

# Risk Management Principles Guide for Sending Humanitarian Funds into Syria and Similar High-Risk Jurisdictions



Dr. Justine Walker

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This guide does not hold any official or legal status. Instead it offers a set of non-binding safeguarding principles that have been developed following close collaboration with relevant stakeholders across governments, donors, international banks and NGOs. The views expressed in this document should not be taken, in any way, to reflect the official opinion of the Swiss Government, the UK Department for International Development, the Graduate Institute, the World Bank, the European Union, and the European Commission. The aforementioned organisations are not responsible for any use that may be made of the information it contains

**Author: Dr. Justine Walker**

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## Introduction to the Guide

### Purpose of the Guide

This guide has been developed to offer background information and practical tips for how banks, humanitarian organisations and donors can work together to ensure aid can reach civilians in need of assistance within Syria, and in a manner which is compliant with EU/US/UN sanctions plus wider regulatory obligations. Although primarily developed in the context of Syria, the principles contained within the guide offer a transferable framework for working together in other high-risk jurisdictions where sanctions, conflict and terrorist financing concerns are prevalent.

### Document Origin

The framework and principles contained in this guide have been developed following extensive research and cross sector dialogue.

Two studies of the United Nations Economic and Social Commission for Western Asia (UN ESCWA) from 2016<sup>1</sup> and 2017<sup>2</sup>, financed by the Swiss Agency for Development and Cooperation (SDC), conducted by Dr. Justine Walker, have shed light on understanding the unintended consequences of restrictive measures and the development of mitigation measures, within the existing regulatory frameworks. Since 2016, regular roundtable discussions with different stakeholders (UN agencies, the EU, the International Committee of the Red Cross, humanitarian International Non-Governmental Organisations (INGOs) as well as state representatives) have identified a need to find safe, transparent and dependable banking and payment channels that cover the whole of Syria.

Beginning in February 2019, a year-long multi-stakeholder dialogue concerning technical compliance for Syria-related humanitarian payments took place. The dialogue was tasked with identifying mechanisms within the existing legal framework to promote principles for the safe and transparent provision of banking and payment channels, in support of permissible international humanitarian activity to, and within, Syria.

The 12-month dialogue was organised by the Graduate Institute, Geneva, under the guidance of Dr. Erica Moret and supported and funded by the Swiss Government, through the Swiss Agency for Development and Cooperation, as well as supported by the European Commission, Directorate-General for European Civil Protection and Humanitarian Aid Operations. Dr. Justine Walker, Head of Global Sanctions and Risk, ACAMS, was contracted as the independent expert to support the workings of the dialogue, agenda setting and drafting of this guide.

### Document Status

This guide holds no official or legal status. Instead it offers a set of non-binding safeguarding principles that have been developed following close collaboration with a wide variety of stakeholders. While every effort has been made to verify the data used in this report, no guarantee or warranty is made on its accuracy. You should seek your own professional advice before acting on any of the content in this report.

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<sup>1</sup> Humanitarian Impact of Syria-Related Unilateral Restrictive Measures, Justine Walker, 2016

<sup>2</sup> Examining Viable Banking and Payment Channels for the Movement of International Humanitarian Funds into Syria, Justine Walker, 2017

The organisations involved do not assume responsibility or liability for the contents of this report, or its reading, use or interpretation.

### Terminology

This report is focused on ‘humanitarian assistance’ i.e. meaning the aid and immediate action designed to save lives and alleviate suffering. What constitutes the compartmentalisation of ‘aid’ between humanitarian, stabilisation, reconstruction, and development has not be defined within this guide.

The term ‘sanctions’ and ‘restrictive measures’ are used inter-changeably throughout this report. Both descriptions are defined as measures or actions against a target to influence its behaviour, policy or actions.

### Acknowledgements

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Finally, special acknowledgements are extended to the following organisations and individuals for the hosting of meetings, co-chairing and collective ongoing leadership:

- Nathalie Chuard and Sandra Boulos, Swiss Agency for Development and Cooperation SDC;
- The European Commission, in particular Directorate-General for European Civil Protection and Humanitarian Aid Operations (DG ECHO) and the Sanctions Unit of Directorate-General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA); and
- Dr. Erica Moret, Thomas Biersteker and Clarissa Brack Burdeu, the Graduate Institute, Geneva.

### Context for writing this Guide

Syria is one of the most challenging operational environments in the world for the delivery of humanitarian assistance and provision of services. Since the outbreak of the Syrian conflict in 2011, the humanitarian situation in the region has drastically deteriorated. Violence and conflict are the primary causes of the crisis, while disrupted livelihoods exacerbate the plight of civilians. The population in Syria struggles to access clean water, food and basic services. Millions of people depend on humanitarian aid and protection, which is extremely difficult to deliver due to the complex security environment, access constraints and bureaucratic hurdles.

In addition to the disastrous consequences of the armed conflict, international sanctions against a number of non-state actors present in Syria, as well as restrictive measures of the US, EU, Switzerland and other states against the Syria government and connected actors, have an impact on humanitarian activities.

Notwithstanding the immense political, safety and security considerations, a concerted programme of humanitarian assistance prevails across the whole of Syria. International finance and humanitarian assistance mobilised to date totals in the EUR billions. However, the combined effect of the conflict, compliance concerns and the presence of financial sanctions has unintentionally eroded the ability for humanitarian actors to facilitate international payments into Syria.

In parallel to examining the safe movement of funds into Syria, wider initiatives have begun to seek out practical solutions to improve funds movement into a range of conflict, sanctioned and fragile jurisdictions, i.e. Somalia, Iran, Sudan, Yemen, Gaza, Venezuela, DPRK and Pakistan. Such initiatives include dialogue in the European Commission, the Netherlands, the UK Tri-sector working group, and the World Bank-ACAMS stakeholder dialogue on financial access for non-profit organisations. Consequently, this guide builds upon these initiatives but offers a specific focus on practical risk management mechanisms.

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## Section 1 - The Humanitarian Situation within Syria and the International Response

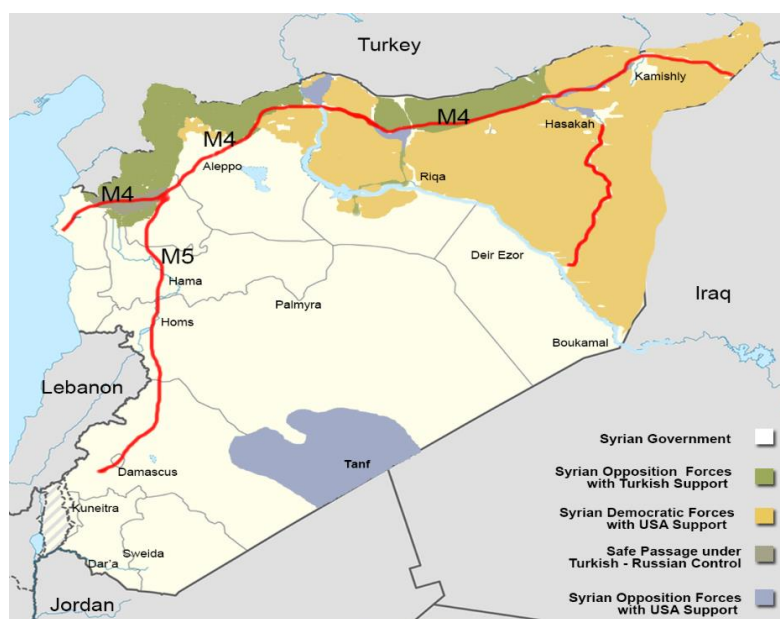
### Syria's Humanitarian Situation

Since the onset of the conflict in 2011 an estimated 5.5 million Syrians have fled the country, and more than 6 million are internally displaced.<sup>3</sup> In Syria itself, the estimated number of people in need of humanitarian assistance is over 11 million, more than two-thirds of the pre-war population. In short, the crisis has caused untold suffering for Syrian men, women, and children. It has taken enormous casualties, caused widespread destruction, forced massive displacement both within Syria and across the region, rolled back development progress, and threatened generations across Syria and neighbouring countries.

Overall, the conflict is challenging not only standard conflict resolution processes, but also the fundamentals of how to maintain humanitarian financial flows. Those in need are located throughout the whole of Syria, this includes civilians located in both government and non-government-controlled areas, including hard-to-reach areas.

At the time of writing of the report, the Syrian Arab Republic is broadly speaking divided into four areas:

- the **North-West of Syria** and parts of the north which are controlled by armed groups and under the influence of Turkey. The area is heavily populated with a large number of Syrian internally displaced persons (IDPs).
- the **North-East of Syria**, which is known also by the north of Euphrates River. It is under the control of the Syrian-Kurdish opposition forces, named SDF, Syrian Democratic Forces, supported by the US. This area is considered the wealthiest part of Syria, it produces more than 80% of Syrian cotton, wheat and barley, and home to 70% of Syrian oil and natural gas fields.
- **Central and South of Syria**, more than 63% of which is controlled by the Syrian Government. Most of this area is desert with the largest concentration of the Syrian population living in major cities.
- **Al Tanf area**, located in the Syrian desert west of the Iraqi border, where there is a US army base with Syrian armed opposition forces.



Map: Syrian Arab Republic - Geographical Zones of Influence (April 2020)

In March 2020, a new passage route was created with the reopening of the M4 highway link between Aleppo and Latakia. The route is under Russian and Turkish joint military control. With the armed conflict ongoing, front lines and areas of influence are constantly shifting. The below map shows the most recent zones of influence.

<sup>3</sup> UN news centre <http://www.un.org/apps/news/infocusRel.asp?infocusID=146>

Certainly, in the short-medium term the context in Syria is likely to remain complex and dynamic. For the foreseeable future, the scale of humanitarian needs across the whole of Syria is expected to remain significant, and especially so in areas of displacement and conflict. In areas of relative stability, opportunities to reduce the level of humanitarian needs through more sustained service delivery and livelihoods activities are expected to emerge.

### Humanitarian Funding Priorities in Syria

The yearly “Humanitarian Response Plan” (HRP)<sup>4</sup>, developed by the United Nations together with NGOs, outlines the shared vision of how to respond to the assessed and expressed needs of the affected population. For 2019, the required budget was 3.29 Billion USD across three key objectives:

- i) Save lives and alleviate the suffering of the most vulnerable people;
- ii) Enhance the prevention, mitigation and response to protection needs; and,
- iii) Increase resilience, livelihoods and access to basic services. These objectives are interlinked and interdependent, with progress on each being essential towards positive outcomes against the others.

#### **Overview of Humanitarian Interventions within Syria**

**The Humanitarian Response Plan (HRP) offers a comprehensive insight into how humanitarian funds are allocated within Syria. The HRP 2019 reported the following overview for the preceding year:**

- An average of 5.3 million vulnerable people received food assistance on a monthly basis across Syria.
- 2.7 million people benefitted from agricultural assistance.
- Almost 6 million people received direct water, sanitation and hygiene emergency assistance.
- Up to 13.8 million people benefitted from water, sanitation and solid waste management systems support.
- 22.8 million medical procedures were supported by humanitarian actors during the year. 11.7 million treatment courses were provided.
- More than 517,000 trauma consultations were carried out. 158,000 deliveries were attended by skilled birth attendants. 81,000 C-sections were conducted throughout the year. 2.4 million children and pregnant and lactating women in need were reached with curative and preventive nutrition services.
- 2.4 million people had their core and essential Non Food Items (NFI) needs met, and 1.1 million people received shelter assistance.
- 838,400 girls and boys benefitted from structured and sustained child protection programmes, including psychosocial support.
- 316,600 people received legal assistance, including on civil documentation and housing, land and property issues 426 communities have at least one type of specialised gender-based violence service.
- 2.5 million people benefitted from explosive hazard risk education.
- 4.3 million children and youth, teachers, and education personnel benefitted from quality education programmes.
- More than 23,101 m<sup>3</sup> of inter-agency humanitarian goods were stored and prepositioned in various locations inside Syria to respond to critical needs.
- 3.8 million people benefitted from early recovery and livelihood interventions, including through the restoration of access to essential social services and social cohesion initiatives

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<sup>4</sup> The Humanitarian Response Plan sets the strategic framework for humanitarian and related funding

<https://reliefweb.int/report/syrian-arab-republic/syrian-arab-republic-2019-humanitarian-response-plan-january-december-0>



## How Humanitarian Actors Work in Syria and their Financial Access Needs

Humanitarian agencies – such as the International Committee of the Red Cross, the Agencies of the United Nations, as well as international and local Non-Governmental Organisations (NGOs) – often have areas of specialisation to contribute to the emergency response, for example the provision of shelter, water supply or sanitation. Humanitarian agencies may work directly or deliver humanitarian aid through partner organisations in Syria. A combination of both direct and partner delivery may also occur. In delivering these programmes humanitarian actors need to coordinate and be in contact with local and national authorities, including the Government of Syria. Such engagement is normal practice.

Aid operations in Syria follow different modalities:

- Regular programming from humanitarian organisations registered in Damascus covering government-controlled areas.
- Crossline operations from humanitarian organisations based in government-controlled areas into non-Government controlled areas;
- Cross-border operations into Syria, currently mainly from Turkey and Iraq, into Syria.

INGOs will be required to have a programme of due diligence in place to assess the suitability of local partners, they will have also undertaken security assessments for staff and operational programmes. This is especially so given the limited access to certain areas for the UN and/or NGO partners, as well as pressure on humanitarian actors from parties in control and armed groups on the conduct of their operations. The presence of groups listed by the UN Security Council as terrorist organisations creates a further level scrutiny on humanitarian deliveries and has resulted in specialised NGO training for those operating in the North West of Syria.

The Humanitarian Response Plan sets out the importance of due diligence and monitoring for humanitarian actors. Those INGOs/NGOs participating in the Syria humanitarian response have committed to follow a baseline of monitoring, due diligence and risk-mitigation standards across all humanitarian programming, and response modalities, in line with international standards. The aim is to ensure humanitarian assistance reaches its intended beneficiaries and provides confidence that the humanitarian community delivers in a transparent, principled and accountable manner. Implementation of these safeguards will normally form part of donor funding requirements and related oversight. In the case of UN agencies who operate through vetted implementing partners (i.e. local NGOs/CSOs and INGOs), these partners are required to provide regular, frequent reporting on projects and are subject to both regular and ad hoc checks to ensure compliance, including through third-party monitors. Monitoring happens at all stages of the process, from the warehouse to distribution points, as well as post-distribution monitoring. In serious cases, humanitarian organisations have suspended assistance if it cannot be provided in line with humanitarian principles and donor requirements.

Through programme implementation, humanitarian actors require access to a full range of financial services to support their in-country activities, including normal office expenditure, such as local salaries, purchasing of local supplies, rent and building maintenance, local service fees and transportation. Depending on the nature of the programme, humanitarian actors may also require access to a wider array of financial services in order to deliver on their key objectives, i.e. building shelter facilities, providing water and sanitation, food production, financing to support cash programming and so forth. Meeting these financial needs for the whole of Syria requires access both formal banking-financial channels and other financial arrangements, including money or value transfer services (MVTS)<sup>5</sup> such as hawalas and other similar service providers.

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<sup>5</sup> As set out by the Financial Action Task Force - Money or value transfer services (MVTS) refers to financial services that involve the acceptance of cash, cheques, other monetary instruments or other stores of value and the payment of a corresponding sum in cash or other form to a beneficiary by means of a communication, message, transfer, or through a clearing network to which the MVTS provider belongs. Transactions performed by such services can involve one or more intermediaries and a final payment to a third party, and may include any new payment methods. Sometimes these services have ties to particular geographic regions and are described using a variety of specific terms, including hawala, hundi, and fei-chen. See <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>

## Section 2 – Legal, Regulatory, and Due Diligence Considerations Relevant to the Movement of Humanitarian Funds into, and within, Syria

### Overview of Financial Sanctions and the Risk Environment.

Governments typically apply targeted sanctions – also referred to as restrictive measures – either through UN Security Council Resolutions, multilateral instruments such as EU Regulations, or through unilateral national level sanctions, i.e. US sanctions.

There is no single framework that sets out the entire range of financial and economic sanctions. Sanctions include various categories and types which target individuals and entities, restricts access to funds, economic resources, and financial services and markets. Sanctions are normally utilised by states, regional bodies, or the international community through the United Nations, and are generally imposed to:

- coerce a regime, or individuals within a regime, into changing their behaviour (or aspects of it) by increasing the cost on them to such an extent that they decide to cease the offending behaviour.
- constrain a target by denying them access to key resources needed to continue their offending behaviour, including the financing of terrorism or nuclear proliferation.
- signal disapproval, stigmatising and potentially isolating a regime or individual, or as a way of sending broader political messages nationally or internationally; and/or
- protect the value of assets that have been misappropriated from a country until these assets can be repatriated.<sup>6</sup>

The US first designated Syria as a state sponsor of terrorism in 1979, with subsequent sanctions imposed in 2004 following Lebanon's political crises. However, the most recent set of international sanctions were implemented in response to the Arab Spring and ensuing war that broke out in 2011. Since then, targeted sanctions against the Syrian government have been imposed by the US, Arab League, EU, Switzerland, Turkey, Australia, Canada and other individual countries. These countries place a number of restrictions on Syrian businesses, sectors, individuals and entities who controlled by or associated with the government. The targets of those sanctions include the Central Bank of Syria, the largest state-owned banks and the Syrian petroleum industry. Varying prohibitions also exist in the provision of certain financial services, including correspondent banking, currency services for the Syrian government and the direct or indirect sale, purchase or brokering of gold, precious metals and diamonds. There are wide-ranging bans on certain types of investment into critical industries and sectors. Prohibitions also exist on the export of certain 'dual use' items, the US imposes a blanket ban on exports to Syria (with humanitarian exemptions).

UN Security Council Resolutions 1267 (1999), and subsequent resolutions concerning ISIL (Da'esh), Al-Qaida, and associated individuals further impose broad-ranging sanctions. This is particularly relevant for humanitarian operations in non-Syrian government-controlled areas such as the North West of Syria.

### Structuring Humanitarian Activity to Ensure Compliance with Sanctions

How to structure humanitarian activities and the processing of related funds into and within Syria without violating sanctions, or local regulations of neighbouring countries or Syrian authorities, presents challenging dilemmas for both financial institutions and those delivering humanitarian aid.

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<sup>6</sup> For example, see the UK Office of Finance Sanctions Implementation (OFSI) guidance [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/862451/OFSI\\_general\\_guide\\_to\\_Financial\\_Sanctions.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/862451/OFSI_general_guide_to_Financial_Sanctions.pdf)

The collapse of the banking system in non-government controlled areas, plus US, EU, and other countries' sanctioning of Syria's government-owned banks – including Syria's largest banks – have resulted in a situation where there are very limited available channels and custodians for funds coming into Syria. The Commercial Bank of Syria (CBS), sanctioned in 2011, is the largest bank, not just amongst government-owned banks, but also compared to private banks operating across the country. Additionally, non-sanctioned banks within Syria have typically been established as joint ventures with some level of Syrian investment.

The compound effect of sanctions and lack of alternative banks makes it extraordinarily difficult to carry out Euro or US dollar-denominated transactions within Syria, through what remains of the current banking system.

EU sanctions and export controls include asset freezes and a number of restrictions on the types of financial services, including new correspondent banking relationships, which EU banks can offer in Syria. Restrictive measures also prohibit the export into Syria of certain goods that can also be used for internal repression.<sup>7</sup> Some goods subject to some level of control will often need to be utilised within humanitarian and wider resilience programs.

The US sanctions program extends beyond that of the EU, by imposing a blanket export embargo and broader financial measures. Activities of US as well as non-US persons and entities are also restricted to items subject to US jurisdiction. Because the US has designated Syria as a State Sponsor of Terrorism, there is an export ban against Syria for almost all US-origin items, wherever located. The ban includes foreign-produced items, in which US content accounts for 10% or more of the value of the finished product.

In parallel to the legal framework of sanctions, regulatory requirements and expectations with the inherent challenges and difficulties of managing third party risks associated with activities in Syria have resulted in many banks dramatically reducing their exposure to Syria.

This has been further exacerbated by actions of certain enforcement authorities against many of the global banks for not implementing adequate risk mitigation programs, resulting in a variety of disciplinary actions including fines, remediation programs, and enhancements to compliance arrangements. The combined impact of legal, sanctions and regulatory requirements and expectations, coupled with the challenging operational risk environment within Syria and the region, has resulted in many banks exiting correspondent bank relationships, as well as overall exposure to Syrian customers.

### **Humanitarian Impact of Syrian Correspondent Banking Withdrawal**

Correspondent banking is the provision of banking services by one bank (the “correspondent bank”) to another bank (the “respondent bank”). Large international banks typically act as correspondents for thousands of other banks around the world. Correspondent banks are most likely to be used by domestic banks to service transactions into and from jurisdictions in which they do not have a physical presence in. The provision of correspondent banking services is viewed as an essential component of the global payment system, especially for cross-border transactions.

The 2015 Financial Stability Board (FSB) report to the G20 on the decline in correspondent banking relationships, states that the ability to make and receive international payments via correspondent

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<sup>7</sup> In certain situations, humanitarian operators can benefit from exemptions, which do not required prior authorisation by a EU Member State Competent Authority (see Section 4).

banking is vital for business and individuals.<sup>8</sup> In Syria's case, correspondent banking channels have dramatically reduced. This reflects a global trend whereby bank to bank activity has considerably reduced within certain jurisdictions, i.e. countries subject to sanctions and higher risk Anti-Money Laundering (AML) environments.

Humanitarian actors report that the significant reduction of available correspondent bank routings into Syria has resulted in a more limited and drawn-out process for the transfer of operational humanitarian funds. It should be noted there are extensive US/EU restrictions in place on the opening of new correspondent relationships with Syrian financial institutions.

## EU, UK and US sanctions – Who Needs to Comply?

Humanitarian organisations working in Syria and similar high-risk jurisdictions need to carefully consider how they comply with relevant sanctions. Failure to comply may result in criminal or regulatory breaches of financial sanctions, and in some cases export control violations. Obligations to adhere to sanctions may apply to humanitarian activity, no matter whether undertaken by international organisations, charities and NGOs, including individual members of staff, regardless of whether they are government funded.

It is worth noting that citizens in third countries (for example EU, UK and US citizens working in Syria)<sup>9</sup> are required to respect relevant sanctions and restrictive measures. This will apply even in circumstances where the employing organisation has no EU, UK or US exposure.

Additionally, sanctions and restrictive measures are likely to apply to entities or bodies that are tasked with the implementation of humanitarian activities which are, directly or indirectly, funded by the budget of the EU or US.

Humanitarian actors can also be subject to financial sanctions imposed by other governments depending on areas of operation, nationality of staff, origin of goods utilised within humanitarian programmes (for example if exporting US origin goods) and dealing in the currency of a particular country, i.e. US dollar. UN Security Council obligations, and especially those related to designated terrorist actors, will also be relevant.

In instances where a certain activity is prohibited under the relevant sanctions regime, there may be a need to apply for a licence or ensure that a general derogation/exception applies. More information on this is provided in section four.

### US & EU – To Whom Do Sanctions Apply?

The application of restrictive measures and sanctions are set out in specific regulation and laws, but they can often be very broad and may apply in the following circumstances:

1. US/EU citizens and permanent residents wherever they are located.
2. Companies, NGOs and other entities organised under the law of the US and EU.
3. All people and organisations who are physically located in the US and EU.
4. Branches of US and EU companies and other entities located throughout the world.

### To Note: Application of Secondary Sanctions to non-US persons

- 'Secondary sanctions'<sup>10</sup> are US sanctions that are intended to prohibit third-country (e.g., EU or Middle Eastern) business with Syria, not just US business. They can apply to either categories of activity, e.g., provision of refined fuel, or to third country business with a sanctioned

<sup>8</sup> Financial Stability Board Report to the G20 on the decline in Correspondent Banking Relationships, November 2015 <http://www.fsb.org/wp-content/uploads/Correspondent-banking-report-to-G20-Summit.pdf>

<sup>9</sup> Unlike in the EU and the US, Swiss citizens are not subject to this principle.

<sup>10</sup> The imposition, or threat of imposition, of secondary sanctions related to Iran, North Korea, Syria etc has grown considerably over the past 18 months. For an overview of the cross-border legal, regulatory and compliance considerations see 'Secondary Sanctions' Implications and the Transatlantic Relationship', Samantha Sultoon & Justine Walker, Atlantic Council, Sept 2019 <https://www.atlanticcouncil.org/in-depth-research-reports/issue-brief/secondary-sanctions-implications-and-the-transatlantic-relationship/>

person/company/entity. Secondary sanctions threaten to cut off non-US persons from the US financial system.

- As an example US secondary sanctions related to Syria generally apply to: transactions with Syrians sanctioned under Weapons of Mass Destruction and counter terrorism authorities; transactions with certain Syrian officials and Syrian government entities; transactions with Syria that facilitate certain human rights abuses; transactions that touch Iran-Syria ties; and transactions related to provision of oil/refined petroleum to Syria.
- In December 2019, **the Caesar Syria Civilian Protection Act**, also known as the Caesar Act, was incorporated in the National Defense Authorization Act (NDAA) for Fiscal Year 2020. As part of Caesar, secondary sanctions will be imposed as of June 2020, on foreign individuals knowingly engaged in **significant activities** with regard to certain activities.

#### **Humanitarian Actors may take some comfort regarding implementation of US secondary sanctions from the following:**

- The US has issued guidance that it will not impose sanctions on a non-US entity for doing something that is either not prohibited under US law or would be authorised under a US general license.
- Current US policy implies that priority targets for secondary sanctions are not humanitarian actors but those linked to the Syrian government and those engaged in petroleum sector reconstruction.

#### **A word of caution to humanitarian actors:<sup>11</sup>**

There may be increased risk of sanctions exposure if activities look more like reconstruction than humanitarian assistance (i.e. rebuilding/repairing infrastructure which is either government run or linked). In such instances you should consult the most updated US guidance and/or seek legal advice. The US Treasury Office of Foreign Assets Controls (OFAC) do operate a hot line for questions on US sanctions.

## **Who Will Benefit from the Payment or Services Provided – The Importance of Screening and Due Diligence?**

In advance of making payments into Syria, humanitarian agencies and banks need to check, *inter alia*, whether:

- i. The people or organisations they are planning to deal with are designated persons on an EU, UK, US or equivalent asset freeze list or travel bans.
- ii. If the planned humanitarian activity could benefit directly or in-directly a designated person.
- iii. The activity they are engaging is either prohibited (i.e. could be classified under US sanctions as a significant reconstruction activity in areas of Syrian government-control) or would cause a violation to occur.

Due diligence is essential to mitigate against risks of a sanctions' violation occurring. The precise level of due diligence is not set out in legislation and will therefore be influenced by a range of factors including, but not limited to: scope of the project; delivery partners involved; likely exposure to a designated actor – either directly or indirectly; geographical areas of location; who is involved in the payment chain.

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<sup>11</sup> This caution could also be applicable to EU sanctions compliance. EU member state national competent authorities are the contact point for guidance on what is reconstruction and what is humanitarian. Do note Article 9a, 13a and 25a of the EU Syria Regulation includes certain derogations for reconstruction.

In the context of EU due diligence, the importance of the following two provisions of Council Regulation 36/2012<sup>12</sup> should be noted:

- Article 27a. It shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the provisions of Articles 2a, 3, 3a, 4, 5, 6, 7a, 8, 9, 11, 11a, 11b, 11c, 12, 13, 14, 24, 25, 26 and 26a.
- Article 28. The prohibitions set out in this Regulation shall not give rise to any liability of any kind on the part of the natural or legal person, entity or body concerned if they did not know, and had no reasonable cause to suspect, that their actions would infringe the prohibition in question.

A first step in the due diligence process is the need to ensure you are not engaging with any person or entity listed on 1) consolidated list of persons, groups, and entities subject to European Union financial sanctions, 2) OFAC's Specially Designated Nationals (SDN) and non-SDN lists, and 3) the UK consolidated sanctions lists.<sup>13</sup> Information on how to access all these lists is provided in section 5 of this report. The term 'sanctioned persons' is a general term which may include individuals, terrorist groups, governments as well as companies and other entities of legal personality.

#### **Practical Tip – Who Should Humanitarian Agencies Screen?**

- Making a decision on who should be screened and how frequently to undertake this task will be informed by the NGO's risk assessment and geographical factors.
- At a minimum, potential delivery partners in Syria should be checked against the list of designated persons issued by both the US, EU and UK. You will also need to consider suppliers and those who you are entering into contracts with, for instance property landlords and those providing ancillary services i.e. telecom providers will also need to be considered.
- It is advisable to repeat the task of screening on a regular basis – remember sanctions lists are 'living' documents and subject to frequent change.

#### **To note:**

- Beyond official government-issued lists of those subject to sanctions, commercial third-party databases provide further detail to that contained on official lists (i.e. on ownership and control, plus wider in-direct and risk exposure). The NGO's risk exposure and risk tolerance will determine whether access to these services are necessary.
- Screening the names of final beneficiaries in receipt of humanitarian assistance against sanctions lists is generally not required, as this may be deemed as contrary to International Humanitarian Law.

## **Making Funds Available to a Designated Actor – The Importance of Determining Ownership and Control**

When assessing whether you are dealing with a sanctioned individual or entity, understanding the concepts of ownership and control becomes a key component of the due diligence process. This is because obligations extend beyond those directly identified as subject to sanctions. The legal threshold for ownership and control is established in accordance with set criteria issued by the EU, US, UK and other authorities. In its most basic form, the restriction prohibits the making available of funds (generally meaning cash and finance

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<sup>12</sup> For Council Regulation 36/2012, see <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02012R0036-20200217&from=EN>

<sup>13</sup> It should be noted that the UK is due to leave the European Union on 31 December 2020, following their departure the UK will operate an autonomous sanctions regime. Further information on the scope of the new UK regime and inter relationship with EU regulations is provided in Section 6.

in any form) or economic resources (generally meaning assets of any kind, i.e. vehicles) directly or indirectly to a listed person.

The “EU Best Practices for the effective implementation of restrictive measures” stipulates the criteria relevant to ownership and control. In this case, if ownership or control is established in accordance with the criteria, the making available of funds or economic resources to non-listed legal persons or entities which are owned or controlled by a listed person or entity will, in principle, be considered as making them indirectly available. However, this will not apply, if, after taking into account all of the relevant circumstances, that the funds or economic resources concerned will not be used by or be for the benefit of that listed person or entity.<sup>15</sup>

Common scenarios faced by humanitarian actors in Syria that could trigger making funds and economic resources available to a designated actor include:

- Renting a building for humanitarian operations from a company which is ultimately owned by an individual or entity on the sanctions list.
- The purchasing of equipment required for humanitarian purposes from a non-listed company which is ultimately owned by an individual or entity on the sanctions list.
- Engaging with third-party suppliers who may operate on behalf of a designated actor or entity.
- Purchasing fuel from a non-designated actor, but that actor has a financial agreement in place, which would result in a significant benefit to a designated actor.

Determining ownership and control can pose many operational challenges, including lack of available and transparent information, the ability to identify associated persons linked to a designated individual or entity, or ability to have trust in the authenticity of the information provided. The risk for individuals in undertaking such due diligence should also not be underestimated.

**Top Tip for Humanitarian Actors: Dealing – Directly or Indirectly – with a Sanctioned Individual or Organisation**

For humanitarian programmes operating in Syria, and similar high-risk jurisdictions involving designated actors, the concept of making funds or economic resources available indirectly to, or for the benefit, of a designated person can be one of the most challenging aspects to manage.

Assess the risk of whether NGO’s programmes are likely to engage with a designated actor, either directly or indirectly. With risk exposure, the level of proximity and nature of this exposure needs to be assessed.

To note: The legal concepts of ownership and control have evolved considerably over the past decade. Many businesses are so complex that it can be challenging to determine who ‘owns’ or ‘controls’ them. There are also subtle but important differences between the US OFAC 50% rule<sup>14</sup> and the guidance issued by the EU on ‘ownership and control’. There are challenges for both banks and INGOs in applying these different criteria in assessing ownership structures and can add an extra layer of complexity in the delivery of humanitarian operations.

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<sup>14</sup> The 50 % rule is how OFAC determines whether companies not appearing on the SDN list are considered sanctioned because they are owned by other companies or people who do appear on the SDN list. Further guidance on the 50% rule is available on the OFAC website, see section 6.

<sup>15</sup> Para 66, EU Best Practices for the effective implementation of restrictive measures

<http://data.consilium.europa.eu/doc/document/ST-8519-2018-INIT/en/pdf>

## Section 3 – Sending Humanitarian Funds into, and within, Syria

It is important for all involved in supporting the movement of humanitarian funds to have a clear understanding of the nature of transactions and how funds will reach the ultimate beneficiary in Syria. In processing payments to Syria, banks and humanitarian actors will first need to consider the following set of questions:

- What currency is the transaction in? Will the transaction need ‘clearing’ through the US financial system? This will have an impact regarding the applicable sanctions regime and related compliance factors.
- Which sanctions regimes are applicable, for instance terrorism, individual designations, Syria specific regimes?
- Is the activity restricted under the relevant sanctions regimes? Is there a possibility to apply for a specific license authorising the activity? Is the activity exempted if carried out to provide humanitarian aid?
- Are any parties to the transaction subject to sanctions designations? Are there any potential matches to SDNs/designated persons in the screening which need to be investigated?
- Is there any involvement of the Government of Syria<sup>16</sup> or a designated terrorist actor?
- Who is the ultimate beneficiary of the transaction/aid?
- Is there any relevant adverse media relating to any of the parties involved i.e. they are operating on behalf of a designated actor?
- Is the activity taking place in an area restricted under relevant counter-terrorism and security legislation (i.e. prohibitions on travelling to certain areas) and, if so, what humanitarian exemptions are in place?
- Are any goods involved? If so, are the goods subject to export controls, or US origin thresholds?
- What ancillary activities will need to take place, for instance purchasing sim cards?
- How will the humanitarian actor deal with restrictions on fuel?
- What reputational risks might result from the transaction/activities?

### The Formal Banking System in Syria

In considering the risk management process for the actual movement of funds, humanitarian actors and their banks will need to determine the availability of likely payment channels. As a first step, this will involve an assessment of the viability of process payments through the formal banking system.

In the context of Syria, at the time of writing, the formal banking system comprises 20 commercial banks: six local state-owned banks (all subject to EU and US sanctions), and 14 subsidiaries of private regional banks (2 of which are subject to US sanctions).

The largest in terms of capital, operations and services is the sanctioned state-owned Commercial Bank of Syria (CBS). It has more than 72 branches across the full breadth of Syria. In terms of private banks, all have some element of Syrian investment, although the majority of shareholding is located outside of Syria. Two private banks are subject to US Sanctions: Cham Bank SA and Syria International Islamic Bank.

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<sup>16</sup> It should be noted that most programmes will require some level engagement with national and local authorities, including the Government of Syria.



Table 1 – Non-Sanctioned (EU and/or US) Private Banks Operating in Syria

Private Banks located in Syria	Location of Major Shareholding	Home State Major Shareholding Regulator
Bank Syria & Overseas S.A (BSO)	Lebanon	Bank Control Commission of Lebanon (BDL)
Banque BEMO Saudi Faransi S.A (BBSF)	Lebanon	Bank Control Commission of Lebanon
Arab Bank Syria	Arab Bank, Jordan	Central Bank of Jordan (CBJ)
Al Baraka Bank Syria S.A	Al Baraka Banking Group, Bahrain	Central Bank of Bahrain
Bank Audi Syria S.A	Bank Audi S.A.L, Lebanon	Bank Control Commission of Lebanon
Byblos Bank Syria S.A	Byblos Bank S.A.L, Lebanon	Bank Control Commission of Lebanon
International Bank for Trade and Finance (IBT)	Housing Bank for Trade and Finance, Jordan	Central Bank of Jordan
Bank of Jordan Syria (BoJ Syria)	Bank of Jordan, Jordan	Central Bank of Jordan
Fransabank Syria S.A	Fransabank SAL, Lebanon	Bank Control Commission of Lebanon
Qatar National Bank Syria S.A (QNB Syria)	Qatar National Bank, Qatar	Qatar Financial Centre Regulatory Authority
Syria Gulf Bank (SGB)	United Gulf Bank, Bahrain	Central Bank of Bahrain (CBB)
Bank Al Sharak	Bank Libano-Francaise S.A.L, Lebanon	Bank Control Commission of Lebanon

As of February 2020, the 12 non-sanctioned Syrian private banks were reported to be operating in most Syrian cities that are under the control of the Syrian government. Despite a registered presence, accessibility of operational bank branches in cities and areas that are out of Syrian government control remain limited. For this reason, humanitarian payment corridors need to consider both bank and non-bank routings for transfers involving the North West and North East of Syria.

Throughout the conflict, Syrian private banks have faced multiple security, regulatory and in some case liquidity challenges. There are a number of Central Bank of Syria policies and local regulations relevant for sending, withdrawing and holding funds in Syria for example: (a) raising the interest rates; (b) sudden restrictions on cash withdrawals; (c) restrictions by the Central banks on foreign currency deposits of Syrians, (d) restrictions on cross border cash movement. Those operating in Syria need to consider carefully how to conduct their operations in compliance with local regulations. Consequently, humanitarian actors and associated parties need to consider local factors that may impact their operations; for example, prohibitions/restrictions in making cash withdrawals in foreign currencies, currency exchange rate fluctuations, movement of cash over borders etc.

**Bank Accounts in Syria - Key Consideration:**

- Does the humanitarian organisation have a bank account in Syria? Will a bank account need to be opened? Will they need any authorisation from a competent authority (i.e. EU member state) to open a bank account? Who should they approach for this authorisation?
- Will the funds need to go into a delivery partners account and, if so, who does the partner bank with? Does the partner use a sanctioned or non-sanctioned bank?

*Note: It should be noted, although rarely utilised, there are US and EU provisions in place to licence payments involving Syrian sanctioned banks for humanitarian purposes.*

**Volume and Frequency of Funds Transfers into Syria**

Syrian private banks have clearly been impacted by the conflict. As such, humanitarian actors need to plan carefully the amount of funds transferred into and held within Syria at any given time. Instead of large

one-off payments, humanitarian actors may instead prefer to utilise regular payment routings of smaller amounts. How and where to hold programme funds will require regular review. This is particularly evident given the 2019 financial crises in Lebanon which impacted a wide number of humanitarian organisations working in both Lebanon and Syria.

**Practical Tip:** Humanitarian actors should provide clear information to their banks, and, if relevant, licencing authorities, on the likely frequency of payments to be made and what these payments will cover. This information will help enable banks to manage their own internal controls.

**Practical Tip:** The Issuance of ‘Statements of Facts’ letters to support funds movement

In some instance donors and government agencies may be willing to issue a ‘statement of facts’ letter that set out a factual assessment of their decision to fund an implementation partner. These letters may be helpful for humanitarian actors to provide to their banks. It should be noted that a ‘statement of facts’ letter will not go as far as a ‘letter of comfort’ which may be viewed as offering a blanket endorsement of the partner and/or programme.

## Accessibility of Bank Branches and Non-Banking Payment Options

The security of bank branches in Syria has, over recent years, posed a major concern, with many having faced numerous armed robberies and been forced to close. Also, due to security reasons, banks’ staff may not be able to travel to work. This is particularly the case for contested areas, or those outside of Syrian government control. In these areas those that do continue operations do so on an extremely limited basis.

Both physical damage of the telecommunications infrastructure and difficulties in obtaining hardware and software updates have further impacted both private and state banks. ATMs are often reported as out of service, either due to connection problems or lack of power. Some banks have begun to invest in solar energy in an attempt to address escalating power problems in Syria.

In many cases, humanitarian actors report that the only viable way to transfer money to an increasingly large number of their projects operating in those areas outside Syrian government control is via informal non-bank networks. For instance, funds received by an INGO may be received into accounts held in Turkey, Jordan, Lebanon, and Iraq by bank transfer, either to their office in those countries, or directly into the account of their implementing partner. Funds are then moved by a variety of money value transfer systems into Syria. Funds may also be received directly into INGO accounts in Damascus and then onwards across Syria.

A report carried out under the guidance of the Norwegian Refugee Council found that various informal value transfer systems have been used, to the virtual exclusion of the formal banking sector.<sup>17</sup> For some areas of operations reliance on non-bank operations, including hawala, to cover NGOs’ operational costs and pay their suppliers represents the only viable option for funds movement.

Beyond the increased expectations of due diligence oversight by humanitarian actors, one of the primary concerns is that funds are rarely transmitted directly to the ultimate beneficiary.<sup>18</sup> This lack of end-to-end payment transparency can be highly problematic for humanitarian actors, donors and banks involved in

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<sup>17</sup> Roger Dean, ‘Remittances to Syria: What Works, Where and How’, July 2015

[http://reliefweb.int/sites/reliefweb.int/files/resources/2015-07-nrc---remittances-to-syria---reportfinal-\(1\).pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/2015-07-nrc---remittances-to-syria---reportfinal-(1).pdf)

<sup>18</sup> For further information on payment challenges and associated risk management factors through the use of hawala see: Edwina Thompson, Technical Assessment, ‘Humanitarian use of Hawala in Syria: Prepared for aid agencies conducting cross-border operations’ 31 July 2015 [http://documents.wfp.org/stellent/groups/public/documents/op\\_reports/wfp280155.pdf](http://documents.wfp.org/stellent/groups/public/documents/op_reports/wfp280155.pdf)

partial remittance of the funds. Equally INGOs will need to carefully assess their compliance with local regulations and prohibitions on the use of foreign (non-Syrian) currency.

### Assessing Geographical Risk Factors in the Movement of Humanitarian Funds

The routes available to send funds into and within Syria will vary considerably depending on the end destination point. For example, in North West Syria there are no operating banks in this area and consequently payments into and within the region must utilise other options, including hawala systems and cash. In North East Syria funds may move by a variety of means including hawala, cash and other means. In comparison, funds movement into government of Syria controlled areas will have a wider range of operations, including formal banking routes.

When operating in more challenging areas humanitarian actors should map available payment channels and their risk appetite for using these channels. This should include:

- **Risk Assessment & Record Keeping.** Undertake a risk assessment of the use of both formal and non-banking channels. Do keep records of your assessment and conclusions.
- **Traceability and Transparency of Funds Movement.** Transparent ownership and operating models of those remitting money is critical. Where possible, use the formal finance system and/or solutions where monitoring and transparency can be demonstrated. If utilising non-banking channels pay particular attention to how money will be transferred, whether a particular operator poses a higher risk for money-laundering, terrorist financing or sanctions, and what mitigating measures can be applied.
- **Due Diligence Timelines.** Practically doing due diligence on the ground for partners/suppliers and related payment routings can be a challenge. Factor this into your planning in terms of resourcing and timelines.
- **Risk Appetite.** NGOs should determine their risk appetite, and understand those of delivery partners, banks and donors.

#### A note to banks:

- Out of necessity, for certain areas of Syria, humanitarian actors will need to utilise non-banking payment options. This is recognised by both donors and governments. FATF recognise that the MVTS sector is made up of a very diverse group of organisations, and do not pose uniform levels of risk. MVTS providers may be small organisations with limited outlet locations such as grocery stores, drug-stores, pharmacies or convenience stores, and may also include regional networks of post offices or banks or other entities, which can be branches or agents. The risk exposure of each model will vary depending on localised factors.<sup>19</sup>

### Key Risks and Challenges in Moving Funds Include:

- **Delays in payments** regularly result in interruptions in programme implementation, enhanced vulnerability to exchange rate fluctuations and heightened security risks to humanitarian actors as a result of security risks linked to unpaid and delayed salaries, plus in some instances the need to utilise cash (i.e. bulk cash movement).
- **Utilisation of non-banking channels** create additional risk factors, including whether money remitters/hawala-providers are regulated, vetted or operating on behalf of designated actors and/or are involved in wider criminal activity such as money laundering. Reliability of service providers

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<sup>19</sup> example, 2016 FATF guidance on the Risk-Based Approach for MVTS: <https://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-RBA-money-value-transfer-services.pdf>

is further noted as a challenge, with a number of non-banking operators operating as general traders/commercial business that may support money-transfers as a secondary activity.

### **Summary - Challenges with Sending Humanitarian Funds into and within Syria**

- The largest banks in Syria, both in terms of size and geographical coverage, are subject to US and EU sanctions. As such, most international banks operate an ‘exceptions allow’ policy regarding transfers to Syria. This means all payments (including humanitarian payments) are likely to be stopped and reviewed, often resulting in delayed and declined payments.
- Significant US and EU restrictions apply to the non-designated Syrian private banks, including restrictions on the establishment of new correspondent banking relationships and opening of bank accounts within Syria.
- The formal banking sector has been impacted by the conflict and wider regional dynamics; in some areas the branch network of banks may not be readily accessible.
- Out of necessity, humanitarian actors are often required to utilise alternative non-banking payment channels for fund movements into and within Syria. These channels vary significantly in their risk profile. Information of local ownership and registration may be difficult to access, thus reducing the willingness among international banks to process payments due to a lack of end-to-end payment visibility.
- Wider regulatory requirements on anti-money laundering, counter-terrorist financing and anti-corruption are difficult to monitor in sanctioned and fragile environments. This again reduces the willingness of international banks to process payments on behalf of humanitarian actors.
- International banks may not always have the necessary information to determine whether a payment relates to a sanctioned or permissible humanitarian activity. This is particularly true in correspondent banking scenarios. Getting all banks involved in the correspondent banking chain comfortable with a specific transaction is both challenging and time consuming.
- Overall, the availability of payment channels is limited and beneficiary banks will often not advertise routings.

## Section 4 - Effective Utilisation of the Humanitarian Exceptions Framework

Licensing frameworks for Syria remain one of most complex areas in global sanctions compliance, marked by ever-mounting unease among NGOs, banks and those manufacturing and exporting humanitarian goods regarding how to deal most effectively with competent authorities and regarding which activities require licences.

### Humanitarian Exemptions within Sanction Frameworks – the Policy Intent

The US and EU frameworks generally provide certain exceptions under the financial sanctions and export control regimes, for example the export of goods used to support humanitarian operations, or financial engagement with certain designated actors.

In the US context, these may be permitted by either a ‘general license’ or ‘individual/specific license’. A general license will automatically apply if the activity falls within the scope of the set parameters of that license. An individual/specific license is issued by competent authorities authorising a set of defined activities.

For the EU framework, there are two broad categories, 1) exemptions that do not require authorisation, and 2) derogations that are subject to authorisation by the EU member state’s competent authority. These categories are broadly followed by other countries implementing EU sanctions. The policy intent of targeted sanctions is to not interrupt the export of medicines, foodstuffs, or other humanitarian goods to countries against which financial sanctions may be in effect. In considering this, it is important to demonstrate that items used for humanitarian purposes do not fall under the scope of ‘similar’ items restricted for other purpose (e.g., for medical masks versus masks used in the context of internal repression).

On a case-by-case basis, government authorities will consider applications for ‘specific licenses’ or ‘derogations’ to authorise transactions, neither exempt nor covered by a general license or exemption framework. The decision on whether to give approval or refusal depends on a range of factors. For instance, in the case of export controls, the nature of the goods and other policy aspects will be considered. The factors that will determine whether a license will be granted can be expected to include: nature of the goods due to be exported; destination within Syria; ultimate end use of the goods; the risk of diversion, and whether a good could be used for an alternative use. Competent authorities approving Syrian-related licenses indicate that the risk of diversion (i.e. goods will be stolen or sold for profit) is of particular concern.

#### **Keep in Mind:**

- What is and is not permitted without a license and/or prior authorisation, can vary considerably across those countries imposing sanctions.
- In principle, humanitarian related goods and assistance may fall out of the scope of any applicable sanctions’ regime, and consequently no license or prior authorisation may be required.
- In complex environments such as Syria, there may be no exemptions or legal authority for a competent authority to issue a licence. For instance, there may be no licensing grounds to authorise humanitarian activity which would benefit a certain designated actor. Therefore, do not automatically assume it is permitted just because it is for a charitable or humanitarian purpose.

## US Syria Sanctions and Export Control Framework

Given the stringent nature of the US system those involved in humanitarian activity should ensure knowledge of how sanctions and export control frameworks operate in practice.

It is important to note that the US and EU frameworks operate within different parameters and legal structures. However, there are a number of aspects contained within the US framework that are mirrored within the EU context.

The US government maintains a complex regulatory framework with regards to activities involving Syria. The framework consists of several US statutes and executive orders, which are implemented through sanctions<sup>20</sup> and export control regulations.<sup>21</sup> Generally, the sanctions regulations govern the activities of US persons and transactions within US commerce, whereas the export control regulations govern the movement of goods (regardless of whether a US persons is involved).

The US government's sanctions, and export control regulations are more restrictive than similar regimes maintained by the UN, the EU and other nation states. The sanctions regulations broadly prohibit involvement of any "US persons" (i.e., an individual or an entity organised under US law) in any transaction involving Syria, including the provision of services. Thus, no US bank can process any transaction involving Syria, unless authorised by license to do so. In addition, US persons may not facilitate transactions conducted by non-US persons.

Activities of US and non-US persons and entities also are restricted with respect to items that are subject to US export jurisdiction. Because the US has designated Syria as a State Sponsor of Terrorism, there is an export ban against Syria for almost all US-origin items, wherever located. The ban includes foreign-produced items in which US content accounts for 10% or more of the value of the finished product.

### **Exceptions to the US Prohibitions: General Licenses, License Exceptions, and Specific Licensing**

While the sanctions and export control regulations contain broad prohibitions on dealings with Syria, the US government makes exceptions in a number of ways:

- General Licenses provide waivers of the sanctions published in the regulations.
- License exceptions establish rules for when a license is not required for exports.
- Specific licenses provide private waivers for particular situations.
- Food and medicine that are non-controlled (i.e., designated as "EAR99" under US export rules) are explicitly excluded from the US export embargo against Syria.

Outlined below are three important exceptions that apply to the UN and NGOs under the Syria regulations.

- (1) **Broad Authorisation for UN Activities:** The sanctions regulations contain a broad grant of authority for "all transactions and activities otherwise prohibited by [the sanctions regulations], that are for the conduct of the official business of the United Nations, its Specialised Agencies, Programmes, Funds, and Related Organisations by employees, contractors, or grantees thereof".<sup>22</sup> The scope of this General License is expanded by a provision that permits transactions "ordinarily incident"<sup>23</sup> to the General License dealing with the UN. This covers transportation, the processing of payments, insurance and the like.

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<sup>20</sup> The Syrian Sanctions Regulations ("SSR"), administered by the US Treasury Department's Office of Foreign Assets Control ("OFAC").

<sup>21</sup> The US Export Administration Regulations (EAR), administered by the US Department of Commerce's Bureau of Industry and Security (BIS).

<sup>22</sup> 31 CFR 542.513(a).

<sup>23</sup> 31 CFR 542.404.

(2) **General License for UN** is, however, limited by two important caveats:

- Contractors and/or grantees of the UN must provide a copy of its contract or grant to any US person before that US person engages in or facilitates any activity authorised by the General License.
- The General License does not permit transactions or activities that involve persons or entities that are either on the “Specially Designated Nationals” list (i.e., “blocked”), or otherwise owned or controlled by a blocked party (a limited exception is made for the Government of Syria, which is blocked but whose involvement is recognised as necessary to effect certain transactions). The list of Specially Designated Nationals is broad and includes members of the Assad family.

(3) **Authorisations for NGO Activities:** With respect to NGOs, the sanctions regulations contain a general License, but it is more limited than the UN General License. There are two particularly important distinctions between the UN and NGO General Licenses:

- Actions taken by private-sector contractors engaged by NGOs are ‘not’ covered as they are with respect to those engaged by the UN, its agencies and affiliates.
- Whereas the UN license extends to the conduct of all “official business,” the NGO license is limited to enumerated activities that cover, most importantly for the purposes of this report, “activities to support humanitarian projects to meet basic human needs in Syria, including, but not limited to, drought relief, assistance to refugees, internally displaced persons and conflict victims, food and medicine distribution, and the provision of health services”.<sup>24</sup> The NGO license also covers activities to support democracy building, education, non-commercial development projects (e.g., health, clean water and agriculture), and preservation and protection of cultural heritage sites.

The US government has issued guidance related to the provision of humanitarian assistance by NGOs and Syria-specific “Frequently Asked Questions” (“FAQs”) containing information on the US government’s interpretation of the sanctions regulations.<sup>25</sup> These FAQs are useful supplements to the text of the regulations, particularly with regard to the scope of General Licenses, including those applicable to the UN and NGOs.

### **Exception for the Export of US-Origin Humanitarian Goods Destined for Syria**

The UN and NGOs may export food and most medicine to Syria. In addition, the US authorities have indicated that they will look to favourably approve specific licenses for Syria, covering:

- certain medicines that are export controlled, including certain vaccines
- certain medical devices<sup>26</sup>
- certain telecommunications-related items

### **Summary of US Syria General Licenses:**

In April 2020 OFAC issued a consolidated summary of their GLs within the Syrian Sanctions Regulations (SySR) related to humanitarian assistance and trade with Syria.<sup>27</sup> Similarly, the exemptions below are also

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<sup>24</sup> 31 CFR 542.516(a)(1).

<sup>25</sup> [https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Documents/ngo\\_humanitarian.pdf](https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Documents/ngo_humanitarian.pdf); [https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq\\_other.aspx#syria\\_whole](https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_other.aspx#syria_whole)

<sup>26</sup> See [https://www.bis.doc.gov/index.php/forms-documents/doc\\_view/711-bis-list-of-ear99-medical-devices](https://www.bis.doc.gov/index.php/forms-documents/doc_view/711-bis-list-of-ear99-medical-devices)

<sup>27</sup> See US Treasury OFAC COVID Factsheet, April 2020 <https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20200416.aspx>

captured in title LXXI of the National Defense Authorization Act for Fiscal Year 2020, titled the “Caesar Syria Civilian Protection Act of 2019,” which codifies the GL in § 542.516 of the SySR (discussed below) and that authorises certain services in support of non-governmental organisations (NGO), and includes a humanitarian waiver.

- 542.510 of the SySR authorises certain exports or re-exports to Syria of items licensed or otherwise authorised by BIS and certain related services. This GL also authorises certain services that are ordinarily incident to the exportation or re-exportation of items to Syria and certain other services to install, repair, or replace such items, provided the export of such items is licensed or otherwise authorised by BIS. Additionally, export of US origin food and medicine that is not controlled (i.e., EAR99) to Syria is not prohibited and does not require a BIS or OFAC license (see Syria FAQ 229). However, controlled medicines (such as vaccines) and any medical devices (including EAR99) will require a specific license for export, although subject to a favourable licensing review policy.
- 542.512 of the SySR generally authorises, subject to certain limitations, non-commercial personal remittances to or from Syria. OFAC also authorises US depository institutions, including banks and US-registered money transmitters, to process non-commercial, personal remittances to or from Syria, or for or on behalf of an individual ordinarily resident in Syria, provided the funds transfer is not by, to, or through the Government of Syria or any person designated or otherwise blocked by OFAC.
- 542.513 of the SySR authorises activities of certain international organisations. Subject to certain narrow limitations, the GL authorises transactions and activities that are for the conduct of the official business of the United Nations, including its specialised agencies, programmes, funds, and related organisations by employees, contractors, or grantees of those organisations.
- 542.516 of the SySR authorises, subject to certain limitations, NGOs to provide certain services in support of, and certain US financial institutions to process transfers of funds in support of, the following not-for-profit activities in Syria:
  - Humanitarian projects that meet basic human needs;
  - Democracy-Building.
  - Projects Supporting Education
  - Non-commercial development projects directly benefitting the Syrian people; and
  - Activities to support the preservation and protection of cultural heritage sites
- 542.525 of the SySR authorises the exportation, re-exportation, sale, or supply, directly or indirectly, from the United States or by a US person, wherever located, to Syria, including the Government of Syria, of services that are ordinarily incident to the exportation or re-exportation to Syria, including to the Government of Syria, of non-US-origin food, medicine, and medical devices that would be designated as EAR99 if it were subject to the EAR.
- 542.532 of the SySR authorises the provision on nonscheduled emergency medical services.

**Specific Licensing Requests:** For transactions not otherwise authorised by OFAC general licenses, OFAC will consider a specific license request on a case-by-case basis.

## EU Framework on Humanitarian Exemptions

EU restrictive measures, or sanctions, are established in a dual form: through a Common Foreign and Security Policy (CFSP) Decision (enforced at the member state level and including arms embargos and travel bans) and Council Regulations (which directly bind EU citizens and business and cover trade and financial restrictions, including asset freezes).



The EU licencing framework differs from that of the US and is based on a process of exemptions and derogations:

- Exemptions allows for activities to proceed based on self-assessment and does not require an authorisation. The exemption depends on the wording in the EU Council Regulation establishing the applicable sanctions regimes. Examples of what can be considered as “humanitarian aid” are often included in such EU Council Regulations.
- Derogations are subject to authorisation by the EU member state’s competent authority. The most common derogations refer to the possibility to release funds of, or make economic resources available to, designated persons, in order to satisfy basic needs, to pay for reasonable legal fees etc. When relevant, derogations are also included for humanitarian assistance. These derogations are often accompanied by conditions which the national authorities in charge of assessing the requests need to verify or can also impose.<sup>28</sup>

**Tip for Humanitarian Actors Purchasing Fuel in Syria – Be aware. *Are you authorised under EU regulations to purchase petroleum products in Syria in order to provide relief or assistance to the civilian population in Syria?***

*One of the most complicated issues for humanitarian actors operating in Syria concerns the purchase of fuel, the following guidance is provided:*

1. Humanitarian actors can purchase petroleum or petroleum-based products for cars, trucks, generators or similar in Syria if (i) this is strictly needed to provide humanitarian aid and (ii) those actors received funds from the EU or an EU member state. The exemption is also applicable for the payment of the fuel, even if the provider is a listed person or entity.
2. Humanitarian actors not receiving funds from the EU or an EU members state must obtain an authorisation for derogation from an EU member state competent authority before purchasing petroleum or petroleum-based products in Syria. To this end, those actors must demonstrate to the Competent Authority that the conditions under (i) are met.

Note that under scenario 2, also that purchasing petroleum in Syria from a listed entity requires two separates authorisations (i.e. one for the restriction on purchasing of oil and one for making economic resources available to a designated entity). In this case, the Competent Authority might allow joint applications.

***Tips for EU Competent Licencing Authorities (authorisation for derogations):***

Competent authorities of EU member states, and those aligning with EU sanctions, can benefit from increased cooperation in order to address common challenges and maximise cooperation on matters of compliance, enforcement, and licence-issuing. Further guidance regarding enforcement standards would also assist humanitarian actors in better understanding the national procedures for seeking member state authorisations for humanitarian aid.

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<sup>28</sup> [https://ec.europa.eu/fpi/sites/fpi/files/2-act\\_part1\\_v5\\_en.pdf](https://ec.europa.eu/fpi/sites/fpi/files/2-act_part1_v5_en.pdf)

***Tips for all Competent Authorities – Improving Ease of Navigation of the Licencing System:***

Whilst EU, UK and US sanctions regimes specifically envisage the possibility of licences to allow otherwise sanctioned activities in the context of humanitarian work, these licences are often reported as complicated and time consuming to obtain and apply.

Humanitarian actors often convey difficulties in navigating the legal framework, as well as lack of knowledge on which competent authorities they should approach. Moreover, humanitarian actors reported that further guidance from government authorities as to the criteria to be followed when applying for a licence and the criteria that government authorities use when considering whether to grant a licence would be useful.

Enhanced coordination from across government agencies is further noted as a key request to avoid contradictory messages i.e. parallel applications resulting in conflicting outcomes in respect to approval or rejection.

## Common challenges in the practical application of humanitarian exemptions within Syria

- A significant proportion of internationally funded humanitarian and resilience-building efforts will involve some level of prohibited activity (i.e. borderline goods or goods used for internal repression, services or actors involved).
- The terminology of what constitutes ‘humanitarian’ can differ between the US and EU (and also among EU member states).
- Many donor funded programs could be considered to expand into ‘development’ or could loosely be defined as ‘reconstruction’, and therefore may therefore constitute a sanctions violation unless specific project activity is licensed/approved by US/EU authorities. Humanitarian actors should seek guidance from relevant authorities in case of uncertainty.
- Lack of competent authority agreement, plus banking and NGO understanding of what activities within Syria are exempt from the relevant regulations pertaining to humanitarian, resilience and development activities.
- During the course of providing humanitarian assistance funds, economic resources may need to be made available to a designated person. For instance, utilisation of a designated bank, payment of operating licences, purchasing of fuel or other necessary goods.
- In respect of ultimate end-users within Syria, sanctions authorities, donors, banks and NGOs may differ on their understanding on what conditions should be met in order to demonstrate an adequate assessment of the risk of involvement of designated parties, and the final destination of the delivery.
- Overcoming the ‘chilling effect’, whereby even in instances where ‘no’ license is required, the concern that goods or finances could be diverted to designated individuals or entities has created a fear that, somehow, a technical sanctions violation could occur. For this reason, financial institutions and exporters will often go well beyond what is actually required. In essence, a ‘compliance buffer zone’ is implemented. In the case of Syria, the response normally leans towards a voluntary boycott. Even where goods and finance may be possible, the legal costs associated with undertaking due diligence and acquiring a license may in some instances be higher than the value of the goods and services.

### **Practical Tips for Humanitarian Actors when Applying for a US or EU Licence**

- Before applying, do check that you actually require a specific/individual licence - i.e. there is no applicable US General Licence that would cover your activities, or a relevant EU/UK exemption in place. This might include reaching out to the authority that you deem competent for your application.
- Be clear on the appropriate licensing grounds and provide solid evidence.
- Identify whether the authority you are applying to has a set humanitarian license form.
- Provide an opening paragraph within your application that summarises the project.
- Be specific – do not use overly general terms i.e. the project will ‘primarily be working on’ as this may cause uncertainty as to wider scope.
- Set out clearly what you will be doing, who you will be dealing with, trusted actors involved, any government funding involved, other factors which could support your application i.e. relevant due diligence that you have undertaken.
- Ensure you clearly set out all the activities that the licence will need to cover.
- Remember you may need to apply to different authorities beyond those dealing with financial sanctions, for instance if you are seeking to export dual use/controlled goods or utilise US origin goods.
- Explain why other routes which do not require derogations were not possible.
- Explain your monitoring activity and how report/reaction would be done in case of unintended violation.
- Inform the competent authority if other authorities are involved (e.g. transnational projects).
- Be specific on timeframe. Specify if there is any particular urgency.
- Be prepared – and available – for follow-up dialogue with the relevant licensing authority.
- Where relevant make sure your bank is aware of the application.

*Do keep in mind that there may be some activities that are prohibited and can't be licensed. These vary from regime to regime and depend on the relevant regulation. For Syria, the most common scenarios that may not be licensable include activity that would benefit a UN designated terrorist actor and certain reconstruction activities that would significantly benefit the government of Syria rather than the civilian population.*

## Section 5 - Guiding Principles for how Donors, Banks and Humanitarian Actors can Effectively and Safely Work Together to Mitigate Sanctions Violations

### Improving the Effectiveness of Collaboration

The delivery of humanitarian operations, and the movement of associated funds into fragile and conflict environments can be highly complex. The presence of sanctioned actors undoubtedly adds a further layer of complexity and can have significant ramifications for how humanitarian aid is delivered.

Over the past decade targeted sanctions have often been imposed in circumstances which are accompanied by the risk of a wider crises. This raises significantly the likelihood that the assistance of humanitarian actors will be required. Notable examples include situations involving conflict, civil uprising, impact associated with the presence of terrorist organisations, lack of state capacity to help the population and nature disaster.

Competent authorities, donors, banks and humanitarian actors need to find ways to effectively and safely work together to ensure humanitarian aid is not diverted to or abused by sanctioned entities and individuals. Central to this is a need to ensure permissible humanitarian operations are not unduly impeded by fear, or a lack of agreement on licencing provisions and uncertainty over the associated risk-management requirements for the movement of humanitarian transfers into high risk jurisdictions.

Building trust and understanding is critical. The need for collaboration between sanctions authorities, donors, banks and humanitarian agencies has never been greater. To support the advancement of effective collaboration a number of practical steps are indicated in order to make safe and effective payments into high-risk environments where sanctions is a concern.

#### **Top Tip - Building Trust and Investing in Multi-Sector Dialogue**

Sanctions authorities should seek to regularly engage with donors, humanitarian actors, banks, financial sector regulators and other government departments. Dialogue should seek to explore key bottle necks in the processing of humanitarian transactions, areas of legal uncertainty plus new and innovative solutions to delivering humanitarian and development aid so that it is safe, secure and effective.

Meetings of key stakeholders should be convened regularly with the aim of building trust and ensuring effective national level dialogue and collaboration.

### Increased and Improved Guidance

Many of the adverse impacts of sanctions regimes on humanitarian action stem from confused messaging, which in turn impacts the way in which legal obligations are interpreted. As such, progress can be made by increasing and improving government/regulatory guidance, including the issuance of FAQs that cover risk assessment, due diligence requirements and legal obligations.

### Dialogue on Proportionality

It should further be acknowledged that operating in a humanitarian crisis is fraught with difficulties and this is inevitably compounded by the challenges sanctions present. Competent authorities need to constantly review the legal and humanitarian questions INGOs face on the ground by making intelligent decisions on whether or not a particular requirement, whilst perhaps desirable, is in fact disproportional to

the specific set of circumstances where timing is everything and funds are limited. In some high-risk environments, certain desirable measures are in fact, impractical, and strict compliance with such requirements could preclude any humanitarian assistance from being provided. In such situations, authorities will need to consider an appropriate balance of obligations and issue practical guidance to NGOs.

## Improving the Effectiveness of Humanitarian Exemptions

Banks and international non-government organisations (INGOs) have increasingly articulated that the current licencing framework permitting humanitarian transactions into sanctioned and conflict environments needs a concerted programme of working together to address common challenges of interpretation, scope and utility. Competent authorities, donors and humanitarian actors should look to engage and consider the following factors:

- Donors and humanitarian actors should work together to identify whether applicable humanitarian exemptions will cover the full range of necessary humanitarian programme activity.
- Governments (regulators) should ensure that targeted measures do not unintentionally affect principled humanitarian activities. They should ensure that there are appropriate exemptions in place and facilitate their effective implementation.
- Government donors (i.e. government development agencies) should understand whether programmes they fund may require the issuance of a licence. If required, donors should ensure facilitation of dialogue with relevant counterparts, i.e. the competent sanctions authority responsible for issuing licenses.
- Prior to project commencement, humanitarian actors should clearly set out all the relevant programme activities which may result in a need to seek a derogation. This could include purchasing/import of dual use goods, fuel purchases, rent payments, necessary engagement with a designated actor and so forth.
- Where viable, competent authorities should consider the issuance of project licences which provides the necessary authorisations to cover pre-agreed activities for a set period of time.
- Competent authorities should seek to identify common scenarios which may require humanitarian actors to unavoidably engage with a designated actor – for example due to safety concerns or lack of alternative payment channels.

### **Tip – Ensure Dialogue on the Use of Essential Services and Engagement with Designated Actors**

In complex high-risk sanctions environments, those delivering humanitarian aid will often need to utilise essential services which may be owned or controlled by a designated actor. For instance, in Syria, notable examples include access to telecommunications and transportation networks i.e. Syrian Airlines.

Competent authorities should seek a regular dialogue with humanitarian actors to understand the types of scenarios where essential use of services involving designated actors may be necessary. Such scenarios will often include aspects of service reliability, staff safety and lack of alternative options.

In advancing such dialogue the concept of proportionality provides a useful framework to consider such matters.

## **Providing Reassurance for Transfers into Sanctioned and High-Risk Jurisdictions**

### ***Practical Tips for Humanitarian Organisations***

- Engage early on with your bank. Provide a summary of your proposed programme which sets out intended beneficiaries, how they were selected, the programme to be delivered, timelines, delivery partners and procurement procedures.
- Be prepared to help your bank understand your operations – they are not a specialist humanitarian organisation and may not be familiar with the controls you have in place. Banks will need to understand how you are operating, purposes of payments plus the scale and frequency of expected payments.
- Be transparent, as exhaustive as possible and build up trust with your bank. For complex scenarios explain how you have conducted your due diligence, what sanctions lists you have screened against, your criteria for selecting delivery partners and how you will deal with potential indirect sanctions exposure.
- Have a good relationship with your donor as they may be able to assist with overcoming particular challenges. Take responsibility for determining the legality of a payment and whether a license is required or not.

### ***Practical Tips for Banks***

- Engage openly with your humanitarian customers on bank policy related to specific high-risk sanctions jurisdictions and the processing of humanitarian transactions involving these jurisdictions.
- Engage early on with correspondent banks. Where applicable, ensure onward payments include licence details and the full purpose of payment in the relevant field. This may assist correspondent and receiving banks to gain comfort.
- For especially complex jurisdictions work with your humanitarian customers in order to build up a good relationship on risk management approaches and available payment routings.

### ***Practical Tips for Governments – including Government Donors, Licensing Authorities, Regulators and Enforcement Agencies***

- Government donors (development agencies) and sanctions authorities should ensure they understand the extent to which government funded humanitarian activities may be subject to a licensing requirement.
- Sanctions authorities should ensure they communicate clearly on how humanitarian activity may be subject to sanctions requirements. This should include ensuring regular dialogue with humanitarian actors and clearly articulated information on licence application processes.
- Sanctions authorities may wish to consider whether a ‘project license’ i.e. a license that covers a full range of identified activities for a set duration may be a more effective model than receiving multiple license applications involving the same project.
- In scenarios where available payment channels are limited and subject to rapid change, authorities should carefully consider how they can structure licensing arrangements to reflect these factors. For instance, in more complex and fluid situations, a humanitarian actor may not be able to identify at the time of submitting a license application the full payment chain. Banks may only process certain payments once a license has been issued and it could take multiple attempts, over numerous weeks, to move a payment through the correspondent banking network in order to reach its end destination.
- In especially high-risk scenarios, the relevant government department should consider how they can offer reassurance in respect to the processing of humanitarian payments (and more so if government funded). This could include engaging in dialogue with banks and their correspondents or issuing supporting statements e.g., ‘a statement of fact’ or ‘comfort letter’ to the relevant banks involved in processing related payments.

## The Need for Continued Dialogue at the International Level

Finally, to support the creation of viable, transparent and safe humanitarian payment corridors into highly complex sanctioned jurisdictions collective vision and leadership is required. The need for continued dialogue at the international level should not be underestimated. There are many areas where international bodies, governments, banks, humanitarian actors and other stakeholders can usefully share experiences and ensure synergies. The value of multi-sector dialogue, formal and informal, should not be lost.

It is evident that the evolving payment landscape and implementation of digital technologies has the potential to lead to substantial delivery opportunities in Syria and beyond. However, this will only be achieved with the parallel engagement of all stakeholders. Whilst these guidelines represent a step forward there remains further work to be done to ensure the effective application of humanitarian exemptions. This includes the promotion of cross competent authority licencing collaboration, greater utilisation of project licenses, further dialogue on proximity and proportionality, and the promotion of transparent and viable payment channels, including alternative payment mechanisms, for the movement of humanitarian funds.

## Section 6 – Helpful sources of further information

This section aims to offer a non-comprehensive list of sources of further information. It should be noted that sanctions obligations and those who are subject to sanctions can change frequently.

### **European Union (EU)**

- Its Best Practice Guide contains recommendations on the implementation of sanctions: <http://data.consilium.europa.eu/doc/document/ST-10254-2015-INIT/en/pdf>
- EU Sanctions Map; specifies some detail on licencing (but does not include full details of exceptions; for this the legal acts for the Syrian restrictive measures regime must be consulted): <https://www.sanctionsmap.eu/#/main>
- EU Sanctions Map link to information on National Competent Authorities: <https://www.sanctionsmap.eu/#/main/authorities>
- Consolidated list of Sanctions: [https://eeas.europa.eu/headquarters/headquarters-homepage\\_en/8442/Consolidated%20list%20of%20sanctions](https://eeas.europa.eu/headquarters/headquarters-homepage_en/8442/Consolidated%20list%20of%20sanctions)
- EU Restrictive Measures in Syria FAQs: [https://ec.europa.eu/fpi/what-we-do/sanctions/eu-restrictive-measures-syria---faqs\\_en](https://ec.europa.eu/fpi/what-we-do/sanctions/eu-restrictive-measures-syria---faqs_en)
- EC Guidance note on the provision of humanitarian aid to fight the Covid-19 pandemic in certain jurisdictions subject to EU restrictive measures: [https://ec.europa.eu/info/files/200511-syria-humanitarian-aid-guidance-note\\_en](https://ec.europa.eu/info/files/200511-syria-humanitarian-aid-guidance-note_en)

### **US Treasury's Office of Foreign Assets Control (OFAC)**

- It publishes guidance on US sanctions and humanitarian assistance: <https://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx>
- Syria Sanctions (which provides a number of links, including overview, guidance, FAQs) <https://www.treasury.gov/resource-center/sanctions/Programs/pages/syria.aspx>
- COVID-19 Fact Sheet: [https://www.treasury.gov/resource-center/sanctions/Programs/Documents/covid19\\_factsheet\\_20200416.pdf](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/covid19_factsheet_20200416.pdf)

### **UK - Office of Financial Sanctions Implementation (OFSI)**

OFSI has published the following on its GOV.UK web pages:

- a list of those subject to financial sanctions <https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets/consolidated-list-of-targets>
  - General Guide to Financial Sanctions [:https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/862451/OFSI\\_general\\_guide\\_to\\_Financial\\_Sanctions.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/862451/OFSI_general_guide_to_Financial_Sanctions.pdf)
  - FAQs Fact Sheet for Charities and NGOs: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/653168/OFSI\\_Charity\\_FAQ\\_web.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/653168/OFSI_Charity_FAQ_web.pdf)
  - Guide to Monetary Penalties: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/708990/Monetary\\_Penalties\\_Guidance\\_web.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/708990/Monetary_Penalties_Guidance_web.pdf)
- As well as other guidance and FAQs: <https://www.gov.uk/government/publications/financial-sanctions-faqs>



### **Switzerland – State Secretariat for Economic Affairs**

[Swiss sanctions general webpage](https://www.seco.admin.ch/seco/fr/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/exportkontrollen-und-sanktionen/sanktionen-embargos/sanktionsmassnahmen/massnahmen-gegenueber-syrien.html) for sanctioned individuals and entities, and links to relevant legislation: [https://www.seco.admin.ch/seco/fr/home/Aussenwirtschaftspolitik\\_Wirtschaftliche\\_Zusammenarbeit/Wirtschaftsbeziehungen/exportkontrollen-und-sanktionen/sanktionen-embargos/sanktionsmassnahmen/massnahmen-gegenueber-syrien.html](https://www.seco.admin.ch/seco/fr/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/exportkontrollen-und-sanktionen/sanktionen-embargos/sanktionsmassnahmen/massnahmen-gegenueber-syrien.html)

### **United Nations**

**UN Humanitarian Exemption Requests Democratic People’s Republic of Korea (DPRK):** Comprehensive humanitarian exemption mechanism as established by the 1718 Sanctions Committee to facilitate the delivery of humanitarian assistance to the Democratic People’s Republic of Korea (DPRK) is provided by the following. Sets out who can apply for a licence, information required, approval process and exemptions provided: <https://www.un.org/securitycouncil/sanctions/1718/exemptions-measures/humanitarian-exemption-requests>

### **Signing up for Sanctions Updates:**

OFSI: <https://www.gov.uk/email-signup?link=/government/organisations/office-of-financial-sanctions-implementation>

OFAC: [https://service.govdelivery.com/accounts/USTREAS/subscriber/new?topic\\_id=USTREAS\\_49](https://service.govdelivery.com/accounts/USTREAS/subscriber/new?topic_id=USTREAS_49)

EU: <https://webgate.ec.europa.eu/europeaid/fsd/fsf>

## Annex 1 - Summary Overview of Certain Key EU Prohibitions – *Non-Exhaustive*

The below tables offer a summary of certain sanctions and export controls provisions referenced in this document. This is a non-exhaustive list and is only provided for background purposes. It should be noted that the entire legal framework expands well beyond the prohibitions set out below. It is advised you keep updated with the most currently regulations, laws and implementing guidance.

Prohibition	Nature of prohibition	Circumstances where a licence/prior authorisation may be available for humanitarian activity
<b>Trade restrictions</b>  Articles 2a, 3(1) and Annex IA of Regulation (EU) 36/2012	Syria is subject to restrictions on internal repression items, a transit control and other restrictions  Prohibits (i) the export into Syria of certain items including detection systems for identifying explosives; and (ii) financing and brokering services in respect of such items	Where items are intended for ‘food, agricultural, medical or other humanitarian purposes’ or are for the benefit of UN, EU or Member State personnel.  Licensing agency: MS competent authority (Annex III)
Articles 2b, 3(4) and Annex IX of Regulation (EU) 36/2012	Imposes a requirement to obtain prior authorisation for (i) the export of other items into Syria, principally chemicals (eg chlorine if at 90 per cent concentration or greater); and (ii) financing and brokering services in respect of such activities.	Where there are no reasonable grounds to determine that the items will or might be used for internal repression.
<b>Asset freeze</b> Articles 14–22, Annexes II and IIA of Regulation	Freezes all funds and economic resources belonging to, owned, held or controlled by a Designated Person. Also prohibits making funds or economic resources ‘available, directly or indirectly, to or for the benefit of’ a Designated Person.	Where making funds available is ‘necessary for humanitarian purposes such as delivering or facilitating the delivery of assistance’ or ‘to ensure human safety and environmental protection’.
<b>Banking services</b> Articles 25 and 25a of Regulation (EU) 36/2012	Places restrictions on the banking services which EU banks can offer in Syria including establishing a new correspondent banking relationship with any Syrian credit or financial institution.	Some services can be authorised where they will assist ‘the Syrian civilian population’ such as ‘meeting humanitarian concerns, assisting in the provision of basic services, reconstruction or restoring economic activity, or other civilian purpose’.
<b>Purchasing of Fuel in Syria, Articles 6(b)-(c), 6a and 16 a(1)</b>	Places restrictions on purchasing petroleum products which are located in or which originated in Syria	Humanitarian actors which receive public funding from the EU/ EU Member States are not subject to that restriction if petroleum products are purchased for providing humanitarian relief/assistance to the civilian population in Syria. This is including payment for the purchase of the fuel, even if the provider is a listed person or entity.  Purchasing of petroleum products which are located in or which originated in Syria may be authorised by an EU MS in all other cases (i.e. actors not receiving EU/ EU Member States).
<b>Switzerland</b> Switzerland joined on 18 May 2011 the sanction measures that the European Union had imposed on Syria on 9 May 2011. The Swiss sanctions against Syria are therefore currently almost identical to those of the EU. The <i>Ordinance</i> on Measures against Syria (CC 946.231.172.7) lays down the measures in Swiss law. The State Secretariat for Economic Affairs (SECO) through its Sanctions division is the administrative unit responsible for implementing international sanctions in Switzerland. The exportation of dual-use goods is controlled by the provisions in the <i>Ordinance on the Export, Import and Transit of Dual Use Goods, Specific Military Goods and Strategic Goods</i> (Goods Control Ordinance, CC 946.202.1). The State Secretariat for Economic Affairs (SECO) through its dual-use export controls division is the administrative unit responsible for dual-use goods control in Switzerland.		

## Annex 2 - About the Author

It should be noted that this report was authored in an independent capacity.

**Dr. Justine Walker** is currently Head of Global Sanctions and Risk, at the international compliance membership organisation ACAMS. In this role she is tasked with leading critical industry and public-sector relationships on global sanctions effectiveness plus overseeing the international sanctions compliance training programme across 80,000 members operating in over 175 countries.

Until December 2019 Justine held the position as Director of Sanctions Policy at UK Finance. The former chair of the European Banking Federation Sanctions Expert Group, a position she held from 2015 until December 2019, Justine has held specialist policy positions in the United Kingdom at the Financial Services Authority and the Treasury's Counter Terrorist and Proliferation Financing Branch. During 2005 – 2010 Justine was part of the UK delegation to the Financial Action Task Force. She has further acted as an International Monetary Fund advisor on the Nigerian anti-money laundering and counter-terrorist financing capacity building program. Formerly based in Central Asia with the United Nations, she has also worked on programs surrounding weapons and drug trafficking, corruption and terrorist financing, and has served as a national expert on the financing of weapons of mass destruction matters.

Justine has extensive experience of working with foreign governments, international bodies and financial institutions on cross border sanctions matters. This includes acting as an independent expert on the promotion of payment channels in support of permissible international humanitarian activity within sanctioned and fragile jurisdictions. On behalf of the Alliance for Financial Inclusion and under the auspices of the German G20 Presidency, she prepared the special report on access to finance for forcibly displaced persons.

She holds a Ph.D. from the University of St. Andrews and an M.Sc. from the University of Edinburgh.

Risk Management Principles Guide  
for Sending Humanitarian Funds into Syria  
and Similar High-Risk Jurisdictions