THE GUIDE TO SANCTIONS

FOURTH EDITION

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Publisher's Note

The Guide to Sanctions is published by Global Investigations Review (GIR) – 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 countries were using them, with greater creativity and (occasionally) self-centredness. I had no idea how true this statement would prove to be. Recent events have supercharged their use, to the point where sanctions never sleep. And that was before Russia invaded Ukraine . . .

Sanctions have become everybody's go-to tool. And little wonder. They are powerful; they reach people otherwise beyond reach. They are easy – they can be imposed or changed at a stroke, without real legislative scrutiny. And they are cheap for governments (as in the cost of making them versus their wider impact); once they exist, others do all the real heavy lifting.

It is on the heavy lifting part where this book can help. The pullulation of sanctions regimes, and sanctions, has created day-to-day headaches and challenges for all nearly all businesses 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* and our new book on money-laundering and anti-money laundering regimes.

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
September 2023

Foreword

The term 'sanctions' is not new. The 90s have been called the 'decade of sanctions' of the UN Security Council. Today we are observing the unprecedented expansion of economic, financial, trade, cyber, targeted, individual and other types of sanctions (restrictive measures) applied by states and regional organisations unilaterally without the authorisation of the UN Security Council. Compliance with unilateral sanctions is enforced by multiple tools, including secondary sanctions exposure, criminalisation of sanctions circumvention and maximum pressure campaigns. Pecuniary penalties as a result of civil charges, even after securing settlement agreements with the US Office of Foreign Assets Control, may reach billions of US dollars.

Complicated, confusing and overlapping sanctions regulations, the proliferation of penalising mechanisms, the high risk and severity of penalties, unclear, lengthy, costly and complicated licensing procedures, uncertainties around the scope of humanitarian carve-outs, broad interpretations of the sanctions regimes, complications in delisting procedures and high legal costs all heighten risks and result in the growing de-risking and over-compliance by all actors in sanctioning, sanctioned and third countries.

It is a principled position of the mandate that any unilateral measures can only be taken by states and regional organisations without the authorisation of the UN Security Council if they fully correspond to criteria of countermeasures or retortions under the law of international responsibility. Any other measures qualify as unilateral coercive measures and are illegal under international law. These unilateral measures, independent of their legality, also have enormous humanitarian effects, which are often neglected or considered to be unintended by the sanctioning parties.

At the same time, as a Special Rapporteur I receive multiple complaints not only about the direct impact of sanctions but also often of over-compliance with all types of sanctions for many, if not all, of the reasons stated above.

De-risking and over-compliance have negative effects on all nationals or residents of countries under sanctions, often involving discrimination on the grounds of nationality, place of birth, residence, registration, IP address or any other nexus with these countries. It results in the isolation of countries, their companies and individuals, breach of trade and cooperation networks, and creates challenges to, or uncertainties of, access to justice and to remedies for those affected, and thus a lack of accountability.

I can also cite the detrimental effects on all basic human rights arising from impediments to the delivery of goods that are not subjected to sanctions, including those that are explicitly exempted from sanctions regimes via humanitarian carve-outs, such as food, medicine, fertilisers, medical equipment and spare parts, as well as many other goods necessary for the maintenance and development of critical infrastructure, thus rendering humanitarian provisions de facto almost non-existent. Financial institutions, manufacturers and delivery and insurance companies refer to broad and unclear interpretations of sanctions limitations by states or the compliance sector. They also mention the risks involved in delivering goods that may be perceived as 'dual use' (relevant to many types of medicine, rescue equipment and even simple consumer goods such as toothpaste), the impossibility or challenges of bank transfers, insurance or deliveries due to other elements of sanctions regulations, or the simple risk-aversion by refraining from dealing or cutting ties with any actor suspected of, or perceived as, having relations with the country under sanctions.

In particular, multiple reports refer to the challenges of delivering humanitarian assistance to the countries under sanctions even in the course of global public health crises, including the covid-19 pandemic, or epidemics (dengue), or in the aftermath of natural disasters such as earthquakes. They also refer to sanctions-induced challenges of effectively implementing humanitarian resolutions of the UN Security Council. Over-compliance and its serious adverse impact on humanitarian work persist even after the adoption of specific, targeted and often time-limited humanitarian carve-outs, such as those adopted for Syria by the US, UK and EU in response to its catastrophic earthquakes in February 2023 (UN Security Council Resolutions 2664 and 2615).

Information about the scope of international and unilateral sanctions, counter-sanctions, legal regimes of different countries, and legal assessment of, and challenges in, litigation in sanctions cases is often fragmentary or politicised. As a Special Rapporteur I very much welcome reflections and open dialogue on

all aspects relevant to sanctions and their impact, as well as discussions about mechanisms to ensure protection of the rights of all those affected by unilateral measures, analyses on the various challenges pertaining to humanitarian carve-outs and licensing, and mechanisms of litigation, accountability, responsibility and redress.

In terms of the serious practical implications of international and unilateral sanctions, compliance and over-compliance, I believe that the experience and views of practitioners exposed in *The Guide to Sanctions* will contribute to the international ongoing debate around the above-mentioned and other relevant issues.

Alena Douhan
UN Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights
September 2023

CHAPTER 13

Practical Applications of International Sanctions and Export Controls in France

Stéphane de Navacelle, Julie Zorrilla and Juliette Musso[1]

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

Sources of trade sanctions in France

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] are mainly an application of international instruments adopted by the United Nations (UN) and the European Union.[3] It is important to note that European Union regulations are directly applicable in France. 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 Juliette Musso 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 Soulignac, *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 can be limited to a specific economic sector. When a sanction targets an individual, it generally involves 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, the aviation sector, the mining and quarrying sector, and the defence and security 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 UN Security Council, which can be adopted by both the European Union and by the French state through 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 state; 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 Soulignac (footnote 3), p. 27.

6 ibid.

7 See Council Regulation (EU) No. 833/2014 of 31 July 2014 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.

French authorities' roles in sanctions implementation

Different French authorities are involved in the implementation of international sanctions, depending on the context of the export, the nature of the goods or the applicable legislation.

For instance, the Directorate General of the Treasury Department within the Ministry of the Economy is responsible for approving certain transactions through its 'Sanctions financières internationales' platform.[9]

The French Export Control Office on Dual-Use Goods (SBDU), also linked to the Ministry of the Economy, is responsible for authorising the export of dual-use goods and other categories of goods for which exportation and importation is limited by European Union regulations.[10] The National Cybersecurity Agency (ANSSI), established in 2009 and related to the Ministry of Defence, is responsible for authorising the importation and exportation of dual-use items that contain encryption.

French customs authorities also generally control the importation and exportation of all goods to ensure compliance with import and export laws.

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 Monetary and Financial Code allows the French government to restrict French investments and financial relations in foreign countries to protect national interests.[11] Historically, this was the main legal process used to apply sanctions before they were enacted through the EU CFSP and other international instruments.[12]

Article L562-2 of the Monetary and 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 legal persons or entities detained, controlled or managed by the targeted person.[13]

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9 www.tresor.economie.gouv.fr/services-aux-entreprises/sanctions-economiques/teleservice-sanctions.

10 www.entreprises.gouv.fr/fr/echanges-commerciaux-et-reglementation/service-des-biens-double-usage/service-des-biens-double-usage.

11 Article L151-2 of the French Monetary and Financial Code.

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

13 Article L562-2 of the French Monetary and Financial Code.

Article L562-3 of the Monetary and 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 UN and the European Union. In addition, this measure can be extended to legal persons or entities detained, controlled or managed by a sanctioned person.[14] This system reinforces the effectiveness of internationally adopted measures in the event of any delays that may occur in implementation.[15]

It is possible to file an appeal or litigation against a decision to freeze the assets of a person.[16] 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.[17]

Consequences for non-sanctioned actors under French law

Sanctions also involve challenges for non-sanctioned economic actors, which must ensure that they do not violate the sanctions rules as an asset freeze prohibits making available economic resources to listed entities or persons.[18]

For ease of access, 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.[19]

Furthermore, financial institutions are required to have a detection system that allows the filtering of persons and entities included in the asset freeze list.[20] Financial institutions must refuse to provide any services or authorise any transactions as soon as the sanction comes into force.[21]

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14 id., Article L562-3.

15 Hotte, Morlet, Sauteret and Soulignac (footnote 3), p. 95.

16 Treasury Department Guidelines/FAQs (footnote 12), questions 10 and 11.

17 Article L562-11 of the French Monetary and Financial Code.

18 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.

19 https://gels-avoirs.dgtresor.gouv.fr/.

20 Joint guidelines of the ACPR (footnote 18), p. 20; Article 11 of Order dated 16 January 2021 on the system and internal controls relating to the fight against money laundering and terrorist financing and to the freezing of assets and the prohibition on making available or using funds or economic resources.

21 Joint guidelines of the ACPR (footnote 18), p. 32.

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.[22] 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 freeze[23] as well as cases of homonymy.[24] Complying with export regulations is an additional challenge.

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

France enforces Regulation (EU) 2021/821, which provides for an EU 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.[25]

As such, an exporter must obtain a licence prior to exporting a dual-use item. A licence granted after the export is made does not render it lawful a posteriori.[26] Likewise, the state exercises control over dual-use goods via a series of obligations related to the end user and the ultimate destination of the items.[27]

Although dual-use goods and licences are mainly determined by the aforementioned European regulation, the French government, through the SBDU, can grant, suspend, modify, withdraw or revoke licences under national regulations.[28]

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22 id., p. 46; ACPR is defined as competent to monitor and enforce regulations on national and international asset freezes by institutions under its supervision; see Articles L612-1 and L561-36-1 of the French Monetary and Financial Code on the ACPR's power to impose disciplinary sanctions; Article L574-3 of the French Monetary and Financial Code on criminal penalties for violation of an asset freeze measure; and Article 459 of the Customs Code on criminal sanctions regarding the violations of legislation and regulations relating to financial sanctions.

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

24 id., Question 36.

25 Article 2.1 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.

26 id., Article 3.

27 id., Article 27 et seq.

28 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.

The SBDU also elaborates on governmental positions regarding dual-use item exports and participates in the corresponding European-level negotiations.[29]

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.[30]

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

- individual licences: these are granted for one or several identified dual-use goods of the same nature, intended for a particular person within a given limit and value.[31] Exporters should attach an end-user certificate to facilitate the licence application process;[32]
- global licences: these allow exporters to export dual-use items and may refer to one or several end users as well as to one or several countries.[33] 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 regulations[34] is required to have a monitoring programme in place to control the end users to whom it is exporting on a regular basis. 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, and the development 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;[35]
- national general licences: these cover agreed licences for export without limit in quantity or value for certain categories of dual-use items to certain specified destinations;[36] and

29 Article 3 of Decree No. 2020-74.

30 www.entreprises.gouv.fr/fr/echanges-commerciaux-et-reglementation/service-des-biens-double-usage/deposer-dossier-hors-licence.

31 Article 3 of Decree No. 2001-1192.

32 www.entreprises.gouv.fr/fr/echanges-commerciaux-et-reglementation/service-des-biens-double-usage/documents-fournir-et-modalites-par-type-d-autorisation.

33 Article 3 of Decree No. 2001-1192.

34 Article 8 of the Order of 13 December 2001 on the control of exports to third countries and transfers to Member States of the European Community of dual-use items and technologies.

35 id., Article 10.

36 Article 3 of Decree No. 2001-1192.

- European general authorisations: EU Regulation 2021/821 provides general authorisations for exporters that fulfil specific monitoring and traceability conditions of their exports.[37]

The SBDU can also issue international import certificates and delivery verification certificates to allow the importer to justify the final destination of the dual-use goods concerned to a foreign supplier or foreign national authorities, which may need to approve the export of the item.[38]

Applications are generally made digitally through the SBDU website.[39] 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, particularly the end-user certificate.[40]

Attention is also drawn to the declared value of the goods, nomenclature codes and other specifications requested in the application form.[41] Finally, the SBDU advises exporters to include a contextual letter to enable it to fully understand the scope of the export operation contemplated.[42]

Although the SBDU grants licences for the export of dual-use items, some products may require further authorisations for the export to be legal; for example, dual-use software that integrates cryptography or cryptological functions[43] 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.[44]

37 ibid.

38 id., Article 8.

39 Articles 2, 11 and 12 of the Order of 13 December 2001.

40 'Documents obligatoires', www.entreprises.gouv.fr/files/files/entreprises/biens-a-double-usage/demarches/modalites-demande-licence-individuelle.pdf, p. 15.

41 ibid.

42 ibid.

43 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.

44 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.

Non-compliance with these formalities may lead to the failure of the export and 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.[45] However, there are some exceptions, and exports of military equipment must be expressly authorised through the granting of a licence. While dual-use items are regulated at the EU level through Regulation 2021/821, the export of military items is regulated at the national level mainly by the French Ministry of Defence as the French rules applicable to the export of military items are found in the Defence Code. 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.[46] They are granted for either exports to non-Member States of the European Union[47] or for 'transfers' within the European Union.[48]

There are three main types of military equipment licence:

- individual licences: these refer to a given operation, limited in price and quantity, with an identified recipient,[49] and are valid for three years;[50]
- 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;[51] and

45 French Defence Code, Article L2335-2 for exports to non-Member States of the European Union.

46 id., Article R2335-9.

47 id., Article L2335-2 for exports to non-Member States of the European Union.

48 id., Article L2335-9.

49 id., Article L2335-3 for exports to non-Member States of the European Union; Article L2335-10 for transfers to EU Member States.

50 id., Article R2335-34.

51 id., Article L2335-3 for exports to non-Member States of the European Union; Article L2335-10 for transfers to European Union Member States.

- 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.[52]

In the case of individual or global licences, the application may be made electronically through the online export licence information, management and administration system.[53] 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.[54]

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.[55]

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.[56] In the case of inconsistencies found during a verification by the DGA, a report and the established verbal proceedings may be sent to a ministerial committee for follow up.[57] In addition, if a criminal offence is suspected, the DGA may inform the French prosecutors, after informing the French Ministry of Defence.

Trade sanctions violations and enforcement defence in France

The international economic sanctions regime at the EU or UN level does not have a direct sanction mechanism in the event of a violation. It is the responsibility of each state, in its enforcement mission, to define the penalties applicable for violation of the various international regimes and to sanction the corresponding infractions.

52 ibid.

53 id., Article R2335-10.

54 Article 2 of the Order of 30 November 2011 establishing the organisation of documentary and on-site inspections carried out by the Ministry of Defence pursuant to Article L2339-1 of the Defence Code.

55 ibid.

56 ibid.

57 id., Article 11.

However, it was decided in November 2022 that violation of restrictive measures adopted by the EU was to be added to the list of 'EU crimes', meaning that the EU will adopt a 'directive containing minimum rules concerning the definition of criminal offences and penalties for the violation of restrictive measures', which must be transposed in every Member State.[58] This process is ongoing at the time of writing.

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 carries a similar sentence.[59]

Article L574-3 of the Monetary and Financial Code provides for the same penalties for violation of sanctions adopted by the French government at national level.[60]

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.[61] For instance, a €50 million penalty was imposed on French bank La Banque Postale in 2018 because of the absence of an adequate detection system to identify whether beneficiaries of bank transactions are subject to an asset freeze.[62] The French Supreme Court for administrative matters later confirmed the sanction.[63]

58 Press Release, European Council, 28 November 2022: 'Sanctions: Council adds the violation of restrictive measures to the list of EU crimes', www.consilium.europa.eu/en/press/press-releases/2022/11/28/sanctions-council-adds-the-violation-of-restrictive-measures-to-the-list-of-eu-crimes/.

59 Article 414 of the French Customs Code.

60 Article L574-3 of the French Monetary and Financial Code.

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

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

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

Similarly, on 30 November 2021, the ACPR imposed a €4 million penalty on MMA IARD, a French insurance company, holding that it had shortcomings in the implementation of asset freeze obligations.[64]

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 complying with the corresponding licensing and authorisation obligations.[65] Pursuant to Article L2339-14 of the Code, the penalty is set at 15 years of imprisonment and a fine of €1.5 million if the materials are biological weapons or weapons of mass destruction.

International sanctions-related criminal seizure of property in France

In October 2022, French authorities seized a villa at Saint-Jean-Cap-Ferrat in the South of France, representing the first criminal seizure of real property of a sanctioned Russian individual. Viktor Rachnikov, majority holder of one of the biggest steel producers in Russia, was suspected to be its owner. He was sanctioned in March 2022 under Regulation (EU) No. 269/2014. When the National Financial Intelligence Unit learned that he was the owner of the villa via a complex arrangement to hide his ownership, it blocked the payment for the sale of the villa before going to court, and the villa was seized.[66] The seizure was made because it was linked to potential money laundering offences. The judicial proceedings are ongoing at the time of writing.

Criminal seizure of property is available under French criminal law until a decision of a court regarding the forfeiture of the property.[67] Forfeiture is available if the property was used to commit a crime or if the property was intended for the perpetration of an offence,[68] as well as under Article 459 of the Customs Code for violation of sanctions regimes.

Sanctions or restrictive measures violations linked to other crimes

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

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

65 Article L2339-2 of the French Defence Code.

66 'Une villa saisie et dix-neuf enquêtes ouvertes: les sanctions contre les oligarques russes commencent à porter leurs fruits en France', *Le Monde*, 1 March 2023.

67 Article 706-121 et seq. of the French Code of Criminal Procedure.

68 Article 131-21 of the French Penal Code.

For instance, the French-Swiss company Lafarge is currently being prosecuted in France for various offences, including for funding terrorism in Syria.[69] The company is alleged to have decided to continue its activities in territories controlled by the Islamic State.[70] Not only did inherent economic sanctions risks in Syria materialise, but French authorities are currently seeking[71] criminal liability for the company.[72] In May 2022, the Paris Court of Appeal confirmed the indictment of Lafarge for complicity for crimes against humanity.[73]

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 UN oil-for-food programme, which entailed a considerable diversion of funds.[74] 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.[75]

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.[76]

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

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

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

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

73 'Lafarge case in Syria: indictment for "complicity in crimes against humanity" confirmed', *Le Monde*, 18 May 2022.

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

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

76 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 consequences[77] and scrutiny from non-governmental organisations (NGOs) and civil society.[78]

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.[79] The same issue applied to Total in the context of the Russian sanctions.[80] Regarding the Myanmar operations, while the media and NGOs questioned the presence of TotalEnergies in the country because the company would be financing the state structures responsible for the repression,[81] 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.[82] 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.[83]

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, it illustrates the balancing act involved in complying with international sanctions regimes and the challenges for companies in doing so.

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

78 id., p. 14.

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

80 'TotalEnergies in Russia: We must stop turning a blind eye', *Le Monde*, 24 August 2022.

81 Joint Press Release, NGOs, 19 March 2021, 'Burma: Total Must Stop Funding the Junta'.

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

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

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.[84]

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.[85]

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.

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

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

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 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 subject 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 French authorities do not check for the existence of sanctions compliance systems, when it comes to enforcement action, active cooperation may result in less severe treatment.

We live in a new era for sanctions. More states are using them, in more creative (and often unilateral) ways.

This, alas, creates complication for the rest of us. Hitherto no book has addressed the complexities that businesses and their advisers must address by dint of this proliferation in a structured way. GIR's *The Guide to Sanctions* fills that gap. 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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