

OPINION ON HUMANITARIAN EXEMPTIONS IN SANCTIONS REGIMES AND COUNTER- TERRORISM MEASURES

Promoting widespread use and
better implementation

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Le Conseil de sécurité,
Rappelant ses résolutions antérieures imposant des sanctions en réponse à des menaces contre la paix et la sécurité internationales,

Réaffirmant qu'il faut combattre par tous les moyens, dans le respect de la Charte des Nations Unies et du droit international, notamment du droit international des droits humains, du droit international des réfugiés et du droit international humanitaire applicables, les menaces pesant sur la paix et la sécurité internationales, et soulignant à cet égard le rôle important que l'Organisation des Nations Unies joue dans la conduite et la coordination de cette lutte, notamment au moyen de ses régimes de sanctions,

Soulignant que ses sanctions sont un instrument important pour promouvoir le respect des Nations Unies pour le maintien et le rétablissement de la paix et la sécurité internationales, y compris en appui aux processus de lutte contre le terrorisme et à la promotion de la non-prolifération des armes nucléaires, et à la pleine application de tout régime de sanctions,

Notant qu'avant de...
évaluer les conséquences...
qu'il doit...

Opinion on humanitarian exemptions in sanctions regimes and counter-terrorism measures. Promoting widespread use and better implementation (A - 2024 - 6) was adopted at the plenary assembly of June 20th 2024.

Contents

Executive summary	4
Introduction	9
1. Consolidating the essential paradigm shift introduced by UN Security Council Resolution 2664 (2022) to preserve the humanitarian space	16
1.1. The historic requirement of a cross-cutting humanitarian exemption for asset freezes decided by the Security Council	16
1.2. Associated risk mitigation and transparency measures	21
1.3. The need to coordinate with counter-terrorism measures	23
2. Supporting the widespread use of broad, cross-cutting and standing humanitarian exemptions in the EU's restrictive measures	27
2.1. Disparate application of the humanitarian exemption within the European Union	27
2.2. Towards the (still too measured) widespread use of humanitarian exemptions within the European Union	32
2.3. The welcome introduction of a humanitarian clause in the context of the criminalisation of EU restrictive measures violations	37
3. Adopting the relevant national measures to achieve the ambitions set out in Resolution 2664 (2022)	39
3.1. The need to incorporate humanitarian exemptions into national legislation	39
3.1.1. On sanctions violations	40
3.1.2. On offences related to counter-terrorism	43
3.2. The need to strengthen measures to support the implementation of humanitarian exemptions	46
CNCDH recommendations	55
Appendix 1: List of people interviewed	61
Appendix 2: Diagrams illustrating the increase in the number of sanctions	63
Appendix 3: Glossary	67
End notes	69

Executive summary

Measures adopted by the United Nations Security Council, the European Union or States to maintain or restore international peace and security, including counter-terrorism measures, can have counterproductive effects that hamper the activities of humanitarian actors and their ability to respond to needs and to help ensure that the rights of people affected by armed conflict or other crises are respected.

In order to remedy this situation and preserve the humanitarian space, the CNCDH [French National Consultative Commission on Human Rights, also national commission for the implementation of international humanitarian law] is calling for more widespread and better implemented humanitarian exemptions in sanctions regimes and counter-terrorism measures, such as the one adopted by the Security Council in its historic Resolution 2664 (2022) of 9 December 2022. The exemptions exclude from the scope of these measures activities which are necessary to ensure the timely delivery of humanitarian assistance or to support other activities that support basic human needs. They are essential for fostering compliance with international humanitarian law, for guaranteeing the continuity of humanitarian activities in situations where sanctions or counter-terrorism measures are applicable, for protecting humanitarian personnel and, ultimately, for helping to save lives and relieve the suffering of populations.

With this opinion, the CNCDH aims:

- to contribute to a better understanding of Resolution 2664 (2022) and the issues surrounding humanitarian exemptions;
- and to make a series of recommendations to France to consolidate, broaden and achieve the humanitarian ambitions of this resolution, both at the UN (part 1) and European (part 2) levels and at the national level (part 3).

As a first step, the CNCDH recommends that France support standing humanitarian exemptions, by encouraging their inclusion or retention in all sanctions regimes and counter-terrorism measures adopted at UN, European and national levels, based at a minimum on the common language of UN Security Council Resolution 2664 (2022) (**Recommendation 1**).

Part 1. Consolidating the essential paradigm shift introduced by the UN Security Council Resolution 2664 (2022) to preserve the humanitarian space

The CNCDH's first series of recommendations are aimed at consolidating, at the UN level, the paradigm shift introduced by Security Council Resolution 2664 (2022). The opinion highlights the essential contribution of this resolution to the preservation of the humanitarian space through the imposition of a humanitarian exemption for all asset freezes decided by the Security Council or its subsidiary bodies, as well as its limits. It also presents the reporting mechanism provided for in the said resolution, including due diligence and transparency measures. A specific point is devoted to the issue of the relationship with the counter-terrorism measures imposed by the Security Council, in addition to asset freezes, given their significant impact on humanitarian action and the legal and operational difficulties that they raise.

The CNCDH's recommendations include the following:

- vote in favour of renewing the application of the humanitarian exemption in Security Council Resolution 2664 (2022) to the sanctions regime against Al-Qaida and Da'esh (1267/1989/2253), without attaching a time limit to its application, and encourage the other members of the Security Council to do likewise (**Recommendation 2**);
- support the extension of the humanitarian exemption as set out in Resolution 2664 (2022) to all sanctions imposed by the Security Council or its subsidiary bodies, in addition to asset freezes, and encourage the other members of the Security Council to do the same (**Recommendation 4**);
- encourage the Counter-Terrorism Committee (CTC) and the Counter-Terrorism Committee Executive Directorate (CTED) to update the guidelines and technical guides for the implementation of Security Council Resolution 1373 (2001) and other relevant resolutions to take account of the benefits of Resolution 2664 (2022), in particular by specifying that the latter applies to financial sanctions imposed by the Security Council to combat terrorism (**Recommendation 6**);
- ensure that the relevant recommendations of the Financial Action Task Force (FATF), in particular recommendation no. 5 on the

offence of terrorist financing, no. 6 on targeted financial sanctions related to terrorism and terrorist financing, and no. 8 on non-profit organisations (NPOs) make a clear reference to the humanitarian exemption in Resolution 2664 (2022) or, where appropriate, incorporate it, and that they better reflect other obligations under international law, in particular international humanitarian law (**Recommendation 7**);

- work to extend the humanitarian exemption to all measures imposed by the Security Council to combat terrorism, specifying that these measures should not apply to humanitarian assistance and other activities that support basic needs carried out in accordance with humanitarian principles and, where applicable, international humanitarian law (**Recommendation 8**).

Part 2. Supporting the widespread use of broad, cross-cutting and standing humanitarian exemptions in the EU's restrictive measures

After presenting the different types of sanctions (restrictive measures) adopted by the European Union (EU), the CNCDH notes that the EU initially applied the humanitarian exemption disparately, incorporating it into UN sanctions regimes and mixed regimes, but maintaining a case-by-case approach for its autonomous sanctions regimes. Although humanitarian exemptions are becoming increasingly widespread within the EU, there is currently no cross-cutting, standing humanitarian exemption for all EU sanctions regimes.

The CNCDH thus recommends that France:

- support the widespread use of broad and standing humanitarian exemptions for all existing and future EU measures to freeze assets and restrict the availability of funds and economic resources (**Recommendation 10**);

- support the extension of the humanitarian exemption to all types of restrictive measures imposed by the EU (**Recommendation 11**);

- use its influence to encourage its European partners to support the reinforced widespread use of broad and standing exemptions in all of the EU's restrictive measures (**Recommendation 12**);

- help to ensure that the EU's guidelines on sanctions, as well as the European Commission's guidance note on the provision of humanitarian aid in compliance with EU restrictive measures, which is currently

being revised, are consistent with international humanitarian law and take full account of the progress made on humanitarian exemptions in EU restrictive measures based on Security Council Resolution 2664 (2022) (**Recommendation 13**).

The EU has also recently introduced a humanitarian clause for provisions aimed at harmonising criminal offences and penalties for violations of its restrictive measures (Directive (EU) 2024/1226 of the European Parliament and of the Council of 24 April 2024 on the definition of criminal offences and penalties for the violation of Union restrictive measures). The CNCDH recommends that France seize the opportunity afforded by the transposition of this directive in order to incorporate a humanitarian exemption into the relevant national provisions and encourage the other Member States to do likewise (**Recommendation 14**).

Part 3. Adopting the relevant national measures to achieve the ambitions set out in Resolution 2664 (2022)

The last part of the opinion focuses on legislative changes and other measures the CNCDH recommends France to adopt at the national level in order to comply with Resolution 2664 (2022) and, more broadly, to achieve the ambition to protect the humanitarian space by helping to safeguard and promote the continuity of humanitarian activities in areas in which individuals or entities targeted by sanctions are operating, including for reasons related to counter-terrorism.

Achieving this ambition, in line with France's international commitments, requires both:

- legislative changes, to clarify how humanitarian exemptions in UN and EU sanctions regimes are taken into account in the national context and what is expected of operators in terms of their conduct, as well as to ensure that the relevant national provisions are consistent in order to guarantee the effectiveness of those humanitarian exemptions. The CNCDH formulates several recommendations aimed at amending:
 - provisions relating to sanctions violations laid down in the Monetary and Financial Code (**Recommendations 15 to 20**);
 - and provisions of the Criminal Code regarding criminal offences linked to counter-terrorism to avoid the paradoxical situation

where actions considered lawful under the humanitarian exemptions provided for by the sanctions regimes may be punishable under the provisions relating to terrorist offences (**Recommendations 21 to 22**).

- the strengthening of measures to integrate and support the implementation of humanitarian exemptions, as well as the inclusion of these measures in all relevant documents (guidelines and guides of the Directorate General of the Treasury and the French Prudential Supervision and Resolution Authority, national risk assessment of the Anti-Money Laundering and Counter-Terrorist Financing Steering Committee, etc.) and financing agreements (**Recommendations 23 to 27**).

The CNCDH also recommends that France encourage dialogue and exchanges of good practices with other States, in particular the 27 EU Member States, in order to promote a protective interpretation of humanitarian action and consistent and uniform implementation of humanitarian exemptions (**Recommendation 28**).

Introduction

1. One of the factors contributing to the shrinking of humanitarian space¹ is the negative impact of sanctions on humanitarian activities and actors, as well as on civilians, which has long been criticized. Sanctions are one of the tools available to the United Nations Security Council² as part of its responsibility to maintain or restore international peace and security. These can be targeted³ and consist, for example, of imposing asset freezes or travel bans on named individuals or entities. They can also take the form of arms embargoes or restrictions on certain resources or goods. In order to apply them, States must adopt implementing measures. As the Security Council points out, States must ensure that these measures comply with their other obligations under international law, in particular international humanitarian law (IHL)⁴, international human rights law and international refugee law. However, these measures can have direct and indirect effects on the ability of humanitarian actors to carry out impartial humanitarian activities in accordance with IHL and humanitarian principles, on the ability of private sector companies and banks to collaborate with them, on the practices of donors and on the States in which sanctions are imposed⁵. Aware of these counterproductive consequences, the Security Council adopted Resolution 2664 (2022) on 9 December 2022. It aims to “*provide clarity to ensure the continuation of humanitarian activities*” in situations where sanctions apply⁶. For the first time, the Security Council is imposing a cross-cutting and standing “humanitarian exemption”⁷ for asset freezing measures, by excluding from their scope the activities necessary to ensure the timely delivery of humanitarian assistance or to support other activities that support basic human needs.

2. The CNCDH has recommended this on several occasions⁸ and welcomes this historic resolution, which was adopted after long and difficult negotiations and thanks to the commitment of many stakeholders (States⁹, UN bodies, humanitarian organisations, academics, etc.). Not only does the CNCDH consider that humanitarian exemptions make it possible to facilitate humanitarian action based on the principles of humanity, impartiality, neutrality and independence¹⁰,

including in areas controlled by individuals or entities subject to sanctions or where they are present or exert influence, but also that they promote compliance with international law. Humanitarian action is rooted in law. Firstly, international humanitarian law contains rules relating in particular to humanitarian assistance, the protection of the wounded and sick, as well as humanitarian personnel. It is also based on international human rights law, which recognises the right of everyone to “a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services”¹¹. However, the measures taken to implement sanctions may have the effect of infringing upon these rules and rights. The application of sanctions can also contribute to a biased and non-neutral perception of the work of humanitarian actors and of the humanitarian actors themselves. This can have the effect of jeopardising their safety and acceptance of their actions¹², which then hampers their ability to access all the people who need their help¹³. Providing for humanitarian exemptions in sanctions regimes is therefore essential to foster compliance with international humanitarian law and create an environment conducive to principled humanitarian action. Similarly, humanitarian exemptions make it possible to protect humanitarian personnel and their ability to respond to needs and to help ensure that people’s rights are respected, independently of any interaction that they may have with sanctioned individuals or entities, or any incidental benefits that they may derive from them. Humanitarian exemptions can thus help save lives and relieve suffering.

3. A significant proportion of people in need of humanitarian aid live in countries where sanctions are in force¹⁴, sanctions which are increasing exponentially¹⁵ as is the number of listed individuals and entities, and they are often intertwined (UN, regional or national sanctions). This adds a further factor of complexity to already complex environments (political, security, regulatory, economic, governance, etc.) and to a global operational context marked by growing humanitarian needs¹⁶. Imposing a humanitarian exemption through Resolution 2664 (2022), a legally binding decision¹⁷, is thus of unprecedented operational value and has major symbolic significance while representing a genuine paradigm shift that is likely to set precedents. This development is based

on precedent, including, in particular, the first humanitarian exemption adopted for the situation in Somalia in 2010¹⁸ and, more recently, those for the situations in Afghanistan in 2021¹⁹ and Haiti in 2022²⁰. What makes Resolution 2664 (2022) particularly noteworthy, however, is the fact that, for the first time, the Security Council has imposed a humanitarian exemption which, firstly, is not linked to a particular sanctions regime – this is known as a cross-cutting humanitarian exemption – and, secondly, applies on a standing basis, subject to the notable exception – from a temporal point of view – of the sanctions regime relating to Da'esh and Al-Qaida.

4. From a terminology point of view, if the term 'exemption' seems to be the one that prevails today, it is important to note that it does not have a perfectly identifiable definition and that other terms are also used by the United Nations bodies themselves, by European Union institutions or by States. The CNCDH notes that, in French, reference is sometimes made to '*exemptions*', sometimes to '*dérogations*', and even more broadly to '*exceptions*' or '*clauses humanitaires*' (humanitarian clauses). These elements reveal a certain vagueness in the use of terms and a lack of precision that is detrimental to a proper understanding of the concept. The CNCDH also notes this in the English versions of the relevant texts which use the terms 'carve-out', 'exemption', 'derogation' or 'exception'. There are also translation issues, as the various terms are not always translated in the same way²¹. However, it is essential to make a distinction between humanitarian 'exemptions' and 'derogations', which are intended to have distinct legal and operational effects. The term 'derogation' implies a request for prior authorisation on a case-by-case basis²² or notification to the competent authority. It also forces actors wishing to benefit from it to first identify the competent authority – an identification that is not always easy – and, if necessary, to wait for its response, which considerably delays operations. Derogations also contradict international humanitarian law, where it applies, since the latter stipulates that only parties to armed conflicts shall authorise and facilitate the free passage of relief operations for civilians²³ and requires third States to facilitate such operations²⁴. As for an 'exemption', this refers to the absence of a request for prior authorisation on a case-by-case basis or a notification requirement, since the restrictions arising from a sanctions regime do not apply to the humanitarian activities in

question. Its material scope is also generally broader and not limited solely to “*basic and extraordinary expenses*”, as is commonly the case with derogations²⁵. Humanitarian exemption is therefore both the right term and the right solution, in that it guarantees compliance with international humanitarian law and humanitarian principles and is capable of promoting legal predictability and certainty²⁶.

5. Despite the significant advances it contains, however, the scope of the humanitarian exemption set out in Resolution 2664 (2022) is limited to the sanctions imposed by the UN and, of those, only to the freezing of assets²⁷. These sanctions represent only part of the total number of sanctions that have an impact on humanitarian action, since they apply alongside those adopted by other international or regional organisations or by States²⁸. However, the Security Council’s clarification of the link between the adoption of sanctions and the need to “*minimize unintended adverse humanitarian effects*” of those sanctions²⁹ represents a paradigm shift that is likely to be replicated in other contexts. While the Security Council recognises that sanctions are an important instrument designed to help maintain or restore international peace and security, it formally emphasises that they need to comply with obligations under international law and deduces from the need to guarantee the continuity of humanitarian activities the imposition of a humanitarian exemption to the freezing of assets. Resolution 2664 (2022) therefore represents a decisive step towards preserving the humanitarian space, helping to establish it as a “*common heritage*”³⁰, which should be extended to include asset freezing measures other than those adopted by the Security Council, in particular the more numerous measures imposed by the European Union.

6. Resolution 2664 (2022) also provides an opportunity, over and above the measures that States must take or adapt to implement it, to adopt any other measures likely to extend the legal and symbolic impetus that it gives, in order to achieve its humanitarian ambitions. This is essential because other sanctions, such as arms embargoes or restrictions on the import or export of certain goods or resources, as well as other types of coercive measures, particularly those linked to counter-terrorism, have a negative impact on humanitarian

action³¹. Counter-terrorism measures include not only financial sanctions, to which the humanitarian exemption in Resolution 2664 (2022) applies, but also the criminalisation of terrorist financing and other forms of active or passive support for terrorism. The inclusion of humanitarian exemptions to ensure that terrorist offences do not apply to humanitarian action and other activities that support basic human needs, thereby granting immunity from prosecution to humanitarian personnel and organisations, is essential to ensure the effective implementation of Resolution 2664 (2022), compliance with international humanitarian law and protection of the humanitarian space. The absence of such exemptions can lead to the paradoxical situation where actions considered lawful under the provisions relating to sanctions can be criminalised under the provisions relating to terrorist offences, and thus be hindered.

7. This opinion therefore covers both humanitarian exemptions in sanctions regimes and humanitarian exemptions in (other) counter-terrorism measures. These are both a necessary condition for compliance with international humanitarian law, an ethical requirement to avoid exacerbating the suffering of populations, and a practical necessity to ensure the operational capability of principled humanitarian action in difficult situations of armed conflict or other crises. They are therefore essential to reconcile the political, economic and security objectives pursued by sanctions and counter-terrorism measures with humanitarian imperatives. Resolution 2664 (2022) represents a decisive turning point in this respect. Its adoption has already led to a number of changes, whether at national level, as the United States was quick to do³², or at regional level, notably within the European Union (EU), although, in the face of resistance from certain States, it has been slow to extend its scope beyond the sanctions imposed by the United Nations.

8. France, which initially opposed the inclusion of the regime relating to Da'esh and Al-Qaida in the humanitarian exemption imposed by Resolution 2664 (2022), finally co-sponsored an exemption applicable to all UN sanctions regimes and voted in favour of it. However, the renewal of the humanitarian exemption for this regime, whose duration has been limited to two years (from 9 December 2024

onward), is a key issue for the effectiveness and consolidation of this humanitarian exemption. This ultimately favourable stance towards a cross-cutting approach at UN level did not immediately translate into a similar approach to sanctions adopted autonomously by the European Union, for which France, among other States, defended a case-by-case approach, mainly favouring derogations. The CNCDH welcomes the change in France's position, which now favours a more cross-cutting approach, as reflected in the commitments it has made in the new Humanitarian Strategy of the French Republic (SHRF)³³ and following steps taken by the Council of the European Union which, in November 2023, introduced humanitarian exemptions into several autonomous European sanctions regimes. However, despite this generalisation of humanitarian exemptions within European sanctions regimes, they are still far from being a coherent and homogeneous whole. In addition, various national measures are needed to translate the progress made on humanitarian exemptions at UN and European level into domestic law, requiring legislative amendments and various support measures to raise awareness of the scope and the legal and practical effects of humanitarian exemptions. These measures appear to be essential in order to make humanitarian exemptions a reality and encourage their effective implementation by all the actors concerned (state authorities, economic operators, humanitarian organisations).

9. This opinion has two objectives: 1) to contribute to a better understanding of Resolution 2664 (2022) and the issues relating to humanitarian exemptions in sanctions regimes and counter-terrorism measures and 2) to make a series of recommendations to France. These recommendations aim to consolidate, broaden and achieve the humanitarian ambitions of Resolution 2664 (2022), at both UN (1) and European (2) levels as well as at the national (3) level. As a first step, the CNCDH recommends that France support standing humanitarian exemptions, by encouraging their inclusion or retention in all sanctions regimes and counter-terrorism measures adopted at UN, European and national levels, based at a minimum on the common language of UN Security Council Resolution 2664 (2022) **(Recommendation 1)**. France, as a permanent member of the Security Council and member state of the European Union, has a particular responsibility. It must guarantee progress in the area of humanitarian exemptions by using its diplomatic

policy with a view to exerting its influence on third countries in order to support, implement and strengthen humanitarian exemptions, while avoiding any measures or interpretations that could invalidate or reduce their scope. Furthermore, in line with the commitments made in its 2023-2027 Humanitarian Strategy³⁴, France must set an example by adopting the necessary national measures.

1. Consolidating the essential paradigm shift introduced by UN Security Council Resolution 2664 (2022) to preserve the humanitarian space

10. The CNCDH would like to return to the scope of Resolution 2664 (2022) in order to highlight its essential contribution to the preservation of the humanitarian space, while pointing out its limitations. In this legally binding resolution, the Security Council established a humanitarian exemption for all asset freezes imposed by it or its subsidiary bodies (1.1) and provided for a reporting mechanism involving due diligence and transparency measures (1.2). A specific point will also be devoted to the issue of the relationship with the counter-terrorism measures imposed by the Security Council, in addition to asset freezes (1.3), given their significant impact on humanitarian action and the legal and operational difficulties that they raise. The CNCDH therefore makes recommendations to France aimed at consolidating, at the UN level, the paradigm shift introduced by this resolution in order to protect the humanitarian space.

1.1. The historic requirement of a cross-cutting humanitarian exemption for asset freezes decided by the Security Council

11. The paradigm shift introduced by Security Council Resolution 2664 (2022) results from the requirement, for the first time, of a cross-cutting and standing humanitarian exemption³⁵ for the asset freezing measures that it imposes or will impose³⁶, without the need for prior authorisation or notification.

12. The CNCDH welcomes the broad scope adopted for the wording of the exemption. The type of conduct authorised (facilitative conduct)

and the humanitarian activities covered by Resolution 2664 (2022) to support basic human needs make it possible to cover a wide range of situations. Authorised conduct, which the Security Council considers does not violate the asset freezes it imposes, covers both “*the provision, processing or payment of funds, other financial assets or economic resources*” and “*the provision of goods and services*”³⁷. Examples include the payment of funds (by an individual or entity), such as the payment of taxes imposed by individuals or entities targeted by asset freezes for operating in areas controlled, *de jure* or *de facto*, by the latter, the payment of suppliers, insurance premiums, etc. Also included are all activities relating to the supply of goods (tangible or intangible), such as food, medical supplies, fuel or IT equipment, as well as the supply of services, such as banking, transport, security, logistics, telecommunications³⁸, and legal services, or water, sanitation and hygiene (WASH) and waste management services, or training (e.g. (para) medical, first aid training for armed groups or training in international humanitarian law), etc.

13. Such conduct is authorised and does not violate the asset freezes decided by the Security Council, provided that it is necessary “*for the timely delivery of humanitarian assistance*”, but also “*to support other activities that support basic human needs*”³⁹. Here too, the material scope is deliberately broad, covering not only humanitarian assistance (food, water, medical supplies, hygiene products, clothing, shelter, healthcare, sanitation, etc.) in times of armed conflict, natural disasters or other crises⁴⁰, but also other activities, such as the protection of individuals who are not or are no longer taking part in hostilities, restoring family links, visiting people deprived of their liberty, the aforementioned training, and activities aimed at ensuring access to education or healthcare (including non-emergency care)⁴¹.

14. These activities must also be carried out by one of the actors expressly referred to in paragraph 1 of Resolution 2664 (2022), namely:

- the United Nations (UN), including its programmes, funds and other entities and bodies, as well as its specialized agencies and related organizations;
- international organizations, humanitarian organizations having observer status with the United Nations General Assembly and

members of those humanitarian organizations;

- bilaterally or multilaterally funded non-governmental organizations participating in the United Nations Humanitarian Response Plans, Refugee Response Plans, other United Nations appeals, or OCHA-coordinated humanitarian “clusters”;
- or their employees, grantees, subsidiaries, or implementing partners while and to the extent that they are acting in those capacities.

15. This wording makes it possible to cover a wide range of impartial humanitarian actors, including local organisations, in particular through the reference to “*implementing partners*”, as well as the private sector, such as banking, insurance or industrial and commercial companies, through the mention of financial transactions and the supply of goods and services necessary for the aforementioned activities. The Security Council also leaves the door open to enlargement to “*appropriate others as added by any individual Committees established by this Council within and with respect to their respective mandates*”⁴².

16. The humanitarian exemption applies to all asset freezes imposed by the Security Council, whether current or future, unless the Security Council decides otherwise, in accordance with the conflict rule set out in paragraph 4 of Resolution 2664 (2022)⁴³. The Security Council specifies that the humanitarian exemption in Resolution 2664 (2022) supersedes those already existing for the regimes relating to Al-Shabaab in Somalia and the situation in Haiti, while deciding that the humanitarian exemption relating to Afghanistan remains in force⁴⁴. The humanitarian exemption that it establishes is therefore not limited to a particular sanctions regime but, subject to this proviso, applies across the board to all Security Council sanctions regimes (as far as asset freezes are concerned). It also applies, in principle, to future sanctions regimes.

17. However, while the CNCDH welcomes the choice of such a cross-cutting and standing humanitarian exemption, it regrets that the sanctions regime concerning ISIL (Da’esh), Al-Qaida and their associates is given specific treatment. The humanitarian exemption for this regime is limited to a period of two years⁴⁵. The Security Council expresses “*its intent to make a decision on the extension of its application to that regime prior to the date on which its application to that regime*

would otherwise expire”⁴⁶, but only a new resolution⁴⁷ will allow the humanitarian exemption in Resolution 2664 (2022) to continue to apply to sanctions regime 1267/1989/2553 from 9 December 2024. This difference in treatment is the result of a political compromise linked to the reluctance of certain Member States of the Security Council, including France, to extend the humanitarian exemption to this regime. It is all the more regrettable given that this is the Security Council sanctions regime that targets the largest number of individuals and entities, and that the latter are not operating in a single territory, but in numerous conflict zones where humanitarian needs are colossal, notably in Yemen, Syria, Afghanistan and the Sahel. Failure to renew the humanitarian exemption for this regime would therefore have an undeniably damaging impact on many humanitarian activities carried out in areas under the *de facto* control of these individuals or entities and, consequently, on the rights and needs of the populations concerned. It would also send a very negative signal, on the one hand, about the sustainability of the cross-cutting humanitarian exemption for asset freezes imposed by the Security Council and, on the other hand, about the willingness of its members to protect the humanitarian space by ensuring the continuity of humanitarian activities, including in the context of counter-terrorism. It would also create legal uncertainty, particularly for states that have already implemented the humanitarian exemption for this regime, as well as for humanitarian actors and their partners which rely on the humanitarian exemption. With regard to Afghanistan, in particular, it would also be particularly incomprehensible and ineffective for a UN sanctions regime relating to the Taliban, and establishing a humanitarian exemption which, moreover, is not limited in time, to coexist with another UN sanctions regime, targeting Al-Qaida and Da’esh, which no longer includes a humanitarian exemption. This non-renewal would also risk compromising the progress made towards making humanitarian exemptions more widespread beyond what is strictly required by Resolution 2664 (2022)⁴⁸.

18. The CNCDH can therefore only recommend that France vote in favour of renewing the humanitarian exemption for the sanctions regime concerning Al-Qaida and Da’esh and that it use all its influence to encourage the other members of the Security Council to do the same. This renewal is essential to avoid fragmenting the normative and operational

framework, to respond to the considerable needs of the affected populations and to avoid eroding an essential part of the humanitarian intent of Resolution 2664 (2022) to the point of rendering it meaningless. The coherence of the normative framework and the effectiveness of the humanitarian exemption would be further enhanced if, on this occasion, the Security Council decided to bring regime 1267/1989/2253 into line with all its other sanctions regimes by not imposing a time limit on its application (**Recommendation 2**). A standing renewal would be the best way to ensure that the humanitarian exemption fully achieves its positive effects and to reassure humanitarian actors as well as those in the private and financial sectors, since practices of over-compliance and disengagement in the face of risk (de-risking) are common in this context⁴⁹. While States reluctant to impose a standing humanitarian exemption for this regime cite in particular fears of humanitarian assistance being diverted, in particular to support or finance terrorism, Resolution 2664 (2022) addresses these concerns through provider due diligence measures and reporting procedures that promote transparency⁵⁰. France should make a firm commitment, as of now, to support a standing renewal of the exemption for this sanctions regime by making the other States aware of the benefits of such an exemption and warning them of the consequences for the populations concerned in the event of non-renewal (**Recommendation 3**).

19. In addition, the humanitarian exemption in Resolution 2664 (2022) only targets exclusion from the scope of the asset freezes and not from all the sanctions imposed by the Security Council (travel bans, arms embargoes, etc.). While this is the type of sanction that has been reported to have the most negative impact on humanitarian action, other sanctions can also have such an effect, particularly when they are interpreted broadly by the States required to apply them. This is the case, for example, with arms embargoes, which very often also include an obligation to prevent the supply of “*technical advice, assistance or training related to military activities*”⁵¹. This is interpreted by some States to include the dissemination of international humanitarian law to weapon bearers, which hampers the ability of the International Committee of the Red Cross (ICRC), for example, to fulfil its mandate. Similarly, these embargoes can have an impact on activities related to combatting weapon contamination, in particular demining and the

elimination of explosive remnants of war, due to the difficulty, or even impossibility, of transporting the necessary materials and equipment (explosives, detonators, metal detectors, protective vests, etc.). The travel ban, for example, could hinder the transfer of combatants injured in armed conflicts to the nearest medical facility, or delay it if a derogation is required⁵². The CNCDH therefore recommends that France support the extension of the humanitarian exemption as set out in Resolution 2664 (2022) to all sanctions imposed by the Security Council or its subsidiary bodies, in addition to asset freezes, and that it encourage the other members of the Security Council to do the same (**Recommendation 4**). France should also work to ensure that the European Union delegation to the United Nations in New York defends this position.

1.2. Associated risk mitigation and transparency measures

20. In paragraph 3 of Resolution 2664 (2022), the Security Council requests providers of humanitarian assistance to use “*reasonable efforts to minimize the accrual of any benefits prohibited by sanctions, whether as a result of direct or indirect provision or diversion, to individuals or entities designated by this Council or any of its Committees*”. In so doing, it implicitly recognises that the individuals or entities targeted by UN sanctions could, by virtue of their positions or actions, benefit from the activities carried out by humanitarian organisations, facilitated by the resolution, particularly when the designated individuals or entities have *de facto* control of an area. This recognition, which rules out a zero-tolerance approach to this risk, is a real step forward⁵³ and gives precedence to the humanitarian rationale over a security rationale which is interpreted too narrowly⁵⁴. Facilitating the delivery of humanitarian assistance or supporting other activities that support basic human needs sometimes involves direct or indirect exchanges with individuals or entities targeted by sanctions, from which they may derive benefits. These result, for example, from fees or taxes that humanitarian organisations have no choice but to pay in order to be able to operate and have access to populations in need, or from funds or goods transferred to organisations essential to the

implementation of humanitarian programmes that are controlled by those individuals or entities (such as hospitals, local service providers or authorities, e.g. payroll taxes or visa fees)⁵⁵. They can also result from cases of diversion of aid without the knowledge of humanitarian actors (such as the theft of a humanitarian convoy), which are also covered by Resolution 2664 (2022)⁵⁶. To minimise the benefits prohibited by sanctions⁵⁷, providers relying on the humanitarian exemption are encouraged to put safeguards in place, “*including by strengthening risk management and due diligence strategies and processes*”⁵⁸.

21. The diversion of funds or economic resources by designated individuals or entities and the risk management and due diligence procedures put in place, as well as any obstacles encountered in applying the humanitarian exemption, are part of the information to be transmitted within the framework of monitoring the implementation of Resolution 2664 (2022). This monitoring is based on regular briefings by the Emergency Relief Coordinator (ERC) (who heads the Office for the Coordination of Humanitarian Affairs (OCHA)) to the sanctions committees, which are responsible for assisting Member States with fully understanding and implementing the humanitarian exemption provided for in paragraph 1 of the resolution, and on the Secretary General’s report on the “*unintended adverse humanitarian consequences of Security Council sanctions measures*”⁵⁹. The exchange of information within this framework is intended to enhance transparency and help create a stronger forum for dialogue, likely to increase trust between the various actors involved. It is essential that this dialogue is grounded in fact-based discussions and that the promotion of a culture of reasonable risk management in humanitarian action does not come at the expense of the benefits that the exemption seeks to ensure. However, a number of potential difficulties relating to reporting were raised during the hearings conducted by the CNCDH for this opinion. These include the complexity of the information that may be requested, confidentiality issues, and the risk of legal proceedings when the information transmitted is likely to relate to criminal offences, in particular terrorist financing offences, if these are not covered by humanitarian exemptions⁶⁰. In addition, it is not always easy to illustrate the negative effects of sanctions, as they have a significant dissuasive effect which encourages humanitarian organisations, where they can,

to design their programmes in such a way as to avoid stumbling blocks with sanctions. More generally, it is essential that the burden of proof for exemptions should not be placed solely on humanitarian actors, that reporting should continue to be purely voluntary and that donors should not require it when they fund a project.

22. Several Security Council sanctions committees have adopted implementation assistance notices containing guidance on the humanitarian exemption resulting from Resolution 2664 (2022)⁶¹. These notices provide useful details on how this resolution relates to previous resolutions governing the sanctions regimes for which they were created, on providers, on their responsibilities and on the humanitarian assistance included. They also invite Member States and providers to make available any relevant information relating to the application of the resolution, in particular the risk of diversion. With the exception of the most recent implementation notices (DRC and South Sudan), the implementation notices all use the term ‘derogation’ (or ‘exception’) and thus do not help to clarify the distinction between situations in which approval or notification is required (derogations) and those in which it is not (exemptions)⁶². However, other committees have not yet adopted specific instructions or updated guidelines governing the conduct of their work, or even published updated information on the relevant pages⁶³. The CNCDH recommends that France ensure that the update of implementation assistance notices for Resolution 2664 (2022) of all Security Council sanctions committees or the guidelines governing the conduct of their work is fully consistent with the cross-cutting humanitarian exemption in Resolution 2664 (2022) and that all publicly available information in this regard is updated accordingly (**Recommendation 5**).

1.3. The need to coordinate with counter-terrorism measures

23. The link between Resolution 2664 (2022) and the measures adopted by the Security Council to combat terrorism⁶⁴, which it regularly describes as “*one of the most serious threats to international peace and security*”, raises questions. It follows from the wording that the

humanitarian exemption imposed applies to all asset freezes decided by the Security Council⁶⁵, including those with designation criteria linked to counter-terrorism. This is the case for asset freezes⁶⁶ imposed by the sanctions regime concerning Da'esh and Al-Qaida (1267/1989/2253) and the regime targeting Al-Shabaab, expressly mentioned⁶⁷, but also, for example, for the regime regarding Yemen under Resolution 2140 (2014) or that resulting from Resolution 1636 (2005) in connection with the attack in Beirut (Lebanon) in 2005. A humanitarian exemption is also provided for asset freezes imposed under the sanctions regime against the Taliban (Resolution 1988 (2011))⁶⁸. The CNCDH considers that the humanitarian exemption in Resolution 2664 (2022) also applies to the asset freezes imposed on the basis of Resolution 1373 (2001) and other relevant thematic resolutions⁶⁹, for which the Security Council has established a Counter-Terrorism Committee (CTC), assisted by the Counter-Terrorism Committee Executive Directorate (CTED), to monitor the implementation of these resolutions. These resolutions⁷⁰ require the adoption of a whole other series of measures to counter terrorist activities: in addition to the freezing of funds and the restriction on making funds, financial assets or economic resources available to individuals or entities designated as terrorists⁷¹ (even if not linked to a specific terrorist act), States must, among other things, criminalise and bring to justice individuals or entities involved in terrorist financing, as well as other types of (non-financial) support constituting forms of active or passive aid to terrorism (recruitment, incitement to commit terrorist acts, supply of weapons, acts associated with “foreign terrorist fighters”, etc.)⁷².

24. The CNCDH has already had occasion to highlight the obstacles to humanitarian action resulting from the rigorous and indiscriminate application of counter-terrorism legislation⁷³. However, the Security Council regularly reiterates that all measures taken by Member States to combat terrorism must comply with their obligations under international law, including international humanitarian law, international human rights law and international refugee law. In its Resolution 2462 (2019), adopted under the French Presidency, the Security Council states that it “[u]rges States, when designing and applying measures to counter the financing of terrorism, to take into account the potential effect of those measures on exclusively humanitarian activities, including medical

*activities, that are carried out by impartial humanitarian actors in a manner consistent with international humanitarian law*⁷⁴. The CNCDH also notes the introduction of an “intentionality clause”, the aim of which, according to the hearings it has conducted, is to prevent impartial humanitarian actors from being prosecuted under this resolution⁷⁵. It observes, however, that the way in which certain States interpret the terrorist offences imposed by Security Council Resolution 1373 (2001) and other relevant resolutions continues, even today, to represent a considerable obstacle to humanitarian action carried out in accordance with humanitarian principles and international humanitarian law. This is particularly the case with the offence of terrorist financing, which can lead to the paradoxical situation where actions exempted under Resolution 2664 (2022) could still be criminalised under criminal law⁷⁶ or be considered contrary to the international standards of the Financial Action Task Force (FATF). Similarly, offences relating to other forms of support for terrorism are sometimes used to penalise mere dialogue with parties to an armed conflict designated as “terrorists”⁷⁷ or the simple act of going to areas controlled by them.

25. The CNCDH recommends that France encourage the Counter-Terrorism Committee (CTC) and its Executive Directorate (CTED) to update the guidelines and technical guides for the implementation of Security Council Resolution 1373 (2001) and other relevant resolutions to take account of the benefits of Resolution 2664 (2022), in particular by specifying that the latter applies to financial sanctions imposed by the Security Council to combat terrorism (**Recommendation 6**). It also recommends that it ensure that the relevant FATF recommendations⁷⁸, in particular Recommendation 5 on the offence of terrorist financing, Recommendation 6 on targeted financial sanctions related to terrorism and terrorist financing, and Recommendation 8 on non-profit organisations (NPOs)⁷⁹ make a clear reference to the humanitarian exemption in Resolution 2664 (2022) or, where appropriate, incorporate it, and that they better reflect other obligations under international law, in particular international humanitarian law (**Recommendation 7**). The CNCDH further recommends that France work to extend the humanitarian exemption to all measures imposed by the Security Council to combat terrorism, specifying that these measures should not apply to humanitarian assistance and other activities that support

basic human needs carried out in accordance with humanitarian principles and, where applicable, international humanitarian law (**Recommendation 8**). This extension would help to ensure the effectiveness of the paradigm shift introduced by Resolution 2664 (2022) with regard to financial sanctions, promoting compliance with international humanitarian law and the continuity of principled humanitarian activities. More broadly, the CNCDH encourages France to continue to ensure that Security Council resolutions, both geographic and thematic, systematically recall that the measures Member States have to adopt to implement the sanctions it decides on, or the counter-terrorism measures it imposes, must comply with international law, in particular international human rights law, international humanitarian law and international refugee law (**Recommendation 9**).

2. Supporting the widespread use of broad, cross-cutting and standing humanitarian exemptions in the EU's restrictive measures

26. EU Member States have delegated a large part of their powers in the area of sanctions to the EU within the framework of the Common Foreign and Security Policy (CFSP)⁸⁰. EU sanctions, known as restrictive measures, are adopted either in view of a situation in a given country (geographic), or to target specific horizontal actions (thematic), such as terrorism, cyberattacks, chemical weapons and human rights⁸¹. The sanctions regimes adopted by the EU are commonly grouped into three categories:

- sanctions regimes that apply sanctions imposed by the United Nations Security Council (known as 'UN regimes');
- sanctions regimes which apply sanctions imposed by the Security Council, but which include additional EU criteria or designations (so-called 'mixed regimes');
- sanctions regimes adopted by the EU on its own initiative (known as 'autonomous regimes').

27. The European Union initially applied the humanitarian exemption disparately, incorporating it into UN sanctions regimes and mixed regimes, but maintaining a case-by-case approach for its autonomous sanctions regimes (2.1). Although humanitarian exemptions are becoming increasingly widespread within the EU, there is currently no cross-cutting, standing humanitarian exemption for all EU sanctions regimes (2.2). The European Union has also recently introduced a humanitarian clause for provisions aimed at harmonising criminal offences and penalties for violations of its restrictive measures (2.3).

2.1. Disparate application of the humanitarian exemption within the European Union

28. On 14 February 2023, the Council of the European Union swiftly

introduced the humanitarian exemption provided for in Security Council Resolution 2664 (2022) into its ‘UN’ sanctions regimes⁸². Since then, the sanctions regimes imposed by the EU in accordance with the Security Council’s decisions have included humanitarian exemptions which reproduce the terms of the aforementioned resolution⁸³.

29. A few weeks later, the EU Council endorsed this approach for mixed regimes, taking the view that the humanitarian exemption to asset freezes provided for in Resolution 2664 (2022) should also apply in cases where the EU decides to adopt supplementary measures on the freezing of funds and economic resources going beyond those decided by the Security Council.⁸⁴ This extension of the UN humanitarian exemption to the EU’s dozen or so mixed regimes is a welcome development. It promotes consistency between regimes, predictability and legal certainty. The introduction of the humanitarian exemption in mixed regimes removes the need to distinguish between individuals and entities referred to by United Nations sanctions and those additionally designated by the European Union. The measures relating to the freezing of funds and economic resources under UN and EU mixed sanctions regimes thus include humanitarian exemptions that faithfully reproduce the terms of Resolution 2664 (2022), targeting the same actors and activities. The extension of the humanitarian exemption to the additional measures adopted by the EU, over and above the obligations arising from that resolution, is the result of its wish to provide a “*clear framework* for humanitarian and economic operators⁸⁵. It is also intended to send “*a strong signal*” that “*EU sanctions do not stand in the way of delivering humanitarian assistance*”, to demonstrate “*the EU’s steadfast determination to avoid unintended negative consequences of sanctions on humanitarian activities*”, and to demonstrate the importance it attaches to “*full adherence to international law in [its] sanctions policy*”⁸⁶.

30. This signal was hardly as clear in the 35 autonomous sanctions regimes of the European Union, and was even initially rather contradictory, given that the vast majority of sanctions imposed by the EU are based on the latter⁸⁷. Far from meeting the expectations created by the extension of the humanitarian exemption to mixed regimes, the European Union initially prioritised a case-by-case approach

for its autonomous sanctions regimes rather than a cross-cutting approach⁸⁸. This approach assumes asking the following two questions for each sanctions regime concerned: firstly, whether to introduce a ‘humanitarian exception’ and, if so, whether to opt for a derogation or an exemption – these decisions should be taken by consensus between Member States. However, in view of this being blocked by several States⁸⁹, including France, it was rarely possible to reach a consensus on a humanitarian exemption until autumn 2023, the main solution being that of a derogation. Several autonomous sanctions regimes have thus been renewed without a humanitarian exemption being introduced, as in the case of the regime relating to the situation in Myanmar/Burma⁹⁰. Furthermore, when an agreement has been reached on a humanitarian exemption, it has been much more limited in scope than Resolution 2664 (2022), either in its temporal scope (as in the case of the Syria regime)⁹¹ or in its material and personal scope (as in the case of the Moldova regime or the regime relating to Iran’s military support for Russia’s war against Ukraine⁹²). This fragmented approach is problematic in several respects.

31. First of all, it raises problems in terms of legal clarity and certainty, as well as operational issues. The example of the sanctions applicable to Mali illustrates the practical difficulty of implementing the distinction between the various categories of EU sanctions regimes, which can change rapidly over time. Initially, this sanctions regime was simply the application, at EU Member State level, of the sanctions regime imposed by Security Council Resolution 2374 (2017) against individuals and entities obstructing the implementation of the 2015 Peace Agreement and responsible for other acts threatening international peace and security in the region. Following the coup in May 2021, the European Union adopted additional restrictive measures against individuals undermining the completion of the political transition in Mali, including obstructing the elections or the transfer of power to elected authorities, thus transforming the sanctions regime relating to Mali into a mixed regime⁹³. Since March 2023, it has thus benefited from a humanitarian exemption under the terms of Security Council Resolution 2664 (2022)⁹⁴. However, the impossibility of extending the UN sanctions regime, due to a lack of agreement within the Security Council, meant that it no longer existed⁹⁵, leaving only the sanctions imposed by the European Union. In the space of a few years, the European sanctions regime relating to

Mali has thus evolved from a UN regime to a mixed regime and then to an autonomous sanctions regime⁹⁶. In this context, it is difficult to understand how humanitarian exemptions should be applied. Differentiation by category of sanctions regime seems unsuitable in practice as a basis for applying the humanitarian exemption.

32. This differentiated approach raises significant practical challenges that add complexity to an already complicated legal and operational environment for humanitarian actors in the many contexts where sanctions are applied. The difficulties encountered in the humanitarian response to the earthquake in Türkiye and Syria on 6 February 2023, which only exacerbated an already disastrous situation and the suffering of the population in Syria, are a case in point. A number of sanctions regimes apply to the situation in Syria, although not all of them include humanitarian exemptions. The sanctions regime targeting the Islamic State (Da'esh) and Al-Qaida, which provides for a two-year humanitarian exemption in accordance with Resolution 2664 (2022), the EU's autonomous sanctions regime regarding Syria, for which a humanitarian exemption has been introduced, but for an initial period limited to six months⁹⁷ and the autonomous sanctions adopted by the EU to combat terrorism, targeting in particular Kurdish armed groups operating in Syria, which until recently⁹⁸ did not include a humanitarian exemption, overlap. In addition, there are the sanctions adopted by certain States, including France, against other individuals or entities present in Syria, which do not always provide for humanitarian exemptions. Humanitarian actors and their partners must therefore navigate between different sanctions regimes which, when they provide for humanitarian exemptions, do not always have the same duration or target the same actors even though they are on the same territory⁹⁹. Moreover, these exemptions generally only concern asset freezes and/or restrictions on making funds and economic resources available, as the other types of sanctions usually only include derogations, or even no humanitarian exception at all. The absence of a cross-cutting, standing humanitarian exemption to export restrictions imposed by EU sanctions in particular has thus been criticised for preventing humanitarian organisations from transporting to Syria some of the materials needed to rebuild essential infrastructure¹⁰⁰ or for delaying such transport.

33. Humanitarian exemptions, which exclude from the scope of sanctions the conduct necessary to facilitate the delivery of humanitarian assistance and other activities that support basic human needs, are always preferable to derogations. As mentioned above, derogations are more restrictive, complex, time-consuming, dependent on the political context of the sanctions regime in question, disconnected from operational realities¹⁰¹ and a source of legal uncertainty. They can also have a harmful effect by giving the impression that humanitarian actors are associated with or even subject to the control of, the states that have granted them, which can have consequences for their safety and their ability to operate. Providing for ‘multi-speed’ humanitarian exemptions is not enough, however, to combat over-compliance by economic operators, anxious to avoid contravening overlapping sanctions regimes that are not identical or always convergent. They can also have a chilling effect on humanitarian actors who, faced with a labyrinth of different regimes and standards, are often tempted to adopt single internal compliance procedures to ensure compliance with all sanctions regimes, based on the most stringent regimes. The difficulties caused by this fragmented approach, both in terms of legal clarity and certainty and in practical terms, run the risk of rendering humanitarian exemptions meaningless and ineffective.

34. These difficulties are also detrimental in terms of policy coherence. The fragmented approach and the challenges in reaching a consensus within the EU Council in favour of humanitarian exemptions for autonomous sanctions regimes are hardly compatible with the major role played by the European Union and its Member States in developing sanctions regimes that comply with international humanitarian law and avoid or minimise negative consequences for humanitarian action and personnel, as well as for non-targeted individuals¹⁰². The case-by-case approach initially adopted by the EU runs counter to this principled stance, embodied in the fact that the majority of its Member States co-sponsored Resolution 2664 (2022)¹⁰³. It also gives the impression that humanitarian space is negotiable, whereas humanitarian exemptions, far from being a political concession, are essential to promote compliance with international humanitarian law and create an environment conducive to principled humanitarian action that meets the needs of populations and protects humanitarian

personnel.

35. The CNCDH thus regrets that France, along with other Member States, did not initially defend the widespread use of humanitarian exemptions in the EU's autonomous sanctions regimes, preferring instead a case-by-case approach that mainly favours derogations. It welcomes the change in France's position, reflected in the commitments made as part of its new Humanitarian Strategy presented at the National Humanitarian Conference on 19 December 2023. The desire to listen to humanitarian actors about the constraints they encounter and the willingness to respond to the phenomena of banks' over-compliance have led the Ministry of Europe and Foreign Affairs (MEAE) to adopt a policy of providing greater support for the inclusion of humanitarian exemptions in sanctions regimes¹⁰⁴. In this strategy¹⁰⁵, France thus undertakes to work "*towards the transposition of UNSC Resolution 2664 into EU law and national legislation*", to continue "*the work of clarifying the content of sanctions with regard to the adoption of humanitarian exemptions*", in particular to ensure "*the harmonization of the language of the texts adopted by the United Nations and the European Union*"¹⁰⁶ and states that it "*will implement (...) the cross-cutting approach determined by the Council concerning the introduction of humanitarian clauses into the EU's autonomous sanctions regimes*".

2.2. Towards the (still too measured) widespread use of humanitarian exemptions within the European Union

36. On 27 November 2023, the Council of the European Union changed its position by introducing cross-cutting humanitarian exemptions in ten of its autonomous sanctions regimes¹⁰⁷. It was determined to "*increase consistency and coherence*" between EU sanctions and those adopted by the Security Council as well as "*ensure the continued timely delivery of humanitarian assistance*" and "*support other activities that support basic human needs*". The EU Council thus considered that it was necessary to introduce a humanitarian exemption to asset freezes and restrictions on making funds and economic resources

available to designated individuals and entities in almost one third of its autonomous sanctions regimes: those relating to Guinea, Tunisia, Zimbabwe, Bosnia-Herzegovina, Myanmar/Burma, Burundi, Venezuela, Nicaragua, Lebanon and in the thematic regime on cyberattacks.

37. The CNCDH welcomes this progress as a decisive step towards the widespread use of humanitarian exemptions and a paradigm shift for the European Union's autonomous sanctions regimes. It is pleased to note that these exemptions are based on the model of Resolution 2664 (2022), while extending its personal scope to other organisations operating in partnership with the EU (the so-called «2664+ model»)¹⁰⁸. In addition to these exemptions, there are derogation mechanisms applicable to organisations and actors involved in humanitarian activities that do not fall within the scope of these exemptions¹⁰⁹. This solution is based on two precedents: one month earlier, the European Union created two new autonomous sanctions regimes for Sudan and Niger, incorporating such an exemption¹¹⁰.

38. Significantly, the European Union took a further step in February 2024 by introducing a similar humanitarian exemption into the sanctions regime relating to counter-terrorism based on Security Council Resolution 1373 (2001), albeit limited to an initial period of 12 months¹¹¹. This is a clear signal from EU Member States in favour of humanitarian exemptions for the financial sanctions (asset freezes and restrictions on making funds and economic resources available) imposed to combat terrorism. The CNCDH encourages France to use this decision to help confirm that the humanitarian exemption in Resolution 2664 (2022) also applies, in the same way, to financial sanctions adopted by States or regional organisations to combat terrorism on the basis of United Nations Security Council Resolution 1373 (2001)¹¹².

39. Following this, a humanitarian exemption was also introduced into the EU's sanctions regime with regard to human rights¹¹³. It thus reinforces not only the coherence between the various sanctions regimes, but also between the very objective of this sanctions regime adopted against individuals responsible for serious human rights violations and the negative humanitarian consequences that could result, in the absence of an exemption, for the rights and basic needs

of civilians¹¹⁴. The humanitarian exemption is based on the ‘2664+ model’. However, political negotiations have led to certain natural or legal persons (identified by an asterisk in the appendix) being excluded from the scope of the exemption. The Council considers that “*in cases where the Council has determined that scrutiny by national competent authorities is required due to a higher risk that funds or economic resources provided would be misused for purposes other than humanitarian assistance*”, a derogation mechanism should apply instead of the exemption¹¹⁵. Most of the persons (natural or legal) or entities targeted on this sanctions list, all Russian or linked to Russian legal persons or entities, such as the Wagner group, have thus been excluded. Even though the introduction of an exemption is to be welcomed, and the solution reflects a political compromise, it is regrettable that this exemption is only partial, which does not make the regime any easier to understand or contribute to the coherence of the objectives pursued.

40. These various developments represent definite progress in that they expand the use and standardise humanitarian exemptions for EU sanctions regimes, which can only benefit those in need and those who work for them. The CNCDH welcomes this progress, which illustrates the potential of the paradigm shift introduced by Resolution 2664 (2022) in favour of preserving the humanitarian space based on compliance with international law in order to protect and ensure the delivery of assistance to populations. It notes, however, that the widespread use of humanitarian exemptions within EU autonomous sanctions regimes is still only partial, and that significant disparities remain.

41. Some autonomous sanctions regimes still do not include any humanitarian exemptions. This is the case with the restrictive measures relating to the situation in Belarus and its involvement in the Russian aggression against Ukraine¹¹⁶, those relating to the situation in Iran¹¹⁷ or those aimed at combatting the proliferation and use of chemical weapons¹¹⁸, even though they include measures to freeze assets and economic resources and restrictions on making them available to targeted individuals.

42. Where humanitarian exemptions are included, their scope may

initially vary. The (personal) scope in terms of the actors eligible for humanitarian exemptions is, for example, either modelled on that of Resolution 2664 (2022), extended to other organisations linked to the European Union (known as the ‘2664+ model’) or limited to a smaller number of organisations. This is the case for the humanitarian exemptions in the regimes against the Republic of Moldova, against actions jeopardising or threatening the territorial integrity, sovereignty and independence of Ukraine or against “*Iran’s military support to Russia’s war of aggression against Ukraine*”. These cover only a limited number of actors, namely only the “*organisations and agencies which are pillar-assessed by the Union and with which the Union has signed a financial framework partnership agreement on the basis of which [they] act as humanitarian partners of the Union*”¹¹⁹. They therefore exclude some of the NGOs covered by Resolution 2664 (2022).

43. Similarly, the material scope of the exemption sometimes uses the same terminology as Resolution 2664 (2022), namely the provision of funds or economic resources “*necessary to ensure the timely delivery of humanitarian assistance or to support other activities that support basic human needs*” or is limited to the provision of funds or economic resources “*necessary for exclusively humanitarian purposes*”¹²⁰. In addition, some regimes only include an exemption to restrictions on making funds and economic resources available, with only a derogation being provided for measures freezing funds and economic resources¹²¹, which requires (specific or general) authorisation from the competent authorities of Member States.

44. The CNCDH also notes differences in the temporal scope of humanitarian exemptions, the durations of which are sometimes standing or aligned with that of the restrictive measures concerned¹²², or more limited, as in the case of the Syria regime (six months, recently extended to twelve months) or the counter-terrorism regime (twelve months)¹²³. However, the temporary nature and short (or even derisory) duration of certain humanitarian exemptions place humanitarian actors, their partners and economic operators in a very precarious position, hardly in keeping with the spirit of Resolution 2664 (2022)¹²⁴. The “Frequently Asked Questions” (FAQ) published by the European Commission on the humanitarian exemption in Syria¹²⁵, while providing

useful guidance for humanitarian actors¹²⁶, illustrates all the difficulties that a limited duration entails: they have to check that the humanitarian exemption on which they can rely has not expired and are encouraged to align the duration of the contracts they enter into with that of the exemption, which is incompatible with emergency humanitarian operations.

45. The CNCDH therefore calls on the European Union and its Member States to take a further step to ensure that humanitarian exemptions become a systematic and standardised reflex for all European Union restrictive measures. To that end, it recommends that France support the widespread use, by means of a cross-cutting decision and regulation, of broad and standing humanitarian exemptions for all existing asset freezes and restrictions on making funds and economic resources available (**Recommendation 10**). As other types of restrictive measures can have a negative impact on humanitarian action and personnel, the CNCDH further recommends that France support the extension of the humanitarian exemption to all restrictive measures imposed by the European Union (**Recommendation 11**). Such exemptions should likewise be incorporated into all future EU restrictive measures. The CNCDH also encourages France to use its influence to urge its European partners to support such a reinforced widespread use of broad and standing exemptions (**Recommendation 12**).

46. Strengthening the common European framework for humanitarian exemptions in restrictive measures¹²⁷ would facilitate the activities of humanitarian actors on the ground and fundraising from donors, provide greater protection for populations in need and humanitarian personnel, and ensure better compliance with international humanitarian law. However, the implementation of restrictive measures falls within the competence of Member States, with the support of the European Commission¹²⁸. It is therefore essential that they apply and promote humanitarian exemptions within their jurisdictions and that the European Union guidelines on sanctions¹²⁹ currently being revised take full account of the progress made in this area since Resolution 2664 (2022). The CNCDH recommends that France help to ensure that these guidelines comply with international humanitarian law and incorporate recent progress relating to

humanitarian exemptions in sanctions regimes. This progress in humanitarian exemptions should also be incorporated into the update of the European Commission's guidance note on the provision of humanitarian aid in compliance with EU restrictive measures¹³⁰, promoting a protective interpretation of all activities covered by Resolution 2664 (2022) (**Recommendation 13**).

2.3. The welcome introduction of a humanitarian clause in the context of the criminalisation of EU restrictive measures violations

47. Member States are responsible not only for implementing EU restrictive measures, but also for identifying and prosecuting their violation for which they must provide effective, proportionate and dissuasive penalties. It is up to the competent authorities in Member States to assess whether there has been a violation of the relevant Council decisions and regulations and to take the appropriate measures. However, there are major differences in this respect. Considering that these weaken the application and undermine the credibility of the objectives pursued by the restrictive measures it imposes, the European Union has just adopted a directive aimed at harmonising the criminal definitions and penalties incurred for violations of its restrictive measures, but also to limit their circumvention and ensure that the individuals or legal entities responsible are held accountable for their actions¹³¹. Differences in the implementation of these restrictive measures also expose humanitarian actors, their partners and economic operators to a significant risk of unjustified legal action if the humanitarian exemptions mentioned above are not applied or if restrictive measures that still do not include such exemptions are violated. It is therefore particularly welcome that Directive (EU) 2024/1226 expressly states that “[n]othing in paragraphs 1, 2 and 3 [relating to criminal offences in the event of a violation of the EU's restrictive measures] shall be understood as criminalising humanitarian assistance for persons in need or activities in support of basic human needs provided in accordance with the principles of impartiality,

*humanity, neutrality and independence and, where applicable, with international humanitarian law*¹³².

48. The CNCDH welcomes the inclusion of such a humanitarian clause in the context of the criminalisation of EU restrictive measures violations, which ensures, subject to transposition by Member States, that humanitarian actors are excluded from the risk of criminalisation under this Directive¹³³. The inclusion of this clause in the operative provisions of the directive and not just in its preamble¹³⁴, which was contested during the negotiations, illustrates the European Union's desire to protect principled humanitarian action from the negative consequences of sanctions and ensure their compliance with international law, in particular international humanitarian law. Although the absence of an express reference to Security Council Resolution 2664 (2022) is regrettable, this clause draws inspiration from it and helps to ensure consistency with the humanitarian exemptions provided for in several EU restrictive measures¹³⁵ and their widespread use¹³⁶.

49. Member States have until 20 May 2025 to transpose it into national law and adopt the laws, regulations and administrative provisions necessary to comply with it. The CNCDH recommends that France seize the opportunity afforded by the transposition of Directive (EU) 2024/1226 of the European Parliament and of the Council of 24 April 2024 on the definition of criminal offences and penalties for the violation of Union restrictive measures in order to incorporate a humanitarian exemption into the relevant national provisions and encourage the other Member States to do likewise (**Recommendation 14**). It also refers to its other recommendations on this subject in section 3 of this opinion. More broadly, France has a particular responsibility, as a permanent member of the Security Council and given its influence within the European Union, to ensure this progress in humanitarian exemptions both within the Security Council and within the EU, and to set an example by adopting the necessary measures at national level.

3. Adopting the relevant national measures to achieve the ambitions set out in Resolution 2664 (2022)

50. Like other UN Member States, France is required to analyse and, where necessary, adapt its national law and other relevant measures relating to asset freezes imposed by the Security Council to ensure that France complies with the humanitarian exemption set out in Resolution 2664 (2022). It also has to apply European Union law and the humanitarian exemptions laid down for certain of its restrictive measures, including within the framework of the transposition of Directive (EU) 2024/1226 on penalties for violations of these measures. More broadly, this analysis provides an opportunity to adopt the national measures needed to achieve the ambition of the resolution to protect the humanitarian space by helping to safeguard and promote the continuity of humanitarian activities in areas in which individuals or entities targeted by sanctions are operating, including for reasons related to counter-terrorism. Achieving this ambition, in line with France's international commitments, requires both legislative changes (3.1) and the strengthening of measures to integrate and support the implementation of humanitarian exemptions, as well as the inclusion of these measures in all relevant documents (guidelines, guides, etc.) and financing agreements (3.2).

3.1. The need to incorporate humanitarian exemptions into national legislation

51. In previous opinions, the CNCDH has already made recommendations to amend the French Monetary and Financial Code and the French Criminal Code to ensure compliance with international humanitarian law and the protection of principled humanitarian action³³⁷. Such amendments seem all the more necessary in view of the progress made on humanitarian exemptions in sanctions regimes since the adoption of Security Council Resolution 2664 (2022) and the objectives thus pursued. The aim of these legislative changes should be to clarify how these exemptions are taken into account in the national

context, to make it clearer what is expected of operators in terms of their conduct, and to ensure that the relevant national provisions are consistent in order to guarantee the effectiveness, at the national level, of humanitarian exemptions imposed at the UN and European levels. Two sets of provisions are particularly relevant here, relating firstly to sanctions violations and secondly to criminal offences linked to counter-terrorism, which are governed respectively by the Monetary and Financial Code and the Criminal Code.

3.1.1. On sanctions violations

52. The humanitarian exemption set out in Security Council Resolution 2664 (2022) and those arising from decisions and regulations of the Council of the European Union concern measures freezing assets and/or restricting the availability of funds or economic resources. In France, these measures are governed in particular by the Monetary and Financial Code (Chapter II of Title VI of Book V). Violation of these rules may result in disciplinary or criminal penalties. The purpose of humanitarian exemptions is to allow actors who may be able to rely on them not to be subject to such penalties. These humanitarian exemptions are provided for in resolutions adopted under Chapter VII of the United Nations Charter or in acts adopted pursuant to Article 29 TEU or Article 275 TFEU, on the basis of which the Minister for the Economy may decide to freeze funds and economic resources in accordance with the Monetary and Financial Code¹³⁸. Although there is no need to amend the Code on this point¹³⁹, as humanitarian exemptions are implicitly included¹⁴⁰, their express inclusion would help to improve understanding of the implications for actors concerned (states, financial and private bodies, humanitarian organisations), by sending a clear signal that no legal action is taken against individuals or bodies that comply with the conditions set out in these exemptions. In particular, this would help to combat practices of over-compliance by economic operators. The CNCDH therefore recommends that the legislator amend Chapter II of Title VI of Book V of the Monetary and Financial Code to insert a new article L. 562-1-1 expressly referring to humanitarian exemptions, which could be worded as follows: “The provisions of this chapter apply without prejudice to applicable humanitarian exemptions intended to ensure the timely delivery of humanitarian

assistance or to support other activities that support basic human needs carried out in accordance with humanitarian principles and, where applicable, international humanitarian law” (**Recommendation 15**). Such a provision could be introduced, for example, when transposing the aforementioned Directive (EU) 2024/1226 on the definition of criminal offences and penalties for the violation of Union restrictive measures¹⁴¹. It would help to protect persons (natural and legal) acting in accordance with humanitarian exemptions, in particular banks and financial institutions, including the AFD (French Development Agency), from the risk of prosecution for violating such measures. In France, this can result in criminal penalties under the Monetary and Financial Code, the Customs Code and the Criminal Code¹⁴².

53. The application of several provisions of Chapter II of Title VI of Book V of the Monetary and Financial Code would also be clarified by introducing such a new article. This is particularly the case for Articles L. 562-4 to L. 562-6 on the obligation to apply freezing measures, the restriction on making funds or economic resources available and the prohibition on circumventing these measures. Accompanied by clear guidelines to this effect¹⁴³, this new article would send a distinct signal to those subject to these obligations¹⁴⁴, as well as to the bodies responsible for overseeing them, that transactions necessary to ensure the timely delivery of humanitarian assistance and to support other activities that support basic human needs do not constitute a violation of these provisions (provided that they are carried out in accordance with the conditions set out in the humanitarian exemptions). The CNCDH recommends that Articles L. 562-4, L. 562-5 and L. 562-6¹⁴⁵ of the Monetary and Financial Code be amended to state that these provisions apply subject to the applicable humanitarian exemptions set out in the new Article L. 562-1-1 (**Recommendation 16**).

54. Article L.562-4-1 of the Monetary and Financial Code on the obligations of the persons subject to it, to organise and put in place internal procedures for the implementation of asset freezing measures and restrictions on availability should specify, at the end of the first paragraph, that they will ensure that the relevant humanitarian exemptions are applied (**Recommendation 17**). This precision would have the merit of clarifying the behaviour expected of operators by

setting out in law the changes and obligations arising from Resolution 2664 (2022). The resolution targets both humanitarian actors and the economic operators with whom they work to carry out their activities.

55. Inserting a reference to humanitarian exemptions in Article L.562-1-1, i.e. at the beginning of the aforementioned Chapter II, would also cover measures to freeze funds and economic resources decided by the Minister for the Economy jointly with the Interior Minister in order to combat terrorism on the basis of Article L.562-2¹⁴⁶. This would be consistent with the interpretation that the humanitarian exemption laid down by Resolution 2664 (2022) applies to all asset freezing measures imposed by the Security Council, including those aimed at combatting terrorism in accordance with Resolution 1373 (2001) and other relevant resolutions¹⁴⁷.

56. For the sake of consistency and to promote the effective implementation of the humanitarian exemptions imposed at the UN and European levels, in particular by Resolution 2664 (2022), the CNCDH also recommends that the legislator introduce an express reference to humanitarian exemptions at the beginning of Chapter I of Title VI of Book V of the Monetary and Financial Code on obligations relating to anti-money laundering and counter-terrorist financing (AML/CFT). Such a provision could, for example, be the subject of a new Article L. 561-1-1 at the top of Section 2 applying to persons subject to AML/CFT obligations and could be worded in the same way as previously proposed: “The provisions of this chapter apply without prejudice to applicable humanitarian exemptions intended to ensure the timely delivery of humanitarian assistance or to support other activities that support basic human needs carried out in accordance with humanitarian principles and, where applicable, international humanitarian law” (**Recommendation 18**).

57. While it is indeed necessary to impose measures to curb terrorist financing and anti-money laundering, this may impede the conduct of humanitarian activities in compliance with international humanitarian law and humanitarian principles, and thus hinder the effectiveness of humanitarian exemptions. For example, the additional due diligence measures imposed by Article L.561-10 of the Monetary

and Financial Code for transactions with countries designated by the FATF or the EU as being exposed to a ‘high risk’ in terms of money laundering and terrorist financing (ML/FT), may encourage banks or financial institutions to disengage (derisking) in order to avoid the risk of criminal penalties. They can thus make it more difficult to make funds available to humanitarian organisations, despite the fact that exemptions allow them to do so, while humanitarian needs in high-risk ML/FT countries such as Myanmar/Burma and Syria are considerable. The CNCDH therefore recommends that the aforementioned Article L. 561-10 be amended to specify that it applies “subject to Article L.561-1-1”¹⁴⁸ on humanitarian exemptions, which it recommends be created (**Recommendation 19**).

58. The CNCDH notes that, conversely, Article L.561-9 of the Monetary and Financial Code provides for simplified due diligence measures in cases where the risk of money laundering or terrorist financing is low, particularly for certain types of customers, such as institutions regulated within the European Economic Area or listed companies¹⁴⁹. It encourages the legislator to consider adding impartial humanitarian organisations to the list of low-risk customers under this provision (**Recommendation 20**)¹⁵⁰.

59. These various amendments to the Monetary and Financial Code, together with the necessary accompanying measures, could make a decisive contribution to the effectiveness of the humanitarian exemptions arising from Security Council Resolution 2664 (2022)¹⁵¹ and the European regulations on restrictive measures, thereby protecting the humanitarian space.

3.1.2. On offences related to counter-terrorism

60. Furthermore, adaptation of the Criminal Code is also essential to ensure the consistency of the relevant national provisions and to avoid the paradoxical situation where actions considered lawful under the humanitarian exemptions provided for by the sanctions regimes may be punishable under the provisions relating to terrorist offences. The Criminal Code should be amended to introduce a humanitarian exemption, based on the letter and spirit of Resolution 2664 (2022)¹⁵²,

for terrorist offences defined in Articles 421-1 to 422-7 of the Criminal Code (Title II of Book IV).

61. Changes to the Criminal Code are as necessary as they are possible, so as not to invalidate the scope of Security Council Resolution 2664 (2022). The offences of ordinary law listed in the Criminal Code constitute acts of terrorism “*when they are intentionally connected with an individual or collective undertaking with the aim of seriously disturbing public order through intimidation or terror*”¹⁵³. Although this moral element makes it possible in principle to exclude humanitarian activities and other activities that support basic human needs carried out in accordance with humanitarian principles and international humanitarian law, this does not expressly follow from the law and remains subject to the discretion of the prosecuting and sentencing authorities. The circular issued in 2021 by the Ministry of Justice draws the attention of prosecutors to the specific nature of the missions of humanitarian organisations and their staff. It also gives examples of activities that should be excluded from the risk of criminal classification, such as providing medical aid¹⁵⁴, “*impartial humanitarian support for civilian populations in areas where terrorist groups operate*” or dialogue with terrorist organisations, “*provided that it does not constitute an agreement intended to further a terrorist aim*”¹⁵⁵. However, some of the examples given raise questions¹⁵⁶ and, from a normative point of view, a circular does not provide the same legal certainty as a legislative provision.

62. In addition, the offence of financing a terrorist undertaking, as articulated in Article 421-2-2 of the Criminal Code, does not include the same condition relating to intent (*mens rea*) as that mentioned above. This is because it is not necessary for the finance provider to have terrorist intent, or for a specific terrorist act to have occurred, but only for the beneficiary of the funds to have planned a terrorist offence¹⁵⁷. Humanitarian organisations and personnel thus remain exposed to the risk of prosecution on this basis if they provide sums of money or economic resources to terrorist individuals or entities¹⁵⁸ (which they may be forced to do in order to carry out their operations)¹⁵⁹. Although the above-mentioned circular expresses the desire not to criminalise the transfer of funds by a humanitarian organisation, there is still some

ambiguity¹⁶⁰ and only a change to the Criminal Code would provide protection from such prosecution.

63. One of the obstacles raised during the hearings conducted by the CNCDH was that it cannot be ruled out that individuals within ‘lawful’ humanitarian organisations may use their positions or funds to commit terrorist offences. However, the introduction of a humanitarian exemption in the Criminal Code, for the purpose of conferring immunity from criminal liability, and thus preventing prosecution, for impartial humanitarian personnel and organisations, is by no means a blank cheque. Immunity would not be absolute and could be excluded if the conditions governing humanitarian exemptions within the meaning of Resolution 2664 (2022) (relating to authorised conduct and the humanitarian actors and activities covered) are not met and the acts are likely to be classified as criminal under Articles 421-1 et seq. It would not prevent the national anti-terrorist prosecutor’s office, if it considered that immunity should be excluded, from prosecuting natural or legal persons on these grounds, and the judges from finding them criminally liable. On the contrary, this humanitarian exemption is a key element in ensuring compliance with international humanitarian law and the conduct of principled humanitarian activities, as well as being necessary to ensure consistency with Resolution 2664 (2022) and its effective implementation. The introduction of such an exemption in the Criminal Code by the legislator would send a strong signal promoting the protection of humanitarian actors, for the benefit of people in need. It would be consistent with Security Council Resolution 2462 (2019) which requires States to ensure that counter-terrorism measures comply with their obligations under international law¹⁶¹, as well as with Directive (EU) 2017/541¹⁶², according to which “[t]he provision of humanitarian activities by impartial humanitarian organisations (...) do not fall within the scope of this Directive [which establishes minimum rules concerning terrorist offences]”¹⁶³. France would thus join the group of States that have already introduced a humanitarian exemption in their criminal legislation, such as Australia¹⁶⁴, the United Kingdom¹⁶⁵, Switzerland¹⁶⁶, Chad¹⁶⁷, Ethiopia¹⁶⁸, the Philippines¹⁶⁹, New Zealand¹⁷⁰ and Canada¹⁷¹, illustrating that more and more States recognise that these exemptions do not hinder their ability to combat terrorism. Moreover, it could have an influence on other third countries

that are still reluctant to adopt it.

64. Consequently, the CNCDH again recommends that the Government change its position and that the legislator introduce a humanitarian exemption in Title II of Book IV of the Criminal Code relating to terrorist offences¹⁷². It points out that a provision with such an objective was included in draft law no. 4354 *on the preservation of the humanitarian space*¹⁷³ (new Article 422-8). The CNCDH considers that this provision could be worded as follows: “Article 422-8. Impartial humanitarian organisations and their personnel may not be prosecuted as perpetrators of, or accomplices to, the crimes and offences stipulated in this Title, solely due to exercising their humanitarian activities and other activities that support basic human needs” (**Recommendation 21**)¹⁷⁴.

65. In addition, the CNCDH recommends that France encourage States that have not already done so to incorporate the humanitarian exemption of Security Council Resolution 2664 (2022) for asset freezing measures into their respective national laws and to incorporate humanitarian exemptions into their legislation on terrorist offences (**Recommendation 22**).

3.2. The need to strengthen measures to support the implementation of humanitarian exemptions

66. For the humanitarian exemption to be fully effective, it must be known and understood by those who have to apply it, whether they are humanitarian actors, private sector companies or public authorities. In addition to the legislative changes mentioned above, support measures (guides, guidelines, awareness-raising or training initiatives, etc.) aimed at providing information about the existence of humanitarian exemptions and their implications are essential for their effective implementation and for changing practices.

67. A wide range of tools and information have been developed and made available to inform the persons who are required to comply with

sanctions¹⁷⁵, in particular asset freezes and restrictions on availability, and also with anti-money laundering and counter-terrorism (AML/CFT) standards¹⁷⁶, of their rights and obligations. However, they do not take sufficient account of recent normative developments relating to humanitarian exemptions and their practical and legal implications. This is the case, for example, with the guide that deals specifically with “*derogations relating to humanitarian aid*”¹⁷⁷. Despite its title, the guide makes a clear distinction between derogations, which require prior authorisation, and exemptions, which exclude the application of certain sanctions from the outset. However, it relies on outdated examples, mentioning only the UN humanitarian exemption for Somalia or the EU exemption for fuel in Syria. As a result, it is not currently in a position to provide a clear understanding of the humanitarian exemptions granted at the UN and European levels, although such a tool would be particularly useful given the heterogeneous nature of these exemptions (in order to combat practices of over-compliance and/or derisking). The CNCDH recommends that this guide be updated without delay, with a title change, and that it be regularly updated. The same applies to the “*Vade-mecum on sanctions and the financing of terrorism*” adopted by the Directorate General of the Treasury, in conjunction with the Ministry of the Interior, concerning “*humanitarian operations in sensitive areas*”, referring to countries under international sanctions or areas where terrorist groups are active¹⁷⁸. This *vade mecum* should also be updated to include humanitarian exemptions and to provide useful keys to understanding what they entail, both for humanitarian actors and for financial service providers (**Recommendation 23**)¹⁷⁹.

68. It emerged from the hearings conducted by the CNCDH that, although Resolution 2664 (2022) and the other humanitarian exemptions already facilitate humanitarian action to support the basic needs of people living in countries under sanctions, further efforts are needed to help incorporate them so that they are fully integrated into the relevant procedures and practices¹⁸⁰.

69. Within humanitarian organisations, it is essential for project management teams and those in charge of risk management procedures and control (linked to financing) to have a thorough knowledge of international law, sanctions regimes, counter-terrorism measures and

humanitarian exemptions so that these organisations can effectively rely on these exemptions, in order to improve their ability to operate in countries where entities and individuals targeted by sanctions are based¹⁸¹. This knowledge is also needed to put in place or strengthen risk management and due diligence processes aimed in particular at minimising the benefits prohibited by sanctions, in accordance with paragraph 3 of Resolution 2664 (2022), and to provide useful information in this regard, in particular to donors. Support measures from the State, in particular from the Crisis and Support Centre (CDCS) or the Directorate General of the Treasury, are essential, especially as the capacities of humanitarian organisations falling within the scope of humanitarian exemptions vary greatly depending on their size and resources. The practical guide published in January 2024 to facilitate access to financial services for non-profit organisations (NPOs) that are partners of the CDCS is, for example, good practice in this respect¹⁸², although it is based on gaps in the legislative framework previously highlighted.

70. Private operators still do not know enough about humanitarian exemptions, particularly in the industrial and commercial sector, many of which are not sufficiently aware that they cover not only the financial transactions and supply of goods and services of humanitarian organisations, but also those of the economic operators with which they collaborate. When they are better informed, as is more often the case with financial service providers (such as banks), they indicate that in the absence of changes to the applicable national legal framework and the obligations to which they are subject on this basis, the humanitarian exemptions imposed at UN and European level do not provide sufficient reassurance to change their practices and operating methods. However, it is their responsibility to be aware of humanitarian exemptions that may apply to asset freezes and restrictions on availability as imposed in particular by European regulations on restrictive measures¹⁸³. Yet these exemptions in no way exempt entities subject to the Monetary and Financial Code from complying with the due diligence obligations it imposes with regard to customers¹⁸⁴, or the obligations to report to and inform the competent authorities¹⁸⁵, which are necessary to ensure that financial transactions are not carried out in violation of sanctions or used to launder money or finance terrorism.

The integration of humanitarian exemptions into the Monetary and Financial Code is therefore essential to clarify the conduct expected of the entities subject to it and should be accompanied by the adaptation of the relevant regulatory provisions¹⁸⁶.

71. Humanitarian exemptions must also be incorporated into the analysis framework and guidelines set by the national supervisory authorities, which are responsible for guiding and, where appropriate, penalising the undertakings subject to them. These authorities have a particular responsibility to participate in their dissemination and implementation and to fully integrate them into what they require of the entities subject to them in terms of compliance with the obligations required for the implementation of asset freezing measures and AML/CFT standards. In particular, the CNCDH recommends that the French Prudential Supervision and Resolution Authority (*Autorité de contrôle prudentiel et de résolution*, ACPR), the body responsible for supervising banks (and the insurance sector), update all the relevant guidelines, including those adopted jointly with other authorities, such as the Directorate General of the Treasury (**Recommendation 24**). For example, the joint guidelines of the Directorate General of the Treasury and the ACPR on the implementation of asset freezing measures, updated in 2021, make no mention of the humanitarian exemptions applicable at that date, which have since changed significantly¹⁸⁷. Similarly, the ACPR's guidelines on the identification, verification of identity and knowledge of customers¹⁸⁸ should be updated, in particular to promote a better understanding by banks of the scope of the type of humanitarian organisations that can benefit from humanitarian exemptions on the basis of Security Council Resolution 2664 (2022) or the relevant European regulations. It could be useful to base them on the guidelines issued by the European Banking Authority (EBA) which, in addition to a more detailed list of factors to be taken into account that may help to reduce risks¹⁸⁹, expressly mentions humanitarian exemptions¹⁹⁰.

72. This update should also provide an opportunity to adjust the requirements in terms of risk assessment (AML/CFT)¹⁹¹ according to the types of non-profit organisations (NPOs), in particular in the event where impartial humanitarian organisations are added to the list of customers for which the Monetary and Financial Code

provides simplified due diligence measures¹⁹². At present, a significant proportion of impartial humanitarian organisations operating in or in relation with third countries are, to the contrary, subject to the additional due diligence measures imposed by the Monetary and Financial Code for countries classified as high ML/TF risk¹⁹³. The national risk assessment updated in 2023 by the Anti-Money Laundering and Counter-Terrorist Financing Steering Committee (COLB), which for the first time devoted a specific chapter to NPOs, considers that the level of threat from terrorist financing is very high, particularly for humanitarian organisations whose operations or financial flows are directed towards risk areas where terrorist groups operate¹⁹⁴. However, as previously highlighted, this classification can hinder the provision of funds to humanitarian organisations, even though this is authorised by humanitarian exemptions. In the Humanitarian Strategy of the French Republic (2023-2027), France emphasises the need for a “*robust risk control policy*” for humanitarian aid, because it is provided in crisis and conflict zones. However, it specifies that such a policy “*must remain flexible and not become a disproportionate obstacle to a prompt and effective humanitarian response*”¹⁹⁵. According to the COLB, the flexible, “*risk-based*” approach adopted by the French authorities pursues the objective of mitigating the risks that NPOs identified as high risk for terrorist financing could be exploited by terrorist entities “*without limiting or discouraging the legitimate activities of these organisations*”¹⁹⁶. While it considers that mitigation measures (awareness-raising initiatives, supervision and control measures as part of the projects financed by the CDCS and the French Development Agency (AFD), etc.) may reduce this risk and change the assessment of residual vulnerabilities to terrorist financing from high to moderate, the COLB limits it to non-profit organisations receiving public subsidies¹⁹⁷. The fact that NPOs carry out activities in countries subject to sanctions which have a humanitarian exemption is not mentioned among the criteria taken into account in assessing the level of risk. Furthermore, the CNCDH notes a contradiction with the European Union’s supra-national risk assessment (SNRA), which considers the risk for these same actors to be low¹⁹⁸. The CNCDH recommends that the COLB update the national risk assessment in light of Resolution 2664 (2022) by including humanitarian exemptions, pointing out that they also apply to financial sanctions imposed to combat terrorism and specifying how

these exemptions are to be taken into account in assessing the risk level (**Recommendation 25**). In doing so, it could be useful for the COLB to consult the humanitarian organisations concerned.

73. The CNCDH takes note of France's intention to ensure that its risk management policy does not disproportionately hamper the ability of humanitarian organisations to operate rapidly and effectively. Nevertheless, additional efforts are needed to ensure that this policy effectively creates "*an environment that is conducive to principled humanitarian action*", in line with the recommendation made by the UN Secretary General¹⁹⁹ and international humanitarian law. These efforts should be determined in close consultation with the actors concerned. Tri-sector dialogues (between the State, companies and humanitarian organisations) are key to fostering a relationship of trust and a better understanding of the legal and operational constraints faced by each sector, as well as to a better taking into account of their respective needs and expectations.

74. France has set up a communication channel to facilitate exchanges with banks and NGOs, in order to combat banks' over-compliance practices and facilitate humanitarian organisations' access to banking services (commonly referred to as the 'State - Banks - NGO dialogue'). A number of tools have been developed in this respect, including the aforementioned practical guide of January 2024 on access to financial services for NPOs. The guide refers to the humanitarian exemptions (adopted up through its publication in January 2024) and makes recommendations to NPOs in this regard, inviting them to consider whether any exemptions (or derogations) are applicable to their activities under the relevant sanctions regimes and to inform their account-holding institutions of any changes related to the inclusion of such exemptions. However, it does not contain any recommendations aimed at the banks, apart from the interesting suggestion of creating a contact point within each bank responsible for business relations with the humanitarian sector²⁰⁰, who should be easily identifiable. It also does not contain any details on the implications of the exemptions with respect to their obligations. At present, the documentation available to the CNCDH suggests that humanitarian exemptions are essentially understood as benefiting humanitarian organisations,

whereas they also apply to economic operators, including banks. Communication and awareness-raising measures to make it easier to understand the importance and effects of humanitarian exemptions should be aimed at all actors concerned, including the private sector, in particular the banking sector, but also the industrial and commercial sectors²⁰¹; otherwise the exemptions will have insufficient impact on over-compliance and derisking practices.

75. Awareness-raising measures should also be aimed at all relevant competent state actors, in particular supervisory authorities and institutional donors. Differences have been noted in this respect between the various institutional donors financing projects in countries subject to sanctions. The AFD's new mechanism for monitoring compliance with the sanctions regulations aimed at civil society organisations, published in March 2024, does refer to humanitarian exemptions. However, it only states that they can be used as a basis for "adjusting" the obligation imposed by the regulations to screen the final beneficiary populations in cases where the financing granted by the AFD includes monetary transfers or the provision of goods with an exploitable market value²⁰². Nevertheless, France's Humanitarian Strategy has reaffirmed its commitment to the principle of not screening the final beneficiaries of aid, in line with humanitarian principles. The absence of screening should not, therefore, be conditional on the humanitarian exemption (or falling into one of the other categories adjusting this obligation as provided for by this mechanism). On the contrary, the freezing of assets and the restriction on making funds and economic resources available do not apply to the cases covered by humanitarian exemptions. The amendments to the Monetary and Financial Code suggested in this opinion would be particularly useful to reassure institutional donors, which are among the legal entities governed by public law that are subject to it. Furthermore, the CNCDH reiterates its recommendation to abandon any screening clause requiring humanitarian organisations receiving funding to select the final beneficiaries of their actions²⁰³ (**Recommendation 26**). It also recommends that contractual clauses reflecting the humanitarian exemptions be introduced into contracts between institutional donors and civil society organisations; these clauses should explicitly state that measures freezing assets and restricting the availability of funds

and economic resources, including in terms of counter-terrorism, do not apply to humanitarian activities covered by the relevant humanitarian exemptions (**Recommendation 27**). The AFD could also be involved in the dialogue between the State, banks and NGOs, as could the supervisory authorities, such as the ACPR and the COLB, to facilitate exchanges on the subject. These dialogue meetings should be organised on a more regular and inclusive basis, in line with the commitments made in the Humanitarian Strategy and should include reinforced terms of reference on the integration of humanitarian exemptions.

76. Various types of additional measures are needed to raise awareness of the scope and legal and practical effects of humanitarian exemptions, in order to make them a reality and encourage their effective implementation by all actors involved. It could be useful here for France to draw inspiration from other States, in particular the OFAC which, in addition to incorporating the humanitarian exemption of Security Council Resolution 2664 (2022) at the national level through general licences, provides numerous guidelines to make it easier for those subject to US sanctions to use them. For example, the OFAC provides guidance on its due diligence expectations for financial institutions wishing to engage in activities authorised by these general licences²⁰⁴. The tri-sector approach and the guidance notes developed by the Netherlands to reassure the private sector and clarify that it is expected to comply with Resolution 2664 (2022) were also cited as examples of good practice during the hearings conducted by the CNCDDH. The CNCDDH recommends that France encourage dialogue and exchanges of good practice with other States, in particular the 27 EU Member States, in order to promote a protective interpretation of humanitarian action, and consistent and uniform implementation of humanitarian exemptions (**Recommendation 28**). Exchanges of good practices could also be organised on this subject with foreign judges, in particular those from jurisdictions that have incorporated humanitarian exemptions into their national law (for sanctions measures and/or counter-terrorism legislation).

77. The December 2024 deadline for renewing the application of the humanitarian exemption in Security Council Resolution 2664 (2022) to the sanctions regime against Al-Qaida and Da'esh (1267/1989/2253) is

an opportunity France must seize to strongly reaffirm its commitment to preserving the humanitarian space and its support for standing humanitarian exemptions in all asset freezing measures imposed by the United Nations. France must also clearly support their extension to other types of sanctions and their integration into the set of measures imposed by the Security Council to combat terrorism in order to ensure the effectiveness of the paradigm shift introduced by Resolution 2664 (2022). In this way, it will ensure that the implementation of financial sanctions complies with international humanitarian law and preserves the continuity of principled humanitarian activities. France must also support the widespread use of broad and standing humanitarian exemptions for all restrictive and counter-terrorism measures imposed by the European Union, so that they form a coherent and consistent whole. In doing so, the CNCDH recommends that France ensure the systematic use of the term ‘exemption’, the legal and operational effects of which are most in line with the objectives pursued, both in French and in the other working languages of the bodies in which they are discussed (**Recommendation 29**). France must also be consistent and lead by example, in accordance with its commitments under the Appeal for Humanitarian Action and its new Humanitarian Strategy, in order to translate the progress made on humanitarian exemptions into national law. This will thus enable all actors concerned to implement them in full, for the benefit of humanitarian organisations and personnel and, ultimately, of the people affected by armed conflicts or other crises.

CNCDH recommendations

Recommendation 1: The CNCDH recommends that France support standing humanitarian exemptions, by encouraging their inclusion or retention in all sanctions regimes and counter-terrorism measures adopted at the UN, European and national levels, based at a minimum on the common language of UN Security Council Resolution 2664 (2022).

Consolidating the essential paradigm shift introduced by UN Security Council Resolution 2664 (2022) to preserve the humanitarian space

Recommendation 2: The CNCDH recommends that France vote in favour of renewing the application of the humanitarian exemption in Security Council Resolution 2664 (2022) to the sanctions regime against Al-Qaida and Da'esh (1267/1989/2253), without attaching a time limit to its application, and encourage the other members of the Security Council to do likewise.

Recommendation 3: The CNCDH recommends that France make a firm commitment, as of now, to support a standing renewal of the humanitarian exemption for the sanctions regime concerning Al-Qaida and Da'esh, by raising awareness of the benefits of such an exemption and warning of the consequences for the populations concerned in the event of non-renewal.

Recommendation 4: The CNCDH recommends that France support the extension of the humanitarian exemption as set out in Resolution 2664 (2022) to all sanctions imposed by the Security Council or its subsidiary bodies, in addition to asset freezes, and that it encourage the other members of the Security Council to do the same.

Recommendation 5: The CNCDH recommends that France ensure that the update of implementation assistance notices for Resolution 2664 (2022) of all Security Council sanctions committees or the guidelines governing the conduct of their work is fully consistent with the cross-cutting humanitarian exemption in Resolution 2664 (2022) and that all publicly available information in this regard is updated accordingly.

Recommendation 6: The CNCDH recommends that France encourage the Counter-Terrorism Committee (CTC) and the Counter-Terrorism Committee Executive Directorate (CTED) to update the guidelines and technical guides for the implementation of Security Council Resolution 1373 (2001) and other relevant resolutions to take account of the benefits of Resolution 2664 (2022), in particular by specifying that the latter applies to financial sanctions imposed by the Security Council to combat terrorism.

Recommendation 7: The CNCDH recommends that France ensure that the relevant recommendations of the Financial Action Task Force (FATF), in particular recommendation no. 5 on the offence of terrorist financing, no. 6 on targeted financial sanctions related to terrorism and terrorist financing, and no. 8 on non-profit organisations (NPOs) make a clear reference to the humanitarian exemption in Resolution 2664 (2022) or, where appropriate, incorporate it, and that they better reflect other obligations under international law, in particular international humanitarian law.

Recommendation 8: The CNCDH recommends that France work to extend the humanitarian exemption to all measures imposed by the Security Council to combat terrorism, specifying that these measures should not apply to humanitarian assistance and other activities that support basic needs carried out in accordance with humanitarian principles and, where applicable, international humanitarian law.

Recommendation 9: The CNCDH encourages France to continue to ensure that Security Council resolutions systematically recall that the measures Member States must adopt to implement the sanctions it decides on, or the counter-terrorism measures it imposes, must comply with international law, in particular international human rights law, international humanitarian law and international refugee law.

Supporting the widespread use of broad, cross-cutting and standing humanitarian exemptions in the EU's restrictive measures

Recommendation 10: The CNCDH recommends that France support the

widespread use of broad and standing humanitarian exemptions for all existing and future European Union measures to freeze assets and restrict the availability of funds and economic resources.

Recommendation 11: The CNCDH recommends that France support the extension of the humanitarian exemption to all types of restrictive measures imposed by the European Union.

Recommendation 12: The CNCDH recommends that France use its influence to encourage its European partners to support the reinforced widespread use of broad and standing exemptions in all of the European Union's restrictive measures.

Recommendation 13: The CNCDH recommends that France help to ensure that the European Union's guidelines on sanctions, as well as the European Commission's guidance note on the provision of humanitarian aid in compliance with EU restrictive measures, which is currently being revised, are consistent with international humanitarian law and take full account of the progress made on humanitarian exemptions in EU restrictive measures based on Security Council Resolution 2664 (2022).

Recommendation 14: The CNCDH recommends that France seize the opportunity afforded by the transposition of Directive (EU) 2024/1226 of the European Parliament and of the Council of 24 April 2024 on the definition of criminal offences and penalties for the violation of Union restrictive measures in order to incorporate a humanitarian exemption into the relevant national provisions and encourage the other Member States to do likewise.

Adopting the relevant national measures to achieve the ambitions set out in Resolution 2664 (2022)

Recommendation 15: The CNCDH recommends that the legislator amend Chapter II of Title VI of Book V of the Monetary and Financial Code to insert a new article L. 562-1-1 expressly referring to humanitarian exemptions, which could be worded as follows: "The provisions of this chapter apply without prejudice to applicable humanitarian exemptions intended to ensure the timely delivery of humanitarian

assistance or to support other activities that support basic human needs carried out in accordance with humanitarian principles and, where applicable, international humanitarian law”.

Recommendation 16: The CNCDH recommends that the legislator amend Articles L. 562-4, L. 562-5 and L. 562-6 of the Monetary and Financial Code to state that these provisions apply subject to the applicable humanitarian exemptions (referred to in the new Article L. 562-1-1).

Recommendation 17: The CNCDH recommends that the legislator supplement Article L. 562-4-1 of the Monetary and Financial Code by specifying that persons subject to the Code must ensure that the relevant humanitarian exemptions are applied.

Recommendation 18: The CNCDH recommends that the legislator amend Chapter I of Title VI of Book V of the Monetary and Financial Code to include a provision expressly referring to humanitarian exemptions, for example by creating a new article L.561-1-1 at the beginning of Section 2, which could be worded as follows: “The provisions of this chapter apply without prejudice to applicable humanitarian exemptions intended to ensure the timely delivery of humanitarian assistance or to support other activities that support basic human needs carried out in accordance with humanitarian principles and, where applicable, international humanitarian law”.

Recommendation 19: The CNCDH recommends that the legislator amend Article L. 561-10 of the Monetary and Financial Code to specify that the additional due diligence measures that it imposes apply “subject to Article L. 561-1-1” on humanitarian exemptions.

Recommendation 20: The CNCDH encourages the legislator to consider adding impartial humanitarian organisations to the list of customers with a low risk of money laundering or terrorist financing within the meaning of Article L. 561-9 of the Monetary and Financial Code providing for simplified due diligence measures.

Recommendation 21: The CNCDH recommends that the legislator

introduce a humanitarian exemption in Title II of Book IV of the Criminal Code relating to terrorist offences, by adding an article 422-8 which could be worded as follows: “Impartial humanitarian organisations and their personnel may not be prosecuted as perpetrators of, or accomplices to, the crimes and offences stipulated in this Title, solely due to exercising their humanitarian activities and other activities that support basic human needs”.

Recommendation 22: The CNCDH recommends that France encourage States that have not already done so to incorporate the humanitarian exemption of Security Council Resolution 2664 (2022) for asset freezing measures into their respective national laws and to incorporate humanitarian exemptions into their legislation on terrorist offences.

Recommendation 23: The CNCDH recommends that the Directorate General of the Treasury update without delay, and continue to do so on a regular basis, the “Guide on derogations regarding humanitarian aid” (including by amending its title) as well as the “Vade mecum on sanctions and the financing of terrorism concerning humanitarian operations in sensitive areas”, in order to take full account of humanitarian exemptions, help disseminate them and provide useful keys to understanding what they entail, both for humanitarian actors and for economic operators.

Recommendation 24: The CNCDH recommends that the French Prudential Supervision and Resolution Authority (*Autorité de contrôle prudentiel et de résolution*, ACPR) and other competent supervisory authorities update all the relevant guidelines relating to the obligations to be met for the implementation of asset freezing measures and anti-money laundering and counter-terrorism (AML/CFT) standards, in order to help disseminate and implement the humanitarian exemptions and fully integrate them into that which is required of the undertakings subject to them.

Recommendation 25: The CNCDH recommends that the Anti-Money Laundering and Counter-Terrorist Financing Steering Committee (COLB) update the national risk assessment in light of Security Council Resolution 2664 (2022) by including humanitarian exemptions, pointing

out that they also apply to financial sanctions imposed to combat terrorism and specifying how these exemptions are to be taken into account in assessing the risk level.

Recommendation 26: The CNCDH recommends that France abandon any screening clause requiring humanitarian organisations receiving funding to select the final beneficiaries of their actions.

Recommendation 27: The CNCDH recommends that contractual clauses reflecting the humanitarian exemptions be introduced into contracts between institutional donors and civil society organisations which explicitly state that measures freezing assets and restricting the availability of funds and economic resources, including in terms of counter-terrorism, do not apply to humanitarian activities covered by the relevant humanitarian exemptions.

Recommendation 28: The CNCDH recommends that France encourage dialogue and exchanges of good practices with other States, in particular the 27 EU Member States, in order to promote a protective interpretation of humanitarian action and consistent and uniform implementation of humanitarian exemptions.

Recommendation 29: The CNCDH recommends that France ensure the systematic use of the term “exemption”, the legal and operational effects of which are most in line with the objectives pursued, both in French and in the other working languages of the bodies in which they are discussed.

Appendix 1: List of people interviewed

Ministries:

For the Ministry for Europe and Foreign Affairs:

Célia CIVIERO, Editor, EU External Relations Department, European Union Directorate (DUE)

Florence CORMON, Deputy Director of the United Nations, International Organisations, Human Rights and Francophonie Directorate (NUOI)

Nicolas NELY, Head of the Humanitarian Division, NUOI Directorate

Luc PIERRON, Head of Stabilisation, Humanitarian and Stabilisation Operations Centre (COHS), Crisis and Support Centre (CDCS)

Jérôme SANSONETTI, Editor, Counter-terrorism and Organised Crime Department, Strategic Affairs, Security and Disarmament Directorate (ASD)

Aurélien TABUTEAU-MANGELS, Legal Consultant, International Public Law Department, Legal Affairs Directorate.

For the Ministry of the Economy, Finance and Industrial and Digital Sovereignty:

Pauline ENNOUCHY, Head of the Sanctions Office, Department for Sanctions and the Prevention of Financial Crime, Multilateral Affairs and Development Department, Directorate General of the Treasury.

For the Ministry of Justice:

Margaux GUILLMOT, Deputy Head of the Office for Combatting Organised Crime, Terrorism and Money Laundering, Criminal Affairs and Pardons Directorate (DACG).

Humanitarian actors:

Sarah BOURGOIS, 'European Union' advocacy assistant for the Norwegian Refugee Council (NRC) Europe office

Tristan FERRARO, Senior Legal Adviser, Legal Division, International Committee of the Red Cross (ICRC), Geneva

Léa GAUTHIER, Humanitarian Advocacy Adviser, Médecins du Monde (Mdm)

Julie HOTTE, lawyer, intersection legal department, Médecins Sans Frontières (MSF)

Lise SALAVERT, Humanitarian Advocacy Manager, Humanité & Inclusion (HI)

Bérénice VAN DEN DRIESSCHE, Senior Humanitarian Policy and Advocacy Adviser, NRC.

Academics:

Julien ANTOULY, doctoral student, Nanterre Centre of International Law (CEDIN), University of Paris Nanterre

Charlotte BEAUCILLON, Professor of Public Law, University of Lille.

Professionals in the banking sector:

Mustapha BOUZIZOUA, expert in the implementation of permanent control mechanisms for non-financial risks and anti-money laundering and counter-terrorist financing (AML/CFT)

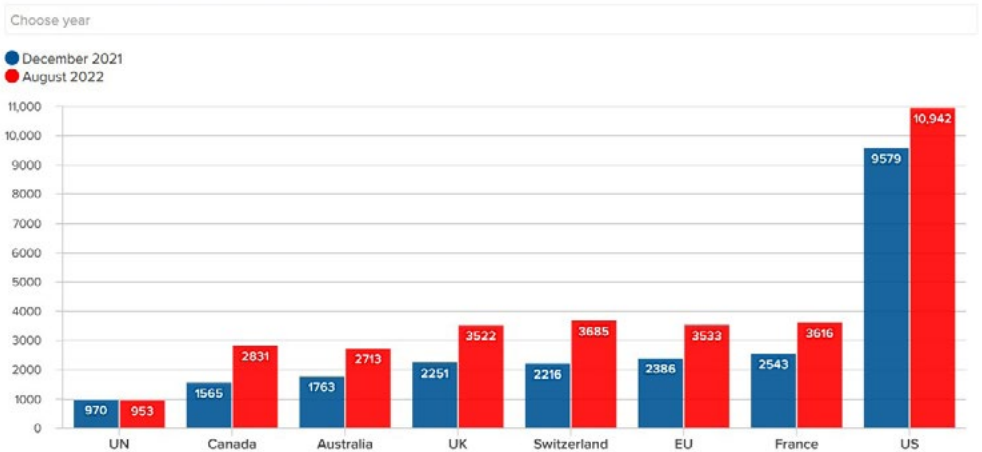
Olivier MORLET, expert in the implementation of permanent control mechanisms for non-financial risks and AML/CFT

Dominique ROUQUAYROL DE BOISSE, Head of Legal Affairs and Compliance, Fédération bancaire française (FBF).

Appendix 2: Diagrams illustrating the increase in the number of sanctions

Sanctioning up across the board

Total listings by sanctioning jurisdictions



Source: Castellum.AI • Data last updated on August 15, 2022.

Figure 1: diagram comparing the number of sanctions imposed in particular by the United States, France and the European Union between December 2021 and August 2022.

Source: Castellum.AI (last updated on 15 August 2022), available on the Atlantic Council website www.atlanticcouncil.org/blogs/econographics/global-sanctions-dashboard-sanctioning-soars-across-the-board/.

New Additions to OFAC Sanctions Lists by Year

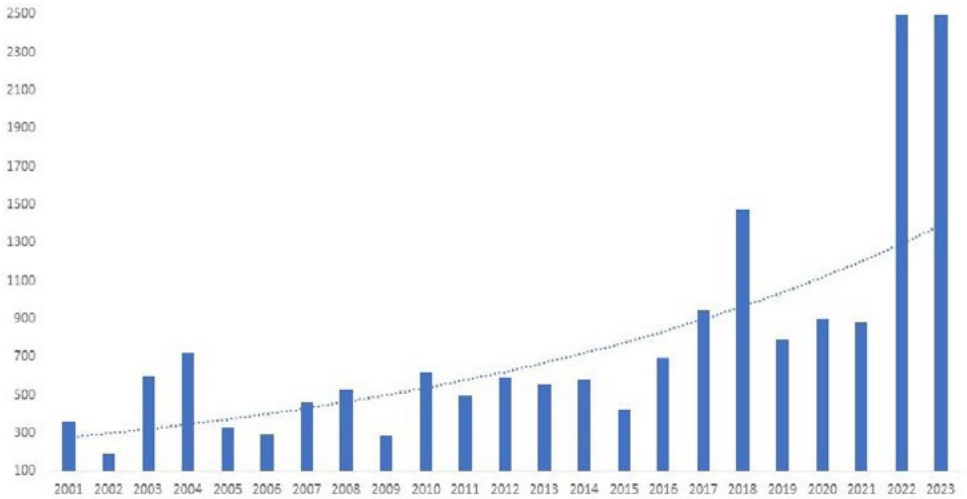


Figure 2: diagram illustrating the increase in the number of sanctions imposed by the U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC).

Source: Gibson Dunn, «2023 Year-End Sanctions and Export Controls Update», “New Additions to OFAC Sanctions Lists by Year», 7 February 2024, available at www.gibsondunn.com/wp-content/uploads/2024/02/2023-year-end-sanctions-and-export-controls-update.pdf.

The evolution of sanctions regimes from 2000 until today

The cumulative view shows the overall increasing number of sanctions regimes and their sum for a selected period. The absolute view allows regimes to be visualised on the chart to see their size and composition by year for the chosen period. Hovering over the bars shows detailed information about the total number of sanctions by year for the selected period, the breakdown into financial sanctions, travel bans, individuals and entities.

Cumulative Absolute

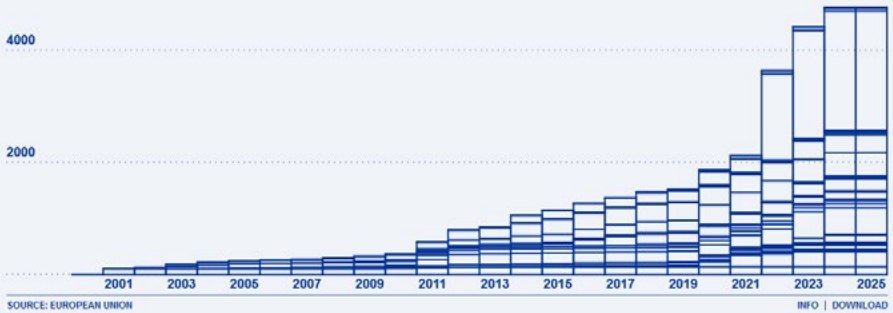


Figure 3: diagram illustrating the overall increase in the number of sanctions regimes imposed by the European Union and their sum between 2000 and 2024.

Source: *EU sanctions tracker*, last updated in June 2024, available at <https://data.europa.eu/apps/eusanctionstracker/>.

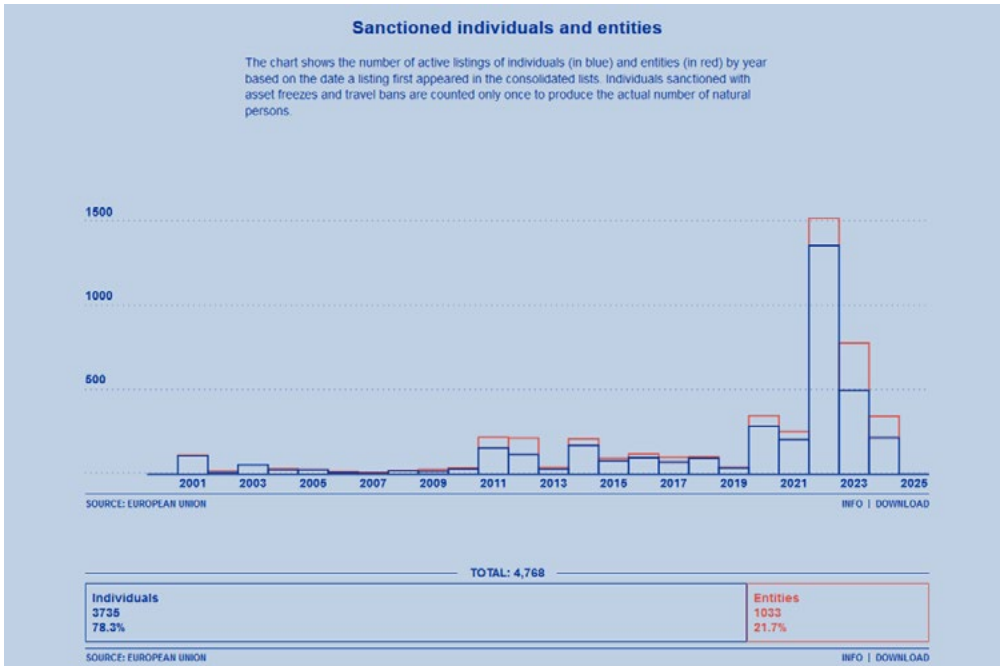


Figure 4: diagram showing the number of active listings of individuals (in blue) and entities (in red) by year, based on the date a listing first appeared in the consolidated lists. Individuals sanctioned with asset freezes and travel bans are counted only once to produce the actual number of natural persons.

Source: *EU sanctions tracker*, last updated in June 2024, available at <https://data.europa.eu/apps/eusanctionstracker/>.

Appendix 3: Glossary

Humanitarian derogation: a provision in a sanctions regime that allows an action, which would otherwise be prohibited by sanctions, to be carried out for humanitarian purposes provided that prior authorisation is obtained from the competent national authority (or, in case of emergency, subject to notification), under the conditions set out in the applicable sanctions regime.

Humanitarian space: this concept, which has no legal definition, can be understood as *“a symbolic space in which there is freedom to conduct operations, and where working methods and respect for principles preserve the flexibility, independence, and impartiality that are necessary in humanitarian action. It exists to provide people affected by crises with security and protection, and to provide them with access to the aid that is essential to their survival”* ([definition proposed by Groupe URD](#)) or as including *“access by humanitarian actors to affected areas and populations affected by crises, their working conditions in accordance with humanitarian principles (humanity, impartiality, neutrality and independence), and access by the populations themselves to the basic services necessary for their survival and protection”* ([definition used by Coordination Sud](#)).

Humanitarian exception: a term that generically refers to a provision in sanctions regimes that provides for specific conditions for allowing an action, which would otherwise be prohibited by the sanctions, to be carried out for humanitarian purposes, whether derogations or exemptions.

Humanitarian carve-out or exemption: a provision which states that an obligation or restriction arising from a sanctions regime does not apply to humanitarian action and/or other activities that support basic human needs²⁰⁵ and thus exempts the actors concerned from having to obtain authorisation or from informing the competent national authority. The term is also used to refer to a provision designed to ensure

that terrorist offences do not apply to humanitarian action and other activities that support basic human needs carried out in accordance with humanitarian principles and, where applicable, international humanitarian law, thereby conferring (non-absolute) criminal immunity on impartial humanitarian personnel and organisations.

Counter-terrorism measures: measures adopted at international, regional or national level to combat terrorist activities, including the freezing of funds and restrictions on making funds, financial assets or economic resources available to individuals or entities designated as terrorists, and the criminalisation of the financing of terrorism as well as other types of support constituting forms of active or passive aid to terrorism (recruitment, incitement to commit terrorist acts, supply of weapons, travel to a State other than their State of nationality or residence for the purpose of perpetrating, planning or preparing, or participation in, terrorist acts or providing terrorist training, etc.).

Sanctions regimes: coercive measures (known as restrictive measures in the European Union) adopted by the competent body of an international organisation, regional organisation or State against natural or legal persons or entities, to encourage them to change their behaviour. These measures may include financial sanctions, restrictions on the import and export of certain resources or goods, embargoes on arms or related equipment, restrictions on admission (visa or travel bans), etc.

Financial sanctions: measures including the freezing of assets and restrictions on making funds and economic resources directly or indirectly available to an individual or entity designated by the competent authority.

End notes

- .1. See appendix 3 for a definition of humanitarian space.
2. Sanctions are also adopted by regional organisations (such as the European Union) or by States (in particular the United States).
3. In view of the undesirable effects of general economic and trade sanctions on civilians, particularly those imposed during the first Gulf War, the Security Council is now essentially adopting restricted and targeted measures. These can nonetheless have negative humanitarian consequences (Report of the Secretary-General of the United Nations of 8 September 2023, *Implementation of Security Council resolution 2664 (2022)*, S/2023/658).
4. IHL is specifically designed to govern armed conflict situations.
5. In this regard, see the above-mentioned report of the Secretary-General (S/2023/658), which notes the direct effects of sanctions (by the very fact of their existence) and their indirect effects, in particular as a result of overcompliance or disengagement (de-risking) practices in the face of the potential risks they entail (e.g. prosecution for violations of sanctions measures).
6. [United Nations Security Council, Resolution 2664 \(2022\) of 9 December 2022, General issues relating to sanctions, S/RES/2664 \(2022\)](#), preamble paragraph 10.
7. With the exception of the sanctions regime provided for in Resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning Islamic State in Iraq and the Levant (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities (hereinafter “1267/1989/2253 regime” or “Da’esh/Al-Qaida regime”), for which the exemption applies for two years only.
8. [CNCDH, Avis sur la proposition de loi relative à la préservation de l'espace humanitaire \[Opinion on the draft law concerning the preservation of humanitarian space\], Plenary Assembly of 25 November 2021](#), JORF no. 0283 of 5 December 2021, text no. 199, recommendation no. 9; [CNCDH, Avis sur le respect et la protection du personnel humanitaire \[Opinion on respect for and protection of humanitarian personnel\], Plenary Assembly of 14 December 2020](#), JORF no. 0307 of 20 December 2020, text no. 86, recommendation no. 7. In the same vein, concerning counter-terrorism measures, see: [CNCDH, Avis sur l'incidence de la législation relative à la lutte contre le terrorisme sur l'action humanitaire \[Opinion on the impact of counter-terrorism legislation on humanitarian action\], Plenary Assembly of 2 October 2018](#), JORF no. 0238 of 14 October 2018, text no. 97, recommendation no. 11.
9. The draft resolution, presented by Ireland and the United States, was cosponsored by a number of States and adopted with 14 votes in favour and one abstention (India).
10. The humanitarian principles of humanity, impartiality, neutrality and independence were adopted in their current form at the 20th International Conference of the Red Cross in 1965 and reaffirmed as the basis of humanitarian action, regardless of the circumstances of an armed conflict (see in particular the UN General Assembly Resolution of 19 December 1991, *Strengthening of the coordination of humanitarian emergency assistance of the United Nations (A/RES/46/182)* and Resolution A/RES/48/114 of 17 December 2003, which added the principle of independence). These principles, regularly reaffirmed by the General Assembly, were incorporated into the *Core Humanitarian Standard* on Quality and Accountability adopted in 2015. IHL refers

only to the principles of humanity and impartiality (see Article 9 of the first three Geneva Conventions of 1949 and Article 10 of the fourth Geneva Convention and Article 18 of the 1977 Additional Protocol II to the Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts).

11. Article 25 §1 of the Universal Declaration of Human Rights of 1948. See also, among others, Article 11 of the 1966 International Covenant on Economic, Social and Cultural Rights.

12. CNCDH, *Opinion on respect for and protection of humanitarian personnel*, 2020, *op.cit.*

13. Humanitarian actors can be perceived as agents or defenders of the sanctions imposed by the UN (Report of the Secretary-General, S/2023/658, *op. cit.*, §28).

14. According to the Office for the Coordination of Humanitarian Affairs (OCHA), one third of people in need of humanitarian assistance in 2023 lived in countries where UN sanctions were in force, representing (as of 10 August 2023) 67% of the total humanitarian appeals for 2023 (Report of the Secretary-General S/2023/658, *op. cit.*, §2). In addition to the sanctions adopted by the UN, there are also sanctions adopted by other organisations or individual states.

15. See the diagrams reproduced in appendix 2 of this opinion.

16. According to OCHA's [Global Humanitarian Overview 2024](#) published on 1 December 2023, almost 300 million people worldwide will require humanitarian assistance and protection in 2024, due to conflicts, climate emergencies and other drivers.

17. The binding nature of Resolution 2664 (2022) derives from Article 25 of the United Nations Charter, which requires Member States to accept and implement the decisions of the Security Council in accordance with the Charter. The decision-making authority of this resolution derives from the language used (“decides”) and the reference to Chapter VII of the Charter.

18. In its aforementioned 2018 opinion on the impact of counter-terrorism legislation on humanitarian action, the CNCDH mentioned Resolution 1916 (2010) (§5) as an interesting example of a sectoral humanitarian exemption based on the status of actors. This exemption, limited in time, was replaced by a standing exemption through Resolution 2551 (2020) (§22), reaffirmed by Resolutions 2607 (2021) (§37) and 2662 (2022) §28.

19. See Resolution 2615 (2021) (§1), which represented a real turning point that facilitated the adoption of Resolution 2664 (2022).

20. Resolution 2653 (2022), §10.

21. Corrections have, however, sometimes been made in certain translations of EU texts (see [the corrigendum to Decision \(CFSP\) 2023/338](#) or [that to Decision \(CFSP\) 2023/726](#) published in the Official Journal of the EU, which replace the term “derogation” with ‘exemption’ in their French versions).

22. In several regimes, the absence of a response from the competent authority to an authorisation request, during a certain period of time, constitutes acceptance of the derogation.

23. See [customary rule 55](#) on Access for Humanitarian Relief to Civilians in Need, applicable to both international and non-international armed conflicts, and its commentary, in the 2005 ICRC study, available at <https://ihl-databases.icrc.org/en/customary-ihl/rules>. See also [customary rule 56](#) on the Freedom of Movement of

Humanitarian Relief Personnel.

24. See for example Article 70 §2 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts of 8 June 1977, which states that not only the parties to the conflict, but also “each High Contracting Party” shall authorise and facilitate the “rapid and unimpeded passage” of humanitarian relief. Similarly, in its resolutions on protection of civilians in armed conflict, the Security Council “calls upon all parties concerned, including neighbouring States, to cooperate fully” to ensure “safe and unimpeded access” of humanitarian personnel to civilians in armed conflicts (see Resolution 1296 (2000) of 19 April 2000, S/RES/1296 (2000), §8 or Resolution 2417 (2018) of 24 May 2018, S/RES/2417 (2018), §4.).

25. For example, prior to the adoption of Resolution 2664 (2022), for the UN sanctions regime relating to Da'esh and Al-Qaida, requests for derogations to asset freezes could only be submitted for the “basic expenses” or the “extraordinary expenses” referred to in §84 of Resolution 2610 (2021) of 17 December 2021 (S/RES/2610 (2021)).

26. Predictability and legal certainty are enhanced by the cross-cutting and standing nature of the humanitarian exemption in Resolution 2664 (2022), which limits the fragmentation associated with the different scopes and timeframes of the sanctions regimes.

27. The resolution also has other limitations, which are outlined in section 1 of this opinion.

28. See appendix 2.

29. Resolution 2664 (2022), paragraph 9 of the preamble.

30. See [the speech by the President of the French Republic to the United Nations General Assembly on 22 September 2020](#). As Ireland’s representative pointed out, more than 40 Member States co-sponsored the resolution “demonstrating (...) that the commitment to protecting the humanitarian space is a global concern” (Security Council meeting of 9 December 2022, S/PV.9214, p. 4).

31. CNCDH, *Opinion on the impact of counter-terrorism legislation on humanitarian action*, 2018, *op. cit.*

32. The U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC) incorporated the humanitarian exemption provided for in Resolution 2664 (2022) at national level from December 2022, by amending the general licences authorising a particular type of transaction for a category of individuals without the need to apply for a licence. See frequently asked questions (FAQ) [1105. What actions did OFAC take to implement the United Nations Security Council Resolution \(UNSCR\) 2664 of December 9, 2022 relating to a new UN sanctions exception for humanitarian assistance?](#)

33. Government, SHRF (2023-2027), p. 9, available at <https://www.diplomatie.gouv.fr/en/french-foreign-policy/emergency-humanitarian-action/humanitarian-strategy-of-france-2023-2027/>.

34. See also the Call for Humanitarian Action, initiated by France (jointly with Germany), aimed at mobilising the international community to improve the implementation of international humanitarian law and humanitarian principles and to preserve the humanitarian space: France Diplomatie, “Call for Action”, joined by 53 signatories (December 2023), available at <https://www.diplomatie.gouv.fr/en/french-foreign-policy/france-and-the-united-nations/multilateralism-a-principle-of-action-for-france/the-call-for-humanitarian-action/>.

35. With the exception of the sanctions regime concerning Da'esh and Al-Qaida, for which the exemption is limited to two years.
36. The humanitarian exemption also applies “to all future asset freezes imposed or renewed by this Council in the absence of an explicit decision by this Council to the contrary” (Resolution 2664 (2022), §4).
37. Resolution 2664 (2022), §1.
38. See in this respect the recommendation made by a global advisory board of high-level leaders and experts convened by the ICRC, according to which sanctions restricting the export or import of information and communication technologies (ICTs) should include specific humanitarian exemptions for ICT equipment and services necessary to ensure the operation, functioning, maintenance and safety of medical services, as well as the timely delivery of humanitarian activities or other services essential to meet the basic needs of civilian populations ([Final Report of the ICRC Global Advisory Board on Digital Threats during Armed Conflicts, Protecting Civilians Against Digital Threats During Armed Conflict: Recommendations to states, belligerents, tech companies, and humanitarian organizations, September 2023](#), recommendation 13, pp. 13-14).
39. Resolution 2664 (2022), §1.
40. The humanitarian exemption required to ensure compliance with IHL is not conditional on its applicability: it applies both to situations of armed conflict, to which IHL applies, and to other situations, making it possible to cover, for example, earthquakes, floods or other natural disasters taking place in areas in which individuals or entities on sanctions lists are operating, such as in Syria or Libya.
41. The resolution focuses on emergency humanitarian assistance and also encompasses other more sustainable response activities.
42. Resolution 2664 (2022), §1.
43. Resolution 2664 (2022), §4: “Emphasizes that where paragraph 1 of this resolution [setting out the humanitarian exemption] conflicts with its previous resolutions, paragraph 1 shall supersede such previous resolutions to the extent of such conflict (...) and decides [that it] shall apply with respect to all future asset freezes imposed or renewed by this Council in the absence of an explicit decision by this Council to the contrary”.
44. For the conduct of humanitarian activities in Afghanistan, the humanitarian exemption in Resolution 2615 (2021), whose wording is broader, but which only covers sanctions related to the Taliban, thus coexists with the cross-cutting humanitarian exemption in Resolution 2664 (2022), which targets the Al-Qaida and ISIL/Da'esh regimes. See: [Dustin A. LEWIS, Radhika KAPPOR and Naz K. MODIRZADEH, «Resolution 2664 \(2022\) and Counterterrorism Measures: An Analytical Frame for States», March 2024, Harvard Law School Program on International Law and Armed Conflict](#) (HLS PILAC).
45. Resolution 2664 (2022), §2.
46. The Security Council does not specify whether the humanitarian exemption will, as appropriate, be renewed for the same two-year period, for a different period or on a permanent basis.
47. The adoption of such a resolution requires the affirmative vote of nine members of the Security Council, without one of its permanent members exercising its right of veto (Article 27 of the United Nations Charter).
48. See in particular section 2 of this opinion on EU sanctions.
49. The current limited duration of the humanitarian exemption for this regime is

not such as to offer sufficient assurances and guarantees to private sector actors to abandon these de-risking practices.

50. See point 1.2. below in this regard.

51. See in this regard Resolutions S/RES/2610 (2021) §1 c) (Al-Qaida/Da'esh regime), S/RES/2662 (2022) §10 (Al-Shabaab regime), S/RES/2255 (2015) §1 c) (1988 Taliban regime) or S/RES/2036 (2012) §22 (Yemen regime).

52. See the Secretary-General's report S/2023/658, op. cit., §36, which notes that in cases of emergency, sanctions committees generally allow for post facto notification to avoid the need for prior approval.

53. It echoes the risk-based approach adopted by the Financial Action Task Force (FATF).

54. See: [Radhika KAPPOR, Dustin A. LEWIS and Naz K. MODIRZADEH, «An interpretive Note for U.N. Member States on Security Council Resolution 2664 \(2022\)», March 2023, HLS PILAC, p. ii.](#)

55. As the Secretary-General notes, “[i]n some cases, there may be no alternative to relying on structures acting under the direction of United Nations-sanctioned actors to implement humanitarian programmes that reach vulnerable populations on the scale and with the urgency required” (S/2023/658, op. cit., §16). This is the case, for example, in Afghanistan, where humanitarian actors have had to pay utility fees to public companies reporting to ministries controlled by sanctioned individuals.

56. However, the use of funds or other resources for purposes other than those stated are not covered by the exemption.

57. For more details, see the Secretary-General's report, S/2023/658, op. cit., §§25 et seq.

58. Resolution 2664 (2022), §3.

59. Resolution 2664 (2022), §§5, 6 and 7.

60. See the discussion below (3.1).

61. See [Implementation Assistance Notice No. 7 of 2 June 2023 of the Sanctions Committee concerning the Democratic People's Republic of Korea \(DPRK\)](#); [Implementation Assistance Notice No. 7 of 4 December 2023 of the Sanctions Committee concerning Libya](#); [Implementation Assistance Notice No. 4 of 6 February 2024 of the Sanctions Committee concerning Al-Shabaab](#); [Implementation Assistance Notice No. 1 of 29 February 2024 of the Sanctions Committee concerning the Democratic Republic of Congo \(DRC\)](#); [Implementation Assistance Notice No. 1 of 1 March 2024 of the Sanctions Committee concerning South Sudan](#) (information on the Sanctions Committees is available at www.un.org/securitycouncil/fr/sanctions/information).

62. This confusion is particularly blatant in the case of the 1267/1989/2253 Committee concerning Da'esh and Al-Qaida which, although it has not adopted an implementation assistance notice relating to Resolution 2664 (2022), does mention it in its recently revised guidelines (noting that it applies for only two years to this sanctions regime). The Committee does not however draw any conclusions from this, as the submission of 'derogations' to asset freezes continues to be based solely on notification by Member States of their intention to authorise derogations relating to basic or extraordinary expenses and on requests for derogations considered by the Focal Point ([Guidelines of the Committee for the conduct of its work concerning ISIL \(Da'esh\), Al-Qaida and associates as amended on 10 March 2023](#)).

63. Or this update is incomplete (see, for example, the [page on the Haiti Committee's "exemptions"](#), which mentions the exemption to the assets freeze resulting from Resolution 2664 (2022) (though using the term "derogation" in French), but then only

lists the procedure for requests for “exemptions” (*sic*) on the basis of other resolutions, without specifying that actors falling within the scope of Resolution 2664 (2022) do not need to make this request).

64. This concerns notably Resolutions 1373 (2001), 1624 (2005), 2178 (2014), 2396 (2017) and 2462 (2019) (see the list of resolutions available at www.un.org/securitycouncil/ctc/fr/content/security-council-resolutions).

65. Resolution 2664 (2022), §§1, 2 and 4.

66. See the discussion above noting that Resolution 2664 (2022) does not cover other types of sanctions imposed by the Security Council, such as travel bans, arms embargoes, export bans on charcoal or components of improvised explosive devices, and the CNCDH’s recommendation to extend the humanitarian exemption in Resolution 2664 (2022) to other types of sanctions.

67. See §2 of Resolution 2664 (2022) which refers to the 1267/1989/2253 regime, to limit the application of the exemption to a period of two years and §4 which refers to Resolution 2607 (2021) (§37) concerning Al-Shabaab.

68. This exemption results from §1 of Resolution 2615 (2021), which remains in force, in accordance with §4 of Resolution 2664 (2022).

69. Security Council, Resolution 1373 (2001) of 28 September 2001, Threats to international peace and security caused by terrorist acts, S/RES/1373 (2001), §1 c). See also, among others, Resolutions S/RES/1973 (2011), S/RES/2199 (2015) and S/RES/2617 (2021).

70. They are in addition to the obligations arising from international conventions relating to terrorism, such as the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999, and the standards established by the FATF on anti-money laundering and counter-terrorist financing (AML/CFT).

71. See in particular Resolution 1373 (2001) §1 d).

72. According to Resolution 2178 (2014), this concept includes travel to a State other than their State of nationality or residence for the purposes of perpetrating, planning or preparing of, or participation in, terrorist acts or the providing of terrorist training. For more details on all these measures, see the CTED’s [Technical guide to the implementation of Security Council resolution 1373 \(2001\) and other relevant resolutions](#), S/2019/998.

73. CNCDH, *Opinion on the impact of counter-terrorism legislation on humanitarian action*, 2 October 2018, *op. cit.*; CNCDH, *Opinion on the draft law concerning the protection of humanitarian space*, 25 November 2021, *op. cit.*

74. Resolution 2462 (2019), §24. See also Resolution 2482 (2019), §6.

75. Hearing of representatives of the Ministry for Europe and Foreign Affairs of 15 March 2024. See §5 of Resolution 2462 (2019), in which the Security Council “[d]ecides that all States shall, in a manner consistent with their obligations under international law, including international humanitarian law, international human rights law and international refugee law, ensure that their domestic laws and regulations establish serious criminal offenses sufficient to provide the ability to prosecute and to penalize in a manner duly reflecting the seriousness of the offense the wilful provision or collection of funds, financial assets or economic resources or financial or other related services, directly or indirectly, with the intention that the funds should be used, or in the knowledge that they are to be used for the benefit of terrorist organizations or individual terrorists for any purpose, including but not limited to recruitment, training, or travel, even in the absence of a link to a specific terrorist act” (emphasis added).

76. See the recommendations made below in section 3.1.

77. In this regard, the CNCDH notes the recommendation it has made to France to strongly reaffirm to its partner States that humanitarian organisations must maintain dialogue with all parties to a conflict, State and non-State alike, including those designated as “terrorists”, in order to ensure an appropriate assessment of needs and a response based on humanitarian principles (CNCDH, *Opinion on respect for and the protection of humanitarian personnel*, 2020, *op. cit.*, §8, recommendation 6).

78. [FATF \(2012 – 2023\), FATF Recommendations – International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, Updated in November 2023](#).

79. While the Interpretative Note to Recommendation 8, revised in November 2023, points out that measures to protect NPOs from potential terrorist financing abuse should be focused, in line with the risk-based approach and be implemented in a manner consistent with the obligations of the United Nations Charter and international law, in particular human rights, refugee and humanitarian law, Resolutions 2462 (2019) and 2664 (2022) are referred to only in a footnote (*ibid.*, p. 61, footnote 29).

80. See in particular Article 29 of the Treaty on European Union (TEU) and Article 215 of the Treaty on the Functioning of the European Union (TFEU).

81. These restrictive measures may be adopted against members of government bodies of third countries, companies, groups, organisations or individuals and include the following measures: freezing of funds and economic resources held by targeted individuals or entities, import and export restrictions, embargoes on arms or related equipment, admission restrictions (visa or travel bans), etc.

82. See [Council Decision \(CFSP\) 2023/338 of 14 February 2023 amending certain Council decisions and common positions concerning restrictive measures in order to insert provisions on a humanitarian exemption](#) and [Council Regulation \(EU\) 2023/331 of 14 February 2023 amending certain Council regulations concerning restrictive measures in order to insert provisions on a humanitarian exemption](#).

83. The aforementioned CFSP decision and regulation of 14 February 2023 relate to the sanctions regimes concerning Somalia, the Central African Republic, Yemen, Haiti, Iraq and Lebanon (assassination of former Prime Minister Rafik Hariri). The humanitarian exemption provided for Afghanistan by Security Council Resolution 2615 (2021) was introduced in the EU on 3 February 2022 (see [Decision \(CFSP\) 2022/153](#) and [Regulation \(EU\) 2022/148](#) of 3 February 2022).

84. [Council Decision \(CFSP\) 2023/726 of 31 March 2023 amending certain Council Decisions concerning restrictive measures in order to insert provisions on a humanitarian exemption; Council Regulation \(EU\) 2023/720 of 31 March 2023 amending certain Council Regulations concerning restrictive measures in order to insert provisions on a humanitarian exemption](#). These legal instruments cover the sanctions regime against Da'esh and Al-Qaida (terrorism), noting the two-year time limit provided for in Security Council Resolution 2664 (2022), as well as the sanctions regimes relating to the situations in the DRC, Iran, Sudan, South Sudan, Libya, the DPRK and Mali, this last regime having since become an autonomous EU regime. A humanitarian exemption was also included in the mixed regime for Guinea-Bissau, at the time of reviewing the regime ([Decision \(CFSP\) 2023/1598 of 28 July 2023](#) and [Regulation \(EU\) 2023/1593 of 3 August 2023](#)) and for the regime concerning the situation in Haiti, at the time of introducing additional measures specific to the EU ([Decision \(CFSP\) 2023/1574](#) and [Regulation \(EU\) 2023/1569 of 28 July 2023](#)).

85. [Council of the EU press release, “Humanitarian action: EU introduces exemptions to sanctions to facilitate the delivery of assistance”, 31 March 2023.](#)

86. *Ibid.*

87. UN and mixed EU sanctions regimes account for only about a third of EU sanctions regimes; the vast majority of individuals or entities are targeted on the basis of autonomous sanctions regimes: see the information available at www.sanctionsmap.eu/#/main and <https://data.europa.eu/apps/eusanctionstracker/>.

88. For the UN and mixed sanctions regimes, the EU proceeded by means of cross-cutting legal acts amending several decisions and regulations governing the regimes concerned.

89. This blocking was due to several reasons and differed from State to State, ranging from questioning in principle the relevance and very usefulness of including exemptions in sanctions regimes, to security concerns linked to the risk of the diversion of funds and economic resources, with the view that humanitarian exemptions could be perceived as a political concession granted to regimes whose behaviour the sanctions are designed to change.

90. The restrictive measures relating to the situation in Myanmar/Burma, including the freezing of funds and economic resources and a restriction on making them available to targeted individuals and entities, were renewed on 28 April 2023 without a humanitarian exemption being introduced ([Decision \(CFSP\) 2023/887](#)). The humanitarian exemption for this regime was only introduced later, by cross-cutting Decision (CFSP) 2023/2686 of 27 November 2023 (see below). This is also the case for the sanctions regimes relating to the situation in Burundi and Venezuela, which were extended by Decision (CFSP) 2023/2228 of 23 October 2023 and Decision (CFSP) 2023/2498 of 10 November 2023 respectively, without humanitarian exemptions, which were also introduced by the aforementioned cross-cutting decision.

91. See the discussion below on the humanitarian exemption for the sanctions regime relating to Syria, initially limited to six months, extended on several occasions and recently extended to one year.

92. See the discussion below (2.2).

93. [Council Decision \(CFSP\) 2021/2208 of 13 December 2021](#). This decision is intended to support the decision of 7 November 2021 by the Economic Community of West African States (ECOWAS) to impose targeted sanctions to ensure that the transitional authorities respect their commitment to a rapid return to constitutional order.

94. The humanitarian exemption for asset freezes imposed under this regime was extended when it was renewed at the end of 2023 ([Decision \(CFSP\) 2023/2799 of 11 December 2023](#)). Its scope was then extended in April 2024 to cover humanitarian actors other than those covered by Security Council Resolution 2664 (2022) ([Decision \(CFSP\) 2024/1204 of 22 April 2024](#)): organisations and agencies to which the EU has granted the humanitarian partnership certificate or which are certified or recognised by a Member State in accordance with national procedures, as well as specialised agencies of the Member States, are also included.

95. [UN Info press release, “Veto by Russian Federation Results in the Security Council’s Failure to Renew Travel Ban, Asset Freeze against Those Obstructing Mali Peace Agreement”, 30 August 2023](#). The UN sanctions thus expired on 31 August 2023.

96. Only since [Council Decision \(CFSP\) 2024/1204 of 22 April 2024](#) (Article 257) has this regime provided for a humanitarian exemption to the freezing of funds and the

restriction on making them available.

97. See [Decision \(CFSP\) 2023/408](#) and [Regulation \(EU\) 2023/407 of 23 February 2023](#), which provided for a humanitarian exemption to the freezing of funds and the restriction on making resources available until 25 August 2023. This exemption was extended by six months on 14 July 2023, by four months on 18 December 2023 and, more recently, replaced by an exemption of one year, applicable until 1 June 2025 ([Decision \(CFSP\) 2024/1496 of 27 May 2024](#)), a duration modelled on that of the restrictive measures concerning Syria. In addition to this exemption, an exemption was introduced in 2016 for the purchase, import or transport of crude oil and petroleum products from Syria, with the Council of the EU recognising that “*The purchase of fuel is an operational requirement for the provision of humanitarian relief or assistance to the civilian population in Syria*” and that the current system for the licencing of the purchase “*is not sufficiently practical*” ([Decision \(CFSP\) 2016/2144](#)).

98. See Council Decision (CFSP) 2024/628 of 19 February 2024 mentioned below.

99. As previously mentioned, the humanitarian exemption from the EU’s autonomous sanctions regime concerning Syria has only been initially set for a limited period of six months. However, it covers broader categories of actors than those referred to in Resolution 2664 (2022), including also organisations and agencies to which the EU has granted a humanitarian partnership certificate or which are certified or recognised by a Member State in accordance with its national procedures, as well as Member States’ specialised agencies (2664+).

100. See for example [Alice DEBARRE, “One Year On: Where Do We Stand on the Milestone Humanitarian ‘Carve-out’ in UN Sanctions Regimes?” IPI Global Observatory, 7 December 2023.](#)

101. They considerably delay operations, as actors wishing to benefit from them have to identify the competent authority and then, if necessary, wait for its response, which is also dependent on its interpretation, which can lead to different practices between Member States.

102. See the Council’s conclusions of 20 May 2021 on the “Communication from the Commission to the European Parliament and the Council on the EU’s humanitarian action: new challenges, same principles” and the related [press release](#).

103. All EU Member States, with the exception of Lithuania, cosponsored [draft resolution 2664 \(2022\)](#) adopted on 9 December 2022 (the [minutes of the meeting](#), however, mention only 22 of the 27 EU Member States).

104. Hearing of MEAE representatives on 15 March 2024.

105. SHRF (2023-2027), *op. cit.*

106. The CNCDH notes, however, that harmonisation between these texts is not just a question of language, but of consistency of standards, with significant legal and operational implications when different solutions are adopted (between a simple derogation, a humanitarian exemption or no humanitarian exception).

107. [Council Decision \(CFSP\) 2023/2686 of 27 November 2023 amending certain Council Decisions concerning restrictive measures in order to insert provisions on humanitarian exceptions](#) and [Council Regulation \(EU\) 2023/2694 of 27 November 2023 amending certain Council Regulations concerning restrictive measures in order to insert provisions on humanitarian exceptions](#).

108. In addition to the organisations included in Resolution 2664 (2022), these EU sanctions regimes cover organisations and agencies to which the EU has granted the

humanitarian partnership certificate, or which are certified or recognised by a Member State in accordance with national procedures, as well as Member States' specialised agencies.

109. These derogations allow a Member State's competent authorities to authorise, "*under such conditions as they deem appropriate*", the provision of funds or economic resources to other organisations or actors, provided that they have established that such provision "*is necessary to ensure the timely delivery of humanitarian assistance or to support other activities that support basic human needs*". These derogation mechanisms may seem redundant, insofar as an exemption, which aims on the contrary to exempt the actors concerned from the authorisation request, has been introduced into these sanctions regimes. However, the personal scope of these derogations is broader than that of the exemption, which covers the vast majority of impartial humanitarian organisations. Yet while it is imperative to protect the activities of impartial humanitarian organisations through humanitarian exemptions, it may be useful to facilitate, through the introduction of additional derogations, activities that have a humanitarian purpose, but which are carried out by other actors not covered by exemptions. In the absence of a negative decision, a request for information or notification of additional time, authorisation is deemed to have been granted within five working days of the date of receipt of the request. The Member State granting such authorisation must inform the other Member States and the Commission (within four weeks).

110. See respectively [Decision \(CFSP\) 2023/2135 of 9 October 2023](#) and [Decision \(CFSP\) 2023/2287 of 23 October 2023](#). The duration of these exemptions is aligned with that of the restrictive measures adopted. It should be noted that during the same period, the Council renewed several sanctions regimes without necessarily attaching such a humanitarian exemption before adopting the aforementioned cross-cutting decision of 27 November 2023 (e.g. in the case of Venezuela or Burundi).

111. [Council Decision \(CFSP\) 2024/628 of 19 February 2024 amending Common Position 2001/931/CFSP on the application of specific measures to combat terrorism](#). Curiously, the EU classifies this regime as an autonomous sanctions regime, even though it is based on UN Security Council Resolution 1373 (2001). In this decision, the EU provides for a humanitarian exemption with the same personal and material scope as in the cross-cutting decision of 27 November 2023 (albeit for a temporary period), as well as an identical derogation mechanism.

112. See the discussion above (1.3).

113. [Council Decision \(CFSP\) 2024/1025 of 4 April 2024 amending Decision \(CFSP\) 2020/1999 concerning restrictive measures against serious human rights violations and abuses and Regulation \(EU\) 2024/1034 of 4 April 2024 amending Regulation \(EU\) 2020/1998](#).

114. It thus contributes to the coherence of the objectives of the EU's external action, in accordance with Article 21 of the TEU.

115. Decision (CFSP) 2024/1025, cited above, Article 1 and recital 5 of the preamble. In this case, it is the competent authorities of a Member State that must grant the derogation, "*under such conditions as they deem appropriate, after having determined that the provision of such funds or economic resources is necessary to ensure the timely delivery of humanitarian assistance or to support other activities that support basic human needs*" (*ibid.*).

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116. See [Consolidated Decision 2012/642/CFSP](#) which provides only for derogations, as cross-cutting Decision (CFSP) 2023/2686 had, for this regime, simply introduced a review clause for the derogation from the freezing of funds and economic resources and restrictions on making them available. The competent authorities of Member States may grant these derogations when they are intended exclusively for «humanitarian purposes, for the evacuation or repatriation of persons, or for initiatives providing support to victims of natural, nuclear or chemical disasters» (derogation introduced by Decision (CFSP) 2022/218 of 17 February 2022).
117. See [Consolidated Decision 2011/235/CFSP](#).
118. See [Consolidated Decision \(CFSP\) 2018/1544](#).
119. See respectively [Decision \(CFSP\) 2023/891 of 28 April 2023](#), [Decision \(CFSP\) 2022/627 of 13 April 2022](#) and [Decision \(CFSP\) 2023/1532 of 20 July 2023](#). The humanitarian exemption in the regime against actions that jeopardise or threaten the territorial integrity, sovereignty and independence of Ukraine is also limited geographically to the territory of Ukraine, excluding humanitarian activities carried out on Russian territory.
120. This is the case for the three aforementioned regimes relating to Moldova, Ukraine and Iran (*ibid.*, emphasis added).
121. Humanitarian exemptions have so far not been extended to the measures freezing funds and economic resources imposed in relation to Moldova, Ukraine or Iran's support for Russia's war against Ukraine (*ibid.*).
122. The duration of a humanitarian exemption is sometimes aligned with that for which the restrictive measures concerned are valid, but it is also sometimes set for a shorter period, as in the case of the regime relating to the situation in Syria (six months) until the recent decision of 27 May 2024 (Decision (CFSP) 2024/1496, which provides for a twelve-month exemption of the same duration as the restrictive measures to which it applies: see [Decision \(CFSP\) 2024/1510](#) of the same date).
123. See Decision (CFSP) 2024/628, *op. cit.*
124. It seems all the more unjustified that the Council of the EU tends to introduce clauses for the review of humanitarian exemptions “*at regular intervals, and at least every 12 months, or at the urgent request of any Member State, the High Representative or the Commission following a fundamental change in circumstances*” (such clauses have for example been introduced for the regimes relating to Belarus, Ukraine, Moldova and Iran's military support for the Russia/Ukraine war by Decision (CFSP) 2023/2686, *op. cit.*).
125. [European Commission, “Frequently Asked Questions: Humanitarian Exemption in the EU Syria Sanctions Regime following the February 2023 earthquakes in Türkiye and Syria”, 2023.](#)
126. For example, regarding the authority to be contacted in case of doubt, or on how they can reassure banks and suppliers that their activities are not subject to sanctions.
127. In addition, the CNCDH notes that while [Directive \(EU\) 2017/541 on combating terrorism](#) includes a humanitarian exemption clause, it only appears in its preamble (in recital 38). It would therefore benefit from being included in the operational paragraphs of the directive.
128. The [Commission guidance note on the provision of humanitarian aid in compliance with EU restrictive measures \(sanctions\) of 30 June 2022, C\(2022\) 4486 final](#) is useful in this respect and notes in particular the distinction between exceptions, derogations and humanitarian exemptions. However, it adopts a restrictive interpretation of

“humanitarian purposes”, which needs to be updated in the light of the progress made on humanitarian exemptions at UN and European level since its publication.

129. [Council of the European Union, Guidelines on implementation and evaluation of restrictive measures \(sanctions\) in the framework of the EU Common Foreign and Security Policy, 5664/18, 4 May 2018](#). To date, these guidelines only refer to derogations.

130. Guidance note of 30 June 2022, *op. cit.*

131. [Directive \(EU\) 2024/1226 of the European Parliament and of the Council of 24 April 2024 on the definition of criminal offences and penalties for the violation of Union restrictive measures and amending Directive \(EU\) 2018/1673](#). This directive is based on the decision of the Council of the EU on identifying the violation of Union restrictive measures as an area of crime that meets the criteria specified in Article 83(1) of the TFEU (“Eurocrimes”) ([Council Decision \(EU\) 2022/2332 of 28 November 2022](#)).

132. Article 385 of Directive (EU) 2024/1226 cited above. See also recital 20, which states that the Directive “*does not intend to criminalise humanitarian assistance for persons in need or activities in support of basic human needs provided in accordance with the principles of impartiality, humanity, neutrality and independence, and where applicable, with international humanitarian law*”.

133. While its wording does not expressly state that these provisions do not apply to such activities, it does at least encourage Member States not to consider them as violations of European sanctions that should be penalised when they transpose and apply the directive.

134. See by analogy the criticisms made by several NGOs regarding the humanitarian exemption clause inserted in recital 38 of [Directive \(EU\) 2017/541 on combating terrorism](#), noting that its insertion only in the preamble limits its scope, as Member States are not required to transpose it into national law, despite its unquestionable interpretative value (contribution to the evaluation of the directive available (in French) at www.coordinationsud.org/wp-content/uploads/ONG-francaises_Contribution-a-evaluation-directive-UE-2017-541_VF-1.pdf).

135. See recital 5 of aforementioned Directive (EU) 2024/1226, which states that acts setting out Union restrictive measures “*can provide for exceptions from the prohibitions laid down therein in the form of exemptions or derogations*” and states that “[c]onduct either covered by [such] an exemption (...) or authorised by the competent authorities of the Member States by means of a derogation in accordance with the acts setting out Union restrictive measures should not be regarded as a violation of a Union restrictive measure”.

136. This humanitarian exemption to penalties for violations of EU sanctions is all the more important given that some regimes still do not include humanitarian exemptions, as previously mentioned, in the absence of a cross-cutting humanitarian exemption covering all sanctions imposed by the EU.

137. CNCDH, *Opinion on the draft law concerning the protection of humanitarian space*, 2021, *op. cit.*; CNCDH, *Opinion on (...) humanitarian personnel*, 2020, *op. cit.*

138. Article L. 562-3 of the Monetary and Financial Code.

139. It should also be noted that EU regulations are directly applicable. However, the freezing measures imposed by United Nations Security Council resolutions only apply to financial institutions once they have been transposed into domestic law ([Joint guidelines of the Directorate General of the Treasury \(DG Trésor\) and the Autorité de contrôle prudentiel et de résolution \(ACPR\) \[French Prudential Supervision and](#)

[Resolution Authority\] on the implementation of asset freezing measures, June 2016, updated to 16 June 2021](#), pp. 6 et seq.).

140. Provided that they are specified (some EU legal acts still do not provide for such exemptions or provide for humanitarian exemptions that are more limited than the one arising from Resolution 2664 (2022): see the discussion above, 2.2).

141. See the discussion above on the humanitarian clause provided for by this directive (2.3.).

142. Article 574-3 of the Monetary and Financial Code refers to the penalties set out in Article 459(1) of the Customs Code, which can range from a fine to five years' imprisonment.

143. See below (3.2.).

144. These are natural persons on national territory and the persons mentioned in Article L.561-2 of the Monetary and Financial Code (in particular banking service providers), but also *“any other legal entity incorporated or established under national law or carrying out an operation on national territory in the course of its business”* (see in particular Article L. 562-4). The CNCDH has already had occasion to warn of the impact on impartial humanitarian organisations of the extended scope of legal entities subject to the obligation to comply with asset freezes and the restriction on availability laid down by Order no. 2020-1342 of 4 November 2020 *strengthening the asset freeze mechanism and restriction on availability* (JORF no. 0269 of 5 November 2020, text no. 10): CNCDH, *Opinion on the draft law (...)*, 2021, *op. cit.*, §12.

145. Although Article L.562-6 refers to *“knowingly and intentionally”* participating in the circumvention of freezing measures and restrictions on availability, its wording runs the risk of being interpreted in a way that is incompatible with Resolution 2664 (2022). This article prohibits persons subject to it from *“knowingly and intentionally participating in activities the purpose or effect of which is to circumvent the measures taken under this Chapter (...)”*. For example, the payment of taxes to a listed entity, although in no way intended to circumvent sanctions, could be interpreted as *“knowingly and intentionally”* making funds and resources available, even though this is covered by humanitarian exemptions.

146. See Article L.562-2 of the Monetary and Financial Code on the competence of these ministers to make decisions on freezing the funds and economic resources of individuals or entities *“that commit, attempt to commit, facilitate or finance terrorist acts or incite or participate in such acts”*, which derives its language from Security Council Resolution 1373 (2001) and other resolutions on counter-terrorism.

147. See 1.3 above. This interpretation has also been adopted by the Council of the EU (see point 2.2.). Consistency would also be enhanced if FATF Recommendation 6 on targeted financial sanctions related to terrorism and terrorist financing made a clear reference to the link with the humanitarian exemption in Resolution 2664 (2022) and better reflected other obligations under international law, in particular IHL (see Recommendation 7).

148. Article L. 561-10 would then read as follows: *“the persons referred to in Article L. 561-2 shall apply additional customer due diligence measures, over and above the measures provided for in Articles L. 561-5 and L. 561-5-1 and subject to Article L. 561-1-1, when (...)”*.

149. See Article R. 561-15 and the other articles in sub-section 8, Section 3, Chapter I, Title VI, Book V of the Monetary and Financial Code.

150. The CNCDH points out that these simplified due diligence measures in no way exempt

the entities subject to them from ensuring, throughout the business relationship, that the ML/FT risk remains low, and from implementing a general system for monitoring and analysing transactions, adapted to detect any unusual or suspicious transactions (Article R.561-14 of the Monetary and Financial Code).

151. The same applies to the humanitarian exemption set out in Security Council Resolution 2615 (2021) relating to Afghanistan.

152. This exemption would also be consistent with recital 38 of Directive (EU) 2017/541 of 15 March 2017 on combating terrorism as well as with Security Council Resolution 2462 (2019) (see below).

153. See, for example, Article 421-1 of the Criminal Code, which deals in particular with wilful attacks on life or on the integrity of the person, money laundering offences and offences relating to weapons and explosives.

154. Surprisingly, however, the circular mentions medical aid as one of the examples of “*more advanced contact with terrorist groups*” that should be subject to “*particularly close scrutiny*”, whereas in the event of armed conflict, Additional Protocols I (Article 16 §1) and II (Article 10 §1) to the Geneva Conventions expressly prohibit the criminal prosecution of medical activities compatible with medical ethics “*regardless of the person benefiting therefrom*”. The CNCDH points out that it recommends that the Criminal Code expressly stipulate that the exercise of a medical activity compatible with medical ethics will not be classified as criminal (CNCDH, *Opinion on the draft law* (...), 2021, *op. cit.*, Recommendation 5).

155. Circular from the Minister of Justice dated 27 July 2021 *on combating attacks on humanitarian workers abroad and the specific nature of the missions of organisations carrying out humanitarian activities*, NOR JUS D 2123311C, CRIM 2021-07/G1-26/07/2021 and its [annex on the principles applicable to the activities of organisations providing humanitarian assistance](#). This circular follows on from the commitment made by the French President in this respect at the National Humanitarian Conference in 2020. See, in this same regard: [DG Trésor, Vade-mecum on sanctions and the financing of terrorism concerning humanitarian operations in sensitive areas](#), p. 12. Adopted in 2021, the annex makes no reference to the humanitarian exemptions arising in particular from Security Council Resolution 2664 (2022).

156. See CNCDH, *Opinion on the draft law* (...), 2021, *op. cit.*, §5. The circular mentions “*the payment of tolls and ‘baksheesh’ to ensure safe access to certain areas*” as examples of situations that should be examined particularly carefully, even though it covers conduct that impartial humanitarian organisations may sometimes be forced to adopt in order to carry out their actions and which is covered by the humanitarian exemption in Resolution 2664 (2022).

157. See the rulings handed down by the Court of Cassation in the Lafarge case: [Crim., 7 September 2021, appeal no. 19-87.367, no. 19-87.376 and no. 19-87.662, published in the bulletin](#), §43: “*(...) it follows from the provisions of Article 421-2-2 of the Criminal Code that, in order for the facts to be established, it is sufficient for the finance provider to know that the funds provided are intended to be used by the terrorist undertaking with a view to committing a terrorist act, whether or not that act actually occurs, and regardless of whether or not it intended to see the funds used for that purpose*”.

158. Article 421-2-2 of the Criminal Code covers more broadly the provision, collection or management of “*funds, securities or property of any kind*” or advice given for that purpose.

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159. See the discussion above (1.2).
160. See the examples mentioned above.
161. Resolution 2462 (2019), §6; see also §24, *op. cit.*
162. The same applies to the humanitarian clause provided for in the aforementioned Directive (EU) 2024/1226 on the definition of criminal offences and penalties for the violation of Union restrictive measures, although the purpose is different.
163. [Directive \(EU\) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism](#), recital 38 of the preamble (see also the «IHL safeguard clause» in recital 37). Recital 38 refers to the recognition “*by international law, including [IHL]*” of the organisations concerned, but the CNCDDH points out that this reference raises questions about the body responsible for this recognition and the criteria that would be used. In a previous opinion on a draft law containing this condition, the Commission recommended its deletion, noting that it is not used by the Security Council (S/RES/2462/2019, §24): CNCDDH, *Opinion on the draft law (...)*, 2021, *op. cit.*, §9.
164. The [Australian Criminal Code](#) contains a number of provisions excluding the application of terrorist offences to non-governmental organisations whose sole purpose is to provide aid of a humanitarian nature or to persons engaging in conduct solely by way of, or the purposes of, the provision of such aid.
165. Since 2019, the [Terrorism Act 2000](#) has provided for a humanitarian exemption to the offence of entering or remaining in a designated area for persons providing aid of a humanitarian nature (section 58B).
166. Article 260 ter (the offence of participating in a terrorist organisation does not apply “*to humanitarian services provided by an impartial humanitarian organisation, such as the [ICRC], in accordance with the common Article 3 of the Geneva Conventions*”) and Article 260 quinquies (the offence of financing terrorism does not apply “*if the financing is intended to support acts that do not violate the rules of international law on the conduct of armed conflict*”) of the [Swiss Criminal Code](#).
167. [Law no. 003/PR/2020 on the suppression of acts of terrorism in the Republic of Chad](#), which states that “*activities of an exclusively humanitarian and impartial nature carried out by neutral and impartial humanitarian organisations are excluded from the scope of this law*” (Article 1.4).
168. [Proclamation no. 1176/2020 to provide for the prevention and suppression of Terrorism Crimes](#), Article 9 §5 according to which humanitarian aid provided by organisations engaged in humanitarian activities or support by a person who has a legal duty to support others is not punishable for the aid provided solely to fulfil that function and duty.
169. Under the [Republic of the Philippines Anti-Terrorism Act of 2020](#), humanitarian activities undertaken by the ICRC, the Philippine Red Cross and other State-recognised impartial humanitarian partners or organisations in conformity with IHL do not fall within the scope of Section 12 of the Act (on material support provided to terrorists).
170. [New Zealand’s anti-terrorism law](#) excludes humanitarian support necessary to satisfy basic needs from the provisions relating to the financing and material support of terrorism.
171. According to Article 83(4) of the [Canadian Criminal Code](#), the offence of terrorist financing does not apply “*to a person who carries out any of the acts [constituting this offence] for the sole purpose of carrying out humanitarian assistance activities conducted under the auspices of impartial humanitarian organizations in accordance*

with international law while using reasonable efforts to minimize any benefit to terrorist groups”.

172. This concept refers to the expression “impartial humanitarian body” used by the Geneva Conventions. The CNCDH points out that it recommends that this provision should not be limited solely to impartial humanitarian organisations operating in situations of armed conflict, which are explicitly covered by IHL, but should also apply to these organisations when they carry out activities in other situations, insofar as the risk of criminalisation also exists in situations not covered by IHL (CNCDH, *Opinion on the draft law (...)*, 2021, *op. cit.*, §7).

173. [Draft law no. 4354 tabled on 13 July 2021 at the National Assembly](#) presented by more than thirty co-signatories.

174. See the amendment proposed by the CNCDH in its *Opinion on the draft law (...)*, 2021, *op. cit.*, Recommendation 4. In the same vein, see: CNCDH, *Opinion on (...) humanitarian personnel*, 2020, *op. cit.* Recommendation 5.

175. See in particular the [page dedicated to international economic sanctions of the DG Trésor](#).

176. See in particular the [ACPR’s page dedicated to AML/CFT](#), the page of the [Financial Markets Authority \(AMF\)](#) on the subject, or the Tracfin financial intelligence unit’s page [on supervisory authorities’ guidelines](#).

177. [DG Trésor, Guide des dérogations relatives à l’aide humanitaire prévues par les sanctions de l’Union européenne](#) [Guide on derogations regarding humanitarian aid provided for by EU sanctions].

178. [DG Trésor, Vade mecum sanctions et financement du terrorisme sur les opérations humanitaires en zones sensibles](#) [Vade-mecum on sanctions and the financing of terrorism concerning humanitarian operations in sensitive areas].

179. At present, the vade mecum only briefly mentions exemptions and seems to confuse them with derogations, stating, without making the distinction, that they allow the competent national authorities to authorise a transaction normally prohibited by sanctions.

180. A similar observation has been made at global level by the Secretary-General of the United Nations (report S/2023/658, *op. cit.*).

181. This capacity would be significantly improved if humanitarian exemptions were incorporated into national legislation, as recommended by the CNCDH (section 3.1.).

182. [CDCS, Guide pratique. Accès aux services financiers des OBNL, partenaires du CDCS, qui exercent des activités de solidarité internationale, January 2024](#) [Practical guide. Access to financial services for NPOs, partners of the CDCS, carrying out international solidarity activities]. In the SHRF, France also undertakes, “as far as possible”, to include humanitarian organisations in the mechanisms for monitoring the implementation of sanctions, without however specifying what this means in practical terms in the French context.

183. Undertakings subject to them are required to be aware of the asset freezes and restrictions on availability laid down in the Monetary and Financial Code and European regulations on restrictive measures, in order to put in place the internal organisation and procedures necessary for their implementation (Article L.562-4-1), which should include exemptions.

184. Identification and up-to-date knowledge of the business relationship, nature of the

business relationship, origin and destination of funds, etc.

185. Reporting suspicions when they know, suspect or have good reason to suspect that the sums or transactions originate from an offence punishable by a custodial sentence of more than one year or are linked to the financing of terrorism (Articles L. 561-15 et seq. of the Monetary and Financial Code).

186. See [Order of 6 January 2021 on the mechanism and internal control to combat money laundering and terrorist financing, and on the freezing of assets and the restriction on the availability or use of funds or economic resources](#), JORF no. 0014 of 16 January 2021, text no. 9.

187. [Joint guidelines of the Directorate General of the Treasury and the Autorité de contrôle prudentiel et de résolution on the implementation of asset freezing measures](#), June 2016, version updated to 16 June 2021.

188. [ACPR, Guidelines on the identification, verification of the identity and knowledge of customers, revised on 16 December 2021](#).

189. In particular, NPOs are mentioned whose accounts are audited and which have a good public reputation, receive public funding, demonstrate that they have taken appropriate steps to mitigate ML/TF risks, or which only deliver assistance and support to individuals through direct material help, such as providing medical devices ([EBA Guidelines amended on 31 March 2023, EBA/GL/2023/03](#)).

190. Banks that provide services to NPOs benefiting from humanitarian exemptions must then obtain evidence demonstrating that they conduct their activities in accordance with the applicable exemptions (or that they benefit from an authorisation from the competent national authority in the event of a derogation) (*ibid.*).

191. According to Article 2 of the aforementioned Order of 6 January 2021, reporting bodies must identify and assess ML/TF risks in particular prior to the launch of new products, services or commercial practices, in order to take appropriate measures to manage and mitigate these risks. To that end, they must take into account the information disseminated by the national financial intelligence unit (Tracfin), the FATF, the OECD and the EU.

192. See Recommendation 20 of this opinion, relating to Article L. 561-9 of the Monetary and Financial Code.

193. In this regard, see Recommendation 19 of this opinion concerning Article L. 561-10 of the Monetary and Financial Code.

194. [COLB report, National assessment of money laundering and terrorist financing risks in France, January 2023](#), chapter 6. The threat of terrorist financing through NPOs is considered low for most non-profit organisations, but very high for three categories (this is also the case for NPOs operating in a conflict zone).

195. SHRF (2023 – 2027), *op. cit.*, pp. 20 – 21.

196. COLB National risk analysis 2023, *op. cit.*, p. 74.

197. *Ibid.*, p. 76.

198. [Commission Staff Working Document Accompanying the document Report from the Commission to the European Parliament and the Council on the assessment of the risk of money laundering and terrorist financing affecting the international market and relating to cross-border activities, 27 October 2022, SWD/2022/344 final](#): “The estimated risk level for NPOs receiving institutional funding, among others by the EU or Member States in charge of the management of EU funds, for terrorist financing and money laundering is LOW.

199. Report S/2023/658, *op. cit.*, §44.

200. The EBA guidelines make the same recommendation so that banks have a good understanding of how the NPO sector (their customers) is organised and operates (EBA guidelines, 31 March 2023, *op. cit.*).

201. Moreover, humanitarian actors are the only recipients expressly targeted by the support measures envisaged by the SHRF, in the form of guidelines (SHRF (2023-2027), *op. cit.*, p. 9).

202. [AFD, *Methodological guide on the procedures for financing French CSO projects and programmes*. Tool sheet 10, March 2024, pp. 114 et seq.](#)

203. CNCDH, *Opinion on the draft law concerning the preservation of humanitarian space*, 2021, *op. cit.*, Recommendation 8; CNCDH, *Opinion on (...) humanitarian personnel*, 2020, *op. cit.*, Recommendation 4. In this respect, see the work of the Inter-Agency Standing Committee's (IASC) Task Force 3 on preserving humanitarian space, which is responsible for the humanitarian coordination of the United Nations system: [IASC, *Policy Paper. Considerations on screening/vetting persons in need of humanitarian assistance in counter-terrorism/sanctions contexts*, August 2023.](#)

204. See in particular [FAQ 1106](#), which states that in assessing whether a particular transaction complies with these general licences, financial institutions may reasonably rely upon the information available to them in the ordinary course of business, provided that they do not know or have reason to know that the transaction is outside their scope.

205. The extent of the humanitarian exemption may vary depending on the terminology used.



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