



**JULY 2020**  
**GUIDE TO ASSET FREEZING**



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## FOREWORD

Economic and financial sanctions regimes serve a variety of general interest objectives, such as the fight against terrorism, the fight against the proliferation of weapons of mass destruction, coercion in response to serious human rights violations and actions that threaten peace. The measures adopted in relation to these sanctions are diverse, with asset freezing being only one category<sup>1</sup>.

Asset-freezing measures adopted in relation to the fight against terrorism, whether international, European or French, involve, for regulated entities subject to anti-money laundering and counter-financing of terrorism (AML/CFT) obligations, freezing without delay funds and other property of persons or entities named in these measures and ensuring that no funds or other property are made available, directly or indirectly, to or for the benefit of these persons or entities.

These measures complement the AML/CFT preventive measures with regard to combating terrorist financing.

This guide is intended for the collective investment management companies referred to in Article L. 543-1 of the Monetary and Financial Code<sup>2</sup>, French collective investments governed by Article L. 214-1 I of the Monetary and Financial Code when they are self-managed, branches of European investment management companies managing UCITS and AIFs referred to in Articles L. 532-20-1 and L. 532-21-3 of the Monetary and Financial Code<sup>3</sup>, financial investment advisors and crowdfunding investment advisors (hereinafter referred to collectively as “professionals”). The guide presents the different asset-freezing regimes applicable in France and reminds professionals of their obligations at each stage of the freezing process. These stages are detection, alert analysis, implementing the freezing measure and declaring it to the Directorate General of the French Treasury.

This guide is not exhaustive and does not replace current legislation, which, as far as French national legislation is concerned, is likely to evolve in the months following its publication (in particular as regards its scope). The provisions of this guide relating to the French regime will be updated accordingly. Professionals are also encouraged to consult the Guide to Good Practice in Implementing Economic and Financial Sanctions, produced by the Directorate General of the Treasury.

For the purposes of this guide, the term “client” refers to any person with whom the professional has a business relationship<sup>4</sup>, including occasional clients and, where the professional is a collective investment management company, the shareholders or unitholders of the collective investments or third-country investment funds it manages.

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<sup>1</sup> Such measures may also include, for example, restrictions on imports or exports, either generally or specifically targeting certain goods or services. These measures are frequently referred to as “embargoes”.

<sup>2</sup> Specifically, asset management companies (AMCs), legal entities managing the AIFs referred to in Article L. 214-24 III 3°, managers of European venture capital funds falling under Regulation (EU) 345/2013 of the European Parliament and of the Council of 17 April 2013 and managers of European social entrepreneurship funds falling under Regulation (EU) 346/2013 of the European Parliament and of the Council of 17 April 2013.

<sup>3</sup> In other words, these are branches, established in France under the freedom of establishment passport, of investment management companies authorised in another country that is a party to the Agreement on the European Economic Area that manage one or more UCITS or AIFs governed by French law.

<sup>4</sup> As defined in Article L. 561-2-1 of the Monetary and Financial Code.

## 1. THE VARIOUS REGIMES

There are several asset-freezing regimes applicable in France:

- Regimes resulting from United Nations Security Council (hereafter “UNSC”)<sup>5</sup> Resolutions, which, in order to be applicable within the countries of the European Union, are transposed through directly applicable European regulations;
- Regimes resulting from Common Foreign and Security Policy (CFSP) decisions of the Council of the European Union taken independently of any UNSC resolution and implemented through the adoption of directly applicable European regulations<sup>6</sup>;
- The French regime provided for in Articles L. 562-1 and following and R. 562-1 and following of the Monetary and Financial Code.

### 1.1 UN AND EUROPEAN REGIMES

The Directorate General of the Treasury website contains an up-to-date [list of the regimes applicable in France](#) resulting from UNSC resolutions and Council of the European Union decisions. At the date of publication of this guide, the following regimes are listed in relation to combating the financing of terrorism:

- Two UN regimes:
  - o The **Al Qaeda-Islamic State regime** resulting from UNSC Resolutions 1267 (1999), 1989 (2011) and 2253 (2015) and transposed into the European Union by **Regulation (EC) 881/2002**. This regime names persons and entities associated with the ISIL (Da’esh) and Al-Qaeda organisations.
  - o The **Afghanistan/Taliban regime** resulting from UNSC Resolution 1988 (2011) and transposed into the European Union by **Regulation (EU) 753/2011**. This regime names persons and entities associated with the Taliban and the threat they pose to the peace, stability and security of Afghanistan.
- Two independent European regimes:
  - o The **Islamic State-Al Qaeda regime** resulting from **Regulation (EU) 2016/1686**<sup>7</sup> supplements the measures adopted by UNSC Resolution 1267 to intensify the fight against the threat of international terrorism posed by Da’esh and Al-Qaeda.
  - o The **“persons involved in terrorist activities” regime** resulting from **Regulation (EC) 2580/2001**<sup>8</sup>. This Regulation adopts specific restrictive measures against certain persons and entities.

These regimes are not the only ones to prescribe asset-freezing measures applicable to regulated entities. As of the date of publication of this guide, others include:

- an asset-freezing regime to combat the use and proliferation of chemical weapons;
- an asset-freezing regime to combat cyberattacks threatening the European Union or its Member States;

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<sup>5</sup> Under Chapter VII of the Charter of the United Nations, the UNSC may, “in the event of a threat to the peace, breach of the peace or act of aggression”, adopt resolutions imposing freezing measures. Under these resolutions, the UNSC, or where appropriate the sanctions committee to which it may have recourse, specifies the persons or entities subject to freezing measures.

<sup>6</sup> The Council of the European Union imposes EU restrictive measures by means of a Common Foreign and Security Policy (CFSP) decision. These measures must be implemented by means of a legislative act in the form of a regulation.

<sup>7</sup> This Regulation gives legal force within the European Union to the designations made by the Council of the European Union under CFSP Decision 2016/1693. The list of persons and entities named is updated through the publication of implementing regulations.

<sup>8</sup> This Regulation gives legal force within the European Union to the designations made by the Council of the European Union under CFSP Decision 2001/931. The list of persons and entities named is updated through the publication of implementing regulations.

- regimes based on geography<sup>9</sup>.

European regulations are regularly amended in order to update the lists of persons or entities named or correct the information identifying persons or entities named, or they are repealed or replaced by new legislation. The Directorate General of the Treasury website provides the consolidated version<sup>10</sup> of these regulations by regime<sup>11</sup>.

#### **Measures adopted under these regimes**

The measures adopted under these regimes aim to:

- freeze all funds and economic resources belonging to (i) the persons, entities and bodies listed in the regulations, (ii) persons, entities and bodies owned, held or controlled by the persons, entities and bodies listed in the regulations, whether directly or indirectly, including by a third party acting on their behalf or at their direction;
- ensure that no funds or economic resources are made available, either directly or indirectly, to or for the benefit of the natural or legal persons, entities or bodies listed in the regulations.

Measures may also cover specific financial services. For example, Council Regulation (EC) 2580/2001 of 27 December 2001 adopted as part of the “persons involved in terrorist activities” regime also expressly prohibits providing financial services to or for the benefit of named natural or legal persons, groups or entities that are subject to a freezing measure<sup>12</sup>. The list of financial services referred to in this Regulation includes “portfolio management”, “all forms of collective investment management”, “custodial services”, “advisory services”, “intermediation services”, etc.

Furthermore, it is prohibited to knowingly and intentionally participate in activities whose object or effect is to circumvent the freezing measures and prohibitions imposed by the UN and European regimes.<sup>13</sup>

It is the responsibility of professionals to ensure that they are familiar with the requirements of each regime, which may be worded differently.

#### **Scope of these regimes**

The scope of the European regulations transposing the UNSC resolutions and of the independent European regulations is very broad as it applies<sup>14</sup>:

- within the territory of the European Union, including its airspace;
- on board any aircraft or any vessel under the jurisdiction of a Member State;
- to any person inside or outside the territory of the European Union who is a national of a Member State;
- to any legal person, entity or body inside or outside the territory of the European Union that is incorporated or constituted under the law of a Member State;

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<sup>9</sup> Belarus, Burundi, Central African Republic, Congo (Democratic Republic of the), Egypt (ill-gotten gains), Guinea, Guinea-Bissau, Iran, Iraq, Lebanon, Libya, Mali, Myanmar (formerly Burma), Nicaragua, North Korea, Russia, Somalia, Sudan, South Sudan, Syria, Tunisia (ill-gotten gains), Turkey, Ukraine, Venezuela, Yemen, Zimbabwe.

<sup>10</sup> Only the regulations are valid. The consolidated version published by the Directorate General of the Treasury is an aid to reading them.

<sup>11</sup> <https://www.tresor.economie.gouv.fr/services-aux-entreprises/sanctions-economiques>.

<sup>12</sup> Article 2.2 of Regulation 2580/2001.

<sup>13</sup> See in particular Article 4 of Regulation (EC) 881/2002, Article 3 of Regulation (EU) 753/2011, Article 11 of Regulation 2016/1686 and Article 3 of Regulation (EC) 2580/2001.

<sup>14</sup> See in particular Article 11 of Regulation (EU) 881/2002, Article 14 of Regulation (EU) 753/2011, Article 10 of Regulation 2580/2001 and Article 18 of Regulation (EU) 2016/1686.

- to any legal person, entity or body in respect of any business done in whole or in part within the European Union.

Professionals are therefore subject to the UN and European regimes referred to above.

It is the responsibility of professionals to ensure that they are familiar with the provisions defining the scope of each regime, which may be worded differently.

## 1.2 FRENCH REGIME

The French regime is provided for in Articles L. 562-1 and following and R. 562-1 and following of the Monetary and Financial Code<sup>15</sup>. Under this regime, freezing measures may be adopted under Article L. 562-2 or Article L. 562-3 of the Monetary and Financial Code.

### Measures adopted under Article L. 562-2 of the Monetary and Financial Code

Pursuant to Article L. 562-2 of the Monetary and Financial Code, the Minister for the Economy and the Interior Minister may jointly decide, for a renewable period of six months, to introduce a freezing measure **independently of the measures resulting from the UN and European regimes**.

The measures adopted by the Minister for the Economy and the Interior Minister are *“the freezing of funds and economic resources:*

*(1) belonging to, owned, held or controlled by natural or legal persons or any other entity that commits, attempts to commit, facilitates, finances, incites or participates in terrorist activities;*

*(2) belonging to, owned, held or controlled by legal persons or any other entity that is itself owned or controlled by the persons mentioned in (1) or knowingly acting on behalf of or at the direction of such persons”.*

Furthermore, Article L. 562-5 of the Monetary and Financial Code prohibits making funds or economic resources available, directly or indirectly, or using them for the benefit of persons whose funds and economic resources are subject to a freezing measure. Article L. 562-6 of the Monetary and Financial Code prohibits knowingly and intentionally participating in activities whose object or effect is to circumvent the freezing measures and prohibitions mentioned above.

Measures decided on the basis of Article L. 562-2 of the Monetary and Financial Code are adopted by way of ministerial orders published in the Official Journal. These orders include information identifying the persons or entities subject to a freezing measure.

### Measures adopted under Article L. 562-3 of the Monetary and Financial Code

Furthermore, the provisions of Article L. 562-3 of the Monetary and Financial Code allow the Minister for the Economy to decide, for a renewable period of six months, to freeze the funds and economic resources of natural or legal persons or any other entity that has attempted to commit, facilitate or finance activities sanctioned or prohibited by resolutions adopted under Chapter VII of the Charter of the United Nations or by measures adopted pursuant to Article 29 of the Treaty on European Union or Article 75 of the Treaty on the Functioning of the European Union.

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<sup>15</sup> The introduction into French law of an independent system for combating terrorist financing meets the requirements of the UNSC (Resolution 1373 (2001)) of 28 September 2001 and of the FATF (Recommendation 6).

Measures decided on the basis of Article L. 562-3 of the Monetary and Financial Code are adopted by way of ministerial orders published in the Official Journal. These orders include information identifying the persons or entities subject to a freezing measure.

These provisions are also used to compensate for the time required to transpose or implement, through a European regulation, the freezing measures prescribed in UNSC resolutions or decisions of the Council of the European Union. In practice, when a UNSC resolution or a decision of the Council of the European Union is adopted, a ministerial order is systematically published, which ensures that any freezing measures are applied immediately in mainland France, in the overseas territories classified as outermost regions in the Treaty on the Functioning of the European Union<sup>16</sup> and in overseas countries and territories (OCTs)<sup>17</sup>. These ministerial orders are automatically repealed, in the case of mainland France and the overseas territories classified as outermost regions, when the European Union regulation transposing or implementing the freezing measure enters into force<sup>18</sup>.

#### **Scope of the French regime**

In accordance with Article L. 562-4 I of the Monetary and Financial Code, the French regime applies:

- to persons subject to the AML/CFT obligations mentioned in Article L. 561-2 of the Monetary and Financial Code; and
- to persons who hold or receive funds or economic resources on behalf of a client.

Among collective investment management companies, only those that hold in registered form units or shares of collective investments or third-country investment funds that they manage<sup>19</sup> or that use a blockchain (shared electronic registration system) for fund administration are subject to the French regime. The same applies to branches established in France, under the freedom of establishment passport, of investment management companies established in another country party to the Agreement on the European Economic Area that manage one or more French UCITS or AIFs and to French self-managed collective investments.

Financial investment advisors (“FIAs”) and crowdfunding investment advisors (“CIAs”) are not subject to this regime<sup>20</sup>.

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<sup>16</sup> Namely Guadeloupe, Guyana, Martinique, Réunion, Saint Martin and Mayotte.

<sup>17</sup> Namely New Caledonia, French Polynesia, Wallis and Futuna Islands, Saint Pierre and Miquelon, Saint Barthélemy and the French Southern and Antarctic Lands.

<sup>18</sup> As European Union regulations are not applicable in the OCTs, the decrees remain in force in the OCTs.

<sup>19</sup> This would therefore apply in particular to asset management companies managing private equity or real estate funds.

<sup>20</sup> They are, however, subject to European regulations, since these expressly prohibit providing investment advice to persons named in a freezing measure (see paragraph 1.1. of this guide).

In summary:

<b>Regime</b>	<b>UN Regime</b>	<b>EU Regime</b>	<b>French Regime</b>
<b>Decision on freezing measures</b>	Resolution adopted by the UNSC	CFSP decision adopted by the Council of the EU	<ul style="list-style-type: none"> <li>- Independent decision adopted by the Minister for the Economy and the Interior Minister pursuant to Article L. 562-2 of the Monetary and Financial Code</li> <li>- Independent decision adopted by the Minister for the Economy pursuant to Article L. 562-3 of the Monetary and Financial Code</li> </ul>
<b>Legal instrument</b>	Transposition into a European regulation	European regulation	Ministerial order
<b>Regulated professionals</b>	Collective investment management companies, French self-managed collective investments, Branches established in France of investment management companies established in another country party to the Agreement on the European Economic Area that manage one or more French UCITS or AIFs, FIAs and CIAs	Collective investment management companies, French self-managed collective investments, Branches established in France of investment management companies established in another country party to the Agreement on the European Economic Area that manage one or more French UCITS or AIFs, FIAs and CIAs	Collective investment management companies that hold in registered form units or shares of collective investments or third-country investment funds that they manage or that use a blockchain (shared electronic registration system) for fund administration, Branches established in France of investment management companies established in another country party to the Agreement on the European Economic Area that hold in registered form units or shares of French UCITS or AIFs that they manage or that use a blockchain (shared electronic registration system) for fund administration, French self-managed collective investments whose shares are held in registered form (shared electronic registration system) or that use a blockchain for fund administration.

Irrespective of these UN, European and French regimes, AMCs remain subject to the organisational rules that apply to them as provided for in the Monetary and Financial Code, the AMF General Regulation and, where applicable, Delegated Regulation (EU) 231/2013, when applying asset-freezing measures.



## 2. DEFINITION OF FREEZING AND SCOPE OF FROZEN ASSETS

**Freezing** is any action, including refraining from doing, that has the effect of depriving the person, body or entity affected by a freezing measure of their power of control over the asset frozen or of the possibility of benefiting from or enjoying the asset frozen. Freezing does not entail transfer of ownership or seizure<sup>21</sup>.

The term “**asset freezing**” is taken primarily from UNSC resolutions. European regulations and the ministerial orders issued under the French regime<sup>22</sup> use the terms “freezing of funds” and “freezing of economic resources” of named persons or entities.

**□ The terms “freezing of funds” and “freezing of economic resources” are defined in each European regulation and in Article L. 562-1 of the Monetary and Financial Code with very similar wording:**

- “**Freezing of funds**” means preventing any move, transfer, alteration, use of, access to, or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character or destination or any other change that would enable the funds to be used, including portfolio management<sup>23</sup>.
- “**Freezing of economic resources**” means preventing the use of economic resources to obtain funds, goods or services in any way, including, but not limited to, by selling, hiring or mortgaging them<sup>24</sup>.

**□ The terms “funds” and “economic resources” are defined with very similar wording in each European regulation:**

- “**Funds**” that may be frozen are financial assets and economic benefits of every kind, including, but not limited to:
  - cash, cheques, claims on money, drafts, money orders and other payment instruments;
  - deposits with financial institutions or other entities, balances on accounts, debts and debt obligations;
  - publicly and privately traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts;
  - interest, dividends or other income on or value accruing from or generated by assets;
  - credit, right of set-off, guarantees, performance bonds or other financial commitments;
  - letters of credit, bills of lading and bills of sale; and
  - documents showing evidence of an interest in funds or financial resources<sup>25</sup>.

The scope of assets that can be frozen is therefore very broad. Units or shares of collective investments or third-country investment funds are also covered by the term “funds”.

<sup>21</sup> This generic definition of freezing is taken from the Guide to Good Practice in Implementing Economic and Financial Sanctions, produced by the French Directorate General of the Treasury.

<sup>22</sup> Pursuant to Articles L. 562-2 and L. 562-3 of the Monetary and Financial Code.

<sup>23</sup> This generic definition of “freezing of funds” is taken from the Guide to Good Practice in Implementing Economic and Financial Sanctions, produced by the French Directorate General of the Treasury.

<sup>24</sup> This generic definition of “freezing of economic resources” is taken from the Guide to Good Practice in Implementing Economic and Financial Sanctions, produced by the French Directorate General of the Treasury.

<sup>25</sup> This generic definition of “funds” is taken from the Guide to Good Practice in Implementing Economic and Financial Sanctions, produced by the French Directorate General of the Treasury.

Article L. 562-1 of the Monetary and Financial Code also provides a non-exhaustive list of financial assets and economic benefits of every kind, which includes those included in European regulations. Article L. 562-1 of the Monetary and Financial Code explicitly mentions the financial instruments governed by Title I of Book II of the Monetary and Financial Code and their equivalent in foreign law.

- **“Economic resources”** are assets of every kind, whether tangible or intangible, movable or immovable, which are not funds, but may be used to obtain funds, goods or services.<sup>26</sup>

Freezing obligations include prohibiting making available or using funds or economic resources for the benefit of persons or entities subject to a freezing measure.

It should also be noted that certain European regulations, including Council Regulation (EC) 2580/2001 of 27 December 2001 adopted as part of the “persons involved in terrorist activities” regime, expressly prohibit providing **financial services** to or for the benefit of named natural or legal persons, groups or entities that are subject to a freezing measure.

### 3. DETECTION

#### 3.1 DETECTION SYSTEM

The European regulations and the provisions of the Monetary and Financial Code do not provide any details regarding how to detect the persons or entities named in a freezing measure and the assets to be frozen. However, to be able to implement a freezing measure if necessary, professionals must have an effective system for detecting the persons or entities named in a freezing measure and the assets to be frozen.

This system should:

- identify clients<sup>27</sup> and their beneficial owner(s) before entering into a business relationship or before executing an occasional transaction, with regard to the persons or entities named in European regulations and/or ministerial orders;
- screen client databases with effect from the publication date of European regulations and/or ministerial orders imposing new freezing measures, repealing or correcting information identifying previously named persons or entities.

An automated detection system is appropriate when the size of the professional’s business and the nature and volume of their activities do not make real-time manual detection practical. However, such a system must not lead to the decision to enter into a business relationship being automated. Professionals exclusively using a manual system, regardless of the size and activities of their business, must ensure that the system is effective.

Professionals using an automated system should be aware that overly restrictive spelling criteria in the screening tool’s settings may limit effective detection.

Screening must be carried out in accordance with the applicable personal data protection regulations.

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<sup>26</sup> This generic definition of “economic resources” is taken from the Guide to Good Practice in Implementing Economic and Financial Sanctions, produced by the French Directorate General of the Treasury.

<sup>27</sup> Including the targets in which collective investment management companies invest on behalf of the collective investments or investment funds they manage.

Where the units or shares of collective investments or third-country investment funds managed by an asset management company (“AMC”) are “bearer” shares or units, the AMC is not obliged to screen shareholders or unitholders for freezing measures, nor indeed to implement such measures, when it does not know their identity.

### ➤ French register of persons subject to an asset-freezing measure

Pursuant to Article R. 562-2 of the Monetary and Financial Code, the Directorate General of the Treasury has set up a French national register of persons subject to a freezing measure [on its website](#). This register lists all persons and entities named in UN, European and French freezing measures and is updated as soon as new European regulations or decrees ministerial orders enter into force<sup>28</sup>. To ensure that freezing measures are implemented quickly, a [subscription-based](#) “freeze newsflash” is sent to notify professionals when updates occur to the national register<sup>29</sup>.

As part of their AML/CFT system, regulated entities must consider the freezing measures set out in UNSC resolutions and the decisions of the Sanctions Committees as soon as they are published on the UNSC website and until they are transposed into European law or a ministerial order is issued under French law. In their assessment of the risks of money laundering and terrorist financing, they must in particular take into account the fact that a person or entity has been named specifically and must implement appropriate due diligence measures in accordance with Article L. 561-10-1 I of the Monetary and Financial Code<sup>30</sup>. Where there is a suspicion of money laundering or terrorist financing, they must report this to TRACFIN, in particular where there is a risk that the funds or economic resources may be withdrawn or that the freezing measure may be circumvented (e.g. a request for full redemption of the units or shares held or for termination of the discretionary mandate). The suspicious transaction report must be made in such a way as to enable TRACFIN to prevent the transaction from being executed.

Using the Directorate General of the Treasury’s single list enables regulated entities to detect in their client databases the persons or entities whose assets are about to be frozen. Early detection of these persons or entities enables them to implement the freezing measure immediately following publication of the European regulation or ministerial order.

### ➤ European list

The European Union also publishes a [list covering persons and entities named in UN and EU measures](#).<sup>31</sup> This list includes not only named persons or entities subject to freezing measures but also those subject to other types of restrictions. The applicable European regulations must therefore be consulted in the event that a person or entity listed in the client databases is detected, in order to ascertain the type of restrictions that apply. Professionals’ attention is drawn to the fact that the European list does not cover the persons or entities named in French measures adopted under Article L. 562-2 of the Monetary and Financial Code<sup>32</sup>.

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<sup>28</sup> In accordance with Article R. 562-2 of the Monetary and Financial Code, the first and last names, aliases, date and place of birth, company name and any other information contained in the instruments or decisions relating to the freezing measure, as published in the Official Journal of the French Republic or the Official Journal of the European Union or included in United Nations Security Council resolutions, must be entered in the register.

<sup>29</sup> AMCs, FIAs and CIAs can subscribe on the Directorate General of the French Treasury’s website.

<sup>30</sup> See §20 of the joint guidelines on risk factors published by the European Supervisory Authorities (JC 2017 37).

<sup>31</sup> The list can also be accessed via the Directorate General of the Treasury’s website.

<sup>32</sup> On 25 June 2020, this amounted to 145 persons or entities.

## ➤ Other lists

### ■ Provider-supplied list

Where professionals use a service provider that supplies them with a consolidated list of persons or entities subject to freezing measures or, more generally, to economic and financial sanctions, professionals must first determine whether using this list and its updates helps them to detect these persons or entities effectively. The professional is at all times responsible for the effectiveness of their detection system.

### ■ Foreign lists

Depending on the scope of their activities, when professionals are subject to other national sanctions regimes outside France, and only if they are (e.g. because a professional has established a branch in another country), they must in this case comply with these regimes by adhering to the regulations of that country.

However, the provisions of Article 5 of Regulation 2271/96 (known as the “Blocking Regulation”)<sup>33</sup> prohibit professionals from complying, whether directly or through a subsidiary or other intermediary, “actively or by deliberate omission, with any requirement or prohibition based on or resulting, directly or indirectly, from the laws” of the United States of America providing for extra-territorial sanctions specified in the Annex to the Regulation (as of the date of publication of this guide, the sanctions relate to Cuba and Iran), unless the European Commission has granted permission to deviate from this provision<sup>34</sup>.

However, as noted in point 5 of the European Commission’s Guidance Note on interpreting the Blocking Regulation (Questions and Answers: adoption of update of the Blocking Statute),<sup>35</sup> professionals remain free to choose whether to start, continue or cease their business operations in the countries covered by these extra-territorial sanctions, and whether to engage or not in an economic sector on the basis of their assessment of the economic situation.

Lastly, independently of the implementation of French and European freezing measures, the freezing lists published by other countries, in particular neighbouring countries, may provide information that helps professionals improve their knowledge about clients and implement the AML/CFT due diligence obligations.

## 3.2 PROCESSING ALERTS

When the system detects a client or beneficial owner, professionals must analyse the alert to determine whether the client detected is the person or entity subject to a freezing measure or simply has the same name as that person or entity.

If the alert occurs before a transaction is executed or before a financial service is provided, professionals must suspend execution of the transaction or provision of the service to a person or entity named in a freezing measure until the alert has been fully processed.

When professionals do not have sufficient information at their disposal to deal with the alert, it is up to them to collect the information required to carry out this analysis (from the client or by referring to external sources of

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<sup>33</sup> Regulation 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom.

<sup>34</sup> For further information, please refer to the Implementing Regulation (EU) 2018/1101 of 3 August 2018, which sets out the criteria used by the Commission when examining requests for exemption under Article 5 paragraph 2 of Regulation No 2271/96 of 22 November 1996.

<sup>35</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52018XC0807\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52018XC0807(01)&from=EN)

information) and analyse the transaction or business relationship to determine whether a link can be established with a country subject to sanctions or with the objective pursued by the relevant European regulation or ministerial order.

If processing the alert leads the professional to conclude that the person or entity to which the alert relates:

- is not the person or entity named in a freezing measure, the alert may be cancelled and there is no need to freeze assets;
- is the named person or entity, the professional must immediately implement the freezing measure and immediately inform the Directorate General of the Treasury.

If the alert cannot be cancelled, the professional must notify the Directorate General of the Treasury as soon as possible by submitting a [déclaration d'homonymie \(namesake report\)](#). In such a case, the Directorate General of the Treasury may, based on the information provided by the professional and the information in its possession:

- confirm unreservedly that the alert does not relate to the named person or entity, in which case, the alert is cancelled;
- confirm that the alert does relate to the person or entity whose assets are frozen, in which case the professional must then immediately implement the freezing measure;
- authorise the professional not to freeze the assets of the person or entity in question if it cannot exclude with certainty that the alert does not relate to the named person or entity, in which case, professionals must adjust their level of due diligence and, if necessary, reassess the risk profile of the business relationship. In the event of any suspicion, they must report this suspicion to TRACFIN.

## 4. IMPLEMENTING FREEZING MEASURES

### 4.1 IMPLEMENTATION PROCEDURES

#### **Implementation “without delay”**

Unlike the regulations aimed at preventing money laundering and terrorist financing provided for in Articles L. 561-2 and following of the Monetary and Financial Code, a risk-based approach is not used to implement asset-freezing measures. Rather, it involves an obligation to achieve a result. When a professional identifies that a client is subject to a freezing measure, they are required to apply the measure without delay<sup>36</sup> as soon as it comes into force. Professionals do not have to request authorisation or confirmation of the freezing measure from the Directorate General of the Treasury unless they need to submit a namesake report (see paragraph 3.2 of this guide).

If a professional should fail to comply with a freezing measure adopted under the UN, European or French regime, they may be subject to AMF or criminal sanctions<sup>37</sup>.

#### **Informing clients and the Directorate General of the Treasury**

##### **Informing clients**

Whether a freezing measure is adopted by the UNSC, the Council of the European Union or by an order of the Minister for the Economy and the Interior Minister, the person or entity named in it must always be notified at their last address known to the authority deciding on the measure. The notification letter must specify the reasons

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<sup>36</sup> Pursuant to European regulations and Article L. 562-4 of the Monetary and Financial Code.

<sup>37</sup> Article 459 1a and 1b of the Customs Code and L. 574-3 of the Monetary and Financial Code.

for such freezing as set out in the European regulations or ministerial order and the remedies and time limits for appeal<sup>38</sup>.

Professionals are nevertheless encouraged to inform the client that the asset freezing is the result of a French or European decision with which they must comply. They may also inform the client of:

- their right to challenge the asset-freezing measure in accordance with the procedures specific to each regime, which are specified in the Guide to Good Practice/FAQ in Implementing Economic and Financial Sanctions, produced by the Directorate General of the Treasury;
- the facility to obtain from the Directorate General of the Treasury, by way of derogation, authorisation to release certain frozen assets to provide for basic needs<sup>39</sup>, in accordance with the procedures specified in the Guide to Good Practice/FAQ in Implementing Economic and Financial Sanctions, produced by the Directorate General of the Treasury.

### ➤ Informing the Directorate General of the French Treasury

The Directorate General of the Treasury is the main point of contact for professionals in relation to implementing freezing measures. Pursuant to Article L. 562-12 of the Monetary and Financial Code, banking or professional secrecy does not prevent the exchange of information between professionals and the Directorate General of the Treasury.

When a professional implements a freezing measure, they must immediately inform the Directorate General of the Treasury<sup>40</sup> as soon as analysis of the alert has determined that the person or entity detected is indeed subject to a freezing measure.

Professionals must also inform the Directorate General of the Treasury of transactions whose purpose or effect would be to circumvent freezing or prohibition measures<sup>41</sup> and of transactions executed in breach of a European or French asset-freezing measure and detected after the event by the professional.

In any event, if a professional is in any doubt about executing a transaction that could result in funds being made available to a client who has been detected in connection with a freezing measure, they must report this to the Directorate General of the Treasury, which will authorise them, if necessary, to proceed with the transaction.

Communication with the Directorate General of the Treasury takes place by way of two operational email addresses:

- For asset-freezing measures relating to combating terrorism: [liste-nationale@dgtresor.gouv.fr](mailto:liste-nationale@dgtresor.gouv.fr)
- For asset-freezing measures adopted pursuant to geographical sanctions regimes: [sanctions-gel-avours@dgtresor.gouv.fr](mailto:sanctions-gel-avours@dgtresor.gouv.fr)

All contact details relating to implementing a freezing measure, whether French, European or international, are available on the Directorate General of the Treasury's website and in the Guide to Good Practice/FAQ in Implementing Economic and Financial Sanctions, produced by the Directorate General of the Treasury.

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<sup>38</sup> In accordance with European regulations. See the Guide to Good Practice in Implementing Economic and Financial Sanctions, produced by the Directorate General of the Treasury.

<sup>39</sup> Under the UN and European regimes, derogations are provided for in each European regulation. Under the French regime, derogations are provided for in Article L. 562-11 of the Monetary and Financial Code.

<sup>40</sup> Article L. 562-4 I of the Monetary and Financial Code. Furthermore, the "competent authority" referred to in European regulations that professionals must contact is the Directorate General of the Treasury.

<sup>41</sup> See European regulations and Article R. 562-3 II 2° of the Monetary and Financial Code.

The obligation to report without delay to the Directorate General of the Treasury applies without prejudice to the obligation to file a suspicious transaction report with TRACFIN where transactions executed before the entry into force of a freezing measure or in the context of a business relationship with a named person or entity fall within the scope of Article L. 561-15 of the Monetary and Financial Code. Professionals are encouraged to refer to AMF Position DOC-2019-18 (Guidelines on the obligation to report to TRACFIN).

## 4.2 LIFTING MEASURES

Freezing measures resulting from European regulations are repealed or suspended by another European regulation. French freezing measures become null and void after six months have elapsed, unless the measure is renewed by another ministerial order. A judgement may also cancel or suspend freezing measures.

As soon as a freezing measure is lifted, professionals must lift all restrictions implemented without waiting for confirmation from the Directorate General of the Treasury. Using their AML/CFT system, they must reassess the risk profile of their business relationships with the persons or entities concerned and implement appropriate due diligence measures.

## 4.3 PRACTICAL IMPLEMENTATION OF FREEZING MEASURES FOR AMCs, FIAs and CIAs

Implementing a freezing measure does not cause any interruption to the business relationship.

The following discussion provides examples, although they are not exhaustive, of the practical impact that implementing freezing measures could have on the activities of AMCs, FIAs and CIAs, without prejudice to any authorisation from the Directorate General of the Treasury to execute the transactions in question (for example, where payments are made to previously frozen accounts).

### For AMCs:

#### ➤ **In relation to providing portfolio management services on behalf of third parties**

On a case-by-case basis, the AMC must suspend any portfolio management carried out on behalf of a person named in a freezing measure or refuse to provide this service (the AMC refrains from entering into an agreement).

#### ➤ **In collective investment management**

Where a shareholder or unitholder of a collective investment or third-country investment fund managed by the AMC is subject to a freezing measure, the AMC must implement the freezing measure provided that it is aware of the identity of the shareholder or unitholder (for example, because the units or shares are in registered form or because it markets the units or shares of the funds itself). It is therefore not required to do so where it is not aware of the identity of the shareholder or unitholder subject to a freezing measure.

Specifically:

- The AMC must refrain from accepting subscription or redemption orders for units or shares in collective investments or third-country investment funds for the benefit of a person named in a freezing measure;
- In connection with unit or share registry management, the AMC must refrain from arranging settlement and delivery following the registration or removal from the register of units or shares in collective investments for the benefit of a person named by a freezing measure;

- The AMC must refrain from distributing dividends to a collective investment shareholder or unitholder where that shareholder or unitholder is subject to a freezing measure. The dividends are retained by the collective investment as a debt owed to the shareholder or unitholder for the duration of the freezing measure;
- The AMC must refrain from providing an investment advice service to a person named under a European regulation, in particular Regulation (EU) 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism;
- The AMC must refrain from investing, on behalf of the collective investments or investment funds it manages, in units or shares of companies or entities named by a freezing measure.

Before liquidating a collective investment or a third-country investment fund in which the AMC managing it has detected that a shareholder or unitholder is subject to a freezing measure, the AMC must liaise with the Directorate General of the Treasury if that liquidation transaction could result in the amounts owed to that shareholder or unitholder being made available. The Directorate General of the Treasury may or may not authorise the AMC to proceed with the liquidation of the collective investment or third-country investment fund.

The system for freezing assets does not only apply in relation to shareholders or unitholders of collective investments or third-country investment funds managed by the AMC. The system for freezing assets applies more broadly to all persons that have a business relationship with the AMC, such as distributors. In this respect, the AMC must refrain, for example, from paying rebates on management fees to a distributor that is subject to a freezing measure.

#### For FIAs:

- The FIA must refrain from providing an investment advice service, and if applicable an order reception and transmission service, to a person named under a European regulation, in particular Regulation (EU) 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism. Implementing the freezing measure does not terminate the engagement once an engagement letter has been signed by the client and the FIA.

#### For CIAs:

- The CIA must refrain from accepting any subscription application from a person named in a freezing measure;
- The CIA must refrain from offering financial securities, shares in cooperative societies incorporated in the form of a *société anonyme* (public limited company), or *minibons* whose issuer is named in a freezing measure.

## 5. ADDITIONAL ORGANISATIONAL RULES UNDER THE FRENCH REGIME

Under the French regime, AMCs that hold in registered form units or shares of collective investments or third-country investment funds that they manage or that use a blockchain (shared electronic registration system) for fund administration must also comply with the organisational rules stipulated in Article R. 562-1 of the Monetary and Financial Code. They must therefore:

- establish an internal organisation and procedures for implementing measures to freeze assets and prohibit making available or using funds or economic resources. The organisation and internal procedures introduced must be appropriate to the size and nature of their business;
- have sufficient material and human resources;



- ensure that those involved in implementing asset-freezing and AML/CFT obligations are not themselves subject to French or European asset-freezing measures<sup>42</sup>;
- ensure that all personnel involved in implementing the freezing and prohibition measures have access to all information necessary to perform their duties or activities;
- introduce an internal control system for implementing the freezing and prohibition measures.

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<sup>42</sup> In accordance with the provisions of Article L. 561-32 and Article R. 561-38-1 of the Monetary and Financial Code.