



WORKSHOP REPORT

THE IMPACT OF EU SANCTIONS AND RESTRICTIVE MEASURES ON HUMANITARIAN ACTION

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The impact of EU sanctions
and restrictive measures
on humanitarian action

November 2019

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List of Acronyms

CFSP
European Union's Common
Foreign and Security Policy

COHAFA
Council Working Party on
Humanitarian Aid and Food Aid

COREPER
Committee of the Permanent
Representatives of the
Governments of the Member
States to the European Union

COTER
Council Working Group on
Terrorism

CT
counter-terrorism

DEVCO
European Commission Directorate-
General for International
Cooperation and Development

DFID
United Kingdom's Department for
International Development

DG
Directorate-General

DG ECHO
European Commission Directorate-
General for Humanitarian Aid and
Civil Protection

EDF
European Development Fund

EEAS
European External Action Service

EU
European Union

EUMS
European Union Member States

FAFA
Financial and Administrative
Framework Agreement

FAs
Framework Agreements

FATF
Financial Action Task Force

FPA
Framework Partnership
Agreement

FPI
Foreign Policy Instrument

GHD
Good Humanitarian Donorship

HR
High Representative of the Union
for Foreign Affairs
and Security Policy

IASC
Inter-Agency Standing
Committee

ICRC
International Committee of the
Red Cross

IHL
International Humanitarian Law

NEAR
European Commission
Directorate-General for
European Neighbourhood Policy
and Enlargement Negotiations

NGOs
Non-governmental organisations

NPOs
Non-profit organisations

NRC
Norwegian Refugee Council

PRAG
European Union External Aid
Practical Guidance

PSC
Political and Security Committee

RC/RC
Red Cross/Red Crescent

RELEX
The Working Party of Foreign
Relations Counsellors

ToR
Terms of Reference

UN
United Nations

UNSC
United Nations Security Council

1 Executive Summary

The impact of counter-terrorism measures on principled humanitarian action is of great concern to the humanitarian community. Effective humanitarian aid delivery relies on the humanitarian principles of humanity, impartiality, independence and neutrality. In zones of conflict, International Humanitarian Law (IHL) should limit the methods and means of warfare employed by all parties to the conflict.

VOICE is the network of 85 European NGOs promoting principled and people-centred humanitarian aid. Collectively, VOICE aims to improve the quality and effectiveness of the European Union and its Member States' humanitarian aid. The network promotes the added value of NGOs as key humanitarian actors.

In November 2019, VOICE organised a two-day workshop to raise awareness and understanding among VOICE member organisations of the framework and the impact of EU sanctions and restrictive measures on humanitarian action. The event gathered NGOs, external experts, European Member States and EU institutions' representatives to discuss the evolving approach in the EU to sanctions and restrictive measures, and their unintended impact on the delivery of humanitarian aid.

This workshop built upon previous VOICE initiatives regarding the impacts of CT measures on humanitarian aid in 2013 and 2016. (reports available on www.VOICEeu.org).

In the years since, the political and security landscape has changed and the EU is strengthening its position in relation to sanctions and CT measures, and individual EU Member States are increasingly adopting strict legislation.

Over the last decade, the global security situation has evolved. States are developing an ever more complex body of sanctions and counter-terrorism (CT) measures reflected both in the United Nations Security Council and at regional and national levels. Also EU is strengthening its position and individual EU Member States are increasingly adopting strict legislation.

“Some places have become no-go zones due to sprawling counter-terrorist regulation, and related legal threats haunt NGOs. Major donors are making unrealistic “zero-tolerance” demands about aid diversion. Governments fighting insurgents are slapping on the “terrorist” label to justify blocking access despite international law that all civilians ought to receive aid, no matter who happens to be ruling over them.

- The New Humanitarian, Aid policy trends to watch in 2020, 2 January 2020

While mostly unintended, the global humanitarian community faces numerous challenges related to these developments: CT clauses in grant contracts, bank de-risking, criminal legislation, increasing risk assessments, etc. are all unintended consequences of a growing sanctions and restrictive measures regime worldwide. These trends are of great concern to all humanitarian actors. Further, they result in the shrinking of humanitarian space and in disruptions to how humanitarians work (including where they work and who they are able to reach). The Inter-Agency Standing Committee (IASC) [Result Group 3](#) on Collective Advocacy, bringing together representatives from UN agencies, NGOs, the International Committee of the Red Cross (ICRC) and the World Bank, has been developing a strong body of evidence and recommendations regarding the impact CT legislation is having on humanitarian operations.

However, the understanding of the nature of humanitarian aid and the awareness of what is needed to deliver effective and efficient humanitarian aid to vulnerable populations in conflict areas is still very limited among the relevant governmental decision makers and regional bodies involved in developing CT policies.

While governments use legitimate CT measures to prohibit financial and other support reaching designated groups, the unintended consequences for humanitarian actors are very significant and must be better understood.

National and international non-governmental organisations (NGOs) deliver most of the humanitarian aid financed by States and the international community. NGOs and most humanitarian actors on their side struggle to understand and navigate the rapidly developing and complex legislative CT framework and are highly concerned about the potential consequences those measures may have on crisis affected populations. In many areas where the needs are highest and where humanitarian principles that underpin humanitarian action apply, NGOs face a number of difficulties, particularly where non-State armed groups (often also called “designated terrorist groups”) are active. Consequences include limited access; activities put on hold due to funding being delayed or not going through; serious security incidents targeting staff; and contractual issues for staff.

CHALLENGES FOR NGOS DEALING WITH SANCTIONS AND RESTRICTIVE MEASURES

Operational level	Advocacy level
<ul style="list-style-type: none"> Denial of applicability of IHL and humanitarian principles Access issues, delays, increased workloads Increased screening demands Bank de-risking and restrictions Identifying and working with suppliers Dual-use items (goods, software, technology, documents and diagrams which can be used for both civil and military-applications) Risk management and risk transfer to partners Self-censorship The cost of compliance. 	<ul style="list-style-type: none"> Lack of clarity around CT framework and decision-making processes Lack of guidance from donors Navigating EU Member State laws Lack of knowledge on how to make requests for derogations and exemptions

Some States deny that IHL applies – even in obvious situations of armed conflict – out of a concern that recognising the existence of an armed conflict could legitimise terrorists. There is a perception that the exceptional threat posed by designated terrorist groups requires an exceptional response. While the humanitarian community understands the legitimacy of states wanting to ensure the security of their populations, and the need for development of CT frameworks, this has had tangible impacts on respect for IHL and on the delivery of principled humanitarian action. There are clearly competing goals between humanitarian aid and external policies; the coexistence of security requirements and the humanitarian imperative is problematic. However, not protecting principled humanitarian action runs counter to what States are hoping to achieve with CT measures since without humanitarian assistance, their populations are left with less (if not without) protection.

The EU sanctions framework is extremely complex. While the UN sanctions framework is in one document, the elements of the complex EU regulatory framework are harder to identify and it is challenging to understand the roles of the various players. Understanding this framework is key for navigating restrictive measures and requires legal and technical expertise for the necessary advocacy efforts to have an impact.

Now, as the new Framework Partnership Agreement (FPA) for DG ECHO and humanitarian partners approaches, it is timely for the humanitarian community to engage on this issue and ensure principled humanitarian action is protected.

While the first day was a forum for NGOs to share experiences relating to sanctions and restrictive measures, and internal strategies for dealing with these, on the second day NGOs were joined by other key external stakeholders in a very collaborative spirit. Throughout both days, the interplay between working groups and plenary sessions worked very well to share knowledge, good practices and recommendations.

The workshop emphasised both:

- The importance of ensuring a solid understanding of the decision-making process and architecture in which sanctions and CT measures are agreed, particularly to allow humanitarian actors to understand how to seek to obtain exemptions/exceptions/licensing and authorisations for humanitarian action
- That donors/regulators want more information and 'evidence' from humanitarians on the impacts of CT measures

VOICE workshop

Plenary session: Identifying the impact of restrictive measures in the field



2 Key recommendations from the workshop



Non-governmental organisations (NGOs) need to develop awareness and in-depth understanding across their own organisation, from the senior management level to the field staff level, and partners when relevant, on the impact of counter-terrorism legislation and sanctions regimes on principled humanitarian assistance.



NGOs need to understand the counter-terrorism (CT) and sanctions frameworks in order to identify where the different restrictive measures come from. This is key in order to advocate towards policy-makers/regulators at European Union (EU) Member States, United Nations Security Council (UNSC) and EU levels.



The humanitarian community must engage at national level, given Member States' respective roles at UN, EU and domestic levels in defining CT measures and sanctions regimes, and in granting exemptions and derogations.



EU Member States need to re-affirm that International Humanitarian Law (IHL) is a legal framework for exceptional times that aims to strike a balance between the principles of humanity and military necessity. CT measures and sanctions regimes must respect IHL and the delivery of principled, needs-based humanitarian aid. Incorporating a humanitarian exemption through an explicit reference to IHL in all UN, EU and national counter-terrorism and sanctions laws remains a priority.



EU Member States should harmonise their interpretation and implementation of CT measures and granting of licenses to allow humanitarian agencies to operate in contexts that are affected by those. Procedures to gain exceptions/derogations/licenses/authorisations should be clarified and made accessible to ensure timely humanitarian response.



As regular reviews of restrictive measures are undertaken, the humanitarian community, supported by the donors, should monitor the negative impacts of sanctions and CT measures at field level, and highlight these impacts to policy makers.



Greater attention is needed to highlight and address the negative consequences of bank de-risking. Dialogue and consultation between all stakeholders – policymakers, donors, humanitarian actors and banks – are required to foster a mutual understanding.

3 Understanding the sources of restrictive measures

The EU has considerably strengthened its legal framework for preventing money laundering and terrorism financing in recent years and is constantly [re]enforcing it – as highlighted in the Commission communication:

“Towards better implementation of the EU’s anti-money laundering and countering the financing of terrorism framework - 24 July 2019”

CT became an umbrella term, but it is of the utmost importance to nuance/to distinguish the different tools and objectives which fall under it. There is a broad list of counter-terrorism measures and there is a difference between sanctions and CT measures, but also an overlap. A considerable number of restrictive measures are not terrorism-related at all. Likewise, there are CT restrictive measures that are not sanctions-related.

The most frequent EU restrictive measures are: travel bans, arms embargoes, economic and financial measures such as trade restrictions or assets freeze. Restrictive measures should be given more visibility and transparency to allow humanitarian organisations to better understand their importance in relation to donor compliance requirements.

KEY PRINCIPLES UNDERPINNING EU SANCTIONS

Sanctions are preventive measures taken to advance the objectives of the EU’s Common Foreign and Security Policy (CFSP) and of the EU Treaties. They are a tool in a broader policy framework allowing the EU to respond swiftly to political challenges and developments that go against its objectives and values. The EU coordinates sanctions with other partners via political dialogue.

The key objectives when adopting sanctions are:

- safeguarding EU’s values, fundamental interests, and security
- preserving peace
- consolidating and supporting democracy, the rule of law, human rights and the principles of international law
- preventing conflicts and strengthening international security

The main rationale behind sanctions is to change behaviour. Sanctions can be adjusted/removed when behaviour changes. The EU policy is to use targeted sanctions to prevent unintended consequences, particularly for civilians. Unintended consequences of sanctions are regularly discussed at EU Council level. Individual designations and transposition of UN listings can be challenged before EU Courts. It was also stressed at EU level there is never a no-contact policy. For humanitarian actors this is essential as it allows contacts and negotiations with armed groups to gain and sustain access to affected population.



VOICE workshop
Plenary session: Counter-terrorism
Sanctions and principled humanitarian action

HOW EU SANCTIONS ARE ARRIVED AT AND ENFORCED – A MEMBER STATE-DRIVEN PROCESS

- The EU implements all sanctions adopted by the UN Security Council under Chapter VII of the United Nations Charter.

Usually, the EU transposes UNSC restrictive measures without changing the text—the resolutions are binding on all UN Member States, which adopt or adapt their national laws accordingly. Restrictive measures adopted in the implementation of UNSC resolutions do not have an end date. They are amended or lifted without delay, following a decision by the UN to that effect. The EU is involved in a permanent dialogue with the UN to better coordinate EU Member States' respective actions on sanctions. Today, there are 14 ongoing [sanctions regimes](#) which focus on supporting political settlements of conflicts, nuclear non-proliferation, and counter-terrorism.

- The EU may also reinforce UN sanctions by applying measures in addition to those imposed by the UNSC.
- The Council of the European Union may also decide to impose sanctions on its own initiative. These are arrived at following negotiations in the Council.

Restrictive measures are laid down in Common Foreign and Security Policy (CFSP) Council Decisions. A proposal is made by the High Representative of the Union for Foreign Affairs and Security Policy (HR); the proposed measures are then examined and discussed by the relevant Council preparatory bodies. The decision is then adopted by the Council by unanimity.

If the Council Decision includes an asset freeze and/or other types of economic and/or financial sanctions, those measures need to be implemented in a Council Regulation – directly applicable by Member States. Based on the CFSP Council Decision, the High Representative and the Commission present a joint proposal for a Council Regulation.

The joint proposal is examined by the Working Party of Foreign Relations Counsellors (RELEX) and forwarded to the Committee of the Permanent Representatives of the Governments of the Member States to the European Union (COREPER) 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. As a legal act of general application, the regulation is binding on any persons or entities (economic operators, public authorities, etc.) within the EU.

The EU adopts sanctions, oversees proper application of the sanctions by the EU Member States, and provides further guidance. National governments are responsible for implementing and enforcing sanctions, and for granting exemptions and licenses.

Measures laid down only in the CFSP Decision, such as arms embargoes or travel restrictions, will be implemented by the EU Member States, while the Commission will verify that the Member States have implemented the regulations in a proper and timely manner.

While Council Regulations are open-ended, corresponding Council Decisions imposing EU autonomous restrictive measures usually apply for 12 months.

Before deciding to extend such a Council Decision, the Council will first review the restrictive measures. Depending on how the situation develops, the Council can decide at any time to amend, extend or temporarily suspend them.

[The EU sanctions map](#) provides a visual overview of sanctions adopted by the Council.

- There are measures taken at national levels, such as autonomous/domestic EU Member State sanctions. Enforcement (e.g. criminal penalties) and implementation are always done at the national level.

Main current CT sanctions in the EU relevant to humanitarian actors

Transposition of UN CT sanctions (1267 Committee, Daesh/Al Qaida):

- Arms embargo on designated persons and entities
- Assets freeze and prohibition from making funds and resources available
- Travel bans
- Against 261 individuals and 84 entities

Daesh/Al Qaida EU autonomous regime:

- Assets freeze and prohibition from making funds and resources available
- Travel bans
- Against 4 individuals

Common Position 2001/931 (transposition of UNSCR 1373/2001):

- Assets freeze and prohibition from making funds and resources available
- Against 15 individuals and 21 entities

4 Measures to safeguard humanitarian aid

Gaining exemptions, derogations and licenses is complex for NGOs. A solid understanding of the roles of the EU institutions, EU Member States and the UN in the development, imposition and enforcement of sanctions and restrictive measures, as well as the granting of derogations and licenses, is necessary. NGOs need to get more clarity on procedures at national level to ask for derogations.

AT UN LEVEL:

If sanctions or CT measures stem from the UNSC, advocacy needs to happen at the UNSC in New York. Requests for granting humanitarian exemptions have to be submitted either through the focal point process outlined in [resolution 1730 \(2006\)](#), or through the State of residence or citizenship of the petitioner.

In March 2019, UNSC resolution 2462 was passed to minimize terrorism financing. As the result of collective advocacy carried out in New York by humanitarian actors, this resolution includes language on humanitarian 'safeguards' which is seen as a step forward by the humanitarian community. For the first time, Resolution 2462 makes these express demands to consider and respect IHL in its operative paragraphs, and the language it uses makes it clearly obligatory for UN member states.

Also of note is the existence of the humanitarian exemption in the UN Sanctions Regime for Somalia. Last summer, Kenyan efforts to double-list Al-Shabaab by having it added to the IS/Al Qaida list could have resulted in the loss of that exemption. Advocacy by the humanitarian community resulted in the proposal being blocked. However this proposal could come up again in 2021.

Member States also liaise with UNSC sanctions committees, if required, in respect of specific exemption and delisting requests.

AT EU LEVEL:

No blanket exemption for humanitarian activities exists in EU legal acts. However, protection of humanitarian aid is written in the EU Treaty and the EU is committed to respect of international law, including IHL¹.

The EU seeks to prevent unintended consequences of sanctions. For example, in the case of Syria, the Council lifted trade restrictions regarding oil, to enable humanitarian actors to purchase fuel. NGOs and other humanitarian actors are encouraged to share concerns (with EEAS, FPI, DG ECHO and EU MS directly) on practical problems faced. RELEX meetings on humanitarian issues are also an opportunity to put exemptions on the agenda while providing the RELEX counsellors with briefings.

Within the EU, there is an effort to coordinate between different instances and services (e.g. between ministries responsible for sanctions – Security/Justice – and ministries responsible for humanitarian aid).

1 The EU Treaty of Lisbon (art. 214) and The European Consensus on Humanitarian Aid

DEROGATIONS: A NATIONAL COMPETENCY

Derogations are granted by EU Member States, not by the EU institutions. National competent authorities are responsible for applying EU regulations; determining the penalties for violations of restrictive measures; granting derogations and licenses; receiving information from and cooperating with economic operators (including financial and credit institutions); and reporting upon their implementation to the EU Commission.

Sanctions are an EU Member State-driven process, and Member States should be approached for derogations. NGOs need to build a strong evidence base to support requests for licenses and derogations from the competent authorities.

NGOs are encouraged to go to the institutions responsible for humanitarian aid and request that they make the case with colleagues responsible for sanctions. However, derogations are given on a case by case basis which makes it difficult to define a universal advocacy line for NGOs.

There are examples of NGOs gaining licenses for activities in sanctioned countries. Licenses in themselves can be obtained relatively quickly, but it can be very time consuming for NGOs to figure out how to obtain them. While it is clear that NGOs should apply to a 'competent authority', they need to understand the roles and modalities of the competent authorities and approach the correct interlocutors to seek exemptions; these could be non-traditional NGO interlocutors, such as Ministries/Departments of Treasury, Finances, Justice, Trade, or Foreign Affairs. There are also discussions around coordination on derogations at EU level.

The challenge starts with which Member State to approach: the one funding the action or the one where the NGO is registered. This issue is not addressed in the EU regulatory framework.

While it is important for NGOs to understand and be able to gain derogations, the best option remains to gain exemptions also linked to questions surrounding the humanitarian principles (as having to ask for derogations from States to be able to work can also affect the perception of a humanitarian organisation as a truly neutral, impartial and independent organisation). If written and used effectively, exemptions could prove to be one of the most efficient methods of protecting humanitarian

organisations and staff from sanctions regimes and counter-terrorism measures. This will allow them to carry out their work without the risk of breaking the law (see NRC Report 'Principles under Pressure', 2018).

EU Guidance:

Although enforcement of sanctions is done by EU Member States, the EU provides guidance/ FAQs on how to implement the laws - to reduce differences between enforcement by individual States.

The latest version of the updated "EU Best practices for the effective implementation of restrictive measures" - paper from RELEX, mandated by COREPER for the monitoring and evaluation of EU restrictive measures dated 4 May 2018, stipulates that:

- when granting exemptions, "the competent authorities may consider (among others) humanitarian purposes, such as, for example, delivering or facilitating the delivery of assistance, including medical supplies, food, or the transfer of humanitarian workers and related assistance or for evacuations from a targeted country".
- "To respond to urgent and changing needs on the ground, the competent authorities should treat requests for authorisations for humanitarian purposes with priority, where appropriate, and ensure that the applicants are aware of the process, contact points and the indicative timeline of the authorisation procedure. Applicants should explain the urgency and underlying humanitarian purpose in their applications to competent authorities".

➤ **EU Member States should harmonise interpretation and implementation of CT measures and granting of licenses. Procedures to gain exceptions, derogations, licenses, or authorisations should be clarified and made accessible to ensure timely humanitarian response.**

5 Compliance with International Humanitarian Law leads to exemptions

Counter-terrorism frameworks have negatively impacted people whom IHL seeks to protect, such as wounded and sick fighters and the civilian population in contexts of armed conflicts.

In the current security climate, the applicability of IHL to CT operations is at times contested despite the fact that compliance with IHL can serve to address States' security concerns. As such, the Geneva Conventions and their 1977 Additional Protocols make specific prohibitions of acts of terrorism that are applicable to Non State Armed Groups designated as terrorist groups whose serious violations against protected population or properties entail criminal responsibility for war crimes. As parties to the Geneva Conventions, States have the obligation to investigate war crimes and, if appropriate, to prosecute. Therefore, States should reaffirm that IHL and its rationale are still valid. IHL does not hinder States from fighting terrorism effectively while setting out a baseline of humanity that all States have agreed to respect.

Counter-terrorism measures have also adversely affected the ability of humanitarian organisations to conduct principled humanitarian action in conflict affected areas. Those CT measures may come in different forms (domestic CT legislation, clauses in grant agreements, sanction or restrictive measures, de-risking measures, etc.). They may affect planned activities that can be put on hold, delayed or cancelled. The capacity to reach those most in need may be reduced or even denied. As an example, new domestic CT laws have criminalised the travel or the presence of their citizens in areas controlled by designated groups; through such laws, staff of humanitarian organisations may be subject to criminal investigations. This has come up in the UK, in Australia, and is currently being discussed in The Netherlands.

In response to these worrying trends, humanitarian actors are working with States to ensure safeguards and mitigating measures are in place for impartial humanitarian action. The most effective mitigating measures are exemptions for humanitarian activities carried out by impartial actors from the scope of CT measures. Exemptions allow States to comply with their obligations under IHL, including the rules protecting the wounded and the sick as well as those providing medical assistance, notably the prohibition against punishing a person for performing medical duties in line with medical ethics. Other IHL rules of note are the rules protecting humanitarian personnel and the rules governing humanitarian activities, whereby activities of impartial humanitarian organisations should be facilitated and not hindered (via complicated administrative hurdles or procedures to be able to undertake humanitarian work in a principled manner). Exemptions would also make it possible for humanitarian organisations to comply with the humanitarian principles of impartiality, neutrality and independence.

At the EU level, there are positive examples of exemptions for humanitarian activities. The Recital 38 added to the EU CT Directive is a significant one:

“The provision of humanitarian activities by impartial humanitarian organisations recognised by international law, including international humanitarian law, do not fall under the scope of this Directive, while taking into account the case law of the Court of Justice of the European Union.

- Directive 2017/541 of the European Parliament and of the Council on combating terrorism

In November 2019, at a public intervention with the Dutch senate, ICRC and Netherlands Red Cross noted that to comply fully with IHL and with humanitarian principles, with regards to the legislative proposal to make it an offence for a Dutch national or resident to intentionally remain in areas controlled by a terrorist organisation there needed to be a general humanitarian exemption, as exists in the EU CT Directive. This exemption was included in this directive because Member States did not want CT legislation to impact negatively on humanitarian action. If new terrorist offences are created, the reasons that were valid for the inclusion of Recital 38 in the EU CT Directive need to be re-applied once again. A recital has limited legal value, but it gives the legal provisions context and has an interpretative value for EU Member States and judicial authorities.

On UN level, the recent inclusion of paragraphs regarding humanitarian activities in counter-terrorism Security Council Resolutions 2462 and 2482 can be welcomed as positive signals as well. These paragraphs urge all States to “take into account” the potential effect of counter-terrorism measures on “exclusively humanitarian activities” carried out by “impartial humanitarian actors” in a manner consistent with IHL.

Respect for humanitarian principles has been clearly emphasised in the European Consensus on Humanitarian Aid and in the Treaty on the Functioning of the EU. Member States must be clear and firm about the need for counter-terrorism activities to be conducted with full respect for the protections afforded to all individuals by international law, in particular IHL and human rights law.

Member States may be concerned that exemptions to CT legislation for humanitarian aid could be exploited by organisations with criminal intentions who may present themselves as ‘humanitarian actors’.

Key documents:

IHL and Challenges of Contemporary Armed Conflict report prepared by ICRC Legal Department for the 33rd International RC/RC Conference:

<https://www.icrc.org/en/document/icrc-report-ihl-and-challenges-contemporary-armed-conflicts>

Counter-terrorism activities must respect protections afforded by international humanitarian law; Statement to UN General Assembly Sixth Committee Meeting on “Measures to Eliminate International Terrorism”, October 2019

<https://www.icrc.org/en/document/counter-terrorism-activities-must-respect-protections-afforded-international-humanitarian>



VOICE workshop
Break out session: Identifying the impact of restrictive measures in the field

However, the language used in exemptions is taken from the Geneva Conventions and Commentaries: ‘impartial’/ ‘humanitarian’ interventions. Both principles as defined in the Commentaries stipulate that impartial humanitarian organisations ‘endeavour to relieve the suffering of individuals, being guided solely by their needs, and to give priority to the most urgent cases of distress.’ Therefore, de jure and de facto, this excludes organisations that are not purely humanitarian and impartial.



Bringing the contents of the Geneva Conventions to the national level is essential to show the interplay between CT and IHL. States need to re-affirm that IHL is already a legal framework for exceptional circumstances.

6 DG ECHO's approach and the next FPA

Internal compliance has been discussed widely in the European Commission (EC) since 2016. A decision was taken to approach the CT issue in a harmonised way so that one Directorate General (DG) is not doing something different from another DG.

DG for European Civil Protection and Humanitarian Aid Operations (ECHO) is doing quite a lot of external advocacy and there are discussions in different platforms between humanitarian donors. DG ECHO raises awareness on CT impacts and has encouraged joint working groups in the Council. DG ECHO also convened an informal workshop with the COTER / COHAFA / PSC Counter-terrorism Coordinator's Office.

For sanctions and CT measures to comply with IHL, DG ECHO advocates for humanitarian exemptions or derogations to be provided in the legal acts. Sanctions and CT experts are not always experts on IHL, and vice-versa; different communities must speak together to increase mutual understanding. DG ECHO discusses the issue with other donors. It is now co-chairing the Good Humanitarian Donorship Initiative (together with Switzerland), and there is a discussion there on good practices on sanctions clauses, looking at what would be the best language to ensure that clauses comply with IHL and humanitarian principles.

DG ECHO has also recently started to engage with the financial institutions on de-risking and, with Switzerland it co-chairs the compliance dialogue on Syria-related humanitarian payments.

This is a multi-stakeholder forum where NGOs, donors, humanitarian organisations and banks (European and Middle-Eastern) discuss the challenges they are facing, and what can be done to address them. Stakeholders are working on a risk-management guide to get humanitarian payments to Syria. The principles might be applied in other jurisdictions. Syria is the first 'case study', and DG ECHO is also looking at other ways to support partners.

Within the framework of the first EU Supranational Risk Assessment on terrorist financing and money laundering, the NGO sector, and in particular NGOs active in humanitarian aid, was perceived as 'high risk', because it makes cross border transfers. The result of this was that many banks took a 'de-risking' approach which meant that they would not facilitate such transactions. DG ECHO – with partners – is trying to demonstrate to regulators that DG ECHO and its partners have sufficient checks in place to avoid aid diversion. Following successful advocacy work undertaken with partners, the non-profit sector was the only sector whose risk rating was lowered in the last risk assessment. For organisations receiving funding from the EU institutions or Member States, both the threat and vulnerability levels were also reduced from 'moderate' to 'less significant' risk.

There is understandable pressure from the EC central services to ensure that funds do not end up in the wrong hands. When the EU budget is implemented (either directly or indirectly), DG ECHO, as much as any other DG, has to make sure that budget-spending complies with CT restrictive measures. As a donor, DG ECHO is obliged to translate EU regulatory frameworks into its requirements.

LANGUAGE IN GRANT AGREEMENTS

The EU Financial Regulation is essential as it is the overarching document guiding all EC rules, conditions and requirements. Title 6 – indirect management: Article 155 Implementation of Union funds and budgetary guarantees that:

When implementing Union funds, persons and entities shall: (a) comply with applicable Union law and agreed international and Union standards and, therefore, not support actions that contribute to money laundering, terrorism financing, tax avoidance, tax fraud or tax evasion.

To change the text, collective advocacy efforts must focus on the Financial Regulation itself.

EU-UN¹ also includes language relating to CT measures: The FAFA agreement states that there is an obligation for UN agencies to inform the EC if an NGO/third party falls under the scope of EU restrictive measures. The relevant clause is at 6a.2 onwards. The new requirement is that UN agencies vet against EU sanctions (restrictive measures) lists:

6a.2. The UN shall cooperate with the Commission in assessing if the third parties, whether entities, individuals or group of individuals, selected by the UN to be recipients of funds in connection with the implementation of the respective contribution agreement, fall under the scope of EU restrictive measures. In the event that such recipients would fall under the scope of EU restrictive measures, the UN shall promptly inform the Commission.

1 The Financial and Administrative Framework Agreement between the EU and the UN.

EU External Aid Practical Guidance commonly known as PRAG.

This practical guide explains both procurement and grant award procedures applying to EU external actions financed from the general budget of the EU and the European Development Fund (EDF). It is used by the Commission services responsible for the management of projects and programmes by DG for International Cooperation and Development (DEVCO) and DG for European Neighbourhood Policy and Enlargement Negotiations (NEAR).

The relevant sections of the PRAG state:

2.4. EU restrictive measures:

The obligation to ensure compliance with the EU restrictive measures applies:

- *to the EU institutions and bodies and to all EU contracting partners;*
- *not only at the initial distribution of funds but also down to the level of final beneficiary.*

Evaluation committees must ensure that there is no detection of a recommended tenderer (and consortia members thereof) or grant applicant, co-applicants, affiliated entities in the list of EU restrictive measures, at the latest before signing a contract.

Likewise, grant beneficiaries and contractors must ensure that there is no detection of subcontractors, natural persons (including participants to workshops and/or trainings and recipients of financial support to third parties), in the lists of EU restrictive measures.

The lists of persons, groups, entities subject to the EU restrictive measures are maintained by the Service for Foreign Policy Instruments and published on the following website: www.sanctionsmap.eu



VOICE workshop
Break out session
Group 1

THE NEXT FPA

Based on the humanitarian principles as set out in the European Consensus on Humanitarian Aid, the EU provides needs-based humanitarian aid to people affected by man-made and natural disasters, with particular attention to the most vulnerable victims. The humanitarian aid funded by the EU is delivered in partnership with UN agencies, the Red Cross and Red Crescent movement, international organisations and NGOs.

This partnership with the Commission is enshrined in Framework Agreements (FAs) that vary according to the type of partner involved. Whereas UN agencies operate with the FAFA as mentioned above, the Framework Partnership Agreement (FPA) defines the contractual relationship - regulations and responsibilities - between DG ECHO and humanitarian organisations including NGOs. Each FPA lasts between four and six years.

The new FPA starts in 2021, and a consultation process started two years ago. NGOs' key priorities include

maintaining a diversity of partners, simplification and a reflection of the Grand Bargain commitments. When it comes to CT and sanctions, NGOs are concerned about language in funding agreements and the definition of red lines.

In July 2019, DG ECHO published the Terms of Reference of the ex-ante assessment that NGOs need to commission to get the 2021 FPA. Within the Block 2 of the ToRs on 'Principles – Ethics', the following text was already inserted: *The Organisation includes provisions in its procurement, sub-granting policies and contracts to ensure that its tenderers, implementing partners and contractors observe and uphold integrity rules and ethical standards, such as:*

1. Avoidance of child labour
2. Respect of basic social rights and working conditions based on international labour standards and
3. Respect of applicable law relating to anti-money laundering and combatting terrorism financing, in the execution of their contracts.



VOICE workshop
Break out session
Group 2



In light of the ongoing consultation regarding the development of the next FPA, the workshop provided a forum for NGOs to share the following recommendations to DG ECHO on the matter.

- Vetting final beneficiaries is a clear red line for humanitarian actors.
- Since the next FPA might be inspiring for Member States, and given that ECHO is asked to give visibility to the existing EU regulatory framework on sanctions and CT, NGOs would recommend giving the same degree of visibility to IHL and the humanitarian principles; as well as to existing exemptions and derogations.
- When it comes to vetting partners, suppliers and contractors against sanction lists, it is recommended to insert minimum thresholds to avoid wasting time and resources into checks of very limited amounts and risks.
- NGOs remain open and interested in having regular dialogue with the Commission and Member States on the issue and to develop guidance to navigate the EU regulatory framework on CT and sanctions.
- NGOs urge DG ECHO to maintain the effort to promote a harmonised approach to CT and sanctions at EU level as well as among humanitarian donors, and to use the opportunity of the launch of the next FPA to organise further exchanges with Member States on this topic.

7 Bank de-risking – a key challenge for NGOs



The issue of financial de-risking, where banks refuse to provide services for organisations owing to concerns about counter-terrorist financing regulations, has become a major hurdle. Organisations reported being unable to transfer money into certain areas, forcing them to use unregulated methods which fall outside formal banking systems, such as hawala or cash-carrying. Significant delays to programming as a result of de-risking were reported. This issue particularly affects smaller organisations who lack strong compliance capabilities, and Muslim faith-based organisations who banks perceive to be at ‘higher risk’. Unless a solution to this issue is found, banks will dictate where humanitarian organisations can work.

- NRC Report, Principles under pressure, 2018.

While aiming at making the fight against money laundering and terrorism financing more effective, EU legislation has reinforced the risk assessment obligation for banks. Banks are liable for violations of this legislation and, consequently, impose measures which have unintended consequences on the delivery of humanitarian aid. Avoiding instead of managing risks, banks are reluctant to provide financial services to NGOs or to operate certain international transfers. Considering the limited weight of the humanitarian sector on the banking one, there are limited incentives for banks to engage in this issue and support the sector.

The main financial access difficulties for humanitarian actors include delays in wire transfers, requests for unusual additional documentation or increased scrutiny, increased fees, account closures or refusals. Cash programmes are also affected for example when vouchers were to be used for products coming from “wrong” countries.

- Banks and NGOs do not share the same language and values. Banks may lack an understanding of humanitarian action and perceive the sector as being too risky.

- Banks decide how many accounts NGOs can operate and can refuse the option to use more than one account. However, donors often insist that separate accounts are used for programmes they fund.
- NGOs are not only impacted negatively when their banks delay/block transfers, but also when companies servicing humanitarians cannot use banking services.
- NGOs face difficulties identifying interlocutors from the banking sector: despite established and regular dialogue with banks, it was reported that decisions to block/delay transfers are taken at bank management level, where direct contacts are much more difficult to establish.
- Transfers are not necessarily blocked by the ‘parent’ bank in European countries, but also in programme countries by subsidiary banks at country level.
- Banks use different approaches with different NGOs.

“Negative impacts range
 “from halts and decreases in funding
 to blocking of projects, suspension of
 programmes, planning and programme
 design not according to needs, as well as
 the slowing of project implementation”

- NRC Report, Principles
 under pressure, 2018.

To address these challenges, a number of good practices were identified and shared during the workshop. This include for example dialogue at national level on impacts and possible solutions for bank de-risking:

- In the UK, a tripartite working group has been set up, chaired by the Home Office (internal security), composed of banks, NGOs, and government representatives (DFID, Treasurer, and Defence). The group has struggled to make concrete progress, but one of the key advantages of it is that it encourages different parts of the government to come together and engage on this issue.
- In France, a group of NGOs gathered evidence and presented it to the Ministries of Finance, Interior, and Defence, as well as a representative from a bank syndicate. The evidence collected on an excel sheet lists the countries/programmes where NGO activities have been delayed/ blocked due to delayed/ blocked transfers. The

NGOs are now compiling information on their due-diligence processes, to share with banks and the government. This is an ongoing action. NGOs are investing a lot of effort into this process and sharing information they would not necessarily share elsewhere. Having established this dialogue is positive. The result of it remains to be seen.

- The International Stakeholder Dialogue in The Netherlands brings together banks, NGOs, government policymakers and regulators, and international organisations, to address financial access challenges and discuss potential solutions. The initiative has been replicated in the UK and the US.

The working group proposed raising awareness among financial institutions of NGO operations and the financial controls they already have in place, at both national and European level. EU institutions could support dialogue between NGOs and the European Bank Association.



VOICE workshop
 Break out session
 Group 3

8 Conclusions: The way forward

Work starts in each organisation. It is crucial for NGOs to develop awareness and in-depth understanding across their own organisation, from the senior management to field staff, and among partners when relevant.

Senior management deals with internal policies and global guidance/training enabling staff to make informed decisions including in relation to language of grant contracts – meaning identifying problematic wording and scope of CT measures-related clauses and definition of the organisation's red lines. CT impacts manifest most strongly at field level - often mixed in with other challenges related to security and logistics. Field staff should be given the relevant tools for compliance and risk management, but also tools to monitor the impact of new restrictive measures. Fostering in-country dialogue on restrictive measures via NGO fora and/or coordination mechanisms would also be useful. There is a need for evidence on the negative impacts of the restrictive measures on humanitarian activities.

Advocacy must happen at the right level and target the right interlocutors/decision-makers along the diverse sources of restrictive measures. Advocacy should track both the process ahead of adoption of sanctions, and the sanctions review and renewal processes since they are key opportunities to get exemptions/derogations into the regulatory frameworks, or to amend existing restrictive regimes.

The national level is the key entry point. Understanding the framework and its main actors at national level is a pre-requisite. NGOs need to prioritise engaging directly with Member States given that it is at the domestic level that CT approaches, policies and positions are developed, and then reflected in UNSC resolutions, FATF policies, in EU sanctions, EU Directives, and CT measures. NGOs need to engage beyond their traditional

interlocutors – Ministries of Foreign Affairs, donors, etc. - to reach out to Treasuries, Ministries of Finance, Justice and those responsible for CT and sanctions policies. Representatives of Member States and EU institutions have demonstrated that they are all open for dialogue; NGO outreach should be broadened to all concerned stakeholders, including the banking sector. Organising similar workshops at national level could support the establishment or reinforcement of the dialogue among the different actors.

It is understood that there is awareness and willingness within the services of the EU Institutions and the Member States to protect humanitarian space. Experience shows that bringing context specific evidence to regulators is essential - as is identifying common concerns and making joint proposals to increase credibility and leverage. An idea could be to identify a group of EU Member States to act together as 'champions' on the issue which could contribute to promoting awareness and good practices among their peers as donors and regulators.

Mapping existing opportunities and advocacy initiatives would be very useful. There are several good examples of joint advocacy among NGOs/humanitarian actors (UNSC Res 2462; the UK Parliament bill, etc.)

There are also on-going NGO initiatives in some Member States to list the restrictions they are confronted with to inform dialogue with both governments and banks (The Netherlands, UK, and France for example). However, these advocacy efforts tend to be ad hoc and/or mainly reactive. To develop proactive advocacy strategies, a more systematic mapping of both restrictive measures and their impacts is needed, including the essential feedback from the field and assessing the "costs of inaction". An EU survey supported by academics could be an effective way to gather and present this information..



ANNEXES

VOICE Workshop Agenda

Glossary of terms

Bibliography

VOICE Workshop on the Impacts of EU Sanctions and Restrictive Measures on Humanitarian Action

Tuesday 19th and Wednesday 20th November 09.00 to 16:30

Tuesday 19th Agenda – OPEN to NGOs only

Wednesday 20th Agenda – with invited guests

09.00	Registration: Welcome & Coffee
09.30 - 10.00	Introductory address and workshop goals Kathrin Schick, Director VOICE
10.00 - 11.00	Break out session 1 Groups identify how CT/restrictive measures have already impacted on their operations in the field (or at other levels), and their expectations of the workshop. Facilitators : Magali Mourlon, Gillian McCarthy. Coffee break – 30 mins
11.30 - 12.00	Expectations and experiences are presented back to the entire group.
12.00 - 13.00	Plenary session <ul style="list-style-type: none"> • Evolving approach in the EU to counter-terrorism/Sanctions: the political dimension and CT/Sanction terminology Speakers: EEAS (Pierre-Arnaud Lotton, Sanctions Policy Division) and FPI (Roberto Crespi, Legal Officer) • The value of collective advocacy – recent successful examples Speaker: Lindsay Hamsik, Senior Manager, Humanitarian Policy and Practice, InterAction • Recommendations for reducing tensions in the interplay between sanctions, counter terrorism measures and humanitarian action Speaker: Emanuela-Chiara Gillard, Chatham House
	13.00 – 14.00 Lunch break
14.00 – 15.30	Break out session 2 3 rotations, 30 mins each <ul style="list-style-type: none"> • Group 1: Bank de-risking • Group 2: Coping with sanctions and counter-terrorism measures: sharing good practice • Group 3: Advocacy – where to now?
15.30 – 16.00	Moving towards the next ECHO FPA – what to expect Speaker: Magali Mourlon, VOICE
16.00 – 16.30	Closing remarks, overview of Day 2

09.30 - 10.00	Tour de table
10.00 - 11.30	Plenary session: Counter-terrorism/ Sanctions and principled humanitarian action <ul style="list-style-type: none"> • ECHO's approach to Counter-terrorism/ Sanctions: Where are we at? Speaker: Adela Kabrtova, Legal Officer, ECHO • Norwegian Refugee Council's advocacy efforts and the way forward Speaker: Emma O'Leary, NRC • The interplay between counter-terrorism measures and International Humanitarian Law Speaker: Hilde Sagon, ICRC
	Coffee break – 30 mins
12.00 - 13.00	Break out session 1 3 advocacy groups working on 2 issues (groups to rotate after lunch) <ul style="list-style-type: none"> • Group 1: Bank de-risking: Identify short, medium and long-term strategies for various levels (field, national, and EU levels) • Group 2: CT and the next FPA: Identify preferred language and red lines. • Group 3: Exemptions and exceptions at EU level - the way forward: Identify short, medium and long-term strategies for various levels / main targets
	13.00 – 14.00 Lunch break
14.00 – 15.00	Break-out session 2
15.00 – 16.00	Presentation of group findings, feedback from experts, and proposed next steps
16.00 – 16.15	Closing

Bank de-risking:

Sometimes referred to as de-banking, this term describes the behaviour of international financial institutions when they refuse to service or suddenly shut down an account because, in the banks' calculations, the potential risk of triggering a red flag with counterterrorism regulators outweighs the potential profit generated from the client (which could be an individual, a business, or an NGO and its beneficiaries, for example).

Financial Action Task Force (FATF):

An inter-governmental body that sets standards for combating money laundering and terrorist financing. In 2001, FATF issued Special Recommendation VIII (later becoming known as Recommendation 8), which identified non-profit organisations (NPOs) as particularly vulnerable to and at risk of being exploited for terrorist financing purposes, and has been the subject of much advocacy work on the part of Non-profits (in particular by the NPO Coalition on FATF). It was revised in 2016, to remove the blanket assumption of risk. R8 now states that; 'Countries should review the adequacy of laws and regulations that relate to non-profit organisations which the country has identified as being vulnerable to terrorist financing abuse. Countries should apply focused and proportionate measures, in line with the risk-based approach, to such non-profit organisations to protect them from terrorist financing abuse [...]'

Good Humanitarian Donorship (GHD) principles:

Endorsed by 42 donors (including all the EU Member States), the GHD principles include reference to: Principled humanitarian action; Respect for and promotion of IHL; The importance of needs-based assistance; Accountability to affected populations; Predictable humanitarian funding; Coherence of donor action; Primacy of civilian response; Support to multilateral coordinated humanitarian action. The GHD Initiative, which acts as a donor forum and network is currently co-chaired by ECHO together with Switzerland (2018-2020).

UN sanctions regime:

Counter-terrorism is an objective of UN Security Council (UNSC) sanctions adopted under Chapter VII of the UN Charter. The two main UNSC regimes establishing sanctions against individuals and entities suspected of terrorism are the known as the 1267 and the 1373 regimes. They impose mandatory obligations on all UN members concerning their implementation. The European Union (EU) implements both regimes. Other sanctions, such as sanctions relating to Somalia, also impact humanitarian action. Also of note is the most recent UN resolution relating to CT – adopted in March 2019, Resolution 2462 calls on States to ensure that their laws and regulations make it possible to prosecute and penalize, as serious criminal offences, the provision or collection of funds, resources and services intended to be used for the benefit of terrorist organizations or individual terrorists. The resolution also calls upon Member States to conduct financial investigations into terrorism-related cases and to more effectively investigate and prosecute cases of terrorist financing, applying criminal sanctions as appropriate.

The Somalia sanctions exemption:

This exemption in relation to financial sanctions was adopted following a focused advocacy effort on the part of humanitarian actors unable to provide assistance to populations faced with famine. Though the exemption was initially limited to one year (2010), the Security Council has renewed it every year since. The exemption reads: [Operative paragraph 48 Decides that until 15 November 2019 and without prejudice to humanitarian assistance programmes conducted elsewhere, the measures imposed by paragraph 3 of resolution 1844 (2008) shall not apply to the payment of funds, other financial assets or economic resources necessary to ensure the timely delivery of urgently needed humanitarian assistance in Somalia, by the United Nations, its specialised agencies or programmes, humanitarian organisations having observer status with the United Nations General Assembly that provide humanitarian assistance, and their implementing partners including bilaterally or multilaterally funded non-governmental organisations participating in the United Nations Humanitarian Response Plan for Somalia.

European External Action Service, EEAS:

is the diplomatic service and combined foreign and defence ministry of the European Union (EU) and carries out the EU's Common Foreign and Security Policy (CFSP), including the Common Security and Defence Policy (CSDP). The EEAS does not propose or implement policy in its own name, but prepares acts to be adopted by the High Representative, the European Commission or the Council.

Service for Foreign Policy Instrument, FPI:

is a service of the European Commission which works alongside the European External Action Service (EEAS). Its core task is to run a number of EU foreign policy actions, including their financing. FPI transposes into EU law sanctions decisions prepared by the European External Action Service and agreed by the Council of the European Union.

EU sanctions policy:

Sanctions are one of the tools used by the EU to promote the objectives of the Common Foreign and Security Policy (CFSP). They are reviewed at regular intervals. The Council of the EU decides whether sanctions should be renewed, amended or lifted. EU sanctions apply only within the jurisdiction of the EU and their implementation and enforcement is primarily the responsibility of the EU Member States. The EU also implements all sanctions imposed by the UNSC.

Dutch proposed CT bill (35125):

The law proposes to criminalise citizens' travel – without Dutch government permission – to areas it designates as controlled by 'terrorist' organisations. Aimed originally at preventing Dutch citizens from joining the so-called Islamic State, this broad new law would – in its current form - require organisations to seek permission for travel to a designated area. As it stands now, the Dutch law provides an exemption for EU, UN, and ICRC staff, but amendments to include all humanitarians were rejected. Similar laws passed in the UK and Australia did find it possible to grant a blanket exemption for humanitarians.

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-  Caritas International Belgium
-  Médecins du Monde (MDM) Belgium
-  Oxfam Solidarité - Solidariteit
-  Plan Belgium

CZECH REPUBLIC

-  ADRA Czech Republic
-  People in Need (PIN)

DENMARK

-  ADRA Denmark Nødhjælp og udvikling
-  Dansk Folkehjælp Danish People's Aid
-  DanChurchAid (DCA)
-  Danish Refugee Council (DRC)
-  Mission East Mission Øst
-  Save the Children Denmark

FRANCE

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-  CARE France
-  Handicap International -Humanity and Inclusion
-  La Chaîne de l'Espoir
-  Médecins du Monde (MDM) France
-  Secours Catholique - Réseau Mondial CARITAS
-  Secours Islamique France
-  Secours Populaire Français
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-  Télécoms Sans Frontières (TSF)


FINLAND

-  Finn Church Aid
-  World Vision Finland

GERMANY

-  ADRA Deutschland
-  Arbeiter-Samariter-Bund (ASB) Deutschland
-  CARE Deutschland-Luxemburg
-  Deutscher Caritasverband Caritas Germany
-  Diakonie Katastrophenhilfe
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GREECE

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-  Caritas Luxembourg

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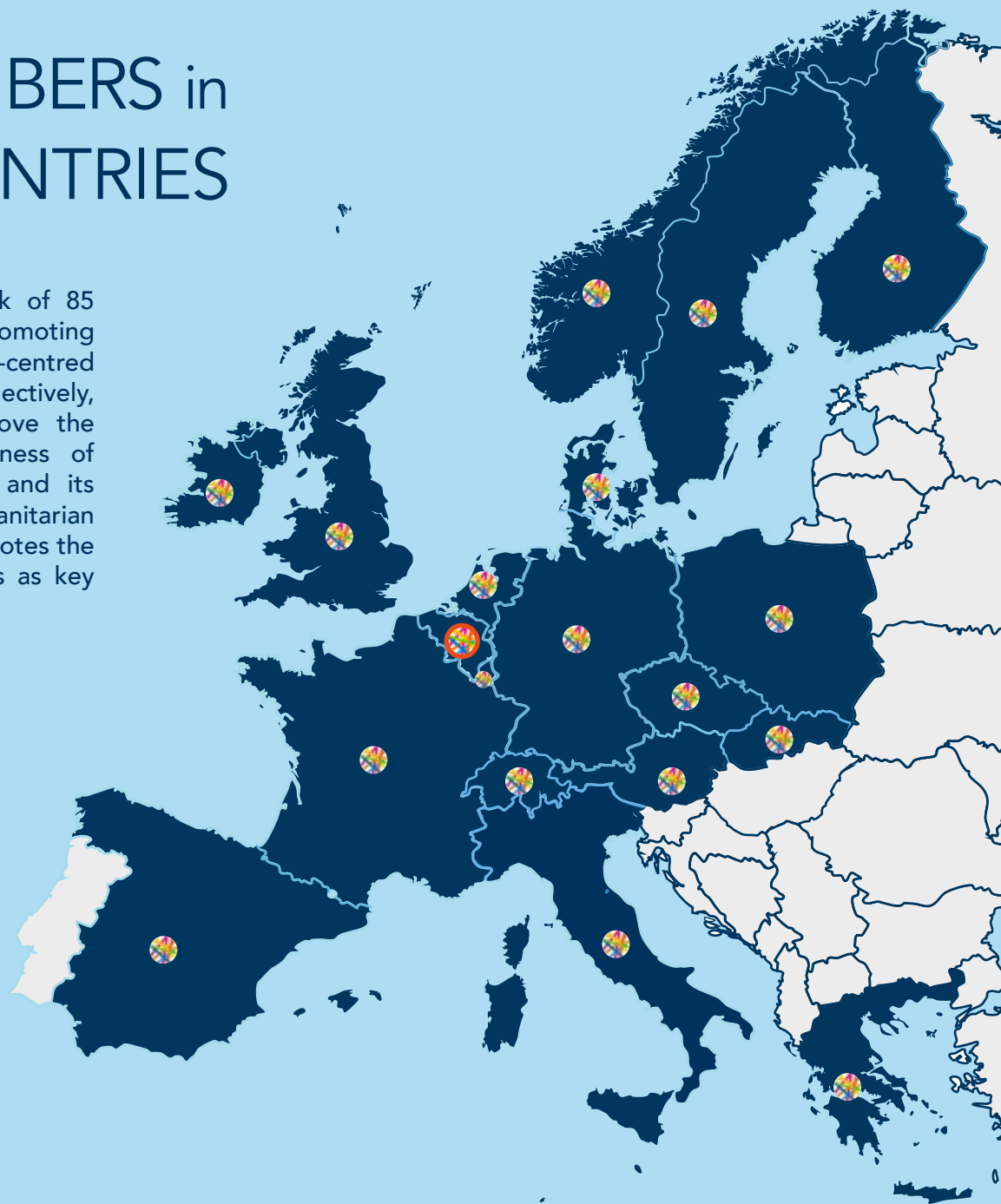
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-  Mercy Corps UK
-  OXFAM GB
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-  Save the Children UK
-  Tearfund
-  World Vision UK

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VOICE is the network of 85 European NGOs promoting principled and people-centred humanitarian aid. Collectively, VOICE aims to improve the quality and effectiveness of the European Union and its Member States' humanitarian aid. The network promotes the added value of NGOs as key humanitarian actors.



VOICE

European humanitarian NGO
Standing together.

www.VOICEeu.org

voice@VOICEeu.org

+32 (0) 2 541 13 60

 @VOICEeu_

VOICE asbl

Rue Royale 71 1000 Brussels Belgium

Company number: 0475213787 RPM Brussels



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