrict or prohibit the use and/or sale of that GMO as or in a product on its territory'. Furthermore, in the event of a severe risk, Member States may take emergency measures, such as the suspension or termination of the placing on the market of a GMO and must inform the Commission of the decision taken on the basis of Article 23, as well as the reasons for having made such a decision. On this basis, a decision shall be taken at Community level on the invoked safeguard clause, in accordance with the procedure foreseen under Article 30(2) of Directive 2001/18/EC.

2.2. Regulation (EC) No 1829/2003 on genetically modified food and feed

- (7) According to its Article 1, Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed⁽¹⁾ (hereinafter Regulation (EC) No 1829/2003) aims at (a) providing the basis for ensuring a high level of protection of human life and health, animal health and welfare, environment and consumer interests in relation to genetically food and feed, whilst ensuring the effecting functioning of the internal market; (b) in laying down Community procedures for the authorisation and supervision of genetically modified food and feed and (c) in laying down provisions for the labeling of genetically modified food and feed. Taken into account these different objectives, this Regulation is based on Article 37, 95 and 152(4)(b), of the EC Treaty. This Regulation applies to GMOs for food and feed use, food or feed containing or consisting of GMOs and food or feed produced from or containing ingredients produced from GMOs. As recalled in recital 11 of the Regulation, authorisation may also be granted to a GMO to be used as a source material for production of food and feed.
- (8) Regulation (EC) No 1829/2003 establishes a centralised system for the authorisation of GMOs (Articles 3 to 7 for genetically modified food and Article 15 to 19 for genetically modified feed). Every application shall be accompanied by a dossier supplying the information required by Annexes III and IV to Directive 2001/18/EC and information and conclusions about the risk assessment carried out in accordance with the principles set out in Annex II to Directive 2001/18/EC (Articles 5(5)(a) and 17(5)(a)). The European Food Safety Authority (EFSA) prepares an opinion on each authorisation (Articles 6 and 18). In case of GMOs to be used as seeds or other plant-propagating materials falling within the scope of the Regulation, Articles 6(3)(c) and 18(3)(c) requires EFSA to delegate the environmental risk assessment to a national competent authority. Article 8 of the Regulation lays down rules applicable to 'existing products' defined as food products placed on the market

⁽¹⁾ OJ L 268, 18.10.2003, p. 1. Regulation as amended by Commission Regulation (EC) No 1981/2006 (OJ L 368, 23.12.2006, p. 99).

under Council Directive 90/220/EEC ⁽¹⁾ before the entry into force of Regulation (EC) No 258/97 of the European Parliament and of the Council ⁽²⁾ or in accordance with the provisions referred to in Regulation (EC) No 258/97 or other products which have been lawfully placed on the market before the date of application of this Regulation, and for which operators responsible of the placing on the market have notified to the Commission within six months of the date of application of this Regulation that the products were placed on the market in the Community before the date of the application of this Regulation. According to the same Article 8, these products may continue to be placed on the market, used and processed under certain conditions. Article 20 of the Regulation sets out the same procedure for feed products which have been authorised under Directives 90/220/EEC or 2001/18/EC, including use as feed, under Directive 82/471/EEC ⁽³⁾, which are produced from GMO, or under Council Directive 70/524/EEC ⁽⁴⁾, which contain, consist or are produced from GMOs. Within one year from the date of application of the Regulation, and after verification that all the information required has been submitted and examined, the products concerned entered the Community Register of genetically modified food and feed (The Register).

3. NATIONAL PROVISIONS NOTIFIED

3.1. Scope of the national provisions notified.

- (9) Poland has attached to its notification all the provisions of the draft Act. Nevertheless, according to the explanatory note submitted by Poland, the derogation to Directive 2001/18/EC would concern only points 5 and 6 of Article 111(2) of Part IV of the draft Act, which concerns the deliberate release of GMOs for experimental purposes, and its Article 172. Accordingly, the assessment in the present decision will be limited to those provisions, without prejudice to other official procedures which will eventually assess the conformity of the rest of the Act — including the other provisions of Article 111 — with Community legislation.

3.1.1. Article 111 (deliberate releases for experimental purposes)

- (10) Article 111 lays down the content of an application for the issuing of a decision for the deliberate release of a GMO.

According to Article 111(1): 'An application for the issuing of a decision in the matter of deliberate release should contain':

According to Article 111(2): 'The following shall accompany an application for the issuing of a decision in the matter of a deliberate release':

1. a risk assessment prepared for the genetically modified organisms being released (...);
2. documentation relating to the preparation of the risk assessment (...);
3. technical documentation of the deliberate release;
4. a programme of action in the case of a risk to the health of persons or animals or the safety of the environment associated with the deliberate release;
5. certification from the mayor of the municipality, town or city that in the local spatial development plan, with regard to the need to protect local environment, nature and cultural landscape of the area in question, provision is made for the possibility of deliberate release;
6. written declarations from the holders of farms neighboring the location of the deliberate release that they do not object to the release;
7. notarised copy of the contract for the conduct of the deliberate release (...);
8. summary of the application.

3.1.2. Article 172 (establishment of special zones for the cultivation of GMOs)

- (11) Article 172 stipulates:

'1. It shall be prohibited to cultivate genetically modified plants, subject to the provisions of paragraph 2.

⁽¹⁾ OJ L 117, 8.5.1990, p. 15. Directive as repealed by Directive 2001/18/EC.

⁽²⁾ OJ L 43, 14.2.1997, p. 1. Regulation as last amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

⁽³⁾ OJ L 213, 21.7.1982, p. 8. Directive as last amended by Commission Directive 2004/116/EC (OJ L 379, 24.12.2004, p. 81).

⁽⁴⁾ OJ L 270, 14.12.1970, p. 1. Directive as last amended by Commission Regulation (EC) No 1800/2004 (OJ L 317, 16.10.2004, p. 37).

2. The Minister with responsibility for agriculture, in consultation with the Minister with responsibility for the environment and after seeking the opinion of the council of the municipality (*gmina*) in which the genetically modified plants are to be cultivated, shall issue a decision concerning the creation of a zone designated for the cultivation of genetically modified plants in a specified area situated within the territory of the municipality (zone designated for the cultivation of genetically modified plants), following the submission by the applicant mentioned in Article 4(21)(f) of an application for the issue of a decision concerning a zone designated for the cultivation of genetically modified plants.

3. An application for the issue of a decision concerning the creation of a zone designated for the cultivation of genetically modified plants should contain:

1. the forename and surname or name and registered office and the address of the applicant mentioned in Article 4(21)(f);
2. the species and variety of genetically modified plant, the properties obtained as a result of the genetic modification and the unique identifier;
3. the number of the cadastral parcel containing the agricultural parcel within the meaning of the regulations on the national system for keeping records of producers, records of farms and records of applications for the award of payments, the area of the agricultural parcel in hectares, the location of the agricultural parcel within the cadastral parcel, the sheet number of the cadastral map for that cadastral parcel, the name of the cadastral region and the name of the municipality and voivodship.

4. The application shall be submitted in writing and in electronic form.

5. The application mentioned in paragraph 3 shall be accompanied by written declarations from the holders of land within the area of spatial isolation from the land on which it is planned to cultivate genetically modified plants that they do not object to the intention to create a zone designated for the cultivation of genetically modified plants.

6. A copy of the application for the issue of a decision concerning a zone designated for the cultivation of genetically modified plants shall be sent, in writing and in electronic form, within five days following the date on which the application is submitted, by the Minister with responsibility for agriculture to:

1. the Minister with responsibility for the environment;

2. the council of the municipality within which the genetically modified plants are to be cultivated;

and these, within 45 days following the date of delivery to them of a copy of the application mentioned in paragraph 3, shall convey their position in the matter, indicating the reasons therefore, to the Minister with responsibility for agriculture.

7. The Minister with responsibility for the environment shall convey to the Minister with responsibility for agriculture the position mentioned in paragraph 6(1) after seeking the opinion of the Team mentioned in Article 26(4) and the opinion of the Committee mentioned in Article 25.

8. The council of the municipality mentioned in paragraph 6(2) shall, immediately after receiving the application, make the information contained therein publicly known in the town or village in which the zone is to be created, in the manner customarily adopted in the area in question.'

- (12) Poland has notified to the Commission all provisions of Article 172. Without prejudice to other official procedures which will assess the conformity of the rest of the Act with Community legislation, the Commission considers that all provisions of Article 172 derogate from Directive 2001/18/EC.

3.2. Impact on Community legislation of the national provisions notified

3.2.1. Impact of points 5 and 6 of Article 111(2)

- (13) The scope of the latter provisions, in conjunction with the explanation of the explanatory note, implies that it will primarily impact on the release of GMOs for any other purpose than for placing on the market (primarily for field trials) under Part B (Articles 5 to 11) of Directive 2001/18/EC.

3.2.2. Impact of Article 172

- (14) The scope of Article 172(1) of the draft Act implies that it will primarily impact on:

- the cultivation of genetically modified seed varieties authorised under the provisions of part C (Articles 12 to 24) of Directive 2001/18/EC,
- the cultivation of genetically modified seed varieties already approved under the provisions of Directive 90/220/EEC and now notified as existing products under Articles 8 and 20 of Regulation (EC) No 1829/2003,

- the cultivation of genetically modified seed varieties authorised under the provisions of Regulation (EC) No 1829/2003.

4. JUSTIFICATION PUT FORWARD BY POLAND

- (15) Information for the draft Act, offering interpretation about the Act's impact on and conformity with Community legislation, is provided in the submitted explanatory note on the draft Act (pages 12 and 16 and 17) and the text of the notification (pages 3 to 5).

4.1. Justifications put forward for points 5 and 6 of Article 111(2)

- (16) According to the Polish notification (pages 3 and 4) and explanatory note (page 12), following arguments support the existence of 'elements related to specific conditions' in the sense of Article 95(5) EC Treaty.
- (17) In the drafting of the rules governing the deliberate release of genetically modified organisms into the environment for experimental purposes, the principle adopted was that a set of arrangements as strict as possible should be created for assessing the safety of a given field experiment in the context of its safety for the environment. This is especially important because release is the first stage of research where the new genetically modified organism comes into contact with the environment and the experiment is conducted without such effective protective measures as are applied in closed systems.
- (18) The effect of such an organism on the environment is unknown and may be potentially harmful (this applies particularly to organisms other than genetically modified higher plants). Such action therefore requires special conditions of safety to be maintained, which is in accordance with the precautionary principle that applies in EU Member States. In view of the richness of biodiversity in Poland, the introduction of genetically modified organisms into the environment may cause serious disturbances to its functioning.
- (19) The overriding principle was therefore adopted that there should be as strict as possible an assessment of all component elements of a given field experiment. Particular emphasis was placed on the environmental conditions (soil composition, fauna, flora, presence of protected species, climatic conditions, etc.).

- (20) These proposals (namely, to condition the release to the consent of the neighbouring owners of farm parcels and the provisions of local spatial plans) place additional obligations on applicants, but they do not exclude the carrying out of work involving the deliberate release of GMOs into the environment. The restrictive approach to the question of release is also linked to the structure of Polish agriculture, which is among the most fragmented in the Community. This poses a serious problem not only for commercial growing of GM plants, but also for the safe location of field experiments.

- (21) The Polish authorities make no reference to any new scientific evidence *since the Directive has been adopted* relating to the protection of the environment.

4.2. Justifications put forward for Article 172

- (22) According to the Polish notification (pages 4 and 5) and explanatory note (16 and 17), the rules on commercial cultivation in the national provisions are based to a large extent on Commission Recommendation 2003/556/EC of 23 July 2003 on guidelines for the development of national strategies and best practices to ensure the co-existence of genetically modified crops with conventional and organic farming ⁽¹⁾.
- (23) The idea of creating zones designated for the cultivation of genetically modified plants is a development of paragraph 3.3 of the aforementioned Recommendation, which concerns cooperation between neighbouring farms. Account was also taken of paragraph 2 and paragraph 3.3.2 (coordinated management measures), which speaks of the voluntary clustering of fields of different farms for the cultivation of similar crop varieties (GM, conventional or organic) in a particular area, as well as subparagraph 3.3.3 concerning voluntary agreements among farmers on zones of a single production type.
- (24) According to the draft act, cultivation of genetically modified plants should be limited to areas which do not contain elements of value from a nature conservation standpoint and whose agrarian structure enables safe cultivation of transgenic plants, without damaging the operations of other farmers.

⁽¹⁾ OJ L 189, 29.7.2003, p. 36.

- (25) The regulations proposed in the draft act permit minimisation of the risk associated with the mixing of reproductive material or crossing of genetically modified plants with unmodified plants, and make it possible to inspect genetically modified crops.
- (26) A ground for the introduction of derogations in the national provisions as regards the restriction of the cultivation of transgenic plants, is the need to fulfil the expectations of Polish society. Provisions restricting the cultivation of GM plants have the purpose of preventing the possible damage which may result should transgenes cross over into conventional crops. Concerns relating to the cultivation of GM plants are associated mainly with the impossibility of eliminating the risk of contamination of crops due to possible crossing. This results from the fact that Polish agriculture is fragmented to a very high degree. Poland has almost two million farms, and the average area of a farm is less than 8 ha. Polish agriculture is characterised by a conventional production system, and there is also increasing interest in organic production. Given this high level of fragmentation, it is not possible to isolate GM crops from conventional and organic crops, and this may also pose a serious threat to Poland's developing organic farming. In this situation, the uncontrolled introduction of transgenic plants into cultivation may inflict losses on farmers.
- (27) The reluctance of Polish farmers is also increased by the absence of provisions on compensation for agricultural losses resulting from the uncontrolled crossing of varieties. At present, there are no national provisions relating to the coexistence of the three forms of agriculture — conventional, organic and using transgenic plants — the draft provisions are the first attempt to regulate this matter.
- (28) The Polish authorities make no reference to any new scientific evidence since the Directive has been adopted relating to the protection of the environment.
- specific to that Member State arising after the adoption of the harmonisation measure, and which are justified by new scientific evidence.
- (30) Furthermore, under Article 95(6) of the EC Treaty, the Commission is either to approve or reject the draft national provisions in question after verifying whether or not they are a means of arbitrary discrimination or a disguised restriction on trade between Member States, and whether or not they shall constitute an obstacle to the functioning of the internal market.
- (31) The notification submitted by the Polish authorities on 13 April 2007 is intended to obtain approval for the introduction of the new Article 111(2) points 5 and 6 and Article 172 of the Act which Poland considers to be a derogation to Directive 2001/18/EC.
- (32) Poland submitted this notification as derogation to Directive 2001/18/EC only. Therefore, the legal assessment contained in this Decision will focus only on Directive 2001/18/EC.
- (33) Directive 2001/18/EC harmonises at Community level the rules with regards to the deliberate release of GMOs, for experimental release or for placing on the market. This horizontal piece of legislation can be seen as the cornerstone of any deliberate release into the environment of GMOs in the European Union, notably since authorisations in accordance with the legislation for genetically modified food and feed (Regulation (EC) No 1829/2003) are carried out also in line with its governing principles.
- (34) When comparing the provisions of Directive 2001/18/EC and the national measures notified, it emerges that the latter are more restrictive than those contained in the Directive, notably in the following aspects:

5. LEGAL ASSESSMENT

- (29) Article 95(5) of the EC Treaty applies to new national measures, which introduce incompatible requirements with those of a Community harmonisation measure on the basis of the protection of the environment or the working environment, on grounds of a problem
- in accordance with the provisions of Part B of the Directive 2001/18/EC, experimental releases of GMOs are not subject to the consent of any third parties (such as neighbouring farmers, as stipulated by the Polish draft Act) and any authorities other than the Competent Authorities designated under Article 4(4) of the Directive (such as local municipalities, as stipulated by the Polish draft Act),

- Directive 2001/18/EC, enables free circulation of genetically modified seeds approved at Community. Articles 13-18 of the Directive establish an authorisation procedure which includes the assessment of each individual notification for GMO(s) by the competent authorities and, under circumstances, the authorisation through the Committee procedure of Articles 5 and 7 of Council Decision 1999/468/EC⁽¹⁾. In accordance with Article 19 of the Directive ('Consent'), '(...) only if a written consent has been given for the placing on the market of a GMO as or in a product may that product be used without further notification throughout the Community in so far as the specific conditions of use and the environments and/or geographical areas stipulated in these conditions are strictly adhered to.' Moreover, Article 22 of the Directive (Free circulation) stipulates that 'without prejudice to Article 23, Member States may not prohibit, restrict or impede the placing on the market of GMOs, as or in products, which comply with the requirements of this Directive'.
- (35) In view of the above, if a GMO receives a consent for cultivation in the EU under the procedure provided for by Directive 2001/18/EC, Member States cannot introduce any additional restrictions to its cultivation. However the Polish Act prohibits their cultivation unless designated in specific zones, even if no such restriction is established by the written consent given under the Directive.
- (36) Directive 2001/18/EC is affected, in so far as the draft act restricts the cultivation of all GMOs in Poland, whereas the Directive (Articles 13-18) foresees a procedure providing at a EC level a case-by-case risk analysis prior to the authorisation of the placing on the market of a GMO.
- (37) The proposed restrictions of the cultivation of genetically modified seeds in Poland also create an obstacle to the placing on the market of genetically modified seeds that would have been authorised for this purpose under Directive 2001/18/EC. The draft Act would, therefore, have implications for genetically modified seeds already approved for the placing on the market under existing Community legislation as well as future approvals.
- (38) Article 111(2)(5, 6) of the draft Polish Act seeks to restrict the cultivation of genetically modified seeds for experimental releases. Experimental releases of genetically modified seeds are regulated under Directive 2001/18/EC although at a national rather than Community level. In accordance with Article 6(1) of the Directive (Standard authorisation procedure), the notification for each experimental release of GMOs is submitted to the Competent Authority of the Member State within whose territory the release is to take place. In accordance with Article 6(8), the notifier may proceed with the release only when he has received the written consent of the competent authority, and in conformity with any conditions required in the consent. Therefore, the provisions of the notified draft Act which establish additional administrative requirements for the authorisation of such releases, such as mayors' certifications and written declarations for the neighboring farmers that they do not object to the releases, irrespective of any potential risk, have to be considered in contradiction with the Directive.
- (39) Article 172(1) prohibits the cultivation of genetically modified plants, subject to the provisions of paragraph 2, namely the designation of specific zones by the Ministry of Agriculture. This general ban is in breach of Article 19 of Directive 2001/18/EC, which stipulates that if a written consent has been given for the placing on the market of a GMO as or in a product, that product may be used without further notification throughout the Community in so far as the specific conditions of use and the environments and/or geographical areas stipulated in these conditions are strictly adhered to. Furthermore, the general ban of the draft Polish Act is in breach of Article 22 of the Directive, which stipulates that Member States may not prohibit, restrict or impede the placing on the market of GMOs, as or in products, which comply with the requirements of this Directive.
- (40) Finally, in accordance with Article 23 of Directive 2001/18/EC, if on the basis of new information, made available since the date of consent, a Member State has detailed grounds for considering that a GMO as or in a product which has been properly notified and has received written consent under Directive 2001/18/EC constitutes a risk to human health or the environment, that Member State may provisionally restrict or prohibit the use and/or sale of that GMO as or in a product on its territory. This provision indicates that the cultivation of a GMO can be prohibited only on a case-by-case basis and upon particular conditions (new information made available since the date of consent), without providing the basis to any Member State to adopt a general ban of the cultivation or any other use of GMOs.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

- (41) It results from the above that, as the Polish authorities explained in their notification, point 5 and 6 of Article 111(2) and Article 172 are not compatible with Directive 2001/18/EC. Under these circumstances, there is no need to further examine them under other Community legislation and in particular under Regulation 1829/2003/EC in the context of this Decision. Nevertheless, the assessment under Directive 2001/18/EC will not prejudice the assessment on the compliance of the notified draft Act with other parts of Community law, and especially Regulation (EC) No 1829/2003 in the context of other EC procedures.
- (42) Article 95(5) of the EC Treaty provides an exception to the principles of uniform application of Community law and the unity of the market. In accordance with the Court's case law any exception to the principle of the uniform application of Community law and of the unity of the internal market must be strictly interpreted. Therefore, the exception provided for by Article 95(5) of the EC Treaty must be interpreted in such a way that its scope is not extended beyond the cases for which it formally provides.
- (43) In the light of the time-frame established by Article 95(6) of the EC Treaty, the Commission, when examining whether the draft national measures notified under Article 95(5) are justified, has to take as a basis 'the grounds' put forward by the Member State. This means that, under the Treaty, the responsibility of proving that these measures are justified lies with the Member State making the request. Given the procedural framework established by Article 95 of the EC Treaty, including in particular a strict deadline for a Decision to be adopted, the Commission normally has to restrict itself to examining the relevance of the elements which are submitted by the requesting Member State, without having to seek possible justifications itself.
- (44) Moreover, and given the exceptional character of the national measure concerned, the burden of proof for the existence of the requirements justifying the adoption of such a measure in accordance with Article 95(5) of the EC Treaty, lies with the Member State which notifies the measure.
- (45) Article 95(5) of the Treaty requires that when a Member State deems it necessary to introduce national provisions derogating from a harmonisation measure, those provisions shall be justified on the following cumulative conditions ⁽¹⁾:
- new scientific evidence,
 - relating to the protection of the environment or the working environment,
 - grounds of a problem specific to that Member State,
 - arising after the adoption of the harmonisation measure.
- (46) Therefore, under the abovementioned Article, the introduction of national measures which are incompatible with a Community harmonisation measure first of all needs to be justified by new scientific evidence concerning the protection of the environment or the working environment.
- (47) As it results from paragraph 45 of this Decision, it is up to the Member State, which has requested that there is a need for a derogation, to provide new scientific evidence, in support of the measures notified.
- (48) The justifications put forward by Poland (text of notification, pages 3-5) are that:
- the uncertainty surrounding the first stage of research where the new genetically modified organism comes into contact with the environment, where the effect of such a genetically modified organism on the environment is unknown and potentially harmful,
 - the need to limit the cultivation of genetically modified plants to areas which do not contain elements of value from a nature conservation standpoint and whose agrarian structure enables safe cultivation of transgenic plants, without damaging the operations of other farmers,
 - the need to fulfil the expectations of Polish society, while concerns relating to the cultivation of genetically modified plants are associated mainly with the impossibility of eliminating the risk of contamination of crops due to possible crossing,
 - a high level of fragmentation of Polish agriculture, where it is not possible to isolate GM crops from conventional and organic crops, thus posing the uncontrolled introduction of transgenic plants into cultivation may inflict losses on farmers,
- ⁽¹⁾ ECR, C-439/05 P and C-454/05 P, points 56-58.

— the reluctance of Polish farmers towards the cultivation of GMOs which is increased by the absence of provisions on compensation for agricultural losses resulting from the uncontrolled crossing of varieties, while at present there are no national provisions relating to the coexistence of the three forms of agriculture (conventional, organic and transgenic plants).

- (49) It results from the justifications put forward by Poland that Polish authorities make no reference to any new information related to the protection of the environment in their notification or in the accompanying explanatory note. Their justifications concern broader issues such as the uncertainty surrounding the first stage of research, the conservation of nature and the matter of liability. There is no reference to any new scientific studies, researches, literature or any other possible findings emerged after the adoption of Directive 2001/18/EC and indicating new evidence concerning the protection of the environment or working environment.
- (50) Under those circumstances, in the absence of new scientific element the Commission did not have any reason to submit, the notification to the European Food Safety Authority EFSA and ask its opinion, in accordance with Article 28(2) of Directive 2001/18/EC.
- (51) Given the fact that the submission of new scientific evidence constitutes a cumulative condition for the fulfillment of the requirements of Article 95(5) EC Treaty, their absence has as consequence the rejection of the notification without the need to further examine the fulfillment of other conditions.

6. CONCLUSION

- (52) Article 95(5) of the EC Treaty requires that, if a Member State deems it necessary to introduce national provisions in derogation from Community harmonisation measures, the national provisions must be justified by new scientific evidence relating to the protection of environment or the working environment, there must be a problem specific to the Member State making the request, and the problem must have arisen after the adoption of the harmonisation measure.
- (53) The Polish notification does not provide any new scientific evidence relating to the protection of the environment or the working environment, which could arose

following the adoption of Directive 2001/18/EC, on the deliberate release into the environment of GMOs, and which makes it necessary to introduce the notified national measures.

- (54) Consequently, the request from Poland for introducing Articles 111(2)(5, 6) and 172 aimed at derogating from the provisions of Directive 2001/18/EC concerning the experimental release and cultivation of GMOs in Poland does not fulfill the conditions set out in Article 95(5).
- (55) In light of the elements which it had available to assess the merits of the justifications put forward for the national measures notified, and in light of the considerations set out above, the Commission considers that Poland's request for introducing national provisions derogating from Directive 2001/18/EC, submitted on 13 April 2007, does not fulfill the conditions set out in Article 95(5) of the EC Treaty, as Poland did not provide new scientific evidence relating to the protection of the environment or the working environment on grounds of a problem specific to Poland.
- (56) The Commission therefore considers that the national provisions notified cannot be approved in accordance with Article 95(6) of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

Points 5 and 6 of Article 111(2) and Article 172 of the draft Law on Genetically Modified Organisms notified by Poland pursuant to Article 95(5) of the EC Treaty, are rejected.

Article 2

This Decision is addressed to the Republic of Poland.

Done at Brussels, 12 October 2007.

For the Commission

Stavros DIMAS

Member of the Commission

COMMISSION DECISION

of 20 December 2007

amending Decisions 2002/231/EC, 2002/255/EC, 2002/272/EC, 2002/371/EC, 2003/200/EC and 2003/287/EC in order to prolong the validity of the ecological criteria for the award of the Community eco-label to certain products

(notified under document number C(2007) 6800)

(Text with EEA relevance)

(2008/63/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 1980/2000 of the European Parliament and of the Council of 17 July 2000 on a revised Community eco-label award scheme⁽¹⁾, and in particular the second subparagraph of Article 6(1) thereof,

After consulting the European Union Eco-labelling Board,

Whereas:

(5) Commission Decision 2003/200/EC of 14 February 2003 establishing revised ecological criteria for the award of the Community eco-label to laundry detergents and amending Decision 1999/476/EC⁽⁶⁾ expires on 29 February 2008.

(6) Commission Decision 2003/287/EC of 14 April 2003 establishing the ecological criteria for the award of the Community eco-label to tourist accommodation service⁽⁷⁾ expires on 30 April 2008.

(7) Pursuant to Regulation (EC) No 1980/2000 a timely review has been carried out of the ecological criteria, as well as of the related assessment and verification requirements, established by those Decisions.

(1) Commission Decision 2002/231/EC of 18 March 2002 establishing revised ecological criteria for the award of the Community eco-label to footwear and amending Decision 1999/179/EC⁽²⁾ expires on 31 March 2008.

(2) Commission Decision 2002/255/EC of 25 March 2002 establishing ecological criteria for the award of the Community eco-label to televisions⁽³⁾ expires on 31 March 2008.

(3) Commission Decision 2002/272/EC of 25 March 2002 establishing criteria for the award of the Community eco-label to hard floor coverings⁽⁴⁾ expires on 31 March 2008.

(4) Commission Decision 2002/371/EC of 15 May 2002 establishing ecological criteria for the award of the Community eco-label to textile products and amending Decision 1999/178/EC⁽⁵⁾ expires on 31 May 2008.

(8) Given the different stages of the revision process for these Decisions it is appropriate to prolong the period of validity of the ecological criteria and the requirements for Decision 2002/255/EC and Decision 2002/371/EC for a period of 12 months, Decision 2003/287/EC for a period of 18 months, and Decision 2002/231/EC, Decision 2002/272/EC and Decision 2003/200/EC for a period of 24 months.

(9) Since the review obligation pursuant to Regulation (EC) No 1980/2000 concerns only the ecological criteria and assessment and verification requirements, it is appropriate that Decisions 2002/231/EC, 2002/255/EC, 2002/272/EC, 2002/371/EC, 2003/200/EC and 2003/287/EC remain in effect.

(10) Decisions 2002/231/EC, 2002/255/EC, 2002/272/EC, 2002/371/EC, 2003/200/EC and 2003/287/EC should therefore be amended accordingly.

(11) The measures provided for in this Decision are in accordance with the opinion of the Committee instituted by Article 17 of Regulation (EC) No 1980/2000,

⁽¹⁾ OJ L 237, 21.9.2000, p. 1.

⁽²⁾ OJ L 77, 20.3.2002, p. 50. Decision as last amended by Decision 2005/783/EC (OJ L 295, 11.11.2005, p. 51).

⁽³⁾ OJ L 87, 4.4.2002, p. 53. Decision as last amended by Decision 2007/207/EC (OJ L 92, 3.4.2007, p. 16).

⁽⁴⁾ OJ L 94, 11.4.2002, p. 13. Decision as last amended by Decision 2005/783/EC.

⁽⁵⁾ OJ L 133, 18.5.2002, p. 29. Decision as last amended by Decision 2007/207/EC.

⁽⁶⁾ OJ L 76, 22.3.2003, p. 25.

⁽⁷⁾ OJ L 102, 24.4.2003, p. 82.

HAS ADOPTED THIS DECISION:

Article 1

Article 5 of Decision 2002/231/EC is replaced by the following:

'Article 5

The ecological criteria for the product group footwear, as well as the related assessment and verification requirements, shall be valid until 31 March 2010.'

Article 2

Article 4 of Decision 2002/255/EC is replaced by the following:

'Article 4

The ecological criteria for the product group televisions, as well as the related assessment and verification requirements, shall be valid until 31 March 2009.'

Article 3

Article 4 of Decision 2002/272/EC is replaced by the following:

'Article 4

The ecological criteria for the product group hard floor coverings, as well as the related assessment and verification requirements, shall be valid until 31 March 2010.'

Article 4

Article 5 of Decision 2002/371/EC is replaced by the following:

'Article 5

The ecological criteria for the product group textile products, as well as the related assessment and verification requirements, shall be valid until 31 May 2009.'

Article 5

Article 5 of Decision 2003/200/EC is replaced by the following:

'Article 5

The ecological criteria for the product group laundry detergents, as well as the related assessment and verification requirements, shall be valid until 28 February 2010.'

Article 6

Article 5 of Decision 2003/287/EC is replaced by the following:

'Article 5

The ecological criteria for the product group tourist accommodation service, as well as the related assessment and verification requirements, shall be valid until 31 October 2009.'

Article 7

This Decision is addressed to the Member States.

Done at Brussels, 20 December 2007.

For the Commission

Danuta HÜBNER

Member of the Commission

COMMISSION DECISION

of 21 December 2007

granting a derogation requested by Belgium with regard to the region of Flanders pursuant to Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources

*(notified under document number C(2007) 6654)***(Only the Dutch version is authentic)**

(2008/64/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources⁽¹⁾, and in particular the third subparagraph of paragraph 2 of Annex III thereto,

Whereas:

- (1) If the amount of manure that a Member State intends to apply per hectare each year is different from the one specified in the first sentence of the second subparagraph of paragraph 2 of Annex III to Directive 91/676/EEC and in point (a) thereof, that amount has to be fixed so as not to prejudice the achievement of the objectives specified in Article 1 of that Directive and has to be justified on the basis of objective criteria, such as, in the present case, long growing seasons and crops with high nitrogen uptake.
- (2) Belgium submitted to the Commission a request for a derogation under the third subparagraph of paragraph 2 of Annex III to Directive 91/676/EEC referred to the region of Flanders.
- (3) The requested derogation concerns the intention of Belgium to allow the application in Flanders, in specific holdings, of up to 250 kg nitrogen per hectare per year from livestock manure in parcels cultivated with grassland and maize undersown with grassland and up to 200 kg nitrogen per hectare per year from livestock manure in parcels cultivated with winter wheat followed by a catch crop and with beet.
- (4) The legislation implementing Directive 91/676/EEC for the region of Flanders, the 'Decree for the protection of water against pollution by nitrates from agricultural sources' (Manure Decree) has been adopted on 22 December 2006⁽²⁾ and applies equally to the requested derogation.

- (5) The Manure Decree applies through the whole territory of Flanders.

- (6) The legislation implementing Directive 91/676/EEC includes limits for the application of both nitrogen and phosphorus. Phosphorus application with chemical fertilisers, as a rule, is prohibited unless soil analysis is performed and a permit is issued by the competent authority.

- (7) Water quality data submitted show a downwards trend in average groundwater nitrates concentration and in average nutrient concentration, including phosphorus, in surface waters.

- (8) The application of nitrogen from livestock manure decreased, in the period 1997-2005, from 162 million kg to 122 million kg and the application of phosphorus (P₂O₅) from livestock manure decreased, in the same period, from 72 million kg to 50 million kg, both as effect of decrease in livestock numbers, low nutrient feeding and manure processing. The use of nitrogen and phosphorus from chemical fertilisers decreased respectively by 44 % and by 82 % since 1991 and it is now corresponding to 57 kg per hectare nitrogen and 6 kg per hectare phosphate.

- (9) The supporting documents presented in the notification show that the proposed amount of respectively 250 kg and 200 kg per hectare per year nitrogen from livestock manure is justified on the basis of objective criteria such as long growing seasons and crops with high nitrogen uptake.

- (10) The Commission after examination of the request considers that the proposed amounts of respectively 250 kg and 200 kg per hectare per year of nitrogen from livestock manure, will not prejudice the achievement of the objectives of Directive 91/676/EEC, subject to certain strict conditions being met.

⁽¹⁾ OJ L 375, 31.12.1991, p. 1. Directive amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

⁽²⁾ Belgisch Staatsblad of 29.12.2006 p. 76368.

- (11) In order to avoid that the application of the requested derogation leads to intensification of livestock rearing, the competent authorities should ensure the limitation of the number of livestock which can be kept in each farm (nutrient emission rights) in the region of Flanders according to the provisions set out in the Manure Decree of 22 December 2006.
- (12) This Decision should be applicable in connection with the second action programme in force for the region of Flanders for the period 2007 to 2010 (Manure Decree of 22 December 2006).
- (13) The measures provided for in this Decision are in accordance with the opinion of the Nitrates Committee set up pursuant to Article 9 of Directive 91/676/EEC,

HAS ADOPTED THIS DECISION:

Article 1

The derogation requested by Belgium by letter of 5 October 2007, with regard to the region of Flanders, for the purpose of allowing a higher amount of livestock manure than that provided for in the first sentence of the second subparagraph of paragraph 2 of Annex III to Directive 91/676/EEC and in point (a) thereof, is granted, subject to the conditions laid down in this Decision.

Article 2

Definitions

For the purpose of this decision, the following definitions shall apply:

- (a) 'farms' means holdings with or without livestock rearing;
- (b) 'parcel' means an individual field or a group of fields, homogeneous regarding cropping, soil type and fertilisation practices;
- (c) 'grassland' means permanent or temporary grassland (generally temporary lies less than four years);
- (d) 'crops with high nitrogen demand and long growing season' means grassland, maize undersown, before or after harvest, with grass mowed and removed from the field acting as a catch crop, winter wheat followed by a catch crop, sugar or fodder beets;
- (e) 'grazing livestock' means cattle (with the exclusion of veal calves), sheep, goats and horses;
- (f) 'manure treatment' means the process of physical-mechanical separation of pig manure into two fractions, a solid and a clarified fraction, performed in order to improve land application and enhance nitrogen and phosphorus recovery;

- (g) 'soil profile' means the soil layer below ground level to a depth of 0,90 m, unless the average highest groundwater level is shallower; in this latter case it shall be to a depth of the average highest groundwater level.

Article 3

Scope

This Decision applies on an individual basis to specified parcels of a farm, cultivated with crops with high nitrogen demand and long growing season and subject to the conditions set out in Articles 4, 5, 6 and 7.

Article 4

Annual authorisation and commitment

1. Farmers who want to benefit from a derogation shall submit an application to the competent authorities annually.
2. Together with the annual application referred to in paragraph 1 they shall undertake in writing to fulfil the conditions provided for in Articles 5, 6 and 7.
3. The competent authorities shall ensure that all the applications for derogation are subject to administrative control. Where the control carried out by the competent authorities of the applications referred to in paragraph 1 demonstrates that the conditions provided for in Articles 5, 6 and 7 are not fulfilled, the applicant shall be informed thereof and the application shall be considered to be refused.

Article 5

Manure treatment

1. Manure treatment shall achieve, at least, an efficiency of removal of suspended solid, total nitrogen and total phosphorus in the solid fraction respectively of 80 %, 35 % and 70 %. Efficiency of removal in the solid fraction shall be evaluated through mass balance.
2. The solid fraction resulting from manure treatment shall be delivered to authorised installations for recycling with the aim of reducing odours and other emissions, improving agronomic and hygienic properties, facilitating handling and enhancing recovery of nitrogen and phosphate. The recycled product shall not be applied to agricultural land located in the region of Flanders except for parks, greeneries and private gardens.
3. The clarified fraction resulting from manure treatment shall be removed to storage. To qualify as treated manure, it shall have a minimum nitrogen to phosphate ratio (N/P_2O_5) of 3,3 and a minimum nitrogen concentration of 3 g per litre.

4. Farmers who carry out manure treatment shall submit each year to the competent authorities the data related to the amount of manure sent to treatment, the amount and the destination of the solid fraction and of the treated manure and their contents of nitrogen and phosphorus.

5. The competent authorities shall establish and submit to the Commission the methodologies to assess the composition of treated manure, the variations in composition and treatment efficiency for each farm benefiting from individual derogation.

6. Ammonia and other emissions from manure treatment shall be collected and treated so as to reduce environmental impact and nuisance.

Article 6

Application of manure and other fertilisers

1. The amount of grazing livestock manure and treated manure applied to land each year, including by the animals themselves shall not exceed the amount of manure set out in paragraph 2, subject to the conditions laid down in paragraphs 3 to 11.

2. The amount of grazing livestock manure and treated manure shall not exceed 250 kg of nitrogen per hectare per year on parcels cultivated with grassland and maize undersown with grassland and 200 kg of nitrogen per hectare per year on parcels cultivated with winter wheat followed by a catch crop and with beets.

3. The total nitrogen input shall comply with the nutrient demand of the considered crop and take into account the supply from the soil and the increased manure nitrogen availability due to treatment. It shall not exceed, in any case, 350 kg per hectare per year on parcels cultivated with grassland, 220 kg per hectare per year on parcels cultivated with sugar beet, 275 kg per hectare per year on parcels cultivated with winter wheat followed by a catch crop, fodder beet and maize undersown with grass, with the exception, in this latter case, of parcels on sandy soils, for which nitrogen application shall not exceed 260 kg per hectare per year.

4. A fertilisation plan shall be kept for each farm, for its whole acreage, describing the crop rotation and planned application of manure and nitrogen and phosphate fertilisers. It shall be available in the farm each calendar year by 15 February at the latest.

The fertilisation plan shall include the following:

- (a) the number of livestock, a description of the housing and storage system, including the volume of manure storage available;
- (b) a calculation of manure nitrogen and phosphorus produced in the farm;
- (c) the description of manure treatment and expected characteristics of treated manure;
- (d) the amount, type and characteristics of manure delivered outside the farm or in the farm;
- (e) a calculation of manure nitrogen and phosphorus to be applied in the farm;
- (f) the crop rotation and acreage of parcels with crops with high nitrogen demand and long growing season and parcels with other crops, including a sketch map indicating location of individual parcels;
- (g) the foreseeable nitrogen and phosphorus crop requirements for each parcel;
- (h) nitrogen and phosphorus application from manure over each parcel;
- (i) application of nitrogen and phosphorus with chemical and other fertilisers over each parcel.

Plans shall be revised no later than seven days following any change in agricultural practices to ensure consistency between plans and actual agricultural practices.

5. Fertilisation accounts shall be prepared by each farm. They shall be submitted to the competent authority for each calendar year.

6. Each farm benefiting from an individual derogation shall accept that the application referred to in paragraph 1 of Article 4, the fertilisation plan and the fertilisation accounts can be subject to control.

7. Nitrogen and phosphorous analysis in soil shall be performed for each farm at least once every four years for each parcel. At least one analysis every 5 hectares of farmland shall be required.

8. Nitrate concentration in soil profile shall be measured every year in autumn on at least 25 % of the farms benefiting from derogation. Soil sampling and analysis shall cover at least 5 % of the parcels cultivated with crops with high nitrogen demand and long growing season and at least 1 % of the other parcels. At least three samples representing three different soil layers shall be required every 2 hectares of farmland.

9. Manure shall not be spread in the autumn before grass cultivation.

10. At least two thirds of the amount of nitrogen from manure, excluding nitrogen from manure from grazing livestock, shall be applied before 15 May each year.

11. Nitrogen and phosphorus excretion factors for cattle established in paragraph 1 of Article 27 of the Flemish Manure Decree of 22 December 2006 shall apply from the first year of validity of this Decision.

Article 7

Land management

Farmers benefiting from an individual derogation shall carry out the following measures:

- (a) grassland shall be ploughed in spring;
- (b) grassland shall not include leguminous or other plants fixing atmospheric nitrogen;
- (c) ploughed grass shall be followed immediately by a crop with high nitrogen demand and fertilisers shall not be applied in the year of ploughing of permanent grassland;
- (d) catch crops shall be seeded immediately after harvest of winter wheat and no later than 10 September;
- (e) catch crops shall not be ploughed before 15 February in order to ensure permanent vegetal cover of the arable area for recovering subsoil autumn losses of nitrates and limit winter losses.

Article 8

Other measures

1. This derogation shall be applied without prejudice to the measures needed to comply with other Community environmental legislation.

2. The competent authorities shall ensure that derogations granted for the application of treated manure are compatible with the capacity of authorized installations for processing of the solid fraction.

Article 9

Measures on manure production and transport

1. The competent authorities shall ensure respect of the limitation of the number of livestock which can be kept in each farm (nutrient emission rights) in the region of Flanders according to the provisions set out in the Manure Decree of 22 December 2006.

2. The competent authorities shall ensure that manure transport from accredited transporters classified in categories A 2^o, A 5^o, A 6^o, B and C according to articles 4 and 5 of the Flemish Ministerial Decree of 19 July 2007 ⁽¹⁾ is recorded through geographic positioning systems.

3. The competent authorities shall ensure that manure composition with regard to nitrogen and phosphorus concentration is assessed before each transport. Manure samples shall be analysed by recognised laboratories and results of the analysis shall be communicated to the competent authorities and to the receiving farmer.

Article 10

Monitoring

1. Maps showing the percentage of farms, number of parcels, percentage of livestock and percentage of agricultural land covered by individual derogation for each Municipality shall be drawn by the competent authority and shall be updated every year. Those maps shall be submitted to the Commission annually and for the first time by February 2008.

2. A monitoring network for sampling of surface and shallow groundwater shall be established and maintained to assess the impact of the derogation on water quality.

3. Survey and nutrient analysis shall provide data on local land use, crop rotations and agricultural practices on farms benefiting from individual derogations. Those data can be used for model-based calculations of the magnitude of nitrate leaching and phosphorus losses from parcels where up to 200 kg nitrogen per hectare per year and 250 kg nitrogen per hectare per year from manure from grazing livestock and treated manure are applied according to Article 6(2).

⁽¹⁾ Belgisch Staatsblad of 31.8.2007 p. 45564.

4. Monitoring sites, corresponding to at least 150 farms, shall be established in order to provide data on nitrogen and phosphorus concentration in soil water, on mineral nitrogen in soil profile and corresponding nitrogen and phosphorus losses through the root zone into groundwater, as well as on nitrogen and phosphorus losses by surface and subsurface run-off, both under derogation and non derogation conditions. The monitoring sites shall be representative of each soil type (clay, loamy, sandy and loessial soils), fertilisation practices and crops. The composition of the monitoring network shall not be modified during the period of applicability of this decision.

5. A reinforced monitoring shall be conducted in agricultural catchments on sandy soils.

Article 11

Controls

1. The competent authorities shall carry out administrative controls in respect of all farms benefiting from an individual derogation for the assessment of compliance with the maximum amount of nitrogen per hectare per year from livestock manure, with nitrogen and phosphorus maximum fertilisation rates, conditions on land use and on manure treatment and transport.

2. The competent authorities shall ensure the control of the results of analysis with regards to nitrate concentration in soil profile in the autumn. Where controls show that the threshold of 90 kg nitrogen per hectare or the lower values established by the Flemish Government according to paragraph 1 of Article 14 of the Flemish Manure Decree of 22 December 2006 is exceeded in a specific parcel, the farmer shall be informed and the parcel excluded from derogation in the following year.

3. The competent authorities shall ensure on-the-spot controls of at least 1 % of manure transport operations, based on risk assessment and results of administrative controls referred to in paragraph 1. Controls shall include, at least, verification of the fulfilment of the obligations on accreditation, assessment of accompanying documents, verification of manure origin and destination and sampling of transported manure. Manure sampling can be carried out, where appropriate using automatic manure samplers installed on the vehicles, during loading operations. Manure samples shall be analysed by laboratories recognised by the competent authorities and results of the analysis shall be communicated to the delivering and to the receiving farmer.

4. A programme of field inspections shall be established based on risk analysis, results of controls of the previous

years and results of general random controls of application of legislation implementing Directive 91/676/EEC. The field inspections shall cover at least 5 % of the farms benefiting from an individual derogation in respect to the conditions set out in Articles 5, 6 and 7.

Article 12

Reporting

1. The competent authority shall submit the results of the monitoring every year to the Commission, with a report on water quality evolution, evaluation of nitrate residue in soil profile in autumn for the different crops in farms benefiting from a derogation and evaluation practice. It shall illustrate how the evaluation of the implementation of the derogation conditions is carried on through controls at farm and parcel level and include information on non compliant farms based on the results of administrative and field inspections.

2. The report shall also include information on manure treatment, including further processing and utilisation of the solid fractions, and provide detailed data on characteristic of treatments systems, their efficiency and composition of treated manure.

3. In addition to the data referred to in paragraphs 1 and 2 the report shall include data related to fertilisation in all farms which benefit from individual derogation, trends in manure production in the region of Flanders, as far as nitrogen and phosphorus are concerned, results of administrative and field controls on manure transport and results of controls on nutrient balances at farm level for calculation of excretion coefficients for pig and poultry.

4. The first report shall be transmitted by December 2008 and subsequently every year by July.

5. The results thus obtained will be taken into consideration by the Commission with regard to an eventual new request for a derogation.

Article 13

Application

This Decision shall apply in the context of the action programme 2007 to 2010 for the Region of Flanders (Manure Decree of 22 December 2006) and shall expire on 31 December 2010.

Article 14

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 21 December 2007.

For the Commission

Stavros DIMAS

Member of the Commission
