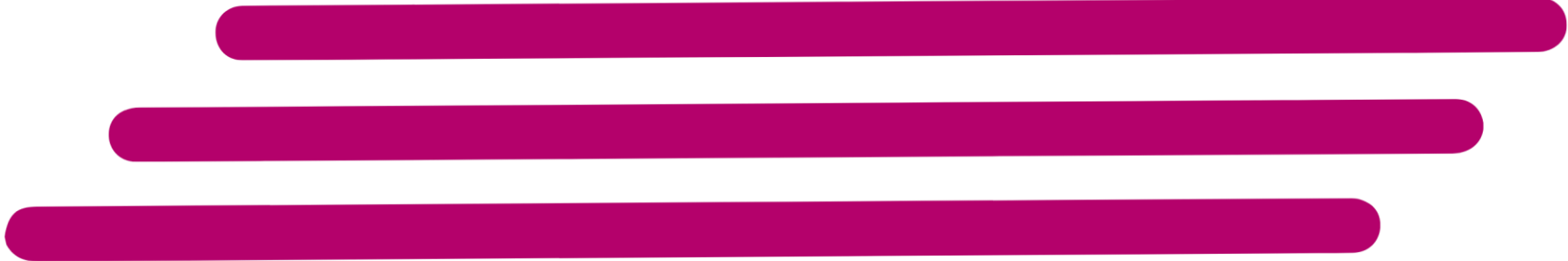




FORUM



Navigating Sanctions Restrictions in Humanitarian Crises

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Challenges Presented by Sanctions

- Is an authorization required to continue activities?
- Are existing exemptions and authorizations adequate?
- What banking channels are available?
- How do I address concerns that sanctioned persons might incidentally benefit from my activities?
- What if I need to engage with sanctioned persons?
- How do I document my activities for compliance purposes?
- What do my donors require? External partners?
- What is public perception of my activities?

OFAC Authorizations

General License (GL)

- **Self-executing**
- Authorizes activities w/n scope
- Published online or in regulations
- **Can be time limited (typically if online)**
- Subject to recordkeeping requirements
- Sometimes include reporting requirements

Specific License

- **Requires an application**
- Authorizes activities w/n scope **for applicant and specific parties**
- **Time limited, generally for two years**
- Subject to recordkeeping requirements
- Sometimes include reporting requirements

Separate BIS authorization often required for the export, re-export, or in-country transfer of commodities, technology, and software subject to EAR

BIS GFT License Exception (15 C.F.R. § 740.12)

- Gift parcels and humanitarian donations
- Humanitarian donations: authorize exports or reexports by groups or organizations of donations to meet basic human needs when those groups or organizations have experience in maintaining a verifiable system of distribution that ensures delivery to the intended beneficiaries. (Eligible items listed in Supp. No. 2 to part 740)
- Not available for Syria, Iran, Russia/Belarus. Specific license applications considered on a case-by-case basis for items necessary for the support of the Syrian people, including, but not limited to, items related to water supply and sanitation, agricultural production and food processing, power generation, oil and gas production, construction and engineering, transportation, and educational infrastructure.
- Does not authorize export or reexport of luxury goods to North Korea.

Implementation of UNSCR 2664

- December 2022, issuance of GLs by OFAC
- Not consistently implemented across sanctions programs
 - OFAC comprehensive sanctions programs' GLs addressing NGO activities are tailored to those programs. **Exception: Syria (recently amended Syria Sanctions Regulations).**
 - Certain previously issued OFAC web GLs (Venezuela, Russian Harmful Foreign Activities, Ukraine/Russia-Related, Burma)
- OFAC issued guidance regarding FIs' due diligence expectations
- OFAC Compliance Communiqués in context of particular events
- OFAC Supplemental Guidance for the Provision of Humanitarian Assistance (Feb. 27, 2023)

December 2022 OFAC GLs, NGO Activities

- Authorize activities ordinarily incident and necessary to certain activities by NGOs who are not blocked persons
- Do not authorize funds transfers initiated or processed with knowledge or reason to know that the intended beneficiary of such transfers is a blocked person, other than for the purpose of effecting the payment of taxes, fees, or import duties, or the purchase or receipt of permits, licenses, or public utility services.
- OFAC's other guidance on blocked persons
 - A purported or actual administrative agency or governing institution is not considered blocked solely because a blocked individual has leadership
 - OFAC advises to use all information at your disposal to assess sanctions risk. Supplement sanctions list searches w/ open-source material
- Incidental benefits to sanctioned entities are not a focus for OFAC sanctions enforcement.

Vision for the Future

- Improved understanding of “basic human needs”, “noncommercial development”, “humanitarian assistance”*
- Better three-way communication between FIs, OFAC, and NGOs
- Sharing of “best practices” among NGOs*
- Aligning requirements in donor agreements with IHL (development context/armed conflict)**
- “Safe harbor” for humanitarian-related activities
- Renewal of UNSCR 2664 for 1267/1989/2253 ISIL (Da’esh) and Al-Qaida sanctions regimes
- Destigmatizing provision of humanitarian aid

*Alderson, H. and Spencer, A. (2024) ‘Implementation and alignment between different sanctions frameworks: lessons learned and best practice’. HPG outcome note. London: ODI (www.odi.org/en/publications/implementation-and-alignment-between-different-sanctions-frameworks-lessons-learned-and-best-practice).

** Emanuela-Chiara Gillard, Sangeeta Goswami and Fulco van Deventer, “Screening of final beneficiaries– a red line in humanitarian operations. An emerging concern in development work,” *International Review of the Red Cross* (2021), 103 (916-917), 517–537. Counterterrorism, sanctions and war

UN Sanctions & Impact on Humanitarian Action

1 UN sanctions committee **lists** individuals, groups, or entities

This is based on criteria for listing established by the committee.

Risks of Impact

Criteria for listing are broad and could trigger the **listing of principled humanitarian organizations**.*

2 UN Security Council resolutions outline the **sanctions measures**

Sanctions measures include:

- Travel ban
- Arms embargo
- Asset freeze

Exemptions for humanitarian actors or activities create bureaucratic procedures for humanitarian organizations, leading to **increased costs and delays** in operations.

1 Member states and regional organizations create domestic and regional sanctions

3 Member states are obligated to **implement** the UN sanctions regime

Member states amend or enact laws or regulatory provisions or issue an executive decision to implement sanctions.

Sanctions measures are insufficiently clear or detailed or do not contain adequate safeguards for humanitarian action, which can lead to:

- De-risking by financial institutions **blocking, restricting, or delaying financial services** for humanitarian organizations
- Differing clauses in donor agreements imposing heavy compliance measures on humanitarian organizations, leading to **increased costs and delays** in operations for humanitarian organizations, as well as **challenging their ability to operate according to principles of neutrality and impartiality**
- **Costs and delays** linked to (potentially multiple) national exemption procedures for humanitarian actors
- Restrictions on dual-use items or risk-averse approaches by suppliers and transit countries **blocking, restricting, or delaying the import of goods** for humanitarian activities

2 Member states **enforce** the sanctions

4 Member states **enforce** the sanctions

Enforcement can take the form of:

- Fines
- Civil or criminal prosecution

Fines are imposed on humanitarian organizations or humanitarian staff face civil or criminal **prosecution** for engaging with a listed entity or individual in a way that violates the sanctions regime.

Other factors include:

- Other counterterrorism measures
- Anti-money laundering measures
- Other relevant regulations

Overall Chilling Effect on Humanitarian Organizations

* Note that of importance to counterterrorist financing is the ability to list organizations that pretend to be humanitarian, such as the "humanitarian" branches of designated entities.

Figure 1. The impact of UN sanctions on humanitarian action

Helpful Resources

- [International humanitarian law, principled humanitarian action, counterterrorism and sanctions: Some perspectives on selected issues | International Review of the Red Cross \(icrc.org\)](#) (overview of the issue)
- [Unblocking aid: the EU's 2023 shift in sanctions policy to safeguard humanitarian efforts - Humanitarian Law & Policy Blog \(icrc.org\)](#) (on EU sanctions)
- [Counterterrorism, sanctions and financial access challenges: Course corrections to safeguard humanitarian action | International Review of the Red Cross \(icrc.org\)](#) (on financial access challenges)
- [Making Sanctions Smarter: Safeguarding Humanitarian Action \(ipinst.org\)](#) (overview of the issue)

Helpful Resources

- [Safeguarding Humanitarian Action in Sanctions Regimes \(ipinst.org\)](#) (shorter overview of the issue)
- [Safeguarding Humanitarian Action in UN Sanctions and Counter terrorism Regimes: The Impact and Implementation of Resolution 2664 \(ipinst.org\)](#) (stocktaking of UNSCR 2664 implementation)
- [Plenary Panel: The Impact of Counter-Terrorism Measures on Humanitarian Action | Sustaining Access: Humanitarian Principles, Practice, and Policy for Today's Challenges | CSIS Events](#) (CSIS event)