

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(93) 592 final

Brussels, 23 November 1993

Proposal for a

COUNCIL REGULATION (EC)

preventing the supply of certain goods and services to Libya

Proposal for a

COUNCIL REGULATION (EC)

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

(presented by the Commission)

Proposal for a

COUNCIL REGULATION (EC)

preventing the supply of certain goods and services to Libya

EXPLANATORY MEMORANDUM

1. The Security Council has decided to extend the scope of the embargo of Libya in view of the persistent non-compliance by Libya with its Resolutions 731 (1992) and 748 (1992).

The Community has therefore to extend the scope of its Council Regulation (EEC) No. 945/92 accordingly.

2. To enhance the transparency of the Community legislation with regard to the embargo of Libya, the existing embargo rules and the abovementioned extension of the embargo are contained in a consolidated form in the new Regulation hereby proposed to the Council.

As a consequence, the proposal also contains the repeal of the Regulation (EEC) No. 945/92.

PROPOSAL for a
COUNCIL REGULATION (EC) No /93
of 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 has adopted Council Regulation (EEC) No 945/92 of 14 April 1992⁽¹⁾ in accordance with Resolution 748 (1992) of the United Nations Security Council;

Whereas the United Nations Security 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Whereas under these conditions Council Regulation (EEC) No 945/92 can be repealed;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 neither prevent the supply of some emergency equipment and equipment and services directly related to civilian air traffic control;

HAS ADOPTED THIS REGULATION:

(1) O.J. N° L 101 of 15.4.1992, p. 53.

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.
- 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

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

Article 4

Funds or other financial resources, derived from the sale or supply of any petroleum or petroleum product, including natural gas and natural gas products, agricultural product or commodity, originating in Libya and exported therefrom after 1 December 1993, and accruing to any commercial, industrial or public utility undertaking which is owned or controlled, directly or indirectly, by the Government or public authorities of Libya, or any entity, wherever located or organised, owned or controlled by the Government or public authorities of Libya or any person identified by the appropriate authorities of the Member States as acting for the purposes of this Regulation, on behalf

of the Government or public authorities of Libya or the abovementioned entities shall be paid into bank accounts which have been opened exclusively for these funds or financial resources after 1 December 1993.

Article 5

The sale or supply to Libya of products falling under the same tariff nomenclature codes as the products listed in the Annex but whose sale or supply is not prohibited under Article 3 shall be subject to prior authorization to be issued by the competent authorities of the Member States.

Article 6

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 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 incorporated or constituted under the law of a Member State.

Article 8

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

Article 9

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

Article 10

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

It shall be applicable 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, 1993

ANNEX

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

A)

- any aircraft or aircraft components
- any engineering and maintenance servicing 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 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 to large size 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 (4000 m³/H) and small head (10 bars)
- Boosting pumps within the same range of flow rates
- Inline pipe line inspection tools and cleaning devices (ie pigging tools) (16' and above)
- Metering equipment of large capacity (1000 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 8 standards
- Pumps meeting American Petroleum Institute 610 standards
- Catalytic reactors meeting American Society of Mechanical Engineers 8 standards
- Prepared catalysts, including the following :
Catalysts containing platinum Catalysts containing Molybdenum

V. Spare parts destined for the items in (I) to (IV) above.

Proposal for a

COUNCIL REGULATION (EC)

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

EXPLANATORY MEMORANDUM

1. The Security Council of the United Nations adopted Resolution 883(1993), extending the embargo of Libya.

Paragraph 8 of Resolution 883 1993 prohibits the satisfying of claims with regard to contracts and transactions, the performance of which was affected by the Resolution 883 (1993) and related resolutions.

2. The formulation of paragraph 8 of UNSC Resolution 883(1993) follows, mutatis mutandis, the formulation of paragraph 29 of UNSC Resolution 687(1991), dealing with such claims by Iraq.

3. The Community has implemented paragraph 29 of UNSC Resolution 687(1991), by adopting Council Regulation (EEC) No. 3541/92 of 7 December 1992.

4. The present proposal for a Council Regulation aims at implementing paragraph 8 of UNSC Resolution 883 (1993), and given the abovementioned similarity between paragraphs 29 and 8 of the respective UNSC Resolutions, the present proposal follows, mutatis mutandis, the formulation of Council Regulation (EEC) 3541/92.

PROPOSAL for a
COUNCIL REGULATION (EC) N° /93 of
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

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) N° 945/92⁽¹⁾, and No (EC).../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;

(1) OJ No L 101 of 15.4.1992, p.53

(2) OJ L ... of1993, p. ...

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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 and its Member States have agreed that Libya must comply in full with the provisions of paragraph 8 of United Nations Security Council Resolution 883(1993) and consider 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 the Resolution 883(1993);

HAS ADOPTED THIS REGULATION

[REDACTED]

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 or 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 counterclaim

 - (e) a claim for the recognition or enforcement, including by the procedure of exequatur, of a judgement, 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 including any military action, authorized by the United Nations Security Council, in respect of the prevention of certain trade with Libya;

[REDACTED]

4. 'person or body in Libya means

- (a) the Libyan state or any public authority thereof ;
- (b) any Libyan national or person resident in Libya.
- (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.

Without prejudice to Article 2, performance of a contract or transaction shall also be regarded as having been affected by the 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 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 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 883(1993) and related resolutions.

2. This prohibition 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;

[REDACTED]

(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 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 be applicable 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

For the Council

The President

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DOCUMENTS

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