

Subsidiary Legislation made under ss.7 & 9.

Guinea-Bissau (Sanctions) Order 2018

LN.2018/020

Commencement

18.1.2018

Implementing :

Regulation (EU) No 377/2012
Regulation (EU) No 458/2012
Regulation (EU) No 517/2013
Regulation (EU) No 559/2013
Regulation (EU) 2017/403
Regulation (EU) No 2018/31

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In exercise of the powers conferred upon him by sections 7 and 9 of the Export Control Act 2005, section 23(g)(i) of the Interpretation and General Clauses Act and all other enabling powers, for the purpose of implementing Council Regulation (EU) No 377 of 2012 of 3 May 2012, Council Implementing Regulation (EU) No 458/2012 of 31 May 2012, Council Regulation (EU) No 517/2013 of 13 May 2013, Council Implementing Regulation (EU) No 559/2013 of 18 June 2013, Council Implementing Regulation (EU) 2017/403 of 7 March 2017 and Council Implementing Regulation (EU) No 2018/31 of 10 January 2018 concerning restrictive measures directed against certain persons, entities and bodies threatening the peace, security or stability of the Republic of Guinea-Bissau, the Minister has made the following Order-

PART 1

Preliminary

Title.

1. This Order may be cited as the Guinea-Bissau (Sanctions) Order 2018.

Commencement.

2. This Order comes into operation on the date of publication.

Interpretation.

- 3.(1) In this Order, unless the context otherwise requires-

“the Council Regulation” means 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, and a reference to Annex I to that Regulation is to be construed as a reference to that Annex as amended from time to time;

“designated person” means any person, entity or body listed in Annex I to the Council Regulation and which is reproduced in Schedule 2;

“document” includes information recorded in any form, and in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

“Member State” means a Member State of the European Union;

“Minister” means the Minister with responsibility for finance;

“relevant institution” means-

- (a) a person licenced or authorised under the Financial Services (Investment and Fiduciary Services) Act 1989 or the Financial Services (Banking Act) 1992 to carry on regulated activity; or
- (b) an undertaking that by way of business-
 - (i) operates a currency exchange office;
 - (ii) transmits money (or any representation of monetary value) by any means; or
 - (iii) cashes cheques that are made payable to customers.

(2) Any expression used both in this Order and in the Council Regulation has the meaning that it bears in the Council Regulation.

PART 2

Freezing funds etc.

Freezing of funds and economic resources.

4.(1) A person (“P”) must not deal with funds or economic resources belonging to, or owned, held or controlled by, a designated person if P knows, or has reasonable cause to suspect, that P is dealing with such funds or economic resources.

(2) In subparagraph (1), “deal with” means-

- (a) in relation to funds-
 - (i) use, alter, move, allow access to or transfer;
 - (ii) deal with the funds in any other way that would result in any change in volume, amount, location, ownership, possession, character or destination; or
 - (iii) make any other change that would enable use, including portfolio management; and

(b) in relation to economic resources, exchange, or use in exchange, for funds, goods or services.

(3) Subparagraph (1) is subject to paragraph 10.

Making funds available to a designated person.

5.(1) A person (“P”) must not make funds available, directly or indirectly, to a designated person if P knows, or has reasonable cause to suspect, that P is making the funds so available.

(2) Subparagraph (1) is subject to paragraphs 9 and 10.

Making funds available for the benefit of a designated person.

6.(1) A person (“P”) must not make funds available to any person for the benefit of a designated person if P knows, or has reasonable cause to suspect, that P is making the funds so available.

(2) For the purposes of this paragraph-

- (a) funds are made available for the benefit of a designated person only if that person thereby obtains, or is able to obtain, a significant financial benefit; and
- (b) “financial benefit” includes the discharge of a financial obligation for which the designated person is wholly or partly responsible.

(3) Subparagraph (1) is subject to paragraphs 9 and 10.

Making economic resources available to a designated person.

7.(1) A person (“P”) must not make economic resources available, directly or indirectly, to a designated person if P knows, or has reasonable cause to suspect-

- (a) that P is making the economic resources so available; and
- (b) that the designated person would be likely to exchange the economic resources, or use them in exchange, for funds, goods or services.

(2) Subparagraph (1) is subject to paragraph 10.

Making economic resources available for the benefit of a designated person.

8.(1) A person (“P”) must not make economic resources available to any person for the benefit of a designated person if P knows, or has reasonable cause to suspect, that P is making the economic resources so available.

(2) For the purposes of this paragraph-

- (a) economic resources are made available for the benefit of a designated person only if that person thereby obtains, or is able to obtain, a significant financial benefit; and
- (b) “financial benefit” includes the discharge of a financial obligation for which the designated person is wholly or partly responsible.

(3) Subparagraph (1) is subject to paragraph 10.

Credits to a frozen account.

9.(1) The prohibitions in paragraphs 5 and 6 are not contravened by a person who credits a frozen account with-

- (a) interest or other earnings due on the account; or
- (b) payments due under contracts, agreements or obligations that were concluded or arose before the account became a frozen account.

(2) The prohibitions in paragraphs 5 and 6 on making funds available do not prevent a relevant institution from crediting a frozen account where it receives funds transferred to the account.

(3) A relevant institution must inform the Minister without delay if it credits a frozen account in accordance with subparagraph (1)(b) or (2).

(4) In this paragraph “frozen account” means an account with a relevant institution which is held or controlled (directly or indirectly) by a designated person.

PART 3

General

Licences.

10.(1) The prohibitions in paragraphs 4 to 8 do not apply to anything done under the authority of a licence granted by the Minister.

- (2) A licence must specify the acts authorised by it and may be-
- (a) general or granted to a category of persons or to a particular person;
 - (b) subject to conditions; or
 - (c) of indefinite duration or subject to an expiry date.
- (3) The Minister may vary or revoke a licence at any time.
- (4) On the grant, variation or revocation of a licence, the Minister must-
- (a) in the case of a licence granted to a particular person, give written notice of the grant, variation or revocation to that person; or
 - (b) in the case of a general licence or a licence granted to a category of persons, take such steps as he considers appropriate to publicise the grant, variation or revocation of the licence.
- (5) A person commits an offence who, for the purpose of obtaining a licence, knowingly or recklessly-
- (a) provides information that is false in a material respect; or
 - (b) provides or produces a document that is not what it purports to be.
- (6) A person who purports to act under the authority of a licence but who fails to comply with any conditions included in the licence commits an offence.

Contravention and circumvention of prohibitions.

11.(1) A person who contravenes any of the prohibitions in paragraphs 4 to 8 commits an offence.

- (2) A person commits an offence who intentionally participates in activities knowing that the object or effect of them is (whether directly or indirectly)-
- (a) to circumvent any of the prohibitions in paragraphs 4 to 8; or
 - (b) to enable or facilitate the contravention of any such prohibition.

Information provisions.

12. Schedule 1 (which contains provisions concerning information gathering and disclosure) has effect.

Officers of a body corporate etc.

13.(1) Where an offence under this Order committed by a body corporate-

- (a) is committed with the consent or connivance of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity; or
- (b) is attributable to any neglect on the part of any such person,

that person as well as the body corporate commit an offence and is liable to be proceeded against and punished accordingly.

(2) In subparagraph (1) “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(3) Subparagraph (1) also applies in relation to a body that is not a body corporate, with the substitution for the reference to a director of the body of a reference-

- (a) in the case of a partnership, to a partner; and
- (b) in the case of an unincorporated body other than a partnership-
 - (i) where the body’s affairs are managed by its members, to a member of the body; and
 - (ii) in any other case, to a member of the governing body.

Penalties.

14.(1) A person guilty of an offence under paragraph 10 or 11 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 3 months or to a fine not exceeding £5,000 or to both.

(2) A person guilty of an offence under paragraph 1(5) or 4(1) of Schedule 1 is liable on summary conviction, to imprisonment for a term not exceeding 3 months or to a fine not exceeding £5,000 or to both.

Extra-territorial application of offences.

15.(1) An offence under this Order may be committed by conduct wholly or partly outside Gibraltar by-

- (a) a British person;
- (b) a body incorporated or constituted under the laws of Gibraltar.

(2) In subparagraph (1) “British person” means-

- (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen;
- (b) a person who under the British Nationality Act 1981 is a British subject; or
- (c) a British protected person within the meaning of that Act.

(3) In this paragraph “conduct” includes acts and omissions.

(4) Nothing in this paragraph affects any criminal liability arising otherwise than under this paragraph.

Proceedings

16.(1) Proceedings against a person for an offence under this Order may be taken before the Supreme Court.

(2) An information relating to an offence that is triable by the magistrates’ court may also be tried if it is laid-

- (a) at any time within 3 years after the commission of the offence; and
- (b) within 12 months after the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings comes to the knowledge of the prosecutor.

Consent to prosecution.

17.(1) Proceedings for an offence under this Order (other than a summary offence) may not be instituted in Gibraltar except with the consent of the Attorney-General.

(4) Nothing in subparagraph (1) prevents-

- (a) the arrest of a person in respect of an offence under this Order; or
- (b) the remand in custody or on bail of any person charged with such an offence.

Notices.

18.(1) This Order has effect in relation to any notice to be given to a person by the Minister under paragraph 10.

(2) Any such notice may be given-

- (a) by posting it to the person's last known address; or
- (b) where the person is a body corporate, partnership or unincorporated body other than a partnership, by posting it to the registered or principal office of the body or partnership concerned.

(3) Where the Minister does not have an address for the person, he must make arrangements for the notice to be given to the person at the first available opportunity.

Crown application.

19.(1) This Order binds the Crown in the right of the Government of Gibraltar.

(2) No contravention by the Crown in right of the Government of Gibraltar of a provision of this Order makes the Crown criminally liable.

(3) Nothing in this paragraph affects Her Majesty in her private capacity.

SCHEDULE 1**Information Provisions****Reporting obligations of relevant institutions.**

- 1.(1) A relevant institution must inform the Minister as soon as practicable if-
- (a) it knows, or has reasonable cause to suspect, that a person-
 - (i) is a designated person; or
 - (ii) has committed an offence under regulation 10 or 11; and
 - (b) the information or other matter on which the knowledge or suspicion is based came to it in the course of carrying on its business.
- (2) Where a relevant institution informs the Minister under subparagraph (1) it must state-
- (a) the information or other matter on which the knowledge or suspicion is based; and
 - (b) any information it holds about the person by which the person can be identified.
- (3) Subparagraph (4) applies if-
- (a) a relevant institution informs the Minister under subparagraph (1) that it knows, or has reasonable cause to suspect, that a person is a designated person; and
 - (b) that person is a customer of the institution.
- (4) The relevant institution must also state the nature and amount or quantity of any funds or economic resources held by it for the customer.
- (5) A relevant institution that fails to comply with any requirement of subparagraph (1), (2) or (4) commits an offence.

Powers to request information.

2. The Minister may request a designated person to provide information concerning-
- (a) funds or economic resources owned, held or controlled by or on behalf of the designated person; or

(b) any disposal of such funds or economic resources.

(2) The Minister may request a designated person to provide such information as he may reasonably require about expenditure-

(a) by or on behalf of the designated person; or

(b) for the benefit of the designated person.

(3) The power in subparagraph (1) or (2) is exercisable only where the Minister believes that it is necessary for the purpose of monitoring compliance with or detecting evasion of this Order.

(4) The Minister may request a person acting under a licence granted under paragraph 10 to provide information concerning-

(a) funds or economic resources dealt with under the licence; or

(b) funds or economic resources made available under the licence.

(5) The Minister may request any person in or resident in Gibraltar to provide such information as he may reasonably require for the purpose of-

(a) establishing for the purposes of this Order-

(i) the nature and amount or quantity of any funds or economic resources owned, held or controlled by or on behalf of a designated person;

(ii) the nature and amount or quantity of any funds or economic resources made available directly or indirectly to, or for the benefit of, a designated person;
or

(iii) the nature of any financial transactions entered into by a designated person;

(b) monitoring compliance with or detecting evasion of this Order; or

(c) obtaining evidence of the commission of an offence under this Order.

(6) The Minister may specify the manner in which, and the period within which, information is to be provided.

(7) If no such period is specified, the information which has been requested must be provided within a reasonable time.

(8) A request may include a continuing obligation to keep the Minister informed as circumstances change, or on such regular basis as the Minister may specify.

(9) Information requested under this paragraph may relate to any period of time during which a person is, or was, a designated person.

(10) Information requested under subparagraph (1)(b), (2) or (5)(a)(iii) may relate to any period of time before a person became a designated person (as well as, or instead of, any subsequent period of time).

Production of documents.

3.(1) A request under paragraph 2 may include a request to produce specified documents or documents of a specified description.

(2) Where the Minister requests that documents be produced, he may-

- (a) take copies of or extracts from any document so produced;
- (b) request any person producing a document to give an explanation of it; and
- (c) where that person is a body corporate, partnership or unincorporated body other than a partnership, request any person who is-
 - (i) in the case of a partnership, a present or past partner or employee of the partnership; or
 - (ii) in any other case, a present or past officer or employee of the body concerned, to give such an explanation.

(3) Where the Minister requests a designated person or a person acting under a licence granted under regulation 10 to produce documents, that person must-

- (a) take reasonable steps to obtain the documents (if not already in the person's possession or control);
- (b) keep the documents under the person's possession or control (except for the purpose of providing them to the Minister or as the Minister may otherwise permit).

Failure to comply with request for information.

4.(1) A person commits an offence who-

- (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) knowingly or recklessly gives any information, or produces any document, which is false in a material particular in response to such a request;
- (c) with intent to evade the provisions of this Schedule, destroys, mutilates, defaces, conceals or removes any document; or
- (d) otherwise intentionally obstructs the Minister in the exercise of his powers under this Schedule.

(2) Where a person is convicted of an offence under this paragraph, the court may make an order requiring that person, within such period as may be specified in the order, to comply with the request.

General power to disclose information.

5. The Minister may disclose any information obtained by him pursuant to this Order-

- (a) to a police officer;
- (b) any person holding or acting in any office under or in the service of the Government of Gibraltar;
- (c) the Gibraltar Financial Services Commission;
- (d) for the purpose of giving assistance or cooperation, pursuant to the Council Regulation, to the Council of the European Union, the European Commission or the Government of a Member State;
- (e) with a view to instituting, or otherwise for the purposes of any proceedings in Gibraltar for an offence under this Order; or
- (f) with the consent of a person who, in their own right, is entitled to the information or to possession of the document, copy or extract, to any third party.

(2) In sub-paragraph (1)(f) “in their own right” means not merely in the capacity as a servant or agent of another person.

Application of provisions.

6.(1) Nothing done under this Schedule is to be treated as a breach of any restriction imposed by statute or otherwise.

(2) But nothing in this Schedule authorises a disclosure that contravenes the Data Protection Act 2004.

(3) Nothing in this Schedule is to be read as requiring a person who has acted as counsel or solicitor for any person to disclose any privileged information in their possession in that capacity.

(4) This Schedule does not limit the circumstances in which information may be disclosed apart from this Schedule.

(5) This Schedule does not limit the powers of the Minister to impose conditions in connection with the discharge of his functions under paragraph 10.

(6) In this paragraph “privileged information” means information with respect to which a claim to legal professional privilege could be maintained in legal proceedings.

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(Paragraph 3(1))

SCHEDULE 2**List of natural and legal persons, entities or bodies referred to in Articles 2(1) and 2(2)****Persons**

Name	Identifying information (date and place of birth) (d.o.b and p.o.b), passport/ID card number, etc	Grounds for listing	Date of designation
António INJAI (a.k.a. António INDJAI)	Nationality: Guinea-Bissau d.o.b.: 20.1.1955 p.o.b.: Encheia, Sector de Bissorá, Região de Oio, Guiné-Bissau Parentage: Wasna Injai (father's name) and Quiritche Cofte (mother's name) Designation: (a) Lieutenant-General (b) Chief of Staff of the Armed Forces Passport: Diplomatic Passport No AAID00435 Date of Issue: 18.2.2010 Place of Issue: Guinea- Bissau Date of Expiry: 18.2.2013 Date of UN Designation: 18.05.2012 (pursuant to para.4 of UNSCR 2048 (2012)) INTERPOL-UNSC Special Notice web link: https://www.interpol.int/en/notice/search/un/5782445	António Injai was personally involved in planning and leading the mutiny of 1 April 2010, culminating with the illegal apprehension of the Prime Minister, Carlo Gomes Junior, and the then Chief of Staff of the Armed Forces, Jose Zamora Induta; during the 2012 electoral period, in his capacity as Chief of Staff of the Armed Forces, Injai made statements threatening to overthrow the elected authorities and put an end to the electoral process; Antonio Injai has been involved in the operational planning of the coup d'état of 12 April 2012. In the aftermath of the coup, the first communique by the 'Military Command' was issued by the Armed Forces General Staff, which is led by General Injai.	3.5.2012
Mamadu TURE (a.k. a. 'N'Krumah')	Nationality -Guinea-Bissau D.o.b. 26.4.1947 Designation: (a) Major General (b) Deputy Chief of Staff of the Armed Forces Diplomatic Passport No DA0002186 Date of issue: 30.3.2007 Place of issue: Guinea-Bissau Date of expiry: 26.8.2013 Date of UN designation:18.05.2012 (pursuant to para.4 of UNSCR 2048 INTERPOL-UNSC Special Notice web link: https://www.interpol.int/en/notice/search/un/5782456	Member of the 'Military Command' which has assumed responsibility for the coup d'état of 12 April 2012.	3.5.2012
Estêvão NA MENA	Nationality -Guinea-Bissau D.o.b. 7.3.1956 Designation: Inspector-General of the Armed Forces Date of UN Designation:18.05.2012 (pursuant to para.4 of UNSCR 2048 2012)) INTERPOL-UNSC Special Notice web link: https://www.interpol.int/en/notice/search/un/5782449	Member of the 'Military Command' which has assumed responsibility for the coup d'état of 12 April 2012.	3.5.2012
Ibraima CAMARÁ (a.k.a. 'Papa Camará')	Nationality: Guinea-Bissau d.o.b.: 11.5.1964 Parentage: Suareba Camara (father's name) and Sale Queita (mother's name) Designation: (a) Brigadier- General (b) Chief of Staff of the Air Force	Member of the 'Military Command' which has assumed responsibility for the coup d'état of 12 April 2012.	3.5.2012

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	<p>Diplomatic Passport No AAID00437 Date of Issue: 18.2.2010 Place of Issue: Guinea- Bissau Date of Expiry: 18.2.2013 Date of UN Designation: 18.05.2012 (pursuant to para.4 of UNSCR 2048 (2012)) INTERPOL-UNSC Special Notice web link: https://www.interpol.int/en/notice/search/un/5781782</p>		
<p>Daba NAUALNA (a.k.a. 'Daba Na Walna')</p>	<p>Nationality: Guinea-Bissau d.o.b.: 6.6.1966 Parentage: Samba Naualna (father's name) and In-Uasne Nanfane (mother's name) Designation: (a) Lieutenant-Colonel (b) Spokesperson of the 'Military Command' Passport No SA 0000417 Date of Issue: 29.10.2003 Place of Issue: Guinea- Bissau Date of Expiry: 10.3.2013 Date of UN Designation: 18.05.2012 (pursuant to para.4 of UNSCR 2048 (2012)) INTERPOL-UNSC Special Notice web link: https://www.interpol.int/en/notice/search/un/5782452</p>	<p>Spokesperson of the 'Military Command' which has assumed responsibility for the coup d'etat of 12 April 2012.</p>	<p>3.5.2012</p>
<p>Cranha DANFÁ</p>	<p>Nationality: Guinea-Bissau d.o.b.: 5.3.1957 Designation: (a) Colonel (b) Head of Operations of the Armed Forces Joint Staff Passport: AAIN29392 Date of Issue: 29.9.2011 Place of Issue: Guinea- Bissau Date of Expiry: 29.9.2016 Date of UN Designation: 18.07.2012 (pursuant to para.4 of UNSCR 2048 (2012)) INTERPOL-UNSC Special Notice web link: https://www.interpol.int/en/notice/search/un/5782442</p>	<p>Member of the 'Military Command' which has assumed responsibility for the coup d'etat of 12 April 2012. Close advisor to Arms Forces Chief of Staff Antonio Injai.</p>	<p>1.6.2012</p>
<p>Júlio NHATE</p>	<p>Nationality: Guinea-Bissau d.o.b.: 28.9.1965 Designation: (a) Lieutenant -colonel (b) Commander of the Paratroops Regiment Date of UN Designation: 18.07.2012 (pursuant to para.4 of UNSCR 2048 (2012)) INTERPOL-UNSC Special Notice web link: https://www.interpol.int/en/notice/search/un/5782454</p>	<p>Member of the 'Military Command' which has assumed responsibility for the coup d'etat of 12 April 2012. A loyal ally of Antonio Injai, Lt.Col. Julio Nhate has the material responsibility for the 12 April 2012 coup, having conducted the military operation.</p>	<p>1.6.2012</p>
<p>Tehipa NA BIDON</p>	<p>Nationality: Guinea-Bissau d.o.b.: 28.5.1954 Parentage: 'Nabidom' Designation: (a) Lieutenant-colonel (b) Head of Intelligence Passport: Diplomatic Passport DA0001564 Date of Issue: 30.11.2005 Place of Issue: Guinea- Bissau Date of Expiry: 15.5.2011 Date of UN Designation: 18.07.2012 (pursuant to para.4 of UNSCR 2048 (2012)) INTERPOL-UNSC Special Notice web link: https://www.interpol.int/en/notice/search/un/5782446</p>	<p>Member of the 'Military Command' which has assumed responsibility for the coup d'etat of 12 April 2012.</p>	<p>1.6.2012</p>

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<p>Tcham NA MAN (a.k.a. Naman)</p>	<p>Nationality: Guinea-Bissau d.o.b.: 27.2.1953 Parentage: Biute Naman (Father's name) and Ndjade Na Noa (Mother's name) Designation: (a) Lieutenant-colonel (b) Head of the Armed Forces Military Hospital Passport: SA0002264 Date of Issue: 24.7.2006 Place of Issue: Guinea- Bissau Date of Expiry: 23.7.2009 Date of UN Designation: 18.07.2012 (pursuant to para.4 of UNSCR 2048 (2012)) INTERPOL-UNSC Special Notice web link: https://www.interpol.int/en/notice/search/un/5782448</p>	<p>Member of the 'Military Command' which has assumed responsibility for the coup d'etat of 12 April 2012. Also a member of the Military High Command (highest hierarchy of the Bissau-Guinean Armed Forces).</p>	<p>1.6.2012</p>
<p>Idrissa DJALO (a.k.a. Idrica Djalo)</p>	<p>Nationality: Guinea-Bissau d.o.b.: 18 December 1954 Designation: (a) Major (b) Protocol advisor of the Armed Forces Chief of Staff (c) Colonel (d) Chief of Protocol of the Headquarters of the Armed Forces (subsequently) Passport: AAIS040158 Date of Issue: 12.10.2012 Place of Issue: Guinea- Bissau Date of Expiry: 2.10.2015 Date of UN Designation: 18.07.2012 (pursuant to para.4 of UNSCR 2048 (2012)) INTERPOL-UNSC Special Notice web link: https://www.interpol.int/en/notice/search/un/5782443</p>	<p>Point of Contact for the 'Military Command' which has assumed responsibility for the coup d'etat of 12 April 2012 and one of its most active members. He was one of the first officers to publicly assume his affiliation to the 'Military Command', having signed one of its first communiques (No 5 dated 13 April 2012). Major Djalo also belongs to the Military Intelligence.</p>	<p>18.7.2012</p>