

Restrictive Measures in Respect of Cote D'Ivoire

EU Council Regulation 25/2011

The European Union has recently implemented measures to widen the scope of sanctions imposed on a number of individuals, entities and bodies in Cote D'Ivoire.

Background

UN Security Council Resolution 1572 was adopted on 15th November 2004, introducing financial sanctions against persons designated by the UN Sanctions Committee as being a threat to democracy in Cote D'Ivoire.

The measures set out in UN Resolution 1572 were implemented by the European Union pursuant to Council Regulation 560/2005, which was passed and became effective on 12th April 2005.

EU Council Regulation 25/2011

Council Regulation 25/2011 was adopted by the EU on 14th January 2011, coming into immediate effect in all EU Member States.

The purpose of Regulation 25/2011 is to impose wider restrictions, including an asset freeze, on persons, entities and bodies who are considered to be obstructing democracy and interfering with the proper outcome of elections in the Ivory Coast. The Regulation has immediate effect upon all natural persons and legal persons, entities and bodies that are nationals of, or are incorporated or constituted under the law of a Member State, or are doing business within the EU.

Under Article 2 all funds and economic resources belonging to, owned, held or controlled by those sanctioned parties as listed in Annex 1 are frozen, and no funds or economic resources shall be made available, whether directly or indirectly, for the benefit of the sanctioned entities. Participation, knowingly or intentionally in activities which have the object or effect of circumventing the sanctions, is prohibited.

Various exceptions are set out in Articles 3 to 7, which relate to the provision of funds or economic resources for: -

- payment of basic expenses such as foodstuffs, medicines, taxes, etc of designated persons and their dependant family members.
- provision of legal services
- maintenance of funds or economic resources that are frozen, such as bank charges.
- satisfying a judicial, administrative or arbitral lien established prior to 15th November 2004, being the date upon which UN Resolution 1572/2004 was passed
- payment of interest into frozen accounts, which shall then also be frozen
- amounts due under contracts agreements or obligations concluded or which arose prior to 14th January 2011, provided that such amounts shall then also be frozen

An application may be made to the EU for authorisation in derogation of the sanctions for the payment of extraordinary expenses. Such applications are to be referred by the relevant Member State to the Sanctions Committee of the UN for determination.

Article 12 provides that Member States shall lay down their own rules on penalties applicable to the infringement of the sanctions.

The sanctioned parties are made up largely of government officials, however, also included are: -

- PETROCI – National Petroleum Operations Company of Cote D'Ivoire
- SIR – Ivorian Refining Corp.
- Autonomous Port of Abidjan
- Autonomous Port of San Pedro
- BNI – National Investment Bank
- BFA – Agricultural Credit Bank

- Versus Bank

Those members who fall within the ambit of Regulation 25/2011 may be impacted by the sanctions measures if they carry on business with any of the listed companies or individuals, or if they or their business partners use any of the sanctioned banks. In addition, it is probable that the use of the ports of Abidjan and San Pedro could amount to a breach of the sanctions if such use involves payments to the port authorities. Furthermore, as the activities of the Club fall within the ambit of this Regulation, in the event of claims arising which require the provision of security to sanctioned parties, it is unlikely that the Club would be able to provide such security on behalf of Members without formal approval from the relevant EU Member State, and Her Majesty's Treasury. Obtaining approval would probably involve a significant delay, and is likely to be refused if the security is in favour of a sanctioned entity or deemed to circumvent the sanctions.

The above risks are ones which Members should consider in the light of their trading contracts.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:011:001:017:EN:PDF>

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