

DOI: <https://doi.org/10.53486/9789975359030.57>

CZU: [343.378:336.71] (478)

IMPORTANCE OF OFAC SANCTIONS IN THE ANTI MONEY LAUNDERING COMPLIANCE PROCESS OF COMMERCIAL BANKS

IMPORTANȚA SANȚIUNILOR OFAC ÎN PROCESUL DE CONFORMITATE PRIVIND PREVENIREA SPĂLĂRII BANILOR A BĂNCILOR COMERCIALE

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Rezumat. Conformitatea băncilor comerciale atât față de cadrul legal, precum și cu multiplele liste internaționale de sancțiuni, este o parte vitală a creării, menținerii și fructificării relațiilor de afaceri și a parteneriatelor între bănci, dar și a bunei reputații a acestora pe plan național și internațional. OFAC administrează și aplică sancțiuni economice și comerciale bazate pe politica externă a SUA și pe obiectivele de securitate națională împotriva țărilor, persoanelor, entităților și regimurilor străine implicate în diferite activități ce reprezintă amenințări la adresa securității naționale, politica externă sau economia Statelor Unite, de aceea toate băncile comerciale care doresc să corespundă cu bănci din SUA, în mod direct sau indirect, trebuie să respecte lista de sancțiuni OFAC.

Scopul cercetării vizează modul în care aceste sancțiuni aduc plus valoare băncilor comerciale în domeniul conformității și în special în procesul de prevenire a spălării banilor în contextul în care Republica Moldova nu se supune acestei liste. În atingerea scopului mai sus menționat a fost cercetată literatura de specialitate, precum și rapoartele entităților vizate în cercetare.

În urma cercetării s-a concluzionat că conformarea cu lista de sancțiuni OFAC este de o importanță majoră pentru băncile comerciale, întrucât acestea asigură buna reputație a băncilor pe plan internațional și o colaborare eficientă cu cele din SUA.

Cuvinte cheie: OFAC, conformitate, sancțiuni, bancă, SPSCB, spălarea banilor.

JEL CLASSIFICATION: E42, F23, F33, F51, F53, F65, G21, O57.

INTRODUCTION

The Office of Foreign Assets Control (OFAC) of the US Department of the Treasury administers and enforces economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States. [4]

Compliance, particularly for multinational institutions, needs to occur based upon a careful assessment of the risks posed by the way in which the financial institution conducts its business around the world. Nonetheless, careful consideration of the compliance best practices listed above

will likely yield significant compliance dividends at most international financial institutions that need to pay close attention to the AML and OFAC regulatory requirements imposed by US regulators.

The purpose of this research paper is to emphasize the role of OFAC sanctions in the AML/CFT compliance process by analyzing the interaction between the US sanctions in the EU and Moldavian economic region. Furthermore, we aim to understand how sanctions and AML legal framework influence the level of money laundering in the country.

CONTENT

In order to ensure a high level of protection of the country from various point of view, including economically, OFAC publishes sanctions lists of individuals, institutions, or countries that threaten national security. These lists are called OFAC Sanctions Lists. Some of these lists are:

- Specially Designated Nationals List (SDN List): Specially Designated Nationals (SDN) Lists, published by OFAC, list persons who are prohibited from doing business by U.S. citizens and those who must comply with US regulations;
- The Consolidated Sanctions List: Consolidated Sanctions List is another sanction list other than SDN sanction lists published by OFAC.

From the legal perspective, OFAC regulations apply to all US citizens, US companies, and individuals or businesses doing business with the United States. OFAC lists impose heavy penalties on firms and persons dealing with persons in the sanction lists. Companies have to follow customer transactions and report suspicious transactions to OFAC. There are numerous and different formats of OFAC sanction lists. Firms must follow the sanction lists to ensure OFAC compliance.

However, all companies, as well as banks, worldwide that want to have and maintain their legal, commercial and partnership relation with the USA must also take into consideration these sanctions. In field of banking sector, commercial banks worldwide have correspondent banks on different matters such as money remittances, money transfers, international payments, or even taxes (ex. FATCA). In the same time, the reputation of the banks is under risk as the non-compliance may lead both to sanctions and partnership cessations, that is why the AML compliance department of commercial banks from all countries across the world often stop transactions that imply OFAC Sanctions, even though the specific person, company or country do not present any danger for the bank or the home country.

AML compliance requires close knowledge of the risk profile of the company. This requires a careful review of the financial institution's business and product lines, its types of customers, and its activities and operations, to determine where problems are most likely to arise. [2]

The Moldovan legal framework regarding AML/CFT includes 3 main documents:

- Law no. 308 of 22.12.2017 on preventing and combating money laundering and terrorist financing (AML Law); transposing into national law some provisions of EU Directive 2015/849 (also known as the "Fourth Anti-Money Laundering Directive - AML") and the Recommendations of the International Financial Action Task Force (FATF);
- Law no. 75 of 21.05.2020. Published: 12-06-2020 in the Official Gazette no. 142-146 art. 260, on the procedure for finding violations in the field of preventing and combating money laundering and terrorist financing and the application of sanctions ("Law 75/2020");
- Regulation on requirements for prevention and combating money laundering and terrorist financing in the activity of banks No. 200 of 09 August, 2018. [1]

In the Republic of Moldova, the responsible body for AML is the Office for Prevention and Fight against Money Laundering (OPFML). OPFML receives, records, analyses, processes and submits to competent authorities the information regarding the suspicious activities and transactions of money laundering, associated offences and terrorism financing and proliferation of weapons of mass destruction.

During 2020, OPFML received from the financial-banking sector 420 suspicious transactions, 393 062 threshold transactions and 1 231 701 cash transactions, as it is seen in Figure 1.

There is no substantial difference between number of cash and threshold transactions in 2020 compared to 2019, but the suspicious ones decreased 50 times, which demonstrates that the reporting entities have focused to the risk-based approach according to recommendations to orient the reporting system from quantity to quality.

In this positive trend, an important role had the improved AML/CFT practice, including the higher level of use of international sanctions. [3]

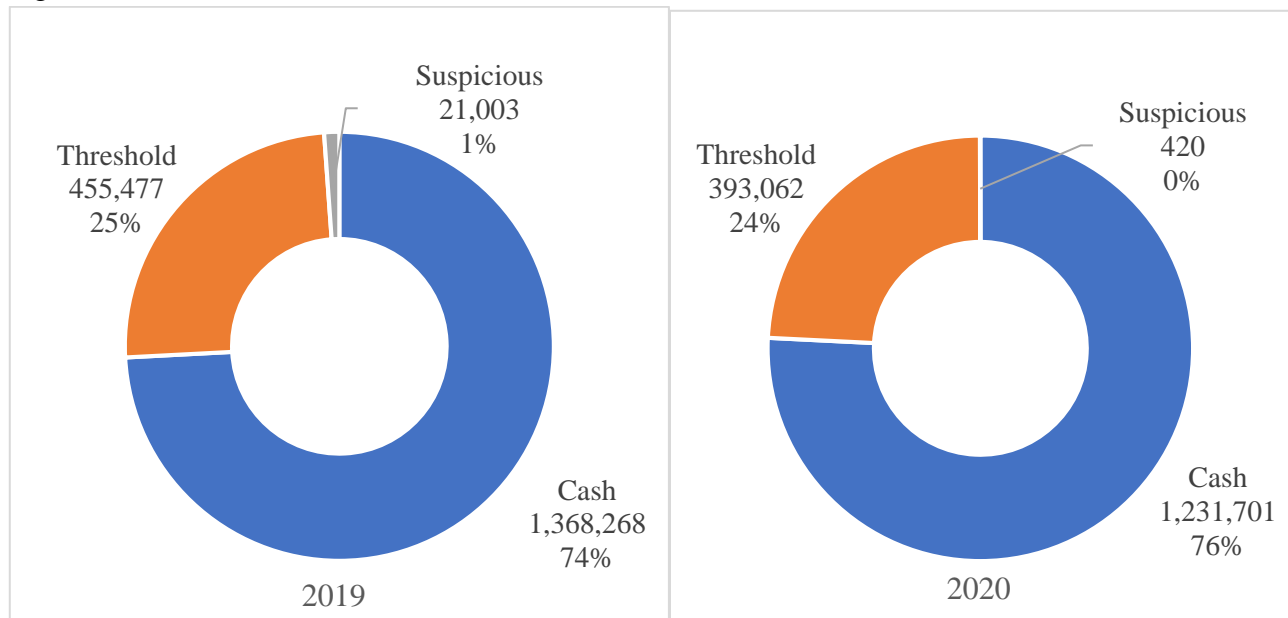


Figure 1. Types of transactions registered at OPFML in 2019 and 2020, total number and %

Source: Elaborated by the author based on the information from the OFFICE FOR PREVENTION AND FIGHT AGAINST MONEY LAUNDERING, Annual report, 2020

Even though our Moldovan legal framework, as well as the EU legal framework does not mention the compliance of AML/CFT practices with the US OFAC Sanctions List, there is a natural interaction of AML and OFAC requirements, as both require the identification of suspicious financial transactions, benefiting both US government, as well as Moldovan and EU financial and banking sector.

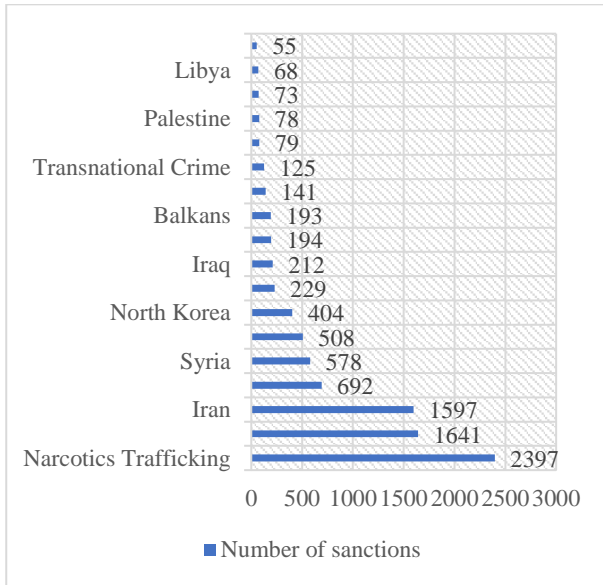


Figure 2. U.S. Designated entities per Sanctions Regime in 2019

Source: Elaborated by the author based on the information from <https://articles.sanctionsassociation.org/steady-increase-in-ofac-enforcement-a-shift-towards-unilateral-sanctions-a-new-focus-on-international-trade-and-much-more-according-to-accuity/>

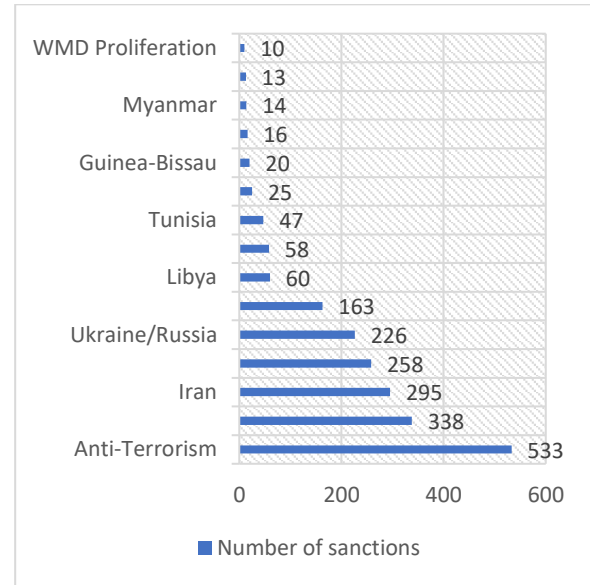


Figure 3. E.U. Designated entities per Sanctions Regime in 2019

In Figure 2 and Figure 3 we can see another point in the importance of OFAC Sanctions List. The US and the EU implement 28 and 22 sanctions regimes respectively, and many tend to be similar. Both the US and EU take a tough stance on terrorism, it being the top reason for EU designations and the second most common reason for designations in the US (behind Narcotics Trafficking). The main differences center around Venezuela, which has 229 US designations compared to the EU’s 25 (10 times more), and Cuba, which features heavily on the US list, but not at all on the EU list. The US also designates 5 times more entities than the EU in relation to Iran (1,587 vs. 295). [5]

AML policies are put in place to deter criminals from integrating illicit funds into the financial system. Money laundering schemes are used to conceal the source and possession of money obtained through illegal activities, such as drug trafficking and terrorism. Banks and other financial institutions are legally obligated to follow AML regulations to ensure that they do not support money laundering activities. Therefore, the OFAC Sanctions List helps AML main purpose – to mitigate the risks of involving the bank in money laundering actions and other illegal activities that might be unintentionally financed by them.

As well, the non-compliance of banks with the OFAC Sanctions (or their violation) could lead to:

- reputational problems for the banks;
- cessation of any kind of relations between US banks and other banks across the globe;
- penalties.

In OFAC Sanctions List, Moldova has only one sanction which is on the “Evil Corp” the Russia-based cybercriminal organization responsible for the development and distribution of the Dridex malware. Evil Corp has used the Dridex malware to infect computers and harvest login credentials from hundreds of banks and financial institutions in over 40 countries, causing more than \$100 million in theft. This malicious software has caused millions of dollars of damage to U.S. On

this matter, two Ukrainian nationals were extradited from the U.K. to the U.S. and pleaded guilty to related charges in Nebraska in 2015, the Justice Department said. In October of that year, U.S. prosecutors also indicted Moldovan national Andrey Ghinkul for cyber-attacks using Dridex. [6]

CONCLUSION

OFAC Sanctions List is not important only in the AML field in the USA's commercial banks, but for all banks worldwide as the business relations between them can take place exclusively under the condition of conformity to the internal frameworks of both countries. Therefore, all entities that perform their transactions and operations through US banks or have relations of economic nature with those entities, automatically have to comply with OFAC Sanctions.

The violation of these sanctions can cause legal, commercial and reputational damage to banks, being under the risk to be penalized, banned from the USA, or even being convicted under the US legislation.

The compliance of banks with this list will ensure a high level of AML conformity, therefore the banks will be trusted by their clients, increasing the quality of their profitability and their main financial indicators.

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