



THE GUIDE TO SANCTIONS

THIRD EDITION

Editors

Rachel Barnes QC, Paul Feldberg, Nicholas Turner,
Anna Bradshaw, David Mortlock, Anahita Thoms and
Rachel Alpert

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Rachel Barnes QC

Paul Feldberg

Nicholas Turner

Anna Bradshaw

David Mortlock

Anahita Thoms

Rachel Alpert

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Enquiries concerning editorial content should be directed to the Publisher –
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Publisher's Note

The Guide to Sanctions is published by Global Investigations Review – the online home for everyone who specialises in investigating and resolving suspected corporate wrongdoing.

When this guide was launched, I wrote that we were living in a new era for sanctions: more and more countries were using them, with greater creativity and (sometimes) self-centredness. I had no idea how true this statement would prove. Recent events have supercharged their use, to the point where, as our editors write in their introduction, ‘sanctions never sleep’. And then Russia invaded Ukraine . . .

Sanctions have truly become a go-to tool. And little wonder. They are powerful; they reach people who would otherwise be beyond our reach. They are easy – you can impose or change them at a stroke, without legislative scrutiny. And they are cheap (in the simplest sense)! It's up to others once they're in place to do all the heavy lifting.

The heavy lifting part is where this book can help. The pullulation of sanctions regimes, and sanctions, has resulted in more and more day-to-day issues for business and their advisers.

Hitherto, no book has addressed this complicated picture in a structured way. *The Guide to Sanctions* corrects that by breaking down the main sanctions regimes and some of the practical problems they create.

For newcomers, it will provide an accessible introduction to the territory. For experienced practitioners, it will help them stress-test their own approach. And for those charged with running compliance programmes, it should help them to do so even better. Whoever you are, we are confident this book has something for you.

The guide is part of the GIR technical library, which has developed around the fabulous *Practitioner's Guide to Global Investigations* (now in its fifth edition). *The Practitioner's Guide* tracks the life cycle of any internal investigation, from

discovery of a potential problem to its resolution, telling the reader what to think about at every stage. You should have both books in your library, as well as the other volumes in GIR's growing library – particularly our *Guide to Monitorships*.

We supply copies of all our guides to GIR subscribers, gratis, as part of their subscription. Non-subscribers can read an e-version at www.globalinvestigationsreview.com.

I would like to thank the editors of *The Guide to Sanctions* for shaping our vision (in particular Paul Feldberg, who suggested the idea), and the authors and my colleagues for the elan with which it has been brought to life.

We hope you find the book enjoyable and useful. And we welcome all suggestions on how to make it better. Please write to us at insight@globalinvestigationsreview.com.

David Samuels

Publisher, GIR

June 2022

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Foreword

I am delighted to welcome you to this third edition of Global Investigations Review's *The Guide to Sanctions*. The international, geographical, political, criminal, legal and regulatory elements that make up sanctions programmes ensure that this will remain one of the most complex compliance areas facing practitioners. The following chapters contain important information, advice and best practice for sanctions and export controls as a compliance discipline, courtesy of some of the world's leading legal, forensic and compliance specialists. The daily change to the international regimes requires practitioners and businesses to be constantly monitoring and horizon-scanning across all relevant jurisdictions, and the Guide is packed full of resources that will enable readers to do just that.

The current sanctions environment makes this Guide a must read for any practitioner who manages or advises on sanctions compliance. This Guide is the work of leading industry specialists who have all given their time and expertise to produce a resource that should be on every bookshelf. At a time of growing complexity, readers may find the Guide worthy of being constantly consulted as a valuable reference resource, not only in its own right, but also for the treasure trove of links and references to information and guidance provided by the regulators who guide industry in implementing sanctions policy.

Sanctions never sleep, and since the previous version of this Guide, we have seen the UK settle into an autonomous programme and increased international coordination with major countries and blocs looking to align as closely as possible. The US is no longer the only major player.

The sanctions regimes in place for countries such as Iran, Syria, North Korea and Yemen, to name just a few, have continued to evolve, but the focus since August 2021 has been squarely on Russia and Belarus. This Guide will bring you

up to date with the significant changes in those regimes, as at the time of writing, covering both the sanctions and export controls, as well as updating you on the developments in other regimes, including China and Hong Kong.

As with earlier editions, this third edition covers the major sanctions programmes from the United Nations, the United States, the European Union, the United Kingdom and the Asia-Pacific region, including the types of prohibitions imposed by the relevant programmes, the licence procedures and the measures that are available to challenge listings. Each of the major jurisdictions has an enforcement section that details the process and elements of enforcement from the relevant jurisdiction. The Guide also covers the re-emergence of thematic sanctions programmes; no longer limited to terrorism and narcotics, these programmes have seen a significant growth over the past few years. The third edition welcomes new authors who share their experiences representing sanctioned clients, among others.

The section on compliance programmes will enable readers to review their own programmes against best practice and improve and enhance their own controls if required. The final section covers sanctions and export controls in practice, giving good advice on how to navigate international, extraterritorial and often conflicting requirements of global sanctions and export control rules.

It is important to remember that financial crime is not a competition and that we make the biggest impact when we work together across industry and governments. The partnerships and collaboration across the globe play an important part in managing international sanctions. Part of my role at UK Finance is to liaise with industry and governments to help promote public-private partnerships and ensure that we are all fighting financial crime, especially in the sanctions space, as a coordinated and collaborative network of specialists, in the UK and elsewhere.

The Guide to Sanctions is intended to enable readers to be a valuable part of the sanctions and export controls community, dedicated to fighting financial crime and helping to protect our wider society from the impacts of those that seek to cause harm on the international stage.

Neil Whiley

Director of Sanctions, UK Finance

June 2022

Part I

Sanctions and Export Control Regimes Around the World

CHAPTER 14

Practical Applications of International Sanctions and Export Controls in France

Stéphane de Navacelle, Julie Zorrilla and Thomas Lapierre¹

Sources, definition and scope of restrictive measures on trade in France

Sources of trade sanctions in France

International economic sanctions, defined as institutionalised mechanisms aimed at modifying reprehensible behaviour in the international sphere by means of partial or complete restrictions in trade and financial matters,² in France are mainly an application of international instruments adopted by the United Nations and the European Union.³ However, France has also adopted similar national retaliatory mechanisms in its own legislation.⁴

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- 1 Stéphane de Navacelle is managing partner, Julie Zorrilla is a partner and Thomas Lapierre is an associate at Navacelle.
 - 2 Emmanuel Lebrun-Damiens and Patrick Allard, 'Les sanctions internationales sont-elles efficaces?', in *Les Carnets du CAP: notes de réflexion et de prospective du Centre d'analyse et de prévision du Ministère des affaires étrangères*, April 2012, p. 107, refers to the different types of sanctions according to their nature, scope and effects.
 - 3 David Hotte, Didier Morlet, Stéphane Sauteret and Vincent Soullignac, *Les sanctions financières internationales* (RB Editions, 2012), p. 91.
 - 4 Régis Chemain and Juin Dalloz, *Répertoire de droit international – Sanctions économiques* (Dalloz, 2021), Section 13; EU Best Practices for the effective implementation of restrictive measures, Foreign Relations Counsellors Working Party, Council of Europe, 2018 recommends adopting autonomous mechanisms of economic sanctions to complement the prevention of terrorism funding.

These international sanctions can be of a commercial nature, aimed at restricting trading, import and export activities with a given country or entity,⁵ or of a financial nature, corresponding to those restrictions linked to the access and continuation of financial, banking or stock market activities.⁶

Sanctions can also target a specific individual, territory or country or be limited to a specific economic sector. When a sanction targets an individual, it is generally materialised by the blocking of the target's accounts or financial products, which are included in sanctions lists. Sectoral sanctions are restrictions of trade or the rendering of certain services. For instance, recent EU sanctions against entities from the Russian Federation were imposed to restrict trade related to energy production and the aviation sector.⁷ Similarly, the European sectoral sanctions concern access to the provision of credit and investment services on the European market for certain Russian banks.⁸

Economic sanctions applicable in France can take three forms:

- economic sanctions adopted by resolutions of the United Nations Security Council, which can be adopted by both the European Union and by the French state through a transposition;
- economic sanctions dictated by Common Foreign and Security Policy (CFSP) decisions of the European Union and the corresponding regulations, which are immediately applicable in the French jurisdiction; and
- measures adopted by means of national legislation or administrative acts on monetary and financial matters, customs or even national defence.

This chapter focuses on national provisions and France's approach to international sanctions.

5 Hotte, Morlet, Sauteret and Soullignac (footnote 3), p. 27.

6 *ibid.*

7 See Council Decision (CFSP) 2022/327 of 25 February 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine.

8 See Council Decision (CFSP) 2022/264 of 23 February 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine; Council Regulation (EU) 2022/263 of 23 February 2022 concerning restrictive measures in response to the recognition of the non-government controlled areas of the Donetsk and Luhansk oblasts of Ukraine and the ordering of Russian armed forces into those areas.

Sanctions applied in France on a domestic basis

Under French law, the French government may put in place different asset freezing mechanisms at the national level.

Article L151-2 of the Financial Code allows the French government to restrict French investments and financial relations in foreign countries to protect national interests.⁹ Historically, this was the main legal process used to apply sanctions before they were covered through the EU CFSP and other international instruments.¹⁰

Article L562-2 of the Financial Code also provides that, through the minister in charge of the economy, the French government can order the freezing of assets of persons related to terrorist cases. This measure can also be extended to those legal persons or entities detained, controlled or managed by the targeted person.¹¹

Article L562-3 of the Financial Code provides that the French government may, for a renewable term of six months, decree the freezing of assets of entities or persons sanctioned by the United Nations and the European Union. In addition, this measure can be extended to those legal persons or entities detained, controlled or managed by a sanctioned person.¹² This system reinforces the effectiveness of internationally adopted measures in the event of any delays that may occur in implementation.¹³

It is possible to file an appeal or litigation against a decision to freeze the assets of a person.¹⁴ French law also provides the possibility for a partial release of sums of money intended to cover, within the limits of the available funds, basic living expenses and required legal costs, justified in advance.¹⁵

Consequences for non-sanctioned actors under French law

Sanctions also involve challenges for non-sanctioned economic actors who must ensure that they do not violate the rules regarding sanctions as an asset freeze prohibits making available economic resources to listed entities or persons.¹⁶

9 Article L151-2 of the French Financial Code.

10 Treasury Department Guidelines/frequently asked questions (FAQs) on the implementation of economic and financial sanctions, Department of Treasury, 2016, p. 8.

11 Article L562-2 of the French Financial Code.

12 *id.*, Article L562-3.

13 Hotte, Morlet, Sauteret and Soullignac (footnote 3), p. 95.

14 Treasury Department Guidelines/FAQs (footnote 10), questions 10 and 11.

15 Article L562-11 of the French Financial Code.

16 Joint guidelines of the French Treasury and the Authority of Prudential Control of Resolution (ACPR) on the implementation of asset freezing measures, 2016, p. 6.

For easy access to information related to sanctions, the implementation of these sanctions mechanisms is based on the use of lists of entities subject to an asset freeze, made available to the public by the Directorate General of the Treasury. Via the publicly available National Registry of Frozen Assets, it is possible to determine whether a person is subject to both domestic and international sanctions, without prejudice to the lists adopted at a European level.¹⁷

Furthermore, financial institutions are required to have a detection system that allows the filtering of persons and entities included in the asset freeze list.¹⁸ Financial institutions must refuse to provide any services or authorise any transactions as soon as the sanction comes into force, without the need for confirmation by the authorities.¹⁹

Violations of the asset freeze regime by financial institutions may result in disciplinary sanctions imposed by the French regulator of the financial, banking and financial sector, the Authority of Prudential Control of Resolution (ACPR) as well as criminal liability.²⁰ Other common challenges when an asset freeze is ordered may include cases of non-sanctioned persons who are affected even if they are not the subject of the asset freeze²¹ as well as cases of homonymy.²² Complying with the export regulations is an additional challenge.

Export of dual-use items and licence export applications in France

France enforces Regulation (EU) 2021/821, setting up a European Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items. Dual-use items are those that, while produced and marketed for civilian purposes may also benefit military activities, in contravention of international material control or restriction provisions.²³

As such, this implies that the exporter must be granted a licence prior to exporting a dual-use item. To be lawful, the export requires the licence to be granted before the dual-use item is exported. A licence granted after the export is

17 <https://gels-avoirs.dgtresor.gouv.fr/>.

18 Joint guidelines of the ACPR (footnote 16), p. 20.

19 *id.*, p. 32.

20 *id.*, p. 46; ACPR is defined as competent to monitor and enforce regulations on national and international asset freezes by institutions under its supervision.

21 Treasury Department Guidelines/FAQs (footnote 10), Question 12.

22 *id.*, Question 36.

23 Article 2 of Council Regulation (EU) 2021/821 of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items.

made does not render it lawful a posteriori.²⁴ Likewise, the state exercises control over dual-use goods via a series of obligations related to the final recipient and the ultimate destination of the items.²⁵

Although dual-use goods and licences are mainly determined by the aforementioned European regulations, the French government, through the French Export Control Office on Dual-Use Goods (SBDU) can grant, suspend, modify, withdraw or revoke licences under national regulations.²⁶

The SBDU also elaborates on governmental positions regarding dual-use item exports and participates in the corresponding European-level negotiations.²⁷

More importantly, through the use of off-licence requests, exporters may request guidance from the SBDU regarding whether the item intended for export is a dual-use item and to which category it belongs pursuant to the Annexes of EU Regulation 2021/821.²⁸

Indeed, licences delivered in France by the SBDU may take different forms, depending on their scope and specific application:

- individual licence: this is granted for one or several identified dual-use goods of the same nature, intended for a particular person within a given limit and value.²⁹ In that regard, exporters should attach an end-user certificate to facilitate the licence application process;³⁰
- global licence: this allows exporters to export items in the same category of dual-use goods and may refer to one or several end users as well as to one or several countries.³¹ To obtain a global licence, an exporter that carries out activity through a regular flow of supply abroad of dual-use goods as defined by the applicable regulations³² is required to have a monitoring programme in place to control the end users to whom it is exporting on a regular basis.

24 *id.*, Article 3.

25 *id.*, Article 27.

26 Article 1 of Decree No. 2001-1192 of 13 December 2001 on the control of export, import and transfer of dual use goods and technologies; Article 1 of Decree No. 2020-74 of 31 January 2020 on the national service called 'Export Control Office on Dual-Use Goods', a department with nationwide competence.

27 *id.*, Article 3.

28 <https://sbdu.entreprises.gouv.fr/fr/demandes-ligne/dossiers-hors-licence-dhl-poser-question-au-sbdu>.

29 Article 3 of Decree No. 2001-1192.

30 <https://sbdu.entreprises.gouv.fr/fr/demandes-ligne/documents-fournir-et-modalites-par-type-d-autorisation#individuelle>.

31 Article 3 of Decree No. 2001-1192.

32 Article 8 of the administrative decision of 13 December 2001 details the conditions for obtaining a global licence.

The exporter must be able to indicate the internal procedures adopted for the purpose of internally verifying the nature of the goods, the list of internal persons in charge of monitoring compliance with the principles governing the matter, and the definition of an audit programme. The exporter is also required to implement a due diligence procedure to identify clients that may not comply with export controls, to implement a training programme for employees and to set up a registration and archiving system;³³

- national general licence: this covers agreed licences for export without limit in quantity or value for certain categories to certain specified destinations;³⁴ and
- European general authorisation: Council Regulation 2021/821 provides general authorisations for exporters who fulfil specific monitoring and traceability conditions in their exports.³⁵

The SBDU can also issue international import certificates and delivery verification certificates to allow the importer to justify to a supplier and the national authorities the final destination of the dual-use goods concerned.³⁶

Applications are generally made digitally through the SBDU website.³⁷ From a practical standpoint, the SBDU encourages companies to adopt review methods and internal controls to ensure the accuracy of the information provided and mitigate the risks associated with exports of dual-use items. For example, to obtain a licence and to avoid customs delays, the service draws attention to the need to have the latest version of the relevant forms, especially the end-user certificate.³⁸

Attention is also drawn to the declared value of the goods, nomenclature codes and other specifications requested in the application form.³⁹ Finally, the SBDU advises exporters to include a context letter to enable it to fully understand the scope of the export operation contemplated.⁴⁰

33 *id.*, Article 10.

34 Article 3 of Decree No. 2001-1192.

35 *ibid.*

36 *id.*, Article 8.

37 Article 2 of the administrative decision of 13 December 2001; *id.*, Articles 11 and 12.

38 'Exporters: 5 points of attention to improve your licence applications', www.sbd.entreprises.gouv.fr.

39 *ibid.*

40 *ibid.*

Although the SBDU grants licences for the export of dual-use items, some products may require further authorisations for the export to be lawful; for example, dual-use software that integrates cryptography or cryptology functions⁴¹ and that is classified as a dual-use item requires an authorisation from the French National Agency of Security and Information Systems, which is attached to the Ministry of the Interior.⁴²

Non-compliance with these formalities may lead to the failure of the export but may also lead to penalties, as discussed below. It is therefore essential for exporters to be equipped with effective verification and compliance systems. This will allow them to gain a full understanding of regulations and to adapt their activities accordingly.

Main export licence of military equipment in France

France has adopted a political doctrine in which the export of military equipment is seen as a key component of its sovereignty and security. The general principle is thus that the export of military equipment and weapons is prohibited by law.⁴³ However, there are some exceptions, and exports of military equipment must be expressly authorised through the granting of a licence. In that regard, the logic is similar to the licence application process for dual-use items.

Military equipment licences are granted by the Defence Ministry through the General Directorate of the Army (DGA) and the General Secretariat of Defence and National Security.⁴⁴

There are four main types of military equipment licence:

- individual licences: these refer to a given operation, limited in price and quantity, with an identified recipient, and are valid for three years;⁴⁵
- global licences: these are granted to an applicant for one or several operations with no price or quantity limit. They are valid for a specific period and can be automatically renewed;⁴⁶

41 Article 29 of Law No. 2004-575 of 21 June 2004 on confidence in the digital economy, which defines the means of cryptology as any device designed or modified to transform data using secret characters to guarantee security.

42 Article 3 of Decree No. 2007-663 of 2 May 2007 taken for the application of Articles 30, 31 and 36 of Law No. 2004-575 on confidence in the digital economy and relating to the means and services of cryptology.

43 Article L2335-2 of the French Defence Code.

44 *id.*, Article R2335-9.

45 *id.*, Article L2335-3.

46 *ibid.*

- general licences: these are defined by an administrative decision published in the official gazette, and allow exports without price or quantity limits to one or several categories of recipients;⁴⁷ and
- transfer licences: these take the form of one of the three previous categories. Transfer licences refer to authorisations required for the export of defence-related material to other Members of the European Union.⁴⁸ Such is the case, for example, for the export of aerospace-related material such as satellites, launching systems, space rockets or telecommunication materials.⁴⁹

In the case of individual or global licences, the application may be made electronically through the online export licence information, management and administration system.⁵⁰ Exporters may be required to produce certificates of non-re-exportation of the goods, issued by the holders of the goods, which guarantee that it is not a triangular operation or a form of circumvention of the regulations.⁵¹

There is also an obligation to submit a semi-annual accountability report on licensed operations. This report must include the orders and shipments made and the certificates of non-re-exportation, among other technical specifications of the operations.⁵²

In the post-licensing stage, the exporter must keep a record of all the necessary justifications to establish that there was no misuse of the material exported during the operation.⁵³ In the case of inconsistencies found in the verification by the DGA, a report and the established verbal proceedings may be sent to a ministerial committee for follow up.⁵⁴ In addition, if a criminal offence is suspected, the DGA may inform the French prosecutors, after informing the French Ministry of Defence.

47 *ibid.*

48 *id.*, Article L2335-9.

49 *id.*, Article L2335-18.

50 *id.*, Article R2335-10.

51 Article 1 of the administrative decision of 30 November 2011.

52 *id.*, Article 2.

53 *ibid.*

54 *ibid.*

Trade sanctions violations and enforcement defence in France

The international economic sanctions regime at the European Union or United Nations level does not have a direct sanction mechanisms in the event of a violation. Indeed, it is up to the different states, in their enforcement mission, to define the penalties applicable in case of violation of different international regimes and to sanction the corresponding infractions.

French provisions on violations of restrictive measures on trade

The violation of an economic sanctions regime can also be a key element in determining criminal liability in cases where the commission of more complex offences is alleged.

Article 459 of the Customs Code states that it is a criminal offence for a person to breach international economic restrictive measures adopted by the European Union or through an international treaty. The infringement, circumvention or fraud of these sanctions carries a maximum sentence of five years' imprisonment and a fine of double the proceeds of the offence. Exporting dual-use items or military equipment without a licence also carries a similar sentence.⁵⁵

Article L547-3 of the Financial Code provides for the same penalties in the case of violation of sanctions adopted by the French government at national level.⁵⁶

As far as asset freezes are concerned, the ACPR exercises its control through the imposition of civil sanctions in the financial, banking and insurance sectors.⁵⁷ For instance, a €50 million penalty was imposed on French bank, La Banque Postale, in 2018 due to the absence of an adequate detection system to identify whether beneficiaries of transactions by the bank are subject to an asset freeze.⁵⁸ The French Supreme Court for administrative matters later confirmed the sanction.⁵⁹ Similarly, on 30 November 2021, the ACPR sanctioned MMA IARD, a French insurance company, with a €4 million penalty, holding that it had shortcomings in the implementation of asset freeze obligations.⁶⁰

In addition, Article L2339-2 of the French Defence Code provides for a maximum sentence of seven years of imprisonment and a fine of €100,000 for any person who produces and markets war materials, arms and ammunition without

55 Article 414 of the French Customs Code.

56 Article L547-3 of the French Financial Code.

57 Joint guidelines of the French Treasury and the ACPR on the implementation of asset freezing measures, 2016, p. 46.

58 Decision of the ACPR Enforcement Committee of 21 December 2018, No. 2018-01.

59 French Council of State, 15 November 2019, No. 428.292.

60 Decision of the ACPR Enforcement Committee of 30 November 2021, No. 2020-09.

respecting the corresponding licensing and authorisation obligations.⁶¹ Pursuant to Article L2339-14 of the Code, the penalty is set at 15 years of criminal imprisonment and a fine of €1.5 million if the materials are biological weapons or weapons of mass destruction.

Sanctions or restrictive measures violations linked to other crimes

In addition to the offences described above, recent events show that violation of the sanctions regime may also be used as evidence of other violations.

For instance, the French-Swiss company Lafarge is currently being prosecuted in France for various offences, including for funding terrorism in Syria.⁶² The company is alleged to have decided to continue its activities in territory controlled by the Islamic State.⁶³ Not only did inherent economic sanctions risks in Syria materialise, but French authorities are currently seeking⁶⁴ criminal liability for the company.⁶⁵

Another relevant case in France concerns the link between the violation of international economic sanctions and the characterisation of the crime of corruption. This case relates to the criminal liability of Total, in the framework of the United Nations oil-for-food programme, which entailed a considerable diversion of funds.⁶⁶ Total, as a company participating in the programme, was sanctioned for its participation in fraudulent schemes that not only allowed a violation of the embargoes but constituted acts of corruption.⁶⁷

Exporters are also at risk of liability in cases of misuse of equipment. This is especially relevant in terms of dual-use items and military equipment. These exports carry a significant legal risk for companies that operate on a global scale. In that regard, under French law, not only can companies be criminally liable, but the French Supreme Court recently confirmed that in the case of a merger or acquisition, an absorbing company can, under certain conditions, be convicted for offences committed by the absorbed company prior to the merger.⁶⁸

61 Article L2339-2 of the French Defence Code.

62 'Syria: Council extends sanctions against the regime for another year', European Council Press Release, 27 May 2021.

63 'How the cement company Lafarge worked with the Islamic State in Syria', *Le Monde*, 21 June 2016.

64 'Lafarge in Syria: the Court of Cassation invalidates the cancellation of proceedings for complicity in crimes against humanity', *Le Monde*, 7 September 2021.

65 'Syria: Lafarge indicted for complicity in crimes against humanity', *Le Monde*, 28 June 2021.

66 'Q&A: Oil-for-food scandal', BBC One-minute World News, 7 September 2005.

67 'Total fined by French court in Iraq oil-for-food case', Reuters, 26 February 2016.

68 Supreme Court, Criminal Division, 25 November 2020, No. 18-86.955.

Examples of challenges for entities operating in France facing allegations of international sanction violations

Aside from regulatory and legal risks, sanctions violations expose corporations to reputational issues, market consequences⁶⁹ and scrutiny from non-governmental organisations (NGOs) and civil society.⁷⁰

This may be illustrated by public criticism of the decision of certain French companies to continue activities in sanctioned countries.

Such is the case, for example, of the French energy group TotalEnergies, which decided to continue operations in Myanmar, despite the impositions of economic sanctions following the military coup that took place on 1 February 2021.⁷¹ While the media and NGOs questioned the presence of TotalEnergies in the country because the company would be financing those state structures responsible for the repression,⁷² TotalEnergies claimed that it did not contribute either directly or indirectly to the violation of human rights in Myanmar and that its motives for maintaining its operations were humanitarian in nature.⁷³ Despite the decision to continue operations, pressure by NGOs and the threat of judiciary actions against the company led to its decision to withdraw in 2022.⁷⁴

The reasoning behind this case is particularly useful, as it reveals the complexities of the regulations and the risk of sanctions, as well as the seriousness of the violation, resulting in the intensification of the risks, even at a preparatory stage. Effectively, they illustrate the balancing act involved in complying with international sanction regimes and the challenges for companies in doing so.

Exporters have also increasingly been held liable for the misuse of their products. For instance, reports show that French companies and their executives have recently been prosecuted as accomplices for providing mass surveillance technology to repressive regimes in Libya and Egypt.⁷⁵

69 Pauline Grosset-Grange, 'French NGOs and corporate funding from companies: the stakes of a convergence', Dumas Institute of Political Science, Paris, 2014, p. 30.

70 *id.*, p. 14.

71 'The oil company Total remains in Burma despite the repression', FranceTv Info, 4 April 2021.

72 'Burma: Total Must Stop Funding the Junta', NGOs joint press release, 19 March 2021.

73 Patrick Pouyané, 'Total facing Human Rights tragedy in Myanmar', Tribune CEO, 4 April 2021.

74 'TotalEnergies and Chevron withdraw from Myanmar, almost a year after the coup', *Le Monde*, 21 January 2022.

75 'Sale of surveillance equipment to Libya', *Le Monde*, 22 June 2021.

Regarding the export of military equipment, the latest French parliamentary report on export licences of weapons underlines that an increasing number of NGOs have started filing criminal complaints against private weapons manufacturer and exporters in France.⁷⁶

Despite compliance with the requirements for this type of export, the responsibility of the producer and exporter after the export may involve complex elements in terms of penalties. In that regard, it should be noted that the granting of a licence by France does not shield exporters from liability arising from misuse of their products.

This is explained by the fact that, although French export regulations may require exporters to maintain control and surveillance of the final use of certain goods marketed by their customers, it is difficult to assess the scope of this obligation once the export transaction has been concluded.

Managing the risk of violations of international sanctions

Compliance with regulations or licences granted by the state is necessary to protect company interests but would most likely not be sufficient to mount an effective enforcement defence in the case of judicial and administrative prosecution for alleged violation of the provisions regarding EU or UN regulations that are applied by the French state.

An effective compliance system may enable the anticipation and overcome the legal challenges posed by enforcement of international restrictive measures on trade.

It is therefore necessary to establish risk management mechanisms and compliance policies in this area. Companies should have teams trained in these issues and, if necessary, seek external assistance in forecasting and reacting to the adoption of international restrictions regardless of their origins. Support in decision-making is essential to manage the risks of sanctions and prosecution in this area and to adopt a global view on these matters.

There is no 'standard' compliance system applicable to all types of companies or a central authority issuing general recommendations. It is therefore necessary to consider the specificities of the activity and the geographical location to define adequate procedures and rules.

It is also necessary to consider the regulations on international economic sanctions in commercial relations with third parties. In this sense, guarantee clauses in accordance with the regulations (mandatory, for example, in the matter

76 Report on export control of weapons No. 3581, 18 November 2020.

of prohibition of re-export) should be generalised in entities that have specific exposure. Likewise, an analysis of beneficial owners should be made to verify whether the structure of suppliers, customers or contractors includes or may benefit persons subjects to international sanctions.

Another important aspect, in addition to prevention, concerns the definition of procedures for detecting violations of international sanctions regimes, audits and controls. Although the French authorities do not verify the existence of sanctions compliance systems, when it comes to enforcement actions, active cooperation may result in less severe treatment.

APPENDIX 2

About the Authors

Stéphane de Navacelle

Navacelle

Stéphane de Navacelle practises corporate litigation, predominantly in criminal law, regulatory, internal investigations, compliance, complex commercial litigation, international arbitration and mediation, in New York, London and Paris.

With over 15 years' experience in investigations in France and abroad, led in part in connection with French, foreign or international organisations (at Engel & McCarney, Debevoise & Plimpton LLP), Stéphane advises entities in rolling out and auditing ethics and compliance programmes. As such, he was appointed as an independent expert monitor in compliance (2017–2019, 2019–2021 and 2022–2024) by European groups operating globally, based on negotiated settlement agreements of the World Bank and the Inter-American Development Bank.

He is a former member of the Paris Bar Council (2017–2019) and has been secretary of the ethics commission and a member of the disciplinary reviews board of the Paris Bar. He is currently appointee for influence through law of the Paris Bar.

Stéphane was appointed as observer by the prosecutor for the international criminal tribunal for Rwanda (2009), was a member of the board of directors of the Fondation de Coubertin (a French public interest Foundation, 2010–2016), a fellow of the American Bar Foundation (2016), a member of the Recognition and Reparation Commission, a French independent committee on sexual abuse in the Catholic Church (2019–2021), and a member of the French Health Ministry Commission for the fight against ill treatment and abuse and the promotion of fair treatment.

Julie Zorrilla

Navacelle

Julie Zorrilla is a partner at Navacelle with over 10 years' experience assisting clients in complex cross-border financial and criminal matters, including embargoes, index manipulation (LIBOR and SSA), asset recovery and large-scale corruption cases involving senior executives and major French and foreign financial institutions.

She handles large-scale corruption and compliance matters, advising on both legal and crisis management for corporations with global operations. She is involved in assisting Stéphane de Navacelle in connection with his appointment as expert pursuant to a World Bank negotiated resolution agreement.

Julie leads the firm's extradition and Interpol practices, advising both individuals and states in connection with European arrest warrants, international arrest warrants and red notices. She participates in determining the strategy for and the implementation of internal investigations. She assists companies with activities on a global scale at all procedure stages, by advising in terms of both legal and communication strategy. She also has expertise in compliance.

Previously, she worked at the Legal Affairs Department of the Ministry of Economy and Finance in 2012, and as an intern auditor at the Paris Court of Appeal in 2011. Julie has been distinguished by *The Legal 500: EMEA* and Global Investigations Review ('Top 100 Women in investigations') in the areas of criminal law, litigation, compliance and investigations.

Thomas Lapierre

Navacelle

Thomas Lapierre is an associate at Navacelle and focuses on white-collar crime defence. He represents both companies and individuals in criminal proceedings in complex financial offences. He has recently worked on cases involving allegations of international corruption, violations of international trade sanctions, financial markets fraud and market manipulation allegations.

He also advises companies and their executives in the implementation of anti-corruption and money laundering compliance programmes.

Previously, Thomas practised within a prominent Paris criminal defence firm where he gained valuable experience in criminal procedure and complex allegations of financial crime and regulatory offences. He also regularly represents individuals before criminal courts in emergency proceedings as a Paris Bar-appointed lawyer.

Navacelle

60 rue Saint-Lazare

75009 Paris

France

Tel: +33 1 48 78 76 78

sdenavacelle@navacelle.law

jzorrilla@navacelle.law

tlapierre@navacelle.law

www.navacelle.law

We live in a new era for sanctions, more than ever, it seems. More states are using them, in more creative (and often unilateral) ways. They've become many states' first line of response.

This, alas, creates a degree of complication for everyone else. Hitherto no book has addressed those issues and the proliferation of sanctions regimes and investigations in a structured way. GIR's *The Guide to Sanctions* solves that. Written by contributors from the small but expanding field of sanctions enforcement, it dissects the topic in a practical fashion, from every stakeholder's perspective, and is an invaluable resource.

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