Chapter 4

Case: Non-compliance at Fokker Services

Ben Klappe and Mark Keunen

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Abstract From late 2005 through to late 2010, Fokker Services BV (FSBV) failed to comply with the economic sanctions the United States (US) Government had established against Iran and Sudan. By scanning the case, violations by FSBV came to light in a structured way, laying bare how FSBV operated to evade export control, breaching sanctions regimes and export control laws. Next, analysis stipulated that the cause and conditions of the violation of the export control regulations were mainly rooted in the tone at the top, the role of (intermediary) management and the absence of a Compliance Program. Subsequently, a short-term and a long-term response were formulated addressing the tone at the top, the development of an Internal Compliance Program, and the application of soft controls to promote an ethical culture.

B. Klappe (✉)

Materiel and Services, PO Box 90004, 3509 AA Utrecht, The Netherlands
e-mail: bfm.klappe@mindef.nl

M. Keunen

Kromhout Barracks, Defence Support Command, PO Box 90004, 3509 AA Utrecht, The Netherlands
e-mail: mmg.keunen@mindef.nl

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4.1 Introduction

In 2015, Fokker Services BV (FSBV), a Dutch aerospace services company, agreed to pay 21 million USD to settle US claims that it conspired to violate sanctions against Iran, Burma and Sudan by providing customers in those countries with aircraft parts, technology and services. From late 2005 through to late 2010, the company made 1,153 shipments of spare, repaired or exchanged parts to customers in the sanctioned countries. The company hid the transactions by withholding or providing false tail numbers to US-based repair shops and by avoiding transactions with US companies on its “blacklist” of companies that were vigilant about export controls.

The services that FSBV offered were subject to US export control regulations. FSBV failed to comply with the economic sanctions the US Government had established against Iran and Sudan. The sanctions prohibited, among other things, the unlicensed exportation or re-exportation, directly or indirectly, of any goods, technology, or services from the United States or any US person to Iran or Sudan. FSBV has violated export control rules by exporting and re-exporting of aircraft parts, technology, and services to US sanctioned countries, without first obtaining a license from OFAC. Research by various agencies such as OFAC, Immigration and Customs Enforcement’s (ICE) Homeland Security Investigations, the Defense Criminal Investigative Service, and the US Attorney’s Office for the District of Columbia has shown that FSBV has systematically tried to conceal the final destination of the parts.¹

FSBV engaged in wilful and reckless alleged violations of US law because FSBV knew that it was shipping US-origin parts, and parts supplied from or repaired in the United States, to customers in Iran and Sudan. Therefore, FSBV caused significant harm to the objectives of the OFAC’s Iran and Sudan sanctions programs given the volume and value of the transactions.

To design and recognize, detect and prevent the specific non-compliant behaviour in the case of FSBV export control violations, the Problem-Oriented Policing (POP) guide template will be deployed.² The first step involves scanning the facts behind the case, followed by an analysis of the root causes of what went wrong. Next, short-term and long-term responses necessary to remedy the non-compliant behaviour are developed. The chapter concludes with a brief assessment reflecting on the process and content of the case analysis.

¹ US Department of Justice 2014.

² Braga 2008.

4.2 Scanning

4.2.1 *Macro-level: Sanctions and World-Wide Competition*

Starting the review at the Macro-level, FSBV was operating in a highly sensitive part of the air and space industry, with international laws and regulations based on national security and economic policy. The industry is strongly regulated and the world-wide competition forces companies, in general, to operate vigilantly at all times, as national security and reputation are at stake. It is at this level where ambiguity and potentially conflicting norms and a perceived lack of (international) enforcement of the US Iranian and Sudan Sanctions regulations may have played a role, leading to the violations.

4.2.2 *Meso-level: Intentional Non-compliant Behaviour*

On 1,112 occasions, FSBV indirectly exported or re-exported aircraft spare parts to Iranian customers, which FSBV either procured or had repaired in the United States specifically to fill an Iranian customer's order, or which were of US origin and subject to export license requirements under US law, independent of the Iranian Transactions and Sanctions Regulations (ITSR), at the time of shipment. On 41 occasions, FSBV indirectly exported or re-exported aircraft spare parts to Sudanese customers or end-users, that FSBV either procured or had repaired in the US, specifically to fill a Sudanese customer's or end user's order, or that were U.S.-origin and required the issuance of a license by a Federal agency at the time of shipment, violating the Sudanese Sanctions Regulations (SSR).

FSBV has exported and re-exported large numbers of shipments to Iran and Sudan for many years—from 2005 to 2010 without the necessary export licences. It has, therefore, the appearance that FSBV has made a cost-benefit analysis between the profits and expenses regarding obtaining the required export licenses or exporting without licenses. Exporting without the required export licenses can be considered as non-compliant behaviour and may be explained from a business-economic perspective because Fokker almost went bankrupt in 1996 and was taken over by Stork. Furthermore, it appears from public available sources, that the non-compliant or unethical behaviour of FSBV occurred while various individuals at all levels throughout the organization knew of various schemes to evade US sanctions.³ Both senior corporate managers and individuals working for the compliance and legal department knew about and approved the various schemes to evade US sanctions.

³ Kini et al. 2014.

4.2.3 *Micro-level: Deliberate Evasion of Regulation*

Absence a clear and convincing message from the FSBV top management to abide by export control rules and absence of a Compliance Plan, middle management complemented with specialists in the Maintenance and Export department developed and used several schemes to evade US sanctions and export laws, including the withholding of aircraft tail numbers, providing false tail numbers, deleting references to Iran in materials sent to the US and hiding activities and documents from the US Federal Aviation Administration during audits of FSBV's Dutch warehouse.⁴ The use of the aforementioned combined actions, witness a well-thought-out and deliberate plan to evade export control rules. US export laws were perceived as inconveniences to be 'worked around' through deceit and trickery.⁵ This behaviour also illustrates awareness and low conscientiousness at the individual employee level.

4.2.4 *Aftermath*

The illegal exports and their concealment are also evidenced by investigations by various authorities, such as BIS, OFAC and the FBI. In response to export control violations a settlement between FSBV and BIS and OFAC has been agreed, such as paying a fine of \$21 million,⁶ implement its new compliance program and policies, changing some of the workforce duties, training staff in US export control and economic sanctions laws,⁷ and the dismissal of a board member.⁸

4.3 Analysis

To understand the nature of the problem and to develop various courses of remedial action, it is necessary to perform an in-depth analysis of the non-compliant and unethical behaviour of FSBV. For that reason, it is important to understand the underlying conditions and causes of the illegal exports to Iran and Sudan. In addition to the above-mentioned areas, we will provide a short overview of the sanction's regime.

⁴ Kini et al. 2014.

⁵ Kini et al. 2014.

⁶ EuropaWire 2014.

⁷ DiBianco et al. 2016.

⁸ Broek 2015.

4.3.1 Tone at the Top

From the publicly available sources, it appears that the non-compliant or unethical behaviour of FSBV occurred while various individuals at all levels throughout the organization knew of various schemes to evade US sanctions.⁹ Both senior corporate managers and individuals working for the compliance- and legal department knew about and approved the various schemes to evade US sanctions. This, combined with the overall number of 1,153 violations during the five-year period (end 2005 to end 2010) points to a culture where compliance with export control rules was deemed irrelevant. As the Department of State Undersecretary for Political Affairs (DPPA) included the demand for firing the president, it can be concluded that even top-level executives were aware of the ongoing violations during a long period, without taking action to stop the evasion of export control rules. Furthermore, it is relevant to include in the analysis the possibility of whether FSBV had made a cost-benefit analysis between exporting to Iran without a license and a possible fine or complying with the rules. For instance, data show that FSBV had generated in 2012 a revenue of 769 million euros and in 2014 a revenue of 758 million euros.¹⁰ Given the amount of the fine and the annual revenues, it could be cautiously concluded that FSBV was in favour of complying with contracts and continuing exports to prohibited countries, instead of respecting the imposed sanctions by the US.

Leaders contribute to an ethical culture by influencing the organization's vision, mission, and strategy. Tone at the top is the atmosphere created by management to encourage employees to embrace a climate of high ethics when the behaviour is modelled by the top management.¹¹ As role models, company leaders have an impact on the moral behaviour of subordinates. When faced with an ethical dilemma, employees reduce the uncertainty of the dilemma by imitating their leaders' behaviour, which they observe daily. Felo and Solieri, experimenting with accounting professionals to test the theory that an employee will focus on the "tune in the middle" rather than the "tone at the top", indicated that signals from top-level executives appear to have more influence on accounting professionals than do signals from midlevel managers. For senior-level executives, the message should be clear: "Watch what you say and do, as people throughout the organization are paying attention".¹²

4.3.2 Absence of a Compliance Programme

FSBV had no formal OFAC compliance program in place during most of the five years when the alleged violations occurred.¹³ The absence of such a program is an

⁹ Kini et al. 2014.

¹⁰ Aerospace Manufacturing and Design 2015.

¹¹ Tukamuhabwa 2012.

¹² Felo and Solieri 2020.

¹³ Kini et al. 2014.

indication that leadership was not intrinsically motivated to follow or implement export control rules and regulations. In addition, an internal- and external control mechanism failed to discover the violations during a long period, while also soft-controls (see hereafter) seemed non-existent.

4.3.3 Role of Middle Management and the Maintenance and Export Department

Absence a clear and convincing message from the FSBV top to abide by export control rules and absence of a Compliance Plan, middle management complemented with specialists in the Maintenance and Export department developed and used a number of schemes to evade US sanctions and export laws, including the withholding of aircraft tail numbers, providing false tail numbers, deleting references to Iran in materials sent to the US and hiding activities and documents from the US Federal Aviation Administration during audits of FSBV's Dutch warehouse.¹⁴ On one occasion, FSBV provided a US aerospace company with a work order that falsely represented that the aircraft part belonged to an aeroplane owned by a Portuguese airline when, in reality, the part actually belonged to an Iran Air aircraft. The US aerospace company fixed the part and returned it to Fokker Services, who then shipped the part to Iran.

Furthermore, FSBV constructed and constantly updated a chart called "the blacklist" that tracked which US companies were more vigilant about export controls, and directed their business to those US companies that were not on "the blacklist". FSBV also deleted references to Iran in materials sent to its US subsidiaries and US repair shops. FSBV changed an internal database that tracked parts to delete fields related to ultimate end-user information, and directed employees to hide activities and documents related to Iranian transactions when inspectors from the US Federal Aviation Administration audited Fokker Services' Dutch warehouse. The use of the aforementioned combined actions, witness a well-thought-out and deliberate plan to evade export control rules. US export laws were perceived as inconveniences to be 'worked around' through deceit and trickery.¹⁵

4.3.4 Conclusion

The findings of the in-depth analysis show that FSBV has systematically violated export control regulations by trying to conceal the final destination of the parts. The cause and conditions of the violation of the export control regulations are mainly rooted in the tone at the top, the role of (intermediary) management and the absence of

¹⁴ Kini et al. 2014.

¹⁵ Kini et al. 2014.

a Compliance Program. After all, corporate managers and individuals throughout the organization knew about the illegal exports. The Maintenance and Export department developed and used even several schemes to conceal the illegal exports. The number of exports and the length of the period seem to rule out errors in company procedures and policies and points more in the direction of a non-compliance culture.

4.4 Response

From the analysis, several shortcomings and weaknesses emerge that require an effective response to stop the non-compliant and unethical behaviour within FSBV. In order to stop non-compliant behaviour, it is necessary to consider which systematic responses can be applied in the short and long-term. It is important to note that a short-term response (i.e., crisis management) can also mean anticipating future events and thus having a preventive effect in the long run. After all, it is of great importance for the continuity of business processes and the continuity of the entire organization to respond effectively in the event of an (acute) threat in the event of a crisis, for example, utilizing institutionalized crisis management capacity.

4.4.1 Short-Term Response

4.4.1.1 Tone at the Top

As soon as possible a statement should be delivered by senior FSBV leadership, preferably the CEO announcing the urgent need to comply with EC, pointing to existing shortcomings and spelling out a time-phased plan to achieve a full-fledged implementation of an EC Internal Compliance Program. An obvious start for the top management level is to urge all staff to follow applicable laws, regulations, and company policies and to hold those violating laws and policies accountable. Without consequences, violations are likely to increase.

In addition, the executive level is to allocate appropriate funding for an EC compliance program. If FSBV allocates insufficient funds for initiatives to encourage ethical behaviour such as training programs, those initiatives are unlikely to promote a strong ethical culture. Those at other levels of leadership can also exert their influence by ensuring that their staff understand the importance of company training concerning conflicts of interest and other ethical issues. If a manager sends a signal that employees should view training as a distraction from their regular work and should be completed as quickly as possible, employees are not likely to internalize the material. Yet if top management sends a signal that the training is an integral part of their work, employees are more likely to take the training seriously.

4.4.1.2 Development of an Internal Compliance Program

FSBV should develop an Internal Compliance Programme (ICP) and implement all elements as soon as possible. To comply with EC and to stop deviant and criminal behaviour, FSBV may include the following measures¹⁶ in its company policy or ICP: (1) increase regulations developing limited authority (e.g., implement rules regarding approval of export, such as a multiple signature requirement); (2) increase the effort that must be made to conduct the deviant or criminal behaviour (e.g., implement a data system targeting anomalies, such as exports to prohibited countries); (3) increase the chance of discovery (e.g., implement and increase guardianship by providing more or more effective surveillance controls by compliance officers); (4) reduce the rewards of criminal behaviour (e.g., implement a company policy that blocks promotions for a fixed period which will lead to a strong reduction in the incentives to conduct illegal exports); (5) decrease the motivation of the offenders (e.g., increase the public awareness about export violations, for example by shaming and blaming, implement a pyramid with informal and formal controls);¹⁷ and (6) remove excuses (i.e., appealing to higher loyalties can be of significant importance for the potential excuse that contracts with prohibited countries must be respected. By including responsibility in the ICP and the code of conduct, and specifying who is responsible for which business process, the organization becomes more transparent and prevents officers from using other neutralization techniques, such as denying responsibility).¹⁸

4.4.1.3 Applying Soft Controls

In addition to these measures, it is strongly recommended to include soft controls in the management control system. Soft controls consist of informal, intangible practices to enhance and sustain proper and employee behaviour.¹⁹ Practices may impact the ethical culture and climate of FSBV (meso-level), emphasizing business integrity. Trainers and managers may use workshops, video clips and flyers, thus generating self-regulating capacity (clarity and congruency, and congruency), self-providing capacity (feasibility and supportability) and self-correcting capacity (transparency, discussability and sanctionability).²⁰

On the latter, the revised crime triangle²¹ can be used. This is an extension from the crime problem triangle which derives from the routine activity theory and is used by the police to diagnose crimes.²² By distinguishing between handler (offender), guardian (target) and manager (place), the triangle allows for a deeper understanding

¹⁶ Goldstein 1990, pp. 102–147.

¹⁷ Smith et al. 2007.

¹⁸ Sykes and Matza 1957.

¹⁹ Kaptein 2008.

²⁰ Bogers 2018.

²¹ Clarke and Eck 2005, pp. 28–29.

²² Sampson et al. 2010.

of the incentives and context of a violation. This way it enables preventing managers and employees of FSBV from reoffending and to assess what changes can be made available throughout the organization, especially in the departments where deviant and criminal behaviour occurred.²³ Besides, situational crime prevention can be added to reduce the chances of displaying criminal and deviant behaviour locally,²⁴ i.e., export departments.

4.4.1.4 Operational Resilience

To respond immediately to the illegal exports to prohibited countries, it is important to pay attention to various operational challenges. Potential challenges: (i) preparation for unpredictable situations, (ii) coping with crisis and (iii) back to normal.²⁵ FSBV can prepare for unpredictable situations, coping with crisis and go back to normal through implementing detailed company procedures and maintaining and monitoring an effective ICP. A contribution to this is to ensure that FSBV is resilient, which means “the capacity to cope with unanticipated dangers after they have become manifest, learning to bounce back”.²⁶

In a crisis situation, it could be useful to leave decision-making to managers at the lower-levels.²⁷ The latter can be particularly relevant, because they may have the expertise and knowledge to solve the problem locally. For that reason, it is relevant to give the local managers of export departments responsibility and the authority to make decisions, for example, approve an export using a multiple signature system within the export department.

4.4.2 Long-Term Response

4.4.2.1 Tone at the Top

It is necessary to remain involved and continue to pay attention at Board Level for EC compliance issues. Leadership should be willing to discuss the topic and status of remedial action during management board meetings and should press for sufficient resources (budget, manpower and IT-support means) leading to a full-fledged compliance programme.

²³ Braga 2008, pp. 25–29.

²⁴ Braga 2008, p. 12.

²⁵ Boin 2004.

²⁶ Wildavsky 1988, p. 12.

²⁷ Boin 2004.

4.4.2.2 The Role of Middle Management

Following guidelines from top management, middle management should be tasked to develop and roll out EC awareness and training programmes. This should include workshops, flyers, e-learning materials etc. ensuring all relevant staff and personnel attend such programmes. Middle managers should also stand ready to discuss with staff the ongoing potentially sensitive EC cases using CRM techniques as discussed earlier.

4.4.2.3 Developing an Internal Compliance Program

An ICP should be evaluated and updated frequently, based on new international and national rules and regulations and should be brought in line with the compliance policy of FSBV. To aim for a systemic structural long-term response, it is necessary to focus on the barrel not only at the apple, respectively FSBV as a whole and not only the individual member who performs duties related to export control or compliance. Compliance is a matter for the entire organization and all its members. A longer-term, systemic response involves adjusting the organizational structure and procedures to accommodate the non-compliant/unethical behaviour structurally.

A suitable means to be compliant in the long-term is an ICP that focuses on EC, among other things. By designing and implementing an effective and efficient ICP throughout FSBV the organisation is enabled to recognize, prevent and/or detect specific types of non-compliant/unethical (counterproductive) behaviour.

Furthermore, to commit to the ICP, the code of conduct and company policies and to respond effectively in the long-term, it is necessary to change the deviant, unethical and criminal behaviour of the members within FSBV into compliant behaviour. When changing behaviour, it is relevant to note that the macro-level, i.e., the (international) economic and legal context, cannot be influenced by the organization itself. It is therefore important to assess how FSBV reacts to the environment and how this translates into the behaviour of individuals (trickle-down): in contrast to the macro-level, the interaction between individuals and the organization can be influenced.

The following protocol can contribute to changing behaviour: (1) specify the behaviour into a certain context so that it is clear to members what FSBV means with compliance; (2) measure the occasions that members within FSBV behave in a compliant way; (3) analyse the behaviour of the moments in which non-compliant and/or compliant behaviour is displayed; (4) feedback the data from the analysis to the members within FSBV, because seeing positive numbers in which complaint behaviour has occurred stimulates desirable behaviour; (5) set (sub)goals regarding compliance with EC within FSBV; and (6) reinforce when members within FSBV have succeeded in reaching (sub)goals, which ultimately leads to a change regarding the corporate culture within FSBV.²⁸

²⁸ Bleker-van Eyk and Houben 2017.

4.5 Assessment

A deliberate violation of export control regulations of the magnitude as was witnessed in the case of Fokker Services during an extended period, caused a renowned firm to suffer a deep blow. A situation like that is worth a thorough analysis to learn valuable lessons and share these lessons with other companies that are faced with export control challenges and customer demands. Using the incremental process of scanning, analysis, response and assessment (i.e., the SARA framework) proved to be very valuable.²⁹

During the first step of scanning, violations by FSBV came to light in a structured way, laying bare how FSBV operated to evade export control, breaching sanction regimes and export control laws concerning Iran, Sudan and Burma. At the time FSBV came forward, no government agency had initiated any investigation focused on the company. The next section, analysis, stipulated what role various actors (top and middle management) and instruments have played and what their role or impact was on the day-to-day activities leading to violations. More in particular, it was found that the cause and conditions of the violation of the export control regulations were mainly rooted in the tone at the top, the role of (intermediary) management and the absence of a Compliance Program. Analysing the response over the course of the next four years, FSBV instituted remedial measures to improve its sanctions compliance program, adopting a set of procedures to track export-controlled parts. Furthermore, FSBV bolstered its employee training requirements, fired its president and demoted or reassigned other employees who had been involved in the violations. The company's compliance efforts have been described by US government officials as "a model to be followed by other corporations".³⁰ Subsequently, a short-term and a long-term response were formulated addressing the tone at the top, the development of an Internal Compliance Program, and the application of soft controls to promote an ethical culture. By following the logic of the SARA framework, the root-causes of violations and misbehaviour within Fokker Services BV became clear.

Without structurally analysing root causes, it is impossible to adequately prevent and respond to violations.

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²⁹ Braga 2008.

³⁰ Kini et al. 2014.

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Ben Klappe, colonel Army Legal Services (Ret.), is Senior Legal Adviser, Export control and compliance, HQ Army Staff, The Netherlands. He holds a Masters of Law degree from Leiden University and has published chapters and articles on peacekeeping and international law in peer-reviewed journals and legal handbooks. He is also a visiting criminal court judge in the District Courts of Gelderland and the Hague.

Mark Keunen holds a law degree from the Open University, The Netherlands. Currently he is a military legal advisor to the Ministry of Defence.

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