

Navigating economic sanctions: challenges and opportunities

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Introduction



Economic sanctions - introduction

Economic sanctions are defined as the withdrawal of customary trade and financial relations for foreign and security policy purposes:

- Comprehensive sanctions: prohibit commercial activity with regard to an entire country;
- Targeted sanctions: block transactions of and with particular businesses, groups, or individuals.

National governments and international bodies like the United Nations and European Union have imposed economic sanctions to coerce, deter, punish, or shame entities that endanger their interests or violate international norms of behavior.

Complicating factors:

A. Multilateral sanctions are always subject to national implementation and despite sharing a common starting point, they may present local variations from the core provisions. → These national variations constitute an additional compliance challenge.

B: Another characteristic of sanctions regimes is their extraterritorial application.

Example: US authorities are granted by the US Patriotic Act of 2001 the right to seize funds in non-US banks. Funds deposited in an account at a foreign bank, which has an interbank account in the US with a covered financial institution, are considered as deposited into the interbank account in the US.

→ the tainted funds can be seized by US authorities in the US account as a substitute for the foreign account.

Foreign sanctions regimes – the US approach



The US approach to economic sanctions

The Office of Foreign Assets Control (OFAC) administers and enforces economic sanctions programs for U.S. government primarily against countries and groups of individuals, such as terrorists and narcotics traffickers.

- Comprehensive Programs: block the government and include broad-based trade restrictions.
- Specific Programs: target specific individuals and entities.

It is important to note that in non-comprehensive programs, there may be broad prohibitions on dealings with countries, and also against specific named individuals and entities. The names are incorporated into OFAC's list of over 6,000 Specially Designated Nationals and Blocked Persons ("SDN list").

"Specially Designated Nationals" or "SDNs" are individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries. They include individuals, groups, and entities, such as terrorists and narcotics traffickers designated under programs that are not country-specific. Their assets are blocked and U.S. persons are generally prohibited from dealing with them.

Remark: Entities owned by a person on the SDN List (defined as a direct or indirect ownership interest of 50% or more) are also blocked, regardless of whether that entity is separately named on the SDN List.



As economic sanctions programs are dynamic, companies need to ensure that their sanctions lists are up to date and that they possess complete information regarding the latest restrictions affecting countries of operations and business partners.

US OFAC Program – penalties and other elements

Penalties:

- ➔ Depending on the program, criminal penalties : fines ranging from \$50.000 to \$10.000.000 and/or imprisonment ranging from 10 to 30 years for wilful violations.
- ➔ Depending on the program, civil penalties: fines ranging from \$284.582 or twice the amount of each underlying transaction to \$1.414.020 for each violation.

The final penalty amount imposed on companies usually reflects the presence of so-called «aggravating» or «mitigating» factors, which increase/decrease the applicable base penalty for the apparent violations.

Be aware of the following “standard” settlement requirements imposed by OFAC:

- ▶ Starting from 180 days after the Agreement is fully executed, a senior-level executive or manager of company must submit an interim progress report on the implementation of the measures agreed.
- ▶ On an annual basis, for a period of five years, starting from one year after the Agreement is fully executed, a senior-level executive or manager of the company will submit a certification confirming that the company has implemented and continued to maintain the measures agreed. ➔ If the company engages in any violations of the sanctions laws and regulations – OFAC may consider the company’s sanctions history, or its failure to employ an adequate sanctions compliance program or appropriate remedial measures, associated with this Agreement as a potential aggravating factor.
- ▶ The Agreement has no bearing on any past, present, or future OFAC actions, including the imposition of civil penalties, with respect to any activities by the company other than those set forth in the Apparent Violations.

Foreign sanctions regimes – the UK approach



The Office of Financial Sanctions Implementation

Introduction:

- ▶ In 2016, the Office of Financial Sanctions Implementation (OFSI), which is a part of HM Treasury, was created.
- ▶ The mandate of OFSI, is:
 - to raise “awareness”
 - to provide clear guidance to promote compliance with financial sanctions
 - ... and to work closely with other parts of government to ensure that sanctions breaches are rapidly detected and effectively addressed.
 - OFSI is responsible for implementing domestic asset freezes.

Some figures:

- ▶ In 2017-2018, the UK implemented 29 financial sanctions regimes.
- ▶ As of September 2017, £12.8 billion of frozen funds were held by UK businesses.
- ▶ In 2017-2018, OFSI received 122 reports of suspected breaches of financial sanctions, with a reported value of around £1.35 billion.
- ▶ Number of enforcement cases in 2019: 2 → £15.000 of penalties imposed....

Principles of efficient compliance



Penalties assessment: “aggravating” or “mitigating” factors

The final penalty amount imposed in breach of sanctions reflects the presence of aggravating / «mitigating» factors.

Common Aggravating Factors are:	Common Mitigating Factors are:
<ul style="list-style-type: none">▪ Lack of a formal dedicated compliance program.▪ Company does not maintain adequate policies, procedures, or internal controls to ensure compliance with the relevant sanctions programs.▪ Improper Due Diligence on customers / clients / service providers / ... (e.g., ownership, business dealings, etc.).▪ Utilizing non-standard payment or commercial practices.▪ The transactions constituting violation were carried out over a long period of time.▪ Misinterpreting, or failing to understand the applicability of certain regulations.▪ Sanctions screening software or filter faults.▪ Exporting or re-exporting US origin goods, technology, or services to sanctioned persons or countries▪ Utilizing the US Financial System, or processing payments to or through US financial institutions.▪ The company did not cooperate from the beginning with government investigation.▪ ...	<ul style="list-style-type: none">▪ Having a global sanctions policy in place at the time of violations.▪ Taking remedial action in response to the apparent violations such as conducting internal investigations, adopting new best practices in sanctions compliance and specific measures to address the deficiencies which lead to violations.▪ Cooperating with government investigation by responding thoroughly and promptly to official requests and submitting detailed and organized information.▪

The 5 components of compliance

- Organizations should approach sanctions compliance using a risk-based analysis by developing and updating a sanctions compliance program (SCP).
 - While each risk-based SCP will vary depending on a variety of factors - each program should be predicated on and incorporate at least five essential components of compliance:
 1. Management commitment
 2. Risk assessment
 3. Internal controls
 4. Testing and auditing
 5. Training
- ➔ transposed into operational reality, such a SCP will normally cover:
- ❑ 160 operational specific items of the company's organization, business approach, strategy and risk-management.
 - ❑ Subdivided into following 7 blocks:
 - Governance
 - Customer and third-party screening
 - Payment and delivery screening
 - People management and training
 - Investigation and reporting
 - Management information
 - Independent monitoring and testing

Concerning the expert





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Background:

Gérard is the Luxembourg Country Practice Leader of F&IS, the OFAC leader and export control issues for Luxembourg at EY Luxembourg.

His professional career involved:

- ▶ Public Prosecutor Office at Luxembourg Financial Intelligence Unit
- ▶ Other Big4 in Luxembourg – 1 of 12 EMEA AML champions
- ▶ Other Big 4 in Switzerland – in charge of the German and French-speaking regions
- ▶ CEO of a Luxembourg company specializing in risk management processes and business development assistance for major companies

Areas of expertise:

- ▶ Fraud and other non-ethical behavior
- ▶ Office of Foreign Assets Control (OFAC) and other economic sanctions programs
- ▶ Export controls
- ▶ Anti-bribery & anti-corruption, including Foreign Corrupt Practices Act (FCPA) , UK Bribery Act (UKBA)
- ▶ Crisis management assistance
- ▶ Transaction forensics

Additionally:

- ▶ Head of the ABBL working group on economic sanctions
- ▶ Former Member of the ABBL professional obligations committee
- ▶ Chairman of the Fraud Committee of ILA until March 2019
- ▶ Member of ALCO GT51 CCO group
- ▶ Core member of the EY Business Integrity and Compliance group and of the EY FI&S Financial Service Group
- ▶ Lecturer at University of Maastricht –Business school: “Masterclass in anti-money laundering” (2008 and 2009)
- ▶ Gérard is about to launch the working group on Counter Terrorism Financing

Thank you

Merci Danke Спасибо תודה 谢谢 شكرا

