



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15.2.2006
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2006/15 (ACC)

Proposal for a

COUNCIL REGULATION

**repealing Council Regulation (EEC) No 1461/93 concerning access to public contracts
for tenderers from the United States of America**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

This proposal seeks to repeal the countersanctions imposed in June 1993 by the EC in direct response to sanctions imposed in May 1993 by the US Government under Title VII of the 1988 Omnibus Trade and Competitiveness Act against most EC Member States.

General context

In May 1993, the US Government imposed sanctions under Title VII of the 1988 Omnibus Trade and Competitiveness Act against most EC Member States further to the adoption of Directive 93/38/EEC (OJ L 199, 9.8.93, p.84-138, hereinafter the "Utilities Directive"). The Utilities Directive is applicable to, inter alia, contracts awarded by EC telecoms operators. The US felt, in particular, that Article 36 of the Utilities Directive led to unwarranted discrimination against US telecom equipment suppliers. Article 36 requires EC operators to give a three percent price preference to EC suppliers over third country suppliers (in this case US suppliers) where no reciprocal market access is granted to EC suppliers in that third country.

In direct response to these sanctions, the EC imposed equivalent countermeasures in June 1993 through Council Regulation (EEC) No 1461/93 (OJ L 146, 17.6.93, p.1).

Since then, the EC telecommunications market has been liberalised. The new Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities in the water, energy, transport and postal services sectors (Utilities Directive), specifically excludes telecom operators from its scope, due to the introduction of effective competition, both de jure and de facto. The Commission therefore considers that the justification for the US maintaining its Title VII sanctions no longer exists. The Commission has consequently been in discussion with the US Administration with a view to seeking a repeal of these sanctions. Exchanges of views led the US to agree to issue a determination to repeal the sanctions, signed by the US Trade Representative, which would become effective upon publication in the Federal Register on 28 February 2006.

The EC countermeasures, as set out in Council Regulation (EEC) No 1461/93, were imposed in direct response to the US sanctions. It follows that, when the US sanctions are repealed, Council Regulation (EEC) No 1461/93 should also be repealed. As the US took the appropriate measures to repeal the sanctions imposed under Title VII of the 1988 Trade Act, the Commission therefore hereby submits to the Council a proposal for a Regulation which would repeal Council Regulation (EEC) No 1461/93. The Council is invited to adopt this Regulation.

Existing provisions in the area of the proposal

Council Regulation (EEC) No 1461/93.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

Consultation of interested parties

This proposal simply repeals an earlier regulation which was imposed as a countermeasure in response to sanctions adopted in the United States. These sanctions now being repealed, it is necessary to also withdraw the E.U. countermeasures.

Impact assessment

This proposal does not require an impact assessment.

No other regulatory approaches are conceivable.

3) LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

This proposal simply repeals an earlier regulation which was imposed as a countermeasure in response to sanctions adopted in the United States. These sanctions now being repealed, it is necessary to also withdraw the E.U. countermeasures.

Legal basis

Article 133 of the Treaty establishing the European Community.

Choice of instrument and budgetary implication

This proposal only repeals an earlier regulation.

No burden will arise out of this proposal as it simply repeals the earlier regulation.

A regulation is the only possible means to repeal the earlier regulation.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) Council Regulation (EEC) No 1461/93¹, as amended through Council Regulation (EC) No 1836/95², restricts access for United States tenderers in respect of certain contracts awarded by certain public authorities in response to certain measures taken by the United States under title VII of its 1988 Trade Act in respect of Community tenderers.
- (2) The decision of the United States of America to repeal the sanctions imposed under Title VII of its 1988 Trade Act will take effect as of 1st March 2006.
- (3) Regulation (EEC) No 1461/93 should therefore be repealed,

HAS ADOPTED THIS REGULATION:

Article 1

Council Regulation (EEC) No 1461/93 concerning access to public contracts for tenderers from the United States of America is hereby repealed.

¹ OJ L 146, 17.6.1993, p. 1.

² OJ L 183, 2.8.1995, p. 4.

Article 2

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

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

Done at Brussels,

For the Council
The President