

**OPINION ON HUMANITARIAN
EXEMPTIONS IN SANCTIONS
REGIMES AND COUNTER-
TERRORISM MEASURES**
**Promoting widespread use and better
implementation**

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Résolution 2664 (2022)
Adoptée par le Conseil de sécurité à sa 9214^e séance,
le 9 décembre 2022

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 prévenir 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 l'évaluation des conséquences de ces sanctions, conformément au droit international,

Sachant qu'avant de...
évaluer les conséquences...
qu'il doit au...

During the plenary assembly of June 20th 2024, the French National Consultative Commission on Human Rights (CNCDH) adopted the Opinion on humanitarian exemptions in sanctions regimes and counter-terrorism measures. *Promoting widespread use and better implementation* (A - 2024 - 6).

[The full text is available on our website.](#)

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**).



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