

The Unintended Consequences of Financial Sanctions Regimes on Humanitarian Organizations: What are the gaps that need to be filled?

A Sanctions Mapping Study conducted by Human Security Collective for the Netherlands Ministry of Foreign Affairs

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Disclaimer:

The study was conducted by HSC and funded by the Ministry of Foreign Affairs. The findings and conclusions presented in the report are based on the research conducted by HSC and are the sole responsibility of HSC. The findings and conclusions in the report do not necessarily reflect the positions of the Ministry of Foreign Affairs.



Ministry of Foreign Affairs



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Introduction

The Unit for Sanctions Policy and Department for Stabilization and Humanitarian Aid of the Netherlands Ministry of Foreign Affairs commissioned this mapping with the goal of gaining insight into the challenges faced by the Dutch Relief Alliance (DRA) and other humanitarian organizations because of international and EU sanctions.¹ The insights gained can help the Ministry in their advocacy at the EU level to continue their efforts to protect the operating space for humanitarian aid, particularly in terms of the exemption provided under UN Security Council Resolution 2664². It can also serve as input from a humanitarian action perspective to the renewal of the Netherlands' 1977 sanctions law.

Humanitarian aid is officially defined as assistance provided to save lives, alleviate suffering, and maintain human dignity during and after emergencies, such as natural disasters, armed conflicts, or other crises³. This aid is intended to be neutral, impartial, and independent, focusing solely on meeting the basic needs of affected populations without taking sides in political, ethnic, or religious conflicts. Humanitarian aid includes the provision of food, water, shelter, medical care, and other essential services to help people survive and recover from crisis situations. The delivery of humanitarian aid often includes a wide network of International Organizations, international, national, or local NGO-s, suppliers, and others.

Humanitarian and development organizations have shown that sanctions, while intended to exert pressure on governments or entities, have had severe unintended consequences on humanitarian aid. They often disrupt the flow of essential supplies, financial resources, and logistical support needed to deliver critical aid, exacerbating the suffering of vulnerable populations. In regions where it can already be a challenge to provide the necessary aid, due to environmental or conflict reasons, sanctions can further hinder the ability of humanitarian organizations to operate effectively, leading to shortages of food, medicine, and other life-saving materials. Moreover, the fear of violating sanctions can deter banks, donors, and suppliers, further limiting the reach and impact of humanitarian efforts in crisis regions.

The unintended consequences of sanctions regimes on the ability of humanitarian organizations to respond to crises across the world have caught due attention of donor governments and policy makers in the past decade. International organizations, governments, and NGOs have (co) convened multi-stakeholder round tables, in some cases focusing on humanitarian and peace building activities across the globe, and in others on specific countries such as Syria and Afghanistan, or certain areas or entities within those countries. In other fora, the emphasis was on US and UN sanctions or on the interconnection between sanctions and anti-money laundering (AML) and countering the financing of terrorism (CFT) rules on humanitarian action, peacebuilding, and development⁴.

¹ <https://dutchrelief.org/>

² The United Nations Security Council (UNSC) adopted Resolution 2664, a cross-cutting humanitarian carve-out for all UN sanctions regimes—including the 1267 ISIL/al-Qaida regime—to safeguard the timely and effective conduct of humanitarian activities. The legally binding resolution affirms that any financial transactions or provision of goods and services necessary for humanitarian assistance and basic human needs “are permitted and not a violation of the asset freeze” measures. (<https://theglobalobservatory.org/2022/12/new-humanitarian-carve-out-un-sanctions-regimes/>)

³ UNOCHA (United Nations Office for the Coordination of Humanitarian Affairs). "What is Humanitarian Aid?" OECD (Organisation for Economic Co-operation and Development). "Humanitarian Assistance."

⁴ Lia van Broekhoven & Sangeeta Goswami, Can Stakeholder Dialogues Help Solve Financial Access Restrictions Faced by Non-Profit Organizations That Stem from Countering Terrorism Financing Standards and International Sanctions?103 (916-917) Int. Rev. Red Cross 717, 732 (2022)

Unmistakable evidence of the international interest in the unintended consequences of sanctions on humanitarian action is the adoption of UN Security Council Resolution 2664 on December 9, 2022. Under the leadership of the US and Ireland, all states in the Security Council voted in favor of the resolution apart from India, which abstained from voting. The resolution safeguards humanitarian action across all UN sanctions regimes and was hailed as a landmark decision by donor governments, policy makers, and humanitarian organizations alike. The resolution has the potential to mitigate the underlying tension between sanctions, international humanitarian law and humanitarian action. In principle, UN sanctions never prohibit humanitarian activities that provide civilians with basic goods and services such as food, water, healthcare, and shelter to live in dignity. The resolution can support the decriminalization of humanitarian aid under national counter terrorism (financing) laws. The entities covered by the carve out are UN agencies, humanitarian organizations, their suppliers and implementing partners and other entities involved in humanitarian work, such as banks and money transfer agencies.⁵

Significant changes for humanitarian action under UN financial sanctions regimes are introduced in the resolution. It has established a "humanitarian carve-out" to asset freeze measures imposed by the UN 1267 ISIL and Al-Qaeda sanctions regime. The 1267 carve-out is time-bound and up for renewal towards the end of 2024. The UN resolution is an important topic in the context of EU sanctions regimes, which are the focus of the mapping. The outcome of the mapping exercise is however not primarily meant to advocate for a renewal of the 1267 carve-out under UNSCR 2664. It aims to address longer-term strategic issues that the Netherlands Ministry of Foreign Affairs needs to take into consideration within the European sanctions policy context in relation to protecting humanitarian operating space.

Other types of sanctions such as trade or export controls and visa and travel restrictions that equally affect humanitarian aid have not been the primary subject of the exercise but will be addressed to a limited extent.

This mapping focuses on targeted sanctions regimes and their impact on the subset of NGOs that are members of the DRA or receive/have received grants from the Netherlands Ministry of Foreign Affairs. It spotlights the financial challenges of NGOs and ways the organizations navigate the unintended consequences of sanctions and AML/CFT regulations in their daily operations.

The mapping was not conducted with the intention of exploring the salient issue of the effectiveness of financial sanctions as a foreign policy tool in service of global peace and security. Nevertheless, an exploration about the effectiveness of sanctions considering recent critical studies would merit further discussion.⁶

The findings highlight operational barriers for NGOs, the ways these organizations have addressed these obstacles, and what hurdles remain in terms of tackling de-risking and de-banking by financial institutions stemming from financial sanctions regimes and AML/CFT rules. The perspective given is a "western and Nordic" one, and therefore limited in scope. For a fuller understanding of the effects of sanctions regimes, more analysis is needed from stakeholders, including NGOs and banks, in countries and areas where humanitarian aid and action take place.

⁵ International Peace Institute (IPI), *Safeguarding humanitarian action in a sanctions environment*, December 2023. <https://www.ipinst.org/wp-content/uploads/2023/12/IPI-E-RPT-Safeguarding-Humanitarian-Action2023.pdf>

⁶ Nicolas Mulder, *The economic weapon: The rise of sanctions as a tool of modern war* (Yale University Press, 2022). <https://www.nicholasmulder.com/#/research/>
Keshavarzian, A., "The political economy of sanctions: Iran in comparative perspective," *Journal of International Politics*, vol. 35, no. 2, 2024, pp. 123-140. <https://www.tandfonline.com/doi/full/10.1080/17938120.2024.2340412>

The mapping thus does not aim to be comprehensive. It aims to display which policy and collaboration, or partnership gaps need to be plugged by the Dutch Ministry of Foreign Affairs and other governments that are committed to protecting humanitarian space.

The mapping was conducted in the current volatile geopolitical context where the wars in Ukraine and especially Gaza and further escalation of the conflict in the Middle East have generated urgent questions for the stakeholders of the mapping about the indiscriminate implementation of international humanitarian law and international human rights law. In addition, elections in EU member states, the EU and the US are expected to affect political decision-making on sanctions and the operating space of humanitarian organizations, and other NGOs that are active in crisis areas. The gains made following the adoption of the UNSC R2664 and the incorporation of the resolution in EU sanctions regimes on the actual implementation of sanctions and AML/CFT rules by financial institutions may slide back due to a decreased risk appetite by banks for transfers in support of humanitarian action to areas affected by the wars in Ukraine, the Middle East and Sudan, where designated entities are active.

Methodology

The findings of the mapping are based on the following input:

1. Interviews with EU policy makers (DG ECHO and DG FISMA), bankers in the Netherlands and Germany (a correspondent bank), and NGOs and NGO membership organizations in the Netherlands and Brussels,
2. A questionnaire which we circulated in collaboration with KUNO to DRA members and other relevant NGOs,
3. Readings of studies by sanctions and humanitarian action experts, and;
4. Participation in multistakeholder dialogues on the impact of sanctions regimes on humanitarian and peace building organizations.

Background

What are EU sanctions?

The Council of the EU can impose sanctions on non-EU countries, entities, and persons. There are several types of sanctions under EU treaties: arms embargoes, travel and visa prohibitions, asset freezes, financial restrictions, economic sanctions, and diplomatic restrictions such as reduction or suspension of diplomatic relations with the goal of exerting political pressure while avoiding military confrontation. The EU has adopted country-specific sanctions regimes, as well as thematic and horizontal regimes to target terrorism, human rights violations, proliferation of nuclear and chemical weapons and cyber-attacks.

There are three “flavors” when it comes to sanctions implemented by the EU: restrictive measures based on UN resolutions; the so-called mixed regimes, which are UN sanctions with added conditions (or listings) posed by the EU; and finally, the autonomous sanctions regimes. The Council decides on autonomous sanctions, which are adopted unanimously by the member states. UN sanctions resolutions have an open end-date and can be lifted and amended without delay on the decision of the UN Security Council. EU autonomous sanctions are supposed to be reviewed at least once every 6 or 12 months. The EU implements all sanctions adopted by the UN Security Council by transposing them into EU law. The EU is in permanent dialogue with the UN to better coordinate UN sanctions regimes with the EU’s autonomous sanctions regimes.

The political process

Decisions and regulations about sanctions are unanimously adopted by the Council of the EU. Restrictive measures are put into effect by a decision of the Common Foreign and Security Policy Council. Prior to the adoption of EU sanctions, a process of examinations and decisions takes place, prepared by different Council working groups, e.g., the regional groups, the Working Party of Foreign Relations Counsellors (RELEX), and the Committee of permanent representatives (COREPER). Based on the CFSP Council decision, the High Representative of the Union for Foreign Affairs and Security Policy and the European Commission present a joint proposal for a Council regulation.

The joint proposal is examined by the Working Party of Foreign Relations Counsellors (RELEX) and sent to Coreper II (the Committee of Permanent Representatives/Member States' ambassadors), and the Council for adoption. The Council then informs the European Parliament of the adoption of the Council regulation. The regulation lays down the precise scope of the measures and details for their implementation. It is binding on any person or entity (economic operators, public authorities, etc.) within the EU.

The EU has developed sanctions exceptions policies for the provision of humanitarian aid. The exceptions ensure that aid can reach those in need despite restrictive measures such as sanctions. These exceptions are designed to balance the enforcement of international laws and sanctions with the imperative to provide humanitarian relief. Humanitarian and multi-mandated organizations have often expressed that the humanitarian exception system is complex and requires extensive human, legal, financial and policy resources to navigate. The adoption of UNSCR 2664 was applauded by these organizations as the start of a sanctions system that would be easier to navigate throughout the entire chain of humanitarian aid provision. The EU has indeed put much effort into incorporating the resolution in its autonomous sanctions' regimes.

As of January 2024, 29 out of 39 EU regional autonomous sanctions regimes have incorporated UNSCR 2664's humanitarian exemptions, leaving 12 regimes without these carve-outs. The sanctions regimes that do not yet include the humanitarian carve-out as set out in UNSCR 2664 are: Belarus, Bosnia and Herzegovina, Burundi, Democratic Republic of Congo, Guinea, Guinea Bissau, Iraq, Libya, and South-Sudan. The carve-out has been applied to (entities in) Syria, Iran, Venezuela, North Korea, and Myanmar for the delivery of basic needs such as food and medicine to populations affected by the conflicts in Syria, Myanmar, and by food and medicine shortages in the other countries.⁷

There remain some important EU autonomous sanctions regimes in which the protection of humanitarian actors could be strengthened:

- a. Some EU regimes still have a time-bound nature for exemptions and should be open-ended: E.g. Syria (1 year exemption renewal) and EU autonomous CT measures (incl. Hamas, PIJ, Hezbollah – 1 year exemption renewal). Those are regimes that apply in contexts of great humanitarian need and so the exemption should be renewed as a priority.
- b. Other EU regimes have a humanitarian exemption that only applies to UN and International Organizations (and not NGOs) and should be aligned with the scope of 2664, e.g. EU financial sanctions on Russia, Moldova.

⁷ International Committee of the Red Cross. (2024, January 23). Unblocking aid: The EU's 2023 sanctions policy and humanitarian efforts. <https://blogs.icrc.org/law-and-policy/2024/01/23/unblocking-aid-eu-2023-sanctions-policy-humanitarian-efforts/>, <https://globalsanctions.com/2023/02/eu-implements-un-sanctions-humanitarian-exemption-amends-somalia-sanctions-regime/>

The EU Global Human Rights Sanctions Regime has a partial inclusion of UNSCR 2664. The provision of humanitarian support even if it goes to sanctioned entities, is not a criminal act under the global human rights sanctions regime. It is still important for humanitarian organizations to comply with the specific guidelines and exemptions provided within the sanctions framework to avoid any legal issues.

For the first time, the EU council decided to insert a specific clause providing that the **humanitarian exemption will not apply to some listed entities and individuals**. To justify its decision, the EU Council indicated in the preamble that "a derogation mechanism should apply instead of the exemption in cases where the Council has determined that scrutiny by national competent authorities is required due to a higher risk that funds or economic resources provided would be misused for purposes other than humanitarian assistance".⁸ Therefore, for these designated persons, a derogation mechanism requiring the authorization of the national competent authorities (NCA) remains applicable. Legally speaking, the Council identified these natural or legal persons with an asterisk in the Annex of the Decision.

The legal and policy process

For the implementation of sanctions regimes without hindering humanitarian action, close collaboration is needed between DG ECHO, DG FISMA, the EU External Action Service, and the EU member states and national competent authorities. DG ECHO (the Directorate-General for European Civil Protection and Humanitarian Aid Operations) is one of the largest humanitarian donors in the world, with a budget of up to € 1 billion in humanitarian support yearly. Its current partnership framework covers 7 years till 2027. DG ECHO's support includes funding humanitarian aid operations, coordinating civil protection activities, and promoting disaster risk reduction and preparedness.

DG ECHO has a global reach, works in partnership with the UN, NGOs, and other relevant international organizations, and is an influential stakeholder in shaping global humanitarian policy, advocating for the humanitarian principles of humanity, neutrality, impartiality and independence and coordination between humanitarian actors for efficiency and effectiveness of humanitarian action. Policy and legal officers at the Directorate commend the resolution as a win and stress that it will only be fully successful if it has been incorporated in all EU sanctions regimes, including the autonomous and thematic regimes.

A key benefit of the resolution is that it overrides all existing and future sanctions resolutions, thereby standardizing humanitarian sanctions exemptions, with an exception for the ISIL and al-Qaeda regime to which the exemption applies for a two-year period (until December 2024). Previously, humanitarian actors have been forced to contend with a patchwork of sanctions rules, which varied in definition of acceptable activities, goods, or actors. The incorporation of the resolution in all EU autonomous and thematic regimes requires political will. This is the most complex factor as political decision-making in some EU member states, e.g., in the Baltic states and other countries bordering Russia, are not necessarily favorable to exemptions of sanctions in countries that are in the sphere of influence of Russia. Organizations would be supported by a standing humanitarian exemption under the AML/CFT regime of the EU and the FATF. Such an exemption would provide comfort to banks of facilitating humanitarian transactions to sanctioned countries. Recommendation 5 provides measures to assist countries to fulfill the legal requirements of the UN terrorist financing convention of 1999 and relevant UN Security Council resolutions concerning terrorist financing. Recommendation 6 requires countries to

⁸https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_202401025

implement targeted sanctions regimes to comply with the UN Security Council Resolutions relating to the prevention and suppression of terrorism and terrorist financing such as UNSCR 1267(1999) and its successor resolutions and UNSCR 1373 (2001). These sanctions apply to natural and legal persons, including NPOs.⁹

DG FISMA's (the Directorate-General for Financial Stability, Financial Services and Capital Markets Union) mandate involves ensuring the stability and efficiency of the EU financial system. When it comes to the implementation of UN Security Council Resolutions such as 2664, DG FISMA plays a crucial role in transposing these international obligations into EU laws and ensuring their effective enforcement within the EU's financial framework.

The policy and legal officers at DG ECHO and the DG FISMA legal team tasked with the transposition of 2664 have closely collaborated on the incorporation of the resolution in the EU mixed and autonomous sanctions regimes. DG FISMA is responsible for drafting the necessary regulations that transpose the obligations of UNSCR 2664 into EU law. In February 2023, the EU passed legislation to implement the resolution.¹⁰

DG FISMA together with DG ECHO is currently working on the update of the draft guidelines for a streamlined implementation of UNSCR 2664 throughout all EU member states. These guidelines, which will be incorporated in an EU horizontal guidance document, need to ensure that the process of implementing the resolution is transparent and accountable with clear communication to stakeholders. The **EU Horizontal Guidance Document on Sanctions** is an official guide from the European Commission that provides practical instructions on how humanitarian organizations can comply with EU sanctions while continuing to deliver aid in regions affected by these measures. The guidance focuses on ensuring that humanitarian activities can proceed without breaching EU restrictive measures.

This guidance document is designed to help organizations understand how they can legally operate in areas under sanctions, like those facing conflict or severe humanitarian crises, without violating the regulations. It provides clarity on key issues such as:

- The legal exceptions for humanitarian aid under the various EU sanctions regimes.
- Guidelines for interacting with private sector partners like banks and suppliers to ensure that they, too, comply with sanctions while facilitating humanitarian aid.
- Procedures for applying for humanitarian derogations, especially when multiple countries or National Competent Authorities are involved.

The goal of the guidance is to mitigate any negative impacts that sanctions might unintentionally have on civilians or humanitarian operations, aligning with international humanitarian law principles. This document is part of a broader EU strategy to maintain humanitarian support, even

⁹ The connections between Sanctions and the AML/CFT regimes – the FATF standards and the EU AML package – are a topic of discussion in a series of International Round Tables convened by the Overseas Development Institute and supported by the USAID. The conversation is under Chatham House Rule and not public. Stakeholders included in this Sanctions mapping take part in the dialogue, including the EU DG FISMA and ECHO, NRC, the Netherlands Ministry of Foreign Affairs and Human Security Collective. Also see recital 53 of the new AML regulation 2024/1624. At the International Round Table on September 17 and in a closed meeting with the FATF president in Paris on October 11 the FATF agreed to investigate the possibility to include the humanitarian exemption in line with UNSCR 2664 into the AML/CFT recommendations 5 and 6 that cover UN sanctions to prevent Terrorism Financing. Much hinges on the renewal and the duration of the renewal of the 1267 carve out under the resolution.

¹⁰ European Union, Regulation (EU) 2023/331 of the European Parliament and of the Council of 14 February 2023 amending certain Council regulations concerning restrictive measures to insert provisions on a humanitarian exemption, Official Journal of the European Union. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32023R0331&qid=1728391937860>

in heavily sanctioned regions.¹¹ The EU horizontal guidance document is expected to be published before Christmas 2024.

Well underway in terms of the legal and policy aspects

Some policy makers in the EU and governments have expressed concerns about diversion or manipulation of aid. The resolution however protects against aid diversion, which NGOs that were interviewed stressed is an issue that long preceded UNSCR 2664. India abstained from voting in favor of the resolution out of concern that terrorist groups could exploit the humanitarian carve-out to raise funds and recruit fighters. In response to these objections, the resolution stipulates that aid providers make “reasonable efforts” to minimize capture by sanctioned actors especially through risk management, due diligence, and reporting requirements.¹²

The asset freeze exemption in the resolution offers legal protection for humanitarian organizations, allowing them to conduct essential activities involving non-state armed groups or sanctioned entities that are often unavoidable in crisis situations. These activities include paying for necessary services such as food, water, or transportation. Other prohibited but difficult-to-avoid actions include paying taxes, road tolls, utility fees, or inadvertently diverting humanitarian goods or equipment to sanctioned parties. To reach vulnerable populations and deliver aid, humanitarian groups often face unavoidable direct or indirect payments to sanctioned individuals or entities. However, they must still demonstrate to donors and regulators that they implement risk mitigation measures to prevent aid diversion or misuse.¹³

The suspicions of humanitarian aid being abused through diversion, manipulation or misuse of exemption are voiced by some governments that seem intent on blocking the renewal of the 1267 sanctions regime within UNSCR 2664. The increasingly urgent calls from states for submission of positive examples to show that the resolution has facilitated humanitarian action and improved delivery of humanitarian aid and protection of humanitarians, by USAID, the UK FCDO, NGOs, the EU, and sanctions experts, need to be seen in light of the argument about aid diversion and aid manipulation by adversaries of a UNSCR 1267 renewal. In a recent dialogue facilitated by a US-based nonprofit, an argument was made by participants and sanctions experts to reverse the burden of proof about aid diversion and manipulation and instead call for a submission of positive examples to advocate that a standing UNSCR 2664 exemption in the UNSC 1267 resolution would already be justified as there is hardly any evidence of (an increase of) aid diversion or manipulation after the launch of UNSCR 2664.¹⁴

While this urgent call for positive examples by some is understandable with the end-of-year renewal by the UN Security Council approaching quickly, there is a legitimate question to pose about the seemingly limited quantitative and qualitative data from NGOs and other relevant

¹¹ https://finance.ec.europa.eu/publications/sanctions-commission-guidance-note-provision-humanitarian-aid-compliance-eu-restrictive-measures_en

¹² Carnegie Endowment for International Peace. (2023, March). Landmark UN humanitarian sanctions exemption is a massive win but needs more support. <https://carnegieendowment.org/research/2023/03/landmark-un-humanitarian-sanctions-exemption-is-a-massive-win-but-needs-more-support?lang=en¢er=middle-east>
Harvard Law School Program on International Law and Armed Conflict. (n.d.). Advancing humanitarian commitments. <https://pilac.law.harvard.edu/advancing-humanitarian-commitments-web-version>

International Peace Institute. (2023, December). Safeguarding humanitarian action: A report. <https://www.ipinst.org/wp-content/uploads/2023/12/IPI-E-RPT-Safeguarding-Humanitarian-Action2023.pdf>

¹³ United Nations University. (2023). Scoping paper on the UN System-wide Humanitarian Action Plan (UNSHA) https://collections.unu.edu/eserv/UNU:7895/UNSHA_ScopingPaper_FINAL_WEB.pdf

¹⁴ <https://theglobalobservatory.org/2023/12/one-year-on-where-do-we-stand-on-the-milestone-humanitarian-carve-out-in-un-sanctions-regimes/> The IPI global observatory have convened round tables on the progress of the implementation of UNSCR 2664. In one of these round tables on June 6, 2024, experts on the UNSCR 1267 monitoring team stressed they had not identified and increase of aid diversion after the adoption of the resolution.

organizations that have so far been submitted to UNOCHA or the EU. The ICRC and NRC have shared positive examples in various multistakeholder dialogues about the positive impact of the resolution on their ability to access financial institutions and expedite transfers.

ICRC programming worth CHF 80 million and serving 20 million Afghan people could continue to be implemented because of UNSCR 2615¹⁵ and 2664. In Yemen, the resolution has helped enormously, e.g., with medical suppliers, because it reduced time that was previously spent on navigating the country and UNSC 1267 regimes. The program that provides potable water to over 3 million people and manages 34 health care facilities could continue to deliver. If the resolution would not have been endorsed, ICRC would have had to consider the scope of their programs in both countries. They estimate that a non-renewal of UNSCR 1267 would mean that almost 100 million people would be affected.

The NRC stresses that UNSCR 2664 provides legal comfort and therefore predictability for their teams on the ground, helping them gain precious time during an emergency.¹⁶ There is clear operational impact. They also emphasize that while they started to see an improvement in derisking figures by up to 40% in the immediate months following the adoption of UNSCR 2664, progress was volatile as they experienced an increase in derisking from November 2023 onward, likely a combination of the external environment and the practices of some correspondent banking channels.

While these are positive outcomes of the resolution, the mapping conducted among DRA members has so far not generated similar positive outcomes. When the resolution was endorsed, one of the requirements was that OCHA and the EU would inform member states about the effectiveness of the resolution based on input by humanitarian organizations. It raises the question whether it is too early to highlight positive examples because the uptake and implementation of the resolution by donor governments, NGOs, financial institutions, and suppliers needs more time in domestic contexts. Is it realistic to expect an improvement of humanitarian access across the board of humanitarian and multi-mandate organizations to sanctioned countries and entities within a two-year UNSCR 1267 carve-out period? Has the expectation of donor governments, policy makers and humanitarian organizations of an expedient uptake of the resolution been too optimistic? Are there still too many other obstacles that need to be addressed, particularly in relation to AML/CFT regulations and the global HR sanctions framework?

The AML/CFT framework, counter-terrorism legislation, and the sanctions framework

The EU is increasingly aware of the need to balance stringent financial regulations to prevent money laundering, terrorism financing and proliferation financing with the imperative to facilitate humanitarian aid. While the EU has made progress implementing humanitarian exemptions within its sanction frameworks, the extension of these exemptions to Anti-Money Laundering, Counter the Financing of Terrorism and Proliferation Financing regulations and export regimes is an ongoing discussion at the EU and in member states.

The FATF and the EU AML and CFT regulations are viewed by the EU and its member states as critical for preventing illicit financial activities. There is ample evidence that the FATF framework and the EU AML/CFT rules pose significant hurdles for humanitarian, development and human

¹⁵ United Nations Security Council, *Resolution 2615 (2021)* concerning the situation in Afghanistan, S/RES/2615(2021), December 15, 2021. [https://undocs.org/S/RES/2615\(2021\)](https://undocs.org/S/RES/2615(2021))

¹⁶ [We must maintain the provision of humanitarian aid to people living in countries where ISIL and al-Qaida operate | ODI: Think change](#) or [One year on: the UN Security Council humanitarian exemption to sanctions that helps save lives | NRC](#)

rights organizations operating in high-risk and sanctioned contexts. The FATF Unintended Consequences project about the impact of the FATF AML/CFT standards on NPOs has resulted in a significant and positive policy change of Recommendation 8, the standard that targets Non-profits as an exceptional category for terrorism financing abuse. While the revision, in theory, can lead to the mitigation of over-regulation of NPOs by governments, and derisking of NPOs by banks and other stakeholders, it still needs to be seen if the revised recommendation¹⁷ will be implemented in line with the changes made.

One of these significant changes is that the oversight of nonprofit organizations for terrorism financing abuse needs to be based on a risk assessment of the sector. The oversight applies only to those NPOs that fall within the FATF definition of the sector (those that raise and disburse funds). Organizations which are potentially at high-risk for TF abuse need to be monitored: for the rest, an adequately calibrated oversight regime needs to be in place. The risk assessment needs to be conducted in consultation and engagement with nonprofits. This change from a rule- to a risk-based approach to determine terrorism financing risks of nonprofit organizations, including humanitarian organizations, has to a certain degree been incorporated in the EU AML/CFT package, the EU supra-national risk assessment and features clearly in the guidance provided by the European Banking Authority.¹⁸

A revision of the FATF country assessment methodology as demanded by the Global Nonprofit Coalition on the FATF which leads countries to be marked down by the assessors for overregulation and derisking of NPOs when they have no evidence of their vulnerability for terrorism financing abuse, is a step in the right direction.¹⁹ However, the EU AML/CFT framework does not explicitly include the broad humanitarian exemptions as laid down in UNSCR 2664. This follows from the fact that the FATF framework assesses countries on their adherence to material support laws: the obligations that countries have (through Security Council-mandated measures) to suppress the financing of terrorism and to criminalize support to terrorism. These features in FATF Recommendations 5, 6 and 7, and countries continue to be assessed by bodies such as the FATF and UN CTED (Counter Terrorism Executive Directorate) on their compliance with these obligations, which are usually transposed into national rules and regulations.

In the context of financial access challenges of humanitarian organizations, it is important for policy makers in the EU and member states to address FATF Recommendation 10 too. This recommendation is about Customer Due Diligence against which banks are assessed as gatekeepers in the overall AML/CFT system. **Under national law, banks and other financial institutions are in most cases liable to criminal charges if they happen to process a payment that ends up with financiers of terrorists or terrorist groups. This is an important obstacle for the operationalization of UNSCR 2664 by banks. The crux of the matter for addressing bank de-risking in relation to on-boarding of customers or over-compliance in transaction monitoring lies on the political will in societies to place the provision of and access to**

¹⁷ Financial Action Task Force (FATF), *Protecting non-profit organisations from abuse: A better approach to implementing Recommendation 8*, 2023. <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/protecting-non-profits-abuse-implementation-R8.html>

¹⁸ Council of the European Union. (2024, May 30). Anti-money laundering: Council adopts package of rules. Retrieved from <https://www.consilium.europa.eu/en/press/press-releases/2024/05/30/anti-money-laundering-council-adopts-package-of-rules/>
European Commission. (2022). Proposal for a directive of the European Parliament and of the Council on combating money laundering by criminal law. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022DC0554>

European Banking Authority. (n.d.). Search results for "nonprofit organizations". Retrieved from <https://www.eba.europa.eu/search?query=non+profit+organizations>

¹⁹ The Global NPO Coalition on the FATF www.fatfplatform.org

humanitarian aid above security related concerns, such as the risk of terrorism financing or sanctions breaches.

In the U.S., even licensed humanitarian organizations face the risk of criminal prosecution under the Antiterrorism and Effective Death Penalty Act (AEDPA) of 1996 and the International Emergency Economic Powers Act (IEEPA). These laws allow for the criminal prosecution of aid organizations for providing even incidental “material support” to designated terrorist groups or individuals. Although Congress included a humanitarian exemption in the IEEPA, this exemption has been waived in all executive orders related to terrorism sanctions since 9/11, and the definition of “material support” in both laws remains unclear. The Centre for Strategic and International Studies has recommended that the U.S. Congress mandate the IEEPA exemption and amend the AEDPA to allow the same activities permitted under OFAC licenses.²⁰

Without a change to the relevant FATF Recommendations, the policy incoherence between the sanctions framework, the AML/CFT framework and terrorism-related frameworks that remain at the national level will continue hampering humanitarian activity.

Other impediments to the humanitarian carve-out

Humanitarian organizations in dialogues about e.g., Syria-related sanctions have expressed that while relief from asset freeze measures is welcome, other sanctions measures continue to hinder their work. Sectoral embargoes and export controls hinder specific humanitarian organizations as they restrict their access to necessary equipment (e.g., for demining) and resources such as fuel, water purification chemicals, etc. that support transportation, food security and medical responses.

An argument can be made on the grounds that sectoral sanctions compared to asset freezes affect fewer humanitarian organizations so a case-by-case instead of a standing exemption may still be workable in most cases, provided that domestic or EU rules and regulations for issuing licenses or derogations are clear. However, a recent study by Oxfam about the challenges of sanctions applied in Syria stresses the importance of discussing the inclusion of a standing humanitarian exemption in export-control related sanctions.²¹

The discussion about the limited scope of UNSCR 2664 goes into the ongoing debate about what is stipulated as being permissible to support activities pertaining to humanitarian aid and basic needs under the resolution. Local bakeries that provide bread to vulnerable populations and are vital to the reconstruction of a community may be considered as a small business that depends on the provision of fuel, electricity, and equipment under economic embargo rules. They would thus fall outside the scope of the strict limitation of humanitarian aid as delineated in UNSCR 2664.

A more fundamental question arises in relation to the boundaries of acceptable humanitarian activities under the resolution. The resolution does not provide the same kind of flexibility as it does for aid delivery in relation to engagement with sanctioned or terrorist groups, which humanitarian organizations sometimes cannot avoid when protecting civilians in crisis areas. A broader issue is the limitation of the resolution in terms of the Humanitarian–Development–Peace interdependency nexus. It is widely recognized that the delivery of medicine is only possible when

²⁰ Center for Strategic and International Studies. (n.d.). Mitigating financial access challenges. Retrieved from <https://www.csis.org/analysis/mitigating-financial-access-challenges>

²¹ Oxfam International. (2023, June 29). Turn on the light: Why tackling energy-related challenges in the nexus of water, food, and energy is key to addressing climate change and food insecurity. Retrieved from <https://policy-practice.oxfam.org/resources/turn-on-the-light-why-tackling-energy-related-challenges-in-the-nexus-of-water-621586>

the infrastructure of hospitals and clinics is supported by development aid or when peacebuilding activities take place between fighting state and non-state or listed armed groups. This is a sensitive and complex discussion for humanitarian organizations as it blurs institutional mandates and priorities and potentially politicizes aid, undermining the oft-touted humanitarian principles of humanity, neutrality, impartiality, and independence. There is broad recognition among the UN and particularly multi-mandate organizations that humanitarian aid faces serious limitations without complementary efforts in development and peacebuilding.

The response from the humanitarian NGOs (Dutch Relief Alliance members)

Characteristics of the respondent NGOs

The sample of 10 Humanitarian NGOs that completed the questionnaire have the following characteristics:

- 9 NGOs have activities in over 10 countries, in various regions (MENA, Sub Saharan Africa, Latin America & Caribbean, Asia), and 1 small organization is focused on one country (Democratic Republic of North Korea).
- The yearly turnover, except for one respondent, is over 10 million euro.
- Only two respondents have less than 50 FTE staff, all the others have over 50 FTE including field staff.
- The aid they provide covers all thematic areas.
- All except for one receive Government (e.g., NL) or Multilateral (e.g., EU) funding as well as private funding.
- Half are part of an international humanitarian structure/network and nearly all have offices in Brussels & Geneva.
- Nearly all work through local partners and their own field offices.

The impact of sanctions on humanitarian activities:

All organizations mentioned delayed operations due to sanctions. Some of them have had to redirect or stop activities in certain countries because of long transfer delays or their inability to transfer the necessary funds altogether. One organization highlighted that the impact of sanctions on bank derisking is one of the biggest challenges they face. Each month, they experience between 70 and 200 blocked financial transfers from their head office²². These transfers are essential for sending funds to their country offices, paying suppliers, and covering staff salaries. Resolving these delays consumes time and resources, which ultimately slows down their program implementation. It also raises their operational costs and, in some cases, forces their staff to take greater personal risks, such as transporting cash, to ensure their work supporting people in need can continue. Additionally, they face further delays when making transfers between other countries and representation offices in Europe. In some places, particularly in Afghanistan, Syria, and Iraq, bank derisking has significantly hindered their operations. Various other organizations have also mentioned that they have gone above and beyond despite these challenges to continue their activities even though this could be potentially harmful to them as an organization. The way these organizations were able to mitigate the impact of the sanctions differed per country. Some examples:

²² No information is available for the total number of transactions

Syria – Government-controlled areas

Banks are very reluctant to facilitate transfers into Syrian Government-controlled areas and mostly refuse transactions. However, UN agencies have been able to pay out directly in Syrian Pounds, making transfers easier. **Financing local partners through international partners has been a crucial strategy in managing money transfer challenges.**

The associated costs due to donor requirements have impacted operations. No-cost extensions from donors were required. On the logistics front, it is essential to continuously update the lists of vendors to ensure a reliable supply of necessary commodities and items for humanitarian projects.

Syria – Northwest and Northeast

To facilitate operations, collaborations with Türkiye-based organizations have been essential. A key step has been obtaining a BIS (US Bureau of Industry and Security) license and engaging with donors and their legal teams to clarify permissible activities. Additionally, it has been necessary to get competent authorities in the Netherlands to confirm the humanitarian nature of activities. Engagement with banks to address issues of overcompliance on by the bank has also been critical.

Mali, Burkina Faso, and/or Nigeria

For these countries it has been helpful to work via church-based organizations to facilitate transactions.

Afghanistan

Transfers are conducted through UN entities and through the UK.

Diversifying funding sources to include private donors has been a key strategy. Through advocacy, humanitarians are amplifying the needs in Afghanistan to ensure that donors ease operational constraints for NGOs, such as the OFAC revised guidelines. This advocacy has also resulted in donors becoming more receptive to funding humanitarian efforts in Afghanistan. To ensure compliance, humanitarians use a Bridger check system for all vendors and staff, for instance, so that they do not engage with individuals or entities on the sanctions list.²³

Sudan and Cuba

Transfers and logistics through neighboring countries.

To a certain extent, NGOs have become increasingly risk-averse due to the extreme difficulty in navigating sanctions regimes and the severe consequences of breaching sanctions. Pushing banks into cooperation for fund transfers can lead to the loss of bank accounts, making financial operations even more challenging.

In response to these complexities and the potentially severe implications, NGOs have adopted a more cautious operational approach like applying a comprehensive vetting process for all vendors and suppliers and conducting thorough due diligence before entering

²³ <https://risk.lexisnexis.com/products/bridger-insight-xg>

into any agreements or transactions. This vetting includes reviewing business practices, ownership structures, and affiliations that might pose a risk under sanctions laws.

The complexity of sanctions regimes has led to the implementation of more rigorous internal compliance procedures and due diligence processes. These measures are designed to ensure that humanitarian aid does not inadvertently violate sanctions. However, these necessary precautions sometimes slow down response times in crisis situations.

Banking relations

The NGOs indicate that humanitarian work in sanctioned countries/regions has been an issue in the relationship with their bank or money transfer agency.

In an extraordinary case, two home banks threatened to close bank accounts of a humanitarian organization. The impact of sanctions on bank derisking is one of the greatest challenges humanitarians face. **Daily financial transfers to country offices for the payment of suppliers or the making of regular staff-salary payments are frequently blocked at head office.** These delays consume time and resources to resolve, delaying program implementation, increasing operational costs, and sometimes forcing staff to take greater risks to their personal safety and security, such as carrying cash to continue supporting people in need.

Despite humanitarian exemptions to sanctions, in general Dutch banks refuse to send money directly or indirectly to sanctioned countries. This has led to considerable amounts of time spent on banking and sanctions-related matters to maintain operations.

Additional payment delays occur when transferring funds from other country offices and representation offices in Europe. In some contexts, bank derisking severely limits the ability to get funds into the country to run operations, particularly in Afghanistan, Syria, and Iraq.

Up-to-date knowledge on sanctions

The NGOs have difficulties in general staying up to date with sanctions dynamics, even though they use multifaceted approaches involving networks, peers, legal readouts, and research. They gather information when vetting suppliers and contractors from other networks, coordination platforms, and sanctions specialists. They participate in various fora, continuously monitor updated sanction lists, follow up on EU resolutions, and engage in both physical and online communication with the Ministry of Foreign Affairs (MOFA).

NGOs leverage a range of sources, including their internal legal counsel, and online information from sanctioning bodies such as OFAC, the Office of Financial Sanctions Implementation (OFSI), and the EU. Other valuable resources include the UN Sanctions App and the EU Sanctions Map.

Occasional attendance at webinars and reading documents shared through coordination mechanisms like the EU humanitarian NGO network VOICE (Voluntary Organisations in Cooperation in Emergencies) also contribute to their understanding. Additionally, NGOs rely on information from other organizations, including USAID, and conduct general information gathering and research through direct and indirect contact with relevant sanctioning authorities. They further enhance their knowledge through their networks, local partners, and other contacts, ensuring they remain compliant with current sanction regimes and are prepared to adapt to any changes.

Clarity and adequacy of humanitarian exemptions within sanction regimes

On paper, the humanitarian exemptions within sanctions regimes seem to be clear and adequate for maintaining operations. The imposition by European donors may add

additional layers of sanctions compliance and requirements around screening individual beneficiaries, which is incompatible with humanitarian principles. In practice humanitarian exemptions are not followed due to overcompliance on the part of donors and banks.

Regrettably, the experience underscores that the clarity and adequacy of humanitarian exemptions within sanction regimes fall short of what is necessary to facilitate uninterrupted operations. **The way sanctions and their exemptions are applied often lacks transparency, leaving significant room for interpretation. This ambiguity poses considerable challenges for NGOs, particularly in ensuring compliance while meeting the urgent needs of those they serve.**

Moreover, even when attempting to utilize the humanitarian exemptions like the UNSCR 2664 carve-out, NGOs frequently encounter bureaucratic hurdles and lengthy approval processes, further impeding the ability to deliver aid efficiently. **The need for clearer, more explicit guidelines and a simplified, expedited process for accessing and applying these exemptions is critical for enhancing the effectiveness of humanitarian operations in sanctioned environments.**

There is a need for further harmonization of humanitarian exemptions in different jurisdictions and sanctions regimes. There are instances in which states have implemented the humanitarian exemptions in the UN sanctions regimes in their domestic regimes but have not included them in their autonomous sanction regimes, or the exemptions have different scopes, cover different actors, have limited timeframes, or require additional reporting requirements. This contributes to a complex legal environment for both NGOs and the private actors that humanitarians rely on to deliver assistance.

What has been the impact of UNSCR 2664?

The impact of UNSCR 2664 has been mixed. Humanitarian NGOs express that they have not observed notable change in their work due to ongoing overcompliance. At the start of 2023, a reduction in bank derisking practices and blocked financial transfers was noticed. While this may not have been exclusively caused by UNSCR 2664, the reduction might be partially attributed to the increased legal certainty and comfort the Resolution provided to financial institutions. However, towards the end of 2023, NGOs noticed again a strong increase in the number of delayed payments.

There have been improvements in the clarity of exemptions for humanitarian activities, but challenges in their implementation persist. Some argue that for instance justifying transactions to Syria for humanitarian activities has become easier and less bureaucratic.

UNSCR 2664 is extremely important as it creates more legal space for humanitarian actors. This legal backing is valuable for conversations with donors, banks, and sometimes internally to help convince understandably cautious senior managers.

Overall, while UNSCR 2664 has provided legal clarity and eased certain bureaucratic hurdles, the practical challenges of overcompliance and derisking by financial institutions remain substantial, limiting its full potential impact on humanitarian operations.

Necessity of renewal

The renewal of the UNSCR 1267/1989/2253 inclusion is necessary to maintain coherence in sanctions regimes, facilitating their application by humanitarian organizations. In the complex landscape of international humanitarian efforts, respect for and adherence to international laws

under the guidance of the Security Council and international regulations are fundamental. Also, the extension of the UNSCR 1267 carve-out under UNSCR 2664 is essential to the continued efficacy and safety of humanitarian operations in conflict-affected areas.

An extension of the UNSCR 1267 carve-out would significantly contribute to mitigating the impacts of terrorist groups and other non-state armed entities on humanitarian activities. It establishes a more secure operational environment, enabling humanitarian actors to conduct their work with reduced security and safety risks.

Policy asks by NGOs²⁴

- 1) The last mile on harmonization of exemption in EU autonomous asset freezes requires to be completed: As of today, due to aligning EU autonomous sanctions with UNSCR 2664, the majority of EU autonomous sanction regimes now include a humanitarian exemption. However, there remain some important EU autonomous asset freezes where the protection for humanitarian actors could be strengthened:
 - a. **The EU regimes that still have a time-bound nature, should be open-ended.** These are regimes that apply in the context of great humanitarian needs for which an exemption is a priority. Removing the time-bound nature means more comfort, more predictability, and means that humanitarian exemptions are not used as a bargaining chip in political negotiations.
 - b. Other EU regimes have a humanitarian exemption that only applies to UN and IOs (and not NGOs) and should be aligned with the scope of UNSCR 2664, e.g., EU financial sanctions on Russia, Moldova.
- 2) **Remove beneficiary screening requirement from donor clauses (especially from development/ODA donors): As per IHL and as stressed by FATF recommendations and following the spirit of UNSCR 2664 – projects addressing humanitarian or basic needs of the civilian populations should be exempted from beneficiary screening requirements – regardless of the source and instrument of funding.**
- 3) **Ensure effective domestic implementation of the humanitarian safeguard in the recent EU ‘sanctions’ directive.** Earlier this year, the Council adopted a humanitarian safeguard in the text of the new directive on ‘criminal offences and penalties for the violation of Union restrictive measures’ creating the crime of sanctions violation in European law. It is important that Member States now transpose the Directive in their national criminal law and ensure that humanitarian safeguards are included in domestic criminal laws.

Banks and Sanctions

For banks, the carve-out is significant as context, but it does not alter their transaction monitoring methods or risk appetite. However, the UNSCR 2664 provision instills greater confidence in banks and transactions that rely on it. Banks view the carve-out as in the first place crucial for humanitarian NGOs themselves, as it helps them to identify where exceptions should be applied.

²⁴ The policy asks were presented by HSC at the RELEX sanctions group event in June under the Belgium chair. The asks were formulated with support from among others NRC.

This necessitates that NGOs possess the requisite expertise to take the lead. Smaller NGOs, unfortunately, are at a disadvantage in this regard.

UNSCR 2664 will not alter the AML/CFT policies of banks. Despite the potential for simplified due diligence on humanitarian organizations under UNSCR 2664 and the associated carve-out, the risk of criminal liability for banks remains. **Even a non-time-bound UNSCR 1267 carve-out in UNSCR 2664 would not be sufficient to persuade banks to apply simplified due diligence to humanitarian organizations.** Beyond legal liability, banks also regard reputational risk as a significant consideration.

Most banks have integrated UNSCR 2664 and humanitarian aid exemptions into their global sanctions standards. Transaction filtering employees are informed about the exemptions available to NPOs. Some banks have agreements with a select number of NPOs to thoroughly document their projects in sanctioned countries, enabling the quick approval of humanitarian transactions without further customer contact.

The Russia sanctions are currently consuming a disproportionate amount of banks' time, leaving limited resources for other sanctioned countries. Banks are in constant consultation with the Ministry of Finance, the Ministry of Economic Affairs, the Ministry of Foreign Affairs, as well as the NVB and EBF. **If sanctions regimes become overly complex, this will impact on all transactions, including humanitarian ones. The Gaza conflict further complicates the situation, and there are indications that it is undermining the improvements humanitarian NGOs experienced when UNSCR 2664 was implemented.**²⁵

Regarding the UNSCR 1267 carve-out, banks apply a specific focus on humanitarian organizations and their activities. However, they do not implement a separate transaction monitoring system for the carve-out itself. **Currently, the sanctions list of the UN, the EU, and the Netherlands are integrated into banks' sanctions filters. If a transaction involves a listed person or entity, the filter will block the transaction, even if it serves a humanitarian purpose. At that point, real-time monitoring occurs, and the sanctions desk reviews the transaction's background to make a final decision. If an exemption can be applied, the bank will examine the sanctions regulations to ensure the payment complies with the stipulated guidelines.**

It is crucial for NGOs to inform their bank in advance about any exemption rules that apply to a transaction. However, in practice, NGOs rarely reference UNSCR 2664. By doing so, banks could better interpret the risks and include this information in the payment description. This is important not only for the NGO's home bank but also for correspondent banks further along in the process.

For payments made by Dutch banks on behalf of NGOs, the funds are often first transferred to a partner organization or to the NGO itself in the region. Only then do the funds reach a project that may involve a sanctioned person, at which point the exemption comes into effect, and the original bank is no longer involved. It is essential to record the origin of the funds, their ultimate purpose, and the parties involved in the bank's records, as correspondent banks will also require this information.

²⁵ Information acquired from NRC in derisking stakeholder dialogues about global transfers which saw an uptick after the adoption of UNSCR 2664 and a steady decline from November 2023 onward, which may be partially attributed to developments in the Middle East following October 7th and to a change in risk appetite from some correspondent bank.. See also <https://www.wsj.com/articles/humanitarian-groups-sending-gaza-aid-face-banking-challenges-82524436>

Temporality

The timeline of a sanctions regime and its exemption rules are crucial components of all sanctions frameworks. Each sanction comes with a grace period, which is the interval before the sanction fully takes effect. If exceptions to the sanction are temporary, integrating them into the organization and its systems becomes challenging.

Risk sharing

According to the banks, governments do not take sufficient responsibility for the risks involved, leaving NGOs and banks to make individual decisions about the extent and nature of the risks they are willing to assume. **Governments need to share this responsibility and provide guarantees for crucial humanitarian transactions. Provision of comfort letters by banks is considered by the NGO relationship manager as an additional but not decisive element in the due diligence procedure by the bank. Another practical solution would be for donor governments to finance the growing compliance costs of NGOs stemming from sanctions and AML/CFT requirements from banks and some funders. In various round table conversations, the approach by the US OFAC (Office of Foreign Asset Control) under the Treasury department to issue general licenses to NGOs for aid provision was mentioned as a good practice by both banks and NGOs.** These general licenses strike a balance between enforcing sanctions regimes and ensuring that humanitarian aid reaches populations in need. However, strict compliance with the guidelines and provisions outlined in the general licenses is essential for avoiding penalties.²⁶

From a more systemic point of view the repeated call from participants in multi-stakeholder dialogues that address bank de-risking for policy coherence between the country's obligation to adhere to international humanitarian law and humanitarian principles and sanction policy and AML/CFT rules and regulations needs to be taken into consideration. The participation of International Development Departments or ministries in the FATF plenaries raises awareness among the different pillars of government about the need to address risk sharing across different ministries. So far only the German government have both ministerial entities (the Treasury function and the development arm) participating in these plenaries.

A legitimate question that is raised by NGOs in round tables concerns the seemingly inability of (humanitarian) donors to put in their collective weight and leverage to achieve a risk-based oversight of financial institutions by supervisors and regulators for (humanitarian) NPOs especially with regard to the corresponding banks, most of which are located in the US.

Definition of humanitarian activities and goods

When delivering goods, it is crucial to describe them accurately using a commodity code from the customs tariff. This code clarifies the conditions under which the delivery is permitted. Banks frequently consult the Ministry of Finance for legislative clarification, which often requires further consultation with Brussels.

The issue of dual-use goods has become increasingly complex. Initially, the ban on dual-use goods targeted those intended for military end-use. Now, there is a total ban on dual-use goods for about five countries, while licenses can be requested for other nations. Banks scrutinize all transactions for dual-use and embargoed goods. However, inaccuracies in the descriptions of these goods necessitate additional checks.

²⁶ <https://ofac.treasury.gov/selected-general-licenses-issued-ofac>

For humanitarian transactions and goods, it is vital for banks to understand the nature of the activities involved. Sanctions regulations are carefully followed to determine if the goods can be delivered to the specified end user under the given conditions. Goods or activities that extend beyond strictly humanitarian and basic needs are not covered by the exemption, as seen in early recovery efforts.

The involvement of the US adds another layer of complexity. If a product's value includes more than 10% U.S. parts, US export measures and restrictions also apply. NGOs that are registered in Europe still need to comply with these restrictions and measures which are issued by the US under their secondary sanctions regime. A secondary sanction is a sanction imposed by the US on a non-US party that transacts business that could otherwise be prohibited were such non-US party a US entity. The regime applies particularly to Iran and North Korea. Banks interviewed for the mapping are fearful of breaching these sanctions as they may lose access to the US market and are therefore applying stringent due diligence on transactions for dual-use goods.

OFAC has issued guidance on the classification of humanitarian goods to countries under secondary sanctions such as Iran. Persons or legal entities do not risk exposure to US secondary sanctions except for transactions that involve persons on the designated OFAC lists and that relate to Iran's program of weapons of mass destruction or its support for international terrorism. OFAC has also issued guidance on the provision of humanitarian aid to North Korea which allows for a wide range of humanitarian goods except for dual-use goods to enter the country for humanitarian purposes.²⁷

The European Union vs the United States

In the EU, banks navigate varying national supervisory frameworks across Member States, which can differ significantly in Southern Europe, Eastern Europe, and North-West Europe - and present distinct regulatory landscapes.

Conversely, on humanitarian aid transfers, the US operates largely under a single regulator, OFAC, ensuring clearer policy and implementation. The use of general licenses or specific licenses further clarifies expectations for banks, enhancing risk management.

Both US and EU sanctions operate similarly for banks. While exemptions are detailed in EU regulations and US executive orders, banks must assess whether transactions align with these exemptions. If not covered by general exemptions, regulators can issue written waivers specifying permissible actions, involved parties, and conditions for leveraging exemptions. When an NGO receives such an exemption, it must confirm the bank's cooperation based on this waiver. The Ministry of Finance provides banks with a copy of the waiver.

Banks and the correspondent chain

Ideally, transaction filters in correspondent banks should be synchronized, but this is not always the case in practice. It is not unusual for the sending bank to approve a transaction, only for the next bank in line to block it.

U.S. banks frequently request additional information about transaction details, particularly concerning dollar payments. In contrast, European banks seldom make such requests, often relying more on assessments made by the sending bank.

²⁷ <https://ofac.treasury.gov/faqs/844> and <https://www.rimonlaw.com/the-u-s-broadens-and-clarifies-sanctions-regulations-for-humanitarian-work-in-north-korea/>

Some correspondent banks consider their business branches as the first line of defense. These branches need more education and awareness regarding NPOs in relation to sanctions, AML/CFT, and anti-fraud measures.

Unlike the broad global scope of the UNSCR 2664 carve-out, banks and their intermediaries often prefer establishing humanitarian payment corridors focused on specific countries. Here, KYC/DD procedures related to sanctions and AML/CFT are shared among all stakeholders in the chain. Receiving banks in these countries are vetted and deemed reliable by sending and correspondent banks. Transaction recipients undergo screening by the sending Humanitarian Organization, supported by government or international donors.

Regulators and supervisors in each jurisdiction involved endorse a risk-based approach rather than strict rule-based supervision. Donors also share potential criminal liability, underscoring the crucial need for political will, which is often lacking.

Each bank in the chain requires a designated shepherd, responsible for overseeing the transaction. This role demands a deep understanding of banking operations and the ability to navigate conflicting business decisions. Such responsibilities necessitate dedicated, knowledgeable individuals at the operational level.

High-level government support is essential for success in humanitarian transfers to sanctions-affected and high-risk AML/CFT countries. Achieving this requires a blend of risk-based KYC/DD practices and robust diplomatic engagement at the highest levels.

Policy and implementation

Policy gaps

The policy entities involved at the EU, UN and domestic levels need to strike a balance between crime-related and value-related sanctions and other international regulations such as AML/CFT regulations as laid down in the FATF AML/CFT standards, and the EU AML package that impede financial access of humanitarian organizations. Within national, regional, and international organizations, different departments with different mandates must try to work towards policy coherence when it comes to the provision of humanitarian aid. This can only be achieved when there is a genuine will to address the barriers to financial access challenges in collaboration. **The gap to be plugged here is the coordination between departments such as DG ECHO, DG FISMA, and the EEAS (CFSP) at the EU level in relation to the incorporation of the UNSCR 2664 carve out and the UNSCR 1267 exemption in the carve out throughout all EU sanctions regimes on which the Council decides.**²⁸

Coordination between member states and the EU institutions is vital as well. The European Commission, in coordination with the EU External Action Service (EEAS) is exploring ways to enhance the regulatory environment for humanitarian operations. This includes evaluating the impact of AML/CFT regulations and export controls on humanitarian aid and considering reforms. The reforms would mitigate any negative effects these regulations have on the delivery of humanitarian assistance. This includes addressing concerns about "de-risking" by banks, which can lead to delays or cancellations of humanitarian projects due to strict compliance with AML/CFT guidelines. **The EEAS, along with other EU bodies are exploring measures such as**

²⁸ Apart from an indefinite exemption of the UNSCR 1267 regime under UNSCR 2664, the EU would need to investigate a standing exemption of the "Common Position 931" which is the EU autonomous CT sanctions, which designates – among other – Hamas, PIJ and Hezbollah. DG FISMA is working with DG ECHO on a horizontal guidance document for the inclusion of UNSCR 2664 and other relevant sanctions in the EU sanctions regimes.

clearer compliance guidelines for banks, special payment platforms for high-risk areas, and exemptions or adaptations in AML/CFT rules to facilitate humanitarian operations.

Member states play a crucial role in this process. Countries like the Netherlands, Ireland, Spain, Sweden, and Germany have been vocal about the need to balance security concerns with humanitarian needs and have been driving collective EU action.

Leadership from member states at the EU is still important to achieve the inclusion of the exemptions under UNSCR 2664 in all autonomous sanctions' regimes, end time-bound restrictions and ensure greater harmonization between sanctions jurisdictions. The political will and momentum to address these at national levels may decrease due to the changing political landscape in supportive states. Public support to address humanitarian crises remains significant in EU member states. However, natural disasters generate more public financial support than man-made conflicts ones such as (civil) war or terrorism.²⁹

Policy and operationalization

In the mapping we focused on the humanitarian carve-out and the AML/CFT regime – this is especially important in relation to overcompliance or derisking of humanitarian and development organizations by banks. Financial regulations and legislation linked to sanctions regimes, countering terrorism financing, and anti-money laundering, as well as rules pertaining to other illicit financial flows have created enormous complexity for financial institutions such as banks to perform their due diligence and know your customer compliance checks, and for humanitarian organizations to deliver their operations.

While UNSCR 2664 is a landmark for facilitating the delivery of humanitarian aid, this mapping shows that the gap between policy and the operationalization of the resolution remains significant. Successes have been reported by NRC and ICRC but the organizations that were approached for the questionnaire we circulated have not reported significant benefits to their work.³⁰

The finding that successes come from the big humanitarian organizations only signals a development we have seen in the impact of AML/CFT regulations on nonprofit organizations as well. Bigger organizations, despite increased challenges to their risk management and internal controls, find ways to deal with the different sanctions frameworks and AML/CFT rules and regulations. They have resources, internal legal, regulatory, and financial expertise, the advocacy power, and the reputation to keep going. They continue to have access to regulated financial institutions because of their reputation and their turnover, which provides them with a designated account manager.

It is the smaller organizations and local humanitarian organizations that endure most the consequences of sanctions and AML/CFT regimes and those who should also benefit from the UNSCR 2664 humanitarian carve-out and changes in the FATF and EU AML/CFT rules.

For all types of humanitarian and multi-mandate organizations, either small or big, extending the humanitarian exemption to AML/CFT regulations and export regimes may help the delivery of critical humanitarian aid. **The inclusion of exemptions for humanitarian organizations in**

²⁹ The Hungarian Relex representative is interested in the outcome of the sanctions mapping and asked HSC to present intermediate findings in an event in Budapest in September. Alternatively, HSC can present findings end of November, beginning of December at a Relex sanctions working group event in Brussels.

³⁰ NRC reported an improvement of transactions after the adoption of 2664 but experienced difficulties in transactions after November 2023 onward which they partially attributed to events in the Middle East and to a change in the risk appetite of some of the correspondent banks

domestic criminal codes in Canada and Switzerland should be looked at as a best practice. Indeed, **the incorporation of a humanitarian exemption in domestic laws and regulations is key.** DRA and other NGOs could provide recommendations to the public consultation for the revision of the NL 1977 sanctions law to include such exemptions in the revised law.

Banks interviewed for the study, as well as those involved in the international Round Table and other dialogues, emphasized that UNSCR 2664 serves as an encouraging signal in support of humanitarian action. However, they still require greater assurance from bank supervisors and examiners before they can implement simplified due diligence procedures for NGOs operating in high-risk or sanctioned areas. While "comfort letters" and reassurances from donor governments—indicating that NGOs have conducted appropriate risk screening, including vetting of partners and service providers—may support the application of simplified due diligence, these measures alone are not sufficient. In one of the round tables that addresses financial access challenges of (humanitarian) NGOs, a participant from US Treasury said that making use of comfort letters might pose a risk of moving the goalposts when it comes to facilitating humanitarian transfers. Banks already have enough legal cover to provide their services through humanitarian exemptions. If banks require comfort letters as an additional safeguard, the effectiveness of the humanitarian exemptions would run the risk of becoming diluted.

The main bottleneck often occurs at the correspondent banking level, where there is limited knowledge about the NGO clients of the sending banks. As a result, correspondent banks frequently opt for extended due diligence, processing transactions only if they deem them commercially viable or if they have established a humanitarian corridor with influential governments or international organizations. **The real solution lies with bank regulators and supervisors, who must take greater responsibility as stakeholders in safeguarding humanitarian aid.**

Multi-stakeholder dialogues and the way forward

Ongoing national and international multi-stakeholder dialogues are a useful way forward. In the Netherlands, such a dialogue resulted in, among others, the risk-based Non-profit Sector standard. This baseline was developed by all relevant stakeholders and has played a significant role in finding a path forward for financial inclusion for NPOs, often described as "everyone's problem but no one's responsibility."³¹ Increasingly, public policymakers and private stakeholders are taking ownership to address financial access challenges linked to sanctions and AML/CFT measures, backed by supportive political environments in the US and Europe. To make meaningful progress at this stage, it is crucial to enhance policy coherence between ministries such as Development Cooperation, Foreign Affairs, Finance, and Justice and Security, as well as their sanctions and AML/CFT departments. For the EU, alignment between DG FISMA, ECHO, and the EEAS is essential. Additionally, leadership from financial regulators and supervisors is needed to ensure that their AML/CFT and sanctions frameworks safeguard humanitarian action, particularly during bank examinations. This is especially critical in the US, home to many correspondent banks. Some financial institutions have already implemented procedures to facilitate transactions for humanitarian aid, especially to Syria following the

³¹ Dutch Banking Association. (n.d.). NVB industry baseline: Not-for-profit organisations. Retrieved from <https://www.nvb.nl/media/g2sf5g1g/nvb-industry-baseline-not-for-profit-organisations-en.pdf>
Dutch Banking Association. (2023, May 31). NVB baselines: Additional information. Retrieved from <https://www.nvb.nl/media/5708/nvb-baselines-additional-information-may-31-2023.pdf>

earthquake. One correspondent bank has even established a humanitarian corridor that enables transactions in sensitive jurisdictions, supported by key US diplomatic policy decision-makers.

Banks acknowledge they can do more to raise awareness and provide training, particularly within their compliance and financial crime departments, to help them better understand humanitarian and civil society organizations operating in crisis areas. When CEOs and senior management recognize the importance of the humanitarian sector and NGOs in relation to their Environmental, Social, and Governance (ESG) reporting obligations, de-risking, or de-banking due to AML/CFT and sanctions compliance can be approached more strategically. This would prevent merely "pushing the responsibility of compliance down to the lower levels of the bank, such as the compliance department."³² Too often, directives or guidance, such as those related to the FATF grey list, are treated as a box-ticking exercise, rather than sparking meaningful discussions about the impact of these measures on NPO clients, their partners, and activities. One Dutch bank successfully integrated the de-risking of NPOs into its Human Rights and Business reports, demonstrating compliance with the Social component of ESG requirements. The same bank also developed an information portal for NPOs on AML/CFT-related KYC and due diligence, which could be expanded to include guidance on sanctions-related due diligence requirements.³³

Influential organizations like the NRC and ICRC may serve as role models within the sector, demonstrating effective risk management strategies to comply with sanctions and AML/CFT requirements.³⁴ Their advocacy power and connections enable them to lead the way in engaging with key private and public stakeholders to address these challenges and find solutions. It is essential for other humanitarian NGOs, particularly members of the Dutch Relief Alliance, to engage with ongoing initiatives and contribute resources and capacities through their platform. As highlighted in previous studies on the impact of AML/CFT and sanctions rules on NGOs, larger organizations tend to have the resources to meet compliance requirements or find workarounds, while mid-sized and smaller organizations struggle due to limited resources (e.g., lack of a dedicated compliance officers), capacity, and access to relevant knowledge in an ever-changing sanctions and AML/CFT landscape. The idea of independent regulation within the sector emerged in several interviews conducted during the mapping process. If NGOs could earn a "badge of honor" from an independent regulator, based on audits for good governance, transparency, and accountability regarding AML/CFT and sanctions compliance, it could help build confidence in these organizations. In the Netherlands, for example, receiving the "erkenning" (badge of honor) from CBF, the Dutch public fundraising regulator, can lead to lighter-touch application of KYC and due diligence requirements by some banks.³⁵

This mapping highlights that global standard setters on AML/CFT, such as the FATF, along with member states supporting UNSCR 2664 at the UN and the EU, financial institutions that make up the Wolfsberg Group, the EU Banking Authority, and others, are engaging with humanitarian organizations. They offer consultations, participate in events, and create advocacy opportunities for upholding humanitarian principles in a landscape increasingly shaped by AML/CFT, illicit financial flows, and sanctions regimes. It is now crucial for progressive policymakers at the Dutch

³² Interview with banker that previously worked for an INGO

³³ ABN AMRO. (2022). Human rights report 2022. Retrieved from https://assets.ctfassets.net/1u811bvgvthc/DJ2luR6Luk4gy0vpHqXZp/bbae98ca816b61efe381cd8150b9d740/ABN_AMRO_-_Human_Rights_Report_2022.pdf

ABN AMRO. (n.d.). Associations and foundations: Know your client centre. Retrieved from <https://www.abnamro.nl/en/commercialbanking/about-abnamro/know-your-client-centre/associations-and-foundations.html>

³⁴ NRC. (n.d.). Principled humanitarian action: Toolkit on Managing counterterrorism risks. Retrieved from <https://www.nrc.no/toolkit/principled-humanitarian-action-managing-counterterrorism-risks>

³⁵ Centraal Bureau Fondsenwerving. (Nd.). Information in English. Retrieved from <https://cbf.nl/information-english>

Ministry of Foreign Affairs—particularly within the Sanctions Policy Unit and the Department for Humanitarian Aid and Stabilization— and in collaboration with colleagues from the Ministries of Finance and Justice and Security to continue their leadership. They should work with relevant decision-makers in the Netherlands and the EU to harmonize sanction regimes impacting timely humanitarian responses, across Europe, advocate for permanent exemptions, and align targeted financial sanctions with AML/CFT regulations.