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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 3274/93
of 29 November 1993
preventing the supply of certain goods and services to Libya

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 228a thereof,

Having regard to the common position adopted by the Council of the European Union on 22 November 1993,

Having regard to the proposal of the Commission,

Whereas the Community adopted Council Regulation (EEC) No 945/92⁽¹⁾ in accordance with Resolution 748 (1992) of the United Nations Security Council;

Whereas the United Nations Council, in view of the persistent non-compliance by Libya with its Resolutions 731 (1992) and 748 (1992) and acting under Chapter VII of the Charter of the United Nations, has decided in its Resolution 883 (1993) of 11 November 1993 to extend the measures decided upon in its Resolution 748 (1992);

Whereas the Community, for reasons of transparency, has decided to incorporate the additional measures within the framework of an all-embracing Community instrument;

Whereas under these conditions Council Regulation (EEC) No 945/92 can be repealed;

Whereas the Community legislation, in accordance with Resolutions 748 (1992) and 883 (1993) of the United Nations Security Council, should not affect certain air transport services justified by significant humanitarian needs nor prevent the supply of some emergency equipment and services directly related to civilian air traffic control,

2. Permission shall be granted when the particular flight has been approved on grounds of significant humanitarian need by the Committee set up pursuant to paragraph 9 of Resolution 748 (1992) of the United Nations Security Council.

Article 2

1. The activities and operation of all Libyan Arab Airlines offices shall be prohibited, and their offices be closed completely.

2. Any commercial transaction with Libyan Arab Airlines shall be prohibited, including the honouring or endorsement of any tickets or other documents issued by that airline.

Article 3

1. The supply or provision to Libya, directly or indirectly, of the goods and/or services listed in the Annex to this Regulation shall be prohibited.

2. The supply or provision to Libya of these goods and/or services may however be allowed by the competent authorities of the Member States provided that the end use of these goods and/or services differs from the end uses described in the Annex to this Regulation.

3. Member States shall inform each other and the Commission within 30 days of the exports to Libya allowed under paragraph 2.

Article 4

1. The Government and the public authorities of Libya and any commercial, industrial or public utility undertaking which is owned or controlled, directly or indirectly, by the Government or public authorities of Libya, or by any person identified by the Member States as acting either on behalf of the Government or Libyan authorities or on behalf of an entity which they control for the purposes of this Regulation, may have at their disposal funds or other financial resources, derived from the sale or supply by them of any petroleum or petroleum

HAS ADOPTED THIS REGULATION:

Article 1

1. Permission shall be denied 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 Libya.

⁽¹⁾ OJ No L 101, 15. 4. 1992, p. 53.

products, including natural gas and natural gas products, agricultural products or commodities, originating in Libya and exported therefrom after 1 December 1993, provided that such funds are paid into bank accounts used exclusively for those funds.

2. This provision shall be implemented by the Member States who shall inform each other and also the Commission of measures taken so that end.

Article 5

This Regulation shall apply notwithstanding any rights or obligations conferred or imposed by any international agreement or any contract entered into or any licence or permit granted before 1 December 1993.

Article 6

This Regulation shall apply within the territory of the Community, including its air space and in any aircraft or on 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 elsewhere which is incorporated or constituted under the law of a Member State.

Article 7

Each Member State shall determine the sanctions to be imposed where the provisions of this Regulation are infringed.

Article 8

Regulation (EEC) No 945/92 is hereby repealed.

Article 9

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

It shall apply as of 1 December 1993, 00.01 hours Eastern Standard Time in New York.

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

Done at Brussels, 29 November 1993.

For the Council

The President

G. COËME

ANNEX

Products and services whose supply to Libya is prohibited under Article 3 of the Regulation :

- A. — any aircraft or aircraft components,
- the provision of engineering and maintenance servicing of Libyan aircraft or aircraft components,
 - the entering into or renewal of arrangements for the provision of engineering and maintenance servicing of any aircraft or aircraft components or for the making available, for operation within Libya, of any aircraft or aircraft components,
 - advice, assistance or training to Libyan pilots, flight engineers or aircraft and ground maintenance personnel associated with the operation of aircraft and airfields within Libya,
 - any certification of airworthiness for Libyan aircraft,
 - payment of new claims against existing direct insurance contracts for Libyan aircraft,
 - any new or renewal of direct insurance for Libyan aircraft,
 - with the exception of emergency equipment and equipment and services directly related to civilian air traffic control :
 - any materials or components destined for the construction, improvement or maintenance of Libyan civilian or military airfields and associated facilities and equipment, or
 - any engineering or other services destined for the maintenance of those airfields and associated facilities and equipment.
- B. I. Pumps of medium or large capacity whose capacity is equal to or larger than 350 cubic metres per hour and drivers (gas turbines and electric motors) designed for use in the transportation of crude oil and natural gas.
- II. Equipment designed for use in crude oil export terminals :
- loading buoys or single point moorings (SPM),
 - flexible hoses for connection between underwater manifolds (PLEM) and single point mooring and floating loading hoses of large sizes (from 12' to 16')
 - anchor chains.
- III. Equipment not specially designed for use in crude oil export terminals but which because of their large capacity can be used for this purpose :
- loading pumps of large capacity (4 000 m³/H and above) and small head (10 bars or less),
 - boosting pumps within the same range of flow rates,
 - in-line pipe line inspection tools and cleaning devices (i.e. pigging tools) (16' and above),
 - metering equipment of large capacity (1 000 m³/H and above).
- IV. Refinery equipment :
- boilers meeting American Society of Mechanical Engineers 1 standards,
 - furnaces meeting American Society of Mechanical Engineers 8 standards,
 - fractionation columns meeting American Society of Mechanical Engineers 8 standards,
 - pumps meeting American Petroleum Institute 610 standards,
 - catalytic reactors meeting American Society of Mechanical Engineers 8 standards,
 - prepared catalytis, including the following :
 - catalysts containing platinum,
 - catalysts containing molybdenum.
- V. Spare parts desinted for the items in I to IV above.
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COUNCIL REGULATION (EC) No 3275/93
of 29 November 1993

prohibiting the satisfying of claims with regard to contracts and transactions the performance of which was affected by the United Nations Security Council Resolution 883 (1993) and related resolutions

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 228a thereof,

Having regard to the common position adopted by the Council of the European Union on 22 November 1993,

Having regard to the proposal of the Commission,

Whereas, under Regulation (EEC) No 945/92 ⁽¹⁾, and (EC) No 3274/93 ⁽²⁾ the Community has taken measures to prevent certain trade between the Community and Libya;

Whereas, as a consequence of the embargo against Libya, the economic operators in the Community and third countries are exposed to the risk of claims by Libya;

Whereas the United Nations Security Council has adopted Resolution 883 (1993) of 11 November 1993 which, in its paragraph 8, deals with claims by Libya in relation to contracts and transactions the performance of which was affected by measures imposed by the Security Council pursuant to Resolution 883 (1993) and related resolutions;

Whereas it is necessary to protect operators permanently against such claims and to prevent Libya from obtaining compensation for the negative effects of the embargo;

Whereas the Community has agreed that Libya must comply in full with the provisions of paragraph 8 of United Nations Security Council Resolution 883 (1993) and considers that, in deciding whether to reduce or lift measures taken against Libya, particular account must be taken of any failure by Libya to comply with paragraph 8 of Resolution 883 (1993),

HAS ADOPTED THIS REGULATION:

Article 1

For the purposes of this Regulation:

1. 'contract or transaction' means any transaction of whatever form and whatever the applicable law, whether comprising one or more contracts or similar

obligations made between the same or different parties; for this purpose 'contract' includes a bond, financial guarantee and indemnity or credit whether legally independent or not and any related provision arising under or in connection with the transaction;

2. 'claim' means any claim, whether asserted by legal proceedings or not, made before or after the date of entry into force of this Regulation, under or in connection with a contract or transaction, and in particular includes:

(a) a claim for performance of any obligation arising under in connection with a contract or transaction;

(b) a claim for extension or payment of a bond, financial guarantee or indemnity of whatever form;

(c) a claim for compensation in respect of a contract or transaction;

(d) a counter-claim;

(e) a claim for the recognition or enforcement, including by the procedure of exequatur, of a judgment, an arbitration award or an equivalent decision, wherever made or given;

3. 'measures decided on pursuant to United Nations Security Council Resolution 883 (1993) and related resolutions' means measures of the United Nations Security Council or measures introduced by the European Communities or any State, country or international organization in conformity with, as required by, or in connection with the implementation of relevant decisions of the United Nations Security Council, or any action authorized by the United Nations Security Council, in respect of the prevention of certain trade with Libya;

4. 'person or body in Libya' means

(a) the Libyan State or any public authority thereof;

(b) any Libyan national;

(c) any body having its registered office or headquarters in Libya;

(d) any body controlled, directly or indirectly, by one or more of the abovementioned persons or bodies;

(e) any person claiming through or for the benefit of any person or body mentioned under (a), (b), (c) or (d) above.

⁽¹⁾ OJ No L 101, 15. 4. 1992, p. 53.

⁽²⁾ See page 1 of this Official Journal.

Without prejudice to Article 2, performance of a contract of transaction shall also be regarded as having been affected by measures decided on pursuant to United Nations Security Council Resolution 883 (1993) and related resolutions where the existence or content of the claim results directly or indirectly from those measures.

Article 2

1. It shall be prohibited to satisfy or to take any step to satisfy a claim made by;

- (a) a person or body in Libya or acting through a person or body in Libya;
- (b) any person or body acting, directly or indirectly, on behalf of or for the benefit of one or more persons or bodies in Libya;
- (c) any person or body taking advantage of a transfer or rights of, or otherwise claiming through or under, one or more persons or bodies in Libya;
- (d) any other person or body referred to in paragraph 8 of United Nations Security Council Resolution 883 (1993);
- (e) any person or body making a claim arising from or in connection with the payment of a bond or financial guarantee or indemnity to one or more of the above-mentioned persons or bodies,

under or in connection with a contract or transaction the performance of which was affected, directly or indirectly, wholly or in part, by the measures decided on pursuant to United Nations Security Council Resolution 883 (1993) and related resolutions.

2. The prohibition referred to in paragraph 1 shall apply within the Community and to any national of a Member State and any body which is incorporated or constituted under the law of a Member State.

Article 3

Without prejudice to the measures decided on pursuant to United Nations Security Council Resolution 883 (1993) and related resolutions, Article 2 shall not apply;

- (a) to claims relating to contracts or transactions, with the exception of any bond, financial guarantee or indemnity, in respect of which the persons or bodies referred to in the said Article prove to a court in a Member State that the claim was accepted by the parties prior to the adoption of the measures decided on pursuant to United Nations Security Council Resolution 883 (1993) and related resolutions, and that those measures have had no effect on the existence or content of the claim;

- (b) to claims for payment under an insurance contract in respect of an event occurring prior to the adoption of the measures referred to in Article 2 or under an insurance contract where such insurance is compulsory under the law of a Member State;

- (c) to claims for payment of sums paid into an account payment from which was blocked pursuant to the measures referred to in Article 2 provided that such payment does not concern sums paid under bonds in respect of contracts referred to in the said Article;

- (d) to claims relating to contracts of employment subject to the law of any Member State;

- (e) to claims for payment for goods which the persons or bodies referred to in Article 2 prove to a court in a Member State were exported prior to the adoption of the measures decided on pursuant to United Nations Security Council Resolution 883 (1993) and related resolutions and that those measures have had no effect on the existence or content of the claim;

- (f) to claims for sums which the persons or bodies referred to in Article 2 prove to a court in a Member State are due under any loan made prior to the adoption of the measures decided on pursuant to United Nations Security Council Resolution 883 (1993) and related resolutions and that those measures have had no effect on the existence or content of the claim,

provided that the claim includes no amount, by way of interest, charge or otherwise, to compensate for the fact that performance was, as a result of those measures, not made in accordance with the terms of the relevant contract or transaction.

Article 4

In any proceedings for the enforcement of a claim, the onus of proving that satisfying the claim is not prohibited by Article 2 shall be on the person seeking the enforcement of that claim.

Article 5

Each Member State shall determine the sanctions to be imposed where the provisions of this Regulation are infringed.

Article 6

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

It shall apply as of 1 December 1993, 00.01 hours Eastern Standard Time in New York.

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

Done at Brussels, 29 November 1993.

For the Council

The President

G. COËME

(Common position defined by the Council of the European Union)

COUNCIL DECISION

of 22 November 1993

on the common position defined on the basis of Article J.2 of the Treaty on European Union with regard to the reduction of economic relations with Libya

(93/614/CFSP)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article J.2 thereof,

Having regard to Resolution 883(93) adopted by the United Nations Security Council on 11 November 1993,

HAS DECIDED AS FOLLOWS:

1. Economic relations with Libya shall be reduced in accordance with the relevant provisions of Resolution 883(93) adopted by the Security Council on 11 November 1993.
2. This Decision shall be published in the Official Journal.

Done at Luxembourg, 22 November 1993.

For the Council

The President

W. CLAES
