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## Risk Managing Humanitarian Payments into High Risk Conflict and Sanctioned Environments

### Background

On 09 July 2020 ACAMS hosted a Sanctions Masterclass on 'Risk Managing Humanitarian Payments into High Risk Conflict and Sanctioned Environments'. Presenters for the Masterclass were: Justine Walker, Head of Global Sanctions and Risk, ACAMS; Roberto Crespi, Legal Officer, Sanctions Unit, CDG FISMA, European Commission; Mark Nakhla, EVP of Research, Kharon; Roland Pearce, Director Corporate Bank Charities Team, Barclays; and John E. Smith, Partner, Morrison and Foerster LLP (former OFAC director).

The Masterclass received over 5,000 registrations and generated a large number of live questions, additional questions were submitted in advance and subsequent to the Masterclass. This short Q&A paper addresses some of the main questions posed, responses to individual questions have been grouped within key thematic topics. **The below should be read in conjunction with viewing the Masterclass and downloading the accompanying slides; the following responses are not intended to be a standalone resource.**

As a reminder the free on demand version of the Masterclass is available [here](#).

### Q: Where to find key sources of further information?

**A:** The Masterclass highlighted four key reports that offer detailed information on the provision of humanitarian aid in compliance with US, UK and EU sanctions. We strongly urge readers to consult the following reports:

- **Risk Management Principles Guide for Sending Humanitarian Funds into Syria and Similar High-Risk Jurisdictions** (Non-binding guidance supported by the EU, World Bank, Swiss Government, UK Department of International Development and Graduate Institute, May 2020)
- **US Fact Sheet: Provision of Humanitarian Assistance and Trade to Combat COVID-19** (April 2020)
- **EC Guidance note on the provision of humanitarian aid to fight the Covid-19 pandemic in certain jurisdictions subject to EU restrictive measures** (May 2020)

• **UK OFSI FAQs Fact Sheet for Charities and NGOs** (October 2017)

We would highlight that the US Fact Sheet provides a range of further links to individual humanitarian licensing regimes, including general licenses and cross programme guidance.

OFAC further operate a hotline regarding the US applicability or scope of humanitarian-related authorisations, questions can also be directed to OFAC's Sanction Compliance and Evaluation Division

at (800) 540-6322

or (202) 622-2490,

or by email at [OFAC\\_Feedback@treasury.gov](mailto:OFAC_Feedback@treasury.gov). The hotline is a useful resource for more standard questions; we would however stress that the hot line should not replace your own risk assessment and legal analysis.

*EU member state competent authorities are listed in the 'authorities' section of the [EU sanctions map](#).*

**Q: Whether humanitarian actors who are not working for US or EU organisations, or are not based in these jurisdictions, need to comply with US and/or EU sanctions.**

**A:** Humanitarian organisations and their staff – no matter where they are based – will need to carefully consider how they comply with relevant sanctions. Failure to comply may result in criminal or regulatory breaches of financial sanctions, and in some cases export control violations.

Obligations to adhere to sanctions may apply to humanitarian activity, no matter whether undertaken by international organisations, charities and NGOs – including individual members of staff – regardless of how they are funded.

Sanctions and restrictive measures are likely to apply to entities or bodies that are tasked with the implementation of humanitarian activities which are, directly or indirectly, funded by the budget of the EU or US (this may be applicable to other country donors arrangements also).

EU, UK and US citizens, no matter where they are based, will also be required to comply with respective sanctions and restrictive measures of the country they are a citizen of. This will apply even in circumstances where the employing organisation has no EU, UK or US exposure.

Keep in mind the origin of goods utilised within humanitarian programmes (for example US origin goods) and dealing in the currency of a particular country, i.e. US dollar may also be relevant. UN Security Council obligations, and especially those related to designated terrorist actors, are a further aspect that all humanitarian actors should be aware of.

In sum, humanitarian actors should consult with specific regulation and laws as they can often be very broad and may apply in the following circumstances:

- US/EU citizens and permanent residents wherever they are located;
- Companies, NGOs and other entities organised under the law of the US and EU;
- All people and organisations who are physically located in the US and EU;
- Branches of US and EU companies and other entities located throughout the world (in the case of certain sanction programs, foreign subsidiaries owned or controlled by US companies must also comply);
- Where there is a nexus to a certain type of good (i.e. US origin goods);
- Dealing in a particular currency (i.e. the US dollar);
- Humanitarian programmes funded by the budget of the EU, the US (and where applicable other countries); and
- UN sanctions.

**Q: What do Secondary Sanctions mean, what is the scope of 'significant transactions' and how do these apply to humanitarian activity in Iran and Syria.**

**A:** US sanctions are generally divided into two categories:

- “primary” sanctions (which apply to US persons or transactions with a US nexus and carry potential monetary penalties for violations); and
- “secondary” sanctions (which apply to non-US persons for transactions outside the United States and which threaten sanctions against foreign persons for sanctionable conduct).

US secondary sanctions threaten to cut off non-US persons from the US financial system for transactions or certain other dealings with US-designated actors, businesses or sectors. Numerous statutory and executive orders provide authority to impose secondary sanctions for transactions involving multiple countries such as Iran, Russia, Syria, North Korea and Venezuela.

OFAC may sanction non-US individuals and entities if they operate in, or knowingly engage in a “significant” transaction. Although there is some variance between sanctions programmes, OFAC has defined the meaning of ‘significant’ to broadly cover:

- The size, number and frequency of the transaction(s);
- The nature of the transaction(s);

- The level of awareness of management and whether the transaction(s) are part of a pattern of conduct;
- The nexus between the transaction(s) and a blocked person;
- The impact of the transaction(s) on statutory objectives;
- Whether the transaction(s) involve deceptive practices; and
- Other factors that the secretary of the Treasury deems relevant on a case-by-case basis the value and number of goods or value and frequency of services.

The clarity on how secondary sanctions apply to humanitarian activities varies between the US sanction programs concerned and the precise circumstances of humanitarian activity. It is critical that humanitarian operators refer to the latest US guidance. For instance, in February 2020 OFAC issued a new frequently asked question (FAQ) 823 which confirmed that non-US persons generally do not risk exposure under US secondary sanctions relating to Iran for engaging in the sale of agricultural commodities, food, medicine, or medical devices to Iran. This is because such transactions are generally subject to exceptions in otherwise applicable authorities, provided the transactions do not involve persons designated in connection with Iran's support for international terrorism or weapons of mass destruction (WMD) proliferation. Non-US persons do not risk exposure under US secondary sanctions for engaging in humanitarian-related transactions or activities involving the Central Bank of Iran (CBI) that would be authorised under [GL 8](#) if engaged in by a U.S. person, provided such transactions and activities do not involve any person designated in connection with Iran's support for international terrorism or WMD proliferation, other than the CBI.

OFAC Iran FAQs are regularly updated and have evolved over recent months to address concerns on how secondary sanctions may impact humanitarian activity. For instance, in June 2020 OFAC issued four new frequently asked questions ("FAQs") that define key terms used in secondary sanctions added to the Iran sanctions program earlier this year. These FAQs focus on defining the construction, mining, manufacturing, and textile sectors of the Iranian economy and clarify OFAC's approach relevant to humanitarian and the COVID-19 response.

In terms of managing primary and secondary sanctions risk, it is important to ensure you are familiar with the scope of what is permitted under US general licenses and the text of OFAC FAQs.

In the case of Syria humanitarian actors should be aware of the Caesar Syria Civilian Protection Act, also known as the Caesar Act.

This is US Congressional legislation that sanctions the Syrian regime for war crimes against its people. The Act was incorporated in the National Defense Authorization Act (NDAA) for Fiscal Year 2020, signed in December 2019. The bill is named after an individual who documented torture against civilians by Assad's government, which became known as the 2014 Syrian detainee report or Caesar Report.

The Caesar Act includes the provision of secondary sanctions and requires the US President to impose sanctions with respect to a foreign persons' that he determines to have engaged in significant transactions with the government of Syria. This includes any entities the government of Syria owns or controls, senior political figures, and persons operating in a military capacity within Syria on behalf of the Syrian, Russian or Iranian governments.

As discussed during the Masterclass, for humanitarian actors operating within Syria there may be increased risk of secondary sanctions exposure if activities look more like reconstruction than humanitarian assistance (i.e. rebuilding/repairing infrastructure which is either government run or linked). In such instances you should consult the most updated US guidance and/or seek legal advice.

Humanitarian Actors can take some comfort that it is highly unlikely that US sanctions would be imposed on a non-US NGO for doing something that is authorised under a general license in the US.

Priority targets for sanctions are not NGOs but those knowingly engaged in significant activities with regard to specified sectors i.e. construction or engineering services to the Government of Syria. That said humanitarian activities which involve a significant reconstruction element would be well advised to consider their sanctions exposure – both primary and secondary.

Our June monthly sanctions compliance update offered an update on the Caesar Act. You can view the recording [here](#).

For a broader discussion paper on secondary sanctions and their cross border impact see the Atlantic Council secondary sanctions [brief](#) written by Samantha Sultoon and Justine Walker, September 2019.

The ACAMS International Sanctions Compliance Task Force humanitarian workstream will continue to map the main uncertainties for humanitarian actors in seeking to comply with secondary sanctions exposure. A further update on this topic will be issued in the coming months.



**Q: How humanitarian exemptions within sanction frameworks work.**

**A:** As a general rule, the US and EU favour humanitarian work, including in crisis zones/countries under sanctions. The US and EU frameworks generally provide certain exceptions under the financial sanctions and export control regimes, for example the export of goods used to support humanitarian operations or financial engagement with certain sanctioned countries or parties.

In the US context, these may be permitted by either a ‘general license’ or ‘individual/specific license’. A general license will automatically apply if the activity falls within the scope of the set parameters of that license. On the other hand, an individual or entity must apply for a specific license, which is issued by competent authorities authorising a set of defined activities relating to that individual or entity’s work.

As a general rule, the US rarely allows the benefits of humanitarian aid to flow directly to a sanctioned party, unless that party is part of the government of a sanctioned jurisdiction (such as Crimea, Cuba, Iran, North Korea, Syria, or Venezuela) and government approval or facilitation is required for the humanitarian project to proceed.

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

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

These above categories are broadly followed by other countries implementing EU sanctions.

The Masterclass highlighted a range of tips on applying for licenses. These are also expanded in the *Risk Management Principles Guide for Sending Humanitarian Funds into Syria and Similar High-Risk Jurisdictions*. We urge readers to consult these sources of information. However, by way of summary do consider the following when applying for a license:

- Do check if you require a specific US or EU license that would cover your activities, there may already be a relevant US/EU exemption in place.
- Be clear on the appropriate licensing grounds and provide solid evidence.
- Identify whether the authority you are applying to has a set humanitarian license form.
- Provide an opening paragraph within your application that summarises the project.
- Be specific – do not use overly general terms i.e. the project will ‘primarily be working on’ as this may cause uncertainty as to wider scope.
- Set out clearly what you will be doing, who you will be dealing with, trusted actors involved, any government funding involved, other factors which could support your application i.e. relevant due diligence that you have undertaken.
- Ensure you clearly set out all the activities that the licence will need to cover.
- Remember you may need to apply to different licensing authorities, beyond those dealing with financial sanctions i.e. export control agencies.
- Explain your monitoring activity and how report/reaction would be done in case of unintended violation.
- Inform the competent authority if other authorities are involved (e.g. transnational projects).
- Be specific on timeframe. Specify if there is any particular urgency.
- Be prepared – and available – for follow-up dialogue with the relevant licensing authority.

It should also be noted that certain humanitarian-related goods and assistance may fall out of the scope of any applicable sanctions regime, and consequently no license or prior authorisation may be required.

Whether national competent authorities give approval or refusal to license requests depends on a range of factors. For instance, in the case of export controls, the nature of the goods and other policy aspects will be considered. The factors that will determine whether a license will be granted can be expected to include: nature of the goods due to be exported; destination; ultimate end use of the goods; the risk of diversion, and whether a good could be used for an alternative use.

Governmental interest of those imposing sanctions on whether to authorise humanitarian activity may at times differ from the interest of the humanitarian organisation. As discussed during the Masterclass, in certain cases it may be necessary for the US and EU to balance the expected benefits of humanitarian work for the people of a country against the benefits for sanctioned parties. For example, governments will want to ensure that aid for suffering populations does not strengthen a terrorist or other malign group's ability to operate, expand, and perpetrate additional suffering.

Do keep in mind that what is and is not permitted without a license and/or prior authorisation, can vary considerably across those countries imposing sanctions. In principle, a significant element of humanitarian related goods and assistance may fall out of the scope of any applicable sanctions' regime, and consequently no license or prior authorisation may be required. Equally, in some limited scenarios there may be no exemptions or legal authority for a competent authority to issue a licence if it would benefit a certain designated actor.

Beyond regime specific licensing information, we suggest readers consult the following two documents issued by OFAC:

- **"OFAC Licensing Process"** – Provides guidance on the OFAC licensing process.
- **"Guidance Related to the Provision of Humanitarian Assistance by Not-For-Profit Non-Governmental Organizations"** – Clarifies the reach of economic sanctions for the non-governmental organisations involved in the provision of humanitarian assistance. (October 2014)

The Masterclass panel stressed the following key factors for consideration of how to manage license applications:

- Recognise there are many complexities in licensing arrangements – for example what does the license/derogation actually cover i.e. export of medical devices without a license (software upgrades often problematic), computers, phone equipment, dual use goods, contracting with local sanctioned linked officials etc.
- For some sanctioned jurisdictions there are a long lists of items used for 'basic human needs' that can be exported without licence, but the same items for a different sanctioned jurisdiction require a licence. You must check export permissions for each individual regime.
- Make sure all your potential exposure is covered.
- Be clear whether your contractors/subcontractors/implementing

partners also covered by either a specific or general license.

- Moving humanitarian goods into Syria, Iran, North Korea etc is often problematic due to payment of local port fees, custom charges and local taxes – check what local payments may necessitate the need for a specific license.
- Incidental engagement with a sanctioned entity/person – lack of competent authority messaging/agreement on what is acceptable and would not constitute a breach. Make sure you understand the thresholds. Hold dialogue across humanitarian actors, donors, competent authorities if required.
- Make sure you know who your US and EU staff are as this may impact on your sanctions compliance frameworks.
- Do you know what your exposure to the US financial system/ US economy may be (USD contracts, use of US banks to convert currencies, US origin goods)?
- Ensure the internal control environment and associated policies are equipped to manage humanitarian exemptions.

**Ability for non-US persons to apply for an OFAC license** – if there is no formal US nexus, non-US persons have limited, if any, ability to apply to OFAC for a license to engage in activity that would otherwise be prohibited. This is the case even when the activity may be consistent with US foreign policy interests, which is often a key consideration for the issuance of a license. For further information on licenses see the United States Department of the Treasury, [“OFAC FAQs: General Questions,”](#) Office of Foreign Assets Control, February 6, 2019.

**Q: Ownership & control factors/ making funds available to a designated actor.**

**A:** In its most basic form, the restriction prohibits the making available of funds (generally meaning cash and finance in any form) or economic resources (generally meaning assets of any kind, i.e. vehicles) directly or indirectly to a listed person.

When assessing whether you are dealing with a sanctioned individual or entity, understanding the concepts of ownership and control becomes a key component of the due diligence process. This is because obligations extend beyond those directly identified as subject to sanctions. The legal threshold for ownership and control is established in accordance with set criteria issued by the EU, US, UK and other authorities.

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

- Use of sanctioned telecoms networks/ travel on sanctioned airlines
- Renting a building for humanitarian operations from a company which is ultimately owned by an individual or entity on the sanctions list
- The purchasing of equipment required for humanitarian purposes from a non-listed company which is ultimately owned by an individual or entity on the sanctions list
- Engaging with third-party suppliers who may operate on behalf of a designated actor or entity

It is important to understand the scope of what is permitted in the context of making funds and economic resources available to a designated actor. As highlighted during the Masterclass there are some instances where funds may be made available to a designated actor, for instance under the US framework NGOs are authorised to engage in transactions with the Government of Syria that are necessary for certain defined activities, these include payment of taxes, fees, and import duties to, and purchase or receipt of permits, licenses, or public utility services from, the Government of Syria. US and EU exemptions vary across individual sanctions programmes; it is therefore necessary to assess each individual scenario so as to prevent making funds available to a designated actor (unless such scenarios are expressly permitted).

Please note the next ACAMS Masterclass will focus on the management of ownership and control factors. This will incorporate questions received on the issue of sanctioned persons on boards of NGOs/ corporates or holding other prominent positions i.e. government minister.

**Q: Whether humanitarian actors are expected to vet and screen the final beneficiaries of humanitarian aid?**

**A:** The general international consensus is that humanitarian aid must be provided without discrimination. The European Commission Guidance note on the provision of humanitarian aid to fight the Covid-19 pandemic in certain subject environments subject to EU restrictive measures offers a clear response to this question. See the answer to question 25.

Screening the names of final beneficiaries in receipt of humanitarian assistance against sanctions lists is generally not required, as this may be deemed as contrary to International Humanitarian Law.



**Q: How to conduct a risk assessment for humanitarian activity.**

**A:** Risk assessments in sanctions compliance are used to identify inherent risks in order to inform risk-based decisions and controls. Undertaking a well-founded risk assessment is essential in order to determine approaches to due diligence, partner selection, potential exposure to designated actors, risk of diversion of humanitarian funds/goods and so forth.

International NGOs are likely to be required to have a programme of due diligence in place to assess the suitability of local partners, they will have also undertaken security assessments for staff and operational programmes. This is especially so in conflict and sanctioned environments where there may be limited access to certain areas for the UN and/or NGO partners, as well as pressure on humanitarian actors from parties in control and armed groups on the conduct of their operations.

International humanitarian response planning, such as what is in place for Syria, sets out the importance of due diligence and monitoring for humanitarian actors. It is worth noting that INGOs/NGOs participating in the Syria humanitarian response plan have committed to follow a baseline of monitoring, due diligence and risk-mitigation standards across all humanitarian programming, and response modalities, in line with international standards. The aim is to ensure humanitarian assistance reaches its intended beneficiaries and provides confidence that the humanitarian community delivers in a transparent, principled and accountable manner. Implementation of these safeguards will normally form part of donor funding requirements and related oversight.

From a sanctions specific point of view, OFAC strongly encourages organisations subject to US jurisdiction, as well as foreign entities that conduct business in or with the US, US persons, or using US origin goods or services to undertake a risk assessment. Any assessment of risk must give weight to the diversity across and within different sectors of the humanitarian community, necessitating that each sector/actor must determine their own risk and manage it appropriately.

In accordance with this, attention should be given to OFAC's 2019 'A Framework for OFAC Compliance Commitments', which offers guidance on conducting a risk assessment. This outlines that, while there is not a 'one-size-fits all' risk assessment, it should generally consist of a holistic review of the organisation from top to bottom. Some general aspects highlighted by OFAC include:

- The organisation conducts or will conduct a risk assessment in a manner and with a frequency that adequately accounts for the potential risks;

- Existing information should be leveraged to inform the process;
- The risk assessment will generally inform the extent of the due diligence efforts at various points in a relationship or a transaction;
- This may include developing a risk rating for customers, customer groups, or account relationship by leveraging information provided by the customer and independent research. This will guide the timing and scope of future due diligence efforts;
- The OFAC risk matrices include important elements to consider in determining the sanctions risk rating;
- Mergers and acquisitions should be included in an organisations risk assessment, with compliance functions integrated;
- The organisation should develop a methodology to identify, analyse, and address the particular risks it identifies; and
- As appropriate, the risk assessment will be updated to account for the conduct and root causes of any apparent violation or systemic deficiencies identified by the organisation.

It is also worth noting that major donors, including US AID, UK DfID, EU funders have also issued guidance on risk assessment and due diligence standards.

**Q: The scope of US humanitarian licenses available for Crimea.**

- A:** Licensing frameworks can be subject to frequent change, we advise those engaged in humanitarian activity to closely follow relevant government advisories. In the meantime, it may be helpful to consult the follow General Licenses (GLs) issued by OFAC related to humanitarian assistance and trade with the Crimea region of Ukraine.
- General License 4, issued pursuant to E.O. 13685, authorises the exportation or reexportation from the U.S., or by a U.S. person, wherever located, of certain agricultural commodities, medicine, and medical supplies to the Crimea region of Ukraine, or to persons in third countries purchasing specifically for resale to the Crimea region of Ukraine, with certain exceptions as further described in General License 4.
  - General License 6, issued pursuant to E.O. 13685, authorises U.S. persons to transfer funds to or from the Crimea region of Ukraine or for or on behalf of an individual ordinarily resident in the Crimea region of Ukraine in cases in which the transfer involves a non-commercial, personal remittance, provided the transfer is not by, to, or through a person whose property and interests in property are blocked pursuant to E.O.s 13660, 13661, 13662, or 13685.

**Q: The current sanctions situation with respect to Sudan?**

Specific Licensing: For transactions not otherwise authorised by OFAC general licenses, OFAC considers specific license requests on a case-by-case basis and prioritises license applications, compliance questions, and other requests related to humanitarian support for the Ukrainian people.

**A:** As highlighted during the Masterclass we will address the Sudan sanctions situation during our next monthly sanctions compliance update which will be issued on Thursday 06 August.

Our Sanctions Compliance Monthly Update is a 40-minute presentation designed to keep compliance professionals informed of essential developments. Each update includes a general update, geo-political update, regulatory update, and a spotlight issue (August will cover Sudan).

You can access these updates [here](#). (Please log in to your LMS account or create a new one)

**Q: The EU sanctions process and whether all EU national parliaments need to approve sanctions before they come into force?**

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

If the Council Decision includes an asset freeze and/or other types of economic and/or financial sanctions, those measures need to be implemented in a Council regulation. The Council decision enters into force upon publication in the Official Journal of the European Union.

Council decisions imposing EU autonomous restrictive measures usually apply for 12 months, while the corresponding Council regulations are open-ended.

For further information on the decision-making process see:

**Adoption and review procedure for EU sanctions**

**Sanctions General Information** – Including: Objectives, Instruments and aims, Guidance

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