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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1263/94

of 30 May 1994

introducing a discontinuation of certain economic and financial relations with Haiti

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Decision 94/315/CFSP of 30 May 1994 concerning the common position defined on the basis of Article J.2 of the Treaty on European Union regarding the reduction of economic relations with Haiti ⁽¹⁾,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Monetary Committee,

Whereas the United Nations Security Council, in view of the persistent absence of democracy and rule of law in Haiti, in particular the refusal of the military authorities in that country to comply in full with the resolutions of the Security Council and the provisions of the Governors Island Agreement, and in view of the serious violation of human rights in Haiti, and acting under Chapter VII of the Charter of the United Nations, has adopted resolution 917 of 6 May 1994;

Whereas resolution 917 (1994) obliges all States to discontinue certain economic relations with Haiti;

Whereas the Security Council in resolution 917 (1994) calls upon all States to act strictly in accordance with the provisions of that resolution and/or the earlier relevant resolutions, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or licence or permit granted prior to the effective date of the measures in resolution 917 (1994) or earlier resolutions;

Whereas resolution 917 (1994) provides for certain exceptions to its provisions when certain conditions are fulfilled and/or certain procedures are followed;

Whereas, for reasons of transparency, the Community legislation, implementing resolution 917 (1994) and other relevant legislation, should be incorporated in an all-embracing Community instrument;

Whereas, under these conditions, Council Regulation (EEC) No 1608/93 of 24 June 1993 introducing an embargo concerning certain trade between the European Economic Community and Haiti ⁽²⁾ and Council Regulation (EEC) No 3028/93 of 28 October 1993 repealing the suspension of the embargo concerning certain trade between the European Economic Community and Haiti and amending Regulation (EEC) No 1608/93 introducing this embargo ⁽³⁾ can be repealed,

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 Haiti.

2. The permission referred to in paragraph 1 shall, however, be granted when the aircraft performs a regularly scheduled commercial passenger flight, or when the aircraft is used for a particular flight that is approved by the Committee established by resolution 841 (1993) for humanitarian purposes or for other purposes consistent with resolution 917 (1994) and other relevant resolutions.

⁽¹⁾ See page 10 of this Official Journal.

⁽²⁾ OJ No L 155, 26. 6. 1993, p. 2.

⁽³⁾ OJ No L 270, 30. 10. 1993, p. 73.

Article 2

The following shall be prohibited:

- (a) the introduction into the territory of the Community of all commodities and products originating in or coming from Haiti and having been exported from or transited through Haiti after the date of entry into force of this Regulation;
- (b) the export to, or the transit through, Haiti of all commodities and products, originating in, coming from or in transit through the Community;
- (c) the entering or leaving of the territory or territorial sea of Haiti by any and all traffic carrying commodities or products, falling under paragraphs (a) and (b);
- (d) any activity the object or effect of which is, directly or indirectly, to promote the activities falling under paragraphs (a), (b) or (c).

Article 3

1. The prohibitions of Article 2 (a), (b) and (d) shall not apply to:

- (a) the export from or transit through the Community to Haiti of foodstuffs and supplies intended strictly for medical purposes;
- (b) the import and export of informational materials, including books and other publications, needed for the free flow of information;
- (c) the export of other commodities or products, destined for essential humanitarian needs or in response to requests of President Aristide or the Prime Minister-in-Office Mr Malval;
- (d) petroleum or petroleum products, including propane gas for cooking;
- (e) the import and export of the equipment of journalists entering or leaving Haiti,

on condition that a proper authorization has been obtained from the competent authorities of the Member States, provided that the activities mentioned in points (b), (c), (d) and (e) are referred to.

2. The competent authorities of the Member States shall issue such an authorization for transactions falling under paragraph 1 (b) of this Article as well as in the cases referred to in points (c), (d) and (e), when the Committee established by resolution 841 (1993) has approved or authorized the import or export concerned.

Article 4

1. The prohibitions set out in Article 2 (c) and (d) shall not apply to traffic performed by regularly scheduled maritime shipping lines calling in Haiti with goods falling under Article 3 as well as carrying other commodities and products which are solely being carried in transit to other destinations, on condition that a prior authorization has been obtained from the competent authorities of the country exercising jurisdiction over the ship concerned.

2. The competent authorities of the Member States shall issue an authorization referred to in paragraph 1 of this Article after having confirmed the compliance by the ship with the formal monitoring arrangements established with states cooperating with the legitimate Government of Haiti as provided for in paragraph 1 of resolution 875 (1993) and paragraph 10 of resolution 917 (1994).

Article 5

1. Member States shall take the necessary measures to ensure the implementation of this Regulation, including the imposition of sanctions where the provisions of this Regulation are infringed.

2. Member States shall inform the Commission and the Member States concerned of the measures taken under paragraph 1 and of all other relevant information in connection with this Regulation, in particular on the application of the directives of the Sanctions Committee and on the movement of supplies intended exclusively for medical purposes and foodstuffs.

3. The names and addresses of the competent authorities of the Member States referred to are contained in the Annex⁽¹⁾.

4. The Commission is hereby empowered to amend the Annex on the basis of notifications of the Member States. Such amendments shall be published in the *Official Journal of the European Communities*.

Article 6

Regulations (EEC) No 1608/93 and (EEC) No 3028/93 shall be repealed.

Article 7

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

⁽¹⁾ This Annex will be published at a later date.

incorporated or constituted under the law of a Member State.

permit granted before the entry into force of the Regulation.

Article 8

This Regulation shall apply notwithstanding any rights or obligations conferred on or imposed by any international agreements or any contract entered into or any licence or

Article 9

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 Brussels, 30 May 1994.

For the Council

The President

G. MORAITIS

COUNCIL REGULATION (EC) No 1264/94

of 30 May 1994

prohibiting the satisfying of claims by the Haitian authorities with regard to contracts and transactions the performance of which was affected by the measures imposed by or pursuant to United Nations Security Council resolutions 917 (1994), 841 (1993), 873 (1993) and 875 (1993)

THE COUNCIL OF THE EUROPEAN UNION,

the authorities of Haiti from obtaining compensation for the negative effects of the embargo;

Having regard to the Treaty establishing the European Community, and in particular Article 73g and Article 228a thereof,

Whereas the Community considers that, in deciding whether to reduce of lift measures taken against the authorities of Haiti, particular account must be taken of any failure by these authorities to comply with paragraph 11 of resolution 917 (1994),

Having regard to Council Decision 94/315/CFSP of 30 May 1994 concerning the common position defined on the basis of Article J.2 of the Treaty on European Union regarding the reduction of economic relations with Haiti ⁽¹⁾,

HAS ADOPTED THIS REGULATION:

Having regard to the proposal from the Commission,

Article 1

Whereas under Council Regulation (EEC) No 1608/93 of 24 June 1993 introducing an embargo concerning certain trade between the European Economic Community and Haiti ⁽²⁾ and Council Regulation (EEC) No 3028/93 of 28 October 1993 repealing the suspension of the embargo concerning certain trade between the European Economic Community and Haiti and amending Regulation (EEC) No 1608/93 introducing this embargo ⁽³⁾ and Council Regulation (EC) No 1263/94 of introducing a discontinuation of certain financial and economic relations with Haiti ⁽⁴⁾;

For the purposes of this Regulation:

Whereas, as a consequence of these measures, economic operators in the Community and third countries are exposed to the risk of claims by the authorities of Haiti concerning contracts or transactions the performance of which was affected by United Nations Security Council resolutions 917 (1994), 841 (1993), 873 (1993) and 875 (1993);

Whereas paragraph 11 of resolution 917 (1994) obliges all States to prevent the satisfaction of such claims by the Haitian authorities;

Whereas it is therefore necessary to protect economic operators permanently against such claims and to prevent

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;

⁽¹⁾ See page 10 of this Official Journal.

⁽²⁾ OJ No L 155, 26. 6. 1993, p. 2.

⁽³⁾ OJ No L 270, 30. 10. 1993, p. 73.

⁽⁴⁾ See page 1 of this Official Journal.

3. 'measures decided on pursuant to United Nations Security Council resolution 917 (1994) 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 discontinuation of certain financial and economic relations with Haiti;

4. 'person or body in Haiti' means

- (a) the authorities in Haiti;
- (b) any Haitian national;
- (c) any body having its registered office or head-quarters in Haiti;
- (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 referred to in (a), (b), (c) or (d).

Without prejudice to Article 2, performance of a contract or transaction shall also be regarded as having been affected by measures decided on pursuant to United Nations Security Council resolution 917 (1994) 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 Haiti or acting through a person or body in Haiti;
- (b) any person or body acting, directly or indirectly, on behalf of or for the benefit of one or more persons or bodies in Haiti;
- (c) any person or body taking advantage of a transfer or rights of, otherwise claiming through or under, one or more persons or bodies in Haiti;
- (d) any other person or body referred to in paragraph 11 of United Nations Security Council resolution 917 (1994);
- (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 abovementioned 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 917 (1994) 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 917 (1994) 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 917 (1994) 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 917 (1994) 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 917 (1994) 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*.

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

Done at Brussels, 30 May 1994.

For the Council

The President

G. MORAITIS

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL RECOMMENDATION

of 30 May 1994

concerning a discontinuation of certain economic and financial relations with Haiti

(94/313/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 73g thereof,

Having regard to Council Decision 94/315/CFSP of 30 May 1994 concerning the common position defined on the basis of Article J.2 of the Treaty on European Union regarding the reduction of economic relations with Haiti ⁽¹⁾,

Having regard to the proposal from the Commission,

HEREBY RECOMMENDS:

1. The Member States and the Commission will inform each other and concert regarding the measures to be taken in order to implement Article 1 (2) of Decision 94/315/CFSP and exchange all relevant information concerning the implementation of this recommendation.
2. The funds and financial resources referred to in paragraph 4 of United Nations Security Council resolution 917 (1994) should be construed as meaning funds or financial resources of whatever kind or origin including, but not limited to, cash, liquid assets, payment claims, guarantees and

documentary credits, funds derived or generated from real property, investments, shares, bonds and other securities, as well as gold and other precious metals.

3. Member States are to ensure that, subject to the granting of authorization by their competent authorities, the measures which they take do not apply to:
 - (a) exceptions requested by President Aristide and the Prime Minister-in-Office, Mr Malval;
 - (b) payments of due interest or of similar remuneration on the funds and financial resources referred to in point 2, provided that they take place within the Community and are made to the persons or bodies entitled thereto;
 - (c) the debiting of accounts in relation to the maintenance of deposits or in relation to other financial services rendered in respect of those accounts.

Done at Brussels, 30 May 1994

For the Council
The President
G. MORAITIS

⁽¹⁾ See page 10 of this Official Journal.

DECISION OF THE REPRESENTATIVES OF THE GOVERNMENTS OF THE
MEMBER STATES, MEETING WITHIN THE COUNCIL

of 30 May 1994

introducing a discontinuation of certain economic and financial relations with Haiti

(94/314/ECSC)

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

HAVE DECIDED AS FOLLOWS:

Article 1

The following shall be prohibited:

Having regard to Council Decision 94/315/CFSP of 30 May 1994 concerning the common position defined on the basis of Article J.2 of the Treaty on European Union regarding the reduction of economic relations with Haiti ⁽¹⁾,

- (a) the introduction into the territory of the Community of all commodities and products falling under the ECSC Treaty, originating in or coming from Haiti, and having been exported from or transited through that country after the date of entry into force of this Decision;
- (b) the export to, or the transit through, Haiti of all commodities and products, originating in, coming from or in transit through the Community;
- (c) the entering or leaving of the territory or territorial sea of Haiti by any and all traffic carrying commodities or products falling under the ECSC Treaty and falling under paragraph (a) and (b);
- (d) any activity the object or effect of which is, directly or indirectly, to promote the activities falling under paragraph (a), (b) or (c).

Whereas the United Nations Security Council, in view of the persistent absence of democracy and rule of law in Haiti, in particular the refusal of the military authorities in that country to comply in full with the relevant resolutions of the Security Council and the provisions of the Governors Island Agreement, and in view of the serious violation of human rights in Haiti, and acting under chapter VII of the Charter of the United Nations, has adopted resolution 917 on 6 May 1994;

Whereas resolution 917 (1994) obliges all States to discontinue certain economic relations with Haiti;

Article 2

Whereas the Security Council in resolution 917 (1994) calls upon all States to act strictly in accordance with the provisions of that resolution and/or the earlier relevant resolutions, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or licence or permit granted prior to the effective date of the measures in resolution 917 (1994) or earlier resolutions;

1. The prohibitions set out in Article 1 (a), (b) and (d) shall not apply to the export of commodities or products falling under the ECSC Treaty destined for essential humanitarian needs or in response to requests of President Aristide, on the condition that a prior authorization has been obtained from the competent authorities of the Member States.

Whereas resolution 917 (1994) provides for certain exceptions to its provisions when certain conditions are fulfilled and/or certain procedures are followed,

2. The competent authorities of the Member States shall issue the authorization referred to in paragraph 1 when the Committee established by Security Council resolution 841 (1993) has approved or authorized the export.

Article 3

In agreement with the Commission,

1. The prohibitions set out in Article 1 (c) and (d) shall not apply to traffic performed by regularly scheduled maritime shipping lines calling in Haiti with commodities and products falling under Article 2 as well as carrying other commodities and products which are solely being carried in transit to other destinations, on the condition

⁽¹⁾ See page 10 of this Official Journal.

that a prior authorization has been obtained from the competent authorities of the country exercising jurisdiction over the ship concerned.

2. The competent authorities of the Member States shall issue the authorization referred to in paragraph 1 of this Article after having established the compliance by the ship with the formal monitoring arrangements established with States cooperating with the legitimate Government of Haiti as provided for in paragraph 1 of resolution 875 (1993) and paragraph 10 of resolution 917 (1994).

Article 4

1. Member States shall take the necessary measures to ensure the implementation of this Decision, including the imposition of sanctions where the provisions of this Decision are infringed.

2. Member States shall inform each other and the Commission of the measures taken under paragraph 1 and of all other relevant information in connection with this Decision.

3. The names and addresses of the competent authorities of the Member States referred to are contained in the Annex ⁽¹⁾.

4. The Commission is hereby empowered to amend the Annex on the basis of notification of the Member States. Such amendments shall be published in the *Official Journal of the European Communities*.

Article 5

This Decision 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 6

This Decision 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 the entry into force of this Decision.

Article 7

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

Done at Brussels, 30 May 1994

The President

G. MORAITIS

(1) This Annex will be published at a later date.

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

COUNCIL DECISION

of 30 May 1994

concerning the common position defined on the basis of Article J.2 of the Treaty on European Union regarding the reduction of economic relations with Haiti

(94/315/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 917 (1994) adopted on 6 May 1994 by the United Nations Security Council,

HAS DECIDED AS FOLLOWS:

Article 1

1. Economic relations with Haiti shall be reduced in accordance with the relevant mandatory provisions of resolution 917 (1994) adopted on 6 May 1994 by the United Nations Security Council.

2. Member States shall adopt without delay the laws, regulations or administrative measures necessary to freeze the funds and financial resources referred to in paragraph 4 of that resolution.

Article 2

This Decision shall be published in the Official Journal.

Done at Brussels, 30 May 1994

For the Council

The President

G. MORAITIS