

THE GUINEA (SANCTIONS) (EU EXIT) REGULATIONS 2019

REPORT UNDER SECTION 2(4) OF THE SANCTIONS AND ANTI-MONEY LAUNDERING ACT 2018

Introduction

1. This is a report under section 2(4) of the Sanctions and Anti-Money Laundering Act 2018 (“**the Act**”) in relation to the Guinea (Sanctions) (EU Exit) Regulations 2019. Section 2(4) requires a report to be laid before Parliament which explains why the appropriate Minister making regulations under section 1 considers that the purpose of the regulations meet one or more of the conditions in paragraphs (a) to (i) of section 1(2) of the Act; why the Minister considers that there are good reasons to pursue that purpose; and why the Minister considers that the imposition of sanctions is a reasonable course of action for that purpose.
2. Sanctions will continue to contribute to the UK’s efforts to “defend the rules-based international order”. The UK will continue to be a global leader on sanctions, based on the smart, targeted use of sanctions, as part of wider political and diplomatic strategies. The UK will enhance its leadership role in developing robust evidence to support sanctions regimes and designations – for national and multilateral sanctions. At the international level, the UK will continue to seek multilateral cooperation on sanctions in response to shared threats, given that a collective approach to sanctions achieves the greatest impact.
3. The EU first adopted a sanctions regime in respect of Guinea on 22 December 2009 in response to gross violations of human rights as a result of the massacre of political demonstrators by security forces in Conakry on 28 September 2009. The measures imposed in 2009 included an arms embargo, an asset freeze and a travel ban against members of the Government. In view of the positive developments in the country, restrictions were eased on 14 April 2014 and the arms embargo was lifted.
4. Bringing these existing EU sanctions into UK law is consistent with UK policy on Guinea. The Regulations are intended to deliver substantially the same policy effects as the existing EU sanctions regime. In the case of Guinea, the current EU sanctions regime provides for travel bans and asset-freeze measures to be imposed on persons responsible for violent repression and its aftermath.

Purposes and reasons for pursuing the purposes

5. The purpose of the sanctions regime, as set out in regulation 4 of the Regulations, is to encourage the Government of Guinea to investigate properly the violent repression in Guinea on 28 September 2009 and the aftermath of that violent repression, and hold to account and bring criminal proceedings against those responsible. Carrying out these purposes meets one or more of the conditions set out in section 1(2) of the Act. In particular, carrying out these purposes would fall within paragraph 1(2)(f) in that it aims to provide accountability for or be a

deterrent to gross violations of human rights, or otherwise promote compliance with international human rights law, or respect for human rights and 1(2)(i) in that it promotes respect for democracy, the rule of law and good governance.

6. There are good reasons for pursuing these purposes, namely to address the violent repression that took place in Guinea on 28 September 2009 and the aftermath of violent repression. In 2019 Human Rights Watch reports that despite meaningful progress in this investigation including the indictment of suspects in 2017, the investigation ended before judges were able to locate mass graves believed to contain over 100 victims' bodies, and a trial is yet to take place. ¹ Impunity largely continues for past human rights abuses committed by the security forces and government.

7. The Regulations impose sanctions in respect of violent repression that happened in Guinea in September 2009. In particular, they confer a power on the Secretary of State to designate persons where the Secretary of State has reasonable grounds to suspect that the person is an involved person, and considers that the designation of that person is appropriate, having regard to the purposes stated in regulation 4, and the likely significant effects of the designation on that person. In these Regulations an 'involved person' means a person who is or has been involved in-
 - (i) The violent repression in Guinea on 28 September 2009, or the aftermath of that violent repression.
 - (ii) Is owned or controlled directly or indirectly (within the meaning of regulation 7) by a person who is or has been so involved.
 - (iii) Is acting on behalf of or at the direction of a person who is or has been so involved, or
 - (iv) Is a member of, or associated with, a person who is or has been so involved.

8. Being involved in the violent repression or the aftermath means —
 - a. being responsible for the violent repression;
 - b. participating in, providing support for, or promoting the violent repression including through the use or threat of violence during the violent repression or in its aftermath;
 - c. being involved in the commission of a serious human rights violation or abuse during the violent repression, or in its aftermath, in particular in the context of—
 - i. the right to life;
 - ii. the right of persons not to be subjected to torture or cruel, inhuman or degrading treatment or punishment, including rape or sexual violence;
 - iii. the right to not be held in slavery or servitude;
 - iv. the right to liberty and security, including the right not to be subject to arbitrary arrest and detention;
 - v. the right to freedom of expression, association and peaceful assembly;
 - d. interfering with the access to medical care by a victim of the violent repression or its aftermath;
 - e. being involved in assisting the contravention or circumvention of any relevant provision.

¹ <https://www.hrw.org/world-report/2019/country-chapters/guinea>

Why sanctions are a reasonable course of action

9. The imposition of prohibitions and requirements of the kind imposed by these Regulations is a reasonable course of action for the purpose of encouraging the Government of Guinea to investigate and hold to account the persons involved in the violent crackdown on 28 September 2009 and its aftermath, and to act as a deterrent.
11. Sanctions can be used to change behaviour; constrain damaging action; or send a signal of condemnation. The UK Government believes sanctions are an effective and reasonable foreign policy tool if they are part of a broader foreign policy strategy for a country or thematic issue, and are appropriate to the purposes they are intending to achieve.
12. There are two principal kinds of sanctions in the Regulations: those relating to financial and immigration sanctions. These restrictions consist of an asset freeze (including a restriction on providing funds and economic resources) and a travel ban. These restrictions can only be imposed upon specified individuals and entities who meet the criteria set out in the Regulations, namely that there are reasonable grounds to suspect that the person is, or has been, involved in the violent repression on 28 September 2009 or its aftermath, in Guinea, and their designation is appropriate having regard to the purposes of the regime and the likely significant effects of the designation on that person. This is in order to ensure that the sanctions are clearly targeted at those who were responsible for violent repression on 28 September 2009 and its aftermath.
13. The intention is to encourage the Government of Guinea to properly investigate violent repression which took place on 28 September 2009 and its aftermath, and to hold the perpetrators of human rights violations to account. More than 150 people were killed and over 100 women were raped. Although 15 members of the former military junta and Presidential Guard have been charged and the location of the courtroom has been chosen, a trial is yet to take place. Impunity largely continues for past human rights abuses committed by the security forces and government. It is important that proceedings start this year to coincide with the 10th Anniversary. Applying these sanctions signals that the events of 2009 have not been forgotten and that those responsible should be held to account, as well as providing a deterrent for the future. The Regulations allow for exceptions to the travel ban and also provides for the financial sanctions to be subject to certain exceptions and a licensing framework. The exceptions and licensing provisions support the reasonableness of imposing these sanctions measures on designated persons, as they can be used, where appropriate to mitigate unintended or counter-productive impacts.
14. These sanctions are not an end in themselves. They are one element of a broader strategy of pressure and engagement to achieve the UK's foreign policy goals in respect of Guinea. The policy intention is to keep the sanctions on the Republic of Guinea in place until the perpetrators of violent repression on 28 September 2009 and its aftermath have been held accountable.
15. The UK will continue to coordinate with international partners, including on the future of the sanctions regime.

16. The Regulations also impose supplemental prohibitions and requirements, in particular those relating to the disclosure of confidential information, the reporting of information by relevant firms, and the holding of records. These kinds of prohibitions and requirements ensure that certain information is appropriately held by those involved with the operation of the sanctions regime and certain information is provided to authorities, and ensure that certain sensitive information is treated securely. These kinds of prohibitions and requirements enable the government to properly operate and enforce the sanctions regime, and therefore their imposition is considered a reasonable course of action for the purpose of the Regulations.

Conclusions

17. The purpose of these Regulations is to encourage the Government of Guinea to investigate properly the violent repression of 28 September 2009 and its aftermath in Guinea, and hold to account and bring criminal proceedings against those responsible, as well as encourage respect for international human rights laws. For the reasons set out in this report, carrying out those purposes meets one or more of the conditions in section 1(2) of the Act. As set out in this report, there are good reasons for pursuing that purpose, and the imposition of immigration and financial sanctions is a reasonable course of action for those purposes.

The Rt Hon Sir Alan Duncan MP KCMG

**Minister of State for Europe and the Americas, Foreign and Commonwealth Office, on behalf of
the Secretary of State for Foreign and Commonwealth Affairs**

ⁱ Section 1(2) states:

“A purpose is within this subsection if the appropriate Minister making the regulations considers that carrying out that purpose would –

- a) further the prevention of terrorism, in the United Kingdom or elsewhere,
- b) be in the interests of national security,
- c) be in the interests of international peace and security,
- d) further a foreign policy objective of the government of the United Kingdom,
- e) promote the resolution of armed conflicts or the protection of civilians in conflict zones,
- f) provide accountability for or be a deterrent to gross violations of human rights, or otherwise promote -
- (i) compliance with international human rights law, or
- (ii) respect for human rights,
- g) promote compliance with international humanitarian law,
- h) contribute to multilateral efforts to prevent the spread and use of weapons and materials of mass destruction, or
- i) promote respect for democracy, the rules of law and good governance.”