NRC NORWEGIAN REFUGEE COUNCIL

Overcoming derisking of humanitarian payment channels to regions impacted by sanctions and counterterrorism measures: Regulatory interventions

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Humanitarian organisations often operate in regions impacted by sanctions and counterterrorism (CT) measures, and the number of crises they respond to has multiplied over the past ten years. Assistance from donor states of the Organisation for Economic Co-operation and Development (OECD) has nearly doubled to more than USD 25bn, while humanitarian needs have increased by more than 350 per cent to USD 55bn[ii] and are projected to continue to grow, according to the United Nations (UN) Office for the Coordination of Humanitarian Affairs (OCHA).[iii] To respond to these growing needs, humanitarian organisations must be able to transfer donor funds to affected regions.

Sanctions and CT measures, however, create complex regulatory challenges for the facilitation of humanitarian transfers. It is well recognised that such transfers to affected regions often face obstacles and delays that may last up to several months or may even fail entirely.[iv] In consequence, effective responses to humanitarian emergencies are put at risk. Funds dedicated to alleviating suffering and preventing crises from becoming catastrophes are held up as result of laws and regulations in the same states that are committing their taxpayers' resources to humanitarian responses.

The phenomenon behind these difficulties is known as derisking.[v] Financial institutions take a cautious approach to facilitating transfers even for humanitarian purposes or refrain from engaging in them at all in the face of excessive regulatory complexity and ambiguity, and legal and reputational risks they perceive to be unacceptably high. More proactive engagement by regulators that author and implement sanctions policies and guidelines, whether they be national governments or supranational bodies, is vital to establish legal conditions and guidance conducive to timely humanitarian transfers.

Substantial progress has been made in recent years in addressing some of the regulatory factors that drive the derisking of humanitarian transfers to affected regions. Among the most prominent measures is UN Security Council resolution 2664 of 2022, which established a general exemption for humanitarian assistance across all UN financial sanctions, including those targeting terrorism.[vi] This has helped enormously in establishing consistency and clarity across UN sanctions. Many sanctioning jurisdictions, such as the US and the EU, have also introduced humanitarian exemptions in their autonomous sanctions.

Some states have issued additional guidance and established national tri-sector groups that build trust and coordination across the public, private and non-profit sectors, but humanitarian transfers to field offices and suppliers and even for staff salaries continue to face difficulties.[vii] Thirty-two per cent of payments to international NGOs in Syria were delayed for between three and ten months in 2023.[viii] The number of transactions NRC made from its head office in Oslo that were delayed or rejected rose by forty-eight per cent in 2024.

This policy brief reviews the remaining challenges in facilitating humanitarian transfers from a financial sector perspective. It identifies key factors that continue to drive derisking and provides recommendations for national and regional regulators intended to foster a more supportive environment for facilitating transfers to affected regions in line with international humanitarian law (IHL) (see table 1).

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Challenge	Recommendation
Laws and regulations	
Limited alignment of humanitarian exemptions in sanctions regimes across jurisdictions	Establish broad and harmonised humanitarian exemptions similar to UNSCR 2664 across sanctions regimes.
CT provisions and other criminal laws do not include or diverge from humanitarian exemptions, weaking the impact of exemptions in sanctions regimes	Include carve-outs for humanitarian transfers in national CT provisions that are aligned with exemptions in sanctions regimes.
Lengthy, complex or unclear language, and complicated qualifications and conditions including time limits that restrict the scope of exemptions	Use clear, simple and concise language aligned across jurisdictions, provide interpretive guidance and ensure terms and conditions do not impede humanitarian transfers.
Implementation	
Lack of awareness of humanitarian exemptions across public, financial and humanitarian sectors, and unclear procedures for executing humanitarian transfers	Support and use national tri-sector groups to promote knowledge of exemptions and develop guidance.
Zero-risk tolerance supervisory attitude instead of promoting FATF's prescribed risk-based approach	Update supervisor instructions to reinforce humanitarian exemptions and promote a risk-based approach.
Reputational risks associated with transactions to sanctioned and terrorism-affected regions	Issue supervisory statements that consider IHL and humanitarian exemptions, and request that the delivery of humanitarian assistance is not impeded.

Table 1: Overview of challenges and recommendations

This policy brief is one of three in a series. The other two make financial sector recommendations to national tri-sector groups and the Financial Action Task Force (FATF). The series is based on the insights of a high-level advisory group that included representatives of 15 global financial institutions based in the EU, the US, the UK and Switzerland.[ix] Its members included global heads of sanctions compliance functions and financial crime prevention functions, payment and charity sector experts, and senior representatives of industry associations such as the Wolfsberg Group. The group was convened by the Norwegian Refugee Council and chaired by the author. The project was supported by the European Commission (ECHO) and the Swiss Federal Department of Foreign Affairs (FDFA).

Regulatory challenges with humanitarian transfers

The impact of sanctions and CT measures is determined by the laws and regulations set, and the implementation procedures put in place. This is as true for exemptions as it is for prohibitions. For humanitarian exemptions to be effective and transfers timely as a result, legal provisions need to be unequivocal and procedures linked to risk management and execution clear. Challenges currently exist in both areas.

Laws and regulations

Humanitarian transfers are affected by two sets of laws and regulations, sanctions and CT measures. Both need to be considered for their distinct impacts. The general humanitarian exemption from UN financial sanctions established by Security Council resolution 2664 achieves several things at once. Its broad language covers humanitarian transfers as well as related activities, and it covers all UN sanctions regimes indefinitely, since December 2024 without exception.[x] In principle these aspects significantly reduce regulatory complexity.

1. **Limited alignment of exemptions in sanctions regimes across jurisdictions**: The uniformity of humanitarian exemptions in UN sanctions is not yet consistently reflected at the level of individual jurisdictions. As one advisory group member put it: “The biggest limitation seems how to get everyone to agree on clear policies and definitions.” Many states have introduced their own exemption models with differing criteria and potential constraints on their application. Their scope and requirements differ significantly in material provisions, temporal validity and conditions.

   The resulting complexity can quickly inhibit timely transfers, given the involvement of various jurisdictions, including intermediary banks.[xi] Other variables may include specific payment properties such as currency, the goods involved and even the passports of the compliance officers involved. Non-alignment means analyses of the requirements under individual jurisdictions will differ, potentially determining whether a transfer is permitted and under what conditions. This increases costs at individual institutions and differing standards across them, resulting in the delay or potential rejection of payments.

2. **CT provisions may diverge substantially from sanctions exemptions even at the level of individual jurisdictions**, either by not taking IHL requirements fully into account or by creating differing obligations under criminal law that are separate from those directly related to sanctions. As such, a transfer that is permissible under a sanctions exemption may be prohibited under national CT provisions applicable to financial institutions. Divergent CT provisions add complexity that is aggravated when various jurisdictions are involved in a transfer. The results again include increased costs and the potential delay or rejection of payments.

3. **Confusing legal language, complicated by qualifications and conditions**: Potential areas of concern may stem from the scope of a humanitarian exemption. Unlike the UN’s holistic example, some states’ exemptions are subject to constraints, for example with respect to goods, beneficiaries and who can rely on/make use of the exemption in question.[xii] When applying such exemptions, the notions of “knowledge” and “intent” become important factors, and intent is inevitably accompanied by the notion of “negligence” (see also point 5 below). These notions may lack clarity in the abstract, but their meaning quickly becomes non-trivial in practice.

   A much more basic concern with legal language in exemptions relates to the absence of a practical, reasonably broad definition of what does and does not constitute humanitarian assistance’ is or, at least by counterfactual, what it is not. These constraints, imprecisions and omissions increase uncertainty and fuel fears about institutional and personal liability risks when facilitating humanitarian transfers supposedly exempt from sanctions and CT provisions.

Implementation

The complexity of current sanctions and CT provisions and the absence of aligned humanitarian exemptions make it challenging to facilitate humanitarian transfers. Operating successfully in this environment requires clear procedures. Engaging with sanctioned and terrorism-affected regions is not an endeavour compatible with a zero-risk tolerance attitude.

4. **Lack of awareness of the exemptions in place, unclear execution procedures and insufficient knowledge and understanding of due diligence and risk management procedures:** Insufficient knowledge among stakeholders on all sides, be they donor states and their respective institutions or ministries, supervisors, local banks or humanitarian organisations, continues to impede transfers. There may be general awareness of

humanitarian exemptions, but “beyond the understanding of principles there is very little awareness of how involved requirements need to be applied”, as one advisory group member put it. Confusion within some financial institutions about the steps required to execute humanitarian transfers covered by exemptions also continues to be an issue. This mainly refers to understanding the due diligence, and its scope, for example with respect to local counterparties in the target region, and reasonable mitigation against remaining risks such as the diversion of funds.

5. **Inconsistencies between existing humanitarian exemptions and a risk-based approach as prescribed by FATF on the one hand, and a zero-tolerance supervisory approach on the other hand**: When reviewing activities that carry elevated risks because they involve affected regions, supervisory examiners rightfully approach them with a great deal of caution. Their focus on potential weaknesses in compliance procedures, however, seems biased towards adherence to prohibitions in the sense that applicable humanitarian exemptions and broader obligations under IHL are not sufficiently recognised.[xiii] The overall impression is of a zero-risk attitude instead of a more holistic focus on strengthening the risk-based approach financial institutions are asked to implement. Even when due diligence and risk management is done “supervisors may always find some negligence on the part of the bank”, as one advisory group member put it. “In the EU, banks now face a high risk for negligence with penalties of up to EUR 40m.”

Finally, **reputational risks** associated with business activities involving regions targeted by sanctions and affected by terrorist activities – even when limited to facilitating humanitarian transfers – remain a substantial concern across the financial sector. For banks “reputational risk always comes first, second and third,” as one advisory group member put it. The fear is that even a humanitarian transfer that is fully and clearly exempt from sanctions and CT measures may be perceived negatively by supervisors and the public if it involves links to parties targeted by sanctions or CT provisions. This adds significantly to derisking pressures at financial institutions.

Recommendations to regulators to ease the facilitation of humanitarian transfers from representatives of the financial sector

Is there a clear, unambiguous, shared policy objective? Ambiguity introduces reputational, compliance, operational, legal and political risks and obstacles.

- *Advisory group member*

IHL is unambiguous in its language on humanitarian assistance and the principles of humanity, neutrality, impartiality and independence. Creating restrictions on humanitarian assistance through sanctions and CT measures introduces ambiguity. For example, aiming to provide emergency support to meet the basic human needs of displaced people in a conflict region while effectively prohibiting any cooperation with those who control the area is clearly an ambiguous policy objective. To limit detrimental effects, it is vital that efforts to mitigate ambiguity are effective.

Efforts to address the current limitations to the effectiveness of exemptions for the facilitation of humanitarian transfers should seek to improve the clarity and alignment of applicable sanctions and CT provisions, rein in excessive liability fears and ensure implementation procedures are well understood and reflect a risk-based approach.

1. **Regulators should reinforce efforts to establish broad humanitarian exemptions in the vein of UN Security Council resolution 2664 and harmonise across autonomous sanctions regimes**. The complexity that results from inconsistency between humanitarian exemptions in sanctions regimes across jurisdictions, and in sanctions and CT provisions within jurisdictions, remains a key regulatory impediment to the facilitation of humanitarian

transfers. Exemptions should be binding, not time-bound and cross-cutting, covering all transfers of funds, resources and related activities. Language used in exemptions, guidance and instructions should be clear, simple and concise. National CT measures should include carve-outs for humanitarian transfers that are clearly aligned with sanctions exemptions and consistent with IHL. In exemplary moves, Switzerland (2020, Chad (2020) and Canada (2023) have incorporated humanitarian exemptions into their revised national CT provisions.[xiv]

2. **Regulators should limit reliance on abstract conditions or other scope-limiting criteria as much as possible.** Regulatory complexity has a particularly harmful impact in connection with heightened uncertainty driven by abstract legal language with excessive interpretive range. Disproportionate fears of liability on the side of organizations and employees when facilitating humanitarian transfers must be reduced. To this end, Interpretive guidance for terms and conditions should be available that easily assists implementation in a way that reflects the policy objective of the timely delivery of humanitarian assistance. Key terms, including “humanitarian assistance”, should be broadly defined and definitions aligned across jurisdictions.

3. **Regulators should support, shape and make use of tri-sector groups to foster collaboration on effective implementation procedures.** Even the best exemptions and guidance can be useless if awareness of them is lacking. Unclear procedures for putting exemptions into practice also inhibit their effectiveness. National tri-sector groups that include representatives from regulators, humanitarian organisations and the financial sector have proven effective in promoting knowledge of exemptions and guidance. Tri-sector group dialogue and collaboration increase understanding, trust and transparency about expectations, including on due diligence and risk management requirements.

4. **Regulators should urgently update supervisor instructions, manuals and training to include key aspects of IHL and humanitarian exemptions.** Ambiguity detrimental to the facilitation of humanitarian transfers also arises from a supervisory zero-risk attitude that does not give enough consideration to humanitarian exemptions. This runs counter to FATF’s standards, which prescribe a risk-based approach towards humanitarian organisations.[xv] Updates should ensure that supervisors, including internal and external auditors, take proper account of robust due diligence and other risk management measures as well as humanitarian exemptions, in line with a risk-based approach. This includes realisation that a “risk-based approach” does not mean zero risk. Supervisors should be instructed not to promote or reinforce the continued derisking of humanitarian payment channels.

5. **Supervisory statements should include IHL considerations, reminders of any humanitarian exemptions in place and requests not to impede the delivery of assistance**. Supervisory statements, including circulars to financial institutions on risks related to sanctioned and terrorism-affected regions, significantly influence financial institutions’ perceptions of risk and risk appetite.

Financial institutions are market-driven entities that by and large respond rationally to conditions and incentives.[xvi] Addressing the derisking of humanitarian payments is a challenging endeavour that does not have a single solution. It requires a series of interventions to revise parameters which on their own may not have decisive influence but nevertheless contribute significantly to the outcome. The recommendations above promote a change of parameters intended to substantially reduce the number of delayed or rejected humanitarian transfers to regions targeted by sanctions and CT measures.

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[ii] OECD, ODA trends and statistics, available at https://www.oecd.org/en/topics/oda-trends-and-statistics.html

[iii] UN OCHA, Annual Report 2023, available at https://www.unocha.org/publications/report/world/ocha-annual-report-2023

[iv] NRC (2018) Principles under Pressure: the impact of counterterrorism measures and preventing/countering violent extremism on principled humanitarian action, available at https://www.nrc.no/resources/reports/principles-under-pressure/

[v] North Carolina Journal of International Law, Sanctions Overcompliance: What, Why, and Does It Matter? June 2023

[vi] See also UN Security Council resolution 2761, December 2024, available at https://docs.un.org/en/S/RES/2761%282024%29

[vii] For details, see this initiative's policy brief on Strengthening National Tri-Sector Groups

[viii] Global NPO Coalition on FATF (2023), Submission for Phase II of the Unintended Consequences Workstream, available at https://fatfplatform.org/assets/Global-NPO-Coalition-submission-on-mitigating-measures-for-de-risking-and-financial-exclusion-of-NPOs_final.pdf

[ix] Disclaimer: The statements in this paper reflect the aggregate views of the high-level advisory group. They do not necessarily represent the positions of the individuals or institutions involved.

[x] UN Security Council, Resolution 2761, December 2024, available at https://docs.un.org/en/S/RES/2761%282024%29

[xi] Cross-border transfers often do not take place directly between the bank in the remitting jurisdiction and a beneficiary bank in a sanctioned crisis region. Because not every financial institution has a direct link to all others, transfers may have to pass through a chain of institutions. These intermediary banks are required to screen transfers as well and assess their legitimacy according to applicable laws and regulations and their internal risk appetite.

[xii] Humanitarian exemptions issued by some states for specific disasters, such as the February 2023 earthquakes in Syria, may be subject to similar constraints.

[xiii] See, for example: UN Security Council, Resolution 2462, March 2019, available at https://digitallibrary.un.org/record/3798199?ln=en&v=pdf

[xiv] Canada: Criminal Code, Section 83.03; Chad: Loi n°003/PR/2020 « portant répression des actes de terrorisme en République du Tchad; Switzerland: Criminal Code (StGB), Art. 260[ter]

[xv] See FATF Recommendation 8. See this initiative's policy brief on FATF and the Risk-Based Approach. Available here: https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf.

[xvi] For research and options on changing incentive structures, see this initiative's research paper on ESG frameworks as a tool to address obstacles to the remittance of humanitarian funds in poorly banked jurisdictions affected by financial sector derisking