



SURVEY REPORT

ADDING TO THE EVIDENCE THE IMPACTS OF SANCTIONS AND RESTRICTIVE MEASURES ON HUMANITARIAN ACTION

MARCH 2021





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List of acronyms

ACF
Action contre la Faim/ Action
Against Hunger

AFD
Agence Française de
Développement/ French
Development Agency

AML/CFT
Anti-money laundering
and countering the financing
of terrorism.

COHAFA
Council of the EU Working Party
on Humanitarian Aid and Food Aid

COTER
Council of the EU working Party
on Terrorism

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

DG FISMA
Directorate-General for Financial
Stability, Financial Services and
Capital Markets Union

DG INTPA
European Commission Directorate-
General for International
Partnerships (former DG DEVCO)

DG NEAR
Directorate-General for
Neighbourhood and Enlargement
Negotiation

EEAS
European External Action Service

EU
European Union

FATF
Financial Action Task Force

IASC
Inter-Agency Standing Committee

ICRC
International Committee
of the Red Cross

ICVA
International Council of Voluntary
Agencies

IHL
International Humanitarian Law

KfW
German (State-owned)
Development Bank

NGO
Non-governmental organisation(s)

NRA
National Risk Assessment

NRC
Norwegian Refugee Council

OFAC
Office of Foreign Assets Control,
the financial intelligence and
enforcement agency of the U.S.
Treasury Department.

RELEX
Council of the EU Working Party
on Sanctions

UK
United Kingdom

UN CTED
United Nations Counter-Terrorism
Committee Executive Directorate

UN OCHA
United Nations Office for the
Coordination of Humanitarian
Affairs

UN WFP
United Nations World Food
Programme

UNICEF
United Nations International
Children's Emergency Fund

UNOCT
United Nations Office of Counter-
Terrorism

UNSC
United Nations Security Council

VENRO
Association of German
Development and Humanitarian
Aid Non-Governmental
Organisations

Executive summary



This report captures the findings of an online survey on the impacts of sanctions and counter-terrorism (CT) restrictive measures on VOICE member NGOs, and the VOICE Webinar on *EU Restrictive Measures and Humanitarian Aid: Between a principled view for exemptions and a pragmatic approach for an effective derogation process* (December 2020). At the webinar, the preliminary findings of the survey were presented and a discussion took place between key stakeholders including VOICE members, and representatives from the European Commission, the Council of the EU's Working Party on Sanctions, and the ICRC. The Webinar inputs and discussions are reflected in this report. The survey and webinar follow on from previous VOICE initiatives on this issue, including a 2-day Workshop held in Brussels in November 2019. VOICE has followed developments closely given that restrictive measures are becoming one of the most important issues for humanitarians, in terms of the impact on humanitarian access and operations.

The VOICE 2019 Workshop highlighted the importance of ensuring a solid understanding of the decision-making process and architecture in which sanctions and CT measures are agreed, particularly to allow humanitarian actors to understand how to obtain derogations, licenses and authorisations for humanitarian action. Also at the workshop, donors and regulators noted the importance of more 'evidence' from humanitarians on the impacts of CT measures, in particular at field level. It was recommended that greater attention is needed to highlight and address the negative consequences of bank de-risking, and that dialogue and consultation between all stakeholders – policy-makers, donors, humanitarian actors and banks – is required to foster a mutual understanding. Finally, the workshop recommendations included that the humanitarian community should engage at national level, given EU Member States' respective roles at UN, EU and domestic levels in defining CT measures and sanctions regimes, and in granting exemptions and derogations.

The online survey aimed at assessing how NGOs have moved forward on some of the main recommendations developed in the 2019 workshop, and what remains to be advanced. The perspectives of 34 VOICE members are included in the survey responses. The survey respondents were mostly based in EU countries, and from a range of organisational roles and positions, including finance, policy and advocacy, institutional funding and donor relations, risk and compliance, programme coordination, and a head of a regional office. 60% of respondents were in management positions. 12 VOICE members took part in follow-up interviews, representing some additional 5 VOICE members.

The majority of the NGOs who participated in this survey have been impacted by sanctions and CT restrictive measures, experiencing: delays in fund transfers or inability to transfer funds for certain countries (so called bank de-risking); delays affecting operations and programming; the inability to do cash-based programming in certain contexts; security risks, among other impacts.

NGOs have developed robust internal procedures to ensure that sanctions and CT restrictive measures are complied with, which involve considerable investments in terms of time, money and human resources. The degree of understanding of the EU restrictive measures framework and the experience of gaining derogations, licenses and authorisations is relatively high among VOICE members, but sufficient guidance from the competent authorities in the EU Member States is lacking, and the processes need to be streamlined.

There is a high-level of advocacy among VOICE members on this issue, which includes individual and collective work and dialogue at national and international levels.

Policy-makers often claim not to have 'evidence' of the impacts on humanitarian action of sanctions and CT restrictive measures. With 88 member NGOs in 19 countries, VOICE is well positioned to gather this evidence, and hopes that the one presented in this report can be used by members to further the discussion on this issue with key stakeholders. The report presents illustrative case-studies that emerged from the survey and interviews with NGOs, further adding to the already significant body of evidence on the impacts of sanctions and restrictive measures on humanitarian action. The names of the NGOs have been removed or changed to respect confidentiality.

Many thanks to the VOICE members who participated in the survey and interviews. Thanks to Human Security Collective and to VENRO for participating in interviews. Thanks also to DG ECHO, DG FISMA, the Swedish RELEX Counsellor, ACF-Spain, NRC, ICRC and all who contributed to the webinar.

1 The impacts of sanctions and restrictive measures on field operations

85% of the donors funding the activities of VOICE members in the following countries have clauses relating to sanctions and counter-terrorism restrictive measures in their funding agreements: Syria, Lebanon, Mali, Occupied Palestinian Territory, Venezuela, Afghanistan, Burundi, Central African Republic, Democratic Republic of Congo, Haiti, Iraq, Democratic People's Republic of Korea, Somalia, South Sudan, Sudan, Turkey, Yemen, Iran, Myanmar, Ukraine, Zimbabwe, Egypt, Guinea, Guinea Bissau, Libya, Tunisia, Nicaragua, Russia, Bosnia-and-Herzegovina, and China (not humanitarian).

DONORS MENTIONED IN THE SURVEY WITH CLAUSES RELATING TO SANCTIONS AND RESTRICTIVE MEASURES IN FUNDING AGREEMENTS

- > **EU Commission donors:** DG ECHO, DG NEAR, DG INTPA (former DEVCO); EU Regional Trust Funds
- > **UN donors:** UNICEF, UNHCR, UNDP, WHO, UN OCHA, UN – WFP.
- > **EU and UK Government donors:** German Federal Ministry for Economic Cooperation and Development, German Federal Foreign Office (GFFO), German (State-owned) Development Bank (KfW); United Kingdom Foreign, Commonwealth and Development Office (formally known as UK Department for International Development, DFID); Irish Department of Foreign Affairs and Trade (DFAT); Netherlands Ministry of Foreign Affairs; French Development Agency (AFD); French Ministry for Europe and Foreign Affairs' Crisis and Support Centre (CDCS); Ministry of Foreign Affairs of Denmark (DANIDA); Swedish International Development Cooperation Agency (SIDA).
- > **US donors:** Bureau of Population, Refugees and Migration (BPRM); Bureau for Humanitarian Assistance (BHA); Office of Weapons Removal and Abatement (WPA); USAID; US Department of State (USDOS); Office of U.S. Foreign Disaster Assistance (OFDA); Food for Peace (FFP).
- > **Other government donors: Australian Department of Foreign Affairs and Trade (DFAT);** Swiss Agency for Development and Cooperation (SDC); Global Affairs Canada (GAC); Canadian International Development Agency (CIDA).
- > **Other donors (also with their own CT clauses in funding agreements):** Disasters Emergency Committee (DEC); START Network; ELRHA; Bill and Melinda Gates Foundation.

Compared to the European Union (EU) donors, the majority of the survey respondents find the US donors stricter in terms of requirements relating to sanctions and CT restrictive measures. Just 8% of the NGOs surveyed indicated that sanctions and restrictive measures have no noticeable impact on their field operations. The remaining 92% of NGOs noted the following impacts:

SANCTIONS AND COUNTER-TERRORISM RESTRICTIVE MEASURES...	% of NGOs for which this applies
1. ...mean extra work for our staff both at field level and at headquarters.	77%
2. ...make it more challenging for logistics in the field, because some of the materials we require for our operations are on the EU sanctions list, or because there are concerns that suppliers may be linked to designated groups or persons.	62%
3. ...add to the financial costs of our field operations in certain countries and for certain programmes	58%
4. ...reduce the capacity of our field operations to respond quickly to emergencies in certain geographical areas.	54%
5. ...have affected decisions relating to our programming in the field, by preventing us from carrying out certain humanitarian programmes and activities, or by impeding our access to areas where needs are acute.	42%
6. ...have led to us postponing and/or cancelling certain humanitarian programmes and activities, which meant we could not provide necessary support to certain communities.	42%
7. ...make it difficult for our field staff in certain countries to carry out their work, due to concerns that they may be arrested for breaches of sanctions and CT restrictive measures.	31%
8. ...have made it necessary for us to hire extra staff.	31%

Other impacts noted by the NGOs include:

- Challenges linked to **bank de-risking** (blockages in transferring funds to operations leading to delays in programme implementation; additional time needed for negotiating with banks for funds transfers; security risks linked to alternative modalities of transfer);
- **Additional resources needed for engaging with donors** on their expectations on how to implement their clauses;
- **Impacts on partnering:** Some local partners have refused to implement projects and activities because of donor CT requirements being passed through to contracts with partners of INGOs;
- **Impacts on procurement:** lengthy contract negotiations with suppliers (due to screening);
- **Increased administrative/ due diligence / reporting requirements.** UK-based humanitarian actors and their employees, for example, have an obligation to report on suspicious activity not only on the part of their own organisations but also by their partners or associates overseas, even if those partners or associates have no connection with the UK;
- **Enhanced overall risks** related to GDPR, investigations, risk of litigation.

Survey respondents were asked to rank the specific impediments faced by their NGO as a result of sanctions and CT restrictive measures:

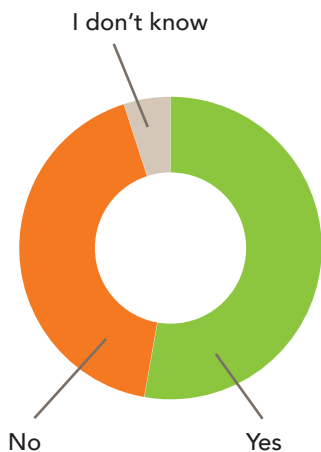
HIGHEST RANKING IMPEDIMENTS FOR NGOs

- 1. Issues relating to bank de-risking, including blocked or delayed transactions , funds returned**
- 2. Operational impediments: Delays affecting programmes and reduction in humanitarian access (security risks)**
- 3. Increased financial and administrative burden**

Several NGOs noted that the potential for severe legal ramifications due to unintentional or ill-informed breaches of CT requirements is the 'most significant' threat to their organisation.

Survey question:

Have any humanitarian activities had to be modified, postponed or cancelled due to concerns that these activities might be in breach of sanctions and CT restrictive measures or CT clauses in donor funding agreements?



Over 50% of the NGOs surveyed responded affirmatively. Some examples include:

- > "Sanctions have resulted in delays and/or extra work. For one of our country programmes we required a derogation and it took 8 months to gain it, which resulted in the return of funds to a donor as the necessary procurement could not be achieved within the allotted timeframe. Banking restrictions made it extremely difficult for us to get funding into another country. This resulted in a lot of administrative efforts to find ways to supply cash for programmes and in delays to the delivery of programmes – even though these had been approved and were being funded by the governments/institutions promoting the sanctions."
- > "Our NGO refrains from cash activities when implementing projects funded by the European Commission development donors (i.e. DG NEAR, INTPA, Madad), owing to compliance with restrictive measures embedded in donor grants."

1.1 ACCESSING FINANCIAL SERVICES: BANK DE-RISKING

Financial inclusion for NGOs has been a long-standing concern. Measures to address anti-money laundering and countering the financing of terrorism (AML/CFT) have sometimes overshot and led to organisations being unable to access needed funds. The Financial Action Task Force (FATF) - the inter-governmental body that sets international standards aimed at preventing global money laundering and terrorism financing - and others, have tried to address this. In 2012, when changing its methodology for evaluating countries, FATF noted that assessors needed to take into account whether AML/CFT measures were disrupting legitimate activities of non-profit organisations. There was a wider change in 2016 when language in the international standard on AML/CFT that NGOs were 'particularly vulnerable' was removed

and it was recognised that there is not a particular vulnerability for NGOs to the financing of terrorism.

The second EU Supranational Risk Assessment (on the assessment of the risk of money laundering and terrorist financing affecting the internal market and relating to cross-border activities) was conducted by the European Commission in 2019, and VOICE actively engaged in the process. The Risk Assessment concluded positively for the non-profit sector. The rating covers threat risk and vulnerability risk, and is divided for the sector as a whole, and for organisations receiving funding from the EU institutions or Member States. The non-profit sector was the only sector or service whose risk rating was lowered. The key outcomes of the 2019 risk assessment are:

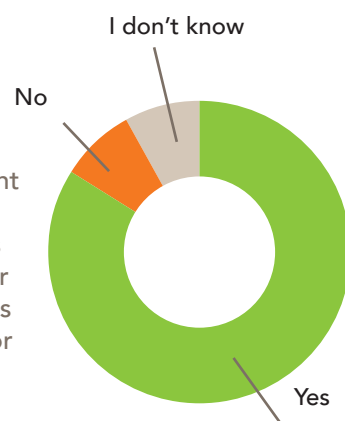
- > The risk rating for the vulnerability to be used for terrorist financing and money laundering has been downgraded from significant to moderate for all non-profit organisations.
- > However, the threat risk overall was still assessed as significant.
- > Both the threat and vulnerability levels were also reduced from moderate to less significant risk for 'NGOs in receipt of institutional funding' (includes Member State funding) which includes all VOICE members.

The assessment specifically recognises the risk that is partially driven from financial exclusion (so-called bank de-risking, resulting in banks refusing to take on NGOs as clients, or refusing to make transfers to specific operations/partners in sanction-affected contexts). It also recognises that counter-terrorism efforts need to be balanced with the legitimate mandate and objectives of professional and principled humanitarian organisations.

This overall change in attitude at the policy level – with the down-grading of the risk rating for non-profit organisations – has not yet trickled down to the operational/practical level. The results of this survey show that VOICE members still struggle with bank de-risking. The challenges relating to accessing financial services have several knock-on impacts on programming, as the evidence in this section illustrates.

Survey question:

Has your organisation had any problems accessing financial services? This might include delays to transfers, or banks refusing to transfer to certain countries or programmes, for example.

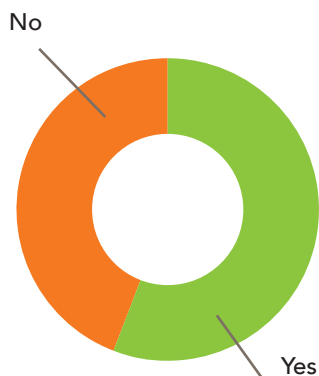


Bank de-risking is not a marginal topic for VOICE members surveyed, and they face a myriad of challenges to operations as a result. The following examples were shared by respondents:

- > “Delays in receiving funds to finance activities in several of the countries on sanctions lists. If the bank sees a reference to countries on lists, they request back-up documents (signed contracts, programme details, etc.). They only give us a short window in which to send this information, otherwise, the funds are returned to the originator. The process is bureaucratic, time consuming and frequently has to be repeated for the same funds – as they are returned and resent. We have experienced poor communication and unexplained delays from banks.”
- > “We face issue with cash transfers in US dollar. We recorded some +700 cases (April 2019 – April 2020) where payments have been questioned because of banks de-risking. Major Banks are not willing to risk working with us as they still consider our sector as high risk. Last year a bank turned us down after a due diligence process that lasted a couple of years, mainly because we operate in Iran and Syria.”
- > “Challenges with banks in transferring funding have created difficulties and delays in Syria, Lebanon, Nicaragua, Iraq, South Sudan and Turkey, for example.”

Survey question:

Has this impacted where your organisation operates? Has your organisation, for example, had to modify, cancel or postpone programmes or activities in certain areas due to having difficulties accessing financial services (banks)?



Some of the comments from respondents to this question include:

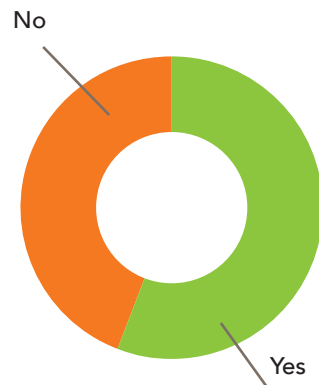
- > “For one country programme we experienced delays in payment of salaries and invoices. Providers lose trust and are not willing to engage with us for future procurement. Our credibility in front of authorities is at stake as we were not able to intervene quickly in some critical moments. There is simply no money available at country level. Implementation of activities is delayed.”
- > “We could not transfer funds to pay the salaries of the staff of a partner organisation working in a hospital in a conflict-affected country, because the bank refused the transfer. This led to the staff of the hospital going on strike.”

**VOICE MEMBER CASE-STUDY:
TRANSFERRING FUNDS TO SYRIA
– HOW TO ADVOCATE FOR
IMPROVEMENTS?**

One NGO interviewed faces big delays getting funds into Syria due to what it claims is a lack of competence or willingness from the banks and ambiguity in enforcement of CT and sanctions instruments by States and/or donors. In terms of addressing delays, this NGO believes that International NGOs (INGOs) should not focus on any one sector/entity over another, but acknowledges that governments, the EU and the banks all play a crucial – but different – role in solving this problem. Their roles are highly interdependent and instead of working together they are involved in a circle of blame and INGOs are caught in the middle going back and forth between parties unless an active stand is taken to pressure these parties to live up to their responsibilities.

Survey question:

Has your organisation put in place mitigation measures to deal with bank de-risking? If so, can you briefly describe these measures?



Typical bank de-risking mitigation measures used by VOICE members include:

- Developing relationships with the banks to discuss transactions, inform them of new projects and changes in activities.
- Providing necessary assurances to banks that all CT requirements are met – this may include supplying extra documentation to the banks such as contracts, upon request.
- Arranging for and then sharing with the banks any supporting documentation from donors, such as ‘comfort letters’.
- Including time buffers for transfers in financial planning.
- Maintaining relations with a large number of banks and coordinating with peer organisations to find pathways to transfer funds.
- Using – as a last resort -informal and unregulated transfer systems.
- Engaging in global advocacy to mitigate bank de-risking.

The perception of the NGOs interviewed for this survey is that they are constantly ‘walking on thin ice’ with banks and in spite of the efforts to engage banks in discussions, the banks simply ‘do not care’. This forces NGOs to find work-arounds which include resorting to less transparent means, like informal money-transfer systems. This greater risk-taking undermines their financial integrity. Financial integrity policy thus becomes counter-productive for protecting NGOs from terrorism financing abuse, as it leads to the exclusion of NGOs from the banking sector. The perception of the NGOs is that they are being driven into a vicious circle which is in no one’s interest.

Respondents were asked if their NGOs engaged with banks, and to describe the results of that engagement. 70% of the NGOs surveyed had engaged in discussions with banks, but these discussions did not – for the most part – lead to smoother banking for the NGOs, as the following comments from survey respondents illustrate:

- “The engagement has been time consuming and not very fruitful. In general, the banks are risk averse and not interested in the detail of humanitarian exemptions. Even if you get the first bank in the transfer chain to agree, it often fails with the correspondent bank.”
- “We have been heavily engaged with our bank on issues related to CT legislation and sanctions, and our main conclusion is that they lack a fundamental understanding of these instruments and are unwilling to invest the appropriate resources to facilitate transfers. The key here is that we are the customer and our bank should invest resources - as they would with any other client - to determine their own rights, obligations, and risks regarding their services. In our opinion, the way forward is for the

EU (and ultimately the US as well) to make it clear to banks that they are allowed to transact financially on our behalf, and for banks to act accordingly, invest the resources necessary and service us as any other client.”

1.2 CASH-BASED PROGRAMMING

The Grand Bargain, launched at the World Humanitarian Summit in 2016, commits donors and humanitarian organisations to increase the use and coordination of cash-based programming (Workstream 3). According to the Factsheet on Cash Transfer and Vouchers produced by the Directorate General for European Civil Protection and Humanitarian Aid Operations (DG ECHO), ‘a strong evidence base shows that cash transfers are often more efficient and cost-effective than other forms of aid’ and ‘the EU actively promotes the use of cash and vouchers alongside other forms of aid from the outset.’ The EU adopted Common Principles for Multi-Purpose Cash-Based Assistance to respond to humanitarian needs. The principles guide donors and partners on how to work with multi-purpose assistance and state that there is little evidence to suggest that cash-based responses are riskier than other approaches.

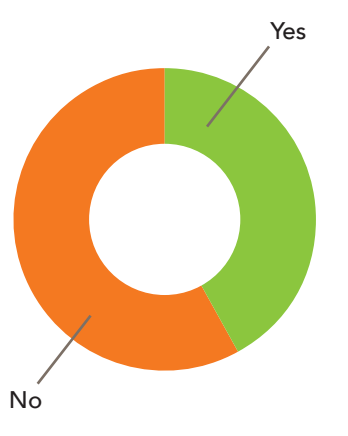
VOICE MEMBER CASE-STUDY: CASH-BASED PROGRAMMING IN LAKE CHAD

During the Lake Chad Basin emergency response in 2015/2016, a major international telecoms company was keen to work with a VOICE member NGO to address the needs of the displaced population from Nigeria in East Niger and Western Chad. The company agreed to a cash transfer programme. To carry out the cash transfers, the company required identification documents from the beneficiaries. The UN Refugee Agency (UNHCR) could not issue appropriate documents for some of the refugees, and the company indicated it would not provide cash-transfers to these people, on the basis that some of the beneficiaries might have links to non-State armed groups. This was in spite of the fact that community elders were able to verify identities, and that the NGO would take up some of the risk. It was deemed by the company to be too risky to transfer to un-documented refugees and as a result the NGO was unable to reach all intended beneficiaries with cash-based programming.

In spite of this lack of evidence the ability of some 43% of the NGOs surveyed to carry out cash-based programming is curtailed in some contexts due to the perception that it is ‘risky’ in terms of aid diversion.

Survey question:

Has your organisation had any problems with Cash and Voucher Assistance programmes, such as the perception that CVA is 'risky' in terms of diversion?



VOICE MEMBER CASE-STUDY: CASH-PROGRAMMING ABANDONED DUE TO INABILITY TO TRANSFER FUNDS TO AFFECTED AREA

In several conflict affected countries where NGOs operate in non-government controlled areas (NGCAs), using cash-based transfers as an aid modality is particularly challenging, due to the sanctions systems affecting banks operating in those areas. For humanitarian NGOs using cash-based programming in NGCAs, transferring funds to service providers and suppliers in those areas is a challenge. Some service providers and suppliers have resorted to withdrawing cash from the banks in the government controlled areas and smuggling it back into the NGCAs. Others are forced to use informal and unregulated money transfer services, and others have simply refused to provide services to the international NGOs.

One VOICE member NGO operating in a conflict affected country has been forced to occasionally use unregulated money transfer services for its activities in the NCGA. The NGO has decided not to openly discuss this with its bank, as the bank may consider that continuing to provide services to the NGO is too risky. If the bank refuses to provide services for the NGO, it will be forced to close down its humanitarian operations. As a result of the challenges to transfer funds to the NGCA, the NGO reverts back to more traditional activities such as distributions of food and non-food items, instead of the much more flexible cash-based modalities.

As well as limiting the scope of cash-based modalities to provide effective and efficient humanitarian assistance, the ability of this NGO to scale-up its activities and reach in the NGCA has been reduced as a result of the challenges to transfer funds to this area. This affects the number of beneficiaries reached and the quality of the services offered by this NGO.

2 Policies and internal procedures to deal with counter-terrorism

The level of understanding of the challenges posed by sanctions and restrictive measures varies among VOICE members:

- > 54% of respondents feel that management and staff at headquarters and field level are somewhat familiar with the challenges;
- > 19% feel that management and staff at headquarters understand the challenges well, but these are not as well understood at field level;
- > 12% feel the challenges are understood well by management and staff at field level, but not as well at headquarters;
- > 12% feel that there is a good level of understanding of the challenges at both field level and headquarters;
- > Just 1 respondent felt that there was a poor understanding by their organisation of the challenges.

76% of respondents indicated that sanctions and CT restrictive measures are taken into account in the risk management frameworks of their organisation, which suggests a high level of awareness among the surveyed NGOs in relation to risks posed by sanctions and CT restrictive measures. NGOs develop prudent approaches and impose their own limits to humanitarian activities as a precaution against breaching CT measures.

One of the main challenges in ensuring compliance with sanctions and CT restrictive measures is captured in the introduction to the CT policy shared by a VOICE member:



'Most donors have not yet defined exactly how they require NGOs to comply. Our organisation as a recipient of funds is asked by the donors to explain how counter-terrorism requirements and sanctions will be complied with, but we receive no guidance from the donors.'

In the absence of clear guidance from donors and regulators, NGOs have developed their own sets of guidelines, elaborated in their CT and vetting policies. 50% of the surveyed NGOs have a stand-alone CT policy; 12% have a well-developed vetting policy and 36% have neither a CT nor vetting policy. The main elements set out in a typical CT policy include: policy statement/position of the NGO vis-à-vis counter-terrorism (see examples below); a statement on the NGOs understanding of the term 'terrorism'; an overview of the relevant sanctions and CT restrictive measures; the mitigation measures, procedures and mechanisms (linked to person(s) responsible for implementing and monitoring these); and a procedure for reviewing the CT policy.

As well as adopting vetting / screening software to comply with donors' requirements, NGOs continue to develop risk-based approaches, such as in-depth assessments and monitoring undertaken by field teams in countries and programmes which are considered to be higher risk. The following excerpt from a CT policy shared by a VOICE member is a good example of a risk-based approach:

VOICE MEMBER CASE-STUDY: DUE DILIGENCE AND RISK ASSESSMENT (EXCERPT FROM ABC NGO CT POLICY)

ABC NGO management must ensure that funds and resources are not put at undue risk of, or diverted to, terrorist financing. That means that particularly in the High Terrorism Risk Countries, we must give due consideration to any terrorism risk and ensure that there are adequate mitigations in place. Among other forms, this includes:

- > Provide regular country context analysis in order to understand the existing context, presence of the proscribed parties, and applicable international and national legislation;
- > Carry out regular risk assessment which will be taken into consideration for the design, implementation and monitoring of programs and operations;
- > If relevant and necessary, adhere to the joint "rules of engagement" (with proscribed parties), usually coordinated by the UN Office for the Coordination of Humanitarian Affairs (OCHA) or humanitarian access groups in the volatile context of the High Terrorism Risk Countries;

- Put relevant due diligence, monitoring and verification measures in place to ensure that our funds and resources are fully accounted for and not diverted;
- Ensure that the screening and vetting procedure is conducted as prescribed;
- Apply the general ABC NGO procedures for risk mitigation including good governance, financial accountability and transparency of ABC and ABC's partners and associates, and transparent and accountable relations with our beneficiaries and others.

'As a humanitarian actor, we oppose all forms of criminality, violence and unlawful behaviour. In particular, we oppose all activities related to terrorism or money laundering. Notwithstanding the above, given that the main goal of our organisation is to provide timely assistance to crises affected populations, we can operate in extremely challenging contexts where conflict and violence are commonplace and where organised crime, corruption, terrorism, money laundering and other criminal activities may often take place.'

Excerpt from CT Policy of a VOICE member

Some of the CT policies of VOICE members explicitly reference the organisation's commitment to international humanitarian law (IHL), in a way that acknowledges the interplay between sanctions and CT restrictive measures and IHL. For example:

'While our organisation, as a NGO working around the world is subject to a broad international, regional and national counter-terrorism framework, our work for people affected by crises will always follow the principles of humanity, impartiality, neutrality and independence as set out in international humanitarian law. Taking into account that both legal frameworks may conflict with each other in specific situations, this policy seeks to address this conflict by taking into account a risk and impact based approach in combination with focused and proportionate measures.'

Excerpt from CT Policy of a VOICE member

Vetting policies and procedures are incorporated, for the most part, in the CT policies of NGOs. In the few cases where they are not explicitly outlined in the CT policy, NGOs have developed common practices for vetting. Only 2 of the NGOs surveyed do not vet at all. In general, NGOs have defined policies for where and who to vet and how often. This includes suppliers, partners and staff. The thresholds and vetting procedures vary slightly from one NGO to another.

The majority of the NGOs surveyed refuse to screen final aid beneficiaries, and this is stated clearly in the CT

policies. Several of the policies state that agreements will not be entered into force with donors if they contain counter-terrorism requirements that are at odds with the humanitarian principles.

Almost all of the NGOs surveyed use screening software for vetting. Some of the software includes: FinScan, LexisNexis, CSI WatchDOG Elite, Bridger Insight Online, and Visual Compliance System, which cover several hundred sanctions lists each (up to 600). Several of the interviewees commented that donors are 'put at ease' by the use of screening procedures (and software) by NGOs. There are significant costs involved in purchasing licenses for the software and in human resources to carry out the screening. The screening (of staff, suppliers and partners) must be carried out regularly. For the larger NGOs, this is a very time-consuming process (in one case 1,000 employees of a VOICE member NGO are vetted every six months). According to the NGOs interviewed for this survey, after several years using these systems there are in fact very low incidences of positive matches.

Another challenge for NGOs in relation to screening/vetting is the interplay with data protection laws. Several interviewees noted that complying with EU and US laws around data protection, while also carrying out screening, can be challenging.

Several of the NGO's interviewed made reference to 'false positive matches', where the software picks up on a name which, upon further investigation, turns out not to be a listed person.

From an interview with a VOICE member:

"Yes, some matches have been identified. But the system throws up lots of what are called 'false positives'. A lot of time is then spent by the legal teams and procurement doing extra checks of these highly unlikely matches in the system".

The very low rate of positive matches indicates that the NGOs are not interacting with the sanctioned suppliers or individuals, and that the risk-frameworks used by NGOs are therefore effective. It also raises the question of the efficacy of screening as a counter-terrorism tool (especially considering the costs of the software licenses and the time involved in using it).

Interviewees described how their NGOs respond in case of positive matches: in the rare cases where a name (for example, a staff member, or Board member of a partner, or a supplier) is picked up by screening, extra checks are carried out. If it is proved to be a positive match, the partner or supplier is either immediately dropped, or due consideration is given at field level to the necessity – for operational purposes – of applying for a derogation to work with a particular partner or supplier.

Development and peace-building donors are moving into contexts that were previously considered to be 'humanitarian', and this is an important step in terms of advancing the so-called 'triple' nexus. The humanitarian community has been increasingly calling

on development and peace-building donors to engage in fragile states particularly since the launch of the Agenda for Humanity (2016). In line with this, Workstream 10 of the Grand Bargain agreement is 'to enhance engagement between humanitarian and development actors'. But while it is encouraging that donors such as the European Commission Directorate-General for International Partnerships (DG INTPA, former DEVCO), the Directorate-General for Neighbourhood and Enlargement Negotiations (DG NEAR), and the French Development Agency (AFD), for example, now fund development programming in contexts such as Syria, clauses in their funding agreements on vetting of beneficiaries has caused alarm among VOICE members.

Several of the interviewees spoken to had concerns about development donors moving into such contexts without an understanding of the sensitivities around screening. This has been an issue in places like Syria, Yemen, Central African Republic, Madagascar, and Chad, for example. This issue is now being discussed among NGOs at national and European level, with a view to addressing it collectively. For example, several French NGOs (in an initiative organised by the NGO platform Coordination Sud) formally and collectively informed the French Development Agency in 2020 that they refuse to screen beneficiaries.

The NGOs argue that not only does screening of beneficiaries potentially compromise the humanitarian principles but is also a waste of resources, given that it is highly unlikely that designated persons will pose as beneficiaries. As an interviewee from a VOICE member put it:

"A relatively small number of people get on the EU sanctions lists, and they tend to be the leadership. So if you want an effective mechanism to try to prevent NGO funds ending up with a terrorist group, potentially screening tens of thousands of individuals, either through a humanitarian or development programme, who are in a crisis situation, is not the best way. The people on the list are not going to turn up in a refugee camp and use their real name in order to get something handed out on a programme. If you look at the names of the individuals on the EU sanctions list, it's not the fighters or even the commanders; it's the people at the very top. And there is quite a judicial process involved in getting a person listed. So the chances of beneficiaries being on it are remote."

On a positive development, from 2021 DG ECHO has included text in its grant agreement (which is signed by DG ECHO and all humanitarian partners for the implementation of humanitarian EU funding) which excludes the vetting of final beneficiaries (all other individuals and entities – staff, partners, suppliers - will continue to be required to be screened). This is contained in Annex 5 of the Humanitarian Aid grant agreement:

- The beneficiaries must ensure that the EU grant does not benefit any affiliated entities, associated partners, subcontractors or recipients of financial support to third parties that are subject to restrictive measures adopted under Article 29 of the Treaty on

the European Union or Article 215 of the Treaty on the Functioning of the EU.

- The need to ensure the respect for EU restrictive measures must not however impede the effective delivery of humanitarian assistance to persons in need in accordance with the humanitarian principles and international humanitarian law. Persons in need must therefore not be vetted.

In order to advance the nexus agenda, it will be necessary to address this emerging issue of restrictive measures clauses and the vetting of final beneficiaries. As it stands, it will not be necessary to vet final beneficiaries in the 'humanitarian' part of the action, but this will apply for the 'development/peace' part. For the time being, there is no humanitarian exemption in development grant agreements (issued by DG INTPA, for example). In the case of a context such as Syria, which is a humanitarian context and where IHL applies, it will be a huge challenge for the EU to advance on the nexus if actors who implement humanitarian action cannot also implement development action, because vetting of beneficiaries is a red line for these actors due to humanitarian principles. Development funding is potentially very significant to bolster budgets of multi-mandated NGOs, but their ability to implement programming is curtailed due to vetting clauses in the 'development' funds.

ICRC PERSPECTIVE: THE LEGAL FRAMEWORK PROVIDES THE ANSWERS PRESENTED AT THE VOICE WEBINAR (2020)

The legal framework applicable in situations of armed conflict is international humanitarian law (IHL) – *lex specialis* for what concerns armed conflict – with the idea to insert elements of humanity into what is otherwise the grim reality of armed conflict. IHL should therefore be the common thread in all discussions on the administrative, financial and/or operational impact of sanctions and counter-terrorism measures on principled humanitarian action undertaken during armed conflict. Within IHL there is a clear role for humanitarian organisations in helping to insert such elements of humanity in armed conflict, and the Geneva Conventions of 1949 and their Additional Protocols oblige parties to armed conflict and third States/International Organisations to facilitate the work of the International Committee of the Red Cross (ICRC), National Red Cross and Red Crescent Societies as well as of any other impartial humanitarian organisations. When discussing possible mitigation measures in relation to the impact of sanctions and CT measures on populations affected by conflict and violence or on humanitarian action, one should keep this question in mind: are the envisaged mitigation measures truly facilitating the work of humanitarian organisations or not? Derogations are very questionable in this aspect.

Derogations also run counter to the IHL rules governing humanitarian activities, whereby impartial humanitarian organisations must only seek and obtain the consent of the belligerent(s) concerned, not of third States/International Organisations.

In the same vein – in relation to sanctions and CT clauses in donor agreements - under IHL, humanitarian activities must not be defined by what source of funding is applicable, but by the fact that they are being implemented in a situation of armed conflict, and that an impartial humanitarian organisation is responding to the needs of the affected populations on the ground, which provides for the humanitarian principles to be respected.

2.1 COSTS OF COMPLIANCE (SCREENING AND VETTING COSTS)

The survey intended to shed some light on the costs involved in complying with sanctions and CT restrictive measures. The majority of NGOs do not explicitly identify these costs, and could only provide estimates. The estimates varied widely (ranges from €45,000 to €300,000 per year and one NGO claiming up to \$1,000,000 per year). The following case-studies provide insights into the costs of compliance for two VOICE members :

VOICE MEMBER CASE-STUDY: ESTIMATED COSTS OF COMPLIANCE FOR VOICE MEMBER NGO1

There are significant costs of compliance related to mitigating risks and ensuring due diligence. In the Middle East region alone, NGO1 has increased its spending on compliance from \$40,000 in 2017 to \$575,000 in 2019 for a dedicated unit, including a full-time anti-corruption investigator. Including the costs of staff, the estimated expenses devoted to compliance with counter-terrorism regulations amount to over \$1 million. Legal fees for a due diligence study on the US sanctions in Iran cost the NGO over \$50,000, excluding human resource-hours and additional staff costs. The NGO's US liaison office estimates half the work of a full-time employee is dedicated to handling and mitigating the impact of bank de-risking.

VOICE MEMBER CASE-STUDY: ESTIMATED COSTS OF COMPLIANCE FOR VOICE MEMBER NGO2

The costs to the NGO of complying with screening clauses in funding agreements include:

- Licenses (for screening software) cost €69,000 a year
- Staff costs to do the screenings: 3 full time equivalents currently (€120,000)
- Legal advice, coordination at Secretariat level for training, standardisation, reporting, etc (€120,000).

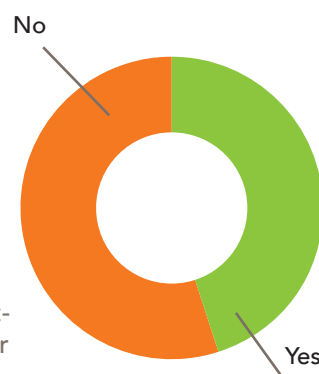
These are rough estimations and the costs increase every year. The licence cost relates to how many jurisdictions are covered. This NGO chose a certain software screening programme because it covers every list published by every government in the world (600 or so lists).

The NGO has 30,000 suppliers listed on its database, and there is a unit cost per supplier for screening. The list of suppliers is constantly expanding, and has to be regularly screened. Also, the NGO has over twenty affiliates with at least 5 members on the Board of each affiliate, all of whom must be vetted.

But then there is another cost – the relationship cost. The NGO has to go to its partners and ask for a list of all of their Board members, and for funding received from the Australian government for example, the passports of the Board members of partners are required. The NGO notes that there is a whole hidden dynamic in this, and that donors are willing to meet some of the costs, the challenge is to quantify the cost and agree what is a reasonable approach.

The survey also assessed how the costs of dealing with sanctions and CT measures are included in the budgets of NGOs:

Survey question: Are the costs for dealing with sanctions and CT restrictive measures included in your annual programme, or country-level budgets? For example, any additional investments in software, or in HR FTE (full-time equivalent)?

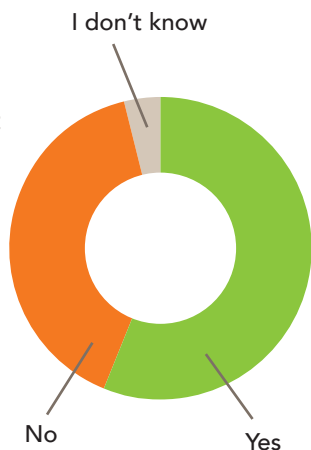


In most cases the costs are spread across the organisation. For example, the costs linked to screening software are often included in head office annual budgets (in the IT budgets) and covered by indirect costs. Some of the NGOs surveyed plan to include resources for screening, compliance, advocacy and legal support (linked to sanctions and CT measures) in their 2021 budgets.

75% of the NGOs surveyed have not discussed the costs with donors, and have not requested extra financial support to cover these costs. For those NGOs who have discussed these costs with the donors, the reactions have varied: some donors routinely accept these costs in approved budgets, while others are unwilling to cover them.

As will be shown in Section 4, VOICE members are active in advocacy on the issue of the impacts of sanctions and CT measures to a broad range of stakeholders. In order to support effective advocacy, the impacts at field level must be monitored and documented. The survey sought to identify how NGOs go about this process.

Survey question:
Does your organisation monitor and record/document the challenges facing it due to sanctions and CT restrictive measures, either in programme countries or in the headquarters? For example, are the challenges captured in reports or memos which are then shared with senior management or the governance board?



None of the NGOs surveyed has created a formal mechanism to systematically monitor and document the impacts of sanctions and CT measures on humanitarian action but there are some structures in place, which include maintaining records (at headquarter level) of: sanctions/CT requirements in grants agreements (and negotiations with donors); challenges relating to bank de-risking; and programmatic impact in certain countries where clusters of challenges arise, filed internally for use in bilateral advocacy activities.

Some VOICE members have compiled case-studies illustrating the impacts. One VOICE member keeps notes/logs and minutes from Counter-terrorism Legislation Oversight and Advisory Committees chaired by senior managers. The impacts are also documented in standard reports such as project reports, reports from

country offices to headquarter, reports from compliance departments, and risk registers.

One VOICE member has initiated an internal, annual survey of its country offices in order to capture and monitor the challenges related to sanctions and CT measures. The annual survey also serves as a tool to raise awareness among country teams of the kinds of impacts and challenges that can arise.

CASE-STUDY: VOICE MEMBER INTERNAL SURVEY ON THE IMPACTS OF SANCTIONS AND RESTRICTIVE MEASURES ON OPERATIONS

In 2020, a survey of 13 field missions of XYZ NGO in Africa and the Middle East was carried out in order to improve understanding of the impacts of EU/UN/US/national sanctions and counter-terrorism restrictive measures. Nine field missions responded. Regular updates are collected from heads of mission and a new survey will be done next year to monitor evolution of the impacts.

Summary of survey aims:

- > Analyse current and future impacts of sanctions and CT restrictive measures;
- > Share knowledge and good practices to mitigate impacts, minimise risks and further develop XYZ's risk management system;
- > Strengthen the presentation of XYZ's capacities to limit the risks of terrorist financing to reassure partners and donors;
- > Increase XYZ's expertise and legitimacy to raise awareness among key players (institutions, partners, etc.); and to be able to initiate or contribute to advocacy initiatives with our partners;
- > Collect concrete cases in order to structure a positioning of XYZ on these standards and on red lines;
- > Launch a monitoring of the impacts on XYZ's operations and anticipate any deterioration.

Summary of Survey findings:

The main impacts concern the limitations of access to banking services and consequently - the security risks for the implementation of alternative systems.

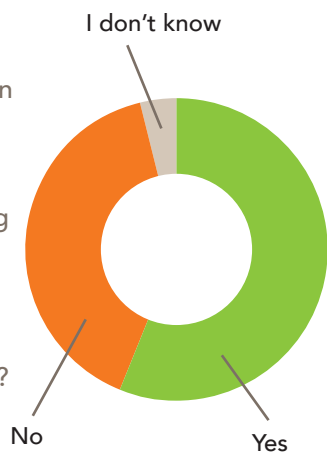
The impacts at the level of operations include the limited number of suppliers that XYZ can use, which in turn limits the scope of XYZ's activities and the populations it can reach.

Threats to humanitarian space and respect for humanitarian principles are less important at this stage.

A few NGOs have invested in producing widely available reports on the impacts of sanctions and CT restrictive measures on their operations (and on operations of other NGOs), and have compiled risk mitigation toolkits, also widely available. These include Norwegian Refugee Councils 'Principles Under Pressure' (2018) and 'Risk Management Toolkit for Counterterrorism Measures' (2019).

Survey question:

To your knowledge, has your organisation held any meetings/workshops/trainings with staff to discuss the challenges facing your organisation (and humanitarian programming) due to sanctions and CT restrictive measures?



Again, there is a wide variation in terms of how VOICE members prepare staff for these challenges. For example, one NGO has an anti-corruption e-learning course mandatory for all staff, with a section on Terrorism Financing; conducts annual workshops in certain regions; and has an active network of screening officers. Another includes issues relating to sanctions and CT restrictive measures in briefings with country directors and has a special committee in place to discuss financial risks and CT clauses in contracts. One NGO surveyed has had one global strategic discussion on this issue, and others have these discussions regularly.

3

Gaining licenses, derogations, exemptions and exceptions for humanitarian action

NOTE ON TERMINOLOGY

In the literature on this issue the use of the terms 'exemption' and 'exception' is inconsistent. VOICE uses the definition provided by the European Commission in its 'Guidance Note on the Provision of Humanitarian Aid to Fight the Covid-19 Pandemic in Certain Environments Subject to EU Restrictive Measures' (May, 2020): Exemptions and derogations are together defined by '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 national competent authority has granted an authorisation, as long as the purpose is to provide humanitarian aid. In the US, the Office of Foreign Assets Control uses the term 'licence' to refer to an authorisation.

The development of the EU sanctions regimes is a complex process which can be summarised as follows: the decisions are taken by the Council of the European Union (that is, the Member States, who are also responsible for implementing the sanctions regimes in their respective jurisdictions, and for granting derogations) and the European External Action Service (EEAS) prepares proposals for decisions, on behalf of the High Representative of the Union for Foreign Affairs and Security Policy. The EEAS also prepares proposals for regulations, jointly with the EU Commission. These documents are then submitted to the Council of the EU for adoption.

Provisions that carve out legal space for humanitarian actors, activities or goods within sanctions measures without any prior approval needed are the most effective way to ensure that restrictions do not apply to humanitarian action. Under EU sanctions, exemptions are limited and are currently only possible under Syria, Somalia and Democratic People's Republic of Korea (DPRK) sanctions regimes. The exemption for Syria relates to the purchase of petroleum products to provide humanitarian relief in Syria or assistance to the civilian population, for which

humanitarian actors do not require any authorisation (Article 6a (1) and Article 16a (1) of the Regulation (EU) No 36/2012). For Somalia, the humanitarian exemption to the UN Sanctions Regime on Somalia is also implemented by the EU. Under the EU autonomous measures regime for DPRK there is an 'exception' to the ban on financial assistance when it is for humanitarian and developmental purposes addressing the needs of the civilian population.

In the absence of global humanitarian exemptions in the EU sanctions framework, several VOICE members operate with permissions (so-called derogations) granted by the competent authority of the Member State where they are registered or have an office. These derogations authorise NGOs to carry out activities which would otherwise be prohibited by restrictive measures. Little guidance on the process to apply for derogations is provided to NGOs by EU Member States or donors. The EU Commission has, however, provided the aforementioned Guidance Note for Covid-19 as well as guidance for Venezuela, Iran, Syria and most recently, Nicaragua. NGOs also apply to the UN for derogations, and to the US Office for Foreign Assets Control for licences.

The EU has not adopted a consistent approach to the inclusion of exemptions for humanitarian action in sanctions regimes, and as a result there is arguably an overreliance on derogations as a means to safeguard humanitarian action in these regimes. The EU Commissioner for Crisis Management, in an address to the European Parliament in November 2020, noted that the EU is working to introduce humanitarian exemptions into all EU sanctions regimes. However, some Member States are reluctant to do so, due to a perceived risk that the use of exemptions might introduce a form of 'loophole', which would make sanctions ineffective (by allowing for funds to be diverted for malign purposes, such as the financing of terrorism). There is currently no consensus in the Council of the EU in relation to including humanitarian exemptions in EU sanctions regimes.

During the VOICE Webinar (2020) it was noted that - for the purpose of advocating to the Council of the EU to include exemptions - lessons can be drawn from the inclusion of exemptions in the UN Security Council sanctions for Somalia and in the Prohibition on Purchasing Petroleum in the EU Syria sanctions. The inclusion of exemptions in these sanctions demonstrates that States are willing to consider exemptions when there is a clear possibility that sanctions will impact the humanitarian response to crises. In both cases States adopted a broad approach to which activities should fall

within the exemptions. The Somalia exemption refers to 'urgently needed humanitarian assistance' and the EU Syria exemption refers to 'humanitarian relief and humanitarian assistance.' In the case of the EU Syria sanctions example, while the exemption itself is limited to actors that receive institutional funding, there is also a derogation included that is open to all actors carrying out humanitarian activities in Syria. The implication here is that the oversight conducted by Member States and by the European Commission (in particular, DG ECHO) of the NGOs that they fund can be used as a method to address States' concerns about the creation of a loophole.

The following box looks at another EU sanctions regime – the human rights sanctions regime – and shows how and why it was decided to include a derogation rather than an exemption in that regime.

EXEMPTION VERSUS DEROGATION IN THE EU HUMAN RIGHTS SANCTIONS REGIME: PRESENTED BY EU COMMISSION REPRESENTATIVE AT THE VOICE WEBINAR (2020)

The EU human rights sanctions regime - adopted in December 2020 - is a useful example to illustrate the process for how derogations can be included in EU sanctions regimes. The draft proposal was submitted to the Council of the EU in October 2020, and did not include exemptions, because it was thought that exemptions would not be workable or accepted by all Member States. It was therefore considered to be more strategic to include a derogation in the sanctions regime. DG ECHO, together with Directorate-General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA) and the European External Action Service, worked on the text relating to the derogation, which was finally included in the Council Regulation 2020/1998 and Decision 2020/1999 December 2020 concerning restrictive measures against serious human rights violations and abuses. It reads:

Article 5:

1. By way of derogations from Article 3(1) and (2), the competent authorities in the Member States may authorise the release of certain frozen funds or economic resources, or the making available of certain funds or economic resources, under such conditions as they deem appropriate, after having determined that the provision of such funds or economic resources is necessary for humanitarian purposes, such as delivering or facilitating the delivery of assistance, including medical supplies, food, or the transfer of humanitarian workers and related assistance or for of Foreign Assets Control uses the term 'licence' to refer to an authorisation.

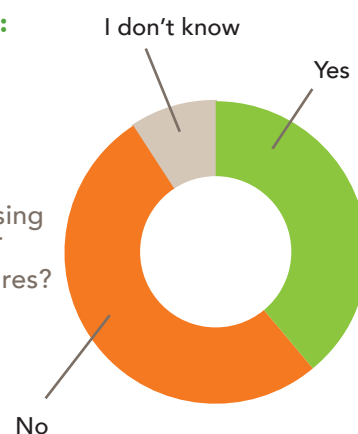
The use of the derogation system requires humanitarian actors to seek permission from Member States before carrying out certain activities, and this has potential ramifications for humanitarian actors working in conflict areas in terms of the perception of their neutrality, impartiality and independence. Furthermore, the requirement for humanitarian actors to seek derogations also adds an additional layer of consent for humanitarian action that is not foreseen in IHL which only requires humanitarian organisations to obtain the consent of parties to the conflict and not, generally, that of third States or other international organisations.

The results of the survey show a good level of understanding among the NGOs of the roles of the various authorities involved in designing and implementing EU sanctions and restrictive measures, and how to gain derogations, authorisations and licences. This understanding has grown over the past few years, as a result of 'learning by doing'.

80% of the NGOs surveyed were either 'familiar with the terms 'licences', 'derogations', 'exceptions' and 'exemptions' in this context' or 'capable of distinguishing between them'.

Survey question:

Has your organisation ever sought to gain licenses or exemptions by authorities imposing sanctions and CT restrictive measures?



40% of the NGOs had applied for and gained licences and authorisations from either the competent authorities in the EU Member States, from the US Office for Foreign Assets Control (OFAC), US department of Commerce, or UN derogations (through Security Council of the UN, in New York).

The humanitarian donors have been supportive of VOICE members and have, for example, provided 'comfort letters' to the NGOs to show their banks that the funds are legitimate and that the humanitarian activities are supported by the donors. However, this is often not enough to reassure the risk-averse banks and NGOs subsequently seek derogations, which can be costly to obtain in terms of time and resources. At the EU level, derogations are applied for in the country where the NGO is registered or has an office. The competent authorities of the individual EU Member States should be

approached. In order to gain an authorisation for sending funds to a country where sanctions or restrictive measures apply, it is necessary to approach the Ministry of Finance. If the authorisation is required for an item on the dual-use list, for example, the Ministry of Industry and Commerce is the competent authority.

Applying for derogations increases the administrative burden for NGOs, and the process to apply for derogations is not harmonised across the EU Member States. Member States provide little guidance to the NGOs on how to navigate the process.

Some EU Member State competent authorities have developed templates (application forms) which the NGOs fill out and then submit. Others do not have these, as they have never been asked to grant derogations. The time it takes to gain a derogation varies. According to one interviewee, it usually takes one month for the competent authorities in the EU Member State where the NGO is based to approve derogation requests and issue an authorisation. In the case of another VOICE member, it took eight months to gain a derogation from the UN.

The Council of European Union Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy (CFSP) contains a Principle on 'Exchange of information and reporting requirements' with a paragraph stating:

- The competent authorities of the Member States and the Commission each have specific tasks as regards the implementation and application of the restrictive measures. In order to ensure that such measures are applied in a coherent manner, including exemptions (derogations) granted, exchange of relevant information between all concerned, in accordance with the provisions of each CFSP Decision and Regulation, is essential.

Once the competent authority of one EU Member State issues an authorisation, relevant information relating to it should be shared with all concerned, in order to ensure coherence across the Member States. It is reasonable to assume that banks in EU Member States would recognise derogations granted in other EU Member States, but this is not necessarily the case, as the following case-study illustrates.

VOICE MEMBER CASE-STUDY: DEROGATION GAINED FROM ONE EU MEMBER STATE NOT RECOGNISED BY BANKS IN OTHER MEMBER STATES

One of the NGOs which participated in the survey described the process involved in gaining a derogation to transfer funds to Syria. This was applied for in the EU Member State where the NGO is headquartered. The derogation and authorisation was granted by the Ministry of Finance. An OFAC licence was also granted for the same project.

In order to transfer the funds from the bank account in the country where the NGO is headquartered to Syria, it goes through intermediary banks in three other EU Member States. The NGO shared the authorisation and the OFAC licence (translated into 3 languages) with the intermediary banks, but these were not recognised by the banks, who insisted on derogations from the competent authorities in the EU Member States where the intermediary banks are based. The funds were sent back to the NGO in its headquarters, which resulted in a delay to the project. Important to note is that the European banks seem more concerned by the US than EU sanctions.

This NGO faced a further challenge when one of the banks it used to transfer funds refused to facilitate the transfer of funds granted by a member state government donor through a second Member State (and an intermediary bank) and onward to Damascus. The intermediary bank was willing to transfer the funds, but as the first bank refused (in spite of gaining a comfort letter from the government donor) the NGO is forced to rely on the Lebanese banking system or other alternative methods to transfer funds.

As noted, regulators and donors have produced little in terms of guidance on this issue until recently and so NGOs have 'learned by doing'. The following case-study illustrates the learning process involved for a VOICE member and the competent authority in the EU Member State where it is headquartered to apply for and gain a UN derogation.

VOICE MEMBER CASE-STUDY: THE EXPERIENCE OF GAINING A DEROGATION FROM THE UN

When the INGO first approached the national competent authority (in its Member State) to seek a derogation for humanitarian work in a country on the UN sanctions list, there was no guidance or templates from anywhere and no-one seemed to know what an application would even look like. There were no tools to use to build a case for a derogation, and there was a lot of trepidation around the issue. The NGO approached the Foreign Ministry of the Member State, which is a different ministry than the one that was funding the NGO and while the ministry understood that the NGO was funded by the government to work in that country, they did not know the full details of what the NGO did there. The NGO commenced a long process of confidence-building so that the interlocutors in the ministry would understand its humanitarian programme. The NGO visited the ministry every week and made presentations. The ministry approached other EU Member States to ask how they examined and approved requests for derogations, but there were not any guidelines available. Neither the EU nor the UN had developed templates for derogation applications at that time. The team in the ministry therefore had to come up with its own guidelines for how the NGO should apply for the derogation.

The NGO gave all the information to the ministry, who prepared the submission to the UN Security Council (UNSC). The ministry took quite a lead in this, but went through 3-4 reviews of the application versions internally before the submission even got to the UNSC in New York. The main delay was the interpretation of what was considered 'humanitarian'. Everything the NGO purchased for that programme had to be broken down to its constituent parts for the donor budget, and the humanitarian supplies falling under the restricted Harmonised Standard (HS) Codes. The derogation was granted by the UN some eight months after the NGO first approached the national competent authority.

The competent authority was keen to learn, understand and demystify this system and the processes involved and to support the NGO. The NGO could tell that the ministry wanted it to succeed with the derogation. The process became much easier and standardised for subsequent applications.

4 Advocacy at national and international levels

65% of the VOICE members who took part in the survey engage in advocacy on the issue of the impacts of EU sanctions and restrictive measures on humanitarian action, and it is considered as an advocacy priority for 50% of them. 92% of the NGOs surveyed are willing to engage more on advocacy efforts on the issue.

Examples of this advocacy include:

- Publication of papers and reports on the evidence of the impacts of CT measures;
- Dissemination of the evidence bilaterally towards selected states and donors;
- Lobbying at EU level: To Directorates General of the EU Commissions including ECHO, INTPA, NEAR, EEAS, FISMA; and to Member States representatives, including at the EU Working Party on Humanitarian Aid and Food Aid (COHAFA) and the Council of the EU's Working Party on Sanctions (RELEX);
- Lobbying at national level ahead of changes to national CT legislation;
- Lobbying at United Nations Security Council level;
- Organisation of and participation in various events and dialogues with stakeholders;
- Engagement with banks and the private sector;
- Engagement with the Financial Action Task Force as part of the Global NPO Coalition on FATF (a loose network of diverse non-profit organisations);
- Engagement with the EU Supranational Risk Assessment;
- Participation in the Inter Agency Standing Committee Results Group 3: Working Group on Collective Advocacy (Counter-terrorism sub-group).

VOICE members who responded to the survey engage with a wide-range of other actors on advocacy around this issue, and in particular with other humanitarian NGOs. Other actors include: the VOICE network, national NGO platforms; the Red Cross/Red Crescent Movement; the Global NPO Coalition on the FATF, Geneva Institute, Chatham House, International Peace Institute, ICVA (International Council of Voluntary Agencies), InterAction, UN agencies such as UN Office for the Coordination of Humanitarian Affairs (OCHA),

the World Food Programme, the United Nations International Children's Emergency Fund (UNICEF) and other sections of the UN such as the Counter-Terrorism Committee Executive Directorate (CTED), the Office of Counter-Terrorism (OCT), and the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

VOICE members have issued press releases and public statements on the impacts. Some public examples include Save the Children's press release on the impacts of sanctions on children in Iraq, and a statement delivered by Caritas Internationalis on the negative impacts of sanctions to the 45th Human Rights Council of the United Nations in September 2020.

The key advocacy priorities for NGOs on this issue are: CT restrictive measure clauses in funding agreements, bank de-risking, and the burden in terms of extra resources and time required to navigate CT restrictive measures.

4.1 MULTI-STAKEHOLDER DIALOGUE

VOICE members are involved in several multi-stakeholder dialogue processes across the EU and further afield. These take place between NGOs and relevant government ministries and in some instances also the banking authorities and financial intelligence units. In some cases, specific demands are brought to the authorities via these initiatives, and in other cases the dialogue focuses on the issue of the impacts of CT sanctions more broadly.

The National Risk Assessment (NRA) is a government-wide activity undertaken to develop risk-based anti-money laundering and countering the financing of terrorism (AML/CFT) actions and facilitate allocation of available resources to control, mitigate, and eliminate risks. The FATF requires each country to undertake a NRA to show the government's knowledge of money laundering risks, and a wide-range of stakeholders, including NGOs, engage in the process. VOICE members have engaged with the relevant government ministries at national level as part of NRAs. The EU Supranational Risk Assessment (on the assessment of the risk of money laundering and terrorist financing affecting the internal market and relating to cross-border activities) affords another opportunity for NGOs and other networks, such as the Global NPO Coalition on FATF, to engage in dialogue with the key authorities at EU level. VOICE was actively engaged in the 2019 EU Supranational Risk Assessment.

Multi-stakeholder dialogues have been established in different States including in France, The Netherlands, Czech Republic, the UK, and Norway.

FRANCE

There is an ongoing tri-partite dialogue in France between the Ministry of Foreign Affairs, the Ministry of Economics and Finance, the banks and the NGOs (4 French NGO members of the NGO Platform Coordination Sud). So far the dialogue is focused in particular on finding solutions to the challenges of bank de-risking for NGOs. A roundtable on this topic took place during the National Humanitarian Conference in December 2020. During his speech at the conference, French President Macron noted that the tri-partite dialogue will continue, and that by June 2021 'concrete operational solutions' to the challenges of bank transfers should be identified, and guidelines on 'good banking practices' and the procedures for requesting exemptions will be developed for NGOs so that 'the NGOs and the banks' compliance departments can stabilise, structure and secure these financing channels without putting the NGOs and the banks at risk.'

THE NETHERLANDS

A working group composed primarily of NGOs working around human rights issues and with an interest in the Occupied Palestinian Territories has been established in the Netherlands for several years. It is convened by the Ministry of Finance and the Human Security Collective Foundation, and also includes banks and the financial intelligence unit, as well as small and large NGOs. The Central Bank has also attended meetings, as well as the banking association. While all the key stakeholders are involved, the progress can be slow, not least because there is a big turnover of staff in the ministry and it takes time for new staff to get up-to-speed on the issue. When new NGOs join in the discussion it also takes time for them to become familiar with the main challenges.

In spite of the challenges, one very positive outcome of this multi-stakeholder dialogue is that some of the big banks in The Netherlands have recognised that de-risking is a problem, and this recognition goes beyond the human rights and compliance divisions, right up to the policy and strategy divisions. This has led to more joined-up approaches within the banks.

THE UK

There is a cross-sectoral working group in the UK convened by the Ministry of Home Affairs, which includes NGOs and the banks, to address the impact of counter-terrorism and other legislation on the funding and delivery of humanitarian assistance, as well as on peace-building and development action.

According to a VOICE member interviewed for this survey, the working group is currently exploring issues

around the definitions of 'humanitarian' action in the context of issuing licences for humanitarian purpose: if there are exemptions for people to be in a designated area for humanitarian purposes, what constitutes 'humanitarian purposes'? Does that include development work? Does it include cash-programming? If exemptions are to be negotiated, what falls inside and outside those exemptions?

CZECH REPUBLIC

Following a National Risk Assessment, FATF recommended that the Czech authorities update the AML/CFT legislation. It was feared by the non-profit sector (including VOICE members) that unless the sector engaged in discussions with the relevant legislatures, misconceptions of how the humanitarian aid system works could lead to legislation being developed which would make it more difficult for NGOs to operate. VOICE members engaged in discussions and exchanges with the Ministry of Foreign Affairs and the Ministry of the Interior (not a usual interlocutor for NGOs). The internal mechanisms used by NGOs to avoid misuse of funds were shown to the Ministry of the Interior, as were details of the vetting processes, financial controls, modalities for cash-based programming and other control mechanisms which minimise the risk of fraud and aid diversion. The dialogue allowed for an exchange with the Ministry of the Interior in relation to humanitarian operations, the risks involved, auditing processes, and the donors involved. These discussions resulted in a set of nuanced recommendations to the non-profit sector (on the prevention of financing of terrorism), which respects the nature of humanitarian work and its modalities.

IASC RESULTS GROUP 3

A counter-terrorism sub-group has been established by the Inter-Agency Standing Committee (IASC) Results Group 3 (Collective Advocacy), and the VOICE Secretariat and members participate in it. The areas of focus for the sub-group are: (i) to advocate for standing humanitarian exemptions in counter-terrorism measures; (ii) to provide guidance to and ensure leadership by humanitarian coordinators and humanitarian country teams to engage actors locally to address the impact of these measures; (iii) to deepen efforts to document the negative effects and make an evidence-based case; (iv) to engage proactively in open and sustained dialogue with States to raise awareness on concerns and work toward practical solutions, including in UN Security Council resolutions, donor agreements and domestic legislation; and (v) to engage the UN counter-terrorism architecture (the Counter-Terrorism Committee and its Executive Directorate, the Office of Counter-Terrorism, and the Sanctions Committees).

The sub-group is also undertaking a piece of work to establish a dashboard to collect data on the impacts of restrictive measures, and to catalogue existing evidence.

AT THE EU LEVEL: COTER/COHAFA/RELEX WORKING PARTIES

Humanitarian actors (including NGOs and ICRC) are regularly invited to brief sanctions experts in the Council of the EU's Working Party on sanctions (RELEX), the EU Working Party on Humanitarian Aid and Food Aid (COHAFA) and the Working Party on Terrorism (COTER).

The Member States are the primary advocacy targets in the EU on this issue, and Member State representatives make up the aforementioned working parties. RELEX counsellors negotiate the provisions to be included in the legal acts for new sanctions regimes and have voting powers for what is included in sanctions regimes, and as such are key targets for advocacy. While VOICE members often have excellent contact with the humanitarian donors, the RELEX counsellors usually report to different government ministries and this should be clearly understood by NGOs engaging in advocacy on this issue. When an NGO approaches RELEX counsellors it is necessary to bring concrete examples of how EU sanctions and restrictive measures (and not US, UN or other sanctions regimes) impact humanitarian programming.

THE GLOBAL NPO COALITION ON FATF AND RELEVANT ADVOCACY 'TARGETS' AT THE MULTILATERAL POLICY LEVEL

Some VOICE members are also part of the larger core group of the Global NPO Coalition on FATF, which has worked on the issue of bank de-risking for several years. FATF has been supportive of the Global NPO Coalition, and has acknowledged that de-risking is a problem. The Global NPO Coalition is now steering its advocacy efforts towards other multilateral policy-makers, as it recognises that while efforts at national levels can lead to short-term fixes for non-profit organisations, in order to solve the root causes of bank de-risking the advocacy should take place at the multilateral level, and include such organisation as: the G20 (in particular, the Global Partnership for Financial Inclusion); the Alliance for Financial Inclusion (a membership body of central banks and regulators from emerging and developing countries across the globe); and the European Banking Authority, which is an important actor in relation to the EU's Action Plan for a comprehensive union policy on preventing money laundering and terrorism financing.

5 Conclusions

The preliminary findings of the survey were presented to VOICE members and representatives of the EU Commission, ICRC, and the Council of the EU's working party on sanctions during a VOICE Webinar in December 2020, titled 'EU restrictive measures on humanitarian aid: Between a principled view for exemptions and a pragmatic approach for an effective derogation process'.

Several of the presentations delivered during the webinar related to how advocacy on this issue can be made more effective. An emphasis was placed on the importance of approaching the national competent authorities with evidence of the impacts of EU sanctions and restrictive measures on humanitarian action, and to push for more streamlined derogation processes across the EU. To drive effective advocacy, humanitarian NGOs need to be very clear on whether the impacts on their programming are a result of EU, UN, US or other sanctions regimes.

NGOs are encouraged to actively reach out to RELEX counsellors for advocacy, as these play a key role in terms of determining the content and scope of new EU sanctions regimes. In other words, NGOs should continue to broaden the scope of their advocacy efforts to also include the sanctions policy-makers, and not only the humanitarian aid policy-makers.

For the purpose of advocating to the Council of the EU to include exemptions, lessons can be drawn from the inclusion of exemptions in other sanctions regimes, notably the UN Security Council sanctions for Somalia and in the Prohibition on Purchasing Petroleum in the EU Syria sanctions. The inclusion of exemptions in these sanctions demonstrates that States are willing to consider exemptions when there is a clear possibility that sanctions will impact the humanitarian response to crises.

Finally, the emerging issue of development donors insisting on screening of final beneficiaries for programming in contexts where international humanitarian law (IHL) applies is a challenge both for the EU ambition to advance on the nexus agenda, and also for humanitarian actors seeking funding for programming in conflict-affected contexts, for whom this is a red-line. Increased dialogue on this issue is needed at the EU Commission level between DGs ECHO and INTPA, and at the national levels also.

The results of the VOICE survey, and the inputs of NGOs and other key stakeholders at the webinar, including representatives from the European Commission and RELEX, show the high level of knowledge and understanding by the NGOs of how sanctions and restrictive measures are impacting humanitarian action and also demonstrate an increasing understanding on the part of policy-makers of these impacts, and an increasing willingness to engage with NGOs further on this issue.

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ANNEXES

Annex 1:

VOICE webinar agenda December 2020

Annex 2:

Recommendations from VOICE 2019
Workshop

Annex 1: Webinar agenda

VOICE webinar - AGENDA

EU restrictive measures impact on humanitarian aid:
Between a principled view for exemptions and a pragmatic approach
for an effective derogation process.

Friday 11th December 2020, 10.30 – 12.30 CET

1.	Welcome, and introductory briefing by VOICE
2.	The findings of the VOICE survey (5-6 slides)
3.	NGO view: Why exemptions are the best way forward Mitigating Risks and Norwegian Refugee Council Toolkit
4.	Views from the Commission: Introducing humanitarian exemptions into EU sanctions: how to get there, and where we are today. New humanitarian partnership agreement & the clause on EU restrictive measures
5.	NGO view: derogations to mitigate the risks, and the practical experience of gaining derogations
6.	Views from the Commission: Towards a more effective, EU wide derogation process
7.	Views from a Member State: What can humanitarians expect at EU level and what should be done in terms of advocacy?

Annex 2:

Recommendations from VOICE 2019 Workshop on the Impacts of EU Sanctions and Restrictive Measures on Humanitarian Action (Brussels 19-20 November 2019)

- Non-governmental organisations (NGOs) need to develop awareness and in-depth understanding across their own organisation, from the senior management level to the field staff level, and partners when relevant, on the impact of counter-terrorism legislation and sanctions regimes on principled humanitarian assistance
- NGOs need to understand the counter-terrorism (CT) and sanctions frameworks in order to identify where the different restrictive measures come from. This is key in order to advocate towards policy-makers/regulators at European Union (EU) Member States, United Nations Security Council (UNSC) and EU levels.
- The humanitarian community must engage at national level, given Member States' respective roles at UN, EU and domestic levels in defining CT measures and sanctions regimes, and in granting exemptions and derogations.
- EU Member States need to re-affirm that International Humanitarian Law (IHL) is a legal framework for exceptional times that aims to strike a balance between the principles of humanity and military necessity. CT measures and sanctions regimes must respect IHL and the delivery of principled, needs-based humanitarian aid. Incorporating a humanitarian exemption through an explicit reference to IHL in all UN, EU and national counter-terrorism and sanctions laws remains a priority.
- EU Member States should harmonise their interpretation and implementation of CT measures and granting of licenses to allow humanitarian agencies to operate in contexts that are affected by those. Procedures to gain exceptions/derogations/licenses/authorisations should be clarified and made accessible to ensure timely humanitarian response.
- As regular reviews of restrictive measures are undertaken, the humanitarian community, supported by the donors, should monitor the negative impacts of sanctions and CT measures at field level, and highlight these impacts to policy makers.
- Greater attention is needed to highlight and address the negative consequences of bank de-risking. Dialogue and consultation between all stakeholders – policymakers, donors, humanitarian actors and banks – are required to foster a mutual understanding.

VOICE MEMBERS 2020

AUSTRIA

-  CARE Österreich
-  CARITAS Österreich
-  SOS Kinderdorf International

BELGIUM

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

CZECH REPUBLIC

-  ADRA Czech Republic
-  People in Need (PIN)




DENMARK

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

FRANCE

-  Action Contre la Faim
-  ACTED - Agence d'Aide à la Coopération Technique et au Développement
-  CARE France
-  Handicap International Humanity and Inclusion
-  La chaîne de l'Espoir
-  Médecins du Monde (MDM) France
-  Secours Catholique - Réseau Mondial CARITAS
-  Secours Islamique France
-  Secours Populaire Français
-  Solidarités International
-  Télécoms Sans Frontières (TSF)

FINLAND

-  Fida International
-  Finn Church Aid
-  World Vision Finland




GERMANY

-  ADRA Deutschland
-  Arbeiter-Samariter-Bund (ASB) Deutschland
-  CARE Deutschland-Luxemburg
-  Deutscher Caritasverband Caritas Germany
-  Diakonie Katastrophenhilfe
-  International Rescue Committee Germany
-  Johanniter-Unfall-Hilfe
-  Malteser International
-  Medico International
-  Plan International Germany
-  Welthungerhilfe
-  World Vision Germany

GREECE

-  Médecins du Monde Greece

IRELAND

-  Concern Worldwide
-  GOAL Global
-  Trócaire

ITALY

-  Caritas Italiana
-  CESVI - Cooperazione e Sviluppo
-  COOPI
-  INTERSOS Organizzazione Umanitaria Onlus
-  WeWorld-GVC Onlus




LUXEMBOURG

-  Caritas Luxembourg

THE NETHERLANDS

-  CARE Nederland
-  Cordaid
-  ICCO - Dutch Interchurch Aid
-  Oxfam Novib
-  Save the Children Netherlands
-  War Child
-  ZOA

NORWAY

-  Norwegian Church Aid
-  Norwegian Refugee Council (NRC)
-  Save the Children - Redd Barna

POLAND

-  Polish Humanitarian Action (PAH)

SLOVAKIA

-  Habitat for Humanity International

SPAIN

-  Acción Contra el Hambre
-  Caritas Española
-  EDUCO
-  Médicos del Mundo
-  Oxfam Intermón

SWEDEN

-  Läkarmissionen/International Aid Services (IAS)
-  PMU Interlife
-  Svenska kyrkan - Church of Sweden

SWITZERLAND

-  Lutheran World Federation
-  Medair
-  Terre des Hommes Switzerland

UNITED KINGDOM

-  Action Against Hunger
-  ActionAid
-  CAFOD
-  CARE International UK
-  Christian Aid
-  International Medical Corps UK
-  International Rescue Committee (IRC-UK)
-  Islamic Relief Worldwide
-  Mercy Corps UK
-  OXFAM GB
-  Plan International UK
-  Save the Children UK
-  Tearfund
-  World Vision UK

88 members
19 countries

VOICE is the network of 88 European NGOs promoting principled and people-centred humanitarian aid. Collectively, VOICE aims to improve the quality and effectiveness of the European Union and its Member States' humanitarian aid. The network promotes the added value of NGOs as key humanitarian actors.



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