COUNCIL REGULATION (EC) No 1799/2003

of 13 October 2003

amending Regulation (EC) No 1210/2003 concerning certain specific restrictions on economic and financial relations with 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 Council Common Position 2003/495/CFSP of 7 July 2003 on Iraq [1], as amended by Common Position 2003/735/CFSP [2],

Having regard to the proposal from the Commission,

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 of 7 July 2003 concerning certain specific restrictions on economic and financial relations with Iraq [3], which, *inter alia*, makes provision for freezing measures targeting the former Government of Iraq and other State entities. These measures entered into force on 9 July 2003.

(2) A review of the relevant 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 the date of 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 concerning export-related incoming payments made through public banks listed in the relevant Annex of Regulation (EC) No 1210/2003 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 judgment established or rendered prior to 22 May 2003 from that process. Maintaining 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.

(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 judgments. Moreover, no exemption should be granted in respect of any judgment rendered in breach of Council Regulation (EC) No 3541/92 of 7 December 1992 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 [4].

(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 hereby 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 or controlling stake, or agencies of that Government, identified by the Sanctions Committee and listed in Annex III, shall be frozen, if they were located outside Iraq on the date of 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 (a), (b) and (c) or by any natural or legal person acting on their behalf or at their direction.

[1] OJ L 169, 8.7.2003, p. 72.
[2] See page 40 of this Official Journal.
[3] OJ L 169, 8.7.2003, p. 6.
[4] OJ L 361, 10.12.1992, p. 1.