Effectiveness of Humanitarian Exceptions to Sanctions: Lessons from the Syria Earthquake

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Advantages

- The carveouts have played a vital role in alleviating some relief efforts with the positive psychological impact playing a particularly notable role, especially in relation to financial transactions.

- The exceptions represent an impressive feat of collaboration between licensing authorities, NGOs, and other stakeholders, which has allowed for the creation of the emergency carveouts in a comparatively short period of time while also leaving feedback channels open. Accompanying guidance has also been useful.

- The Swiss exception, which exempts humanitarian actors who receive Swiss funding from the ban on providing - directly or indirectly - assets or economic resources to sanctioned persons, entities, or businesses to facilitate humanitarian work, is widely seen as the most beneficial thanks to its open-ended time frame and needs-based approach, permitting a wider range of relief-related activities.

- The European Union's (EU) exemption, which allows access to goods, services, and coverage of all types of humanitarian assistance (not only relating to earthquake relief), is seen as the most gain in terms of its coverage of a broad range of actors.[ii]

- U.S. General License (GL) 23's inclusion of non-U.S. actors is seen as highly beneficial compared to earlier GLs. Clarifying guidance provided by the U.S. Treasury on permissible transactions by non-U.S. non-governmental organizations (NGOs) and about sending personal remittances has been widely welcomed. Its engagement with stakeholders was also described as especially responsive and constructive. NGOs also commended the 2023 U.S. De-risking Strategy[iii] as well as recent U.S. Treasury appointments and outreach focusing on the reduction of the chilling effect of sanctions.

already been approved to be set on an unlimited basis with the option of a renewal clause to serve as reassurance to governments due to the long-term nature of required relief efforts.

- NGOs described ongoing donor over-compliance, such as through restrictive donor agreements, with continued reluctance to fund some exempted activities, particularly regarding anything going beyond immediate life-saving assistance (e.g., rebuilding of schools in GoS-controlled areas).

- More widely, NGOs expressed hope that the broader categories of humanitarian actors could be incorporated into other (current and future) exemptions. So, the definition of "humanitarian actors" should be broader than just UN agencies and member state-funded organizations.

In sum, NGOs highlight that the adoption of new carveouts in renitimTc 0 T6ctheororroorn

introduction of GLs under the export control regime relating to Syria to expedite and simplify the export of critical items required for earthquake response and speed up the provision of SLs when still required.

10. Issuance of guidance by BIS to humanitarian and development organizations to provide clarity and reassurance on Syria-related export control requirements and exceptions processes as well as the provision of points of contact to allow rapid consideration of emergency export license reviews. This Tdould also include a list of 3.687 6 -0 0 Tw 0 Tw 9.687 0 Td 22 6 -0 0 Tw 0 92Artifact687 0 Tdw 9

		efforts in Syria and Turkey" e.g., "NGOs can purchase fuel in Syria and then transport it across the border in their vehicles or in generators."		
Who is covered	Wide range of actors Any U.S. national or third-country persons/entities.	UK and non-UK humanitarian organizations in Syria, e.g., UN entities, humanitarian organizations with observer status with the UN General Assembly, INGOs participating in UN Humanitarian Response Plans, and in general any NGO carrying out "relief activities in Syria"	EU and non-EU funded humanitarian organizations in Syria, e.g., UN entities, IOs, humanitarian organizations with observer status with the GA, EU's specialized agencies.	Originally only Swiss-funded entities operating in Syria but later the Swiss Federal Council extended the measure (for

	under U.S. export controls			
Scope	The examples offered point to a relatively broad scope. Examples of earthquake “relief efforts” include: 1. Removing rubble from collapsed buildings 2. Stabilizing damaged buildings 3. Stabilizing or repairing roads and other critical infrastructure damaged in the			

hostilities; countering terrorism; addressing human rights abuses and chemical weapons attacks

and engage with key humanitarian and disaster assistance stakeholders, including NGOs, IOs, and key partners and allies, to understand emerging challenges they may face in delivery of services".[xxii] Others noted benefits that had been observed regarding the sending of remittances to Syria, with some Syrians based outside the country noting that the process for sending funds to family and friends had become easier and faster since the license was introduced.

enduring reforms and progress on the political process."[xxxii] Furthermore, U.S. secondary (or extraterritorial) sanctions, adopted through the Caesar Syria Civilian Protection Act of December 2019, authorizes "punishment of any government or private entity considered to aid the regime or groups and entities connected to it, or considered to contribute to the reconstruction of Syria."[xxxiii] OFAC's Compliance Communiqué affirms that GL23 permits the "erecting temporary shelter, removing rubble from collapsed buildings, stabilizing damaged buildings, repairing roads and other critical infrastructure damaged in the earthquake and repairing or rebuilding damaged hospitals and schools in earthquake-affected areas."[xxxiv] It goes on to add that GL23 does not allow US persons to engage in long-term reconstruction efforts in Syria, whereby "Projects exceeding 180 days do not fall within the scope of GL 23."[xxxv] FAQ 938[xxxvi] also cites that permissible relief efforts include "restoration of health facilities"; "rehabilitation of local schools"; "refurbishment of mills, silos, and bakeries"; "rehabilitation and restoration of conflict-damaged water systems, sanitation, and hygiene infrastructure", and "rehabilitation of irrigation pumps and canals".[xxxvii] Understanding what exactly each of these concepts (rebuilding, rehabilitation, restoration, refurbishment etc.) remains a source of confusion,[xxxviii] uncertainty and concern for humanitarian operators that fear falling afoul of U.S. sanctions.

damaged in the earthquake, require access spare parts that are prohibited under export controls". The interviewee went on to add that equipment required to repair "earthquake damaged dams and irrigation networks are not allowed under the U.S. export controls, particularly in light of the fact that much of the earthquake response equipment uses materials that contain 10% U.S. manufactured materials or dual-purpose materials."

European Union

Advantages

- Facilitates transactions
- Allows actors to make economic funds available to listed persons and entities where required for relief efforts
- Permits broader access to goods and services delivered by sanctioned companies without an authorization
- A very wide range of organizations and individuals can benefit from the exemption
- Valid for all types of humanitarian assistance, not only that which relates directly to earthquake relief
- Positive steps in creating a point of contact on derogations on dual-use goods

On Feb. 23, 2023, the European Council took the decision to adopt a humanitarian amendment, applicable for a period of six months. The amendment waives the need for humanitarian organizations to obtain prior permission from EU member states' national competent authorities "to make transfers or provide goods and services intended for humanitarian purposes to listed persons and entities".[lii] Council Resolution (EU) 2023/407[liii] and Council Decision (CFSP) 2023/408[liv] serve to clarify the implementation of the already existing exemption on the purchase and transport of petroleum products in Syria and the provision of associated financing or financial assistance, provided that the certain conditions are met, including that "the activities concerned are for the sole purpose of providing humanitarian relief in Syria or assistance to the civilian population in Syria" and do not breach any of the prohibitions laid down in the Decision.[lv]

Strengths

allowing for sufficient time to properly carry out an adequate earthquake response". Nevertheless, the wording in the Council regulations issued on Feb. 23 and later restated in the FAQ released by the European Commission in mid-May that refers to "initial period of six months," has provided hope to NGOs that it will be renewed. Another shortcoming is that it does not cover dual-use goods, like that described (above) in relation to U.S. export controls (see box below). NGOs with EU funding cited difficulties accessing certain goods required for the earthquake response that fall under the dual-use banner, including large generators and water pipes (though acknowledged that hindered access could also relate to factors such as over-compliance and other logistical bottlenecks). Like in the U.S., the process for obtaining an ad-hoc exception (derogations) for dual-use goods from the EU, is deemed to be cumbersome and described as "very complex and time-consuming". NGOs acknowledged the benefits of the clarification on an identified point of entry to make requests for derogations for dual-use goods in the EU, contained in the EU FAQ released on May 17.

EU export controls

- Broader range of transactions is now possible
- Marks a successful outcome of the UK Trisector group in light of regular feedback and exchanges between government, banks, and NGOs

The UK imposes autonomous sanctions against Syrian targets which are similar to those of the EU.[lxv] The UK issued two exemptions (GLs) in February 2023, building on existing humanitarian provisions, "to further facilitate humanitarian relief efforts in Syria following [the] earthquakes… [and] strengthen the timely and effective delivery of relief efforts by removing the need for individual license applications".[lxvi] The two GLs are the following:

1. The Export Control Joint Unit (ECJU) published a temporary General Licence for the purposes of facilitating humanitarian assistance in relation to earthquake relief efforts in Syria and Turkey. The licence came into force on Feb. 15, 2023, and expires after six months. It "permits the acquisition, supply or delivery of petroleum products and provision of related financial services or funds under regulations 37(1), 38(1) and 40(1)(b) and (c) of The Syria (Sanctions) (EU Exit) Regulations 2019".[lxvii] There are notification and record-keeping requirements attached to the licence.

2. On Feb. 15, 2023, the UK's Office of Financial Sanctions Implementation (OFSI) issued General Licence INT/2023/2711256 under Regulation 61 of the Syria (Sanctions) (EU Exit) Regulations 2019 ("The Syria Regulations") pertaining to humanitarian activity in relation

The UN has a CT sanctions regime on non-state armed groups (NSAGs) operating in non-Government controlled areas of Syria, under the 1267/1989/2253 ISIL (Da'esh) and Al Qaida sanctions regimes (which includes the group, HTS operating in northwest Syria).[lxx] This includes asset freezes, travel bans, and an arms embargo. In adopting UNSCR 2664 (2022), from Dec. 9, 2023 (for two years), the Security Council expressly creates a landmark standing humanitarian carveout applicable to its asset freezes across 14 sanctions regimes,[lxxi] including the aforementioned CT regime.[lxxii] The scope of UNSCR 2664 covers a narrow set of categories of actors (UN, multilateral organizations, NGOs involved in implementing Humanitarian Response Plans (HRP), Refugee Response Plans, other United Nations appeals, or OCHA-coordinated humanitarian clusters).

Humanitarian actors operating in northwest Syria highlighted the importance of domestic implementation of the resolution and suggested that adoption toNationo

[iii] U.S. Department of the Treasury (2023) "The Department of the Treasury's De-risking Strategy", April, https://home.treasury.gov/system/files/136/Treasury_AMLA_23_508.pdf

[iv] Illustrating why the six-

[xxv] Banks are now able to rely on sender information (of those sending funds) in order to process transactions; a move designed to lower compliance demands on banks.

[xxvi] Now around 7000. Before the blackmarket rate was greater, and now it's closer. But the gap applies to

[li] Alpert, Rachel & Bernstein, Alyssa (2023) "Breaking Down Barriers to Emergency Earthquake Aid in Syria", Just Security, 16 March, https://www.justsecurity.org/85499/breaking-down-barriers-to-emergency-earthquake-aid-in-syria/.

[lii] Council of the EU (2023) "Earthquake in Türkiye and Syria: EU amends restrictive measures in place regarding Syria to facilitate the speedy delivery of humanitarian aid", 23 February, https://www.consilium.europa.eu/en/press/press-releases/2023/02/23/earthquake-in-turkiye-and-syria-eu-amends-restrictive-measures-in-place-regarding-syria-to-facilitate-the-speedy-delivery-of-humanitarian-aid/#:~:text=The%20sanctions%20regime%20does%20not,any%20part%20of%20the%20country.

[liii] Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.LI.2023.056.01.0001.01.ENG&toc=OJ%3AL%3A2023%3A056I%3ATOC

[liv] Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.LI.2023.056.01.0004.01.ENG&toc=OJ%3AL%3A2023%3A056I%3ATOC

[lv] European Commission (2023) "Frequently Asked Questions: Humanitarian Exemption in the Syria Sanctions Regime following the February 2023 Earthquake in Türkiye and Syria", https://finance.ec.europa.eu/system/files/2023-05/230516-faqs-humanitarian-exemption-syria_en.pdf

[lvi] Decision 2013/255/CFSP — restrictive measures against Syria and Regulation (EU) No 36/2012 — restrictive measures in view of the situation in Syria.

[lvii] European Commission (2022) "Commission Guidance Note on the Provision of Humanitarian Aid in Compliance with EU Restrictive Measures (Sanctions)", 30 June, https://finance.ec.europa.eu/system/files/2022-07/220630-humanitarian-aid-guidance-note_en.pdf

[lviii] European Commission (2022) "Commission Guidance Note on the Provision of Humanitarian Aid in Compliance with EU Restrictive Measures (Sanctions)", 30 June, https://finance.ec.europa.eu/system/files/2022-07/220630-humanitarian-aid-guidance-note_en.pdf

[lix] Swiss Confederation (2023) "Ordonnance instituant des mesures à l'encontre de la Syrie", 3 March 2023, https://www.fedlex.admin.ch/eli/oc/2023/109/fr

[lx] It states, "Humanitarian actors in receipt of federal funding may now provide money and economic resources directly or indirectly to designated persons, entities and businesses, when necessary to provide humanitarian assistance or support to the civilian population. In the case of humanitarian actors who do not receive federal funding, an exceptional authorisation scheme has been set up to provide economic resources to designated persons, businesses and entities, provided this involves humanitarian activities or the provision of aid to the civilian population in Syria". https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-93462.html

[lxi] See: https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-93638.html

[lxii] The temporary scope of entities and bodies benefiting from the EU humanitarian exemptions are listed in CR(EU) 2023/407, Article 16a and CD(EU) 2023/408, Article 28a.

[lxiii] Swiss Federal Council (2023) "Swiss government facilitates humanitarian activities in Syria", 3 March, https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-93462.html

[lxiv] The same interviewee relayed that this development seems to have been planned prior to the earthquake.

[lxv] See https://www.gov.uk/government/collections/uk-sanctions-on-syria.

[lxvi] See, https://www.gov.uk/government/news/uk-takes-steps-to-further-facilitate-aid-flow-into-syria

[lxvii] UK Department for International Trade, 2023, "General Trade Licence Syria Sanctions - Earthquake Relief Efforts in Syria", February, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1136680/general-trade-licence-syria-sanctions-earthquake-relief-efforts-in-syria.pdf.

[lxviii] https://www.gov.uk/government/news/uk-takes-steps-to-further-facilitate-aid-flow-into-syria

[lxix] The licence covers the following actors: "the United Nations, including its programmes, funds and other entities and bodies, and its specialised agencies and related organisations; humanitarian organisations having observer status with the United Nations General Assembly and members of those humanitarian organisations; bilaterally or multilaterally funded non-governmental organisations participating in the United Nations Humanitarian Response Plans, Refugee Response Plans, other United Nations appeals, or humanitarian clusters coordinated by the United Nations Office for the Coordination of Humanitarian Affairs; international organisations carrying out relief activities in Syria; any employee, grantee, subsidiary, or implementing partner of any organisation falling within the above list while and to the extent that they are acting in those capacities".

[lxx] S/RES/1267 of 15 October 1999, S/RES/1989 of 17 June 2011, and S/RES/2253 of 17 December 2015.

[lxxi] Kapoor, Radhika, Lewis, Dustin A. and Modirzadeh, Naz K. (2023), "An Interpretive Note for U.N. Member States on Security Council Resolution 2664 (2022)," Harvard Law School Program on International Law and Armed Conflict, March, https://blogs.harvard.edu/pilac/files/2023/03/HLS-PILAC-Res.-2664-Interpretive-Note.pdf

[lxxii] The text states that the Security Council "Decide[d] that […] the provision, processing or payment of funds, other financial assets, or economic resources, or the provision of goods and services necessary to ensure the timely delivery of humanitarian assistance or to support other activities that support basic human needs by [specified actors or appropriate others] are permitted and are not a violation of the asset freezes imposed by [the Security] Council or its Sanctions Committees" and "Decide[d] that the provisions introduced by paragraph 1 [of resolution 2664] will apply to the 1267/1989/2253 ISIL (Da'esh) and AlQaida sanctions regime for a period of two years from the date of adoption of […] resolution [2664 (2022)]" (UNSCR 2664 [2022], preamble).

[lxxiii] Crew, Rory (2023) Changes to U.S. fuaryTj -1.1,S