



Observatoire ARGA

**DUE PROCESS GAPS IN SANCTIONS AND FINANCIAL
INTELLIGENCE MECHANISMS: STRUCTURAL RISK
ASSESSMENT FOR THE U.S. REGULATORY ARCHITECTURE**

Author:

Sergey Khrabrykh — President of ARGA, PhD
Ekaterina Khomutinnikova

Organization: Observatoire ARGA – Sanctions and Compliance Unit

Mailing address: 14 rue Jacques Laffitte, Bayonne, 64100

Contacts: info@argaobservatory.org, +33 7 58 49 62 27

Website: www.argaobservatory.org

Table of Contents

- 1 Introduction
- 2 Architecture of the U.S. Sanctions System
 - 2.1 Legal and regulatory basis
 - 2.2 Listing mechanisms
 - 2.3 Administrative review
- 3 Financial intelligence and automated risk processing
 - 3.1 Role of FinCEN
 - 3.2 Integration of sanctions and AML
 - 3.3 Algorithmic factor
- 4 Structural due process gaps
 - 4.1 Disproportion between listing speed and review speed
 - 4.2 Limited transparency
 - 4.3 Cross-border informational dependence
 - 4.4 Secondary consequences
- 5 Systemic risks for the U.S. financial architecture
 - 5.1 Over-compliance
 - 5.2 Legal fragmentation risk
 - 5.3 Risks for public companies
 - 5.4 Litigation exposure
- 6 Comparative context
 - 6.1 European Union
 - 6.2 United Kingdom
 - 6.3 Global trend
- 7 Regulatory risk map
- 8 Recommendations
- 9 Conclusion

INTRODUCTION

U.S. sanctions policy and the financial intelligence system are among the most developed and influential instruments of global regulatory governance. They play a key role in safeguarding national security, protecting the international financial system, and countering transnational threats.

At the same time, the expansion of sanctions regimes and financial monitoring tools increases the pressure on the procedural resilience of these mechanisms. The priority of operational speed,

inherent to restrictive measures, inevitably creates tension between the effectiveness of response and the depth of procedural safeguards.

This report examines the U.S. sanctions and financial intelligence architecture through the lens of structural due process gaps and their potential systemic impact on financial stability, regulatory predictability, and institutional trust.

The purpose of the analysis is not to criticize sanctions policy as such, but to identify zones of regulatory risk arising from the combination of high-speed restrictive measures, automated data processing, and cross-border informational dependence.

ARCHITECTURE OF THE U.S. SANCTIONS SYSTEM

2.1 Legal and regulatory basis

U.S. sanctions authority is based on:

- International Emergency Economic Powers Act (IEEPA);
- Executive Orders;
- U.S. Treasury regulations;
- activities of the Office of Foreign Assets Control (OFAC).

The sanctions regulation model is oriented toward speed and flexibility. This enables rapid state response to national security threats.

2.2 Listing mechanisms

Designation may be based on:

- intelligence information;
- financial flow analysis;
- international cooperation;
- network and beneficial ownership analysis.

Decisions are taken administratively, without prior judicial proceedings.

2.3 Administrative review

The review mechanism includes the possibility of filing a petition for delisting. However:

- review timelines are not always strictly limited;
- access to evidentiary material may be restricted;
- the process remains administrative rather than judicial in nature.

FINANCIAL INTELLIGENCE AND AUTOMATED RISK PROCESSING

3.1 Role of FinCEN

FinCEN aggregates and analyzes significant volumes of information, including Suspicious Activity Reports (SARs), cross-border transactions, and other financial risk signals.

3.2 Integration of sanctions and AML

U.S. financial institutions use integrated systems combining:

- sanctions lists;
- politically exposed person (PEP) databases;
- adverse media screening;
- international law enforcement notifications.

These systems are built on a risk-based approach and rely heavily on automation.

3.3 Algorithmic factor

Automated compliance models tend to amplify risk signals. Under conditions of uncertainty, banks often choose a more conservative strategy known as defensive compliance.

This creates a “risk multiplication” effect, where a primary sanctions or informational signal is transformed into secondary restrictions.

STRUCTURAL DUE PROCESS GAPS

4.1 Disproportion between listing speed and review speed

Restrictive measures may be introduced rapidly, while administrative review may require significant time.

This creates temporal asymmetry:

restriction → immediate financial consequences → prolonged period of legal uncertainty.

4.2 Limited transparency

In certain cases, designated subjects do not have access to the full evidentiary record due to national security considerations.

This reduces the effectiveness of legal defense and prolongs uncertainty.

4.3 Cross-border informational dependence

Sanctions decisions may rely on information from foreign partners whose procedural standards and judicial independence differ from those of the United States.

This creates an additional layer of uncertainty regarding the reliability of underlying information.

4.4 Secondary consequences

Even after delisting, the following may persist:

- banking restrictions;
- refusal of counterparties to cooperate;
- reputational damage;
- prolonged presence in private compliance databases.

Thus, an “inertial trace” of sanctions impact may remain.

SYSTEMIC RISKS FOR THE U.S. FINANCIAL ARCHITECTURE

5.1 Over-compliance

Financial institutions seeking to minimize regulatory risk may implement measures exceeding formal requirements.

5.2 Legal fragmentation risk

Differences between U.S., EU, and UK sanctions regimes create operational challenges for global banks and increase compliance risk.

5.3 Risks for public companies

For publicly traded companies, sanctions-related signals may affect:

- share value;
- access to capital;
- disclosure obligations;
- investor relations.

5.4 Litigation exposure

The growth of sanctions-related litigation increases pressure on courts and generates additional legal costs.

COMPARATIVE CONTEXT

6.1 European Union

The EU provides a more formalized judicial review mechanism through the Court of Justice of the European Union, creating a clearer model of judicial oversight.

6.2 United Kingdom

Following Brexit, the United Kingdom developed an independent sanctions regime with separate review procedures.

6.3 Global trend

There is a growing use of targeted sanctions and expansion of their scope, increasing pressure on due process procedures globally.

REGULATORY RISK MAP

Key risk zones include:

- opacity of evidentiary basis;
- temporal disproportionality of procedures;
- automated amplification of signals;
- long-term secondary effects;
- international inconsistency of standards.

Together, these factors may generate structural pressure on the U.S. financial system.

RECOMMENDATIONS

Establish indicative timelines for the review of sanctions reconsideration requests.

Develop additional U.S. Treasury guidance on proportionality of measures by financial institutions in cases where no direct sanctions basis exists.

Strengthen coordination between OFAC and FinCEN in managing secondary effects of sanctions decisions.

Create aggregated public statistics on review procedures without disclosure of sensitive information.

Develop guidance for financial institutions on minimizing inertial effects following delisting.

CONCLUSION

The U.S. sanctions and financial intelligence architecture is a powerful instrument for ensuring national and international security.

Strengthening procedural safeguards and increasing transparency of review mechanisms does not weaken the system. On the contrary, it enhances resilience, reduces secondary risks, and reinforces trust in the regulatory environment.

This report provides a foundation for expert dialogue on balancing sanctions effectiveness with institutional stability of the U.S. financial system.

ARGA Observatory considers this document a contribution to constructive and professional discussion on the procedural resilience of sanctions and financial intelligence mechanisms.