

Vitol decision shakes double jeopardy defence in France

Michael Griffiths

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The Court of Cassation found Vitol and Total siphoned money to Iraq through transport fees (Credit: istockphoto.com/Lalocracio)

Companies should have no confidence that the principle of double jeopardy will protect them against prosecution in France when they have been sanctioned for the same misconduct outside of Europe, lawyers said in light of a recent decision.

France's highest court, the Court of Cassation in Paris, on 26 February [upheld a decision to fine Swiss energy company Vitol €300,000](#) for making corrupt payments to the Iraq government as part of the United Nations Oil-For-Food programme. The fine piles onto a \$17.5 million sanction Vitol received in the US in 2007 as part of a plea deal it took to resolve identical allegations.

The court rejected Vitol's argument that it was protected from criminal proceedings in France because it had already been punished in the US. The court found that double jeopardy – that a company or individual can't be prosecuted for the same offence twice – didn't apply because the company pleaded guilty to a different charge in US proceedings and that France must maintain its right to punish companies that break French law.

The company had argued it was insulated from French bribery charges because of a [plea deal it entered into with the New York County District Attorney's Office in 2007](#). As part of the deal, the company pleaded guilty to a single count of grand larceny in the New York State Supreme Court and paid a \$17.5 million fine, \$4.5 million of which was donated to the state of New York.

Vitol admitted in the US plea deal that corrupt payments were made through its employees in France. In total, the company said it paid \$13 million to Iraqi officials between 2001 and 2002 hidden in oil contracts awarded to the company as part of the Oil-For-Food programme.

Investigative judges in France opened an investigation into Vitol in 2002. Vitol first invoked double jeopardy to rebuff proceedings in France in 2013. At the time, the [Paris District Court acquitted the company](#). However, the Paris Court of Appeals [reversed the decision in 2016](#), sparking Vitol to appeal against the decision to the Cour de Cassation.

In addition to the €300,000 fine Vitol received in France, local authorities also went after several individual defendants, fining them from €3,000 to €100,000. Serge Boidevaix, a former secretary-general in France's foreign ministry, received a €75,000 fine, while France's former ambassador to the UN was given a €50,000 penalty.

The UN introduced the Oil-for-Food programme in 1996 to relax sanctions on Iraq that had been imposed after the Iraqi army invaded Kuwait in 1990. Oil-For-Food allowed Iraq to sell a limited quantity of oil to buy basic humanitarian supplies to alleviate hardships the sanctions caused Iraqi civilians.

However, a [2005 UN inquiry into the programme found](#) that 2,253 companies paid a total of \$1.8 billion in kickbacks to the Iraqi government as part of the programme. The UN inquiry found that many companies complied with Hussein's demand that companies pay a 10% surcharge for transport costs or "after sale service" which was payable to ministries within the sanctioned regime.

French lawyers told GIR that the Cour of Cassation's decision to impose a fine for bribery has significantly weakened the double jeopardy defence, particularly when prosecutors allege some of the misconduct occurred in France.

Antoine Kirry, of Debevoise & Plimpton in Paris, said: "It now appears that when there's an offence partly in France and you've signed an agreement in the US, you've just got no protection against double jeopardy."

In the Vitol matter, the Cour of Cassation considered double jeopardy protections enshrined in both France's penal code and the European Union charter. However, the court said that both those protections fail to immunise a company from being prosecuted twice if part of the offence occurred within France and if the misconduct is prosecuted by a country that isn't bound by French or EU law, such as the US.

"You have no defence for double jeopardy with a state investigating outside of the EU," said Stephane de Navacelle, of Navacelle Law in Paris.

However, lower courts in France are not bound to follow the Cour of Cassation's decision because France does not have a precedent system like the US or the UK. But French lawyers told GIR that lower courts will probably consider the Cour de Cassation's judgment when ruling on the next case.

"Although the Cour of Cassation's view is only persuasive, they tend to be followed by lower courts," Kirry told GIR.

Total's conviction

As part of the same case, the Cour of Cassation also fined French oil company Total €700,000 on 26 February. The Paris District Court lumped Vitol and Total together in one proceeding because allegations against both companies concerned corrupt payments to the Iraq State Oil Marketing Organisation (SOMO).

The Cour of Cassation upheld the Paris Court of Appeals' 2016 decision that found Total guilty of corruption related to the Oil-For-Food programme but, unlike Vitol, US authorities have not sanctioned the company over this misconduct.

In a separate matter, Total was sanctioned by US authorities over allegations it bribed Iranian officials from 1995 to 2004 to win exploration contracts over Iranian oil fields.

Total [entered into a \\$245.2 million, three-year deferred prosecution agreement with the US Department of Justice](#) (DOJ) and disgorged \$153 million in a US Securities and Exchange Commission (SEC) cease-and-desist order. The DPA [expired in November 2016](#).

Prosecutors in France charged the company in 2013 over identical bribery allegations, after launching an investigation into Total in 2002. GIR understands that the case is going ahead but has not yet been scheduled for trial.

The next wave of double jeopardy decisions in Oil-For-Food matter

The Cour of Cassation isn't done with the Oil-For-Food scandal just yet. In November, the court will hear appeals from another 14 companies accused of wrongdoing as part of the UN scheme, with more double jeopardy arguments likely to feature.

French judges handling the early stages of the Oil-For-Food scandal decided to split cases against 16 companies into two categories: companies whose money went to SOMO and those that siphoned money to the Iraqi Ministry of Trade.

The 14 companies that fall into the second category were convicted for bribery offences in France in June 2015, they include French companies Renault Trucks, which [signed a \\$7 million DPA with the DOJ in March 2008](#) and defence company Textron which [entered into \\$1.15 million DPA in August 2007](#).

The Paris Court of Appeals convicted the companies in February 2016, after the Paris District Court acquitted them in 2013 citing double jeopardy. The matter is scheduled to be heard by the Cour of Cassation in a case beginning on 21 November 2018.

Total and Vitol did not respond to requests for comment.

Michael Griffiths

Author

Michael.Griffiths@globalinvestigationsreview.com

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