



BELGIUM

by Nadiya Nychay and Laurens Engelen,
Dentons Europe LLP

www.dentons.com

IMPLEMENTATION AND LAW

Historically, Belgium has been a strong proponent and advocate of the use of restrictive measures (sanctions) to pursue foreign policy objectives. As such, Belgium implements and enforces sanctions adopted by the UN Security Council as well as the EU. In addition, in Belgium, there is a legal framework for the adoption of autonomous sanctions targeting persons and entities having committed, financed or facilitated terrorist activities.

UN sanctions

In Belgium, UN sanctions are implemented through the Law of 11 May 1995 (*Wet van 11 mei 1995 inzake de tenuitvoerlegging van de besluiten van de Veiligheidsraad van de Organisatie van de Verenigde Naties/Loi de 11 mai 1995 relative à la mise en oeuvre des décisions du Conseil de Sécurité de l'Organisation des Nations Unies*).

EU sanctions

As for EU sanctions, these are adopted by EU regulations that have direct effect in the legal systems of the EU Member States. Accordingly, they do not need to be transposed at the Member State-level. Nevertheless, EU sanctions are enforced through national legislation in the EU Member States. In Belgium, EU sanctions are given force specifically in the Law of 13 May 2003 relating to the implementation of restrictive measures adopted by the European Union Council against some states, persons and entities (*Wet van 13 mei 2003 inzake de tenuitvoerlegging van de beperkende maatregelen die genomen worden door de Raad van de Europese Unie ten aanzien van Staten, sommige personen en entiteiten/Loi du 13 mai 2003 relative à la mise en oeuvre des mesures restrictives adoptées par le Conseil de l'Union européenne à l'encontre d'Etats, de certaines personnes et entités*).

The EU Blocking Regulation (Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of the extraterritorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom (OJ L 309, 29.11.1996, p. 1), as amended) has been implemented by way of the Law of 2 May 2019 (*Wet van 2 mei 2019 houdende diverse financiële bepalingen/Loi du 2 mai 2019 portant des dispositions financières diverses*, hereinafter the 'Law of 2 May 2019').

Belgian national sanctions

Belgian national sanctions – i.e., those adopted by Belgium – are adopted through laws or royal decrees. When a specific national restrictive measure or a sanction is imposed in connection with terrorism, its financing or facilitation, this is done on the basis of the Royal Decree of 28 December 2006 (*Koninklijk besluit van 28 december 2006 inzake specifieke beperkende maatregelen tegen bepaalde personen en entiteiten met het oog op de strijd tegen de financiering van het terrorisme/Arrêté royal du 28 décembre 2006 relatif aux mesures restrictives spécifiques à l'encontre de certaines personnes et entités dans le cadre de la lutte contre le financement du terrorisme*, hereinafter the 'Royal Decree of 28 December 2006').

The Public Service for Finances maintains a national list of sanctions targets adopted on the basis of the Royal Decree of 28 December 2006.¹



Nadiya Nychay is a Partner in the Brussels office of international law firm Dentons, where Laurens Engelen is an Associate.

www.dentons.com

Arms embargoes

In Belgium, competence in the area of arms embargoes resides with the three regions; i.e., the Flemish, the Wallonia, and the Brussels Capital regions. Accordingly, the governing law depends on one's place of residence or incorporation.

In the Flemish region, the relevant legislation is set out in the Decree of 15 June 2012 (*Decreet van 15 juni 2012 betreffende de in-, uit-, doorvoer en overbrenging van defensiegerelateerde producten, ander voor militair gebruik dienstig materiaal, ordehandhavingsmateriaal, civiele vuurwapens, onderdelen en munitie*).

In the Wallonia region, the export and import of arms law is set out in the Decree of 21 June 2012 (*Décret de 21 juin 2012 relatif à l'importation, à l'exportation, au transit et au transfert d'armes civiles et de produits liés à la défense*).

In the Brussels Capital region, arms embargoes and transfers of arms are regulated pursuant to two pieces of legislation: the Ordonnance of 20 June 2013 (*Ordonnantie betreffende de in-, uit-, doorvoer en overbrenging van defensiegerelateerde producten, ander voor militair gebruik dienstig materiaal, ordehandhavingsmateriaal, civiele vuurwapens, onderdelen, toebehoren en munitie ervan*) and the Decision of 3 April 2014 (*Besluit van 3 april 2014 van de Brusselse Hoofdstedelijke Regering tot uitvoering van de Ordonnantie van 20 juni 2013 betreffende de in-, uit-, doorvoer en overbrenging van defensiegerelateerde producten, ander voor militair gebruik dienstig materiaal, ordehandhavingsmateriaal, civiele vuurwapens, onderdelen, toebehoren en munitie ervan*).

POWERS AND PROVISIONS

Most powers delegated to government agencies are related to the designation of sanctions targets and licensing activities that would otherwise be prohibited under applicable sanctions, export controls or arms embargoes.

The power to designate a sanctions target is only exercised in respect of the Belgian national sanctions, i.e., those targeting persons or entities having committed, financed or facilitated terrorist activities.

Pursuant to Article 3 of the Royal Decree of 28 December 2006, the National Security Council of Belgium (*Nationale Veiligheidsraad/Conseil national de sécurité*) may designate persons and entities that have committed or plan to commit or facilitate terrorist activities. Such designations are made on the basis of evaluations by the so-called Coordination Body for the Analysis of a Threat (*Coördinatieorgaan voor de dreigingsanalyse/Organe de coordination pour l'analyse de la menace*) following consultation with the competent authority and upon approval of the Council of Ministers (*Ministerraad/Conseil des Ministres*).

Licensing powers

Requests for a licence or an authorisation or an exception to asset freezes and the prohibition to make funds and economic resources available to a designated person (a sanctions target) are evaluated and processed by the Federal Public Service of Finances.

BELGIUM

With respect to arms embargoes and dual-use restrictions, such requests are considered only at the regional level, i.e., by the Flemish, Wallonia, and Brussels Capital governments.

The competent licensing authority in Flanders is the Flemish Department of Foreign Affairs, more specifically the Service for Control over Strategic Goods (*Controle Strategische Goederen*). The nature of the arms, their destination and counterparty determine the specific licensing procedure to be followed.

In the Wallonia region, the competent licensing authority for arms exports or imports is the Wallonia regional government. There are three types of licence the Wallonia government can issue – global, general, and individual licences. Global licences are issued upon individual request and authorise the transfer of military and dual-use items to a group of counterparties in one or more EU Member States. As such, global licences can be tailored to the applicant's needs. Where holders of a global licence wish to export those items to a non-EU destination or a non-EU counterparty, in addition to a global licence, their holders would need to apply for an individual licence that authorises the transfer of the military or dual-use items to a counterparty outside of the EU. In addition to global and individual licences, the government of the Wallonia region can issue general licences, which apply to all Wallonia-based persons and entities and authorise the transfer of military and dual-use items to other EU Member States. General licences are limited in number and specific to certain goods.

In the Brussels Capital region, all requests for licences must be submitted to the specialised Cell for Licences (*Service Licences/Dienst vergunningen*). Once the request is submitted, the Cell for Licences advises the Brussels Secretary for External Relations who will then grant or refuse the licence. If granted, the licence is valid for no longer than three years, renewable once for a three year-period.

KEY AGENCIES

Sanctions policy in Belgium falls within the competence of the Federal Public Service of the Treasury on the one hand, and the General Administration of Customs and Excise Duties on the other. The competence of the Federal Public Service of the Treasury concerns the implementation of financial sanctions and asset restrictions, while the competence of the General Administration of Customs and Excise Duties primarily concerns export controls (controls in connection with dual-use goods).

The contact details are provided below:

Freezing of funds, financing and financial assistance

Federal Public Service Finance – Treasury

30 Avenue des Arts/ Kunstlaan 30

1040 Brussels

Fax: +32 2 579 58 38

Email: Quesfinvragen.tf@minfin.fed.be

Controls relating to fiscal measures and non-fiscal measures

Federal Public Service Finance – General Administration of Customs and Excise Duties

North Galaxy – box 37

Avenue Albert II, 33

1030 Brussels

Fax: +32 2 579 51 85

Email: info.douane@minfin.fed.be

In addition, the agencies listed below enjoy *ad hoc* powers to assist and provide licences for specific types of activities:

Goods, technical assistance and other services

Federal Public Service Economy, SME's, Self-employed and Energy – Direction générale du Potentiel

économique/ Algemene Directie van het Economisch Potentieel Service Licences/ Dienst vergunningen

Rue du Progrès/Vooruitgangstraat 50

1210 Brussels

Tel.: +32 2 277 67 13

Fax: +32 2 277 50 63

Nuclear exports and imports

Federal Public Service Economy, SME's, Self-employment and Energy – Nuclear Energy Division

Boulevard Roi Albert II 16/Koning Albert II laan 16

1000 Brussels

Tel.: +32 2 277 64 52

Tel.: +32 2 277 83 28

Fax: +32 2 277 52 06

Sanctions policy falls within the competence of the Federal Public Service of the Treasury and the General Administration of Customs and Excise Duties.

BELGIUM

Finally, the regional authorities in charge of the export, import and transit licences for weapons, military and paramilitary equipment and dual-use goods are:

Brussels Capital Region

Brussels International Directorat – (Cell for Licences)

20, Kruidtuinlaan/Boulevard du Jardin Botanique

1035 Brussels

Tel: +32 2 800 37 27

Fax: +32 2 800 38 24

Email: calu@sprb.irisnet.be

Walloon Region

Department for Economy, Employment and Research

Service for Arms Licenses (Direction des Licences d'Armes)

14, Chaussée de Louvain

5000 Namur

Tél.: +32 81 64 97 51

Fax: +32 81 64 97 60

Email: michel.moreels@spw.wallonie.be

Flemish Region

Flemish Department of Foreign Affairs

Arms Trade Monitoring Unit (Dienst Controle Strategische Goederen)

Boudewijnlaan 30

1000 Brussels

Tel.: +32 2 553 57 92

Fax: +32 2 553 60 37

Email: csg@iv.vlaanderen.be

ENFORCEMENT AND PENALTIES

As is the case for all EU sanctions, EU Member States are tasked with their enforcement and penalties for infringement. In Belgium, the competent authorities are:

- For EU and UN sanctions: the officers of the judicial police, officers of the Customs and Excise Administration, and officers of the General Administration of the Treasury of the Federal Public Service Finance.

- For Belgian national sanctions (limited to terrorism): the government departments of Justice, Finance, Internal Affairs, Foreign Affairs, and Defence.

Penalties for sanctions violations are determined on a case-by-case basis. They can consist of financial sanctions and/or imprisonment.

Given that the sanctions adopted pursuant to the UN Security Council resolutions are implemented automatically, non-compliance with these sanctions is punishable by imprisonment from eight days to five years and a fine of up to €8 million, which can be increased in the case of a repeated offence.

Violations of EU sanctions are punishable by imprisonment for between eight days and five years and/or a criminal fine of €200 to €200,000 on the one hand, and/or an administrative fine of €250 to €2.5 million, on the other hand. As far as administrative fines are concerned, violations by legal persons would trigger a fine in the range of €10,000 and 10% of the legal person's annual turnover, while violations by natural persons would trigger a fine in the range of €250 to €5 million.

In addition to the foregoing, and consistent with the requirements of the EU Blocking Regulation, in May 2019 Belgium passed the Law of 2 May 2019 setting forth penalties for violating the EU Blocking Regulation. For legal entities, the Law of 2 May 2019 introduced a penalty of an administrative fine that could range between €10,000 and 10% of the annual turnover, while for natural persons, the administrative fine could range between €250 and €5 million. Moreover, the Law of 2 May 2019 sets out the specific criteria to be taken into consideration when determining the amount of the fine, i.e.:

- Seriousness and duration of the violation;
- Degree of responsibility and involvement of the entity or person concerned;
- The financial capacity of the entity or person concerned;
- The benefits or profits generated by the violations;
- The disadvantages suffered by third parties as a result of the violations, if such can be determined;
- The degree of cooperation with the authorities by the entity or person concerned;
- Whether or not the entity or person concerned has committed past infringements.

Despite the existence of the legal framework to enforce sanctions in Belgium, cases of enforcement are not frequent. Having said that, a recently prosecuted violation of the Syria sanctions in Belgium did not go unnoticed, and resulted in criminal fines and prison sentences for the entities and persons involved. In particular, three Belgian companies, established in and around the Antwerp area, were charged in February 2019 with exporting to Syria certain chemicals used for the production of sarin gas, in 24 distinct

Links and Notes

- ¹ This list can be consulted via the following link:
https://finance.belgium.be/en/about_fps/structure_and_services/general_administrations/treasury/financial-sanctions/national
- ² See: https://www.fdfa.be/sites/default/files/atoms/files/ICP%20brochure%20digitaal_1.pdf.
- ³ See: https://diplomatie.belgium.be/en/policy/policy_areas/peace_and_security/sanctions.

BELGIUM

shipments. One of the companies was a chemical manufacturer, while the other two companies were trading companies. As a result of the Antwerp court ruling of 7 February 2019, the court ordered fines of €75,000, €346,443 and €500,000, respectively. Furthermore, managers of the two companies were sentenced to monetary fines and prison sentences of four and 12 months, respectively.

OUTREACH

The regulatory authorities publish and make available documents and information brochures through online sources. For example, the Flemish Service for Control on Strategic Goods, authorised for granting licences for the export of dual-use items and arms, has published guidance on how to adopt an internal compliance programme for companies.² Similarly, the Public Service for Foreign Affairs has provided guidelines on doing business with Iran under the sanctions regime.³

Seminars and study days are regularly organised, and these often involve universities and specialised research institutions.

POLITICAL FACTORS

Through a statement available on its website, the Belgian Federal Public Service for Foreign Affairs has confirmed its preference for so-called ‘smart’ or targeted sanctions, i.e., sanctions that target directly persons and individuals, as opposed to classic broad sanctions. According to the statement, sanctions and restrictive measures generally should, wherever possible, be limited to targeting only the persons and entities directly responsible for the policies and actions, thereby minimising the negative consequences for third parties.

Furthermore, Belgium considers that coordination with non-EU states increases the impact of sanctions. Belgium thus underlines the need to ensure broad international support for EU sanctions to maximise their effectiveness.

The authors thank Ms. Anna Golouchko for her assistance in preparing this chapter.

This chapter is reprinted from the book **Sanctions in Europe**, published by WorldECR, the journal of export controls and sanctions, January 2020.
www.worldecr.com