

French Blocking Statute: Small Changes, Big Expectations

March 21, 2022

On February 18 and March 16, 2022,¹ the French government made some changes to the so-called “French Blocking Statute” of 1968. They do not modify the broad logic of the statute, but they clarify companies’ obligations to report requests for information or documents by foreign authorities. They also provide for enhanced assistance by French authorities.

Background. The French Blocking Statute prohibits the disclosure of information that would harm the sovereignty, security or essential economic interests of France or contravene public policy, unless this is accomplished under an existing treaty.² It also prohibits any person from requesting, searching for or disclosing commercial information for use in foreign judicial or administrative proceedings.³ A breach of those prohibitions is punishable by up to six months’ imprisonment and/or a EUR 18,000 fine (EUR 90,000 for legal entities).

The Blocking Statute was explicitly adopted in reaction to the practice of U.S. lawyers conducting pre-trial discovery on French soil for use in U.S. proceedings. It has, however, almost never been enforced. As a result, U.S. and UK courts tend not to see the Blocking Statute as a valid reason not to comply with domestic subpoenas, production orders or discovery or disclosure requirements. The Blocking Statute thus creates a host of difficulties for French companies, requiring them to balance the immediate risk of

¹ Decree N°2022-207 of February 18, 2022; *Arrêté* of March 7, 2022 on the communication of economic, commercial, industrial, financial or technical documents and information to foreign individuals or entities, published on March 16, 2022.

² Article 1: “Subject to treaties or international agreements, it is prohibited for any individual of French nationality or usually resident on French territory and for any officer, representative, agent or employee of an entity having a head office or establishment in France to communicate to foreign public authorities, in writing, orally or by any other means, in any place whatsoever, documents or information relating to economic, commercial, industrial, financial or technical matters, the communication of which is capable of harming the sovereignty, security or essential economic interests of France or contravening public policy, specified by the administrative authorities as necessary.”

³ Article 1 bis: “Subject to international treaties or agreements and laws and regulations in force, it is prohibited for any person to request, search for or communicate, in writing, orally or in any other form, documents or information of an economic, commercial, industrial, financial or technical nature for the purposes of establishing evidence in view of foreign judicial or administrative procedures or in the context of such procedures.”

noncompliance with their U.S. or UK obligations with the often theoretical risk of violating the Blocking Statute.

In a highly-publicized [report of June 2019](#), the French National Assembly flagged the lack of effective legal tools available to French companies faced with extraterritorial proceedings. The report made several recommendations for French authorities to strengthen their control over French companies and other companies active in France, in line with U.S. authorities' robust supervision and enforcement powers.

One of the main recommendations was to increase the criminal penalties for violations of the Blocking Statute in the hope that foreign courts would give more consideration to the Blocking Statute "excuse." The French government did not choose that option, reportedly because it would have been an ineffective argument before certain foreign authorities.

New Obligation to Report to French Authorities. Almost three years after that report, the French government eventually chose to update an already-existing obligation to report requests for information or documents by foreign authorities—an obligation that was rarely applied in the absence of clear reporting procedures.

As of April 1, 2022, companies receiving foreign requests for documents or information potentially covered by the Blocking Statute will now have to report "*without delay*" to a French government body known as "SISSE" (Strategic Information and Economic Security Service).⁴ They will then have to submit the following information to the SISSE "*as quickly as possible*":

- The registration number of the company holding the requested documents or information;
- The organizational chart identifying the natural or legal persons controlling such company, and the legal persons controlled by such company;
- A short description of the company's activities in France and within the territory of the applicant's State;
- The company's main French and foreign competitors;
- The reasons for the applicant's request for information;
- The communications between the applicant and the company; and

⁴ <https://sisse.entreprises.gouv.fr/fr>

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- The contact information of a designated person within the company.

Interestingly, French authorities will then have one month to give their opinion as to whether the requested information is covered by the Blocking Statute. Companies shall then be able to produce such opinion to the foreign authorities.

On March 16, 2022, the SISSE published a guide to help companies determine what information may fall within the scope of the Blocking Statute.⁵ In practice, it may be difficult to identify “sensitive” information. This guide therefore encourages companies to audit and classify their data and to store them in a way that is adapted to their level of sensitivity. While the SISSE will not be bound by companies’ internal classifications when delivering an opinion, companies may use this guide to improve their understanding of the sensitivity of their data.

Takeaways. This reform is intended to help French companies better respond to foreign requests for sensitive information covered by the Blocking Statute. According to French officials, it is a “major step in the protection of sensitive information” and “the important thing is to convince foreign authorities about the legitimate nature of filtering the flow of information that is key for the national interest.”

While expectations are high, it now remains to be seen whether companies will be keen to actually report to French authorities, especially given the lack of enforceability of failure to report to the SISSE. That may well depend on whether French authorities’ involvement actually helps companies in their relations with foreign authorities. How foreign authorities will take into account French authorities’ above-mentioned opinion will, of course, be paramount here.

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Please do not hesitate to contact us with any questions.

⁵ SISSE, Guide for companies for the identification of sensitive data,
https://sisse.entreprises.gouv.fr/files_sisse/files/outils/guide/guide-identification-donnees-sensibles.pdf.

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