

# COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

## COUNCIL REGULATION (EC)

introducing a discontinuation of certain  
financial and economic relations with Haiti

DRAFT DECISION OF THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER  
STATES OF THE EUROPEAN COAL AND STEEL COMMUNITY  
MEETING WITHIN THE THE COUNCIL

INTRODUCING A DISCONTINUATION OF CERTAIN ECONOMIC  
RELATIONS WITH HAITI

Proposal for a

## COUNCIL REGULATION (EC)

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)

(presented by the Commission)

EXPLANATORY MEMORANDUM

The Security Council of the United Nations adopted on 6 May 1994 Resolution 917, which obliges the Member States of the United Nations to strengthen the existing financial and economic embargo of Haiti.

The present proposals of the Commission for Community legislation (EC and ECSC) implementing Resolution 917 (1994) follows closely the existing Community legislation with regard to the embargoes concerning Iraq, the federal Republic of Yugoslavia (Serbia and Montenegro) and Libya as far as the trade embargo is concerned.

The provisions with regard to the financial embargo follow closely the proposal of the Commission with regard to the extension of the Community legislation concerning the embargo of Libya on which the Monetary Committee already expressed its opinion.

The proposal with regard to the prohibition of satisfying claims of the Haitian authorities is identical, mutatis mutandis, to the Council Regulation dealing with the same subject in respect of Libya.

Council Regulation (EC) N° ...../94  
of ..... May 1994  
introducing a discontinuation of certain  
financial and economic relations with Haiti

**THE COUNCIL OF THE EUROPEAN UNION**

Having regard to the Treaty establishing the European Community, and in particular Articles 73G and 228A thereof,

Having regard to Decision 94/...../CFSP adopted by the Council on ..... May 1994,

Having regard to the proposal of 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 by 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 this Resolution obliges all States to discontinue certain economic relations with Haiti and urges them strongly to freeze without delay the funds and financial resources of certain persons in the military and police forces in order to ensure that neither these nor any other funds and financial resources are made available, by their nationals or by any persons within their territory, directly or indirectly, to or for the benefit of such persons or of the Haitian military, including the police ;

Whereas the Security Council in this Resolution calls upon all States to act strictly in accordance with the provisions of this Resolution and of the earlier relevant Resolutions, notwithstanding the existence of any rights of obligations conferred or imposed by any international agreement of 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 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) N° 1608/93<sup>(1)</sup> and 3028/93<sup>(2)</sup> 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;

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(1) O.J. N° L 155, 26.6.1993 p. 2

(2) O.J. N° L 270, 30.10.1993, p. 73

- (2) Permission 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 and other relevant Resolutions.

Article 2

- (1) For the purpose of this Article:

- a. "Haitian military" means all members of whatever rank in the Haitian military, including the police, and their immediate families; the major participants in the coup d'état of 1991 and in the illegal governments since the coup d'etat and their immediate families; those employed by or acting on behalf of the Haitian military and their immediate families.
- b. "funds or financial resources" means 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 property, investments, shares, bonds and other securities, as well as gold and other precious metals.

- (2)

- a. the disposal by the Haitian military of any funds or financial resources owned or directly or indirectly controlled by them or the government of Haiti shall be prohibited;

- b. no other funds or financial resources shall be made available to or for the benefit of the Haitian military;
  - c. any activity shall be prohibited whose object or effect is to further the activities that are prohibited under paragraph(2)a. and (2)b. of this Article, except activities of a purely administrative character.
- 3.)
- a. list of persons falling under the definition of Haitian military given under paragraph (1)a. of this Article is contained in Annex 1 to this Regulation.
  - b. the Commission is hereby empowered to update this list on the basis of the information received by the Committee established by Resolution 841 (1993). Such updates shall be published in the Official Journal of the European Communities.

### Article 3

Provided that an authorization has been obtained from the relevant authorities of the Member States ;

- a. the prohibitions of Article (2)a. and c. do not apply to a release requested by President Aristide;
- b. the prohibitions of Article (2)b. and c. do not apply to the payments of due interest or of similar remunerations on the funds and financial resources falling under Article (2)a. provided that they take place within the Community and to the persons or bodies directly entitled thereto.

#### Article 4

As from 23.59 Eastern Standard time (USA) on 21 May 1994 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 21 May 1994;
- 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. of this Article.
- d. any activity the object or effect of which is to promote directly or indirectly the activities falling under the foregoing paragraphs of this Article.

#### Article 5

- (1) The prohibitions of Article 4a. 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;
- 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 the condition that a proper authorization has been obtained from the competent authorities of the Member States.

- (2) the competent authorities of the Member States shall issue such an authorization for transactions falling under paragraphs (1)a. and b. of this Article as well as in all other cases when the Committee established by Resolution 841 (1993) has approved or authorized the import or export concerned.

#### Article 6

- (1) the prohibitions of Article 4c. and d. do not apply to traffic performed by regularly scheduled maritime shipping lines calling in Haiti with goods falling under Article 5 of this Regulation as well as carrying other commodities and products which are solely being carried in transit to other destinations, on the 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 such an authorization after having confirmed the compliance by the ship with the format 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 7

- a. 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.
- b. Member States shall inform each other and the Commission of the measures taken under paragraph a. of this Article and of all other relevant information in connection with this Regulation.
- c. the names and addresses of the competent authorities of the Member States referred to are contained in Annex II of this Regulation.

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

#### Article 8

Regulations (EEC) N°.s 1608/93 and 3028/93 shall be repealed with effect from 22 May 1994.

### Article 9

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

### Article 10

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 permit granted before the entry into force of the Regulation.

### Article 11

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, ..... May 1994.

DRAFT DECISION OF THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER  
STATES OF THE EUROPEAN COAL AND STEEL COMMUNITY  
MEETING WITHIN THE THE COUNCIL  
(94/ /BCSC)  
INTRODUCING A DISCONTINUATION OF CERTAIN ECONOMIC  
RELATIONS WITH HAITI

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

Having regard to Decision 94/ /CFSP<sup>(1)</sup> adopted by the Council of  
the European Union on May 1994 ;

Whereas the United Nations Security Council, in view of the persistent  
absence of democracy and rule of law in Haiti, in particular by 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 this Resolution obliges all States to discontinue certain  
economic relations with Haiti ;

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

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(1) O.J. N° L

Whereas Resolution 917 provides for certain exceptions to its provisions when certain conditions are fulfilled and/or certain procedures are followed ;

In agreement with the Commission,

HAVE DECIDED AS FOLLOWS :

#### Article 1

As from 23.59 Eastern Standard Time (USA) on 21 May 1994 the following shall be prohibited :

- 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 this country after 21 May 1994 ;
- 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 paragraphs a. and b. of this Article ;
- d) any activity the object or effect it is, directly or indirectly, to promote the activities falling under the foregoing paragraphs of this Article.

#### Article 2

- a) The prohibitions of 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.

- b) The competent authorities of the Member States shall issue such an authorization when the Committee established by Security Council Resolution 841 (1993) has approved or authorized the export.

### Article 3

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

- a) Member States shall take the necessary measures to ensure the implementation of this Decision, including the determination of sanctions to be imposed where the provisions of this Decision are infringed ;
- b) Member States shall inform each other and the Commission of the measures taken under paragraph a. of this Article and of all other relevant information in connection with this Decision ;
- c) The names and addresses of the competent authorities of the Member States referred to are contained in Annex I of this Decision.

The Commission is hereby empowered to amend this Annex on the basis of notifications 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 vessel under the jurisdiction of a Member State, and to any person elsewhere who is a national of a Member States and anybody 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.

COUNCIL REGULATION (EC) Nr        /94  
OF        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 Articles 73 G and 228 A thereof,

Having regard to Decision 94/        /CFSP<sup>(1)</sup> adopted by the Council of  
the European Union on        May 1994,

Having regard to the proposal of the Commission,

Whereas under Regulations (EEC) Nrs. 1608/93<sup>(2)</sup> and 3028/93<sup>(3)</sup> and  
(EC) N°        /94<sup>(4)</sup> the Community has taken measures to discontinue  
certain financial and economic relations with Haiti ;

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 the performance of contracts or  
transactions which was affected by United Nations Security Council  
Resolutions 917 (1994), 841 (1993), 873 (1993) and 875 (1993) ;

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

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(1) O.J. N° L

(2) O.J. N° L 155, 26.6.1993, p. 2

(3) O.J. N° L 270, 30.10.1993, p. 73

(4) O.J. N° L

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 Security Council 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.



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 mentioned under (a), (b), (c) or (d) above.

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) ;

- (c) 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 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 resolution 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.

It shall apply as of 21 May 1994 23.59 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,

For the Council

EXPLANATORY MEMORANDUM

The Security Council of the United Nations adopted on 6 May 1994 Resolution 917, which obliges the Member States of the United Nations to strengthen the existing financial and economic embargo of Haiti.

The present proposals of the Commission for Community legislation (EC and ECSC) implementing Resolution 917 (1994) follows closely the existing Community legislation with regard to the embargoes concerning Iraq, the federal Republic of Yugoslavia (Serbia and Montenegro) and Libya as far as the trade embargo is concerned.

The provisions with regard to the financial embargo follow closely the proposal of the Commission with regard to the extension of the Community legislation concerning the embargo of Libya on which the Monetary Committee already expressed its opinion.

The proposal with regard to the prohibition of satisfying claims of the Haitian authorities is identical, mutatis mutandis, to the Council Regulation dealing with the same subject in respect of Libya.