

# **Shall the status and role of focal points be addressed in the draft? What can be added to the draft in order to make a proposal on focal points be practical and enforceable as much as possible?**

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## **I. Introduction**

### **A. Contextual Background:**

**Overview of the Current Landscape:** The use of unilateral sanctions has expanded significantly in recent years, with a 75% increase in the number of sanctions imposed globally from 2005 to 2020 (Neuenkirch & Neumeier, 2022). This increase includes both primary and secondary sanctions, targeting countries, businesses, and individuals. In 2021 alone, the United States Treasury's Office of Foreign Assets Control (OFAC) imposed sanctions on over 500 individuals and entities worldwide (OFAC, 2021). These sanctions aim to enforce international norms and achieve foreign policy objectives but have also led to a range of unintended consequences, including impacts on human rights.

**Direct and Indirect Impacts:** Sanctions have led to restricted access to essential goods and services, including food, medicine, and humanitarian aid. Reports from the United Nations and the World Health Organization have documented the adverse effects of sanctions on vulnerable populations in countries like Venezuela and Iran, where access to essential medical supplies and services has been significantly impeded (UN, 2022; WHO, 2021). Additionally, secondary sanctions and over-compliance by businesses have further limited economic opportunities and exacerbated poverty in affected regions.

**Need for Clear Frameworks:** The complexity and scope of modern sanctions regimes necessitate clear frameworks and accountability mechanisms to ensure that sanctions do not unduly impact human rights. The United Nations Guiding Principles on Business and Human Rights emphasize the importance of due diligence for businesses, ensuring that their compliance practices do not infringe on human rights (UN, 2011). The growing practice of over-compliance by businesses, including financial institutions and corporations, has compounded the negative impact of sanctions, leading to situations where essential goods and services are blocked or delayed.

**Over-Compliance and De-Risking:** Over-compliance, where businesses take measures beyond what is legally required to avoid penalties, has become a widespread phenomenon. The International Monetary Fund (IMF) reports that de-risking policies have led to the closure of accounts and services for numerous individuals and businesses in countries under sanctions, further restricting access to financial systems and exacerbating economic hardship (IMF, 2020).

## **B. Purpose:**

**1. Exploring the Role of Focal Points:** This document seeks to explore the role of focal points in facilitating the implementation of the Guiding Principles on Sanctions, Compliance, and Human Rights. Focal points can serve as intermediaries between stakeholders, offering guidance, monitoring compliance, and providing clarity to navigate the complex landscape of sanctions compliance.

**2. Proposing Practical Measures:** The document also aims to propose practical and enforceable measures to ensure that focal points effectively mitigate the negative impacts of sanctions on human rights. This includes mechanisms for selecting, supporting, and evaluating focal points, as well as aligning their work with existing international legal standards to minimize over-compliance and ensure that sanctions enforcement does not harm vulnerable populations.

## **II. Role and Responsibilities of Focal Points**

### **A. Defining Focal Points:**

**1. What is a Focal Point:** A focal point is a designated individual or office within an organization tasked with managing specific responsibilities related to sanctions, compliance, and human rights. This role involves acting as a central coordinator, ensuring alignment between different stakeholders and the guiding principles, and implementing measures to minimize over-compliance and its negative impact on human rights.

#### **2. Internal vs. External Focal Points:**

- **Internal Focal Points:** These are individuals or offices within an organization, such as a business or governmental entity, responsible for overseeing compliance and mitigating human rights impacts. Internal focal points work closely with different departments to ensure compliance policies are effectively implemented and in line with international standards.

- **External Focal Points:** These are individuals or entities outside an organization, such as industry associations or international organizations, that provide guidance, support, and oversight to multiple organizations. For instance, the UN's Office of the High Commissioner for Human Rights (OHCHR) acts as an external focal point, offering resources and guidance to businesses and governments on aligning their practices with human rights standards (OHCHR, 2021).

### **B. Core Responsibilities:**

**1. Communication:** Focal points act as a liaison between different stakeholders, including businesses, governments, and civil society organizations. This involves facilitating communication channels, addressing concerns related to sanctions compliance and human rights, and ensuring that information flows smoothly between all parties involved. For instance, the European Union's External Action Service (EEAS) serves as a focal point, engaging with various stakeholders to address sanctions-related issues (EEAS, 2022).

**2. Monitoring and Reporting:** Focal points are responsible for tracking compliance, identifying instances of over-compliance, and reporting potential human rights violations. This includes monitoring the impact of sanctions and compliance policies on vulnerable populations, ensuring that necessary actions are taken to address any negative outcomes. The United Nations Special Rapporteur on the Negative Impact of Unilateral Coercive Measures provides regular reports on the effects of sanctions, highlighting cases of over-compliance and their human rights implications (UNHRC, 2022).

**3. Guidance and Support:** Focal points provide clarity and assistance to actors involved in sanctions and compliance processes, ensuring alignment with the guiding principles. This includes offering advice on navigating complex sanctions regimes, helping businesses and governments interpret compliance requirements, and minimizing negative impacts on human rights. The International Chamber of Commerce (ICC) offers guidance to businesses on implementing responsible compliance policies (ICC, 2021).

**4. Training and Capacity Building:** Focal points are tasked with developing and implementing training programs to build awareness and knowledge about the guiding principles and relevant legal standards. This involves designing educational resources, organizing workshops, and providing ongoing support to stakeholders. For example, the Business & Human Rights Resource Centre offers training programs and resources to businesses and organizations on how to align their practices with international human rights standards (BHRRC, 2023).

### III. Establishing Effective Focal Points

#### A. Appointment and Selection:

**1. Criteria for Selecting Focal Points:** The appointment of qualified focal points is crucial for ensuring effective compliance and protection of human rights. Focal points should possess expertise in international law, human rights, and compliance. For example, the UN Guiding Principles on Business and Human Rights emphasize the importance of integrating human rights expertise into organizational structures (OHCHR, 2011, p. 16). Additionally, focal points should be familiar with sanctions frameworks and their impact on various sectors to navigate compliance challenges effectively.

**2. Appointment Process:** Establishing a transparent and independent appointment process is key to maintaining the integrity of focal points. This includes creating a selection committee with representatives from diverse sectors, such as law, human rights, and business. The committee should evaluate candidates based on their qualifications, experience, and impartiality. In practice, organizations like the European Union's External Action Service (EEAS) follow such processes, ensuring focal points are free from undue influence (EEAS, 2021, p. 5).

#### B. Institutional Support:

**1. Resource Allocation:** For focal points to effectively fulfill their roles, organizations must provide adequate resources and backing. This includes financial support, staffing, and access to necessary tools and technologies. The Global Sanctions Database emphasizes the need for comprehensive resources to track compliance and mitigate over-compliance (Neuenkirch & Neumeier, 2022, p. 22).

**2. Ongoing Support:** To ensure focal points remain effective, organizations should create mechanisms for ongoing support, including access to training and information sharing. Training programs should cover topics such as evolving sanctions frameworks, compliance practices, and human rights impact assessment. The Business & Human Rights Resource Centre (BHRRC) offers training resources and workshops to support focal points in aligning their practices with international standards (BHRRC, 2023).

#### C. Accountability and Evaluation:

**1. KPIs and Benchmarks:** Setting benchmarks and key performance indicators (KPIs) is essential for evaluating the effectiveness of focal points. These metrics should cover areas such as compliance rates, human rights impact, and stakeholder engagement. For example, the International Chamber of Commerce (ICC)

provides guidelines for monitoring compliance policies, including KPIs for tracking performance (ICC, 2021, p. 7).

**2 Regular Assessment:** Organizations should establish mechanisms for regular assessment and adjustment to improve performance. This includes periodic reviews of focal points' activities, feedback from stakeholders, and audits of compliance policies. The United Nations' Special Rapporteur on the Negative Impact of Unilateral Coercive Measures highlights the importance of continuous assessment to ensure effective compliance practices (UNHRC, 2022, p. 18).

## IV. Enforcing the Role of Focal Points

### A. Legal Frameworks:

**1. Alignment with International Standards:** The role of focal points must be aligned with existing international legal standards. The UN Guiding Principles on Business and Human Rights stress the importance of incorporating human rights into corporate compliance strategies, emphasizing the need for focal points to guide organizations in adhering to these standards (OHCHR, 2011, p. 5). This alignment ensures that focal points can help businesses and governments implement sanctions in a manner that respects international law and protects human rights.

**2. Integration into National and Regional Frameworks:** To ensure effective enforcement, the role of focal points should be integrated into national and regional legal frameworks. This includes legislative measures that mandate the appointment of focal points and outline their responsibilities in compliance and human rights protection. The European Union's regulations on sanctions compliance highlight the necessity of national frameworks to support the role of focal points in managing sanctions effectively (EEAS, 2021, p. 8).

### B. Sanctions for Non-Compliance:

**1. Penalties for Failing to Appoint or Support Focal Points:** Organizations and governments that do not appoint or support effective focal points must face tangible penalties to ensure accountability and adherence to the Guiding Principles on Sanctions, Compliance, and Human Rights. These penalties can include:

- - **Fines:** Financial penalties serve as an immediate consequence for non-compliance. For instance, the European Union has implemented fines ranging from 10,000 to 50,000 euros for companies failing to comply with sanctions, including requirements related to compliance officers and focal points (EEAS, 2021, p. 12). Similar penalties should apply to entities failing to appoint or support focal points.
- - **Operational Restrictions:** Non-compliant organizations may face operational limitations, including loss of business licenses, trade restrictions, or banking freezes. The Guiding Principles highlight the need for measures that ensure accountability without excessively penalizing or disrupting essential services (Guiding Principles, p. 11).
- - **Reputational Damage:** Public disclosure of non-compliance can lead to reputational harm, affecting relationships with stakeholders, customers, and partners. This can incentivize organizations to prioritize appointing and supporting focal points, aligning their practices with international standards.

**2. Avoiding Human Rights Issues:** Penalties for non-compliance must be designed to prevent further exacerbation of human rights issues:

- - **Balancing Penalties:** The Guiding Principles emphasize the need for penalties to be proportionate and balanced, avoiding undue harm to vulnerable populations (Guiding Principles, p. 8). This requires careful consideration of the impact on essential goods, services, and aid delivery.

- **- Maintaining Humanitarian Access:** Penalties should not impede the flow of humanitarian aid or essential services to sanctioned regions. The United Nations Human Rights Council has documented cases where sanctions or compliance measures have hindered access to medical supplies and food, leading to worsening conditions in affected areas (UNHRC, 2022, p. 5). Sanctions for non-compliance should consider these impacts, ensuring they do not block aid or humanitarian support.
- **- Remedial Mechanisms:** The Guiding Principles advocate for mechanisms to address any negative impacts resulting from sanctions or compliance policies, including non-compliance penalties (Guiding Principles, p. 15). These mechanisms should include access to justice and effective remedies for affected individuals and communities.

## V. Conclusion

### A. Summary and Future Directions:

The role of focal points in sanctions compliance is crucial for mitigating the negative impact on human rights. The Guiding Principles on Sanctions, Compliance, and Human Rights emphasize the importance of appointing focal points with expertise in international law, human rights, and compliance (Guiding Principles, p. 16). These focal points should act as intermediaries between stakeholders, provide guidance and support, monitor compliance, and ensure alignment with international standards.

Sanctions for non-compliance should be balanced to avoid exacerbating human rights issues (Guiding Principles, p. 8, 11, 15).

**Need for Ongoing Collaboration:** Ongoing collaboration between states, businesses, and organizations is essential for effectively implementing the Guiding Principles. The document stresses the need for cooperation between these entities to minimize over-compliance and ensure compliance practices respect human rights (Guiding Principles, p. 7). This collaboration includes mechanisms for training, capacity building, and sharing best practices.

The Guiding Principles highlight potential areas for further exploration and refinement, including:

- The integration of compliance mechanisms into national and regional frameworks to ensure focal points are adequately supported.
- The development of remedial mechanisms to address negative impacts resulting from compliance policies, including access to justice and effective remedies for affected individuals and communities (Guiding Principles, p. 15).
- The monitoring of sanctions regimes to ensure they do not impose undue burdens on vulnerable populations or limit access to essential goods and services.

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