

EU reply, 12.12.2022

*The EU Delegation to the UN Office and other international organisations in Geneva presents its compliments to the Office of the High Commissioner and has the honour to refer to the joint communication dated 26 October 2022 (ref AL OTH 106/2022).*

*The EU Delegation hereby wishes to transmit in attachment the response of the competent EU services to the enquiry contained in the joint communication.*

*Enclosure:*

The competent EU services hereby respond to the joint communication dated 26 October 2022 that focuses on the system of humanitarian exceptions, namely derogations and exemptions<sup>1</sup> in EU sanctions.

To begin with, we would like to recall key principles underpinning the EU sanctions policy. Sanctions are a key instrument at the EU's disposal to notably counter breaches of international law, including combat human rights abuses. The restrictive measures the EU imposes autonomously comply with international law, including with the obligations stemming from international humanitarian law (IHL). It goes without saying that they are not meant to hinder impartial humanitarian organisations or actions necessary to provide humanitarian aid. In accordance with international humanitarian law, the provision of humanitarian aid should not ultimately be prevented by EU restrictive measures.

Before addressing the more detailed allegations contained in the joint communication, the competent EU services would like to point out some fundamental misconceptions included therein, including that humanitarian derogations and exemptions should “*counter-balance and effectively compensate for the deep social and economic disruptions caused by the extensive and multifaceted restrictions and obstacles emanating from the imposed sanctions regimes*”. In fact, the system of humanitarian derogations and exemptions is aimed at allowing the continuation of humanitarian supplies and operations that would be otherwise prohibited by the sanctions in place. A recent example of this is their introduction into two existing sanctions regimes to facilitate humanitarian activities in Ukraine<sup>2</sup>. Secondly, and for the reasons explained above, the EU services oppose the allegation that humanitarian exceptions included in EU sanctions regimes would have “*harmful consequences*”.

Furthermore, the EU services also contest the allegation that EU restrictive measures are “*indiscriminate*”, and cause “*broad macro-level structural changes*” and “*severe suffering among populations*” in sanctioned countries. EU restrictive measures are always targeted and carefully calibrated, aimed at those responsible for the policies or actions the EU wants to influence. They are developed in such a way as to avoid, and where unavoidable mitigate, any adverse consequences for those not responsible for the policies or actions leading to the adoption of sanctions.

Regarding the detailed concerns expressed in the joint communication, the competent EU services would like to put forward the following:

- To facilitate the understanding and actual use by humanitarian actors of the EU system of humanitarian derogations and exemptions, the EU is engaged in sustained efforts in terms of awareness-raising and has issued a set of guidance notes. The latest example is the horizontal guidance note on the provision of humanitarian aid in compliance with EU restrictive measures, which provides practical direction on

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<sup>1</sup> See section 3.8 of the June 2022 humanitarian guidance for further details on exemptions and derogations and their respective specifics: [https://finance.ec.europa.eu/publications/sanctions-commission-guidance-note-provision-humanitarian-aid-compliance-eu-restrictive-measures\\_en](https://finance.ec.europa.eu/publications/sanctions-commission-guidance-note-provision-humanitarian-aid-compliance-eu-restrictive-measures_en)

<sup>2</sup> [Link](#) to Council of the EU press release on 13 April 2022

how to comply with EU restrictive measures, supported by a non-technical language and concrete examples.<sup>3</sup>

- In cases where exemptions are not available, derogations come into play with subsequent authorisations to be applied for. Guidelines on the humanitarian derogations available and on the authorisation process have been developed to support awareness of humanitarian actors and coordinate their handling by national competent authorities in a uniform manner<sup>4</sup>.

- The joint communication seems to infer that dual-use rated goods and technologies cannot be actually supplied even when they are part of a humanitarian transaction authorised pursuant to a derogation. This is not correct and the internationally-mandated licensing system that underpins dual-use exports can address goods destined for a sanctioned party or country and licences can be granted where relevant<sup>5</sup>.

- The EU humanitarian contact point has provided a single port-of-call for both national competent authorities and humanitarian operators to seek guidance from the Commission on the application of EU sanctions to their intended humanitarian action. This year alone, the contact point has allowed national competent authorities and operators to obtain clarification from the Commission on over 15 questions. The feedback received from national competent authorities and humanitarian operators has been consistently positive, and the contact point has become an effective tool in ensuring the delivery of humanitarian assistance in compliance with EU sanctions.

- Over-compliance leads to restricting or denying transactions that are not actually prohibited by the EU sanctions in place. It is a complex issue as it intersects with possibly diverging risk appetites of various actors involved in a single payment or supply chain, their freedom to conduct business and make cost-benefit decisions on a commercial basis and with a cross-jurisdictions perspective. One should also not overlook the “reputational risk” aspect, as some businesses will not want to operate in countries where sanctions apply due to the Government’s actions that have given rise to these sanctions, such as internal repression or violations of international law. For its part, the EU is willing to mitigate sanctions over-compliance and, to this end, it supports, promotes and actively engages in continuous dialogue between all parties involved in humanitarian assistance (including therefore regulators and banks). The guidance issued so far and referenced above is also geared to this end.

Finally, the EU services have taken note of the statement on humanitarian exemptions of 23 November 2022<sup>6</sup> by three of the experts that had also signed the joint communication. We regret that the statement was issued before the deadline to respond to the allegations included in the joint communication.

Further information is available at: [https://finance.ec.europa.eu/eu-and-world/sanctions-restrictive-measures/humanitarian-assistance-environments-subject-eu-sanctions\\_en](https://finance.ec.europa.eu/eu-and-world/sanctions-restrictive-measures/humanitarian-assistance-environments-subject-eu-sanctions_en)

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<sup>3</sup> [https://finance.ec.europa.eu/publications/sanctions-commission-guidance-note-provision-humanitarian-aid-compliance-eu-restrictive-measures\\_en](https://finance.ec.europa.eu/publications/sanctions-commission-guidance-note-provision-humanitarian-aid-compliance-eu-restrictive-measures_en)

<sup>4</sup> [https://finance.ec.europa.eu/publications/factsheet-member-state-procedures-grant-humanitarian-derogations-eu-restrictive-measures-sanctions\\_en](https://finance.ec.europa.eu/publications/factsheet-member-state-procedures-grant-humanitarian-derogations-eu-restrictive-measures-sanctions_en)

<sup>5</sup> See for instance, under Syria sanctions, articles 2a(2) and 2b of Regulation (EU) No 36/2012 and , under Russia sanctions, article 2(3) of Regulation (EU) N° 833/2014.

<sup>6</sup> <https://www.ohchr.org/en/statements/2022/11/humanitarian-exemptions-unilateral-sanctions-regimes-ineffective-and-inefficient>