

# New EU Ivory Coast Sanctions



On 15 January 2011, EU Council Regulation No. 25/2011 entered into force. The Regulation imposes certain trade and financial restrictions in relation to the Ivory Coast which effectively prevent most trade between the EU and the Ivory Coast. This Regulation amends a previous EU Regulation relating to the Ivory Coast, No. 560/2005. These amendments have been made as a result of political developments in the Ivory Coast following recent presidential elections in the country.

## Background to the sanctions

On 28 November 2010, voters in the Ivory Coast went to the polls in the Presidential election with both the incumbent President, Mr Laurent Gbagbo and the opposition candidate Mr Alassane Ouattara fighting a close election battle. Following this election Mr Ouattara was widely recognised by the international community as the winner of the election. Despite pressure to step down as President, Mr Gbagbo has refused to hand over power to his rival. As a result, Mr Gbagbo is continuing to remain in power while his rival Mr Ouattara is in residence at a hotel in the main city of Abidjan with the protection of UN peacekeepers.

As the EU has recognised Mr Ouattara as the legitimate leader of the country it has introduced sanctions against Mr Gbagbo and those entities that are believed to support his regime in the hope that this will increase the pressure on Mr Gbagbo to leave office.

A turbulent history in the country means that this is not the first time that sanctions have been implemented against the Ivory Coast. On 15 November 2004, the UN Security Council adopted Resolution 1572 which implemented sanctions following an increase in hostilities and humanitarian issues after a ceasefire agreement reached in 2003. This was implemented in the EU by Regulation No 560/2005 on 14 April 2005. The latest EU sanctions amend the 2005 Regulation to reflect further restrictions in light of the disputed election and the EU's stance on Mr Gbagbo and his supporters.

## EU Regulation No 25/2011 (the "Regulation")

The Regulation entered into force on 15 January 2011, the date of its publication in the Official Journal of the European Union. The Regulation states that it is binding in its entirety and is directly applicable in all Member States. Accordingly no further domestic legislation is required to bring it into force.

## Who is subject to the Regulation?

Article 13 of the Regulation provides as follows:

*"This regulation shall apply:*

- a. *within the territory of the Union, including its airspace;*
- b. *on board any aircraft or any vessel under the jurisdiction of a Member State;*
- c. *to any person inside or outside the territory of the Union who is a national of a Member State;*
- d. *to any legal person, entity or body which is incorporated or constituted under the law of a Member State;*
- e. *to any legal person, entity or body in respect of any business done in whole or in part within the Union."*

It is important to note the scope of Article 13(e) which amends the wording of the 2005 Regulation from *"business done within the Community"* to the wider provision of *"business done in whole or in part within the Union"*. This reflects the wording used in the latest EU Iranian sanctions and means that the sanctions will apply to transactions carried out by non-EU entities where only part of the business is carried out within the EU.

## What is the effect of the new Regulation?

The purpose of the Regulation is to prevent trade with sanctioned entities and it is against that background that the provisions must be analysed.

Article 2 of the Regulation freezes the funds of persons, bodies and entities listed in the Annexes to the Regulation who it is believed are contributing to Mr Gbagbo's regime. In addition to this, under Article 2(2) no funds or economic resources are to be made available, directly or indirectly for the benefit of those persons.

The definitions of “funds” and “economic resources” can be found in Article 1 of the original Regulation of 2005 and they are very broad in scope. “Funds” covers *“financial assets and benefits of every kind”*. This definition includes but is not limited to bills of lading, letters of credit, cheques, guarantees and other instruments financing exports. “Economic resources” means *“assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services”*. Those who have read Ince & Co’s “Iranian trade sanctions – an update” (at [www.incelaw.com](http://www.incelaw.com)) will note the similarity between the financial restrictions imposed in respect of the Ivory Coast and those imposed by EU Regulation No. 961/2010 concerning Iran.

An anti-circumvention provision is also included which makes it an offence to knowingly and intentionally participate in an activity the effect of which is, directly or indirectly, to circumvent the measures referred to in Article 2. For example businesses should not make payment to the direction of a non-sanctioned third party in order to obtain services from a sanctioned entity.

### Sanctioned entities

The sanctioned entities are listed in Annex IA to the Regulation. A number of individuals in the Ivory Coast are sanctioned, most of whom it is believed are key supporters of Mr Gbagbo. This includes both the Director-General of the Port of Abidjan and the Director-General of Customs, both parties who could be involved, directly or indirectly in trade transactions at ports in the Ivory Coast.

In addition, among others, the Ivory Coast sanctioned entities include the ports of Abidjan and San Pedro, a number of banks, the National Petroleum Company (PETROCI), the Ivorian Refining Company (SIR) and trade organisations such as the Coffee and Cocoa Trade Management Committee (CGFCC) and the Ivory Coast Association of Natural Rubber Producers (APROCINCI).

### Impact of the Regulation

As a result of the Regulation difficulties arise in respect of any ships calling at one of the sanctioned ports because any payments made to the port (such as payments of port dues or stevedores costs) will be prohibited insofar as they are made by an EU-related entity or where they are made by a non-EU entity but some part of the voyage or transaction in question has been carried out within the EU. It is an offence to attempt to circumvent the restrictions laid down by the Regulation and many potentially affected shipping enterprises are therefore choosing to avoid any potential conflict between complying with the Regulation and

fulfilling their contractual obligations. Press reports suggest that, as a result, some EU shipping lines have temporarily ceased all trading with the port authorities in the Ivory Coast. Other shipping lines have ceased to accept import orders for the Ivory Coast, although their export trade remains unaffected.

As sanctions become more prevalent as a deterrent in the international community and with significant fines for breaches, those involved in the international business community need to be aware and adhere to the various sanctions regimes. With little guidance produced on the application of these sanctions it seems that a cautious approach must be adopted by those continuing to trade with the Ivory Coast.

### Defences and derogations

Again, similarly to the Iranian restrictions, Article 9(a) of this Regulation provides that no liability shall arise where the entity concerned which made funds or economic resources available *“did not know, and had no reasonable cause to suspect, that their actions would infringe the prohibition in question”*. The threshold test for demonstrating “no reasonable cause to suspect” is not however clear and no guidance has been provided by the EU.

Furthermore, Articles 3 and 4 of the Regulation provide for certain derogations from Article 2. These include that under certain conditions, licences can be obtained from the relevant competent authorities of EU Member States to release certain frozen funds or economic resources. In the UK the competent authority is HM Treasury.

Finally, Article 7 provides that Article 2(2) does not prevent financial or credit institutions within the EU from crediting frozen accounts of sanctioned entities. In those circumstances, the funds paid in to those accounts will also be frozen. There is therefore scope for payments to be made to sanctioned entities on the condition that those funds are then frozen, for example where payment was already due under an agreement that was concluded or in relation to an obligation that arose before the asset freeze.

### Contact us

This briefing is intended to provide a general overview of the latest EU restrictions relating to the Ivory Coast. Where specific advice is needed on any aspect of the EU Regulation and its potential effect, please contact Michelle Linderman or your usual contact at Ince & Co.

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