

SANCTIONS UPDATE: CÔTE D'IVOIRE



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This update summarises the key aspects of new EU sanctions against Côte d'Ivoire, which entered into force on 15 January 2011, and which will affect those trading with Côte d'Ivoire, a major exporter of cocoa and coffee.

Background

Following the contested Presidential elections in Côte d'Ivoire at the end of 2010, which the incumbent leader, Mr Laurent Gbagbo, is said to have lost, the EU Council has imposed sanctions against certain natural and legal persons in Côte d'Ivoire. Those persons are said to be directly or indirectly obstructing the process of peace and national reconciliation, and, in particular, are said to be jeopardising the proper outcome of the electoral process.

Council Regulation 25/2011 (the "Regulation")

The Regulation was published on 15 January 2011 and entered into force immediately. It applies (i) within the territory of the Community,

(ii) on board any vessel 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 which 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 effect of the Regulation is that funds and economic resources belonging to, owned, held or controlled by the natural and legal persons named in the Annex to 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. Activities which directly or indirectly circumvent the other prohibitions are themselves prohibited.

As with the sanctions against Iran, "funds" is defined widely to include financial assets and benefits of every kind. This expressly includes letters of credit, bills of lading and bills of sale. "Economic resources", "freezing of funds" and



“freezing of economic resources” are also all widely defined. For example, “economic resources” means 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.

The natural and legal persons who are listed in the Annex to the Regulation include the Director-General of the Autonomous Port of Abidjan, the Autonomous Port of Abidjan itself, and the Autonomous Port of San Pedro itself, together with certain banks, oil companies and other commodity companies (and associated individuals).

Derogations

There are three important derogations from the prohibitions, as follows:

1. The relevant national authority may authorise the release of frozen funds, or a payment, in certain limited circumstances.
2. A payment may be made to a frozen account (but will itself be frozen) where that payment was due under a contract, agreement or obligation that was concluded or arose prior to the date of the asset freeze.

3. The prohibition does not give rise to a liability if the natural or legal person which made the funds available did not know, and had no reasonable cause to suspect, that their actions would infringe the prohibition.

For further information, please contact **Anthony Woolich**, Partner, on +44 (0)20 7264 8033 or anthony.woolich@hfw.com, or **Robert Wilson**, Partner, on +44 (0)20 7264 8340 or robert.wilson@hfw.com, or **Daniel Martin**, Associate, on +44 (0)20 7264 8189 or daniel.martin@hfw.com, or your usual contact at HFW.

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Lawyers for international commerce hfw.com

HOLMAN FENWICK WILLAN LLP
Friary Court, 65 Crutched Friars
London EC3N 2AE
T: +44 (0)20 7264 8000
F: +44 (0)20 7264 8888

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