

Subsidiary Legislation made under ss.3 & 7.

## **Burundi Sanctions Order 2015**

### **LN.2015/179**

		<i>Commencement</i>	<b>8.10.2015</b>
Amending enactments	Relevant current provisions		Commencement date
LN. 2018/238	<i>Notice of Corrigendum</i>		
2018/241	Sch.		1.11.2018
2019/004	Sch.		11.1.2019

**Transposing:**

Regulation (EU) 2015/1755

**ARRANGEMENT OF PARAGRAPHS**

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**SCHEDULE**

*In exercise of the powers conferred upon him by sections 3 and 7 of the Export Control Act 2005 and section 23(g)(i) of the Interpretation and General Clauses Act; and for the purpose of implementing Council Regulation (EU) 2015/1755 of 1 October 2015 concerning restrictive measures in view of the situation in Burundi, the Minister has made the following Order-*

**Title and commencement.**

1. This Order may be cited as the Burundi Sanctions Order 2015 and comes into operation on the day of publication.

**Interpretation.**

2. In this Order-

“claim” means any claim, whether asserted by legal proceedings or not, made before or after the date of entry into force of this Regulation, under or in connection with a contract or transaction, and includes in particular-

- (a) a claim for performance of any obligation arising under or in connection with a contract or transaction;
- (b) a claim for extension or payment of a bond, financial guarantee or indemnity of whatever form;
- (c) a claim for compensation in respect of a contract or transaction;
- (d) a counterclaim;
- (e) a claim for the recognition or enforcement, including by the procedure of *exequatur*, of a judgment, an arbitration award or an equivalent decision, wherever made or given;

“competent authority” means the Minister with responsibility for finance;

“contract or transaction” means any transaction of whatever form and whatever the applicable law, whether comprising one or more contracts or similar obligations made between the same or different parties; for this purpose ‘contract’ includes a bond, guarantee or indemnity, particularly a financial guarantee or financial indemnity, and credit, whether legally independent or not, as well as any related provision arising under, or in connection with, the transaction;

“economic resources” means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds, but may be used to obtain funds, goods or services;

“freezing of funds” means preventing any move, transfer, alteration, use of, access to, or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the funds to be used, including portfolio management;

“funds” means financial assets and benefits of every kind, including, but not limited to-

- (a) cash, cheques, claims on money, drafts, money orders and other payment instruments;
- (b) deposits with financial institutions or other entities, balances on accounts, debts and debt obligations;
- (c) publicly- and privately-traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts;
- (d) interest, dividends or other income on or value accruing from or generated by assets;
- (e) credit, right of set-off, guarantees, performance bonds or other financial commitments;
- (f) letters of credit, bills of lading, bills of sale; and
- (g) documents showing evidence of an interest in funds or financial resources;

“person” means any natural or legal person, entity or body;

“the Regulation” means Council Regulation (EU) 2015/1755 of 1 October 2015 concerning restrictive measures in view of the situation in Burundi, as amended from time to time.

### **General.**

3.(1) This Order makes provision for the implementation of restrictive measures set out in the Regulation.

(2) The persons who are subject to restrictive measures and are listed in Annex I of the Regulation are set out in the Schedule.

(3) Where a person is no longer the subject of restrictive measures under the Regulation, the Minister shall amend the Schedule by Notice published in the Gazette.

(4) Where any of the particulars in Annex I of the Regulation are amended, whether by inclusion or new persons or otherwise, the Minister may amend the Schedule by Notice published in the Gazette.

**Applications to the competent authority.**

4. An application for the release of frozen funds or economic resources, or the making available of funds or economic resources pursuant to Articles 3, 4 or 5 of the Regulation shall be made to the competent authority.

**Authorisations pursuant to Article 3.**

5.(1) Where the competent authority receives an application for the release of frozen funds or economic resources, or the making available of funds or economic resources pursuant to Article 3 of the Regulation, the competent authority may authorise such sums and upon such conditions as it deems appropriate, after having satisfied itself that the conditions set out in paragraphs (a) to (d) of Article 3(1) apply.

(2) An authorisation granted under subparagraph (1) shall be in writing.

(3) Where competent authority is minded to grant an application in accordance with Article 3(1)(d) of the Regulation the competent authority shall ensure that the Commission and the competent authorities of Member States are informed of the grounds on which it considers that a specific authorisation should be granted.

(4) The notification referred to in subparagraph (3) shall be a minimum of 2 weeks prior to the intended authorisation.

(5) The competent authority shall ensure that the Commission and Member States are informed of any authorisations granted under this paragraph.

**Authorisations pursuant to Article 4.**

6.(1) Where the competent authority receives an application for the release of frozen funds or economic resources pursuant to Article 4 of the Regulation, the competent authority may authorise their release if the conditions set out in Article 4(1)(a) to (d) are met.

(2) An authorisation granted under subparagraph (1) shall be in writing.

(3) The competent authority shall ensure that the Commission and Member States are informed of any authorisations granted under this paragraph.

**Authorisations pursuant to Article 5.**

7. Where a payment by person listed in Annex I to the Regulation is due under a contract or agreement that was concluded by, or under an obligation that arose for person concerned, before the date on which that person was included that Annex, the competent authority may authorise, under such conditions it deems appropriate, the release of frozen funds or economic resources, provided that the competent authority concerned has determined that the conditions in Article 5(1)(a) and (b) are satisfied.

**Authorisations: renewal, revocation and amendment.**

8.(1) The competent authority may at any time renew, revoke or amend an authorisation under paragraph 5, 6 or 7 and any renewal or amendment may add further conditions.

(2) A renewal, revocation or amendment shall be in writing.

**Appeals.**

9. A person who-

- (a) having made an application under paragraph 5, 6 or 7, is refused an authorisation;
- (b) is not satisfied with the terms of an authorisation granted under paragraph 5, 6 or 7; or
- (c) is not satisfied with the revocation or the amendment of an authorisation granted under paragraph 5, 6 or 7,

may appeal to the Supreme Court on a point of law.

**Provision of information.**

10.(1) Where a person is subject to an obligation to disclose information pursuant to Article 7 of the Regulation, the disclosure to the Commission shall be made through the competent authority.

(2) The competent authority may by a notice in writing require the person named therein to provide such information as may be required under Article 7 of the Regulation.

(3) A person who fails to make any or any sufficient disclosure when required to do so pursuant to a notice issued under subparagraph (2) commits an offence.

**Verification.**

11.(1) A person who pursuant to Article 7 of the Regulation has made a disclosure under paragraph 10 shall comply with any requests that the competent authority may make for the purposes of the verification of the information disclosed.

(2) A request under subparagraph (1) shall be in writing, addressed to the person who is required to provide the additional information and may state the time by which the request must be complied with.

(3) A person who without reasonable cause fails to comply with a request issued under this paragraph commits an offence.

**Offences.**

12.(1) A person who, without being authorised to do so, acts in breach of the provisions of Article 2 or 8 of the Regulation commits an offence.

(2) A person who acts in breach of the terms of an authorisation issued under paragraph 5, 6 or 7 is commits an offence.

(3) In proceedings for an offence under this paragraph it shall be a defence for a person to show that that person did not know, and had no reasonable cause to suspect, that such actions would infringe the prohibitions set out in the Regulation or the terms of an authorisation issued under this Order.

(4) Where a person is required to provide information under the Regulation or pursuant to a provision of this Order it shall be an offence for that person to provide information which that person knows is false or misleading in any material particular.

(5) A person commits an offence if that person, with a view to obtaining an authorisation under paragraph 5, 6 or 7, provides information in support of an application which that person knows is false or misleading in a material particular.

**Penalties.**

13.(1) A person guilty of an offence under paragraph 12(1) or (2) is liable-

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine up to level 5 on the standard scale or to both; or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years or to a fine or to both;
- (2) A person guilty of an offence under paragraph 12(4) and (5) is liable-
- (a) on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine or to both; or
  - (b) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not level 5 on the standard scale or to both.
- (3) A person guilty of an offence under paragraph 10(3) or 11(3) is liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale or to both.
- (4) If an offence under this Order committed by a body corporate is shown-
- (a) to have been committed with the consent or connivance of an officer of the body corporate; or
  - (b) to be attributable to any neglect on the part of an officer of the body corporate,
- the officer as well as the body corporate commit an offence and are liable to be proceeded against and punished accordingly.



## SCHEDULE

Paragraph 3

**List of natural and legal persons, entities and bodies referred to in Annex 1 of the Regulation**

Name	Identifying information	Grounds for designation
Godefroid BIZIMANA	DOB: 23.4.1968  POB: NYAGASEKE, MABAYI, CIBITOKÉ  Burundian nationality. Passport number: DP0001520	Deputy Director-General of the National Police, responsible for undermining democracy by making operational decisions that have led to a disproportionate use of force and acts of violent repression towards peaceful demonstrations that started on 26 April 2015 following the announcement of the presidential candidacy of President Nkurunziza.
Gervais NDIRAKOBUCA alias NDAKUGARIKA	DOB: 1.8.1970  Burundian nationality. Passport number: DP0000761	Head of Cabinet of the Presidential Administration (Présidence) responsible for matters relating to the National Police. Responsible for obstructing the search for a political solution in Burundi by issuing instructions that led to disproportionate use of force, acts of violence, acts of repression and violations of international human rights law against protestors demonstrating from 26 April 2015 onwards, following the announcement of the presidential candidacy of President Nkurunziza, including on 26, 27 and 28 April in the Nyakabiga and Musaga districts in Bujumbura.
Mathias-Joseph NIYONZIMA alias KAZUNGU	DOB: 6.3.1956; 2.1.1967  POB: Kanyosha Commune, Mubimbi, Bujumbura-Rural Province, Burundi  Registration number (SNR): O/00064  Burundian nationality.  Passport number: OP0053090	Officer of the National Intelligence Service. Responsible for obstructing the search for a political solution in Burundi by inciting violence and acts of repression during the demonstrations that started on 26 April 2015 following the announcement of the presidential candidacy of President Nkurunziza. Responsible for helping to train, coordinate and arm the Imbonerakure paramilitary militias, including outside Burundi, who are responsible for acts of violence, repression and serious human rights abuses in Burundi.
Léonard NGENDAKUMANA	DOB: 24.11.1968 Burundian nationality. Passport number: DP0000885	Former 'Chargé de Missions de la Présidence' and former army general. Responsible for obstructing the search for a political solution in Burundi by participating in the attempted coup d'état of 13 May 2015 to overthrow the Burundi Government. Responsible for acts of violence — grenade attacks — committed in Burundi, as well as for incitement to violence. General Léonard Ngendakumana publicly supported violence as a means to achieve political goals.