



Briefing

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Application of EU and US Sanctions in Romania – impact on the business of banks

1. Background

In recent years, in an attempt to prevent and combat money laundering and terrorism financing, both the EU and the US have increased the number of restrictions in connection to businesses developed with designated persons or sanctioned countries. In view of the recent situation between Ukraine and Russia at the EU's Eastern border, over the last 14 months, the EU has adopted several regulations (and this also goes for the US competent authorities) which impose restrictive measures in case of certain business relationships with Russia (with designated persons or in relation to certain sectors or assets).

In this environment, credit institutions play an important role for ensuring an effective implementation of international sanctions by freezing funds, by denying access to certain prohibited financings and by following up on flow of funds. In this briefing, we outline the legal framework applicable to banks doing business in Romania and touch on the jurisdiction of various relevant authorities.

2. Legal framework

2.1. National level

Romanian local law applicable to the banking sector in relation to international sanctions¹ sets out that Romanian credit institutions are required to implement internal regulations, which should ensure enforcement of the international sanctions regarding freezing of funds.

Such procedures should cover identification of persons which are subject to international sanctions – designated persons - as well as identification of prohibited transactions with existing and one-off customers, policies regarding customer take-on, approach to dealing with designated persons, archiving of paperwork regarding the clientele of the credit institution, access of relevant personnel to such data and reporting both internally and to competent authorities any suspicious transaction.

These internal regulations (and all amendments thereto) must be notified to the National Bank of Romania ("NBR") (arguably, they could be part of the anti-money laundering & counter-terrorism internal regulations). The banks should also appoint one or more responsible persons to coordinate implementation of these internal regulations and the details of such person(s) should be notified to NBR.

Romanian branches of foreign credit institutions are also subject to these obligations.

2.2. European level

Various EU regulations, guidelines and best practices papers covering counter terrorism in general (EC Regulation 2580/2001), which directly and/or indirectly supplement the Romanian legal framework (above), provide that no funds or economic resources shall be made available, directly or indirectly, to or for the benefit of natural or legal persons, entities or bodies listed on various black lists (or acting on behalf or at the direction of such entities).

¹ The Government Emergency Ordinance no. 202/2008 regarding enforcement of international sanctions, as amended and National Bank of Romania Regulation no. 28/2009 regarding supervision of the method for enforcement of international sanctions related to freezing of funds.



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This prohibition has been reiterated under the recent Council Regulations nos. 833, 960, 1290 and 1351/2014, which have been put in place at EU level in view of Russia's actions destabilising Ukraine as well as in response to the illegal annexation of Crimea and Sevastopol. The new EU regime also sets out sectoral sanctions which prohibit, with certain carve-outs (e.g. a tenor in specific cases, non-prohibited imports or exports, emergency solvency funding), making new loans available or providing credit for any sale, supply, transfer or export of certain goods and technologies (such as dual-use items, as defined by Regulation no. 428/2009 or goods and technology listed in the Common Military List) to any natural or legal person, entity or body in Russia, referred to in certain lists.

2.3. International level

International sanctions imposed under Resolutions of the United Nations Security Council are directly applicable in Romania, subject to Romanian publicity formalities (publication in the Official Gazette of Romania).

Moreover, sanctions imposed by other states or foreign authorities (e.g. Office of Foreign Assets Control, component of the US Treasury Department ("OFAC")) may also be mandatory at national level but subject to enactment of specific regulations for the enforcement of such international sanctions.

3. Romanian competent authorities and local measures

3.1. General jurisdiction

As a general rule, each public authority is responsible for the supervision of the implementation of international sanctions against all individuals and/or entities within its jurisdiction.

For blocking funds or economic resources held, owned by or under the control of designated individuals or entities subject to sanctions, the Romanian Ministry of Public Finance, through National Tax Administration, at the order of the Minister of Finance, has general competence to implement international sanctions.

At national level, the Inter-ministry Council (*Consiliul Interministerial*), which is functioning under the Romanian Ministry of Foreign Affairs, is responsible for ensuring general cooperation and consultations between authorities and public institutions regarding implementation of international sanctions in Romania.

3.2. NBR special jurisdiction and measures

NBR is in charge with the supervision of the implementation of international sanctions by freezing of funds applied by credit institutions towards natural persons and/or legal entities, subject to such restrictions.

Moreover, NBR is competent to take measures against all credit institutions subject to its supervision - such as warnings, fines (up to approx. EUR 12,000,000), suspension or even withdrawal of a credit institution's banking license - in case of breach of any prohibition or other related duties.

4. Other authorities taking measures at international level

Credit institutions in breach of international sanctions may also be subject to measures taken by other relevant authorities with competence to enforce international sanctions in certain territories, such as:

- (i) at EU level, the EU Council, which may "black list" credit institutions involved in business with designated persons or in breach of sanctions, including sectorial economic sanctions;
- (ii) in the US, OFAC, which may act if any credit institution infringes its restrictions and there is involved any US element (e.g. US persons (all entities organized under US law (including their non-US branches), permanent residents in the United States and any US citizens or US green cardholders globally) or through US territory or its financial system) – e.g. please see USD 9 billion BNP Paribas fine case.

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5. Possible Romanian legal developments - NBR's draft regulation on international sanctions

An NBR draft regulation regarding supervision of the method for enforcement of international sanctions related to freezing of funds, envisages the strengthening of identification and monitoring requirements imposed by the regulations in force (i.e. NBR Regulation no. 28/2009). One of the important envisaged changes relates to identification of credit institution's clients, which should be made based on documents harder to forge, such as identity documents issued by a state authority, in case of natural persons or documents issued by a trade registry, in case of legal persons (the same rules would also apply to any representatives thereof).

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