



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 07.06.2002
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Proposal for a

COUNCIL REGULATION

amending Council Regulation (EC) No 2465/96 concerning the interruption of economic and financial relations between the European Community and Iraq

(presented by the Commission)

EXPLANATORY MEMORANDUM

- (1) Further to a number of Resolutions of the Security Council of the United Nations, including in particular Resolutions 661(1990) and 986(1995), the Community has interrupted most of its economic and financial relations with Iraq. The measures are laid down in Council Regulation (EC) No 2465/96 and, as regards the financial embargo, national legislation of the Member States.
- (2) On 14 May 2002, the Security Council adopted its Resolution 1409(2002), which extends, for a period of 180 days beginning on 30 May 2002, the validity of *inter alia* the substantive provisions of Resolution 986(1995). That Resolution established the Oil for Food programme and made provision for an escrow account which is funded by Iraq's exports of petroleum and petroleum products.
- (3) Resolution 1409(2002) contains new rules concerning the authorisation for exports of civilian commodities and products to Iraq which are to be financed from that escrow account. To that end, revised procedures were attached to the Resolution. These revised procedures could be published in the Official Journal pursuant to Article 6 of Council Regulation (EC) No 2465/96, when the Council has published the necessary amendment to that Regulation.
- (4) The purpose of the revised procedures, which will be applied by the Office of the Iraq Programme (OIP), is to determine whether an export transaction concerns any of the commodities or products subject to special export restrictions. The OIP gives written confirmation to the Member State concerned, if it has determined that the transaction concerns neither commodities or products subject to the embargo on arms and military commodities and products, nor commodities or products included in the revised Goods Review List adopted by the Security Council. Resolution 1409(2002) allows states to permit exports to Iraq for which such confirmation has been obtained. If such confirmation is not obtained and the transaction concerns exports of commodities or products included in the revised Goods Review List, the Committee established by Resolution 661(1990) may decide to authorise the export transaction.
- (5) As Resolution 1409(2002) extends the validity of Resolution 986(1995) and creates an additional exception to the export restrictions laid down in Resolution 661(1990), it is without prejudice to the existing specific rules concerning exports of products intended strictly for medical purposes, of foodstuffs, of materials and supplies for essential civilian needs, and of parts and equipment essential for the safe operation of the Kirkuk-Yumurtalik pipeline system in Iraq, as laid down in Resolutions 661(1990), 687(1991) and 986(1995). The new procedures for application of the additional exception will, however, have to be followed, if payment from the escrow account referred to above is requested for such exports.

Proposal for a

COUNCIL REGULATION

amending Council Regulation (EC) No 2465/96 concerning the interruption of economic and financial relations between the European Community and Iraq

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 2002/.../CFSP concerning¹,

Having regard to the proposal from the Commission²,

Whereas:

- (1) Council Regulation (EC) No 2465/96 concerning the interruption of economic and financial relations between the European Community and Iraq³ prohibits, with certain exceptions, the export to Iraq of all commodities and products originating in, coming from, or in transit through the Community. This export regime was imposed further to Resolutions 661(1990), 687(1991) and 986(1995) of the Security Council of the United Nations.
- (2) Pursuant to Resolution 986(1995) an escrow account has been established for the financing of certain exports to Iraq. On 14 May 2002, the Security Council of the United Nations adopted Resolution 1409(2002) laying down new procedures and rules for approval of exports to Iraq which will be financed from this escrow account. These procedures and rules shall be applicable as of 30 May 2002.
- (3) As a result exports for which an application for financing from the escrow account is made will be checked against the list of military commodities and products and against the revised Goods Review List (GRL) which the Security Council also adopted. The GRL comprises goods, services and technologies which can be used for civil as well as military purposes (dual-use goods).
- (4) If the exports are not included in these lists, the Office of the Iraq Programme (OIP) will confirm in writing to the State that sent the application, that the application does not contain any commodity or product included in these lists. If such confirmation is obtained, the export is permitted and eligible for payment from the escrow account. However, such payment is subject to meeting the conditions of paragraph 8(a) of Resolution 986(1995), which provides that the export must be at the request of the

¹ OJ L ..., ..., p. ...

² OJ C ..., ..., p. ...

³ OJ L 337, 27.12.1996, p. 1.

Government of Iraq, that Iraq effectively guarantees equitable distribution of the exported goods and that the Secretary-General receives authenticated confirmation that the exported goods have arrived in Iraq.

- (5) If the exports are included in the list of military commodities and products or in the revised Goods Review List, the application will be referred to the Committee established by Resolution 661(1990). The exports are not permitted, unless the Committee gives its approval. In this regard, it should be noted that the Committee may give its approval for exports of commodities and products included in the revised Goods Review List, but will not approve exports of military commodities and products.
- (6) Applications for financing of exports to Iraq from the escrow account have to be made to Office of the Iraq Programme through the diplomatic missions of States and international organisations accredited to the United Nations in the format prescribed by the Security Council. That format should also be used for notifications to the Committee established by Resolution 661(1990).
- (7) It is appropriate that competent authorities in the Community immediately communicate to the person, entity or body at whose request the application was made, any confirmation they receive from the Office of the Iraq Programme and any approval they received from the said Committee. Such confirmation or authorisation need not be duplicated by an export authorisation or licence as it constitutes sufficient evidence that the export is not in breach of Council Regulation (EC) No 2465/96.
- (8) Regulation (EC) No 2465/96 should be amended in order to reflect that exports are allowed, if in accordance with the new procedures and rules it has been confirmed that they are eligible for payment from the escrow account.
- (9) Experience with the application of Regulation (EC) No 2465/96 has shown that the meaning of certain provisions of that Regulation should be clarified.
- (10) Persons, entities and bodies engaging in trade with Iraq should be protected against Iraqi attempts to abuse export and import transactions to ends that are not compatible with the Resolutions of the Security Council of the United Nations and in particular pressure to deviate or depart from the provisions of contracts or agreements submitted to the Office of the Iraq Programme. To that end, they should be required to inform the competent authorities in the Community, if they are subject to such attempts or pressure.
- (11) In order not to create legal uncertainty for Community exporters, this Regulation must enter into force immediately,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 2465/96 is amended as follows:

1. Article 2 is replaced by the following:

"Article 2"

1. "The prohibitions of points 1, 3 and 5 of Article 1 shall not apply to the introduction into the territory of the Community of:
 - (a) commodities or products which originate in or come from Iraq and were exported before 7 August 1990;
 - (b) petroleum and petroleum products originating in Iraq, on the condition that there is evidence in writing that the Committee established by Resolution 661(1990) of the Security Council of the United Nations has given its approval for the purchase of the commodities or products concerned, and provided that payment of the full price is made to the escrow account established by the Secretary General of the United Nations pursuant to Resolution 986(1995)."
2. "The prohibitions of points 2, 3 and 5 of Article 1 shall not apply to the export from or transit through the Community to Iraq of:
 - (a) products intended strictly for medical purposes, on the condition that a competent authority listed in Annex I has given an authorisation in writing;
 - (b) foodstuffs, on the condition that a competent authority listed in Annex I has confirmed in writing that the export or transit has been notified to the Committee established by Resolution 661(1990) of the Security Council of the United Nations;
 - (c) materials and supplies for essential civilian needs, on the condition that a competent authority listed in Annex I has confirmed in writing that the export or transit has been approved by the said Committee;
 - (d) parts and equipment which are essential for the safe operation of the Kirkuk-Yumurtalik pipeline system in Iraq, on the condition that a competent authority listed in Annex I has confirmed in writing that the export or transit has been approved by the said Committee, and provided that the conditions for payment determined by that Committee established under Security Council resolution 661(1990) are fulfilled;
 - (e) any other commodity or product, on the condition that a competent authority listed in Annex I has confirmed in writing that the Office of the Iraq Programme of the Secretariat-General of the United Nations has notified in written form that the export of that commodity or product is eligible for payment from the escrow account established by the Secretary General of the United Nations pursuant to Resolution 986(1995);

- (f) any other commodity or product for the export of which the said Committee has given its approval."
3. "The prohibitions of points 3, 4 and 5 of Article 1 shall not apply to:
1. the provision of either postal and telecommunications services, medical services necessary for the operation of existing hospitals, or of non-financial services resulting from contracts or amendments to contracts concluded before 7 August 1990, where their execution began before that date;
 2. flights approved by the said Committee or destined for activities of the United Nations in Iraq, on the condition that a competent authority listed in Annex I has confirmed in writing that the flight either has been approved by the said Committee or is destined for activities of the United Nations in Iraq;
 3. services, including financial transactions, ancillary or directly related to the activities referred to in paragraphs 1, 2 and 3."
4. "Except for notifications and applications made by international organisations which are accredited to the United Nations, all notifications to the Committee established by Resolution 661(1990) of the Security Council of the United Nations, applications for approval by that Committee and applications for payment addressed to the Office of the Iraq Programme of the Secretariat-General of the United Nations, shall be made through the competent authority of the Member State in which the person, entity or body concerned is resident or established, as listed in Annex I. As regards notifications, applications and requests for payments concerning exports to Iraq, the request shall be accompanied by the completed form entitled "Notification or Request to Ship Goods to Iraq" in Annex II."
5. "A confirmation in writing by a competent authority listed in Annex I, as referred to in this Article, shall be valid throughout the Community. Upon receipt of an authorisation from the Committee established by Resolution 661(1990) or a notification from the Office of the Iraq Programme that an export to Iraq is eligible for payment from the escrow account referred to above, the competent authorities listed in Annex I shall immediately give such written confirmation to the person, entity or body concerned."
2. Article 4 is replaced by the following:
- "Article 4"*
1. "Any direct or indirect payment from the escrow account established by the Secretary General of the United Nations pursuant to Resolution 986(1995) shall be destined only for the purposes indicated in paragraph 8 of that resolution, as published in the Official Journal of the European Communities, and shall not be diverted to any other purpose."
 2. "Any natural or legal person, entity or body shall immediately report to a competent authority listed in Annex I and, through such authority or directly, to the Commission, any attempt, pressure or action by or on behalf of the Government of Iraq or any person, entity or body in Iraq or acting for or on behalf such person, entity or body, to depart or deviate in any manner, from the terms of the contract or agreement which it has submitted to the Committee established by Resolution

661(1990) of the Security Council of the United Nations or to the Office of the Iraq Programme of the Secretariat-General of the United Nations."

3. Annexes I and II are added to Council Regulation (EC) No 2465/96 and shall read as set out in Annexes I and II to this Regulation, respectively.

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*

ANNEX I

"Annex I"

"List of competent authorities referred to in Articles 2 and 4

(to be completed by the Member States)"

ANNEX II

"Annex II"

"Form to be filled out for notification of exports to Iraq, application for approval of such exports or application for payment for such exports from the UN escrow account, as referred to in Article 2(4).

May 2002 REVISED

<i>SECURITY COUNCIL COMMITTEE ESTABLISHED BY RESOLUTION 661 (1990) CONCERNING THE SITUATION BETWEEN IRAQ AND KUWAIT NOTIFICATION OR REQUEST TO SHIP GOODS TO IRAQ</i>			
For further guidance regarding completion of application please consult OIP web site (www.un.org/Depts/oip/index)			
<i>(TO BE COMPLETED BY THE SECRETARIAT)</i>			
COMM. No.	REGISTRATION DATE	DATE RECEIVED BY UNMOVIC/IAEA (if applicable)	DATE SENT TO THE COMMITTEE (if applicable)
<i>(TO BE COMPLETED BY PROSPECTIVE EXPORTING COUNTRY or INTERNATIONAL ORGANIZATION)</i>			
1. MISSION OR INTERNATIONAL ORGANIZATION		2. CERTIFYING SIGNATURE AND OFFICIAL SEAL	
3. DATE OF SUBMISSION		4. MISSION REFERENCE No.	
5. GOODS TO BE SHIPPED (General description of the goods)		6. NUMBER OF LINE ITEMS ON THE EXCEL FORM ATTACHMENT	7. TOTAL VALUE
			8. CURRENCY ISO CODE
9. EXPORTER Name: Address: Country: Phone/Fax/E-mail:		10. ORIGIN of GOODS (if different from applicant State)	
11. RECEIVING COMPANY/ORG. Name: Address: Phone/Fax/E-mail:		12. SHIPPING ARRANGEMENTS: Select ONE Point of Entry into Iraq <input type="checkbox"/> Trebil <input type="checkbox"/> Al Waleed <input type="checkbox"/> Zakho <input type="checkbox"/> Umm Qasr	
13. END USER entity (if different from receiving company/org.) Name: Address: Phone/Fax/E-mail:		14. END USE Provide details of intended end-use. (attach additional sheets if necessary)	

15. METHOD OF PAYMENT

From the Iraq Account in accordance with SC resolution 986 (1995)

By other arrangement (in this case, disregard page 2)

In this case, please fill out PAGE 2

(Relevant documentation including contract(s) must be attached)

16. ADDITIONAL INFORMATION:

(Attach additional sheet if necessary)

IF THIS NOTIFICATION OR REQUEST TO SHIP GOODS TO IRAQ IS TO BE PAID FROM THE IRAQ ACCOUNT IN ACCORDANCE WITH SC RESOLUTION 986 (1995) PLEASE FILL OUT THESE ADDITIONAL BOXES

(see box 15 on page 1)

MISSION REFERENCE No.:

17. IDENTICAL GOODS PREVIOUSLY SUBMITTED:

Indicate whether or not you have previously submitted an application for IDENTICAL goods.

YES NO UNABLE TO DETERMINE

If YES provide Comm. number reference(s) with respective item number(s)

18. DETAILED LIST OF GOODS:

Indicate whether or not the scope of supply includes any spare parts, accessories, sets, kits, tool boxes, tools, equipment, special tools, lots or consumables.

YES NO

If YES indicate whether or not all components of the spare parts, accessories, sets, kits, tool boxes, tools, equipment, special tools, lots or consumables have been listed as separate line items with the relevant description, quantity and price on the attached Excel format application.

YES NO (in this case, the document will not be registered by the Secretariat)

19. TECHNICAL INFORMATION:

Indicate whether or not the scope of the supply includes (separately or as part of larger item) any of the goods and/or technology specified on the OIP web site (www.un.org/Depts/oip/cpmd/delays)

YES NO

If YES indicate whether or not the relevant technical specification form for each item has been completed and attached to the application.

YES NO

20. GRL RELATED ITEM(S) AND/OR TECHNOLOGY:

Indicate whether or not the scope of supply includes any item included in the Goods Review List (GRL). The GRL may be accessed via the OIP web site (www.un.org/Depts/oip...).

YES NO UNABLE TO DETERMINE

If **YES** indicate below the line item number and description as from the Excel sheet of these goods considered to be included in the GRL.

Line item No.

Description

GRL Ref. No.

(attach additional sheets if necessary)

IMPORTANT NOTICE

The following attachments are compulsory

- 1) Excel form application listing **IN DETAIL** all goods (including all spare parts, accessories ...) + diskette
- 2) Contract signed by both parties with all attachments, enclosures and annexes
- 3) All relevant documentations and/or technical specifications of the goods (e.g. brochures, pictures, diagrams, chemical composition, material composition, etc.).

For further guidance regarding completion of application please consult OIP web site (www.un.org/Depts/oip/index)

PAGE 2 of 2

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