

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,

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

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);

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

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

Whereas the Community considers that, in deciding whether to reduce or 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),

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;

(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
