COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 8.10.2003
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Proposal for a

COUNCIL REGULATION

amending Council Regulation (EC) No 1210/2003 concerning certain specific restrictions on economic and financial relations with Iraq

(presented by the Commission)

EXPLANATORY MEMORANDUM

(1) Further to the adoption of Regulation (EC) No 1210/2003 concerning certain specific restrictions on economic and financial relations with Iraq, which implements Resolution 1483(2003) of the UN Security Council of 22 May 2003, Member States in Council stated that they consider that the Regulation was on one point more restrictive than required by the Resolution and on another not logical. The Council is in the process of preparing a Common Position based on Article 15 of the Treaty on European Union, in order to pave the way for a valid amendment of Regulation (EC) No 1210/2003.

(2) The amendments concern the extent to which funds and economic resources of public entities in Iraq, if located outside Iraq, have to be frozen, and an exemption from freezing for funds and economic resources which are the subject of a prior lien or judgement, so as to allow their use to satisfy the claims secured by such lien or the claims declared valid and enforceable in such judgement.

(3) These amendments relate to the interpretation of Resolution 1483(2003). For that reason, they should apply with retroactive effect to the date on which Regulation (EC) No 1210/2003 entered into force.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 60 and 301 thereof,

Having regard to Common Position 2003/495/CFSP on Iraq [1], as amended by Common Position 2003/.../CFSP .... [2]

Having regard to the proposal from the Commission[3],

Whereas:

(1) Further to Resolution 1483(2003) of the UN Security Council of 22 May 2003, the Council has adopted Regulation (EC) No 1210/2003 concerning certain specific restrictions on economic and financial relations with Iraq [4], which, *inter alia*, makes provision for freezing measures targeting the former Government of Iraq. These freezing measures entered into force on 9 July 2003.

(2) A review of the texts has led to the conclusion that the Resolution does not require that the freezing measures be applied to funds and economic resources of ministries and other public entities that were not located outside Iraq on 22 May 2003, but left Iraq after that date.

(3) In view of this, the ban on making funds and economic resources available to public entities in Iraq, which impairs the functioning of such entities and unnecessarily hampers the reconstruction of Iraq, should be reconsidered. As a result the clarification that export-related incoming payments made through public banks listed in the relevant annex, should not be frozen, becomes redundant.

(4) Resolution 1483(2003) presents the freezing of funds and economic resources as the first step in a process leading to the transfer thereof to the Development Fund for Iraq. It also exempts funds and economic resources being the subject of a lien or judgement established or rendered prior to 22 May 2003 from that process. Applying the freezing measures is, therefore, not suitable, if the funds and economic resources concerned are explicitly exempt from the requirement to cause their transfer to that Fund.

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1 OJ L 169, 8.7.2003, p. 72.
2 OJ L ...
3 OJ C , , p. .
4 OJ L 169, 8.7.2003, p. 6.

(5) It is noted that the absence of a freezing requirement should be without prejudice to the applicability of the normal rules on recognition and enforcement of arbitral and foreign judgements. Moreover, no exemption should be granted in respect of any judgement rendered in breach of Regulation (EC) No 3541/92 prohibiting the satisfying of Iraqi claims with regard to contracts and transactions the performance of which was affected by United Nations Security Council Resolution 661 (1990) and related resolutions [5].

(6) Since these amendments relate to the interpretation of Resolution 1483(2003), it is appropriate to give them retroactive effect to the date on which Regulation (EC) No 1210/2003 entered into force,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1210/2003 is amended as follows:

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

"Article 4

1. All funds and economic resources of the previous Government of Iraq, or of any of the public bodies, corporations, including companies established under private law in which the public authorities have a majority stake, and agencies of that Republic, identified by the Sanctions Committee and listed in Annex III, shall be frozen, if they were located outside Iraq on 22 May 2003.

2. All funds and economic resources belonging to, or owned or held by the following persons, identified by the Sanctions Committee and listed in Annex IV, shall be frozen:

(a) former President Saddam Hussein;

(b) senior officials of his regime;

(c) immediate members of their families; or

(d) legal persons, bodies or entities owned or controlled directly or indirectly by the persons referred to in subparagraphs (a), (b) and (c) or by any natural or legal person acting on their behalf or at their direction.

3. No funds shall be made available, directly or indirectly, to, or for the benefit of, a natural or legal person, body or entity listed in Annex IV.

4. No economic resources shall be made available, directly or indirectly, to, or for the benefit of, a natural or legal person, body or entity listed in Annex IV, so as to enable that person, group or entity to obtain funds, goods or services."

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[5] OJ L 337, 10.12.1992, p. 1.

(2) Article 5 shall be replaced by the following:

"Article 5

The crediting of frozen accounts shall be allowed on the condition that any additions shall be frozen."

(3) Article 6 shall be replaced by the following:

"Article 6

1. By way of derogation from Article 4, the competent authorities of the Member States, as listed in Annex V, may authorise the use of frozen funds or economic resources, if all of the following conditions are met:

(a) the funds or economic resources are the subject of a judicial, administrative or arbitral lien established prior to 22 May 2003 or of a judicial, administrative or arbitral judgement rendered prior to that date,

(b) the funds or economic resources will be used exclusively to satisfy claims secured by such a lien or recognised as valid in such a judgement, within the limits set by applicable laws and regulations governing the rights of persons having such claims,

(c) satisfying the claim is not in breach of Regulation (EC) No 3541/92 prohibiting the satisfying of Iraqi claims with regard to contracts and transactions the performance of which was affected by United Nations Security Council Resolution 661 (1990) and related resolutions, and

(d) recognising the lien or judgement is not contrary to public policy in the Member State concerned.

2. In all other circumstances, funds, economic resources and proceeds of economic resources frozen pursuant to Article 4 shall only be unfrozen for the purpose of their transfer to the Development Fund for Iraq held by the Central Bank of Iraq, under the conditions set out in UNSC Resolution 1483 (2003)."

(4) The title of Annex V is replaced by the following:

"List of competent authorities referred to in Articles 6, 7 and 8".

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*. It shall apply from 9 July 2003.

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

Done at Brussels,

For the Council
The President