HUMANITARIAN ACTIVITIES IN CRISIS SITUATIONS IN UKRAINE

Recommendations to overcome legal and administrative obstacles in the regulation of humanitarian aid
Humanitarian activities in Ukraine in response to the pandemic and conflict

According to UN estimates, in the seventh year of the armed conflict in Donbas (the country’s east) an estimated 3.4 million conflict-affected people in Ukraine still require urgent humanitarian assistance and protection services. These humanitarian needs are now expected to grow further as a new crisis, connected to outbreak of the coronavirus disease COVID-19, looms. Both the protracted crisis related to the armed conflict in Donbas and the consequences of the pandemic outbreak require immediate humanitarian response. This includes the urgent supply of laboratory tests to identify infected individuals, personal protective equipment (PPE) for health care workers and medical equipment to treat COVID-19 infected patients in serious conditions, delivery of PPE, hygiene and sanitation products for vulnerable populations, and ensuring access to safe water, supporting livelihoods and ensuring the protection of those affected by the conflict. Furthermore, considering the long isolation period and its negative impact on the economy, we should do our utmost to plan for and support early recovery in the country, and strive for a newly sustainable and inclusive economy that leaves no-one behind.

Since the beginning of hostilities in the east of Ukraine and the outbreak of the coronavirus disease COVID-19, dozens of humanitarian non-government organizations (NGOs) have been providing critical humanitarian aid to the most vulnerable affected populations: women and children, older people, and those with disabilities or chronic illness, medical staff and facilities, residents of settlements along both sides of the contact line, and in particular the hard-to-reach villages – access to which is restricted due to lack of public transport, damaged roads and/or security measures.

These organisations providing humanitarian aid are, however, facing bureaucratic and legislative problems which hinder the timely and effective delivery of aid. Problems include time-consuming procedures for the registration of humanitarian projects, which can take up to six months, and shortcomings in the regulation of the taxation of aid, which puts an undue financial burden on humanitarian organisations, donors and, in certain circumstances, on beneficiaries. With a new crisis looming, it is now more important than ever to enable the swift and timely delivery of aid for the most vulnerable. This document therefore summarizes major shortcomings in the regulation of humanitarian aid, and provides specific recommendations for remedial measures from the perspective of implementing organisations.

The humanitarian crisis in Ukraine related to the conflict in Donbas in numbers (Ukraine Humanitarian Needs Overview, 2020):

- **1,5 million** people affected by the conflict live in the government-controlled areas (GCA)
- **1,9 million** are residents of the non-government controlled areas (NGCA)
- **1.1 million** (30%) – elderly people
- **416 thousand** (12%) – people with disabilities, including children, adults and elderly persons
- **530 thousand** (16%) – children
- **65 thousand** live close to the ‘line of contact’ (0-20 km), in isolated and hard-to-reach settlements in GCA
- **1,5 million** live close to the ‘line of contact’ (0-20 km) in NGCA.

Number of people in need of assistance by sector (Ukraine Humanitarian Needs Overview, 2020)

<table>
<thead>
<tr>
<th>Sector</th>
<th>Number of People</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education</td>
<td>1,0 million</td>
</tr>
<tr>
<td>Food security &amp; Livelihoods</td>
<td>1,3 million</td>
</tr>
<tr>
<td>Health</td>
<td>2,8 million</td>
</tr>
<tr>
<td>Protection</td>
<td>0,4 million</td>
</tr>
<tr>
<td>Shelter/NFI</td>
<td>2,8 million</td>
</tr>
<tr>
<td>Water, sanitation and hygiene</td>
<td>2,8 million</td>
</tr>
</tbody>
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According to 2020 COVID-19 Emergency Response Plan for Ukraine (OCHA) health requirements to overcome the consequences of the pandemic are $84 million and the socio-economic requirements are $81 million (on the national scale). The conflict-affected area specifically needs $42 million from these two sets of requirements.

A number of countries and organisations have been providing humanitarian aid to Ukraine. Among the main donors in 2019 were: the USA, Germany, the European Commission, Switzerland, Norway, Sweden, United Kingdom, Canada, France, and Japan among others.

Among the largest humanitarian donors is the EU, who has provided more than €141.8 million since 2014 in emergency assistance, including €23 million allocated during 2019. About half of this assistance supports vulnerable people living in the non-government controlled areas. EU Member States separately have provided another €268,9 million in humanitarian aid during the conflict. In April, 2020, as part of its global response to the coronavirus outbreak, the European Commission decided to mobilise an emergency support package for Ukraine of over €190 million to cover immediate and short-term needs.

The Ukraine Humanitarian Fund (UHF), a pooled fund, managed by the Office of the Coordinator for Humanitarian Affairs in Ukraine (OCHA), intended to support coordinated humanitarian action and address some of the most critical needs in line with the Humanitarian Response Plan was also established in 2019.

Major shortcomings in the regulation of humanitarian activities and recommendations to the Ukrainian authorities to improve the situation:

1. Time consuming procedures for the registration of international technical assistance projects

   The issues of attracting international technical assistance (ITA) and state registration of ITA projects/programs are regulated by a Procedure approved by the Resolution of the Cabinet of Ministers of Ukraine in 2002, last amended in December 2019 (hereinafter – the Government or CMU and the Procedure). For ITA, under the projects registered in accordance with the Procedure, a preferential taxation of goods and services within the customs territory of Ukraine and importation of goods into the customs territory of Ukraine has been established (exemption from taxation), as well as accreditation of their executors. According to the Procedure, the CMU Secretariat shall make a decision on registration of the project/program within 10 working days.

   However, in practice, the whole registration process is time consuming, and typically takes from 4 to 6 months (sometimes even longer), which is unacceptable for humanitarian projects that are intended as a quick reaction and that must be implemented rapidly. This long period is related, in particular, to the fact that under the Procedure before a program/project is submitted for registration to the CMU Secretariat, a beneficiary (relevant central bodies of the executive power, Kyiv City and regional state administrations, or bodies of local self-government that are relevant to the results of the program/project), has to consider a draft memorandum (or other documents) confirming an agreement on the purposes, tasks and activities under the project, submitted by a contractor (usually an NGO or an international organization), and sign it. This stage is the lengthiest.

   Therefore, the time-consuming procedure for registration is driven by few reasons:
   1. The said Procedure provides for a single mechanism for registering all categories of ITA projects. However, the features of humanitarian projects and their urgent nature are unfortunately not considered. The registration of humanitarian projects aimed at provision of an emergency response to crisis situations must be simplified and carried out in the first place to ensure the timely delivery of vital assistance for affected vulnerable populations, and to avoid an unreasonable financial burden on donors (taxes and fees). The best solution is to provide for
Recommendation 1: The Cabinet of Ministers of Ukraine should amend the Procedure in order to prioritize and simplify the registration of humanitarian projects, as compared to development ones, preferably to establish a specific procedure for the registration of humanitarian projects in line with humanitarian law; to clearly define time requirements for review, approval and signing of project documentation by local state administrations and other beneficiaries (the whole procedure – up to 10 days).

Recommendation 2: The CMU Secretariat and local state administrations and other beneficiaries should ensure strict compliance with the time requirements for registration of humanitarian projects envisaged by the Procedure. In the absence of relevant legal regulation this should be done within the shortest possible time in the light of all the circumstances.

2. Unclear and unpredictable procedure for registration of humanitarian aid recipients, for the recognition of cargo, funds, works and services as humanitarian aid

According to the Law of Ukraine «On Humanitarian Aid» (hereinafter referred to as ‘the Law’), the Ministry of Social Policy of Ukraine is the specially authorized central body of the executive on humanitarian aid. The Ministry of Social Policy adopts decisions on registration of international organizations and NGOs as humanitarian aid recipients, maintains a Unified Register of Humanitarian Aid Recipients, as well as decides on recognition of cargoes, funds, in foreign currency in particular, works and services as humanitarian aid. Local bodies of the executive take decisions on recognition of cargos weighing up to 3 tons and light motor vehicles for people with disabilities as humanitarian aid. Goods (works, services) recognized as humanitarian aid in the manner prescribed by the Law shall be exempt from taxation according to the Law (the Tax Code of Ukraine and the Customs Code of Ukraine).

4 https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule55
At the same time, the procedure for the registration of humanitarian aid recipients and recognition of goods (works, services) as humanitarian aid is not sufficiently clear, transparent or predictable. There were situations where humanitarian NGOs had to seek OCHA’s mediation to obtain a registration/recognition (additional documents were requested, or the documentation package required differed across otherwise similar situations etc.). As well, the length of the procedure is up to 60 days, which raises serious risks for the efficiency of the humanitarian response.

For example, a humanitarian COVID-19-related cargo, provided by an international organization for the conflict-affected populations in Donbas, arrived in Ukraine on 12 March (before the Verkhovna Rada (Parliament) of Ukraine adopted a law on taxes and import duty exemption for goods required to counteract the spread of COVID-19) and before the Ministry of Social Policy simplified the procedure for the recognition of COVID-19-related cargos as humanitarian aid. It took the Ministry for Reintegration of the TOT, actively supported by the humanitarian community (OCHA), almost three weeks to get a decision of the Kyiv City State Administration on recognition of the above mentioned cargo as humanitarian aid.

3. Shortcomings in the taxation of humanitarian aid

Given the charitable nature of international humanitarian aid, it should be exempt from taxation (value added tax, personal income tax, military levy, customs duties and fees), as reflected in donor requirements. However, the existing mechanisms of humanitarian aid taxation are not fully adapted to the specifics of humanitarian work, including its urgent nature. There exist four sets of problems:
I. Exemption from Value Added Tax (VAT) for the purchase of humanitarian goods and services in Ukraine

At present, exempt from taxation (VAT) only applies to the supply of goods and services within the customs territory of Ukraine as international technical assistance (financed through ITA) – that is, only in case of registration of the relevant ITA project by the CMU Secretariat (however, see the problem described above).

In other cases, if goods and services are purchased in Ukraine by international and foreign non-governmental humanitarian organizations for the purpose of their subsequent delivery to the population as a humanitarian assistance, such operations are subject to taxation.

On 16 January, 2020 the Ukrainian Parliament adopted a Law No 466-IX providing for procurement of goods/services in the customs territory of Ukraine to also be tax exempt if they are procured for the provision of humanitarian assistance in Ukraine by diplomatic missions, consular entities and representative offices of international organizations in Ukraine in accordance with the Law of Ukraine ‘On the Humanitarian Assistance’. This law, being a positive step towards improvement of the legislation on humanitarian activities, would give the legal ground for claiming reimbursement of operational VAT. At the same time, it does not envisage such an exemption for foreign non-governmental organizations and their autonomous subdivisions (branches, representative offices), as well as does not provide for necessary amendments to the Law of Ukraine ‘On Charitable Activities and Charitable Organizations’.

As part of measures aimed at stopping the spread of the coronavirus disease, Ukraine has decided to introduce a fiscal relief, in particular for international and non-governmental humanitarian organizations. Thus, on March 17 and 30, 2020, the Verkhovna Rada (Parliament) of Ukraine adopted Laws No 530-IX and No 540-IX and amended the Tax code to ensure a VAT exemption for import operations into the customs territory of Ukraine and/or operations on procurement within the customs territory of Ukraine of goods required to counteract the spread of COVID-19 (according to the list determined by the Government).

These amendments positively improve the provision of COVID-19 related aid. However, to solve the problem as a whole, such provisions should be extended and apply to all cases of humanitarian assistance in crisis situations (a conflict, a pandemic etc.) and during the whole period for which such situations last. When a crisis situation occurs, there is no time to wait till the Parliament adopts special laws – an operational mechanism should be already in place and ready to be launched immediately for the whole period of the crisis (for example, by a decision of the Government).

II. Refund Value Added Tax (VAT) from the State Budget

According to information from a number of international organizations providing humanitarian aid to the conflict-affected populations, the gaps in the Ukrainian legislation on exemption from value

Recommendation: The Government of Ukraine and the Verkhovna Rada of Ukraine should develop, submit to the Parliament and adopt a Law to amend:

1. The Tax Code of Ukraine (TCU) by providing for foreign non-governmental organizations and their autonomous subdivisions (branches, representative offices) to be able to procure goods and services in the form of charitable assistance and be provided with such goods and services, and for the performance of these transactions to be exempt from taxation.

2. The Law of Ukraine ‘On Charity and Charitable Organizations’ by adding to the definition of charitable organizations as legal entities of private law, also ‘autonomous subdivisions of foreign non-governmental organization (branch, representative office)’.
Recommendation: The Secretariat of the Cabinet of Ministers of Ukraine should initiate the establishment of a working group composed of representatives of relevant authorities, international organizations and donors to assess the debt in VAT refund due to international organizations which protect and assist the populations affected by the crisis situations, as well as to find ways to resolve this acute problem as soon as possible.

added tax (VAT) for the purchase of goods and services of humanitarian nature within the territory of Ukraine, financed by international organizations (see above), have led to the accumulation of large amounts of non-refunded VAT in recent years. This situation has a negative impact on Ukraine’s image and threatens to reduce international humanitarian aid.

The Law No 466-IX from 16 January, 2020 mentioned above establishes that during the period from January 1, 2016 till February 1, 2020 the VAT exemption shall be applicable to procurement of goods/services in the customs territory of Ukraine if they are procured for provision of humanitarian assistance in Ukraine by diplomatic missions, consular entities and representative offices of international organizations in Ukraine in accordance with the Law of Ukraine ‘On the Humanitarian Assistance’ (this legal provision could be used for a legal basis to claim settlement of VAT debts for the past periods).

III. Exemption of non-targeted humanitarian (charitable) assistance provided to conflict-affected populations from taxation (recognizing it as non-taxable personal income of these individuals)

Pursuant to TCU, the charitable assistance can be either targeted (provided under particular conditions and spending areas) or non-targeted, which provides for different taxation regimes.

Charitable assistance, both non-targeted and targeted (such as multi-purpose cash, cash assistance to cover basic needs in food products, sanitary materials, winterization kits etc.), paid/provided directly by international charitable organizations, duly registered by the Ministry of Social Policy, to individuals residing in areas of the Antiterrorist Operation/ Joint Forces Operation (ATO/JFO) or registered internally displaced persons, shall not be included in the taxable income of such persons according to the subparagraph 165.1.56 paragraph 165.1 Article 165 of the TCU.

However, when non-targeted charitable assistance is provided by local NGOs (even if they act as partners of international NGOs), significant limits are applied to its non-taxable amount (as of January 1, 2020 – only UAH 2,940 per year per person). This amount is insufficient to ensure basic needs of the most vulnerable people.

If the amount of such aid exceeds the amounts prescribed by law, the excess amount is subject to taxation (personal income tax and military levy) and these costs are borne by the humanitarian aid’s recipient, which puts an unacceptable burden on the most vulnerable people in need, or by humanitarian organizations providing such assistance. In addition, it may lead to further negative

Recommendation: The Government of Ukraine and the Verkhovna Rada of Ukraine should develop, submit to the Parliament and adopt an Act on amendment of the Tax Code of Ukraine, determining that non-targeted charitable assistance of any amount (value) that is provided by national NGOs at the expense of international donors to persons residing in the ATO/JFO area (the list of settlements to be determined by the Government) or internally displaced persons, as well as to persons affected by other crisis situations, shall not be included into their taxable income. Furthermore, determining that local organizations providing non-targeted assistance through funding by international organizations should be considered as agents of the international organizations, and thus their beneficiaries exempted from PIT payment regardless of the amount received (subparagraph 165.1.56 paragraph 165.1 art. 165 of the TCU).
Recommendation: The Government of Ukraine should amend relevant by-laws to improve the reporting procedure for humanitarian non-governmental organizations that provide charitable assistance to populations affected by crisis situations:

To avoid misinterpretation while paying non-taxable charitable assistance to individuals in accordance with the TCU provisions, an amendment is needed in the Income Tax Guide (see above), to add a specific income attribute (category) «xxx» for the amount of charitable assistance, provided to the benefit of a tax payer (individual) by international charitable organizations (branches, representative offices), that is not subject to taxation (personal income tax/PIT).

consequences for aid recipients, such as the loss of entitlements to state targeted social assistance, (subsidies to cover the cost of housing and communal services), to resolve this problem, local partners of international organizations should be defined as their agents, meaning that their beneficiaries are also to be exempted from PIT payments.

IV. Improvement of the tax reporting procedure for humanitarian organizations by distinguishing the category of humanitarian assistance that is exempted from taxation

According to the TCU, a donor (charity giver), being a legal entity, specifies in their tax reports, the amount of charity assistance provided. However, according to the Income Tax Guide (Annex to the Procedure approved by a Resolution of the Ukrainian Ministry of Finance on 13 January 2015, No 4) all types of charity aid, including those paid by international NGOs, fall under the one category (income attribute) ‘169’. As a result, the controlling authority of the category ‘169’ cannot distinguish the specific TCU provisions under which the charity aid was paid (types of the aid and their taxation regime), and the State Fiscal Service (SFS) conducts commercial checks of all payments exceeding 2,940.00 UAH (non-taxable income of beneficiaries of non-targeted charitable assistance) to ensure observance of the TCU requirements.

4. Humanitarian Aid Law in crisis situations

The Laws of Ukraine ‘On Humanitarian Aid’ and ‘On Charity and Charitable Organizations’, the Tax and Customs Codes and other regulatory legal acts do not consider the peculiarities of humanitarian (charitable) activities in crisis situations, pandemics or armed conflicts in particular. This complicates the work of non-governmental humanitarian organizations to provide assistance to the affected populations and requires appropriate legislative changes.

At the same time, it is very important to comprehensively and systematically fill the legislative gaps in the field of regulation of humanitarian aid provision and taxation. A feasible solution could be adoption of a specific law regulating the provision of humanitarian aid in crisis environment.

In 2016, the Verkhovna Rada of Ukraine (Committee on Affairs of Veterans and Persons with Disabilities) together with the humanitarian community, including the Office of the Coordinator for Humanitarian Affairs in Ukraine, the International Committee of the Red Cross and non-governmental organizations, drafted laws on Humanitarian Aid in Crisis Situations (No. 4360) and laws amending the Tax and Customs Codes of Ukraine on issues of humanitarian aid in crisis situations (No. 4361 and 4362). These draft laws aimed at the comprehensive regulation of various aspects of humanitarian action, in armed conflict in particular, and easing the bureaucratic burden during provision of humanitarian assistance to people in need. The draft laws were intended to solve all the above-mentioned problems. Unfortunately, these draft laws were not considered and adopted by the Parliament of the previous VIII convocation.

Recommendation: The Government of Ukraine and the Verkhovna Rada (Parliament) of Ukraine should establish a working group, including representatives of the line ministries and departments, relevant parliamentary committees, international and non-governmental organizations and experts with the aim of updating the draft laws No. 4360, 4361 and 4362 submitted to the Verkhovna Rada of VIII convocation (taking into account legislative and institutional changes that have taken place in the last four years); submit these draft laws for consideration by the Verkhovna Rada of Ukraine, review and adopt them.
The above mentioned legislative and bureaucratic problems and obstacles are standing in the way of proper provision of humanitarian aid and recovery activities in the conflict affected Donbas and other areas affected by different crisis situations (ongoing or forthcoming). For example, since 2016, there has been a decrease in donors’ input to respond to the armed conflict in the eastern Ukraine, though part of this is due to its protracted nature. Given that in the foreseeable future Ukraine will to a significant extent depend on foreign aid to respond efficiently to humanitarian challenges, there is an urgent need to comprehensively review the national legislation on humanitarian activities and the related practices, followed by development and adoption of relevant amendments.

With this in mind, we call on Ukrainian authorities (Ukrainian Government and Parliament, Ministry of Social Policy, Ministry for Reintegration of the temporary occupied territories, Ministry of Finance, local state administrations) to consider the humanitarian community’s concerns therein expressed and the specific recommendations above for a proper response aimed at making the operational environment of the aid community fully advantageous and, in this way, to better ensure the protection and support of populations affected by crisis situations.

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