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**Commission Notice**

**COMMISSION GUIDANCE NOTE ON THE PROVISION OF HUMANITARIAN AID  
TO FIGHT THE COVID-19 PANDEMIC IN CERTAIN ENVIRONMENTS SUBJECT  
TO EU RESTRICTIVE MEASURES**

## INTRODUCTION

EU restrictive measures (sanctions) may consist of the freezing of funds or economic resources of certain persons, entities and bodies, as well as in some cases in restrictions to trade in certain goods and services. The purpose of these restrictions is to attain the objectives of the Union's Common Foreign and Security Policy, which include in particular preserving peace, strengthening international security and consolidating and supporting democracy, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law (Article 21 of the Treaty on European Union).

EU sanctions are targeted. They focus on those whose actions endanger the abovementioned values, while avoiding negative consequences on the civilian population. In particular, EU sanctions are not meant to stand in the way nor impede the supply of humanitarian aid, including medical assistance. EU measures comply with all obligations under international law, in particular international human rights law, international refugee law, and international humanitarian law<sup>1</sup>.

Sanctions may alter a country's ability to fight COVID-19 by affecting the procurement of certain goods and technologies, either because such goods are subject to restrictions (for instance, dual-use goods which can also be used for military purposes), or because the persons involved in their procurement are sanctioned. In addition, there may be an indirect, but significant effect caused by certain operators' unwillingness to engage in transactions related to a sanctioned country or individual, even if those are legitimate (over-compliance), for fear of accidentally violating the sanctions, or a lack of economic incentives to engage in comparison to the risks stemming from those transactions. In addition, those targeted by restrictive measures may pass on to the civilian population the economic consequences of international sanctions imposed on them, thus increasing hardship for the non-targeted civilian population.

The EU sanctions in force and the complete lists of persons and entities designated under EU sanctions are reflected in the EU Sanctions Map<sup>2</sup>. The list of persons and entities is also available in the Financial Sanctions Database<sup>3</sup>. Both tools are freely accessible to Humanitarian Operators.

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<sup>1</sup> Council Conclusions on Humanitarian Assistance and International Humanitarian Law - Brussels, 25 November 2019, ref. 14487/19 (<https://data.consilium.europa.eu/doc/document/ST-14487-2019-INIT/en/pdf>). Council Conclusion on Communication from the Commission to the European Parliament and the Council on the EU's humanitarian action: new challenges, same principles – Brussels, 20 May 2021, Ref. 8966/21 (<https://data.consilium.europa.eu/doc/document/ST-8966-2021-INIT/en/pdf>).

<sup>2</sup> <https://www.sanctionsmap.eu/>. The official source of EU law is the Official Journal of the European Union, which prevails over the Sanctions Map in case of conflict.

<sup>3</sup> <https://webgate.ec.europa.eu/fsd/fsf>.

## GENERAL PRINCIPLES

- ✓ EU sanctions are not meant to stand in the way nor impede the supply of humanitarian aid. Any action not explicitly prohibited under EU sanctions is considered permitted, unless otherwise stated by a national competent authority (NCA). Over-compliance should not lead to undermining the provision of humanitarian aid.
- ✓ EU sanctions may contain exceptions which enable otherwise restricted actions to be carried out in order to provide humanitarian aid. In the context of the fight against the COVID-19 pandemic, restricted activities may be exceptionally allowed even in the absence of explicit exceptions, if there is no other means to ensure the provision of humanitarian aid.
- ✓ It is for the Humanitarian Operators to prove to the relevant NCA that the conditions of the existing exceptions are fulfilled, or, in the absence of such exceptions, that the only available option to provide humanitarian aid to the persons in need is to resort to restricted activities. NCAs should provide necessary guidance as to how to obtain humanitarian derogations. When a derogation is requested, it needs to be dealt with expeditiously.
- ✓ The Commission calls on Member States to create a contact point for humanitarian derogations and cooperate closely in the context of the fight against the COVID-19 pandemic.

**The purpose of this Guidance Note is to give practical guidance, in the form of questions and answers, on compliance with EU sanctions when providing humanitarian aid, in particular medical assistance, to fight the COVID-19 pandemic<sup>4</sup>.** This Guidance Note is addressed to all actors subject to the jurisdiction of the EU involved in such activities. First, it seeks to support the competent authorities of EU Member States (hereinafter “NCAs”). These are national bodies nominated by the Member States to manage EU sanctions at a domestic level. They are called upon to assess requests for derogations, reply to questions or otherwise engage with operators within their jurisdiction in the context of humanitarian activities. Second, it aims to provide clarity to public and private operators which must comply with EU sanctions and which are involved in the supply of humanitarian aid to the population in order to combat the COVID-19 pandemic (hereinafter, “Humanitarian Operators”). Humanitarian Operators include donors, international organisations, banks and other financial

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<sup>4</sup> This Note supplements, and should be read in conjunction with, the other applicable guidance documents concerning the implementation of EU restrictive measures published by the European Commission (hereinafter the “Commission”) and the National Competent Authorities (hereinafter the “NCA”) in the Member States, as well as the Best Practices for the effective implementation of restrictive measures published by the Council of the European Union (<http://data.consilium.europa.eu/doc/document/ST-8519-2018-INIT/en/pdf>).

institutions – when involved in transactions supporting humanitarian aid –, as well as non-governmental organisations (NGO) and the non-profit sector.

For further guidance, Humanitarian Operators should seek the advice of their NCA. The Commission remains at the disposal of NCAs for further questions and support<sup>5</sup>, and calls upon Member States to create a “contact point” for humanitarian derogations in the context of the fight against the COVID-19 pandemic, in addition to the Contact Point at EU level established by the Commission on 30 March 2021<sup>6</sup>. The Commission stands ready to support Member States in this regard to ensure the uniform implementation of EU legislation.

The questions below have been compiled through interaction with NCAs, Humanitarian Operators and other international stakeholders since the beginning of the COVID-19 crisis.

This Note replaces Commission Notice C(2020) 7983 final, adopted on 16 November 2020 which included chapters on Iran, Nicaragua, Syria, and Venezuela. Those chapters remain unchanged.

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<sup>5</sup> [RELEX-SANCTIONS@ec.europa.eu](mailto:RELEX-SANCTIONS@ec.europa.eu).

<sup>6</sup> [EC-SANCTIONS-HUMANITARIAN-CONTACT-POINT@ec.europa.eu](mailto:EC-SANCTIONS-HUMANITARIAN-CONTACT-POINT@ec.europa.eu). See also [https://ec.europa.eu/info/business-economy-euro/banking-and-finance/international-relations/restrictive-measures-sanctions/eu-level-contact-point-humanitarian-aid-environments-subject-eu-sanctions\\_en](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/international-relations/restrictive-measures-sanctions/eu-level-contact-point-humanitarian-aid-environments-subject-eu-sanctions_en).

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## CLARIFICATION ON COVID-19 VACCINES AND THERAPEUTICS

The term ‘medicine’ used in this Guidance Note includes vaccines against SARS-related coronaviruses (SARS-CoV species)<sup>7</sup> and Covid-19 therapeutics<sup>8</sup> packaged for individual use. The term ‘medical assistance’ includes medical activities to administer the aforesaid vaccines and therapeutics. The term ‘makeshift hospitals, sanitation operations or temporary infrastructures to fight the COVID-19 pandemic’ includes any infrastructure or mobile unit to administer the aforesaid vaccines and therapeutics.

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<sup>7</sup> Humanitarian Operators that are uncertain whether a medicine qualifies as a vaccine should seek information from the manufacturer and/or the exporter. Vaccines against SARS-related coronaviruses fall under CN code 3002 20 10, Part Two, Section VI, Chapter 30, Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Implementing Regulation (EU) 2020/2159 of 16 December 2020 (OJ L 431 21.12.2020, p. 34). In case of doubt, Humanitarian Operators should also contact the relevant NCA. See also <https://www.ema.europa.eu/en/human-regulatory/overview/public-health-threats/coronavirus-disease-covid-19/treatments-vaccines/covid-19-vaccines>

<sup>8</sup> See in particular European Medicine Agency website, COVID-19 treatments at <https://www.ema.europa.eu/en/human-regulatory/overview/public-health-threats/coronavirus-disease-covid-19/treatments-vaccines/covid-19-treatments>; Commission’s Questions and Answers: COVID-19 Therapeutics Strategy, 29 June 2021 at [https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_21\\_3301](https://ec.europa.eu/commission/presscorner/detail/en/qanda_21_3301)

## EU COUNTER-TERRORISM SANCTIONS

### LEGAL REFERENCES

- Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the ISIL (Da'esh) and Al-Qaida organisations (“UN-based Al-Qaida and ISIL Regulation”<sup>9</sup>),
- Council Regulation (EU) 2016/1686 of 20 September 2016 imposing additional restrictive measures directed against ISIL (Da'esh) and Al-Qaida and natural and legal persons, entities or bodies associated with them (“EU Autonomous Al-Qaida and ISIL Regulation”<sup>10</sup>), and
- Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (“EU Autonomous Counter-Terrorism Regulation”<sup>11</sup>)

collectively defined as the “EU Counter-Terrorism Sanctions Regulations”<sup>12</sup>.

The EU Counter-Terrorism Sanctions Regulations comprises the three abovementioned pieces of legislation. The first one is the UN-based Al Qaida and ISIL Regulation, which transposes into EU law the UN Security Council Resolutions (UNSCR) adopted since the seminal Security Council Resolutions 1267/1999 and 1390/2002<sup>13</sup>. It imposes restrictive measures against certain persons and entities associated with Usama bin Laden and Al-Qaida. In 2015, the Security Council expanded the scope of sanctions to persons and entities associated with the Islamic State in Iraq and the Levant (‘ISIL (Da'esh)’).

The second one is the EU Autonomous Al-Qaida and ISIL Regulation which enacts autonomous measures to fight the international terrorism threat posed by ISIL (Da'esh) and Al-Qaida, enabling the Union to impose sanctions against natural and legal persons, entities or bodies associated with them, in addition to the sanctions introduced by the UN-based Al Qaida and ISIL Regulation.

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<sup>9</sup> OJ L 139 29.5.2002, p. 9.

<sup>10</sup> OJ L 255 21.9.2016, p. 1.

<sup>11</sup> OJ L 344 28.12.2001, p. 70.

<sup>12</sup> Council Regulation (EU) No 753/2011 of 1 August 2011 concerning restrictive measures directed against certain individuals, groups, undertakings and entities in view of the situation in Afghanistan is not included in this Guidance Note. The explanation is that, in 2011, the initial UN regime set up by Security Council Resolution 1267 (1999), which covered both the Taliban and Al-Qaida was split in two by Security Council Resolutions 1989 (2011) and 1988 (2011). Security Council Resolution 1988 (2011) established a separate regime against individuals and entities associated with the Taliban and constituting a threat to the peace, stability and security of Afghanistan. This sanctions regime is transposed into EU legislation by Council Regulation (EU) No 753/2011.

<sup>13</sup> Resolutions 1267 (1999) adopted by the Security Council at its 4051<sup>st</sup> meeting on 15 October 1999 (S/RES/1267 (1999)); Resolution 1390 (2002) adopted by the Security Council at its 4452<sup>nd</sup> meeting on 16 January 2002 (S/RES/1390 (2002)).

The third one is the EU Autonomous Counter-Terrorism Regulation that the Union has adopted to give effect to UNSCR 1373/2001<sup>14</sup>. It establishes a sanctions regime against persons and entities who commit, or attempt to commit, terrorist acts, or who participate in or facilitate the commission of such acts. Pursuant to it, the Union adopted a list of persons and entities subject to sanctions which adds to the afore-mentioned legislation.

The sanctions laid down in the EU Counter-Terrorism Sanctions Regulations include an asset freeze and a prohibition to make any funds or economic resources directly or indirectly available to, or for the benefit of, natural or legal persons, entities or bodies included in the relevant annexes<sup>15</sup>.

EU Counter-Terrorism Sanctions Regulations are focussed, have clear objectives and target specific natural or legal persons, entities or bodies which are engaged in national or international terrorism. **The EU Counter-Terrorism Sanctions Regulations do not cover medicine, medical equipment and medical assistance provided to the population at large. As such, medical equipment, including oxygen, respirators, personal protective equipment (PPE) and ventilators as well as medicines and other medical items required to fight the COVID-19 pandemic are not subject to restrictions** on export, supply, financing or use under the EU Counter-Terrorism Sanctions Regulations. It is therefore unlikely that EU Counter-Terrorism Sanctions Regulations could interfere with humanitarian aid to fight the COVID-19 pandemic intended for people in areas where designated natural and legal persons, entities or bodies operate.

Nevertheless, in specific and very limited cases, the export, supply or financing of items needed by Humanitarian Operators may be indirectly impacted by the freezing of funds or economic resources of certain natural and legal persons, entities, groups and bodies (“designated persons or entities”), which may happen to be involved in the relevant transactions.

As a general rule, **EU Counter-Terrorism Sanctions Regulations do not allow the making available of funds and economic resources to designated persons or entities, although a number of derogations exist (see Section I). However, in accordance with International Humanitarian Law, where no other options are available, the provision of humanitarian aid should not be prevented by EU sanctions.**

Ancillary activities needed to support the provision of medical devices (e.g. transport of medical devices, currency exchange and storage) are in principle permitted, subject to the conditions above.

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<sup>14</sup> Resolution 1373 (2001) adopted by the Security Council at its 4385<sup>th</sup> meeting on 28 September 2001, S/RES/1373 (2001).

<sup>15</sup> See Section I.



I. PROHIBITION ON MAKING FUNDS AND ECONOMIC RESOURCES AVAILABLE TO DESIGNATED PERSONS OR ENTITIES<sup>16</sup>

**1. Are humanitarian operators allowed to liaise with designated persons or entities if this is needed to provide humanitarian assistance to the civilian population in the context of the COVID-19 pandemic?**

Yes. Humanitarian Operators may liaise with designated persons or entities if this is needed in order to organise the provision of humanitarian aid in a safe and efficient manner.

Therefore, if a designated person intervenes in a humanitarian transaction, this does not automatically mean that the transaction must be abandoned. Insofar as no funds or economic resources are made available to a designated person, the EU Counter-Terrorism Sanctions Regulations do not prohibit liaising with the former.

**2. How can Humanitarian Operators ensure that they are not making funds or economic resources available to designated persons or entities when providing aid to fight the COVID-19 pandemic?**

Humanitarian Operators should already have in place the required procedures to carry out the necessary checks to ensure that partners involved in the delivery of humanitarian aid are not designated under EU sanctions. In the context of providing assistance to fight the spread of COVID-19, Humanitarian Operators should pay particular attention to designated persons or entities that have material control over or oversight of a geographical area where humanitarian aid will be provided, especially where they can restrict access to it<sup>17</sup>. This includes non-state designated actors and designated persons and entities that have an official or unofficial role in, or can influence, local governments<sup>18</sup>. Humanitarian Operators must also pay attention to designated persons and entities that allegedly operate in the field of charity or humanitarian relief<sup>19</sup> as well as those providing services complementary to humanitarian aid, such as logistics, medical

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<sup>16</sup> Annex I and Ia to UN-based Al-Qaida and ISIL Regulation, Annex I to the Autonomous Al-Qaida and ISIL Regulation and the list provided for in Article 2(3) of the EU Autonomous Counter-Terrorism Regulation list the natural and legal persons, entities, groups and bodies designated under EU sanctions. These lists are reflected in the EU Sanctions Map (<https://www.sanctionsmap.eu>) and in the Financial Sanctions Database (<https://webgate.ec.europa.eu/fsd/fsf>), both of which are freely accessible. These lists are regularly updated. The official source of EU law is the Official Journal of the European Union, which prevails in case of conflict.

<sup>17</sup> By way of example, entry 'Jama'atu Ahlis Sunna Lidda'Awati Wal-Jihad', Annex I to UN-based Al-Qaida and ISIL Regulation.

<sup>18</sup> By way of example, entry ' Hamas (including Hamas-Izz al-Din al-Qassem)', list provided for in Article 2(3) of EU Autonomous Counter-Terrorist Regulation.

<sup>19</sup> By way of example, entry 'Global Relief Foundation', entry 'Al-Haramain & Al Masjed Al-Aqsa Charity Foundation Al-Haramain' as well as the branches of 'Al-Haramain', and entry 'Wafa Humanitarian Organisation', Annex I to UN-based Al-Qaida and ISIL Regulation.

services, security or money service business<sup>20</sup>, especially if they have a legal or *de facto* monopoly in those specific sectors.

While primary attention should be devoted to actors operating in the specific geographical area where humanitarian aid is going to be provided, some persons subject to designation may operate from another location<sup>21</sup> (see also Question 15).

Humanitarian Operators should also ensure that funds and economic resources, including medical equipment, are not diverted by designated persons or entities. This entails adopting the necessary precautions and checks to ensure that funds and economic resources are not seized by these persons (e.g. designated armed non-state actors), and that medical material provided is used for its intended humanitarian purposes.

Humanitarian Operators, especially those closest to external partners and subcontractors, should gather as much information as reasonably possible and make their partners aware, preferably contractually, that funds or economic resources must not be made available to designated persons or entities or for their benefit. The use of informal types of money transfer, such as havaleh/hawala/xawala/xawilaad/hundi or other types of money transfer to cash, also fall within the scope of this prohibition.

According to Article 2(4) of the UN-based Al-Qaida and ISIL Regulation and Article 12(2) of the EU Autonomous Al-Qaida and ISIL Regulation, actions by Humanitarian Operators that are in violation of the restrictive measures set forth in those Regulations do not give rise to any liability if these persons did not know, and had no reasonable cause to suspect, that their actions would infringe the prohibitions at hand. In this vein, EU sanctions should not lead to over-compliance. In particular, they should not be interpreted as requiring Humanitarian Operators to carry out unrealistic efforts to collect evidence or prove the negative.

Humanitarian Operators are required to channel humanitarian aid via persons that are not designated under the EU Counter-Terrorism Sanctions Regulations and other applicable sanctions (see Section IV). In accordance with International Humanitarian Law, where no other options are available, the provision of humanitarian aid should not be prevented by EU sanctions. However, this is unlikely in the case at hand given that the EU Counter-Terrorism Sanctions Regulations target designated persons or entities responsible for acts of national and international terrorism.

In case of doubt, Humanitarian Operators should reach out to the relevant NCA<sup>22</sup> to enquire whether their procedures respect the anti-circumvention clause enshrined in the

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<sup>20</sup> By way of example, entry ‘Al-Kawthar Money Exchange’, entry ‘Selselat Al-Thahab’ and entry ‘Hanifa Money Exchange office’, Annex I to UN-based Al-Qaida and ISIL Regulation.

<sup>21</sup> By way of example, entry ‘Benevolence International Fund (alias Benevolent International Fund, (b) BIF-Canada)’, with address in 2465, Cawthra Road, Unit 203, Mississauga, Ontario, L5A 3P2 Canada; PO box 1508, Station B, Mississauga, Ontario, L4Y 4G2 Canada; PO box 40015, 75, King Street South, Waterloo, Ontario, N2J 4V1 Canada; 92, King Street, 201, Waterloo, Ontario, N2J 1P5 Canada, Annex I to UN-based Al-Qaida and ISIL Regulation.

<sup>22</sup> The lists of NCAs are available in Annex II to UN-based Al-Qaida and ISIL Regulation; Annex II to the EU Autonomous Al-Qaida and ISIL Regulation and the Annex to the EU Autonomous Counter-Terrorism Regulation.

EU Counter-Terrorism Sanctions Regulations<sup>23</sup>. NCAs should provide clear and timely guidance to Humanitarian Operators in that regard.

### **3. Can medicines, medical equipment, disinfectants and protective equipment constitute “economic resources”?**

Yes. According to the definition in the EU Counter-Terrorism Sanctions Regulations<sup>24</sup> and in the Guidelines on the implementation and evaluation of restrictive measures (sanctions)<sup>25</sup>, ‘economic resources’ means any kind of resources, tangible or intangible, movable or immovable, “*which are not funds, but which may be used to obtain funds, goods or services*”. Providing batches of medicine, medical equipment, disinfectants to a designated person allows that person to, for instance, sell the goods and obtain funds in exchange. Hence it amounts to making economic resources available to, or for the benefit of, a designated person or entity. This could be the case where medical devices are provided to designated persons or entities active in the charity field or in an area which is *de facto* controlled by a designated person or entity. Making economic resources available to, or for the benefit of, a designated person or entity requires prior authorisation by the NCA.

However, providing isolated items of the abovementioned goods to a designated person for their own use or protection would not amount to making economic resources available to them. Moreover, the EU Counter-Terrorism Sanctions Regulations contain derogations enabling NCAs to authorise the making available of funds or economic resources if these are necessary to satisfy the basic needs of designated persons and their dependent family members, including payments for foodstuffs, medicines and medical treatment<sup>26</sup>.

### **4. Can the provision of medical assistance amount to “making economic resources available” to designated persons or entities?**

In principle, the provision of medical assistance (i.e. medical services and related items like medicine for personal consumption) to persons infected by, or suspected of having contracted, COVID-19, is not considered to have an intrinsic economic value, or be exchangeable for funds or economic resources. Consequently, it does not amount to an economic resource, and thus the involvement of a designated person in the provision of such medical assistance will not breach the EU Counter-Terrorism Sanctions Regulations.

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<sup>23</sup> Article 4 of UN-based Al-Qaida and ISIL Regulation; Article 11 of EU Autonomous Al-Qaida and ISIL Regulation; Article 3 of EU Autonomous Counter Terrorism Regulation.

<sup>24</sup> Article 1(2) of UN-based Al-Qaida and ISIL Regulation; Article 1(b) of EU Autonomous Al-Qaida and ISIL Regulation; Article 1(1) of EU Autonomous Counter Terrorism Regulation.

<sup>25</sup> Guidelines on the implementation and evaluation of restrictive measures (sanctions) published by the Council of the European Union, para 61, p. 26, ref. 5664/18, 4 May 2018. (<https://data.consilium.europa.eu/doc/document/ST-5664-2018-INIT/en/pdf>).

<sup>26</sup> Article 2a(1)(a) of UN-based Al-Qaida and ISIL Regulation; Article 5(a) of Autonomous Al-Qaida and ISIL Regulation; Article 5(2)(1) of EU Autonomous Counter Terrorism Regulation.

For the specific case in which a designated person happens to be involved in the chain leading to the provision of humanitarian assistance, see Question 1. With respect to ensuring that no funds or economic resources are made available to designated persons or entities, for instance if designated persons or entities charge the beneficiaries of such medical assistance for the service provided or obtain any economic resource for their own benefit in the context of the provision of medical assistance, see Question 2.

**5. Can Humanitarian Operators provide funds to local organisations for the purpose of fighting the COVID-19 pandemic in geographical areas where persons or entities designated under EU Counter-Terrorism Sanctions Regulations operate?**

Yes. For the specific case in which a designated person or entity happens to be involved in the chain leading to the provision of humanitarian aid, see Question 1. With respect to ensuring that no funds or economic resources are made available to designated persons or entities, see also Question 2.

II. IMPORT AND EXPORT RESTRICTIONS

**6. Is the sale, supply, transfer or export of any goods and technologies supplied for humanitarian purposes to fight the COVID-19 pandemic allowed under EU Counter-Terrorism Sanctions Regulations?**

Yes. The EU sanctions laid down in the EU Counter-Terrorism Sanctions Regulations are focussed, have clear objectives and target specific persons by freezing their assets and prohibiting the making available of funds or economic resources to them. The sale, supply, transfer or export of any goods to geographical areas where persons and entities designated under EU Counter-Terrorism Sanctions Regulations operate are not restricted as such. This means that, as a general rule, EU Counter-Terrorism sanctions do not affect the sale, supply, transfer or export of any goods and technologies to fight the COVID-19 pandemic. In this context, “goods and technologies” include, among others, personal protective equipment (PPE), ventilators or powered respirators for medical purposes (assisted breathing) and other medical devices to fight COVID-19 as well as COVID-19 testing kits (such as quantitative real time qRT-PCR KIT), medicines, disinfectants, detergents or chemicals.

For the specific case in which a designated person or entity happens to be involved in the chain leading to the provision of such goods and technologies intended for humanitarian aid, see Question 1. With respect to ensuring that no funds or economic resources are made available to designated persons or entities, see also Question 2.

III. OTHER QUESTIONS

**7. Can EU banks open a new bank account with credit or financial institutions in geographical areas where persons and entities designated under EU Counter-Terrorism Sanctions Regulations operate, if the purpose is to support humanitarian aid fighting the COVID-19 pandemic?**

Yes. Banking activities are allowed under the EU Counter-Terrorism Sanctions Regulations, provided that the financial institution is not a designated entity. This includes the establishment of new correspondent banking relationships and the establishment of new joint ventures. Banks are also permitted to open offices, branches

and subsidiaries in those areas. Currently, no financial institutions are subject to restrictive measures under EU Counter-Terrorism Sanctions<sup>27</sup>.

**8. Can EU nationals travel to geographical areas where persons or entities designated under EU Counter-Terrorism Sanctions Regulations operate to provide medical assistance to fight the COVID-19 pandemic?**

Yes. In principle, nothing in the EU Counter-Terrorism Sanctions Regulations prohibits travel to geographical areas where persons and entities designated under those Regulations operate.

For the specific case in which a designated person or entity happens to be involved in the chain leading to the provision of humanitarian aid, see Question 1. With respect to ensuring that no funds or economic resources are made available to designated persons or entities, see also Question 2.

**9. Can Humanitarian Operators purchase fuel, rent vehicles or use private transport services for transporting medical equipment to fight the COVID-19 pandemic in geographical areas where persons or entities designated under EU Counter-Terrorism Sanctions Regulations operate?**

Yes. For the specific case in which a designated person or entity happens to be involved in the chain leading to the provision of humanitarian aid, see Question 1. With respect to ensuring that no funds or economic resources are made available to designated persons or entities, see also Question 2.

**10. Can Humanitarian Operators help to relocate or evacuate people affected by the COVID-19 pandemic to other locations in or outside geographical areas where persons or entities designated under EU Counter-Terrorism Sanctions Regulations operate?**

Yes. For the specific case in which a designated person or entity happens to be involved in the chain leading to the relocation of people affected by COVID-19, see Question 1. With respect to ensuring that no funds or economic resources are made available to designated persons or entities in the process leading to the relocation of people affected by COVID-19, see also Question 2.

**11. Can Humanitarian Operators finance or take part in the construction of makeshift hospitals, sanitation operations or temporary infrastructures to fight the COVID-19 pandemic in geographical areas where persons or entities designated under EU Counter-Terrorism Sanctions Regulations operate?**

Yes. For the specific case in which a designated person or entity happens to be involved in the construction and/or draws economic benefit from it, see Question 1. By way of example, this could be the case if the designated person charges a fee for accessing the temporary infrastructure, or if it retains ownership of the latter after the end of the crisis caused by the COVID-19 pandemic.

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<sup>27</sup> However, Humanitarian Operators should pay attention to the money services businesses designated under the EU Counter-Terrorism Sanctions Regulations (see footnote 20).

## **12. Can Humanitarian Operators provide humanitarian aid if the only way is to provide it through designated persons or entities?**

Humanitarian Operators must always seek solutions that do not breach EU sanctions. Accordingly, Humanitarian Operators are required to channel humanitarian aid via persons that are not designated under the EU Counter-Terrorism Sanctions Regulations and other applicable sanctions. In accordance with International Humanitarian Law, where no other options are available, the provision of humanitarian aid should not be prevented by EU sanctions. This is however unlikely given that the EU Counter-Terrorism Sanctions Regulations target designated persons and entities responsible for acts of national and international terrorism.

## **13. Should Humanitarian Operators vet the final beneficiaries of Covid19-related humanitarian aid?**

No. According to International Humanitarian Law, Article 214(2) of the Treaty on the Functioning of the European Union and the humanitarian principles of humanity, impartiality, independence and neutrality, humanitarian aid must be provided without discrimination. The identification as an “individual in need” must be made by the Humanitarian Operators on the basis of these principles. Once this identification has been made and it is clear that the individual in need is the final beneficiary, no vetting of the final beneficiary is required.

## **IV. OTHER LEGISLATION**

## **14. Are Humanitarian Operators required to comply with EU sanctions<sup>28</sup> other than EU Counter-Terrorism Sanctions Regulations when delivering aid to fight the COVID-19 pandemic in geographical areas where entities designated under the EU Counter-Terrorism Sanctions Regulations operate?**

Yes. EU Counter-Terrorism Sanctions Regulations target persons, entities and bodies who can be located in environments subject to EU sanctions regimes that focus on specific geographical areas (e.g. Syria, Somalia, Iran, Yemen)<sup>29</sup>. Humanitarian Operators must ensure that they provide humanitarian aid in compliance with those EU sanctions, in addition to the possible sanctions envisaged in the EU Counter-Terrorism Sanctions Regulations. For instance, humanitarian activities carried out in a specific part of the Syrian territory controlled by a designated terrorist group must comply with, inter alia, the applicable restrictive measures under the EU sanctions vis-à-vis Syria (see the Syria chapter of this Guidance Note) as well as those resulting from the EU Counter-Terrorism

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<sup>28</sup> See also footnote 2.

<sup>29</sup> Council Regulation (EU) No 36/2012 of 18 January 2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation (EU) No 442/2011 (OJ L 16, 19.1.2012, p. 1); Council Regulation (EC) No 147/2003 of 27 January 2003 concerning certain restrictive measures in respect of Somalia (OJ L 24, 29.1.2003, p. 2); Council Regulation (EU) No 359/2011 of 12 April 2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Iran (OJ L 100 14.4.2011, p. 1); Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010 (OJ L 88, 24.3.2012, p. 1); Council Regulation (EU) No 1352/2014 of 18 December 2014 concerning restrictive measures in view of the situation in Yemen (OJ L 365, 19.12.2014, p. 60).

Sanctions Regulations under which the terrorist group in question is designated<sup>30</sup>. The NCA should be consulted in case of doubts on questions concerning compliance with EU Counter-Terrorism Sanctions Regulations and other sanctions regimes, for instance in relation to possible humanitarian exceptions, envisaged in specific EU sanctions regimes, that are however not included in the EU Counter-Terrorism Sanctions Regulations. See also Question 17 of the Iran chapter and Question 23 of the Syria chapter of this Guidance Note.

**15. EU Counter-Terrorism Sanctions Regulations are not linked to any specific geographical area. How can Humanitarian Operators determine what are the ‘relevant’ designations under EU Counter-Terrorism Sanctions Regulations for their humanitarian aid project?**

The scope of application of EU sanctions is never restricted to any specific geographical area relating to the designated persons, entities or bodies. By way of example, the prohibition to make funds available to, or for the benefit of, a person designated under the Syria Regulation applies irrespective of the location of the designated person<sup>31</sup>. See also Question 17 of the Iran chapter and Question 23 of the Syria chapter of this Guidance note.

The designation under EU Counter-Terrorism Sanctions Regulations includes persons, entities and bodies of different nationalities that are located in a variety of countries. As a rule, Humanitarian Operators should check against all the lists, as they cannot assume that only some of the designations are relevant for their humanitarian project. This is also because a number of persons, entities and bodies designated under the EU Counter-Terrorism Sanctions Regulations are active in several countries, in cross-border areas, or even from other areas<sup>32</sup>.

Nevertheless, certain persons, entities or bodies designated under the EU Counter-Terrorism Sanctions Regulations are known for operating in specific geographical areas. Humanitarian Operators should collect information to determine whether the geographical areas where humanitarian aid is to be provided are known to be areas of operation of specific designated persons or entities, and in that case, pay particular attention to ensure that no funds or economic resources are made available to them or for their benefit.

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<sup>30</sup> By way of example, entry ‘Al-Nusrah Front for the People of the Levant’, Annex I to UN-based Al-Qaida and ISIL Regulation, which states under ‘Other information: (a) Operates in Syrian Arab Republic.’; entry ‘Abdallah Azzam Brigades (AAB)’, Annex I to UN-based Al-Qaida and ISIL Regulation which states under ‘Other information: Operates in Lebanon, Syria and the Arabian Peninsula’.

<sup>31</sup> However, given that the Syria Regulation (see Syria chapter) imposes sanctions on natural or legal persons as well as entities and bodies that have been identified as being responsible for the violent repression against the civilian population in Syria, benefiting from or supporting the regime or associated with it, it is likely that these natural or legal persons as well as entities and bodies are operating in and from Syria. Humanitarian Operators providing assistance in Syria should therefore pay primarily attention to sanctions and designations included in the Syria Regulation.

<sup>32</sup> See also footnote 20.

EU Counter-Terrorism Sanctions Regulations often include information ('identifiers')<sup>33</sup> that Humanitarian Operators may consult in order to determine whether a designated person or entity is operating in the relevant geographical area.

**16. Should Humanitarian Operators subject to the jurisdiction of a Member State comply with third country counter-terrorism sanctions?**

No. Humanitarian Operators under the jurisdiction of Member States are required to comply with EU sanctions only.

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<sup>33</sup> 'Identifiers' are additional information which assist in the identification of a designated person or entity. While the most common 'identifiers' concern aliases, places and dates of birth or passport numbers, in certain cases EU sanctions include information concerning the place of operation of the designated persons or entities. By way of example, entry 'Harakat-ul Jihad Islami', letter d), Annex I to UN-based Al-Qaida and ISIL Regulation, which states "Operating in India, Pakistan and Afghanistan"; entry 'Al-Qaida in the Arabian Peninsula', section 'Other information', Annex I to UN-based Al-Qaida and ISIL Regulation, which states "Location: Yemen or Saudi-Arabia (2004 - 2006)."; entry 'Hassan Dahir Aweys', section 'Other information', Annex I to UN-based Al-Qaida and ISIL Regulation, which states "(a) Southern Somalia (as of November 2012), (b) Also reported to be in Eritrea as of November 2007"; entry 'Islamic Movement of Uzbekistan', section 'Other information', Annex I to UN-based Al-Qaida and ISIL Regulation, which states: "(b) Active in the Afghanistan/Pakistan border area, northern Afghanistan and Central Asia".



## IRAN

### LEGAL REFERENCES AND GUIDANCE

“Iran Regulations”:

- Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010<sup>34</sup> (Iran Weapons of Mass Destruction (WMD) Regulation)
- Council Regulation (EU) No 359/2011 of 12 April 2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Iran<sup>35</sup> (Iran Serious Human Rights Violations Regulation)

Other relevant EU legislation and documents:

- Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom<sup>36</sup> (Blocking Statute)
- The European Commission’s Guidance note: “Questions and answers: adoption of update of the Blocking Statute”<sup>37</sup>
- The European Commission’s Q&A document on “Due diligence on restrictive measures for EU businesses dealing with Iran”<sup>38</sup>

On 20 July 2015, the United Nations Security Council adopted Resolution 2231 (2015) regarding the Joint Comprehensive Plan of Action (JCPOA), agreed by Iran and the E3/EU+3 (China, France, Germany, the Russian Federation, the United Kingdom and the United States, with the High Representative of the European Union for Foreign Affairs and Security Policy). On JCPOA Implementation Day (16 January 2016), the EU lifted all its economic and financial sanctions imposed in connection with the Iranian nuclear programme.

As a consequence, a number of activities and associated services are allowed, which can also be relevant to the provision of humanitarian assistance, namely: **financial, banking and insurance activities, as well as activities in the shipping and transport sectors of Iran**. Further details on the lifting of sanctions pursuant to the JCPOA can be found in Section 3 of the **EU’s JCPOA Information Note**<sup>39</sup>.

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<sup>34</sup> OJ L 88, 24.3.2012, p. 1-112.

<sup>35</sup> OJ L 100, 14.4.2011, p. 1-11.

<sup>36</sup> OJ L 309, 29.11.1996, p. 1-6.

<sup>37</sup> OJ C 277I, 7.8.2018, p. 4-10.

<sup>38</sup> [https://ec.europa.eu/info/files/faqs-restrictive-measures-iran\\_en](https://ec.europa.eu/info/files/faqs-restrictive-measures-iran_en).

<sup>39</sup> [https://eeas.europa.eu/sites/eeas/files/jcpoa\\_note\\_en.pdf](https://eeas.europa.eu/sites/eeas/files/jcpoa_note_en.pdf).

In reaction to the United States' withdrawal from the JCPOA, the EU updated the Blocking Statute in order to include in its annex the re-imposed extra-territorial U.S. sanctions, thereby mitigating the impact of these sanctions on EU operators doing legitimate business in and with Iran. This update formed part of the EU's support to the continued, full and effective implementation of the JCPOA, including by sustaining legitimate trade and economic relations between the EU and Iran, which were normalised when nuclear-related sanctions were lifted as a result of the JCPOA.

EU sanctions vis-à-vis Iran that are still in force after the lifting of restrictive measures under the JCPOA are focussed, have clear objectives and target specific persons, entities or goods, which are usually not involved in humanitarian aid. EU sanctions vis-à-vis Iran **do not cover medicine, medical equipment and medical assistance provided to the population at large. As such, medical equipment**, including personal protective equipment (PPE), respirators, oxygen and ventilators, **as well as medicines and other medical items required to fight the COVID-19 pandemic are not subject to direct restrictions on export, supply, financing or use in Iran (see Section II).** It is therefore very unlikely that EU sanctions could interfere with humanitarian aid to fight the COVID-19 pandemic intended for the people in need in Iran.

Nevertheless, in specific and very limited cases, the export, supply or financing of these items by Humanitarian Operators may be indirectly impacted by other restrictions, such as the freezing of funds or economic resources of certain persons, entities and bodies subject to EU sanctions ("designated persons") which may happen to be involved in the relevant transactions.

Notwithstanding sanctions-lifting under the JCPOA, a number of measures and restrictions related to the proliferation of weapons of mass destruction (WMD) have remained in place even after Implementation Day in accordance with the JCPOA<sup>40</sup>. A further lifting of sanctions is expected to occur in 2023, in line with the timetable established by the JCPOA.

In addition, since 2011 the EU has imposed sanctions in response to serious human-rights violations in Iran<sup>41</sup>.

As a general rule, **EU sanctions vis-à-vis Iran do not allow the making available of funds and economic resources to designated persons, although a number of derogations exist (see Section I). However, in accordance with International Humanitarian Law, where no other options are available, the provision of humanitarian aid should not be prevented by EU sanctions. This principle is, however, unlikely to find application in the case at hand given the targeted nature**

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<sup>40</sup> These concern, inter alia, an arms embargo, measures related to missile technology, restrictions on certain nuclear-related transfers and activities, and provisions concerning certain metals and software, which are subject to a specific authorisation regime. In accordance with the JCPOA, a further lifting of restrictive measures should occur in 2023. Points 19 and 20 of Annex V to the JCPOA.

<sup>41</sup> These include travel restrictions and an asset freeze with respect to certain persons and entities, as well as an embargo on equipment which may be used for internal repression and on equipment which may be used to monitor or intercept the internet and telephone communications on mobile or fixed networks.

**of the restrictive measures in the EU sanctions vis-à-vis Iran as well as the type and the limited number of designations.**

Ancillary activities needed to support the provision of medical devices (e.g. transport of medical devices, currency exchange and storage) are in principle permitted. While the possibility that those actions fall under the scope of specific restrictions is remote, Humanitarian Operators should carefully check them against this Note before they are carried out and, if needed, seek guidance from the relevant NCA.

**I. PROHIBITION ON MAKING FUNDS AND ECONOMIC RESOURCES AVAILABLE TO DESIGNATED PERSONS<sup>42</sup>**

**1. Are Humanitarian Operators allowed to liaise with designated persons if this is needed to provide humanitarian assistance to the civilian population in Iran in the context of COVID-19 pandemic?**

Yes. Humanitarian Operators may liaise with designated persons if this is needed in order to organise the provision of humanitarian aid in a safe and efficient manner.

Therefore, if a designated person intervenes in a humanitarian transaction, this does not automatically mean that the transaction must be abandoned. Insofar as no funds or economic resources are made available to a designated person, the Iran Regulations do not prohibit liaising with the former.

**2. How can Humanitarian Operators ensure that they are not making funds or economic resources available to designated persons, entities or bodies when providing aid to fight the COVID-19 pandemic?**

Humanitarian Operators should already have in place the required procedures to carry out the necessary checks to ensure that partners involved in the delivery of humanitarian aid are not designated under EU sanctions. In the context of providing assistance to fight the spread of COVID-19 in Iran, close attention should be paid to the designated persons, entities and bodies linked to the healthcare and logistics sectors, as well as the Islamic Revolutionary Guard Corps (IRGC), which operates in vast sectors of the Iranian economy, including healthcare<sup>43</sup>. Humanitarian Operators should also ensure that funds and economic resources, including medical equipment, are not diverted by designated persons. This entails adopting the necessary precautions and verifications to ensure that funds and economic resources are not seized by these persons (e.g. the IRGC), and that medical material provided is used for its intended humanitarian purposes.

Humanitarian Operators, especially those closest to external partners and subcontractors, should gather as much information as reasonably possible and make their partners aware,

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<sup>42</sup> Annexes VIII, IX, XIII and XIV to the Iran WMD Regulation and Annex I to the Iran Serious Human Rights Violations Regulation contain the lists of individuals, entities and bodies designated under EU sanctions. These lists are reflected in the EU Sanctions Map (<https://www.sanctionsmap.eu>) and in the Financial Sanctions Database (<https://webgate.ec.europa.eu/fsd/fsf>), both of which are freely accessible to Humanitarian Operators. These lists are regularly updated. The official source of EU law is the EU Official Journal, which prevails in case of conflict.

<sup>43</sup> The Iranian Revolutionary Guard Corps (IRGC) is included under entry 1, Part II.B, Annex IX to the Iran Weapons of Mass Destruction (WMD) Regulation.

preferably contractually, that funds or economic resources must not be made available to designated persons or for their benefit. The use of havaleh (hawala) and other informal types of money transfer also fall within the scope of this prohibition.

According to Article 42(2) of the Iran WMD Regulation and Article 8(2) of the Iran Serious Human Rights Violations Regulation, violations of EU sanctions do not give rise to any liability if the violator did not know, and had no reasonable cause to suspect, that its actions would infringe the prohibitions at hand. In this vein, EU sanctions should not lead to over-compliance. In particular, they should not be interpreted as requiring Humanitarian Operators to carry out unrealistic efforts to collect evidence or prove the negative.

Humanitarian Operators are required to channel humanitarian aid via actions and persons that are not restricted under the Iran Regulations and other applicable sanctions. In accordance with International Humanitarian Law, where no other options are available, the provision of humanitarian aid should not be prevented by EU sanctions. However, this is unlikely in the case at hand given the targeted nature of the designations under the Iran Regulations. See also Question 15.

In case of doubt, Humanitarian Operators should reach out to the relevant NCA<sup>44</sup> to enquire whether their procedures respect the anti-circumvention clause enshrined in the Iran Regulations<sup>45</sup>. NCAs should provide clear and timely guidance to Humanitarian Operators in that regard.

### **3. Can medicine, medical equipment, disinfectants and protective equipment constitute “economic resources”?**

Yes. According to the definition in the Iran Regulations, “economic resources” means any kind of resources, “*tangible or intangible, movable or immovable, which are not funds, but which may be used to obtain funds, goods or services*”<sup>46</sup>. Providing batches of medicine, medical equipment and disinfectants to a designated person allows that person to, for instance, sell the goods and obtain funds in exchange, hence, it amounts to making economic resources available to, or for the benefit of, a designated person. This could be the case where medical devices are provided to designated persons within the Iranian administration. Making economic resources available to, or for the benefit of, a designated person requires prior authorisation by the NCA.

However, providing isolated items of the abovementioned goods to a designated person for their own use or protection would not amount to making economic resources available to them. Moreover, the Iran Regulations contain derogations enabling NCAs to authorise the making available of funds or economic resources if these are necessary to

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<sup>44</sup> Lists of NCAs are available in Annex II to the Iran Serious Human Rights Violation Regulation and in Annex X to the Iran Weapons of Mass Destruction (WMD) Regulation.

<sup>45</sup> Article 2(3) of the Iran Serious Human Rights Violations Regulation and Article 41 of the Iran Weapons of Mass Destruction (WMD) Regulation.

<sup>46</sup> Article 1(c) of the Iran Serious Human Rights Violations Regulation and Article 1(h) of the Iran Weapons of Mass Destruction (WMD) Regulation.

satisfy the basic needs of designated persons and their dependent family members, including payments for foodstuffs, medicines and medical treatment<sup>47</sup>.

**4. Can the provision of medical assistance amount to “making economic resources available” to designated persons?**

In principle, the provision of medical assistance to persons infected by, or suspected of having contracted, COVID-19, is not itself considered to have an intrinsic economic value, or be exchangeable for funds or economic resources. Consequently, it does not amount to an economic resource, and thus the involvement of a designated person in the provision of such medical assistance will not breach the Iran Regulations.

For the specific case in which a designated person happens to be involved in the chain leading to the provision of medical assistance, see Question 1. With respect to ensuring that no funds or economic resources are made available to designated persons, for instance if these persons charge the beneficiaries for the service provided or obtain any economic resource for their own benefit in the context of the provision of medical assistance, see Question 2.

**5. Can Humanitarian Operators provide funds to local organisations in Iran for the purpose of fighting the COVID-19 pandemic?**

Yes.

For the specific case in which a designated person happens to be involved in the chain leading to the provision of humanitarian aid, see Question 1. With respect to ensuring that no funds or economic resources are made available to designated persons, see also Question 2.

**II. IMPORT AND EXPORT RESTRICTIONS<sup>48</sup>**

**6. Is the provision of ventilators or powered respirators for medical purposes (assisted breathing) and other medical devices to fight the COVID-19 pandemic allowed under the Iran Regulations?**

Yes. In principle, the sale, supply, transfer, export and financing of medical devices, including ventilators or powered respirators for medical purposes, is not prohibited under the Iran Regulations.

Nevertheless, given that some few items may be suited for different uses, some of which have nothing to do with humanitarian activities, a case-by-case assessment of the technical features of the specific device<sup>49</sup> to be exported may be needed, in order to

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<sup>47</sup> Article 4 of the Iran Serious Human Rights Violation Regulation and Article 26 of Iran Weapons of Mass Destruction (WMD) Regulation.

<sup>48</sup> Annexes I, II, III, VIIA and VIIB to the Iran WMD Regulation and Annexes III and IV to the Iran Serious Human Rights Violations Regulation contain the lists of goods and technologies covered by EU sanctions.

<sup>49</sup> Although the goods and technologies mentioned under Question 6 may seem to correspond to entries in Annex I to Council Regulation (EC) No 428/2009 (‘Dual-Use Regulation’, OJ L 134, 29.5.2009, p. 1-269), dual-use items have important distinctive features.

ensure that it is indeed meant solely for medical purposes, and not for military, ballistic or nuclear proliferation activities.

This explains why the sale, supply, transfer, export and financing of certain goods and technologies are subject to prior NCA authorisation. This is the case, for example, of microscopes and related equipment and detectors (including some that employ X-ray or electron spectroscopy)<sup>50</sup>, as they could be used for enrichment-related activities inconsistent with the JCPOA. The export of other goods, such as certain balancing machines, can be authorised by NCAs when such machines are designed for medical equipment, but otherwise it is prohibited, as they could be used in the development of nuclear weapon delivery systems.

To obtain an authorisation, Humanitarian Operators must demonstrate that the equipment would not contribute to activities inconsistent with the JCPOA. The template contained in Annex IIa may provide some indications of the elements to which Humanitarian Operators may need to pay attention. Humanitarian Operators can seek further guidance from the NCA on the necessary information to substantiate their application.

Moreover, Article 4a of the Iran WMD Regulation prohibits the sale, supply, transfer, export and financing of certain goods and technologies, including specific types of digital computers and electronic assemblies<sup>51</sup>, as they could contribute to the development of nuclear weapon delivery systems.

For technical specifications, Humanitarian Operators should seek information from the manufacturer. In case of doubt, they should contact the NCA.

For the specific case in which a designated person happens to be involved in the chain leading to the provision of humanitarian aid, see Question 1. With respect to ensuring that no funds or economic resources are made available to designated persons, see also Question 2.

## **7. Is the provision of medicines, disinfectants, detergents or chemicals to fight the COVID-19 pandemic allowed under the Iran Regulations?**

Yes. In principle, EU sanctions laid down in the Iran Regulations do not prohibit the sale, supply, transfer or export, financing or use of medicines, soaps, disinfectants (biocides), detergents or chemicals for medical use needed to fight the COVID-19 pandemic.

However, the sale, supply, transfer or export, financing or use of certain chemical substances are subject to NCA authorisation pursuant to Article 2a of the Iran WMD Regulation, as they may also be used for the proliferation of nuclear weapons.

For the specific case in which a designated person happens to be involved in the chain leading to the provision of humanitarian aid, see Question 1. With respect to ensuring that no funds or economic resources are made available to designated persons, see also Question 2.

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<sup>50</sup> Article 3a. See in particular entries II.A2.003 and II.A6.016 of Annex II to the Iran WMD Regulation.

<sup>51</sup> See in particular entry 4A003 of Annex III to the Iran WMD Regulation.

**8. Is the provision of COVID-19 testing kits (qRT-PCR KIT) allowed under the Iran Regulations?**

Yes. The Iran Regulations do not prohibit the sale, supply, transfer or export, financing or use of COVID-19 testing kits such as quantitative real-time PCR kit (qRT-PCR KIT). The reagents commonly used in qRT-PCR KIT are also not subject to any kind of trade restrictions under the Iran Regulations. The NCA should be contacted in case further guidance is needed, for instance if the kit is not of the type usually found on the market.

For the specific case in which a designated person happens to be involved in the chain leading to the provision of COVID-19 testing kits (qRT-PCR KIT) as part of humanitarian aid, see Question 1. With respect to ensuring that no funds or economic resources are made available to designated persons, see also Question 2.

**9. Is the provision of personal protective equipment needed to fight the COVID-19 pandemic allowed under the Iran Regulations?**

Yes. In principle, the Iran Regulations do not prohibit the sale, supply, transfer or export, financing and use of personal protective equipment (PPE) needed to fight the COVID-19 pandemic.

Although the Iran Serious Human Rights Violations Regulation prohibits the export to Iran of certain protective equipment that may be used for internal repression, such as body armour and helmets, it specifically exempts equipment designed for safety of work requirements<sup>52</sup>. In case of uncertainty, Humanitarian Operators should seek the necessary clarification from the manufacturer.

For the specific case in which a designated person happens to be involved in the chain leading to the provision of humanitarian aid, see Question 1. With respect to ensuring that no funds or economic resources are made available to designated persons, see also Question 2.

IV. OTHER QUESTIONS

**10. Can EU banks open a new bank account with an Iranian credit or financial institution to support humanitarian aid fighting the COVID-19 pandemic?**

Yes. As of JCPOA Implementation Day (16 January 2016), banking activities with Iranian banks are allowed, provided that the Iranian financial institution is not a designated entity. This includes the establishment of new correspondent banking relationships and the establishment of new joint ventures. Banks are also permitted to open offices, branches and subsidiaries in Iran. Only two Iranian banks remain designated: Ansar Bank and Mehr Bank<sup>53</sup>.

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<sup>52</sup> See item 5 in Annex III to the Iran Serious Human Rights Violations Regulation.

<sup>53</sup> Entries 8 and 9, Part B, Section II, Annex IX to Iran WMD Regulation.

**11. Can EU nationals travel to Iran to provide medical assistance to fight the COVID-19 pandemic?**

Yes. In principle, nothing in the Iran Regulations prohibits travel to Iran or the provision of medical assistance in the country.

For the specific case in which a designated person happens to be involved in the chain leading to the provision of humanitarian aid, see Question 1. With respect to ensuring that no funds or economic resources are made available to designated persons, see also Question 2.

**12. Can Humanitarian Operators purchase fuel, rent vehicles or use private transport services in Iran for transporting, into or within Iran, medical equipment to fight the COVID-19 pandemic?**

Yes.

Article 4c of the Iran WMD Regulation prohibits the purchase from Iran of certain types of high energy density materials, as listed in Annex III to the Regulation, usable in “missiles” or unmanned aerial vehicles. However, this does not concern refined fossil fuels and biofuels, including fuels for engines certified for use in civil aviation, unless specially formulated for ‘missiles’ or unmanned aerial vehicles.

For the specific case in which a designated person happens to be involved in the chain leading to the provision of humanitarian aid, see Question 1. With respect to ensuring that no funds or economic resources are made available to designated persons, see also Question 2.

**13. Can Humanitarian Operators help to relocate people affected by the COVID-19 pandemic to other locations in Iran or outside the country?**

Yes.

For the specific case in which a designated person happens to be involved in the chain leading to the relocation of people affected by COVID-19, for instance the Islamic Revolutionary Guard Corps (IRGC), see Question 1. With respect to ensuring that no funds or economic resources are made available to designated persons in the process leading to the relocation of people affected by COVID-19, see also Question 2.

**14. Can Humanitarian Operators finance or take part in the construction of makeshift hospitals, sanitation operations or temporary infrastructures to fight the COVID-19 pandemic?**

Yes.

For the specific case in which a designated person happens to be involved in the construction and/or draws economic benefit from it, see Question 1. By way of example, this could be the case if the designated person charges a fee for accessing the temporary infrastructure, or if it retains ownership of the latter after the end of the crisis caused by the COVID-19 pandemic.

**15. Can Humanitarian Operators provide humanitarian aid if the only way is to provide it through designated persons?**



Humanitarian Operators must always seek solutions that do not breach EU sanctions. Accordingly, Humanitarian Operators are required to channel humanitarian aid via actions and persons that are not restricted under the Iran Regulations and other applicable sanctions. In accordance with International Humanitarian Law, where no other options are available, the provision of humanitarian aid should not be prevented by EU sanctions. This is however unlikely the case given the targeted nature of the restrictive measures in the EU sanctions vis-à-vis Iran.

**16. Should Humanitarian Operators vet the final beneficiaries of humanitarian aid?**

No. According to International Humanitarian Law, Article 214(2) of the Treaty on the Functioning of the European Union and the humanitarian principles of humanity, impartiality, independence and neutrality, humanitarian aid must be provided without discrimination. The identification as an individual in need must be made by the Humanitarian Operators on the basis of these principles. Once this identification has been made, no vetting of the final beneficiaries is required.

V. OTHER LEGISLATION

**17. Are Humanitarian Operators required to comply with EU sanctions concerning International Terrorism and EU sanctions concerning the situation in Syria when delivering aid to fight the COVID-19 pandemic in Iran?**

Yes.

EU sanctions against international terrorism<sup>54</sup> are very limited as far as Iran is concerned and target only a few Iranian persons and entities. If these become involved in a transaction, the specific restrictions in the EU sanctions against international terrorism apply. Further specific guidance from the NCA may be necessary in such a case.

EU sanctions concerning the situation in Syria<sup>55</sup> also target three Iranian persons and one Iranian entity. These sanctions are applicable regardless of the country where the Humanitarian Operator is conducting its activities. The relevant prohibitions, which differ from those of the Iran Regulations, are the topic of a dedicated chapter of this Guidance Note.

**18. U.S. sanctions against Iran prohibit a number of actions allowed by the EU. Should Humanitarian Operators subject to the jurisdiction of a Member State comply with these foreign sanctions?**

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<sup>54</sup> Council Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ L 344, 28.12.2001, p. 70-75). The Council reviews and amends the list of persons, groups and entities to which this Regulation applies. The most recent version of the list is annexed to Council Implementing Regulation (EU) 2020/1128 of 30 July 2020 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, and repealing Implementing Regulation (EU) 2020/19 (OJ L 247, 31.7.2020, p. 1-4).(OJ L 8I, 14.1.2020, p. 1-4).

<sup>55</sup> Council Regulation (EU) No 36/2012 of 18 January 2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation (EU) No 442/2011 (OJ L 16, 19.1.2012, p. 1-32).

No. Humanitarian Operators under the jurisdiction of a Member State are only required to comply with EU sanctions. In fact, they are prohibited from complying with certain U.S. sanctions against Iran.

A number of U.S. sanctions against Iran are applied extra-territorially. This means that they are intended to produce effects beyond the U.S. territory and that they seek to regulate the behaviour of EU economic operators that have no significant connection to the U.S. However, the EU does not recognise the extra-territorial application of laws adopted by third countries and considers such application to be contrary to international law.

Council Regulation (EC) No 2271/96 ('Blocking Statute')<sup>56</sup> protects EU persons engaged in lawful (i.e. in compliance with EU law) international trade and/or movement of capital inter alia with Iran, as well as related commercial activities, against the effects of the foreign laws specified in its Annex, including certain U.S. sanctions against Iran. It does so by nullifying the effect in the EU of any foreign court ruling based on the foreign laws in its Annex, and by allowing EU persons to recover in court damages caused by the extra-territorial application of those foreign laws.

At the same time, the Blocking Statute prohibits compliance by EU persons with any requirement or prohibition based on the foreign laws specified in its Annex. EU persons whose economic and financial interests are affected by the extra-territorial application of those laws are required to inform the European Commission<sup>57</sup>.

Details on the rights and obligations set out in the Blocking Statute are available on a dedicated webpage<sup>58</sup>.

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<sup>56</sup> Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom (OJ L 309 29.11.1996, p. 1-6).

<sup>57</sup> [RELEX-SANCTIONS @ec.europa.eu](mailto:RELEX-SANCTIONS@ec.europa.eu).

<sup>58</sup> <https://ec.europa.eu/info/blocking-statute>.

## NICARAGUA

### LEGAL REFERENCES AND GUIDANCE

- Council Regulation (EU) 2019/1716 of 14 October 2019 concerning restrictive measures in view of the situation in Nicaragua<sup>59</sup> (“Nicaragua Regulation”).

EU sanctions vis-à-vis Nicaragua were imposed in response to the continued violations of human rights and civil liberties in the Republic of Nicaragua by security forces and pro-government armed groups that have engaged in the repression of political opponents, demonstrators, independent media and civil society organisations. The objective of the EU sanctions vis-à-vis Nicaragua is to bring about a change in the repressive policy of the Government of Nicaragua and to prevent further deterioration of human rights and the rule of law in Nicaragua as well as to contribute to a peacefully negotiated way out of the ongoing political crisis.

Sanctions laid down in the Nicaragua Regulation include assets freezes and a prohibition to make any funds or assets directly or indirectly available to, or for the benefit of those that are responsible for serious human rights violations and for undermining democracy and the rule of law in the Republic of Nicaragua, as well as persons associated with them. A number of exceptions are foreseen, including for humanitarian purposes. In view of the continuing grave situation in Nicaragua, the first set of designations of individuals and entities subject to asset freeze was adopted on 4 May 2020<sup>60</sup>.

**The sanctions laid down in the Nicaragua Regulation do not concern medicine, medical equipment and medical assistance provided to the population at large. As such, medical equipment, including oxygen, respirators, personal protective equipment (PPE) and ventilators as well as medicines and other medical items required to fight the COVID-19 pandemic are not subject to restrictions on export, supply, financing or use in Nicaragua.**

Moreover, the restrictive measures established in the Nicaragua Regulation are focussed, have clear objectives and target specific persons who are primarily linked with the national law enforcement (Nicaraguan National Police or “NNP”), the Nicaraguan prison administration or are advising the President of Nicaragua. It is therefore very unlikely that EU restrictive measures could interfere with humanitarian aid to fight the COVID-19 pandemic intended for the people in need in Nicaragua.

Nevertheless, in specific and very limited cases, the export, supply or financing of items needed by Humanitarian operators may be indirectly impacted by the freezing of funds or economic resources of certain persons, entities and bodies (“designated persons”), which may happen to be involved in the relevant transactions.

**As a general rule, EU sanctions vis-à-vis Nicaragua allow for funds and economic resources to be made available to designated persons where such funds or resources**

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<sup>59</sup> OJ L 262, 15.10.2019, p. 1–10.

<sup>60</sup> Council Implementing Regulation (EU) 2020/606 implementing Regulation (EU) 2019/1716 concerning restrictive measures in view of the situation in Nicaragua (OJ L 139I, 4.5.2020, p. 1–3).

**are necessary solely for the purpose of providing humanitarian relief, subject to authorisation requirements** (see Section I).

Ancillary activities needed to support the provision of medical devices (e.g. transport of medical devices, currency exchange and storage) are also in principle permitted, subject to the conditions above.

**I. PROHIBITION ON MAKING FUNDS AND ECONOMIC RESOURCES AVAILABLE TO DESIGNATED PERSONS<sup>61</sup>**

**1. Does the provision of humanitarian assistance in the form of food, medicines, medical equipment, disinfectants, medical assistance and other medical products, and the creation of temporary medical infrastructures needed to fight the COVID-19 pandemic in Nicaragua, qualify as the provision of resources “necessary for humanitarian purposes”?**

Yes, the provision of assistance in the form indicated under Question 1 qualifies as the provision of resources “necessary for humanitarian purposes”.

**2. Are Humanitarian Operators allowed to liaise with designated persons if this is needed in order to provide humanitarian assistance to the civilian population in Nicaragua in the context of COVID-19 pandemic?**

Yes. Humanitarian Operators may liaise with designated persons if this is needed in order to organise the provision of humanitarian aid in a safe and efficient manner.

As general rule, Article 6(1) of the Nicaragua Regulation allows for the making available of funds and economic resources to designated persons where such funds or economic resources are necessary solely for humanitarian purposes, such as delivering or facilitating the delivery of assistance, including, among others, medical supplies. Humanitarian Operators must seek a prior authorisation from the National Competent Authority (“NCA”) before making those funds or economic resources available to the designated persons.

**3. How can Humanitarian Operators ensure that they are not making funds or economic resources available to designated persons, entities or bodies when providing aid to fight the COVID-19 pandemic?**

Humanitarian Operators should have in place the required procedures to carry out the necessary checks to ensure that partners involved in the delivery of humanitarian aid are not designated under EU sanctions. In the context of providing assistance to fight the spread of COVID-19 in Nicaragua, close attention should be paid in particular to the designated persons in critical positions linked to the healthcare or police sectors (e.g. NNP), that may be at some point involved in the humanitarian operation (e.g. for security reasons). Humanitarian Operators should also ensure that funds and economic resources, including medical equipment, are not diverted by designated persons. This

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<sup>61</sup> Annex I to the Nicaragua Regulation contains a list of individuals designated under EU sanctions. This list is also reflected in the EU Sanctions Map (<https://www.sanctionsmap.eu/>) and in the Financial Sanctions Database (<https://webgate.ec.europa.eu/fsd/fsf>), both of which are freely accessible to Humanitarian Operators. These lists are regularly updated. The official source of EU law is the EU Official Journal, which prevails in case of conflict.

entails adopting the necessary precautions and verifications to ensure that funds and economic resources are not seized by these persons, and that medical material provided is used for its intended humanitarian purposes.

Humanitarian Operators, especially those closest to external partners and subcontractors, should gather as much information as reasonably possible and make their partners aware, preferably contractually, that funds or economic resources must not be made available to designated persons or for their benefit.

According to Article 10(2) of the Nicaragua Regulation, actions by Humanitarian Operators that are in violation of the restrictive measures set forth in this Regulation do not give rise to any liability if these persons did not know, and had no reasonable cause to suspect, that their actions would infringe the prohibitions at hand. In this vein, EU sanctions should not lead to over-compliance. In particular, they should not be interpreted as requiring Humanitarian Operators to carry out unrealistic efforts to collect evidence or prove the negative.

If a designated person happens to be involved in a humanitarian transaction, this does not automatically mean that the transaction must be abandoned. The Nicaragua Regulation contains a number of important derogations allowing such transactions to go through, subject to the NCA's prior approval. See also Section I, and in particular Questions 2, 5 and 6, and Question 19.

In case of doubt, Humanitarian Operators should enquire with the relevant NCA<sup>62</sup> whether their procedures respect the anti-circumvention clause in the Nicaragua Regulation<sup>63</sup>. NCAs should provide clear and timely guidance to Humanitarian Operators in that regard.

#### **4. Can medicine, medical equipment, disinfectants and protective equipment constitute “economic resources”?**

Yes. According to the definition in the Nicaragua Regulation, “economic resources” means any kind of resources, “*tangible or intangible, movable or immovable, which are not funds, but may be used to obtain funds, goods or services*”<sup>64</sup>. Providing batches of medicine, medical equipment and disinfectants to a designated person allows that person to, for instance, sell the goods and obtain funds in exchange, hence, it amounts to making economic resources available to, or for the benefit of, a designated person. Making economic resources available to, or for the benefit of, a designated person requires prior authorisation by the NCA.

However, providing isolated items of the abovementioned goods to a designated person for their own use or protection would not amount to making economic resources available to them. Moreover, the Nicaragua Regulation contains a derogation enabling NCAs to authorise the making available of funds or economic resources if these are

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<sup>62</sup> Lists of NCAs are available in Annex II to the Nicaragua Regulation.

<sup>63</sup> Article 9 of the Nicaragua Regulation.

<sup>64</sup> Article 1(d) of the Nicaragua Regulation.

necessary to satisfy the basic needs of designated persons and their dependent family members, including payments for foodstuffs, medicines and medical treatment<sup>65</sup>.

**5. Can the provision of medical assistance amount to “making economic resources available” to designated persons?**

In principle, the provision of medical assistance to persons infected by, or suspected of having contracted, COVID-19, is not itself considered to have an intrinsic economic value, or be exchangeable for funds or economic resources. Consequently, it does not amount to an economic resource, and thus the involvement of a designated person in the provision of such medical assistance will not breach the Nicaragua Regulation.

For the specific case in which a designated person happens to be involved in the chain leading to the provision of medical assistance, see Question 2. With respect to ensuring that no funds or economic resources are made available to designated persons, for instance if these persons charge the beneficiaries for the service provided or obtain any economic resource for their own benefit in the context of the provision of medical assistance, see Question 3.

**6. Can Humanitarian Operators provide funds to local organisations in Nicaragua for the purpose of fighting the COVID-19 pandemic?**

Yes.

For the specific case in which a designated person happens to be involved in the chain leading in the provision of humanitarian aid, for instance in case of designations concerning persons or entities with competence in the health sector or persons in designated law enforcement authorities, see Question 2. With respect to ensuring that no funds or economic resources are made available to designated persons, see also Question 3.

**II. IMPORT AND EXPORT RESTRICTIONS**

**7. Is the sale, supply, transfer or export of any goods and technologies supplied for humanitarian purposes to fight the COVID-19 pandemic allowed under the Nicaragua Regulation?**

Yes. The EU sanctions laid down in the Nicaragua Regulation are focussed and only target specific persons by freezing their assets and prohibiting the making available of funds to them. The sale, supply, transfer or export of any goods to Nicaragua are not restricted. This means that, as a general rule, EU sanctions do not affect the sale, supply, transfer or export of any goods and technologies to fight the COVID-19 pandemic. In this context, “goods and technologies” include, among others, personal protective equipment (PPE), ventilators or powered respirators for medical purposes (assisted breathing) and other medical devices to fight COVID-19 as well as COVID-19 testing kits (such as quantitative real time qRT-PCR KIT), medicines, disinfectants, detergents or chemicals.

For the specific case in which a designated person happens to be involved in the chain leading to the provision of such goods and technologies intended for humanitarian aid,

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<sup>65</sup> Article 3(1)(a) of the Nicaragua Regulation.

see Question 2. With respect to ensuring that no funds or economic resources are made available to designated persons, see also Question 3.

### III. OTHER QUESTIONS

#### **8. Can EU banks open a new bank account with a Nicaraguan credit or financial institution to support humanitarian aid fighting the COVID-19 pandemic?**

Yes. Banking activities with Nicaraguan banks are allowed, provided that the Nicaraguan financial institution is not an entity listed in Annex I of the Nicaragua Regulation. This includes the establishment of new correspondent banking relationships and the establishment of new joint ventures. Banks are also permitted to open offices, branches and subsidiaries in Nicaragua. Currently, no Nicaraguan financial institution is subject to restrictive measures.

#### **9. Can EU nationals travel to Nicaragua to provide medical assistance to fight the COVID-19 pandemic?**

Yes. In principle, nothing in the Nicaragua Regulation prohibits travel to Nicaragua, or the provision of medical assistance in the country.

For the specific case in which a designated person happens to be involved in the chain leading to the provision of humanitarian aid, see Question 2. With respect to ensuring that no funds or economic resources are made available to designated persons, see also Question 3.

#### **10. Can Humanitarian Operators purchase fuel, rent vehicles or use private transport services in Nicaragua for transporting, into or within Nicaragua, medical equipment to fight the COVID-19 pandemic?**

Yes. Nothing in the Nicaragua Regulation prevents Humanitarian Operators from purchasing fuel in Nicaragua.

For the specific case in which a designated person happens to be involved in the chain leading to the provision of humanitarian aid, see Question 2. With respect to ensuring that no funds or economic resources are made available to designated persons, see also Question 3.

#### **11. Can Humanitarian Operators help relocate people affected by the COVID-19 pandemic to other locations in Nicaragua or outside the country?**

Yes.

For the specific case in which a designated person happens to be involved in the chain leading to the relocation of people affected by COVID-19, for instance a designated NNP member or someone acting on their behalf, the derogation in Article 6(1) of the Nicaragua Regulation may apply. This derogation provides that under certain conditions funds and economic resources can be made available to designated persons where such funds or economic resources are necessary for humanitarian purposes, explicitly including evacuations from Nicaragua. For this, prior authorisation from the NCA is needed.

#### **12. Can Humanitarian Operators finance or take part in the construction of makeshift hospitals, sanitation operations or temporary infrastructures to fight the COVID-19 pandemic?**

Yes. See also Question 1.

For the specific case in which a designated person happens to be involved in the construction and/or draws economic benefit from it, see Question 2. By way of example, this could be the case if the designated person charges a fee for accessing the temporary infrastructure, or if it retains ownership of the latter after the end of the crisis caused by the COVID-19 pandemic.

**13. Can Humanitarian Operators provide humanitarian aid if the only way is to provide it through designated persons?**

Humanitarian Operators must always seek solutions that do not breach EU sanctions and must use the existing derogations under the Nicaragua Regulation when they want to make funds or economic resources available to, or for the benefit of, a designated person. Accordingly, Humanitarian Operators are required to channel humanitarian aid via persons that are not designated under the Nicaragua Regulation. In accordance with International Humanitarian Law, where no other options are available, the provision of humanitarian aid should not be prevented by EU sanctions. This is, however, very unlikely in the case at hand, given the targeted nature of the restrictive measures in the Nicaragua Regulation, the type and the limited number of designations and the existence of specific derogations related to humanitarian purposes, if the present guidelines are strictly followed.

IV. PROCEDURAL QUESTIONS

**14. What does the term “derogation” mean?**

Derogations are explicit exceptions foreseen in the legal acts, whereby a restricted (prohibited) action is permitted in specific circumstances, provided that it is authorised by the NCA<sup>66</sup>. In the absence of such an authorisation, the action cannot be lawfully carried out. In the specific case of Article 6 of the Nicaragua Regulation, the purpose of the action must be solely humanitarian.

**15. Are joint applications acceptable, for instance, one application by several Humanitarian Operators, or one application to several NCAs at the same time?**

For the sake of efficiency, if a humanitarian project to fight the COVID-19 pandemic requires several applications for derogations to be submitted, whether to one or several NCAs, it should be possible to submit a single application to all relevant NCAs.

Similarly, if a humanitarian project requires several Humanitarian Operators to apply for derogations, it should be possible to submit a joint application. Donors, banks, International Organisations and NGOs involved in a humanitarian project should cooperate to exchange information in order to gather the evidence required by the NCAs to grant the authorisation.

In the current exceptional circumstances, NCAs are invited to establish a contact point for humanitarian derogations related to the fight against the COVID-19 pandemic. Given

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<sup>66</sup> Derogations are generally phrased along the following lines: “By way of derogation from the (prohibitions in) Article..., the competent authorities may authorise, under the conditions they deem appropriate...”.



the urgency of the situation, NCAs should cooperate to ensure that they provide timely and consistent replies to such requests. The Commission stands ready to support NCAs in their efforts.

**16. Can NCAs grant general authorisations, or do Humanitarian Operators need to apply for an authorisation for each individual activity?**

NCAs can grant derogations under any EU sanctions for a limited number of reasons, which the NCA needs to verify in each given case.

The Nicaragua Regulation allows NCAs to grant authorisations “*under such conditions as they deem appropriate*”, when the release or the making available of certain frozen funds or resources, or their provision to designated persons is necessary for humanitarian purposes.

It is up to the relevant NCA to decide whether, in the case of identical recurrent activities/transactions the conditions of which are known in advance, it is in a position to grant a single authorisation covering several activities/transactions (e.g. for identical transactions approved in batches, provided that a case-by-case assessment of those batches is carried out, and oversight of their outcome can be ensured) or needs to authorise them one by one. The Commission encourages NCAs to consider whether, in the current exceptional circumstances, a single authorisation could facilitate the provision of humanitarian aid to the persons affected by the COVID-19 pandemic. In issuing an authorisation, the NCAs may decide to impose conditions to ensure that the exceptions do not frustrate or circumvent the objective of the sanctions.

**17. How can Humanitarian Operators request a derogation in order to carry out a restricted action/transaction, if the purpose is to provide assistance to people affected by the COVID-19 pandemic?**

A derogation can be requested by any Humanitarian Operator involved in the provision of humanitarian aid. Usually, the implementing partners are best placed to gather the necessary information. All other operators, including donors and banks, should cooperate with the applicant to facilitate the collection and sharing of such information.

Humanitarian Operators must address the NCA with which they have the closest link, as indicated in Annex II to the Nicaragua Regulation. They should seek guidance from the NCA to identify the documents needed to obtain the relevant derogations.

See also Question 15 concerning joint applications.

**18. How can Humanitarian Operators obtain expedited derogations, if the situation on the ground so requires?**

Humanitarian Operators seeking an urgent derogation should clearly point out the urgency and explain the underlying reasons in their application. The more complete an application is, the easier and faster a NCA will be able to process it. Supporting declarations from the donors, letters of comfort from other authorities and similar documents may also be attached to the submission to facilitate the review of the application by the NCA. Humanitarian Operators must obtain the relevant authorisation before initiating the humanitarian project to fight the COVID-19 pandemic.

In order to expedite the process, Humanitarian Operators should liaise with and seek guidance from the NCA even before the submission of an application.

Consistent guidance throughout the EU is paramount in order to ensure that Humanitarian Operators in the EU are able to operate. The Commission stands ready to support NCAs in their efforts, and to create a single platform for publishing the guidance issued by NCAs.

**19. Should Humanitarian Operators vet the final beneficiaries of humanitarian aid?**

No. According to International Humanitarian Law, Article 214(2) of the Treaty on the Functioning of the European Union and the humanitarian principles of humanity, impartiality, independence and neutrality, humanitarian aid must be provided without discrimination. The identification as an individual in need must be made by the Humanitarian Operators on the basis of these principles. Once this identification has been made, no vetting of the final beneficiaries is required.

## SYRIA

### LEGAL REFERENCES AND GUIDANCE

- Council Regulation (EU) No 36/2012 of 18 January 2012 concerning restrictive measures in view of the situation in Syria (Syria Regulation)<sup>67</sup>;
- The European Commission’s “Frequently Asked Questions” document on EU restrictive measures in Syria<sup>68</sup> (“Syria FAQs”).

EU sanctions vis-à-vis Syria (“Syria Sanctions”) were imposed in response to the violent repression by the Syrian regime, including through the use of chemical weapons and live ammunition, of peaceful protest resulting in the death and injury of several demonstrators and arbitrary detentions. The sanctions laid down in Council Regulation (EU) No 36/2012 consist of a number of sectoral restrictions, including a prohibition on exporting goods or technology which might be used for internal repression, including chemicals used in chemical attacks, and a prohibition on the local purchase and import of petroleum products. A number of exceptions are foreseen, notably for humanitarian purposes. EU sanctions target specific persons and specific sectors of the Syrian economy, meaning that the majority of sectors – including food and medicines – are not targeted by EU sanctions at all.

Sanctions laid down in Council Regulation (EU) No 36/2012 include individual designations entailing an assets freeze on persons and entities responsible for the violent repression against the civilian population, persons benefiting from or supporting the regime, Ministers and senior members of Syrian armed forces. As of 17 February 2020, 277 individuals and 71 entities are designated. These lists are also reflected in the EU Sanctions Map<sup>69</sup> and in the Financial Sanctions Database<sup>70</sup>, both of which are freely accessible online.

Given the significant presence of terrorist groups in areas within Syria, EU sanctions against international terrorism pursuant to United Nation Security Council Resolution (UNSCR) 1267 and 1373 are also relevant in this context<sup>71</sup>. Similarly, the EU has adopted sanctions against the proliferation and use of chemical weapons<sup>72</sup>, which

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<sup>67</sup> OJ L 016 19.1.2012, p. 1.

<sup>68</sup> [https://ec.europa.eu/info/files/170901-faqs-restrictive-measures-syria\\_en](https://ec.europa.eu/info/files/170901-faqs-restrictive-measures-syria_en)

<sup>69</sup> <https://www.sanctionsmap.eu/>.

<sup>70</sup> <https://webgate.ec.europa.eu/fsd/fsf>.

<sup>71</sup> Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the ISIL (Da'esh) and Al-Qaida organisations (OJ L 139, 29.5.2002, p. 9); Council Regulation (EU) 2016/1686 of 20 September 2016 imposing additional restrictive measures directed against ISIL (Da'esh) and Al-Qaeda and natural and legal persons, entities or bodies associated with them (OJ L 255, 21.9.2016, p. 1); Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ L 344, 28.12.2001, p. 70).

<sup>72</sup> Council Regulation (EU) 2018/1542 of 15 October 2018 concerning restrictive measures against the proliferation and use of chemical weapons (OJ L 259, 16.10.2018, p. 12).

currently target five Syrian persons (“EU Sanctions concerning International Terrorism and Chemical Weapons”).

**The Syria Sanctions and EU Sanctions concerning International Terrorism and Chemical Weapons do not concern medicine, medical equipment and medical assistance provided to the population at large. As such, medical equipment, including oxygen, respirators, personal protective equipment (PPE) and ventilators as well as medicines and other medical items required to fight the COVID-19 pandemic are not subject to direct restrictions on export, supply, financing or use in Syria.**

Nevertheless, in specific cases, the export, supply, financing or use of these items may be indirectly impacted by other restrictions, such as the freezing of funds or economic resources of certain persons, entities and bodies subject to EU sanctions (“designated persons”) which happen to be involved in the relevant transactions.

As a general rule, **Syria Sanctions allow for funds and economic resources to be made available to designated persons, where such funds or economic resources are necessary solely for the purpose of providing humanitarian relief in Syria or assistance to the civilian population in Syria.** In certain cases, a prior licence from the NCA is necessary (see Section I).

Moreover, Humanitarian Operators might also need to carry out ancillary activities (e.g. transport of medical devices, currency exchange and storage), which may be affected by specific restrictions (e.g. prohibition on the purchase of oil products in Syria). **The Syria sanctions also provide for a series of derogations allowing such ancillary activities to proceed, under certain conditions** (see Section II and III).

The questions below have been compiled through interaction with NCAs, Humanitarian Operators and other international stakeholders since the beginning of the COVID-19 crisis.

#### I. PROHIBITION ON MAKING FUNDS AND ECONOMIC RESOURCES AVAILABLE TO DESIGNATED PERSONS

**1. Does the provision of humanitarian assistance in the form of food, medicines, medical equipment, disinfectants, medical assistance and other medical products, and the creation of temporary medical infrastructures needed to fight the COVID-19 pandemic in Syria, qualify as “humanitarian relief” or “assistance to the civilian population”?**

Yes, the provision of humanitarian assistance in the form indicated under Question 1 qualifies as “humanitarian relief” or “assistance to the civilian population”.

**2. Are Humanitarian Operators allowed to liaise with designated persons if this is needed in order to provide humanitarian assistance to the civilian population in Syria in the context of COVID-19 pandemic?**

Yes. Humanitarian Operators may liaise with designated persons if this is needed in order to organise the provision of humanitarian aid in a safe and efficient manner.

As a general rule, Article 16a(2) of the Syria Regulation allows for the making available of funds and economic resources to designated persons where such funds or economic

resources are necessary solely for the purpose of providing humanitarian relief in Syria or assistance to the civilian population in Syria. A prior licence from the NCA is necessary in order to do so.

The Syria Regulation also allows Humanitarian Operators to make funds and economic resources available to designated persons without the need for prior authorisation from the NCA in very specific and limited cases (e.g. Article 16a(1) of the Syria Regulation). See Question 19 and Questions 25.

### **3. Can medicine, medical equipment, disinfectants and protective equipment constitute “economic resources”?**

Yes. According to the definition in the Syria Regulation, “economic resources” means any kind of resources, tangible or intangible, movable or immovable, “*which are not funds, but which may be used to obtain funds, goods or services*”<sup>73</sup>. Providing batches of medicine, medical equipment and disinfectants to a designated person allows that person to, for instance, sell the goods and obtain funds in exchange, hence it amounts to making economic resources available to, or for the benefit of, a designated person. This could be the case where medical devices are provided to designated persons within the Syrian administration or to designated persons running healthcare facilities. Making economic resources available to, or for the benefit of, a designated person requires prior authorisation by the NCA, unless otherwise exempted.

However, providing isolated items of the abovementioned goods to a designated person for their own use or protection would not amount to making economic resources available to them (see, by analogy, Question 6 of the Syria FAQs).

### **4. Can the provision of medical assistance amount to “making economic resources available” to designated persons?**

In principle, the provision of medical assistance to persons infected by, or suspected of having contracted COVID-19, is not itself considered to have an intrinsic economic value, or be exchangeable for funds or economic resources. Consequently, it does not amount to an economic resource, and thus the involvement of a designated person in the provision of such medical assistance will not breach the Syria Regulation.

For the specific case in which a designated person happens to be involved in the provision of medical assistance **and** draws economic benefit from it, for instance by charging the beneficiaries for the service provided or by obtaining any economic resource for his/her/its own benefit in the context of the provision of medical assistance, see Question 2.

### **5. Can Humanitarian Operators provide funds to local organisations in Syria for the purpose of fighting the COVID-19 pandemic?**

Yes.

For the specific case in which a designated person happens to be involved in the chain leading to the provision of humanitarian aid, see Question 2 and 4. With respect to how

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<sup>73</sup> Article 1(f) of the Syria Regulation.

to ensure that no funds or economic resources are made available to designated persons, see also Question 20.

## II. IMPORT AND EXPORT RESTRICTIONS

### **6. Is the export of ventilators or powered respirators for medical purposes (assisted breathing) allowed under the Syria Sanctions?**

Yes. In principle, ventilators for medical purposes do not fall under the scope of the export restrictions of the Syria Regulation.

With respect to powered respirators, a case-by-case assessment of the technical features of the specific item to be exported may be needed, in order to ensure that it is meant solely for medical purposes, and not for military activities or internal repression. This is because in the latter case, powered respirators could be subject to prior NCA authorisation under the Dual-Use Regulation, as referred to by the Syria Regulation<sup>74</sup>.

For technical specifications, Humanitarian Operators should seek information from the manufacturer on whether the item falls under the scope of the Dual Use Regulation.

The relevant NCA should be contacted in case of doubt.

For the specific case in which a designated person happens to be involved in the chain leading to the provision of humanitarian aid, see Question 2.

### **7. Is the provision of medical devices other than ventilators or powered respirators to fight the COVID-19 pandemic, including oxygen canisters, allowed under the Syria Regulation?**

Yes. In principle, the sale, supply, transfer or export to Syria, financing or use of medical devices is not prohibited under the Syria Regulation.

For the specific case in which a designated person may obtain economic resources from the provision of humanitarian aid, see Question 2.

### **8. Is the provision of medicines, disinfectants, detergents or chemicals to fight the COVID-19 pandemic allowed under the Syria Regulation?**

Yes. In principle, EU restrictive measures laid down in the Syria Regulation do not prohibit the sale, supply, transfer or export, financing or use of medicines, soaps, disinfectants (biocides), detergents or chemicals for medical use needed to fight the COVID-19 pandemic.

However, the sale, supply, transfer or export to Syria, financing or use of some chemical substances used for disinfection/cleaning require prior authorisation granted by a NCA pursuant to Article 2b, due to the fact that they may also be used for internal repression,

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<sup>74</sup> Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items. See in particular entry 1A004.a of the Annex to the Dual-Use Regulation, which is referred to by Article 2d of the Syria Regulation, as amended by Article 1 of Council Regulation (EU) No 697/2013 of 22 July 2013 (OJ L 198, 23.7.2013, p. 28).

including carrying out chemical attacks. In particular, this is the case for ethanol, isopropanol and sodium hypochlorite<sup>75</sup>.

An authorisation is required for the sale, supply, transfer or export of ethanol, isopropanol and sodium hypochlorite on their own or in mixtures in specific high concentrations (“Restricted concentrations”)<sup>76</sup>. To obtain such an authorisation, the Humanitarian Operators must demonstrate that these substances will be used to provide humanitarian relief in the context of the fight against the pandemic, and not for other purposes<sup>77</sup>. The Humanitarian Operators can seek guidance from the NCA on the necessary information to substantiate the application for that authorisation.

Disinfectants, hand sanitizers and detergents/cleaning products in the form of end-products are themselves mixtures. However, these end-products generally require a lower concentration of ethanol, isopropanol and sodium hypochlorite than the Restricted concentrations<sup>78</sup>. In this case, the derogation is not required. These products can therefore be freely traded and provided in the context of humanitarian aid.

The prior authorisation is also not required in the less likely case where those end-products incorporate ethanol, isopropanol and sodium hypochlorite in concentration equal to or exceeding the Restricted concentrations, provided that the Humanitarian Operator can guarantee that either of these conditions is met:

1. ethanol, isopropanol and sodium hypochlorite cannot feasibly be removed from the product or used for other purposes (removal/repurposing of the controlled chemicals is unfeasible)<sup>79</sup>; or
2. for ethanol and sodium hypochlorite, the end-products are consumer goods packaged for retail sale for personal use or packaged for individual use<sup>80</sup>.

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<sup>75</sup> Ethanol is an active substance which is used for many disinfectant products (product type 1 under Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products). Isopropanol has recently been used as an alternative to ethanol due to the shortage of the latter. Sodium hypochlorite is used as a biocide in detergents, commonly encountered in liquid bleach. The sale, supply, transfer or export of ethanol, isopropanol, and sodium hypochlorite, which are listed under Annex IX, entry A1.004, is subject to authorisation requirements under Article 2b of the Syria Regulation. Ethanol is applied in the production of dialkyl alkylphosphonates and anhydrous ethanol, which can be used as solvents in chemical reactions to produce precursors of chemical weapons (including sarin). Sodium hypochlorite solutions can be used to extract chlorine gas.

<sup>76</sup> The restriction apply to mixtures in concentrations from 90% or greater (ethanol, sodium hypochlorite) or 95% or greater (Isopropanol).

<sup>77</sup> According to Article 2b(2), the NCA shall not grant an authorisation if it has reasonable grounds to determine that the substances the sale, supply, transfer or export of which is in question is or might be used for internal repression or for the manufacture and maintenance of products which might be used for internal repression.

<sup>78</sup> The concentration of ethanol and isopropanol in disinfectants and detergents is usually 75%. Bleaches contain sodium hypochlorite below 10% concentration, with common concentration of about 5%.

<sup>79</sup> See General Note to Annex IX, as amended by Article 3 of Council Regulation (EU) No 509/2012 of 15 June 2012 amending Regulation (EU) No 36/2012 (OJ L 156, 16.6.2012, p. 10).

For technical specifications of the goods, Humanitarian Operators should seek information from the manufacturer, possibly obtaining a declaration that the item does not fall under the relevant restriction of the Syria Regulation<sup>81</sup>. In case of doubt, Humanitarian Operators should contact the NCA.

For the specific case in which a designated person happens to be involved in the chain leading to the provision of humanitarian aid, see Question 2.

**9. Is the provision of COVID-19 testing kit (qRT-PCR KIT) allowed under the Syria Regulation?**

Yes. EU restrictive measures set out in the Syria Regulation do not prohibit the sale, supply, transfer or export, financing or use of COVID-19 testing kits such as quantitative real time PCR kit (qRT-PCR KIT). The reagents commonly used in qRT-PCR KIT are also not subject to any kind of trade restrictions under the Syria Regulation. Should the Humanitarian Operator have reason to believe that the reagents provided with the qRT-PCR KIT are not the ones commonly used, it should seek confirmation from the manufacturer that those reagents are not subject to export restrictions under the Syria Regulation. The NCA should be contacted in case further guidance is needed.

For the specific case in which a designated person happens to be involved in the chain leading to the provision of COVID-19 testing kit (qRT-PCR KIT) as part of humanitarian aid, see Question 2.

**10. Is the provision of personal protective equipment needed to fight the COVID-19 pandemic allowed under the Syria Regulation?**

Yes. In principle, the Syria Regulation does not prohibit the sale, supply, transfer or export, financing and use of personal protective equipment (PPE) needed to fight the COVID-19 pandemic.

Certain specific items used as PPE in the context of the fight against the COVID-19 pandemic, such as masks, gloves and protective shoes can also be adapted for use in war situations to protect from biological agents. The sale, supply, transfer or export, financing or use of this PPE is subject to prior authorisation by a NCA<sup>82</sup>.

Humanitarian Operators should ensure that the PPE intended for sale, supply, transfer or export, financing or use in the fight against the pandemic is not adapted for use in war scenarios. In case of uncertainty, Humanitarian Operators should seek the necessary clarification from the manufacturer. If an authorisation is nevertheless required, because the PPE is adapted for use in war scenarios in addition to use in civilian contexts, the

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<sup>80</sup> See Annex IX of the Syria Regulation, as amended by letter (a), point 11, Article 1 of Council Regulation (EU) No 697/2013 of 22 July 2013 (OJ L 198, 23.7.2013, p. 28). According to this Article, this condition does not apply to those consumer goods incorporating isopropanol.

<sup>81</sup> In particular, entry A1.004 of Annex IX to the Syria Regulation.

<sup>82</sup> In particular, see entry I.B.1A004, table A, Part 1 of Annex IA to the Syria Regulation. This entry covers, inter alia, protective suits, gloves and shoes specially designed or modified for defence against biological agents adapted for use in war.



Humanitarian Operator handling the export should demonstrate to the NCA that the item has a humanitarian purpose<sup>83</sup>.

For the specific case in which a designated person happens to be involved in the chain leading to the provision of humanitarian aid, see Question 2.

### III. OTHER RESTRICTIONS

#### **11. Can EU banks open a new bank account with a Syrian credit or financial institution to support humanitarian aid fighting the COVID-19 pandemic?**

Yes, subject to a specific request for derogation.

Under specific conditions, Article 25a of the Syria Regulation provides that banks can request a derogation from the NCA to open a bank account with a Syrian credit or financial institution for the purpose of providing assistance to the Syrian civilian population. See also Questions 23 to 24 of the Syria FAQs.

#### **12. Can EU nationals travel to Syria to provide medical assistance to fight the COVID-19 pandemic?**

Yes. In principle, nothing in the Syria Regulation prohibits travel to Syria, or the provision of medical assistance in the country.

For the specific case in which a designated person happens to be involved in the chain leading to the provision of humanitarian aid, see Question 2.

#### **13. Can Humanitarian Operators purchase fuel in Syria for transporting, into or within Syria, medical equipment to fight the COVID-19 pandemic?**

Yes, pursuant to Article 6a of the Syria Regulation.

If Humanitarian Operators receive public funding from the EU or a Member State for the purpose of providing humanitarian aid in Syria, no prior authorisation by the NCA is required in order to purchase fuel needed to provide such aid pursuant to Article 6a(1). In this case, if the payment for the fuel goes to a designated person, it can be made without any authorisation as per Article 16a(1) of the Regulation.

If Humanitarian Operators do not receive funding from the EU or a Member State for the purpose of providing humanitarian aid in Syria, a prior authorisation by the NCA is required in order to purchase the fuel pursuant to Article 16a(2) of the Regulation. In this case, if the payment for the fuel goes to a designated person, an authorisation is needed in accordance with Article 16a(2) of the Regulation (see also Question 18 of the Syria FAQs). In the latter case, when contacting the NCA, Humanitarian Operators should specify whether they need to purchase oil on different occasions (e.g. small purchases from petrol stations) or if they envisage a one-off purchase (e.g. refuelling a lorry before leaving Syria). While blanket exemptions are not allowed, Article 6a(2) of the Syria Regulation allows NCAs to grant general derogations for identical recurring operations.

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<sup>83</sup> Article 2a(2) of the Syria Regulation.

See also Question 18 on joint applications and Question 19 on general derogations.

See also the Syria FAQs, questions 16 to 18.

**14. If imports of medical material into Syria in connection with the fight against the COVID-19 pandemic are subject to taxes and import duties, can Humanitarian Operators pay those to the Syrian Government?**

Yes, if this is the only way to provide humanitarian assistance to the civilian population in Syria in the context of COVID-19 pandemic.

If the payment is to be made to, or will indirectly benefit, a designated person, which is highly likely in this case, a derogation from the NCA may be needed. See also Question 2.

**15. Can Humanitarian Operators evacuate people affected by the COVID-19 pandemic to other locations in Syria or outside the country?**

Yes.

If the action entails, for instance, purchasing fuel or making funds available to a designated person<sup>84</sup>, a derogation may be necessary. See Question 13.

Note that it is possible to procure jet fuel for designated Syrian air carriers for the purpose of evacuation of the population affected by the pandemic in accordance with Article 7a.5(b) of the Syria Regulation.

**16. Can Humanitarian Operators finance or take part in the construction of makeshift hospitals, sanitation operations or temporary infrastructures to fight the COVID-19 pandemic?**

Yes. See also Question 1.

For the specific case in which a designated person happens to be involved in the construction and/or draws economic benefit from it, see Question 2. By way of example, this could be the case if the designated person charges a fee for accessing the temporary infrastructure, or if it retains ownership of the latter after the end of the crisis caused by the COVID-19 pandemic.

**17. Can Humanitarian Operators provide humanitarian aid if the only way is to provide aid through designated persons?**

Humanitarian Operators should make use of the existing exceptions under the Syria Regulation. However, in accordance with International Humanitarian Law, where no other option is available, the provision of humanitarian aid should not be prevented by EU restrictive measures. This, however, is unlikely to be the case, given that the Syria Sanctions provide ample derogations catering for humanitarian activities and if the present guidelines are strictly followed.

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<sup>84</sup> By way of example, see entry 50, Part B, Annex II (Syrian Arab Airlines).

#### IV. PROCEDURAL QUESTIONS

##### **18. Are joint applications acceptable, for instance, one application by several Humanitarian Operators, or one application to several NCAs at the same time?**

For the sake of efficiency, if a humanitarian project to fight the COVID-19 pandemic requires several applications for derogations to be **submitted, whether to one or several NCAs**, it should be possible to submit a single application to all relevant NCAs.

Similarly, if a humanitarian project requires **several Humanitarian Operators to apply** for derogations, it should be possible to submit a joint application. Donors, banks, International Organisations and NGOs involved in a humanitarian project should cooperate to exchange information in order to gather the evidence required by the NCAs to grant the authorisation.

In the current exceptional circumstances, **NCAs are invited to establish a contact point for humanitarian derogations related to the fight against the COVID-19 pandemic**. Given the urgency of the situation, NCAs should cooperate to ensure that they provide timely and consistent replies to such requests. The Commission stands ready to support NCAs in their efforts.

##### **19. Can NCAs grant general authorisations, or do Humanitarian Operators need to apply for an authorisation for each individual activity?**

NCAs can grant derogations under any EU sanctions for a limited number of reasons, which the NCA needs to verify in each given case.

The Syria Regulation explicitly allows NCAs to grant general authorisations (“*under the general and specific conditions they deem appropriate*”) in two cases: for the making available of certain funds or resources to designated persons in relation to humanitarian activities under Article 16a(2) and for purchasing petroleum products in Syria for the same activities, under Article 6a(2).

It is up to the relevant NCA to decide whether, in the case of identical recurrent activities/transactions the conditions of which are known in advance, they wish to grant a single authorisation covering all activities/transactions, or prefer to authorise them one by one. The Commission encourages NCAs to consider whether, in the current exceptional circumstances, a single authorisation could facilitate the provision of humanitarian aid to the persons affected by the COVID-19 pandemic. In issuing an authorisation, the NCAs may decide to impose conditions to ensure that the exceptions do not frustrate or circumvent the objective of the sanctions.

##### **20. How can Humanitarian Operators ensure that they are not making funds or economic resources available to designated individuals, entities or bodies when providing aid to fight the COVID-19 pandemic?**

Annexes II and IIa of the Syria Regulation contain the lists of individuals, entities and bodies designated under EU restrictive measures. These lists are also reflected in the EU

Sanctions Map<sup>85</sup> and in the Financial Sanctions Database<sup>86</sup>, both of which are freely accessible to Humanitarian Operators. These lists are regularly updated.

Humanitarian Operators should already have in place the required procedures to carry out the necessary checks to ensure that partners involved in the delivery of humanitarian aid are not designated under EU restrictive measures. In the context of providing assistance to fight the spread of COVID-19 in Syria, close attention should be paid to the designated persons, entities and bodies linked to the healthcare sector, both public and private, as well as the logistics sector. The Humanitarian Operators should also ensure that funds and economic resources, including medical equipment, are not diverted by designated persons. This entails adopting the necessary precautions and verifications to ensure that funds and economic resources are not seized by these persons (e.g. designated members of the Syria armed forces).

Humanitarian Operators, especially those closest to external partners and subcontractors, should gather as much information as reasonably possible and make their partners aware, preferably contractually, that funds or economic resources must not be made available to designated persons or for their benefit. The use of Hawala and other informal types of money transfer also fall within the scope of this prohibition.

According to Article 28 of the Syria Regulation, violations of EU restrictive measures do not give rise to any liability if the violator did not know, and had no reasonable cause to suspect, that its actions would infringe the prohibitions at hand. In this vein, EU restrictive measures should not lead to over-compliance. In particular, they should not be interpreted as requiring Humanitarian Operators to carry out unrealistic efforts to collect evidence or prove the negative.

If a designated person happens to be involved in a humanitarian transaction, this does not automatically mean that the transaction must be abandoned. The Syria Regulation contains a number of important exceptions allowing such transactions to go through, subject, in certain cases, to the NCA's prior approval. See also Section I, and in particular Questions 2, 4 and 5, and Question 25.

In case of doubt, Humanitarian Operators should reach out to the relevant NCA to enquire whether their procedures respect the anti-circumvention clause of the Syria Sanctions. NCAs should provide timely and clear guidance to Humanitarian Operators in that regard.

## **21. How can Humanitarian Operators request a derogation in order to carry out a restricted action/transaction, if the purpose is to provide assistance to people affected by the COVID-19 pandemic?**

A derogation can be requested by any Humanitarian Operator involved in the provision of humanitarian aid. Usually, the implementing partners are best placed to gather the necessary information. All other operators, including donors and banks, should cooperate with the applicant to facilitate the collection and sharing of such information.

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<sup>85</sup> <https://www.sanctionsmap.eu/>.

<sup>86</sup> <https://webgate.ec.europa.eu/fsd/fsf>.

Humanitarian Operators must address the NCA with which they have the closest link, as indicated in Annex III to the Syria Regulation. They should seek guidance from the NCA to identify the documents needed to obtain the relevant derogations.

See also Question 18 concerning joint applications.

**22. How can Humanitarian Operators obtain expedited derogations, if the situation on the ground so requires?**

Humanitarian Operators seeking an urgent derogation should clearly point out the urgency and explain the underlying reasons in their application. The more complete an application is, the easier and faster an NCA will be able to process it. Supporting declarations from the donors, letters of comfort from other authorities and similar documents may also be attached to the submission to facilitate the review of the application by the NCA. Humanitarian Operators must obtain the relevant authorisation before initiating the humanitarian project to fight the COVID-19 pandemic.

In order to expedite the process, Humanitarian Operators should liaise with and seek guidance from the NCA even before the submission of an application.

Consistent guidance throughout the EU is paramount in order to ensure that Humanitarian Operators in the EU are able to operate. The Commission stands ready to support NCAs in their efforts, and to create a single platform for publishing the guidance issued by NCAs.

**23. Are Humanitarian Operators required to comply with EU Sanctions concerning International Terrorism and Chemical Weapons when delivering aid to fight the COVID-19 pandemic in Syria?**

Yes.

EU Sanctions concerning International Terrorism and Chemical Weapons target certain persons which may operate in Syria. If they become involved in a transaction, the specific restrictions in the EU Sanctions against International Terrorism and Chemical Weapons apply. Further specific guidance from the relevant NCA is required in such a case.

**24. What is the difference between exemptions and derogations (together defined as “exceptions”)?**

Exemptions mean that a restriction does not apply when the purpose of the action is to provide humanitarian aid. Humanitarian Operators can carry out the action at hand without any delay. They should however be capable of demonstrating that the action was undertaken for a specific humanitarian purpose.

Derogations mean that a restricted (prohibited) action can be carried out only after the NCA has granted an authorisation, as long as the purpose is to provide humanitarian aid<sup>87</sup>.

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<sup>87</sup> Exemptions are generally phrased along the following lines: “(The prohibitions laid down in) Article... shall not apply to...”. Derogations are generally phrased along the following lines: “By way of

**25. Should the Humanitarian Operators vet the final beneficiaries of humanitarian aid?**

No. According to International Humanitarian Law, Article 214(2) of the Treaty on the Functioning of the European Union and the humanitarian principles of humanity, impartiality, independence and neutrality, humanitarian aid must be provided without discrimination. The identification as an individual in need must be made by the Humanitarian Operators on the basis of these principles. Once this identification has been made, no vetting of the final beneficiaries is required.

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*derogation from the (prohibitions in) Article..., the competent authorities may authorise, under the conditions they deem appropriate...”.*

## VENEZUELA

### LEGAL REFERENCES AND GUIDANCE

- Council Regulation (EU) 2017/2063 of 13 November 2017 concerning restrictive measures in view of the situation in Venezuela<sup>88</sup> (“Venezuela Regulation”).

EU sanctions vis-à-vis Venezuela laid down in Council Regulation (EU) 2017/2063 were imposed in response to the continuing deterioration of democracy, the rule of law and human rights in Venezuela. The objective of the EU restrictive measures is to foster a credible and meaningful process that can lead to a peaceful negotiated solution. They can be reversed depending on the evolution of the situation in the country, in particular the holding of credible and meaningful negotiations that lead to inclusive, fair and credible legislative and electoral conditions, the respect for democratic institutions and the liberation of all political prisoners.

Sanctions laid down in the Venezuela Regulation include, inter alia, an embargo on equipment that might be used for internal repression, assets freezes, a prohibition to make any funds or assets directly or indirectly available to, or for the benefit of those that are responsible for serious human rights violations and for undermining democracy and the rule of law in Venezuela, as well as persons associated with them. In view of the continuing grave situation in Venezuela, 36 persons are currently designated under the Venezuela Regulation<sup>89</sup>.

**The sanctions laid down in the Venezuela Regulation do not concern medicine, medical equipment and medical assistance provided to the population at large. As such, medical equipment, including oxygen, respirators, personal protective equipment (PPE) and ventilators as well as medicines and other medical items required to fight the COVID-19 pandemic are not subject to direct restrictions on export, supply, financing or use in Venezuela (See Section II).** Moreover, the restrictive measures established in the Venezuela Regulation are focussed, have clear objectives and target specific persons who are primarily linked with the armed forces, security services, the government or the judicial system. It is therefore very unlikely that EU restrictive measures could interfere with humanitarian aid to fight the COVID-19 pandemic in Venezuela.

Nevertheless, in specific and very limited cases, the export, supply or financing of items needed by Humanitarian Operators may be indirectly impacted by the freezing of funds or economic resources of certain persons, entities and bodies subject to EU sanctions (“designated persons”) who or which may happen to be involved in the relevant transactions.

**As a general rule, EU sanctions vis-à-vis Venezuela do not allow the making available of funds and economic resources to designated persons, although a number of derogations exist (See Section I). In accordance with International Humanitarian Law, where no other options are available, the provision of humanitarian aid should**

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<sup>88</sup> OJ L 295 14.11.2017, p. 21-37.

<sup>89</sup> See Annex IV and V to the Venezuela Regulation.

**not be prevented by EU sanctions. This principle is, however, unlikely to find application in the case at hand, given the targeted nature of the restrictive measures in the Venezuela Regulation as well as the type and the limited number of designations.**

Ancillary activities needed to support the provision of medical devices (e.g. transport of medical devices, currency exchange and storage) are also permitted. While the possibility that those actions fall under the scope of specific restrictions is remote, Humanitarian Operators should carefully check them against this Note before they are carried out and, if needed, seek guidance from the relevant NCA.

**I. PROHIBITION ON MAKING FUNDS AND ECONOMIC RESOURCES AVAILABLE TO DESIGNATED PERSONS<sup>90</sup>**

**1. Are Humanitarian Operators allowed to liaise with designated persons if this is needed to provide humanitarian assistance to the civilian population in Venezuela in the context of COVID-19 pandemic?**

Yes. Humanitarian Operators may liaise with designated persons if this is needed in order to organise the provision of humanitarian aid in a safe and efficient manner.

Therefore, if a designated person intervenes in a humanitarian transaction, this does not automatically mean that the transaction must be abandoned. Insofar as no funds or economic resources are made available to a designated person, the Venezuela Regulation does not prohibit liaising with the former.

**2. How can Humanitarian Operators ensure that they are not making funds or economic resources available to designated persons, entities or bodies when providing aid to fight the COVID-19 pandemic?**

Humanitarian Operators should have in place the required procedures to carry out the necessary checks to ensure that partners involved in the delivery of humanitarian aid are not designated under EU sanctions. In the context of providing assistance to fight the spread of COVID-19 in Venezuela, close attention should be paid in particular to designated persons in critical positions linked to armed forces (Bolivarian National Guard and Bolivarian National Army) as well as members of the Venezuelan government operating in the economic or industrial sector, that may be involved in humanitarian operations. Humanitarian Operators should also ensure that funds and economic resources, including medical equipment, are not diverted by designated persons. This entails adopting the necessary precautions and verifications to ensure that funds and economic resources are not seized by these persons, and that medical material provided is used for its intended humanitarian purposes.

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<sup>90</sup> Annexes IV and V to the Venezuela Regulation contain the lists of individuals, entities and bodies designated under EU sanctions. These lists are also reflected in the EU Sanctions Map (<https://www.sanctionsmap.eu>) and in the Financial Sanctions Database (<https://webgate.ec.europa.eu/fsd/fsf>), both of which are freely accessible to Humanitarian Operators. These lists are regularly updated. The official source of EU law is the EU Official Journal, which prevails in case of conflict.



Humanitarian Operators, especially those closest to external partners and subcontractors, should gather as much information as reasonably possible and make their partners aware, preferably contractually, that funds or economic resources must not be made available to designated persons or for their benefit.

According to Article 13(2) of the Venezuela Regulation, actions by Humanitarian Operators in violation of the restrictive measures set forth in this Regulation do not give rise to any liability if these persons did not know, and had no reasonable cause to suspect, that their actions would infringe the prohibitions at hand. In this vein, EU sanctions should not lead to over-compliance. In particular, they should not be interpreted as requiring Humanitarian Operators to carry out unrealistic efforts to collect evidence or prove the negative.

Humanitarian Operators are required to channel humanitarian aid via actions and persons that are not restricted under the Venezuela Regulation. In accordance with International Humanitarian Law, where no other options are available, the provision of humanitarian aid should not be prevented by EU sanctions (see also Question 12). However, this is unlikely in the case at hand given the targeted nature of designations under the Venezuela Regulation.

In case of doubt, Humanitarian Operators should reach out to the relevant NCA to enquire whether their procedures respect the anti-circumvention clause of the Venezuela Regulation<sup>91</sup>. NCAs should provide clear and timely guidance to Humanitarian Operators in that regard.

### **3. Can medicine, medical equipment, disinfectants and protective equipment constitute “economic resources”?**

Yes. According to the definition in the Venezuela Regulation, “economic resources” means any kind of resources, “*tangible or intangible, movable or immovable, which are not funds, but may be used to obtain funds, goods or services*”<sup>92</sup>. Providing batches of medicine, medical equipment and disinfectants to a designated person allows that person to, for instance, sell the goods and obtain funds in exchange, hence, it amounts to making economic resources available to, or for the benefit of, a designated person. Making economic resources available to, or for the benefit of, a designated person requires prior authorisation by the NCA.

However, providing isolated items of the abovementioned goods to a designated person for their own use or protection would not amount to making economic resources available to them. Moreover, the Venezuela Regulation contains derogations enabling NCAs to authorise the making available of funds or economic resources if these are necessary to satisfy the basic needs of designated persons and their dependent family members, including payments for foodstuffs, medicines and medical treatment<sup>93</sup>.

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<sup>91</sup> Article 14 of the Venezuela Regulation.

<sup>92</sup> Article 1(d) of the Venezuela Regulation.

<sup>93</sup> Article 9(1)(a) of the Venezuela Regulation.

**4. Can the provision of medical assistance amount to “making economic resources available” to designated persons?**

In principle, the provision of medical assistance to persons infected by, or suspected of having contracted, COVID-19, is not itself considered to have an intrinsic economic value, or be exchangeable for funds or economic resources. Consequently, it does not amount to an economic resource, and thus the involvement of a designated person in the provision of such medical assistance will not breach the Venezuela Regulation.

For the specific case in which a designated person happens to be involved in the chain leading to the provision of medical assistance, see Question 1. With respect to ensuring that no funds or economic resources are made available to designated persons, for instance if these persons charge the beneficiaries for the service provided or obtain any economic resource for their own benefit in the context of the provision of medical assistance, see Question 2.

**5. Can Humanitarian Operators provide funds to local organisations in Venezuela for the purpose of fighting the COVID-19 pandemic?**

Yes.

For the specific case in which a designated person happens to be involved in the chain leading to the provision of humanitarian aid, for instance in case of designated persons or entities with competence in the Venezuela government, see Question 1. With respect to ensuring that no funds or economic resources are made available to designated persons, see also Question 2.

II. IMPORT AND EXPORT RESTRICTIONS<sup>94</sup>

**6. Is the sale, supply, transfer or export of any goods and technologies supplied for humanitarian purposes to fight the COVID-19 pandemic allowed under the Venezuela Regulation?**

Yes. The EU sanctions laid down in the Venezuela Regulation target specific persons by freezing their assets and prohibiting the making available of funds to them. They also prohibit the sale, supply, transfer or export of certain telecommunications equipment, technology and software as well as equipment used for internal repression<sup>95</sup>. However, these restrictions do not affect the sale, supply, transfer or export of goods and technologies related to the fight against the COVID-19 pandemic. In this context, “goods and technologies” includes, among others, ventilators or powered respirators for medical purposes (assisted breathing) and other medical devices to fight COVID-19 as well as COVID-19 testing kits (such as quantitative real time qRT-PCR KIT), medicines, disinfectants, detergents or chemicals.

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<sup>94</sup> Annexes I and II to the Venezuela Regulation contain the lists of goods and technologies covered by EU sanctions.

<sup>95</sup> For a detailed list of goods that cannot be sold, supplied, transferred or exported to Venezuela, see Annex I and II to the Venezuela Regulation.

The Venezuela Regulation prohibits the export to that country of certain personal protective equipment (PPE) that may be used for internal repression, such as body armour and helmets. However, it specifically exempts equipment designed for safety of work requirements<sup>96</sup>. Furthermore, this prohibition shall not apply to protective clothing, including flak jackets and military helmets, temporarily exported to Venezuela by Humanitarian Operator for their personal use only<sup>97</sup>. In case of uncertainty, Humanitarian Operators should seek the necessary clarification from the manufacturer.

For the specific case in which a designated person happens to be involved in the chain leading to the provision of humanitarian aid, see Question 1. With respect to ensuring that no funds or economic resources are made available to designated persons, see also Question 2.

### III. OTHER QUESTIONS

#### **7. Can EU banks open a new bank account with a Venezuelan credit or financial institution to support humanitarian aid fighting the COVID-19 pandemic?**

Yes. Banking activities with Venezuelan banks are allowed, provided that the Venezuelan financial institution is not a designated entity. This includes the establishment of new correspondent banking relationships and the establishment of new joint ventures. Banks are also permitted to open offices, branches and subsidiaries in Venezuela. Currently, no Venezuelan financial institution is subject to restrictive measures.

#### **8. Can EU nationals travel to Venezuela to provide medical assistance to fight the COVID-19 pandemic?**

Yes. In principle, nothing in the Venezuela Regulation prohibits travel to Venezuela, or the provision of medical assistance in the country.

For the specific case in which a designated person happens to be involved in the chain leading to the provision of humanitarian aid, see Question 1. With respect to ensuring that no funds or economic resources are made available to designated persons, see also Question 2.

#### **9. Can Humanitarian Operators purchase fuel, rent vehicles or use private transport services in Venezuela for transporting, into or within Venezuela, medical equipment to fight the COVID-19 pandemic?**

Yes. Nothing in the Venezuela Regulation prevents Humanitarian Operators from purchasing fuel in Venezuela.

For the specific case in which a designated person happens to be involved in the chain leading to the provision of humanitarian aid, see Question 1. With respect to ensuring

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<sup>96</sup> See item 5 in Annex I to the Venezuela Regulation.

<sup>97</sup> Article 5 of the Venezuela Regulation.

that no funds or economic resources are made available to designated persons, see also Question 2.

**10. Can Humanitarian Operators help to relocate people affected by the COVID-19 pandemic to other locations in Venezuela or outside the country?**

Yes.

For the specific case in which a designated person happens to be involved in the chain leading to the relocation of people affected by COVID-19, see Question 1. With respect to ensuring that no funds or economic resources are made available to designated persons in the process leading to the relocation of people affected by COVID-19, see also Question 2.

**11. Can Humanitarian Operators finance or take part in the construction of makeshift hospitals, sanitation operations or temporary infrastructures to fight the COVID-19 pandemic?**

Yes.

For the specific case in which a designated person happens to be involved in the construction and/or draws economic benefit from it, see Question 1. By way of example, this could be the case if the designated person charges a fee for accessing the temporary infrastructure, or if it retains ownership of the latter after the end of the crisis caused by the COVID-19 pandemic.

**12. Can Humanitarian Operators provide humanitarian aid if the only way is to provide it through designated persons?**

Humanitarian Operators must always seek solutions that do not breach EU sanctions. Accordingly, Humanitarian Operators are required to channel humanitarian aid via actions and persons that are not restricted under the Venezuela Regulation. In accordance with International Humanitarian Law, where no other options are available, the provision of humanitarian aid should not be prevented by EU sanctions. This is, however, very unlikely the case for the sanctions regime at hand, given the targeted nature of the restrictive measures in the Venezuela Regulation as well as the type and the limited number of designations.

**13. Should Humanitarian Operators vet the final beneficiaries of humanitarian aid?**

No. According to International Humanitarian Law, Article 214(2) of the Treaty on the Functioning of the European Union and the humanitarian principles of humanity, impartiality, independence and neutrality, humanitarian aid must be provided without discrimination. The identification as an individual in need must be made by the Humanitarian Operators on the basis of these principles. Once this identification has been made, no vetting of the final beneficiaries is required.

IV. OTHER LEGISLATION

**14. U.S. sanctions against Venezuela prohibit a number of actions allowed by the EU. Should Humanitarian Operators subject to the jurisdiction of a Member State comply with these foreign sanctions?**

No. Humanitarian operators subject to the jurisdiction of a Member State do not have to comply with autonomous sanctions regimes from third countries.