

Template touch point tool: How to identify ways in which programming interacts with applicable sanctions and counterterrorism measures

TOOL 1

REMINDER: Which sanctions and counterterrorism measures should my organisation consider?

Humanitarian organisations should take into account:

- ✓ United Nations (UN) sanctions
- ✓ Sanctions or counterterrorism measures adopted by the country where the organisation's head office is registered
- ✓ Sanctions or counterterrorism measures adopted by the country or countries where it operates

In addition:

- ✓ Staff must also consider with the sanctions and counterterrorism measures adopted by their country of nationality. These do not, however, apply to their organisation as a whole.
- ✓ Transactions in the formal banking sector conducted in United States (US) dollars must comply with US sanctions.
- ✓ Other sanctions or counterterrorism measures may also become applicable indirectly through funding agreements. Donors frequently require the recipient of their funds to comply with the sanctions or counterterrorism measures they have adopted or are subject to, even if the organisation is not under the jurisdiction of the donor country.

TEMPLATE TOUCH POINT TOOL:

This tool allows organisations to analyse how humanitarian operations interact with applicable sanctions and counterterrorism measures. It provides a template for an organisation to identify touch points between sanctions, counterterrorism measures and programming, analyse the risks, identify mitigating measures, and document the organisation's decision on whether to proceed with an action or not. The categories and examples below are not exhaustive and the template can be adapted based on your organisation's operations and programmes.

There are nine main types of 'touch points' that are most common for organisations to consider:

- ❶ Taxes and social security payments
- ❷ Visa and registration costs
- ❸ Allowances, stipends, per diems and transportation costs
- ❹ Utilities
- ❺ Programme/IT software
- ❻ Procurement
- ❼ Cash payments to beneficiaries and community groups
- ❽ Payments to Money Transfer Service Providers
- ❾ Coordination

When to use this tool

You can use this tool to map touch points in a country of operation, for specific projects or activities. It can be used when developing a new project or as a risk management tool which is frequently updated. It can also be used to evaluate the impact of existing sanctions and counterterrorism measures or in anticipation of regulatory changes - e.g. anticipated sanctions designations or counterterrorism proscription. The examples included in this template are for illustrative purposes only and should not be construed as legal advice.

Where to get advice and support

The analysis is best done when informed by expertise across operations, legal and risk, and management functions. If your organisation does not have these capacities and resources, then consider doing the analysis collectively with the international non-governmental organisation (INGO) forum or access working group. Alternatively, consider commissioning legal advice from a specialised law firm or seeking pro bono legal advice from networks such as TrustLaw.

TABLE LEGEND:

Type of touch point: *These categories can be adjusted to fit the needs of your operations.*

Amount: *How much is the payment? Include variation of costs if applicable?*

Payment arrangement and frequency: *How are payments made? How often are payments made?*

Relevant entity to whom payment is made: *Who is the recipient of the payment?*

Analysis: *Does the payment involve a designated entity? Are there risks that payments violate applicable laws?]*

Risk rating: *Define your rating, e.g. traffic light or numbers.*

Risk mitigations: *Are there humanitarian carveouts / exemption which cover this payment? What measures could be put in place to mitigate the risk?*

Decision: *Decision of the management. This can then also be included in a 'Note to file' if relevant.*

Red flags: *Are there specific issues to follow-up or pay attention to? E.g. changes to payment modalities or expiration of exemption.*

# / Type of touch point							
Amount	Payment arrangement and frequency	Relevant entity to whom payment is made	Analysis	Risk rating	Risk mitigations	Decision	Red Flags or points of attention
1. Taxes and social security payments (e.g. income tax, supplier withholding tax, pensions, social insurance payments, etc.)							
As per the law, e.g. % of salary.	Bank transfer, monthly	Ministry of Finance	Minister of Finance is listed under United Nations Security Council (UNSC) financial sanctions. Minister also listed under autonomous sanctions of country X.	Select: - Green - Orange - Red	UNSC Resolution 2664 provides an exemption to payments needed for humanitarian activities. However, the exemption has not been translated into the national law of country X, which is a donor to this project.	Allowed, under certain conditions. Monitor payments. Only use donor funds from X country as this state has transposed UNSC Resolution 2664 into national legislation.	Red flag: Any change in payment arrangements that gives rise to concerns that money might be going to designated entities (e.g. organisation had been paying tax to a general account and is now being asked to pay to an account in the name of an individual). Evidence that funds (or asset transfers) are likely to benefit a designated entity directly and personally (e.g. the Minister of Finance).
2. Visa & registration cost (e.g. staff residency permits)							
As per the law, e.g. between 50-400 USD.	Cash, one-off	Ministry of Interior	De facto authorities / Cabinet are designated under country X financial sanctions.	Select: - Green - Orange - Red	Country X sanctions include a humanitarian exemption that authorizes transactions for humanitarian purposes. The exemption, however, expires at the end of the year.	Allow payments pending the condition of the exemption and until expiry at the end of the year.	For attention: Monitor the expiry of the exemption. Document how the exemption applies to the payments or activity. Advocate for renewal of the humanitarian exemption.
3. Allowances & stipends (e.g. Incentives to civil servants, per diem or transportation for schoolteachers)							
X USD a month	Cash without receipts	Individual civil servants, from the Education Ministry (who have not received salaries for a year).	De facto authorities / Cabinet are a proscribed terrorist group under the US Foreign Terrorist Organisation (FTO) designation. FTO designation triggers the application of the US Material Support clause which prohibits the direct/indirect provision of material support to terrorist groups/ individuals.	Select: - Green - Orange - Red	There are no exemptions in the US material support statute. Are there US Office of Foreign Asset Control (OFAC) General Licenses for humanitarian activities? If so, does the License allow stipend support to public or private teachers, healthcare workers for example? Set-up verification of recipients of allowances and / or field visit reports.	Escalate decision to senior management. Seek written guidance from sanctioning country / donor confirming that Incentive payments to teachers or health workers are allowed insofar as the payments do not directly benefit a designated person.	Red flag: Changes to the school / institution management that include members of designated / proscribed group (e.g. newly arrived military commander as Director). Red flag: Any credible reasons to believe that local government employees are paying funds to a designated entity or could be compelled to do so.
4. Utilities (e.g. payment of electricity, internet, telecom, water bills for offices or guest houses)							
X USD / month	Monthly payments, by bank transfer or post office.	Bills issued / paid to relevant company	The company is state-owned and the de facto authorities are designated under US financial sanctions.	Select: - Green - Orange - Red	Applicable US General License authorises the payment of public utilities for humanitarian purposes.	Allowed explicitly by the humanitarian exemption.	For attention: Monitor changes in the sanctions landscape.
5. Programme software (e.g. software for online training programmes or human resources platforms)							
5,000 USD	Bank transfer to US company	What country does the software originate from? US company under the authority of the US Bureau of Industry and Security (BIS).	US export control prohibits the use of certain US components in country X under sanction. Export controls require organisations to apply for an export license from the US BIS.	Select: - Green - Orange - Red	Are BIS licenses necessary and can the organisation apply for some?	Consider alternative providers if available. If a BIS license is required, only process payments when the license is secured.	For attention: Monitor duration and expiry of the license and reapply if required. Document the application process for a license to feedback on the experience.

# / Type of touch point							
Amount	Payment arrangement and frequency	Relevant entity to whom payment is made	Analysis	Risk rating	Risk mitigations	Decision	Red Flags or points of attention
6. Procurement (e.g. Purchasing cement from a local company)							
15,000 USD	Paid via Hawala	Local cement company	The owner of the company is designated under European Union (EU) sanction.	Select: - Green - Orange - Red	The EU sanctions offer the options for organisation funded by the EU or its member states to apply for a derogation to purchase and pay goods necessary for humanitarian activities.	Consider an alternative provider if available. Consider using funds from another donor (only relevant if the organisation is not an EU entity). Consider applying for a derogation to the national competent authority in Europe.	For follow-up: Document the application process for License to feedback on the experience. Advocate for a humanitarian exemption in lieu of a case-by-case derogation.
7. Money Transfer Service Provider							
50,000 USD a month	Bank transfer to provider after cash received in location and confirmed by staff.	Central Bank or Ministry of Finance	As per internal procedures relevant screening of suppliers should be undertaken.	Select: - Green - Orange - Red	Ensure selection and screening of suppliers and agents according to organisational standards. i.e. Check they are a regulated provider and request supporting documentation. Payments to suppliers made in arrears.	Allow payment unless supplier is flagged in periodic screening checks.	For attention: Monitor changes to local regulations on providers.
8. Coordination (e.g. signing Memorandums of Understanding (MoU)s with line ministries, project agreements etc.)							
N/A	N/A	E.g. Ministry of higher education	De facto authorities (DFA) cabinet are designated under country X financial sanctions.	Green	Sanctions do not prohibit coordination with designated authorities for the purpose of humanitarian action.	Coordination is allowed and necessary for humanitarian operations. Ensure the Memorandum of Understanding (MoU) or agreement does not include clauses or requirements that would contradict humanitarian principles (e.g. approval of beneficiary list etc.).	Red flag: Monitor changes in requirements and escalate decisions to senior management as necessary, e.g. if de facto authorities request payment for access or other undue conditions.