

Statutory Document No. 2017/0369

*European Communities (Isle of Man) Act 1973*

EUROPEAN UNION (MALI SANCTIONS) (NO.2) REGULATIONS 2017¹

Laid before Tynwald: 16 January 2018
Coming into operation in accordance regulation 2

The Council of Ministers makes the following Regulations under sections 2B and 2C of the European Communities (Isle of Man) Act 1973.

1 Title

These Regulations are the European Union (Mali Sanctions) (No.2) Regulations 2017.

2 Commencement

These Regulations come into operation immediately after they are made.

3 Interpretation

In these Regulations—

“**the EU Regulation**” means Council Regulation (EU) 2017/1770¹ of 28 September 2017 concerning restrictive measures in view of the situation in Mali, as it has effect in the Island², and a reference to a numbered Article or Annex (without more) is a reference to the Article of, or Annex to, the EU Regulation so numbered.

4 Breaches of the EU Regulation

- (1) A person commits an offence if the person —
 - (a) fails to comply with Article 2(1), 2(2), 7(1), 8 and 10(1), or
 - (b) uses information in contravention of Article 7(3).
- (2) But no offence is committed under paragraph (1) if —

¹ OJ L 251, 29.9.2017, p. 1

² Council Regulation (EU) 2017/1770 was applied to the Island with certain modifications by SD 2017/0368. The Annexes to the EU Regulation are applied to the Island as they are amended from time to time.

- (a) the exceptions in Article 6(1), 6(2) and 9(2) apply to the particular circumstances; or
- (b) a person is acting in accordance with a licence obtained under regulation 5.

5 Authorisations, Derogations and Licences

- (1) Where the Treasury receives a request for an authorisation in respect of a derogation which may be permitted under the EU Regulation, it may only grant such an authorisation, by way of a licence in writing, in accordance with the conditions set out in the EU Regulation.
- (2) The Treasury may vary or revoke a licence at any time.
- (3) The Treasury, if it grants, varies or revokes a licence, must—
 - (a) in the case of a licence granted to a particular person, give written notice of the licence, variation or revocation to that person; and
 - (b) in the case of a general licence or a licence granted to a category of persons, take such steps as the Treasury considers appropriate to publicise the licence, variation or revocation.
- (4) A person commits an offence if, for the purpose of obtaining a licence the person—
 - (a) makes any statement or furnishes any document or information which to his or her knowledge is false in a material particular; or
 - (b) recklessly makes any statement or furnishes any document or information which is false in a material particular.
- (5) If an offence is committed under paragraph (4) any licence granted in connection with the application for which the false statement was made or the false document or information furnished shall be void as from the time it was granted.
- (6) A person who, having acted under the authority of a licence granted under these Regulations, fails to comply with any of the requirements or conditions to which the licence is subject commits an offence, unless—
 - (a) the licence had been varied by the Treasury;
 - (b) the alleged failure to comply would not have been a failure had the licence not been so varied; and
 - (c) either—
 - (i) the licence was varied after the doing of the act authorised by the licence; or
 - (ii) the person did not know and had no reasonable grounds to suspect that the licence had been varied.

6 Information

The Schedule has effect in order to facilitate the obtaining, by or on behalf of the Treasury, of information for the purpose of ensuring compliance with the EU Regulation.

7 Liability of officers of body corporate etc.

- (1) If an offence under these Regulations committed by a body corporate is shown—
 - (a) to have been committed with the consent or the connivance of an officer of the body corporate; or
 - (b) to be attributable to any neglect on the part of any such officer, the officer as well as the body corporate is guilty of an offence and liable to be proceeded against and punished accordingly.
- (2) If an offence under these Regulations committed by a partnership is shown —
 - (a) to have been committed with the consent or the connivance of a partner; or
 - (b) to be attributable to any neglect on the part of a partner, the partner as well as the partnership is guilty of an offence and liable to be proceeded against and punished accordingly.
- (3) If an offence under these Regulations committed by an unincorporated association (other than a partnership) is shown —
 - (a) to have been committed with the consent or the connivance of an officer of the association; or
 - (b) to be attributable to any neglect on the part of any such officer, the officer as well as the association is guilty of an offence and liable to be proceeded against and punished accordingly.
- (4) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body.
- (5) In this regulation—

“officer” includes —

 - (a) in relation to a body corporate, a director, manager, secretary, chief executive, member of the committee of management and its registered agent;
 - (b) in relation to an unincorporated association, any officer of the association and any member of its governing body; and

- (c) in relation to a limited liability company constituted under the Limited Liability Companies Act 1996, the company's manager, the registered agent and its members, and any person purporting to act in such a capacity;

“partner” includes a person holding himself or herself out to be a partner (within the meaning of section 16(1) of the Partnership Act 1909).

8 Penalties and proceedings

- (1) Any person guilty of an offence under regulation 4(1)(a), 5(4) or 5(6), or paragraph 2(b) or (c) of the Schedule is liable –
- (a) on conviction on information, to custody for a term not exceeding 2 years or to a fine, or both; or
- (b) on summary conviction, to custody for a term not exceeding 3 months or to a fine not exceeding £5,000, or both.
- (2) A person guilty of an offence under regulation 4(1)(b), or paragraph 2(a) or 3(2) of the Schedule, is liable on summary conviction to custody for a term not exceeding 3 months or to a fine not exceeding £5,000, or both.
- (3) No proceedings for an offence under these Regulations, other than a summary offence, shall be instituted except by or with the consent of the Treasury or the Attorney General.
- (4) Paragraph (3) does not prevent the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence, or the remand in custody or on bail of any person charged with such an offence, notwithstanding that the necessary consent to the institution of proceedings for the offence has not been obtained.

9 Revocation

The European Union (Mali Sanctions) Regulations 2017³ are revoked.

MADE 08:10 15 DECEMBER 2017

³ SD 2017/0295

SCHEDULE

[Regulation 6]

INFORMATION

1

- (1) The Treasury (or any person authorised by the Treasury for that purpose, either generally or in a particular case) (“the requesting authority”) may request any person in or resident in the Island to furnish to the requesting authority any information in his or her possession or control, or to produce to the requesting authority any document in his or her possession or control, which the requesting authority may require for the purpose of ensuring compliance with the EU Regulation; and any person to whom such a request is made shall comply with it within such time and in such manner as may be specified in the request.
- (2) Nothing in sub-paragraph (1) requires any person who has acted as advocate, counsel or solicitor for any person to disclose any privileged document or information in his possession in that capacity.
- (3) If a person is convicted of an offence under paragraph 2 of failing to furnish any information or produce any document, the court may make an order requiring that person, within such period as may be specified in the order, to furnish the information or produce the document.
- (4) The power conferred by this paragraph to request any person to produce documents includes power to take copies of or extracts from any document so produced and to request that person or, if that person is a body corporate, any other person who is a present or past officer of, or is employed by, the body corporate, to provide an explanation of any such document.

2

A person is guilty of an offence if the person—

- (a) without reasonable excuse, refuses or fails within the time and in the manner specified (or, if no time has been specified, within a reasonable time) to comply with any request made under this Schedule;
- (b) intentionally furnishes false information or a false explanation to any person exercising his or her powers under this Schedule; or
- (c) with intent to evade the provisions of this Schedule, destroys, mutilates, defaces, secretes or removes any document.

3

- (1) No information furnished or document produced (including any copy or extract made of any document produced) by any person in pursuance of a request made under this Schedule shall be disclosed except—
- (a) with the consent of the person by whom the information was furnished or the document was produced;
 - (b) to any person who would have been empowered under this Schedule to request that it be furnished or produced or any person holding or acting in any office under or in the service of the Crown in respect of the Government of the Isle of Man or the United Kingdom;
 - (c) on the authority of the Treasury, to the European Commission or to any of the competent authorities listed in Annex II to the EU Regulation, for the purpose of assisting the Commission or that competent authority to ensure compliance with the EU Regulation; or
 - (d) with a view to the institution of, or otherwise for the purposes of, any proceedings for an offence under these Regulations.
- (2) A person commits an offence if the person, without reasonable excuse, discloses information or a document in contravention of paragraph (1).
- (3) A person who has obtained information or is in possession of a document only in his or her capacity as servant or agent of another person may not give consent for the purposes of sub-paragraph (1)(a).

ENDNOTES

Table of Endnote References

¹ The format of this legislation has been changed as provided for under section 75 of, and paragraph 2 of Schedule 1 to, the Legislation Act 2015. The changes have been approved by the Attorney General after consultation with the Clerk of Tynwald as required by section 76 of the Legislation Act 2015.