

# RECENT EUROPEAN SANCTIONS AGAINST THE IVORY COAST



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European Council Regulation 25/2011 was signed and came into force on 15 January 2011. It applies to all contracts/agreements entered into on or after this date, and does not apply retrospectively.

## APPLICATION

The Regulation applies:

- (i) within the territory of the Community
- (ii) on board any ship under the jurisdiction of a member state
- (iii) to any person inside or outside of the Community who is a national of a member state
- (iv) to any legal person, group or entity that is incorporated or constituted under the law of a member state, and
- (v) to any legal person, group or entity doing business within the Community.

The Regulation will not apply to a non-EU parent company purely by reason of the fact that it has an EU subsidiary (if the parent company has no EU nationals and if it acts outside the EU, without any involvement from the EU subsidiary). It is however important to consider the degree to which an EU-based subsidiary is 'involved' with the non-EU-based parent company.

## EFFECT

The effect of the Regulation is that funds and economic resources belonging to, owned, held or controlled by the natural and legal persons specifically designated under the Regulation are frozen. In addition, no funds, financial assets or economic resources may be made available directly or indirectly to or for the benefit of those persons.

## SANCTIONED ENTITIES

The Regulation expressly lists the natural and legal persons who are listed and they include:

- the Director-General of the Autonomous Port of Abidjan
- the Autonomous Port of Abidjan
- the Autonomous Port of San Pedro
- Espoir Marine Terminal (Petroci Holding) a.k.a the National Petroleum Operations Company of the Ivory Coast
- the Ivorian Refining Company (SIR)
- together with banks, oil companies and other commodity companies (and individuals).

A full list can be found in the Annex to the Regulation at:

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

## PROHIBITIONS

The Regulation operates as an asset freeze. It is not an express prohibition on trade. It does not limit participation in particular trades (such as oil and gas industries) akin to the US and EU sanctions against Iran. However, it is important to note that the Regulation also restricts the release or provision of all 'economic resources' owned or controlled, directly or indirectly, by the listed persons. This is an absolute prohibition and even payment into a blocked account is prohibited. The Regulation also prohibits activities where the object or effect of which is to circumvent the other prohibitions. The best course, therefore, is for no payment of any kind to be made.

## 'FUNDS' AND 'ECONOMIC RESOURCES'

The definitions of 'funds' and 'economic resources' under the Regulation are drafted in wide terms.

Economic resources include "assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but which can be used to obtain funds, goods or services". Accordingly, a ship would fall within the definition of an 'economic resource'. Therefore, chartering a ship to a named person or entity would be a breach of the Regulation.

Funds are defined under the Regulation as "financial assets and benefits of every kind, including but not limited to... (e) credit, right of set-off, guarantees, performance bonds or other financial commitments...". This is likely to include club letters of security or bank guarantees issued in favour of a named person or entity.

Given the very wide definition of economic resources and funds, the safest course is for members not to enter into any new contracts with the named people/entities.





#### — PAYMENTS

Payments, unless authorised in advance, by an EU Member to the named entity directly would clearly amount to a breach of the Regulation.

It is unlikely that the club would be able to reimburse a member in respect of payments made to discharge a P&I liability to a named entity or person. The authorities may argue that the initial payment would not have been made if there had not been insurance in place and that funds are being made available indirectly to the named person by the club.

The Regulation does not include any blanket prohibition on trading to the Ivory Coast and therefore the trade there is not illegal; however, each particular transaction (e.g. payment of port dues, provision of security, etc.) needs to be considered in turn to determine whether there has been a breach of the Regulation or risk thereof.

#### — DEROGATIONS

There are two important derogations to the prohibition on making funds (etc.) available to the listed persons:

- (a) funds (etc.) may be made available where those were due under contracts that were concluded or arose prior to the date of the asset freeze. Any such funds will be frozen once they arrive in the listed person's account; and
- (b) the prohibition does not give rise to a liability if the natural or legal person who made the funds available did not know, and had no reasonable cause to suspect, that their actions would infringe the prohibition.

#### — PENALTY

The Regulation requires member states to establish penalties. The current position on penalties is unclear. Under UK law, the penalties may include imprisonment (for up to seven years on conviction on indictment or up to six months on summary conviction) and/or a fine (unlimited on conviction on indictment and up to £5,000 on summary conviction).

#### — PRACTICAL ADVICE

In relation to EU members and nationals, payments of monies to the ports of Abidjan and San Pedro, as well as other sanctioned entities, are clearly in breach of the Regulation. Consequently, should a claim result in the Ivory Coast then the club will not be able to pay monies directly or indirectly to any entity that may be designated under the sanctions. Furthermore, the club will not be able to issue security or arrange for the provision of a bank guarantee to designated entities. This may lead to delays.

Whilst there may be significant pressure from charterers to trade to the Ivory Coast, the provision of a letter of indemnity (which may appear to absolve owners of any liability for claims or costs that may arise when trading there) is unlikely to absolve the owner from liability under the Regulation. Also, 'fronting agreements', whereby non-EU entities offer to pay monies to sanctioned entities on behalf of an EU-based entity in return for later reimbursement, are also likely to be caught by the Regulation.

The issue of stowaways is an on-going problem that has yet to be addressed and must be dealt with on a case-by-case basis. There may be an increased risk of stowaways from the Ivory Coast. This may cause additional delays to ships and may present problems under the Regulation for ships trading in the area.