

**EXPLANATORY MEMORANDUM TO**  
**THE GUINEA-BISSAU (ASSET-FREEZING) REGULATIONS 2012**  
**2012 No. 1301**

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

**2. Purpose of the instrument**

2.1 These Regulations put in place criminal penalties for breach of EU financial sanctions in relation to the Republic of Guinea-Bissau. The financial sanctions are contained in Council Regulation (EU) No. 377/2012 of 3 May 2012 concerning restrictive measures directed against certain persons, entities and bodies threatening the peace, security or stability of the Republic of Guinea-Bissau (“the Council Regulation”).

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

3.1 None.

**4. Legislative Context**

4.1 The European Council adopted Council Decision 2012/237/CFSP on 3rd May 2012 (“the Council Decision”). The Council Decision includes measures targeting those who seek to prevent or block a peaceful political process or who take action that undermines stability in the Republic of Guinea-Bissau. Such measures include the imposition of asset freezes on persons engaging in or providing support for acts that threaten the peace, security or stability of the Republic of Guinea-Bissau and persons associated with them, as identified by the Council.

4.2 The Council Regulation came into force on 4th May 2012 and implements the measures contained in the Council Decision. Annex I to the Council Regulation contains a list of persons who have been identified by the Council in relation to whom the prohibitions in the Council Regulation are applied. The list may be amended from time to time by the Council, to add or remove names, or to alter identifying information.

4.3 Accordingly, it is necessary that these Regulations include ambulatory references to ensure that at such time as names are included in, or are deleted from, Annex I the penalties and other provisions in these Regulations apply, or cease to apply, to those persons. 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.

4.4 It was not possible for the Foreign and Commonwealth Office to submit the Council Decision and Council Regulation to the relevant Parliamentary Committees (the Commons EU Scrutiny Committee and the Lords Select Committee on the European Union) for those Committees' approval prior to the documents' adoption on 3rd May due to the urgency to agree the measures in view of the situation in the Republic of Guinea-Bissau. The Minister for Europe wrote to the Committees on 30th April advising that it would be necessary to override the scrutiny process on this occasion and undertook to provide an explanatory memorandum to the Committees in time for when they next sit in mid May.

## **5. Territorial Extent and Application**

5.1 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**

6.1 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 Council Regulation. 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.

7.2 The Regulations:

- define a designated person as being a person listed in Annex I to the 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 granting 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.

7.3 No criminal penalty is included for breach of the requirement in regulation 8(3) for financial institutions to inform the Treasury when they credit a frozen account. The Treasury considers that any such breaches are appropriately dealt with in the context of the supervision of financial institutions by the Financial Services Authority, which has a range of enforcement powers under the Financial Services and Markets Act 2000 (c.8).

- Consolidation

7.4 There are currently no plans to consolidate the relevant legislation.

## **8. Consultation outcome**

8.1 No consultation has been carried out in relation to this instrument.

## **9. Guidance**

9.1 Guidance on the asset freezing measures in relation to the Republic of Guinea-Bissau is available on the Treasury's website. The Treasury's Asset Freezing Unit operates a free subscription email service alerting 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 any 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 these Regulations do not themselves impose requirements, but only put in place penalties in relation to activities which are prohibited by the directly effective Council Regulation.

10.2 The impact on the public sector is also negligible.

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

## **11. Regulating small business**

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the Treasury work with the financial sector on the requirements for complying with the asset freezing measures set out in the Council Regulation and similar EU legislation. The Treasury have provided guidance to assist business in complying with these measures.

## **12. Monitoring and review**

12.1 The EU monitors and reviews its financial sanctions measures. The Treasury will review the penalties for breach of the restrictions imposed by the Council Regulation if it is amended or repealed.

## **13. Contact**

The Asset Freezing Unit at the Treasury Tel: 020 7270 5454 or email: [AFU@hmtreasury.gsi.gov.uk](mailto:AFU@hmtreasury.gsi.gov.uk) can answer any queries regarding the instrument.