



## Security Council

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THE UNITED NATIONS  
COMPENSATION COMMISSION

Decision taken by the Governing Council of the United Nations  
Compensation Commission during its second session, at the  
15th meeting, held on 18 October 1991

Arrangements for Ensuring Payments to the Compensation Fund

1. Paragraph 7 of Security Council resolution 692 (1991) requested the Governing Council to report as soon as possible on the actions it has taken with regard to the arrangements for ensuring that payments are made to the Fund, so that the Security Council could give its approval in accordance with paragraph 22 of resolution 687 (1991).
2. The arrangements in the following paragraphs will be revised when circumstances warrant.
3. These arrangements will come into operation only when sanctions are removed pursuant to paragraph 22 of resolution 687 (1991) and are consistent with the approach adopted in resolutions 706 (1991) and 712 (1991) and with the reports of the Secretary-General dated 2 May 1991 (S/22559), and 4 September 1991 (S/23006). The Governing Council will oversee the implementation of these arrangements.

Payment mechanism

4. Purchasers of Iraqi petroleum and petroleum products will continue to be required to make all payments to an escrow account established by the Secretary-General as a special account of the United Nations. This

Escrow`Account will replace the escrow account established pursuant to resolutions`706`(1991) and 712`(1991). The Executive Secretary and the Secretary-General will consult to establish the appropriate arrangements for the administration of this Escrow`Account and on the question of which person or institution should be the Escrow Agent. Use of an escrow account will ensure continuity and predictability for those involved in transactions involving Iraqi petroleum and petroleum products.

5. The Compensation Fund will be a separate account administered by the Executive Secretary under the policy guidance of the Governing`Council. The Executive Secretary will report periodically to the Governing Council on the administration of the Fund. The Escrow Agent will transfer from the Escrow Account to the Compensation Fund the percentage due it and remit the remainder to Iraq, without any further deduction except as specifically provided in this paper. The Compensation Fund will bear interest. The Executive Secretary will be authorized to enter into any agreements or arrangements necessary to implement this paragraph and will report to the Governing Council on these agreements or arrangements.

6. Contracts for the sale and purchase of Iraqi petroleum and petroleum products will be made directly by Iraq (SOMO) with purchasers. They must provide that payment will be transferred directly to the Escrow Account. To`ensure payment occurs, purchasers will be required to open a confirmed irrevocable letter of credit for each transaction providing that the proceeds will be paid to the Escrow`Account, except where the Executive Secretary determines that there is an alternative equivalent guarantee of payment. A letter of credit form will be established. The issuing or confirming bank for each transaction will be required to be a reputable commercial bank notified by the parties to the transaction and acceptable to the Executive`Secretary. The amount and timing of payments will be in accordance with normal commercial practice (for crude oil shipments, market price, with payment 10-60`days after loading in Iraq or in a contiguous State). The Escrow Agent will notify the Executive Secretary of each payment into the Escrow Account. In cases where payment to the Escrow`Account is not made by documentary letter of credit and`is not made within the time period specified in the contract, the Executive Secretary will arrange for the stand-by letter of credit (or alternative equivalent guarantee) to be called.

7. With regard only to exports by truck of Iraqi petroleum and petroleum products, a special system will apply. Iraq's neighbouring States will be required, within five days, to provide the Executive Secretary with copies of the customs documents specifying the volume and value of such shipment. If the petroleum or petroleum products are bought for use in a neighbouring State or for re-export, the purchaser will be required to pay the percentage to the`Escrow Account within 30`days after petroleum or petroleum products are exported from Iraq. The Escrow Agent will transfer this full amount to the Compensation Fund. Instead of a letter of credit, if payment is not made within 30`days, the Executive Secretary will notify the Escrow Agent of the additional amount to be provided on account of the shipment. The Escrow Agent will then transfer such additional amount to the Compensation Fund out of other funds passing through the Escrow Account. Truck shipments for direct sales by Iraq from terminals in neighbouring States will be handled in the

same manner as shipments from pipeline terminals, i.e., the requirement for payment of the full purchase price into the Escrow Account, backed up by a letter of credit, will apply.

8. With respect to barter transactions, Iraq will be required to choose either of the following two options for each shipment: (a) arrange another cash sale from which such additional funds will be deducted as are required to make payment for the barter transaction, with these funds being remitted to the Escrow Account in advance of transfer of title of the petroleum or petroleum product, or (b) pay the required percentage from other sources in advance of the transfer of title. Agreements for such barter transactions must indicate a market contract price for the petroleum or petroleum products. The amount of the required percentage under either of the preceding alternatives will be fixed by reference to this price. If a barter, or other transaction mentioned above occurs without the required payment being made to the Escrow Account, the Executive Secretary will notify the Escrow Agent of the amount to be provided on account of the shipment, and the Escrow Agent will transfer such additional amount to the Compensation Fund out of other funds passing through the Escrow Account.

9. The question of exports of petroleum and petroleum products for debt repayment will be addressed by the Governing Council at a later stage, noting Security Council resolutions 687 (1991) and 692 (1991).

10. The Executive Secretary will report on the status, location and value of the Iraqi petroleum and petroleum products previously exported and subject to the percentage deduction under paragraph 6 of resolution 692 (1991) and, taking into account the results of payments under resolutions 706 (1991) and 712 (1991), will develop, for the consideration of the Governing Council, proposals for assuring that contributions are made to the Compensation Fund with respect to such previous exports.

11. The Escrow Account and Compensation Fund will be special funds of the United Nations with appropriate privileges and immunities. The Compensation Commission will ask the Security Council to reaffirm that the Escrow Account and Compensation Fund enjoy the privileges and immunities of the United Nations. Before the Escrow Account or Compensation Fund are established, a satisfactory legal opinion will be obtained from the institution or institutions in which they are to be held attesting that they will be immune from suit or other form of judicial process, including attachment, garnishment and offsets.

12. The Compensation Commission will ask the Security Council to decide under Chapter VII that exports of Iraqi petroleum and petroleum products, while in transit, are immune from attachment or other legal action. Before Iraqi petroleum or petroleum products transit any State other than Iraq, the Executive Secretary will obtain a satisfactory legal opinion attesting to such immunity from that State or, if he deems it appropriate, may enter into any agreement with that State providing for such immunity. Upon transfer of title to the purchaser, the petroleum and petroleum products will not be subject to garnishment by Iraq's creditors.

13. These arrangements are designed to permit normal commercial marketing of Iraqi petroleum and petroleum products once sanctions are lifted, while both ensuring that the Compensation Fund receives all the payments it is due and protecting the petroleum and petroleum products and the sales proceeds from garnishment by Iraq's creditors. The Escrow Account and Compensation Fund will be immune from garnishment. Payments that purchasers owe the Escrow Account will not be subject to garnishment since the payment will be owed to the account and not to Iraq.

#### Monitoring

14. The monitoring system is to be implemented with the greatest possible use of existing commercial mechanisms and with a view to imposing the minimum burden on normal commercial activity that is consistent with ensuring payments to the Compensation Fund.

15. The Executive Secretary is requested to hire Commission agents to monitor the flow of petroleum and petroleum products at appropriate points, including any functioning loading terminals and at meters situated at the Iraqi border in any functioning pipeline running into a neighbouring State. Before any loading, Commission agents will check that the contract or barter transaction agreement has the approved content, that the letter of credit has the approved form and content, and that the transaction contains no indication of fraud. This paragraph would not apply to truck shipments; the Commission would essentially rely on the assistance of the Customs authorities in Iraq's neighbouring States to assist in the monitoring, but would have the authority to make spot checks.

16. Commission agents will also check that the pricing is within an acceptable range of the market price as determined by the Executive Secretary, with expert assistance, taking into account other relevant transactions, the commercial usages of the parties to the particular transaction, and other relevant circumstances. If the Commission agents determine that the contract price is below the acceptable range for petroleum or petroleum products that have been loaded and shipped, the Executive Secretary will notify the Escrow Agent of the additional amount needed to cover the resulting shortfall in contributions to the Compensation Fund. The Escrow Agent will transfer such additional amount to the Compensation Fund out of other funds passing through the Escrow Account. Commission agents will have authority to prevent loading and shipment if these matters are not in order. In accordance with standard practice in the industry, the parties to the transaction will be required to provide a report from a recognized independent petroleum inspector of international reputation attesting to quality and quantity. The Commission agents will provide copies of the contracts, letters of credit and the independent inspectors' reports to the Executive Secretary, who will maintain a register of all transactions and of related payments into the Escrow Account and Compensation Fund.

17. Where the loading terminal is outside Iraq, the Executive Secretary is requested to obtain the assistance of the State where it is located in conducting the monitoring and otherwise assisting in the implementation of the decisions of the Governing Council. (Resolution 692 (1991) requested

all States and international organizations to cooperate fully with such decisions.) When Iraq's offshore terminal again becomes operational, the Executive Secretary will make arrangements for monitoring exports from it.

18. The Executive Secretary will consult with the Secretary-General to draw on the relevant experience and staff used by the Secretary-General, to avoid duplication of efforts.

Governing Council and Security Council action

19. The Governing Council requests that the Executive Secretary make all the arrangements, consulting with the Secretary-General as necessary, so that this system can be implemented immediately when the Security Council takes action pursuant to paragraph 22 of resolution 687 (1991). The Governing Council should, when it reports to the Security Council pursuant to paragraph 7 of resolution 692 (1991), request that in the resolution of approval pursuant to paragraph 22 the Security Council include the provisions necessary for the effective implementation of these arrangements, including provisions (a) reaffirming the immunity of the Escrow Account and Compensation Fund, (b) establishing the immunity of the Iraqi petroleum and petroleum products while in transit, until title is transferred to a purchaser, and (c) requiring that all States take any necessary domestic measures to implement the arrangements decided upon by the Governing Council for ensuring payments to the Compensation Fund.

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