



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.07.1996  
COM(96) 416 final

Proposal for a

**COUNCIL REGULATION (EC)**

concerning the interruption of economic and financial relations between the  
European Community and Iraq

Draft

**DECISION OF THE REPRESENTATIVES OF THE GOVERNMENTS OF THE  
MEMBER STATES OF THE EUROPEAN COAL AND STEEL COMMUNITY,**

**MEETING WITHIN THE COUNCIL**

repealing Decision 90/414/ECSC preventing trade as regards Iraq and Kuwait

(presented by the Commission)

## Explanatory Memorandum

By adopting on 14 April 1995 resolution 986 (1995) the Security Council of the United Nations opened the way for the export of oil by Iraq, in order to enable that country to meet the humanitarian needs of its population, and in particular to pay for the import of medicine, health supplies, foodstuffs and materials and supplies for essential civilian needs.

Having refused initially to negotiate with the United Nations on the implementation of the resolution, Iraq finally agreed to such negotiations at the beginning of 1996. As a result operative paragraphs 1 and 2 of said resolution will now enter into force, permitting the export of Iraqi oil valued at one billion US dollars every 90 days under the conditions set out in the Resolution, the ensuing Memorandum of Understanding between Iraq and the Secretary-General of the United Nations and the rules of procedures and guidelines adopted by the Committee established by Resolution 661 (1990), hereafter called the Iraq Sanctions Committee.

The existing Community legislation with regard to the embargo to Iraq has to be adapted to the provisions of Resolution 986 (1995) in order to make it possible for the imports from and the exports to Iraq to take place effectively as far as the Community is concerned. The European Commission has therefore made the proposal accompanying this memorandum. The proposal does not limit itself to amend the existing Council Regulations, but creates a comprehensive text regarding the embargo regime, including the new exemptions provided for by Resolution 986 (1995) and reflecting the experiences gained during the application of the embargo. Such a text increases the transparency of the Community legislation and will facilitate considerably its application, by inter alia economic operators within the Community.

Articles 228A and 73G of the EC Treaty form the legal basis, enabling the legislation to cover more aspects of the embargo than Article 113 which served as the legal basis for the existing embargo regime. The present proposal does not affect Regulation (EEC) No 3541/92, dealing with the prohibition to satisfy 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. This last Regulation should continue to stand on its own, because, inter alia, it will remain permanently in force, even after a complete lifting of the embargo. On the other hand, in the light of Opinion 1/94 of the European Court of Justice, the present proposal covers the products falling under the Treaty of the European Coal and Steel Community (ECSC), and if adopted by the Council of the European Union, Decision 90/414/ECSC should then be repealed by the Member States. A separate proposal to this effect will also be submitted by the European Commission.

Resolution 986 (1995) provides for a strict control of Iraqi oil exports by the Iraq Sanctions Committee. Discussions are still taking place within the Committee on the modalities of these control mechanisms. The role, if any, of the competent authorities within the European Community in this respect is not yet clear. The same is true for the mechanisms with regard to the control of exports to Iraq of goods and services to be paid out of the so-called escrow account, which will be fed by the revenues of oil exports from

Iraq. The information available in this regard indicates that strict procedures will be applied by the Iraq Sanctions Committee or the Secretary-General of the United Nations in order to guarantee that the full amount due for the Iraqi oil will be paid into the escrow account and that the goods to be paid for from this account will effectively arrive in Iraq and be distributed in accordance with the provisions of Resolution 986 (1995).

The Secretary-General of the United Nations has not yet chosen the bank which will hold the escrow-account, and the present proposal has, therefore, to be amended in due time in this respect.

Furthermore, the foreseeable increase in commercial traffic with Iraq will also increase the possibilities of circumvention of the embargo. Additional control mechanisms might, therefore, appear to be necessary to cope with this increased risk of violations of the sanctions regime. Other sanctions regimes have shown that the prevention of such violations can not (always) be fully guaranteed by border measures of the Member States of the European Community. A heavier burden in this respect will be put on the shoulders of the neighbouring states of Iraq and of multilateral task forces such as the Maritime Interception Force. Nevertheless, those parties will need the cooperation of the European Community to enable them to play an effective role in the prevention and/or detection of breaches of the sanctions regime. Previous experience with regard to such prevention and detection has demonstrated that the Commission can play a useful role in this regard, while fully respecting the role of the Member States in the enforcement of Community Regulations. The present proposal provides for a close and effective cooperation between the European Commission and all other competent authorities within the Community.

Whatever additional tasks might have to be performed by the competent authorities within the Community, and which might have to be included in the Regulation to be adopted, the Commission considers that the situation with regard to the implementation of Resolution 986 (1995) has developed to such an extent that the present proposal for the relevant Community legislation will cover most of the necessary adaptations to the existing legislation and should, therefore, be made already at this moment. Such a timing is, furthermore, justified by the precarious situation of a large part of the population of Iraq, the alleviation of which is exactly the purpose of Resolution 986 (1995).

With regard to the separate Articles of the Regulation the following can be said:

Article 1 sums up the prohibitions which up to now are embodied in Council Regulations 2340/90 and 3155/90, as amended.

Article 2 contains the exemptions from the embargo and the conditions attached thereto, such as an export authorisation by the competent authorities of the Member States in the case of medicines. Paragraph 1(b) provides for the possibility to import Iraqi petroleum and petroleum products into the Community. Paragraph 2 introduces the notion of approval by the Iraq Sanctions Committee for export of certain goods which will be paid for out of the escrow account. Paragraph 5 demands such an approval for the opening of letters of credit related to the exports of certain parts and equipment, mentioned in paragraph 2.d.. Paragraphs 3,4 and 6 contain exemptions that already exist under the present embargo regime.

Article 3 provides for the provision of conclusive evidence to the Commission of confirmation of notifications, approvals etc. by the Iraq Sanctions Committee. Through

this procedure competent authorities of the Member States, as well as those of third States or organisations entrusted with the control of the sanctions and other directly interested parties will be afforded a single address for relevant information that would otherwise only be available in a fragmented form.

Article 4 reflects paragraph 14 of Resolution 986 (1995), dealing with immunity for petroleum and petroleum products still under Iraqi title. An extension of this immunity to payments for these goods is justified by the fact that a lack of such protection would seriously hamper the realization of the objectives of Resolution 986 (1995).

Article 5 ensures that, also in accordance with paragraph 14 of Resolution 986 (1995), the payments from the escrow account are not diverted to purposes other than those indicated in Resolution 986. Where these purposes are expressly stated, such as in paragraph 8 of Resolution 986 (1995), they shall be published immediately by the Commission in the C series of the Official Journal in accordance with Article 7 of the present proposal. When additional destinations will be agreed upon by the Sanctions Committee, in accordance with paragraph 8(f) of the said Resolution, they will also be published.

Article 6 responds to paragraphs 5 of Resolution 661 (1990) and 25 of Resolution 687 (1991), and is similar in its formulation to provisions in other Council Regulations implementing Security Council decisions concerning economic sanctions.

In order to facilitate in particular the operations of the economic operators within the Community which have an interest in the implementation of Resolution 986 (1995), the Commission is instructed by Article 7 to publish all relevant procedures to be established by the Iraq Sanctions Committee regarding the embargo of Iraq and other relevant information such as the Iraq Sanctions Committee's definition of foodstuffs. This information will then be available in eleven languages of the Community, and thus contribute to creating a level playing field for the interested economic operators. The responsibility for the content of the procedures, guidelines or interpretations established by the Iraq Sanctions Committee rests with the Committee. A list of the competent authorities within the Community dealing with the different aspects of the embargo of Iraq should also form part of this publication.

By Article 8 a system of mutual information between the Commission and the Member States will be established in order to obtain maximum transparency of the implementation of the Community law, as well as to further the uniform application thereof. Sanctions to be imposed where the provisions of the proposed Regulation are violated have to be introduced by the Member States.

Having integrated the provisions of Council Regulations (EEC) Nrs 2 340/90 and 3155/90, as amended, in the present proposed Regulation, both former Regulations can be repealed (Article 9).

Article 10 contains the usual limitations by territory and nationality of the applicability of the Regulation.

Article 11 establishes the date of entry into force of the Regulation and, therefore, does not reflect the fact that the Security Council decided in paragraph 3 of the Resolution that the exceptions to the embargo created by Resolution 986 (1995) only remain in force for an *initial* period of 180 days. The Commission considers that a limitation to 180 days of

the proposed Regulation would create many inconveniences, such as when transactions legally concluded during the first 180 days still have to be completed after this period. If the Security Council would decide not to prolong the period of 180 days, or even to shorten this period, the Commission will ensure that proposals for the corresponding legislation will be made.

Finally, Article 73G of the EC Treaty would enable the integration in the present proposal of the financial sanctions decided upon by the Security Council which are up till now implemented by national legislation of the Member States. At this stage and for reasons of urgency, the proposal does not include the appropriate provisions to this effect, but the Commission, in the event, may introduce such provisions through a new proposal.

Proposal for a

COUNCIL REGULATION (EC)

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 228a and 73g thereof,

Having regard to the Common Position of .... 1996 defined by the Council on the basis of article J.2 of the Treaty on European Union, with regard to the implementation of resolutions 660, 661, 666, 670 (1990), 687 (1991) and 986 (1995) of the United Nations Security Council,

Having regard to the proposal of the Commission,

Whereas the United Nations Security Council, acting under Chapter VII of the Charter of the United Nations, decided in its resolutions 660, 661, 666, 670 (1990) and 687 (1991) that all States should take the necessary measures with regard to the interruption of their economic and financial relations with Iraq as provided for in these resolutions,

Whereas, furthermore, the United Nations Security Council, acting under Chapter VII of the Charter of the United Nations, decided in its resolution 986 (1995), to allow, as a temporary measure and under strict conditions, the import of petroleum and petroleum products originating in Iraq in order to create the funds necessary for the payment for the import of certain goods into Iraq and certain commercial activities related thereto, in particular foodstuffs and medical products, and decided to allow the export to Iraq of certain goods and the use of certain financial instruments to facilitate such export, and determined certain conditions attached to aforementioned transactions and activities;

Whereas, in order to enable the Community to continue to implement effectively the embargo of Iraq, while at the same time enabling its economic operators to fully use the derogations to the economic embargo concerning Iraq, appropriate mechanisms should be established for the handling of notifications to and applications for approval of transactions and contracts with Iraq by the Committee established by Resolution 661 (1992) of the Security Council, as well as of the authorizations given by this Committee;

Whereas, for reasons of transparency and in the light of the developments since the introduction of the embargo, the Community legislation, implementing the abovementioned United Nations Security Council Resolutions should be incorporated in a comprehensive Community instrument, including inter alia the products falling under the Treaty establishing the European Coal and Steel Community (ECSC), and therefore, Council Regulations (EEC) 2340/90 <sup>1)</sup> and 3155/90 <sup>2)</sup> preventing trade by the Community with Iraq should be repealed,

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<sup>1)</sup> OJ no L 213, 9.8.1990, p.1., as last amended by Council Regulation (EEC) No 1194/91 (OJ No L 115, 8.5.1991, p. 37)

<sup>2)</sup> OJ no L 304, 1.11.1990, p.1,

Whereas, to this effect, the Member States of the European Coal and Steel Community have repealed Decision 90/414/ ECSC as of the date entry into force of this Regulation,<sup>3)</sup>

## HAS ADOPTED THIS REGULATION:

### Article 1

The following shall be prohibited:

1. The introduction into or the transit through the territory of the Community of all commodities and products originating in, coming from, or having transited through Iraq;
2. The export to, or the transit through, Iraq of all commodities and products originating in, coming from, or in transit through the Community;
3. The provision of services with the object or effect of promoting the economy of Iraq, and in particular
  - (i) for the purposes of any economic activity carried out in or from Iraq; or
  - (ii) to any natural person in Iraq, any legal person so constituted or incorporated under Iraqi law or any organization exercising an economic activity (whether in Iraq or not) controlled by persons resident in Iraq or by organizations constituted or incorporated under the law of Iraq;
4. The permission to any aircraft to take off from, land in, or overfly, the territory of the Community if it is destined to land in, or has taken off from, the territory of Iraq;
5. Any activity or transaction the object or effect of which is, directly or indirectly, to promote the transactions or activities mentioned under this article

### Article 2

The prohibitions of Article 1 shall not apply to:

1. The introduction into the territory of the Community of
  - a. commodities or products originating in, coming from or having transited Iraq before 7 August 1990;
  - b. petroleum and petroleum products originating in Iraq, whose export by Iraq has been approved by the Committee established under Security Council Resolution 661 (1990) and for which payment of the full amount of each purchase has been made into the Iraq account with .....Bank .....

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<sup>3)</sup> OJ no L 213, 9.8.1990, p.3, as last amended by Decision 91/265/ECSC (OJ no L 127, 23.5.1991, p.27)

2. The export from or the transit through the Community to Iraq of
  - a. products intended strictly for medical purposes, after authorisation by the competent authority of the Member State;
  - b. foodstuffs, after notification to the said Committee;
  - c. materials and supplies for essential needs, the export of which to Iraq has been approved by said Committee;
  - d. parts and equipment which are essential for the safe operation of the Kirkuk-Yumurtalik pipeline system in Iraq, the export of which to Iraq has been approved by said Committee;
  - e. any other product for the export of which said Committee has given its approval;

With regard to products mentioned under a. and b. of this paragraph the authorisation, respectively notification requirements will be deemed fulfilled when the said Committee has approved the payment for these goods from the Iraqi account with .... Bank.

3. The provision of postal or telecommunications services, medical services necessary for the operation of existing hospitals, or services resulting from contracts or amendments to contracts concluded before the entry into force of the interdiction contained in Regulation (EEC) No 2340/90, where their execution began before that date;
4. Flights approved by the said Committee or destined for activities of the United Nations in Iraq;
5. The issuance or confirmation of letters of credit to the benefit of a party in Iraq within the framework of the export of goods mentioned under paragraph 2 d. of this Article, after approval of each such issuance or confirmation by the said Committee;
6. Any activity or transaction the object of effect of which is, directly or indirectly, to promote the transactions or activities mentioned under paragraphs 1.a., 2.a., b. and c., 3. and 4 above.
7. Essential transactions directly relating to the export by Iraq of petroleum and petroleum products permitted under paragraph 1.b. above and other activities directly related to these exports and to those permitted under paragraph 2.d. and e.

#### Article 3

Conclusive evidence of each notification of the export of foodstuffs, approval by the said Committee of a contract, transaction, export, letter of credit or of a payment into the Iraqi Account of ... Bank ... shall be provided to the European Commission.

#### Article 4

Petroleum or petroleum products exported by Iraq with approval of the said Committee, and still being under Iraqi title, or any payment related to these exports, shall be immune from legal proceedings and not be subject to any form of attachment, garnishment or execution.



#### Article 5

Any direct or indirect payment from the Iraq account with ... Bank ... shall only be destined for the purposes indicated in paragraph 8 of Resolution 986 (1995), as published in the Official Journal of the European Communities, and shall not be diverted to any other purpose.

#### Article 6

Articles 1 to 6 shall apply notwithstanding any rights or obligations conferred or imposed by any international agreement or any contract entered into or any licence granted before the entry into force of this Regulation.

#### Article 7

The Commission shall publish in the Official Journal of the European Communities the relevant information regarding applicable procedures for notifying to or obtaining the necessary approval by the said Committee of transactions or activities referred to in Article 2, and in particular those for obtaining payment from the Iraqi Account with .... Bank ....., as well as other relevant information in connection with the implementation of this Regulation.

#### Article 8

1. The Commission and the Member States shall take the necessary measures to ensure the implementation of this Regulation,
2. They shall inform each other of the measures taken and of other relevant information at their disposal in connection with this Regulation.
3. Each Member States shall determine the sanctions to be imposed where the provisions of this Regulation are infringed.

#### Article 9

Council Regulations (EEC) Nos 2340/90 and 3155/90 are hereby repealed.

#### Article 10

This Regulation shall apply within the territory of the European Community including its air space and on any aircraft or any vessel under the jurisdiction of a Member State and to any person elsewhere who is a national of a Member State and any body which is incorporated or constituted under the law of a Member State.

Article 11

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 , .....

*For the Council*

*The President*

**DECISION OF THE REPRESENTATIVES OF THE GOVERNMENTS OF THE  
MEMBER STATES OF THE EUROPEAN COAL AND STEEL COMMUNITY,**

**MEETING WITHIN THE COUNCIL**

repealing Decision 90/414/ECSC preventing trade as regards Iraq and Kuwait

(96/.../ECSC)

THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES  
OF THE EUROPEAN COAL AND STEEL COMMUNITY, MEETING WITHIN THE  
COUNCIL,

Whereas the Council of the European Union, in view of the Resolutions of the United Nations Security Council regarding the interruption of economic and financial relations with Iraq, has adopted Regulation (EC) No ...../96, <sup>1)</sup> concerning the interruption of economic and financial relations between the European Community and Iraq, which covers also the goods and products falling under the Treaty establishing the European Coal and Steel Community;

Whereas for these reasons there is no longer a need for the continuation of Decision 90/414/ECSC <sup>2)</sup> and, therefore, this decision should be repealed;

In agreement with the Commission,

HAVE DECIDED AS FOLLOWS:

Article 1

Decision 90/414/ECSC is hereby repealed.

Article 2

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

Done at Brussels, .....

*The President*

*c/iraq/ecscoilf*

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1) OJ no L ....., .....1996, p.....

2) OJ no L 213, 9.8.90, p.3 as last amended by Decision 91/265/ECSC (OJ no L 127, 23.5.91, p.27)

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