



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL REGULATION

**concerning certain specific restrictions on economic and financial relations with Iraq
and repealing Regulation (EC) No 2465/1996**

(presented by the Commission)

EXPLANATORY MEMORANDUM

- (1) In its Resolution 1483 (2003) of 22 May 2003, the United Nations Security Council decided that the comprehensive trade sanctions imposed in accordance with Resolution 661(1990) and subsequent Resolutions should be repealed and replaced with certain specific restrictions.
- (2) The remaining restrictions include a ban on exports of arms and related materiel to Iraq, which may be implemented on the basis of Regulation (EC) No 1334/2000 and legislation of the Member States on exports of arms, restrictions on the importation of petroleum, petroleum products and natural gas imported from Iraq and a ban on trade in or transfer of Iraq's cultural heritage. In addition, the Resolution provides for the freezing of funds and economic resources of senior officials of the former Iraqi regime and of the foreign funds and economic resources belonging to the Government of Iraq. The proposed Regulation is intended to implement those restrictions.
- (3) As regards the goods which are part of Iraq's cultural heritage, the Resolution urges States to take appropriate steps to facilitate their safe return to the appropriate Iraqi institutions. The provisions of the proposed Regulation supplement those of Regulation (EEC) No 3911/1992, which provides the basis for an export licensing policy on cultural goods and applies to the customs territory of the Community only. It should also be noted that Directive 93/7/EEC provides for a procedure for the return of those cultural objects which the Member States have classified as national treasures possessing artistic, historic or archaeological value. However, that procedure is applicable as between Member States only and concerns objects which have been unlawfully removed from the territory of a Member State. The proposed Regulation does not address the question of the procedures to be followed by a Member State for cultural property to be legitimately returned to Iraq.
- (4) The Resolution presents the freezing of funds and economic resources as the first phase of a process resulting in a transfer of the funds and economic resources to the newly-established Iraq Development Fund. The proposed Regulation does not address the question of the procedures to be followed by a Member State for funds and economic resources to be legitimately transferred to that Fund.
- (5) Finally, the proposed Regulation imposes certain temporary restrictions on the right of creditors to seek to satisfy their claims against Iraq in that it exempts all petroleum, petroleum products and natural gas exported by Iraq, as well as the payments for such goods, the Development Fund for Iraq and the funds and economic resources frozen in accordance with the proposed Regulation, from legal proceedings, attachment, garnishment and execution.

Proposal for a

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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/.../CFSP on Iraq and repealing Common Positions 1996/741/CFSP and 2002/599/CFSP¹,

Having regard to the proposal from the Commission²,

Whereas:

- (1) Further to United Nations Security Council Resolution 661 (1990) and subsequent relevant Resolutions, in particular Resolution 986 (1995), the Council imposed a comprehensive embargo on trade with Iraq. This embargo is at present laid down in Council Regulation (EC) No 2465/96 of 17 December 1996 concerning the interruption of economic and financial relations between the European Community and Iraq³, as last amended by Commission Regulation (EC) No 208/2003⁴.
- (2) In its Resolution 1483 (2003) of 22 May 2003, the Security Council decided that, with certain exceptions, all prohibitions related to trade with Iraq and the provision of financial or economic resources to Iraq should no longer apply.
- (3) With the exception of a ban on exports of arms and related materiel to Iraq, the Resolution provides that the comprehensive restrictions concerning trade should be repealed and replaced with specific restrictions applying to imports of petroleum, petroleum products and natural gas from Iraq, and to trade in goods belonging to Iraq's cultural heritage.
- (4) The Resolution also states that certain funds and economic resources, in particular those belonging to former Iraqi President Saddam Hussein and senior officials of his regime, should be frozen, subject to designation by the Committee of the Security Council established pursuant to paragraph 6 of Resolution 661 (1990).
- (5) The Resolution stipulates that all petroleum, petroleum products and natural gas exported by Iraq, as well as the payments for such goods, should be exempt from legal

¹ OJ L , , p. .

² OJ C , , p. .

³ OJ L 337, 27.12.1996, p. 1.

⁴ OJ L 28, 4.2.2003, p. 26.

proceedings, attachment, garnishment and execution by those having claims against Iraq. This temporary measure is necessary in order to promote economic reconstruction of Iraq and the restructuring of its debt, which will help remove the threat to international peace and security constituted by the current situation in Iraq in the common interest of the international community and in particular the Community and its Member States.

- (6) Common Position 2003/.../CFSP makes provision for an amendment of the current Community regime in order to align it with Resolution 1483(2003).
- (7) These measures fall under the scope of the Treaty and, therefore, in particular with a view to avoiding distortion of competition, Community legislation is necessary to implement the relevant decisions of the Security Council as far as the territory of the Community is concerned. For the purposes of this Regulation, the territory of the Community is deemed to encompass the territories of the Member States to which the Treaty is applicable, under the conditions laid down in that Treaty.
- (8) In order to create maximum legal certainty within the Community, the names and other relevant data relating to natural or legal persons, groups or entities identified by the UN authorities whose funds and economic resources are to be frozen, should be published and a procedure established within the Community to amend these lists.
- (9) For reasons of expediency, the Commission should be empowered to amend the Annexes to this Regulation setting out the lists of persons, bodies and entities, whose funds and economic resources are to be frozen, and the list of competent authorities.
- (10) The competent authorities of the Member States should, where necessary, be empowered to ensure compliance with the provisions of this Regulation.
- (11) The Commission and Member States should inform each other of the measures taken under this Regulation and of other relevant information at their disposal in connection with this Regulation, and should co-operate with the Committee established by Resolution 661(1990), in particular by supplying it with information.
- (12) Member States should lay down rules on sanctions applicable to infringements of the provisions of this Regulation and ensure that they are implemented. Those sanctions must be effective, proportionate and dissuasive.
- (13) Since the comprehensive trade measures of Regulation (EC) No 2465/1996 are being replaced by the specific trade restrictions of this Regulation, and this Regulation imposes freezing measures which require immediate application by economic operators, it is necessary to ensure that sanctions for breaches of this Regulation can be imposed as soon as it enters into force.
- (14) For the sake of clarity, Regulation (EC) No 2465/1996 should be repealed in its entirety. The trade restrictions not maintained by this Regulation should cease to apply with effect from 23 May 2003,

HAS ADOPTED THIS REGULATION:

Article 1

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

- (1) "Sanctions Committee" means: the Committee of the Security Council of the United Nations which was established pursuant to paragraph 6 of Resolution 661 (1990);
- (2). "funds" means:
 - (a) financial assets and economic benefits of every kind, including but not limited to cash, cheques, claims on money, drafts, money orders and other payment instruments;
 - (b) deposits with financial institutions or other entities, balances on accounts, debts and debt obligations;
 - (c) publicly- and privately-traded securities and debt instruments, including stocks and shares, certificates presenting securities, bonds, notes, warrants, debentures, derivatives contracts;
 - (d) interest, dividends or other income on or value accruing from or generated by assets; credit, right of set-off, guarantees, performance bonds or other financial commitments;
 - (e) letters of credit, bills of lading, bills of sale;
 - (f) documents evidencing an interest in funds or financial resources,
 - (g) any other instrument of export-financing;
- (3) "economic resources" means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services;
- (4) "freezing of funds" means preventing any move, transfer, alteration, use of or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the use of the funds, including portfolio management;
- (5) "freezing of economic resources" means preventing their use to obtain funds, goods or services in any way, including, but not limited to, by selling, hiring or mortgaging them.

Article 2

The following shall be prohibited:

- (1) The introduction into the territory of the Community of petroleum, petroleum products and natural gas originating in Iraq, as listed in Annex I, if payments for such

products are not deposited into the Development Fund for Iraq held by the Central Bank of Iraq;

- (2) The introduction into the territory of the Community of cultural goods coming from Iraq, as listed in Annex II, whatever their origin, or of cultural goods belonging to Iraq's cultural heritage, as listed in Annex II, where there is no evidence that those goods were exported from Iraq prior to 2 August 1990, if
 - (a) the goods form an integral part of either the public collections listed in the inventories of Iraqi museums, archives or libraries' conservation collection, or the inventories of Iraqi ecclesiastical institutions, or
 - (b) there exists reasonable suspicion that the goods have been removed from Iraq without the consent of their legitimate owner or have been removed in breach of Iraq's laws and regulations.
- (3) The export of or removal from the territory of the Community of cultural goods belonging to Iraq's cultural heritage or coming from Iraq, as listed in Annex II, if
 - (a) such goods form an integral part of either the public collections listed in the inventories of Iraqi museums, archives or libraries' conservation collection, or the inventories of Iraqi ecclesiastical institutions, or
 - (b) there exists reasonable suspicion that the goods have been removed from Iraq without the consent of their legitimate owner or have been removed in breach of Iraq's laws and regulations.

This prohibition shall not apply if it is demonstrated that either

- (a) the cultural goods were exported from Iraq prior to 2 August 1990, or
- (b) the cultural goods are being returned to their legitimate owner in Iraq.

Article 3

1. All funds and economic resources located outside Iraq on or after 22 May 2003, and belonging to the Republic of Iraq, or to 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.
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 by such natural persons 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.

Article 4

- 1. Without prejudice to the legislation applicable on confiscation and expropriation, courts of law and competent authorities of the Member States may order the transfer of funds, economic resources and proceeds of economic resources frozen pursuant to Article 3 to the Development Funds for Iraq held by the Central Bank of Iraq.
- 2. This Regulation shall not restrict the validity and use of the guarantees and letters of credit issued by Iraqi banks meeting the conditions of Article 3(1), at the request of their customers, with a view to payment for goods or services which such customers concerned have ordered in the Community. It shall not require the freezing of a transfer of funds to a beneficiary in the Community by or through an Iraqi bank meeting the conditions of Article 3(1), if such transfer constitutes a payment for goods and services ordered by customers of that bank.

Article 5

- 1. The participation, knowingly and intentionally, in activities, the object or effect of which is, directly or indirectly, to circumvent Article 3 or to promote the transactions referred to in Article 2, shall be prohibited.
- 2. Any information that the provisions of this Regulation are being, or have been, circumvented shall be notified to the competent authorities of the Member States, as listed in Annex V, and, directly or through these competent authorities, to the Commission.

Article 6

- 1. Without prejudice to the rules applicable on reporting, confidentiality and professional secrecy and to the provisions of Article 284 of the Treaty, natural and legal persons, entities and bodies shall:
 - (a) provide immediately any information which would facilitate compliance with this Regulation, such as accounts and amounts frozen in accordance with Article 3, to the competent authorities of the Member States listed in Annex V where they are resident or located, and, directly or through these competent authorities, to the Commission;
 - (b) co-operate with the competent authorities listed in Annex V in any verification of this information.

2. Any information provided or received in accordance with this Article shall be used only for the purposes for which it was provided or received.
3. Any additional information directly received by the Commission shall be made available to the competent authorities of the Member States concerned.

Article 7

The freezing of funds and economic resources, carried out in good faith that such action is in accordance with this Regulation, shall not give rise to liability of any kind on the part of the natural or legal person, group or entity implementing it, or its directors or employees, unless it is proved that the funds and economic resources were frozen as result of negligence.

Article 8

1. Without prejudice to the right to institute legal proceedings of persons having a claim against the Republic of Iraq, including its public bodies, state-owned corporations, whether established under public or private law, and agencies, the following shall be immune from legal proceedings and shall not be subjected to any form of attachment, garnishment or execution:
 - (a) petroleum, petroleum products and natural gas originating in Iraq, until title to such goods has been passed to a purchaser;
 - (b) proceeds and obligations arising from the sale of petroleum, petroleum products and natural gas originating in Iraq, including payments for such goods deposited into the Development Fund for Iraq held by the Central Bank of Iraq;
 - (c) funds and economic resources frozen pursuant to Article 3;
 - (d) the Development Fund for Iraq held by the Central Bank of Iraq.
2. By way of derogation from paragraph 1, the proceeds and obligations arising from the sale of petroleum, petroleum products and natural gas originating in Iraq, and the Development Fund for Iraq shall not be immune from claims made on the basis of Iraq's liability for damages in connection with any ecological accident occurring after 22 May 2003.

Article 9

The Commission shall be empowered to:

- (a) amend or supplement Annexes III and IV on the basis of determinations made by either the United Nations Security Council or the Sanctions Committee, and
- (b) amend Annex V on the basis of information supplied by Member States.

Article 10

Without prejudice to the rights and obligations of the Member States under the Charter of the United Nations, the Commission shall maintain all necessary contacts with the Sanctions Committee for the purpose of the effective implementation of this Regulation.

Article 11

The Commission and the Member States shall immediately inform each other of any measures taken pursuant to this Regulation. They shall supply each other with relevant information at their disposal in connection with this Regulation, in particular information received in accordance with Article 6 and information relating to breaches of the provisions of this Regulation, enforcement problems and judgements handed down by national courts.

Article 12

This Regulation shall apply notwithstanding any rights conferred or obligations imposed by any international agreement signed or any contract entered into or any licence or permit granted before the entry into force of this Regulation.

Article 13

1. The Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by 30 July 2003 at the latest and shall notify it without delay of any subsequent amendment affecting them.
2. Pending the adoption of any necessary legislation to that end, the sanctions to be imposed shall be those determined by the Member States in order to give effect to Article 7(3) of Regulation (EC) No 2465/1996.
3. Each Member State shall be responsible for bringing proceedings against any natural or legal person, group or entity under its jurisdiction, in cases of violation of any of the restrictive measures laid down in this Regulation by any such person, group or entity.

Article 14

This Regulation shall apply

- (a) within the territory of the Community, including its airspace,
- (b) on board any aircraft or any vessel under the jurisdiction of a Member State,
- (c) to any person elsewhere who is a national of a Member State,
- (d) to any legal person, group or entity which is incorporated or constituted under the law of a Member State,

- (e) to any legal person, group or entity doing business within the Community.

Article 15

Regulation (EC) No 2465/1996 is repealed.

Article 16

1. This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.
2. Except for Articles 3 and 4, it shall apply from 23 May 2003.
3. Article 8 shall apply until 31 December 2007.

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

Done at Brussels,

For the Council
The President

ANNEX I

List of goods referred to in Article 2, point 1

CN code	Product description
2709 00	Petroleum oils and oils obtained from bituminous minerals, crude
2710	Petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by weight 70 % or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations
2711	Petroleum gases and other gaseous hydrocarbons
2712 10	Petroleum jelly
2712 20 00	Paraffin wax containing by weight less than 0,75 % of oil
<i>ex</i> 2712 90	'Slack wax', 'scale wax'
2713	Petroleum coke, petroleum bitumen and other residues of petroleum oils or of oils obtained from bituminous minerals
2714	Bitumen and asphalt, natural; bituminous or oil shale and tar sands; asphaltites and asphaltic rocks
2715 00 00	Bituminous mixtures based on natural asphalt, on natural bitumen, on petroleum bitumen, on mineral tar or on mineral tar pitch (for example, bituminous mastics, cutbacks)
2901	Acyclic hydrocarbons
2902 11 00	Cyclohexane
2902 20 00	Benzene
2902 30 00	Toluene
2902 41 00	o-Xylene
2902 42 00	m-Xylene
2902 43 00	p-Xylene
2902 44	Mixed xylene isomers
2902 50 00	Styrene
2902 60 00	Ethylbenzene
2902 70 00	Cumene

2905 11 00	Methanol (methyl alcohol)
3403 19 10	Lubricating preparations (including cutting-oil preparations, bolt or nut release preparations, anti-rust or anti-corrosion preparations and mould release preparations, based on lubricants) and preparations containing, as basic constituents, 70 % or more by weight of petroleum oils or of oils obtained from bituminous minerals but not as the basic constituent
3811 21 00	Additives for lubricating oils containing petroleum oils or oils obtained from bituminous minerals
3824 90 10	Petroleum sulphonates, excluding petroleum sulphonates of alkali metals, of ammonium or of ethanolamines; thiophenated sulphonic acids of oils obtained from bituminous minerals, and their salts

ANNEX II

List of goods referred to in Article 2, points 2 and 3

ex CN code	Product description
9705 00 00	1. Archaeological objects more than 100 years old which are the products of:
9706 00 00	- excavations and finds on land or under water
	- archaeological sites
	- archaeological collections
9705 00 00	2. Elements forming an integral part of artistic, historical or religious monuments which have been dismembered, of an age exceeding 100 years
9706 00 00	
9701	3. Pictures and paintings, other than those included in category 3A or 4, executed entirely by hand in any medium and on any material, which are more than 50 years old and do not belong to their originators
9701	3A. Water-colours, gouaches and pastels executed entirely by hand on any material, which are more than 50 years old and do not belong to their originators
6914	4. Mosaics in any material executed entirely by hand, other than those falling in categories 1 or 2, and drawings in any medium executed entirely by hand on any material, which are more than 50 years old and do not belong to their originators
9701	
Chapter 49	5. Original engravings, prints, serigraphs and lithographs with their respective plates and original posters, which are more than 50 years old and do not belong to their originators
9702 00 00	
8442 50 99	
9703 00 00	6. Original sculptures or statuary and copies produced by the same process as

	the original, which are more than 50 years old and do not belong to their originators, excluding those in category 1
3704	7. Photographs, films and negatives thereof, which are more than 50 years old and do not belong to their originators
3705	
3706	
4911 91 80	
9702 00 00	8. Incunabula and manuscripts, including maps and musical scores, singly or in collections, which are more than 50 years old and do not belong to their originators
9706 00 00	
4901 10 00	
4901 99 00	
4904 00 00	
4905 91 00	
4905 99 00	
4906 00 00	
9705 00 00	9. Books more than 100 years old, singly or in collections
9706 00 00	
9706 00 00	10. Printed maps more than 200 years old
3704	11. Archives, and any elements thereof, of any kind or any medium which are more than 50 years old
3705	
3706	
4901	
4906	
9705 00 00	
9706 00 00	

9705 00 00	12. (a) Collections, as defined by the Court of Justice in its judgement in Case 252/84 ⁵ , and specimens from zoological, botanical, mineralogical or anatomical collections;
9705 00 00	
	(b) Collections, as defined by the Court of Justice in its judgement in Case 252/84 ⁵ , of historical, palaeontological, ethnographic or numismatic interest
9705 00 00	13. Means of transport more than 75 years old
Chapters 86-89	
	14. Any other antique items not included in categories 1 to 13
	(a) between 50 and 100 years old:
Chapter 95	- toys, games
7013	- glassware
7114	- articles of goldsmiths' or silversmiths' wares
Chapter 94	- furniture
Chapter 90	- optical, photographic or cinematographic apparatus
Chapter 92	- musical instruments
Chapter 91	- clocks and watches and parts thereof
Chapter 44	- articles of wood
Chapter 69	- pottery
5805 00 00	- tapestries
Chapter 57	- carpets
4814	- wallpaper
Chapter 93	- arms
9706 00 00	(b) more than 100 years old

⁵ 'Collectors' pieces within the meaning of heading N° 97.05 of the Common Customs Tariff are articles which possess the requisite characteristics for inclusion in a collection, that is to say, articles which are relatively rare, are not normally used for their original purpose, are the subject of special transactions outside the normal trade in similar utility articles and are of high value.'

ANNEX III

List of public bodies, corporations and agencies of the Republic of Iraq, referred to in Article 3(1)

ANNEX IV

List of natural and legal persons, bodies or entities associated with the regime of former President Saddam Hussein, referred to in Articles 3(2), 3(3) and 3(4)

ANNEX V

List of competent authorities referred to in Articles 5 and 6

(to be completed by the Member States)

BELGIUM

DENMARK

GERMANY

GREECE

SPAIN

IRELAND

ITALY

LUXEMBOURG

NETHERLANDS

AUSTRIA

PORTUGAL

FINLAND

SWEDEN

UNITED KINGDOM

EUROPEAN COMMUNITY

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