**EXPLANATORY MEMORANDUM TO**

**THE IVORY COAST (ASSET-FREEZING) REGULATIONS 2011**

**2011 No. 1086**

**1.** This explanatory memorandum has been prepared by the Treasury and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

The Regulations put in place criminal penalties for breach of EU financial restrictions in relation to Ivory Coast. The financial sanctions are contained in Council Regulation (EC) No 560/2005 of 14 April 2005 imposing certain specific restrictive measures directed against certain persons and entities in view of the situation in the Ivory Coast ("the 2005 Council Regulation") as amended by Council Regulation (EU) No 25/2011 of 15 January 2011 ("the 2011 Council Regulation").

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 These Regulations have been laid before Parliament less than 21 days before they come into force.

3.2 The asset freezing measures in relation to Ivory Coast originally imposed by UN Security Council Resolution 1572 (2004) were implemented in the UK by the Ivory Coast (United Nations Sanctions) Order 2005 (SI 2005/253), which imposes penalties for breach of those measures. However, that Order does not cover the additional measures implemented by the 2011 Council Regulation, nor the additional persons and entities subsequently added to the annexes to the 2005 Council Regulation.

3.3 Recent developments in Ivory Coast have increased the urgency of the need to have in place penalties for breach of the EU Regulations. Increasing pressure on the current regime may lead to attempts to remove assets frozen in the UK, or appropriate Ivorian assets to UK accounts. On 31 March 2011 the UN passed a new Security Council Resolution (1975 (2011)), applying the asset freezing measures under Resolution 1572(2004) to five further individuals. Given these developments, it is important that the EU Regulations are implemented quickly.

3.4 The penalties and other provisions contained in these Regulations are in line with those for other EU asset freezing regimes. The financial sector is accordingly aware of the nature of the requirements being placed on them. The Treasury provides a dedicated email address and telephone number to deal with queries from the financial sector and other affected persons in relation to asset freezing regimes

## 4. Legislative Context

4.1 United Nations Security Council 1572 (2004) was implemented in the European Union by the 2005 Council Regulation. On 14 January 2011, the EU adopted the 2011 Council Regulation, which amended the 2005 Council Regulation to allow the EU to list, separately to the UN, persons obstructing the process of peace and national reconciliation who jeopardise the proper outcome of the electoral process in the Ivory Coast.

4.2 These Regulations introduce ambulatory references to the Annexes to the Council Regulation. Annexes I and IA to the Council Regulation contain lists of the persons who the UN or EU have decided should be subject to asset freezing measures, and in relation to whom the prohibitions in the Council Regulation are applied. These lists may be amended from time to time to add or remove names, or to alter identifying information. It is therefore necessary that the penalties and other provisions in these Regulations should apply to persons listed in the Annexes as amended from time to time. Any changes to the lists of designated persons will be published in the Official Journal, and will also appear on the Treasury's website and in a notice sent out electronically to subscribers to the Treasury's Asset Freezing Unit mailing list.

4.3 An Explanatory Memorandum on the 2011 Council Regulation was submitted for Parliamentary Scrutiny by the Foreign and Commonwealth Office on 25 January 2011 The House of Commons European Scrutiny Committee cleared the document on 26 January 2011. The House of Lords Select Committee on the European Union cleared the document on 1 February 2011.

4.4 An Explanatory Memorandum on the Council Common Position concerning restrictive measures against Ivory Coast, which led to the 2005 Regulation, was submitted for Parliamentary Scrutiny on 30 November 2004. The House of Commons European Scrutiny Committee cleared the document on 1 December 2004. The House of Lords Select Committee on the European Union cleared the document on 30 November 2004.

## 5. Territorial Extent and Application

This instrument applies to all of the United Kingdom and, outside the United Kingdom, to British citizens and those with a UK connection.

## 6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## 7. Policy background

- What is being done and why

7.1 These Regulations provide for penalties for breach of the asset freezing measures contained in the 2005 Council Regulation. The 2005 Council Regulation has direct effect, and requires Member States to put in place effective, proportionate and dissuasive penalties for infringements of the 2005 Council Regulation.

7.2 The Treasury considers that such penalties should be criminal, in line with those in place for breaches of other EU sanctions regimes. Criminal penalties are appropriate to enforce sanctions regimes because international financial sanctions are aimed at threats to international peace and security and the abuse of human rights. The consequences of a breach of any sanctions regime may be very serious and criminal penalties provide a better, more dissuasive, deterrent than civil penalties.

7.3 The Regulations:

- define a designated person as being a person listed in Annex I or IA to the 2005 Council Regulation;

- define the scope of the prohibitions that apply to the freezing of funds and economic resources and also to the making available of funds and economic resources to, or for the benefit of, a designated person;

- provide penalties for breaches of the prohibitions;

- provide a mechanism for the Treasury to grant licences and create an offence where a person knowingly or recklessly provides false information or documents to obtain a licence or fails to comply with the conditions of a licence;

- include provisions for the gathering and sharing of information and create an offence for failing to comply with or obstructing the Treasury's exercise of these powers.

## 8. Consultation outcome

No consultation has been carried out in relation to these Regulations.

## 9. Guidance

Guidance on the asset freezing measures in relation to Ivory Coast is available on the Treasury's website. The Treasury's Asset Freezing Unit operates a free subscription email service updating subscribers on changes to the asset freezing regime, and on other financial sanctions measures. A dedicated telephone line and email address are available for the financial sector and other persons to submit queries on the asset freezing regime.

## 10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible, because this Instrument does not themselves impose significant requirements, but only put in

place penalties in relation to activities which are prohibited by the directly effective 2005 Council Regulation.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment has not been prepared for this instrument, because any impact results from the 2005 Council Regulation rather than these Regulations, which only provide for enforcement powers.

## 11. Regulating small business

The legislation applies to small business. The Treasury work with the financial sector on the requirements for complying with the asset freezing measures set out in the 2005 Council Regulation. The Treasury have provided detailed guidance to assist business in complying with the asset freezing measures.

## 12. Monitoring & review

The EU monitors and reviews its financial sanctions measures. The Treasury will review the penalties for breach of the EU asset freezing measures if the 2005 Council Regulation is amended or repealed.

## 13. Contact

**Matthew Myers** at the Asset Freezing Unit of the Treasury Tel: 020 7270 5991 or email: matthew.myers@hmtreasury.gsi.gov.uk can answer any queries regarding the instrument.