

MEMBER ALERT



Shipowners Claims Bureau, Inc., Manager
One Battery Park Plaza 31st Fl., New York, NY 10004 USA
Tel: +1 212 847 4500
Fax: +1 212 847 4599

www.american-club.com

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CÔTE D'IVOIRE (IVORY COAST): EUROPEAN UNION AND UNITED STATES SANCTIONS

Members will wish to note the following in regard to recent developments in the Côte d'Ivoire (Ivory Coast) and the sanctions in respect thereof which have recently been imposed by authorities within both the European Union and the United States.

EU Sanctions

As many Members will be aware, following the controversial presidential elections in the Côte d'Ivoire at the end of 2010 – which Mr. Laurent Gbagbo, the then incumbent president, is considered to have lost – the Council of the European Union has imposed sanctions against certain natural and legal persons in the Côte d'Ivoire. These persons are said to be directly or indirectly obstructing the process of peace and national reconciliation. They are also said to be jeopardizing the proper outcome of the electoral process.

Accordingly, in consequence of Council Regulation 25/2011 published on January 15, 2011 and which entered into force immediately, any 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.

The ambit of the Regulation is intended to apply to:

- the territory of the European Union; and
- on board any vessel under the jurisdiction of a Member State; and
- to any person inside or outside the Union who is a national of a Member State; and
- to any legal person, group or entity which is incorporated or constituted under the laws of a Member State; and
- to any legal person, group or entity doing business within the Union.

As with the sanctions against Iran, funds are defined widely to include financial assets and benefits of every kind. This expression includes letters of credit, bills of lading and bills of sale. The expressions “*economic resources*”, “*freezing of funds*” and “*freezing of economic resources*” are also widely defined. For example, “*economic resources*” means assets of every kind, whether tangible or intangible, moveable or immovable, funds which can be used to obtain funds, goods or services.

Members are asked to note that the natural or legal persons who are listed in the Annex to the Regulation (which was published in the Official Journal of the European Union on January 15, 2011) 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, or companies and other commodity companies and associated individuals.

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Therefore, any Member based in the EU, or operating a vessel registered in the EU, must bear in mind that payment of port dues or charges at Abidjan or San Pedro, either directly or through an agent, may constitute a violation of these sanctions.

It should also be noted that there are three important derogations from the provisions:

- the relevant national authority may authorise the release of frozen funds, or a payment, in certain limited circumstances; and
- 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;
- 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.

[Click here for Regulation 25/2011](#)

US Sanctions

In a parallel development, the US Treasury Department's Office of Foreign Asset Control (OFAC) has recently issued a more restricted set of prohibitions vis-à-vis the Côte d'Ivoire. US citizens are prohibited from doing business with Mr. Gbagbo, his wife Simone Gbagbo as well as their allies Alcide Ilahiri Djedje (foreign minister), Pascal Affi N'Guessan, spokesman and political leader, and chief of staff Désiré Tagro.

These individuals have been added to OFAC's Specially Designated Nationals Listing (SDN) and any US assets of those individuals have now been frozen. It is significant to note that OFAC's SDN list has not added the Ports of Abidjan or San Pedro. Consequently, this Association is not impeded in any way of providing security in connection with any alleged P&I claims arising in those locations.

[Click here for US Treasury/OFAC press release of January 6, 2011](#)

Recommendations

As with other recent sanctions regulations imposed by the EU and OFAC in the past year, it is not yet clear as to how such regulations will be specifically interpreted and enforced in the near future. The obvious import of the latest EU regulations, which are more stringent than those promulgated by OFAC, will be that a Member's payment of port dues at Abidjan and San Pedro may constitute a violation.

As such, if a Member is subject to the EU or OFAC regulations and if a Member is presently trading or is expected to trade to the Côte d'Ivoire, the Managers recommend that such Members obtain legal advice prior to doing so. Should any Member need a recommendation of counsel in this regard, the Managers stand ready to assist in this regard.