

Case study of money transfer from Ivory Coast to Mali:

Overview of sanctions

Below is an overview of the sanctions imposed on Mali and the latest developments on said sanctions.

- The ECOWAS – or CEDEAO (*Communauté Economique des Etats de l’Afrique de l’Ouest*) in French – is made up of the following countries: Benin, Burkina Faso, Cap-Vert, Ivory Coast, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.

The ECOWAS has imposed sanctions on Mali via a series of communiqués of the *Authority of Heads of State and Government of the ECOWAS*. To date, we understand that there have been 4 communiqués.

- The *Conference of Heads of State and Government of the West African Economic and Monetary Union* also imposed sanctions on Mali via its communiqué dated 9 January 2022 (the “**WAEMU First Communiqué**”).

The WAEMU (i.e., the *Union Economique et Monétaire Ouest Africaine*) is a regional bloc made up of the following countries: Benin, Burkina Faso, Guinea Bissau, Ivory Coast, Mali, Niger, Senegal and Togo.

- The *Cour de Justice de l’Union Economique et Monétaire Ouest Africaine* (i.e., a regional court that also has jurisdiction over Mali) issued ordinance No. 06/2022/CJ on 24 March 2022 (the “**Ordinance**”) after the third communiqué of the ECOWAS and the WAEMU First Communiqué.

The communiqués, the WAEMU First Communiqué and the Ordinance all provide information on sanctions imposed on Mali. We have set out below details on said sanctions.

First communiqué

- Date: 16 September 2021
- The sanctions imposed are as follows:
 - sanctions against individuals whose actions negatively impact the schedule relating to the holding of presidential elections in Mali. These sanctions impose travel restrictions on these individuals and their family members. Their financial assets are also frozen. The list of individuals that are subject to these sanctions is, however, not publicly available. This means that we cannot identify the individuals subject to said sanctions.

Second communiqué

- Date: 7 November 2021
- The sanctions imposed are as follows:
 - the sanctions set out in the first communiqué above are confirmed. This second communiqué confirms, however, that members of the transitional authority in Mali are also subject to the sanctions set out in the first communiqué above.

Third communiqué

- Date: 9 January 2022
- The sanctions imposed are as follows:
 - the sanctions set out in the first and second communiqués above are maintained.



- additional sanctions are imposed on Mali. These additional sanctions are as follows:
 - all member states of the ECOWAS recall their ambassadors in Mali.
 - terrestrial and aerial borders between the ECOWAS and Mali are closed.
 - suspension of all commercial and financial transactions between countries of the ECOWAS and Mali, with the exception of food products, pharmaceutical products, medical devices and equipment (including those pertaining to the fight against Covid-19), electricity and petroleum products.
 - assets of the Republic of Mali in central banks of the ECOWAS are frozen.
 - assets of the Malian state and state-owned/parastatal companies in commercial banks of the ECOWAS countries are frozen. As a kind reminder, Mali is member state of the ECOWAS; and
 - suspension of all financial assistance and transactions for the benefit of Mali by financial institutions of the ECOWAS.

The WAEMU First Communiqué

- Date: 9 January 2022
- The sanctions imposed are as follows:
 - the sanctions set out in the second communiqué above are confirmed.
 - the sanctions set out in the third communiqué above are confirmed.
 - suspension of Mali from organs and institutions of the UEMOA; and
 - suspension of financial help for the benefit of Mali from financing institutions of the WAEMU.

Ordinance

- Date: 24 March 2022
- The ordinance suspends the application of the WAEMU First Communiqué. This means that the application of the WAEMU First Communiqué is suspended until the WAEMU regional court issues its decision on the merits of the case. This also means that once a decision on the merits of the case is handed down, the sanctions set out in the WAEMU First Communiqué could be reinstated or annulled.

Fourth communiqué

- Date: 25 March 2022
- The sanctions imposed are as follows:
 - the sanctions set out in the third communiqué above are maintained.

Implications of the sanctions on the case at hand

Why would a bank in Ivory Coast block funds?

There are various possibilities that one could consider. We appreciate that the possibilities we have in mind are not all relevant to the case at hand. But we just wanted to provide you with a full picture of why a bank in Ivory Coast would block funds within the frame of sanctions imposed on Mali.



These possibilities are as follows:

- the money held in the Ivorian bank may belong to sanctioned individuals whose assets are frozen in all ECOWAS member countries (including Ivory Coast) – please refer to the input underlined in yellow above for your ease of reference.
- the money held in the Ivorian bank may (i) relate to commercial/financial transactions between Ivory Coast and Mali that are suspended – this would mean that any movement of funds from Ivory Coast to Mali pertaining to these commercial/financial transactions would be blocked or (ii) relate to assets owned by the Malian state or state-owned/parastatal companies. Please refer to the input underlined in blue above for your ease of reference.
- whilst the Ordinance suspends the application of the WAEMU First Communiqué, this suspension is just provisory until the regional court of the WAEMU issues its decision on the merits of the case – i.e., whether or not the sanctions set out in the WAEMU First Communiqué should be reinstated or annulled. Please refer to the input underlined in green above for your ease of reference. The Ivorian bank holding the money might want to wait for the decision of the regional court of the UEMOA before transferring any funds to Mali. This is understandable. If the regional court of the UEMOA decides that the sanctions against Mali should be upheld, the bank would be in violation of the WAEMU First Communiqué above if it were to transfer the funds to Mali. Please refer to the input underlined in green above for your ease of reference; and/or
- The fourth communiqué confirms all the sanctions set out in the third communiqué. This means that the second bullet point above is still applicable.

Solutions

Based on our input above, we understand why the Ivorian bank would be reluctant to transfer any funds to Mali/would be blocking funds in Ivory Coast. Any moves that the Ivorian bank makes could potentially be considered as violating the sanctions imposed on Mali.

One would need to wait for the lifting of all sanctions against Mali for the funds to be freed. There is no visibility into when this might happen. We understand, however, that the holding of presidential elections in Mali is the condition that needs to be met before the sanctions imposed on Mali are lifted.

New developments regarding this situation

On 3 July 2022, the ECOWAS decided to lift most of the sanctions against Mali. This decision is set out in a fifth communiqué of the ECOWAS. It was taken after the ECOWAS's approval of Mali's electoral calendar which provides for a potential presidential election in March 2024 in which members of the transitional authority cannot be candidates.

Fifth communiqué of the ECOWAS¹

The lifted sanctions are as follows:

- closure of land and air borders between the ECOWAS and Mali (sanction previously set out in the third communiqué of the ECOWAS).
- suspension of all commercial and financial transactions between ECOWAS member states and Mali (sanction previously set out in the third communiqué of the ECOWAS).
- freezing of Mali's assets deposited with the central banks and commercial banks of all ECOWAS member states (sanction previously set out in the third communiqué of the ECOWAS, although neither the third communiqué nor the other ECOWAS communiqués refer to assets deposited with "commercial banks" of ECOWAS member states).



- freezing of assets of the Malian state and state-owned/parastatal companies deposited with commercial banks of all ECOWAS member states (sanction previously set out in the third communiqué of the ECOWAS).
- suspension of all financial assistance and transactions in favour of Mali by ECOWAS financing institutions (sanction previously set out in the third communiqué of the ECOWAS); and
- recall by all ECOWAS member states of their ambassadors in Mali (sanction previously set out in the third communiqué of the ECOWAS).

The sanctions that have not been lifted are as follows:

- suspension of Mali from ECOWAS institutions (this sanction is, however, not referred to in the previous communiqués of the ECOWAS); and
- targeted sanctions against individuals or groups (sanction previously set out in the first and second communiqués of the ECOWAS).

There are also new developments with respect to the WAEMU First Communiqué. The WAEMU issued a second communiqué on 8 July 2022 (the “**WAEMU Second Communiqué**”²).

The WAEMU Second Communiqué:

- informs the public of the existence of the fifth communiqué of the ECOWAS above; and
- lifts the suspension of financial help for the benefit of Mali from financing institutions of the WAEMU (sanction previously set out in the WAEMU First Communiqué).

There is, however, no information in the WAEMU Second Communiqué on whether or not the other sanctions set out in the WAEMU First Communiqué are also lifted.

Additionally, we are not aware of any developments regarding the Ordinance – i.e., we have no information on whether the WAEMU regional court has issued its final decision on whether or not the WAEMU First Communiqué should be annulled or confirmed.

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¹https://ecowas.int/wp-content/uploads/2022/07/FR_Final-Communique-Sommet-juillet-2022-VF.pdf

²<http://www.uemoa.int/fr/communique-uemoa-levee-des-sanctions-economiques-et-financieres-l-encontre-du-mali-0>

