



Screening guidelines for international aid repealed by the French Supreme Court

On 10 February 2023, the Conseil d'État (French Supreme Administrative Court) repealed screening guidelines applicable to international aid organisations, on the ground that existing law does not provide for a screening obligation

In December 2021, the French Ministry for Europe and Foreign Affairs issued screening guidelines, i.e., an obligation to verify that all individuals and legal persons who receive funds through international solidarity projects financed by French institutional donors were not on international or national sanctions lists. Under these guidelines, the personnel, partners, service providers, suppliers and populations who were the ultimate beneficiaries of aid were required to undergo screening.

Represented by their counsel, SCP Spinosi, in February 2022 Coordination SUD and seven other co-petitioner organisations (Action Contre la Faim, Centre de Recherche et d'Informations pour le Développement, CCFD-Terre Solidaire, Coordination Humanitaire et Développement, Handicap International, Médecins du Monde and Secours Catholique Caritas France) petitioned the Conseil d'État to repeal these guidelines. They argued that the guidelines were more restrictive than current positive law. This action was supported by 32 member organisations of Coordination SUD, who voluntarily joined the proceedings¹.

If these guidelines had been applied, they would have created obligations, which, in addition to being ineffective, would have breached the principles that govern the action of international solidarity organisations. Indeed, screening persons who receive aid on the basis of sanctions lists is contrary to humanitarian principles, in particular the principle of impartiality whereby aid is provided on the basis of needs (a principle that all humanitarian organisations apply) and the principle of international solidarity. In practice, this screening measure, *ipso facto*, would have fostered an attitude of mistrust within the communities that the organisations are trying to help, thereby not only impeding access to populations and diminishing the quality of aid programmes, but also increasing the risks for the safety of personnel. In addition to being ineffective in achieving its stated objectives, this measure would have made the administrative procedures significantly more complex. Moreover, aid organisations have no legal mandate to verify people's identities, not to mention that, in many countries, aid beneficiaries have no identity documents, which would have made the contemplated measure impossible to apply in practice.

¹ *Acting For Life, ActionAid, AIDES, AVSF, BATIK International, CFSI, CLONG, Commerce Equitable France, Equipop, FERT, FIDH, Fondation Danielle Mitterrand, FORIM, GERES, GRDR, GRET, Groupe Initiatives, Initiative Développement, Inter Aide, Oxfam, Première Urgence Internationale, Ritimo, Samu social International, SEVES, Sidaction, SIF, Solidarités International, SOS Villages d'Enfants France, Terre des Hommes France, Tetraktys, Triangle Génération Humanitaire and Women Engaged for a Common Future.*

On 10 February 2023, the Conseil d'État repealed the screening guidelines on the ground that the law does not provide for a screening obligation, and that institutional donors cannot make the payment of their aid contingent on the implementation of such a measure by civil society organisations. This applies to all screening requirements, including checks on personnel, partners, suppliers and the people who benefit from the aid. In its reasoning, the Conseil d'État specified that, unlike banking institutions (among others), the law does not define specific methods that are applicable to civil society organisations in order to ensure compliance with international sanctions and asset freezing measures. This decision supports the position of NGOs on this matter.

International solidarity organisations have reiterated that they adopt practices which are aligned with their governing principles, comply with the regulations in force, and are proportionate to identified AML/CFT risks. Through such practices, they ensure that their resources are used and managed properly, in a manner consistent with the objective of their aid programme activities. Many international donors have acknowledged the effectiveness of these due diligence measures, and French donors should follow suit. **These measures preclude the screening of those who receive aid, which is a red line that civil society organisations refuse to cross.**

France's political commitment to uphold humanitarian principles and to contribute to international solidarity, which is regularly demonstrated nationally and internationally, is thus facilitated by this decision of the Conseil d'État, which implied that the practices used prior to the guidelines struck a satisfactory balance between compliance with AML/CFT regulatory obligations and fulfilment of obligations under international law.