

# The enforcement of economic sanctions in France



The ability of the French courts to enforce economic sanctions is somewhat curtailed by a lack of a criminal offence to target violation of embargoes or restrictive measures. Is it time for a rethink, ask Jamie Boucher and Aymeric Boelle.

In recent years, sanctions have become an increasingly important French foreign policy tool. Terrorism financing, arms controls and sanctions against Russia, Iran and North Korea have all made this area a hot topic, generating significant public debate, and these issues pose numerous risks, both for French companies and for international businesses operating in France.

Economic and financial sanctions are used by the French state against both countries and individuals. Sanctions aimed at sovereign states forbid, restrict or place pressure on the trade of goods, technologies and targeted services and may include the freezing of assets owned by individuals or entities linked to that country. Sanctions directed at individuals or commercial entities impose a freezing of funds and economic resources, as well as restricting financial or commercial transactions.

In common with other EU Member States, France distinguishes between three different types of economic sanctions: UN sanctions, EU sanctions and French (unilateral) sanctions. The Security Council of the United Nations can vote on resolutions to set up financial, economic and commercial sanctions according to Chapter VII of the UN. Each country must then domestically transpose and enforce these economic sanctions, except if they fall within the remit of the European Union, which can transpose them in European law. The European Union can impose economic sanctions as part of the Common Foreign and Security Policy ('CFSP') which become automatically effective in French law via publication in the *Official Journal of the European Union*. The European parliament or the European Council can also impose sanctions as part of the protection of an 'area of freedom,

security and justice' on the basis of article 75 of the Treaty on the Functioning of the European Union ('TFEU'). At the French level, economic

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sanctions are implemented by decree or order pursuant to articles L.151-2, L.562-1 or L.562-2<sup>1</sup> of the Monetary and Financial code.

## **Sanctions enforcement by the French authorities**

There is currently a dearth of precedent relating to sanctions in French law. However, a major case before the French courts, the LafargeHolcim matter, could give guidance on the enforcement of French sanctions if it is set down for trial.

### **LafargeHolcim**

Following an internal investigation conducted by two independent law firms, LafargeHolcim recognised that Lafarge Cement Syria 'provided funds to third parties to work out arrangements with a number of these armed groups, including sanctioned parties, in order to maintain operations and ensure safe passage of employees and supplies to and from the plant.'<sup>2</sup>

The French Ministry of the Economy and Finances filed a

complaint in September 2016 against LafargeHolcim on the basis of article 459 of the French Customs Code, which establishes penalties applicable to anyone who violates or attempts to violate the restrictions on economic and financial relations established by European regulations made in application of article 215 of the TFEU or by the international treaties and agreements regularly approved and ratified by France.

Article 459 punishes individuals and entities that violate the embargoes implemented by European regulations or national measures, taken by the Ministry of the Economy, to freeze assets and economic resources owing to the participation of those individuals and entities in proliferation activities. Violations or attempted violations are punishable by imprisonment, fines and seizure of the *corpus delicti*, the means of transport used, and any goods and assets that are the product of the offence.<sup>3</sup>

Although this case has not yet been ruled upon by French judges, the question remains whether the current French rules and regulations enforcing embargoes and other restrictive measures are adequately tailored to meet the increasing objectives of embargoes in foreign policy.

### **Absence of a general criminal offence under French law**

As pointed out in a 19 January 2016 opinion of the French National Assembly's Committee on National Defence and Armed Forces<sup>4</sup> and a 20 January 2016 opinion of the French National Assembly's Committee on Foreign Affairs,<sup>5</sup> there are three main provisions that form the basis of criminal charges against violators.

The three provisions relate to:

1. The trade of arms and war

- equipment: only transactions expressly authorised by the French government through the delivery of licences, which can only be granted in the absence of embargo or restrictive measures, can be undertaken.<sup>6</sup>
2. The trade of other goods not falling under the arms and war equipment regime (such as civil goods or dual-use goods)<sup>7</sup>, and
  3. Financial transactions with foreign countries.<sup>8</sup>

However, both opinions – in favour of introducing a new bill – regret the absence of a criminal offence under French law specifically targeting the violation of embargoes or restrictive measures. Further, the opinion of the French National Assembly's Committee on Foreign Affairs notes that the above-described provisions are incomplete and do not allow French authorities to pursue violators of embargoes in a number of instances. For example, the existing provisions target goods and financial transactions but not other services such as training, after-sale or technical assistance for the use of weapons. Also, these provisions do not target indirect violations in which a French entity would intentionally use a foreign third party to circumvent an embargo.

In February 2006, in response to the absence of a general criminal offence specifically targeting the violation of embargoes or restrictive measures, the French parliament started discussing a draft bill (draft bill n°670) regarding the violation of embargoes. This draft bill was introduced in October 2007, and was transmitted to the French National Assembly in February 2013 – it was, however, only put on the National Assembly's agenda in 2016 and was transmitted to the French Senate on 28 January 2016.

This draft bill goes beyond the UN Security Council recommendation of September 1998, which encourages 'each Member State, as appropriate, to consider as a means of implementing the obligations referred to in paragraph

1 above the adoption of legislation or other legal measures making the violation of arms embargoes established by the Council a criminal offence.<sup>9</sup>

This draft bill, to be introduced in the French Criminal Code, aims to create a general criminal offence for the violation of French, European or UN embargoes or restrictive measures, as well as increasing the penalties in case of violation – under the draft bill, such violation would be punishable by up to seven years of imprisonment and a fine of up to EUR 750,000.<sup>10</sup>

The adoption of such bill would align France with the UK sanctions enforcement regime which provides that the most heinous violations of sanctions (i.e., such as the intentional circumventions or breaches, like the intentional export of dual-use goods without a licence) can be punished by a maximum custodial penalty of ten years and/or an unlimited fine.

### Conclusion

Although, there do not seem to be precedents of French companies being fined by non-French authorities for violation of UN or EU laws, the lack of significant economic sanctions enforcement precedents in France could leave room for foreign regulators and prosecutors to enforce their own economic sanctions programmes beyond their own borders.

For instance, the US authorities are increasingly creative in extending their reach beyond their own borders. To date, US authorities have fined 13 major European financial institutions for violation of the US economic sanctions programme, including BNP Paribas and Crédit Agricole S.A., basing their jurisdiction on the clearing of USD which occurred on US soil – even though the senders and recipients of such transactions were located outside of the US and were banking with non-US banks.

In light of the foreign regulators' activism – and sometimes competition – in enforcing their economic sanctions programmes, it may be time for the newly elected French National

### Links and notes

<sup>1</sup> Articles L. 562-1 and 2 are implemented in accordance with articles L.562-3 to L562-11 of the Monetary and Financial code.

<sup>2</sup> <http://www.lafargeholcim.com/sites/lafargeholcim.com/files/atoms/files/03022017-press-lafargeholcim-syria-en.pdf>

<sup>3</sup> <http://www.un.org/en/sc/1540/documents/FranceReport17Aug2015.pdf>

<sup>4</sup> <http://www.assemblee-nationale.fr/14/rapports/r3419.asp>

<sup>5</sup> <http://www.assemblee-nationale.fr/14/rapports/r3429.asp>

<sup>6</sup> Article L. 2339-44-1 of the Defense Code provides that exporting arms or war equipment without a licence can be punished by up to five years' imprisonment and up to EUR 75,000 fine. See also, article L. 2339-2 of the Defense Code.

<sup>7</sup> Article 38 of the Customs Code provides that 'are considered prohibited all goods which import or export is forbidden whatever the ground may be, or subject to restrictions.' Article 414 of the Customs Code provides that such violation can be punished by, amongst other sanctions, three years' imprisonment and a fine amounting to between one and two times the value of the good (or five years' imprisonment and three times the value of the good in case of dual-use goods).

<sup>8</sup> For example, pursuant to article L.151-2 of the Monetary and Financial Code, the French government can make foreign exchange transactions, capital movements and settlements of all kinds between France and foreign countries subject to declaration, prior authorisation or inspection. Violations of the regulation regarding financial dealings with foreign countries are punishable by up to five years' imprisonment and a fine between one and two times the amount subject to the violation or the attempted violation.

<sup>9</sup> United Nations Resolution 1196 of 16 September 1998. <http://unsct.com/en/resolutions/doc/1196>

<sup>10</sup> This draft bill also provides that violations in organised group are punishable by up to ten years of imprisonment and up to EUR 1.5 M in fines. <https://www.senat.fr/leg/pjl15-349.html>

Assembly to consider adopting a bill creating a general criminal offence for the violation of embargoes that would allow French courts to fully enforce French foreign policy.

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