

**Mandates of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights; the Special Rapporteur on the right to development; the Special Rapporteur on the right to food; the Independent expert on the promotion of a democratic and equitable international order and the Independent Expert on human rights and international solidarity**

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(Please use this reference in your reply)

3 April 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights; Special Rapporteur on the right to development; Special Rapporteur on the right to food; Independent expert on the promotion of a democratic and equitable international order and Independent Expert on human rights and international solidarity, pursuant to Human Rights Council resolutions 49/6, 51/7, 49/13, 45/4 and 44/11.

In this connection, we would like to bring to your attention the following comment on the text of the European Union's Council Regulation 2023/407 and European Union's Council Decision 2023/408 of 23 February 2023, amending article 16a of the EU Regulation 36/2012 and article 28a of the EU Council Decision 2013/255 respectively. This new EU regulation and decision were adopted in response to the humanitarian crisis in Syria and aims at easing for a period of 6 months of the EU Restrictive Measures against Syria for the purpose of facilitating the relief efforts following the catastrophic earthquakes of 6 February 2023.

At the outset, we wish to welcome the European Union's reaction in response to this unprecedented natural disaster with its tremendous cost in human life and infrastructure, the expressed easing of transactions for earthquake relief purposes, as well as the reported mobilisation of emergency assistance, including financial support and delivery of the disaster relief goods.

In particular, with regards to the above-mentioned EU Council's Regulation and Decision, we would like to highlight a number of elements and share few reflections around these elements for consideration by the all relevant EU institutions.

The EU Council's documents contain a broad and detailed list of actors and operators who may be covered by this humanitarian exemption and who are involved in the delivery of emergency relief and humanitarian assistance, namely a) all UN system with its programmes, funds and specialised agencies; b) international organisations; c) humanitarian organisations with observer status with the United Nations General Assembly, as well as members of those humanitarian organisations; d) NGOs participating in UN Humanitarian Response Plans, Refugee Response Plans, other UN appeals or humanitarian clusters coordinated by the UN Office for the Coordination of Humanitarian Affairs (OCHA); e) public bodies or legal persons funded either by the EU or the EU Member States; f) organisations with which the EU has signed financial framework partnership agreements and acting as humanitarian partners of the EU; g) organisations to which the EU has granted the Humanitarian Partnership Certificate or those certified or recognised by EU Member States; h) EU

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Member States specialised agencies; i) employees, grantees, subsidiaries, or implementing partners of all the above.

The approach adopted by determining with such precision the status and type of concerned parties is undoubtedly helpful in providing clarity among those parties and dispel any uncertainties of these actors in the performance of their legitimate and life-saving interventions. In addition, such statutory clarity may also be important for any due diligence procedure and compliance review by banks and other financial service providers, who may enter into relationship with the above-mentioned actors, and who would be called upon to speedily process international payments and money transfers to the effectively respond to the emergency relief necessities. However, this list of concerned actors may not be completely inclusive, as it may not take into consideration actors with significant humanitarian work and presence in different parts of the country. By way of example we may refer to Churches and faith-based organisations, some of whom have presence in the country, used to be very active with humanitarian and life-saving projects and may thus face serious challenges in the delivery of emergency relief humanitarian assistance or international transfers of funds.

It is encouraging that the documents refer not only to “humanitarian assistance” but also to other activities that “support basic human needs for the civilian population in Syria”. This formulation demonstrates a clear understanding that in times of natural disasters, the assistance provided should be comprehensive by taking into account the broader needs of civilian population. However, we wish to stress that this broader understanding of humanitarian assistance in response to serious natural disasters may not align itself with the 6-month time-bound character of the adopted exemptions, and it would be important to indicate whether “rebuilding” and / or “reconstruction” of critical infrastructure is included in the category of humanitarian assistance and basic human needs.

We are of the view that it would be inappropriate and morally questionable to assess the permissibility of critical and life-saving interventions following a natural disaster on the basis of the length of such efforts. In this regard, we wish also to underscore that in a worn-torn country, such as Syria, with 50 to 80 percent of its infrastructure destroyed (including water and electricity supply, health facilities, roads, schools, shelter, irrigation, diesel and gas), subjected to a comprehensive and long-standing system of economic sanctions and other restrictions, and with severe shortages in energy and fuel, even targeted interventions to “support basic human needs for the civilian population” and eventually for reconstruction of damaged critical infrastructure may take significant amount of time, way beyond the 6-month period stipulated in the text of the EU Council’s Regulation and Decision.

Moreover, clarification needs to be provided with regard to the authorities who will be competent to assess what is included in the category of “support basic human needs for the civilian population” as well as the geographic scope of such interventions. It would be really challenging to have a cohesive, efficient and consistent approach on this matter if the EU Council decides to delegate the assessment process to the competent ministerial authorities of the EU Member States, the same way it has been done for the EU systems of humanitarian exceptions and derogations (see letter to the EU Commission, [AL OTH 106/2022](#)), or to limit deliveries to the specific territory only.

Similarly, we are not aware of any specific explanatory document that could guide the humanitarian operators following the adoption of these EU Council's documents and which could offer specialised feedback with regard to the compliance of their activities with the scope of these exemptions. In addition, it is not clear whether the EU has created an ad hoc support service for this specific context, with a sufficient number of trained officials, which would be more interactive than the generic email address provided by the EU Commission's Guidance Note on the Provision of Humanitarian Aid in Compliance with EU restrictive measures.<sup>1</sup>

The EU Council's documents do not make any specific reference to financial institutions or to the way they should deal with funds and payments to Syria. This may again be perceived as a positive element, if considered that any specific language on this issue may be received as a caution and thus contribute to the financial institutions' tendency to excessively de-risk and over-comply with unilateral sanctions or restrictive measures. In this regard, we would appreciate a more detailed position and information on how EU institutions ensure that financial over-compliance and de-risking will not undermine the ongoing effort of emergency relief assistance in post-earthquake Syria. Our mandates have received information regarding such impediments in international funds transfers performed by humanitarian civil society actors, something that testifies to the conduct of over-compliance and de-risking even in the current context of emergency relief response.

In this regard also, given the proximity in time between the EU Council's Regulation/Decision and those of other sanctioning jurisdictions – with the observed differences among these decisions –, it is not clear whether EU is currently in a position to effectively advise and support including through its blocking statute any banks or businesses who may be considered liable for violating the non-EU sanctions regimes.

In this context and taking into consideration of the above-mentioned reflections, we are of the view that existing humanitarian carve-outs or other *ad hoc* temporary measures to ease unilateral sanctions regimes may be considered as positive steps, but due to their complexity and often unclear or limited scope, may not be the appropriate tools or sufficient in order to respond to humanitarian needs, and in this case urgent needs following natural disasters affecting hundreds of thousands of people. Catastrophic events such as the recent earthquakes affecting also Syria further exacerbate the already multifaceted and comprehensive adverse impact of long-lasting unilateral sanctions regimes on the lives and human rights of the Syrian people, and may demand for more comprehensive response, including the complete lifting of such regimes.

In this context, we recall the General Comment No. 8 by the UN Committee on Economic, Social and Cultural Rights (CESCR), which has underscored the findings of a number of UN and other studies, which have analysed the impact of sanctions on human rights and concluded that humanitarian exemptions do not have the expected positive effects, such as the unhindered flow of essential goods and services destined for humanitarian purposes (E/C.12/1997/8, paras 4 and 5).

We also recall the States' obligations in ensuring the respect, protection and fulfilment of all human rights and fundamental freedoms, in accordance with all

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<sup>1</sup> EU Commission's Guidance Note at [https://finance.ec.europa.eu/system/files/2022-07/220630-humanitarian-aid-guidance-note\\_en.pdf](https://finance.ec.europa.eu/system/files/2022-07/220630-humanitarian-aid-guidance-note_en.pdf)

relevant international and regional human rights instruments. With regard to businesses' and financial institutions' over-compliance and de-risking, we call on States to take all necessary steps to protect against human rights abuses by enterprises and institutions domiciled in, or owned and controlled by them; to provide effective guidance to them on how to respect human rights throughout their operations; and, to exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for such enterprises and institutions, in line with principles 2, 3, 4 and 5 of the UN Guiding Principles on Business and Human Rights.

The obligation to protect the right to life requires States to take special measures to protect persons in vulnerable situations whose lives are particularly endangered by specific threats (CCPR, General Comment No. 36, para. 23). We note that the right to life is linked to the positive obligation to ensure access to the basic conditions necessary to sustain life (CCPR General Comment No. 6, para 5; CCPR General Comment No. 36, para 21). Measures, including the obstruction of humanitarian assistance, which restrict access to basic and life-saving goods and services such as food, health, electricity and safe water and sanitation run counter to the right to life (CCPR/C/ISR/CO/4, para. 12; A/73/314, para. 27). We recall that any deaths attributable to such measures amount to an arbitrary deprivation of life, which engages the responsibility of the State (A/73/314, para. 13).

We finally recall that the spirit of solidarity and international cooperation is enshrined in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, which provides that States have a duty to cooperate in the various fields irrespective of differences in their political, economic and social systems. The Declaration stipulates that States are obliged to cooperate, inter alia, in the protection and promotion of human rights; in the economic, social and cultural fields.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned analysis.
2. Please describe the measures undertaken to provide further guidance and clarity on the application of the EU Council Regulation 2023/407 and EU Council Decision 2023/408 of 23 February 2023 to all relevant actors engaging in the post-earthquake emergency relief efforts in Syria.
3. Please provide information on the procedures for assessing the compatibility of humanitarian operators' ongoing or planned emergency relief activities with the scope of the above-mentioned EU Council's documents.
4. Please provide information on the measures undertaken in order to address business and financial sector over-compliance with the current EU restrictive measures against Syria, despite the expansion of the authorised activities and transactions as provided by the EU Council

Regulation 2023/407 and EU Council Decision 2023/408 of 23 February 2023.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from the European Union will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

A copy of this letter has been shared with the Syrian Arab Republic, as the concerned State.

Please accept, Excellency, the assurances of our highest consideration.

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