

In case of discrepancies between the French and the English texts, the French text shall prevail

Luxembourg, 22 October 2003

To all the persons and entities
supervised by the CSSF

CSSF CIRCULAR 03/114

Re: Restrictive measures concerning certain Iraqi assets

Dear Sir, Madam,

We are pleased to enclose 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.

We draw your attention, in particular, to the replacement of Article 4 paragraph 1 of Regulation (EC) No 1210/2003, which henceforth only provides for the freezing of those funds and economic resources of persons and entities as designated by the Sanctions Committee of the Security Council of the United Nations and listed in Annexe III of the Regulation, if they were located outside Iraq on the date of 22 May 2003.

Paragraph 2 of Article 5 of Regulation (EC) No 1210/2003 has been deleted.

Article 6 henceforth allows the competent authorities of the Member States, as listed in Annexe V of Regulation (EC) No 1210/2003, to authorise the release of frozen funds or economic resources, if all of the conditions listed in that Article are met.

We remind you that on the basis of Article 8 of the Regulation, the professionals of the financial sector are invited to immediately report any relevant information relating to the amended Regulation to the CSSF, who will forward the information to the Ministry of Foreign Affairs, Division of International Economic Relations, as well as to the Ministry of Finance.

Regulation (EC) No 1799/2003 came into effect on the day following that of its publication in the Official Journal of the European Union (15 October 2003). It applies with retroactive effect from the date on which Regulation (EC) No 1210/2003 entered into force, i.e. from 9 July 2003.

Yours faithfully,

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER

Charles KIEFFER
Director

Arthur PHILIPPE
Director

Jean-Nicolas SCHAUS
Director General

Annexe.

**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:
- former President Saddam Hussein;
 - senior officials of his regime;
 - immediate members of their families; or
 - 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.

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, body or entity to obtain funds, goods or services.’;
2. in Article 5, paragraph 2 shall be deleted;
3. Article 6 shall be replaced by the following:
‘Article 6
1. 1. By way of derogation from Article 4, the competent authorities of the Member States, as listed in Annex V, may authorise the release of frozen funds or economic resources, if all of the following conditions are met:
(a) the funds or economic resources are the subject of a judicial, administrative or arbitral lien established prior to 22 May 2003 or of a judicial, administrative or arbitral judgment rendered prior to that date;
(b) the funds or economic resources will be used exclusively to satisfy claims secured by such a lien or recognised as valid in such a judgment, within the limits set by applicable laws and regulations governing the rights of persons having such claims;
- (c) satisfying the claim is not in breach of Regulation (EC) No 3541/92; and
- (d) recognising the lien or judgment is not contrary to public policy in the Member State concerned.
2. In all other circumstances, funds, economic resources and proceeds of economic resources frozen pursuant to Article 4 shall only be unfrozen for the purpose of their transfer to the Development Fund for Iraq held by the Central Bank of Iraq, under the conditions set out in UNSC Resolution 1483 (2003).’;
4. the title of Annex V shall be replaced by the following:
‘List of competent authorities referred to in Articles 6, 7 and 8.’.

Article 2

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

It shall apply from 9 July 2003.

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

Done at Luxembourg, 13 October 2003.

For the Council
The President
F. FRATTINI
