



GOOD PRACTICES IN APPLYING FINANCIAL ACTION TASK FORCE STANDARDS

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FATF STANDARDS / REQUIREMENTS

The risk of terrorist abuse is managed best where there are effective, proportionate measures. Over the last few years, non profit organizations (NPOs) have worked tirelessly to raise awareness about the restrictive practices in the implementation of the [Financial Action Task Force \(FATF\) Recommendation 8](#) at the national level, which has resulted in the [closing of civic space](#) in many countries. Although the FATF's Recommendation 8 only calls on countries to review their laws with regards to NPOs, the FATF's [Interpretative Note \(IN\)](#) and the [Best Practices Paper \(BPP\)](#) include within its ambit specific requirements, including registration of NPOs, extensive record-keeping, reporting, and the “know your beneficiaries and associates” principle. At its June 2015 plenary session the FATF adopted a new BPP for the implementation of the Recommendation 8, which clearly states that counter-terrorism measures should not apply to the entire NPO sector (since not all NPOs are at risk of abuse) and stresses that government overregulation of the NPO sector is not a desirable outcome of implementing the FATF standards. In addition, the importance of outreach to NPOs and regular dialogue to develop a collaborative relationship is emphasized.

1) RISK ASSESSMENT OF THE NPO SECTOR

A high quality domestic review of the entire NPO sector is fundamental, and is necessary for the implementation of the FATF standards. Its result should determine which NPOs fall within the scope of the FATF definition of a ‘non-profit organization’ to which the FATF’s counter-terrorism measures should apply, as well as the nature of those measures. The domestic review should clarify whether laws, regulations and other measures already in place are appropriate and sufficient, or whether additional measures are needed to mitigate a potential risk.

2) THE FATF-REQUIRED APPROACH¹ TO PROTECTING THE NPO SECTOR INCLUDES FOUR ELEMENTS:

- 2.1 Ongoing outreach to the sector;
- 2.2 Proportionate, risk-based supervision or monitoring;
- 2.3 Effective investigation and information gathering; and
- 2.4 Effective mechanisms for international cooperation.

To help address typical concerns raised by the FATF or countries, here are concrete [suggestions and examples](#) on how to implement these requirements, without compromising the work of the NPO sector.

2.1 ONGOING OUTREACH TO THE SECTOR

There should be a two-way, ongoing dialogue between governments and NPOs during each step of the process, including domestic risk assessment, development and implementation of measures (legislation and others) and guidance, and during the FATF mutual assessment process.

¹ Interpretive Note to Recommendation 8 (FATF, 2012) para 5.

- Guidance and publications for NPOs: the French Treasury publishes, on its website, a guide of good conduct for associations with regards to the terrorist financing risk to which they are exposed. It warns associations and their staff of specific risks and on how to improve their due diligence measures by putting in place adequate internal policies, procedures and controls. It also explains the FATF's Recommendation 8. The Belgian Ministry of Justice initiated an awareness-raising campaign among NPOs on the potential abuse of NPOs for terrorism financing and engaged in a dialogue with NPOs on the matter.
- Outreach team: The Charity Commission of England and Wales has established a small outreach team to raise awareness on issues such as fraud and abuse, including abuse by terrorist organizations, within several key charity sectors. The aim of the team is to provide effective engagement with stakeholders to enable NPOs to protect themselves from abuse.
- Consultation and dialogue: The Spanish Treasury conducted wide consultations for the development of a best practices and recommendations paper on combating money laundering and terrorist financing for the NPO sector. The paper was published on the government's website and included inputs from officials that have supervisory powers over NPOs, organizations representing the sector, and NPOs. Its aim is to assist officials in ensuring that NPOs are not used to channel funds and resources to persons or entities linked to terrorist groups or organizations.
- Ireland introduced a Charities Regulation Bill in 2009, a new comprehensive framework with a major impact on the accountability and transparency of NPOs (introducing a system of registration, reporting and regulation implemented by a new body). The Bill was developed during a 14-week consultation period, with a specialized website set up to include access to key documents. Over 85 responses (of mostly charities) were received and the final document reflected numerous suggestions and contributions by the public.

2.2 PROPORTIONATE, RISK-BASED SUPERVISION OR MONITORING

Recommendation 8 does not require countries to apply the same measures to all NPOs. Such a "one-size-fits-all" approach is not consistent with Recommendation 1 and the required implementation of a risk-based approach. Countries should implement measures that are "commensurate with the risks identified through their domestic review of the NPO sector and their understanding of the TF risks facing the sector, and should apply enhanced measures where the TF risks are higher".²

- The UK does not mandate a compulsory registration for charities with an income under 5,000 GBP and charities with an income under 10,000 GBP can use simplified registration and reporting process.
- In France, regulations requiring increasing accountability and transparency (the requirement to publish executive compensation, e.g.) target associations with annual budgets of over 150,000 Euros.
- In Croatia, the development of a unified NPO national registry and the making of registration data easily accessible to the public added to the transparency of the NPO sector. However, the publicly-available register protects the personal data of NPO members and beneficiaries.
- Norway encourages voluntary registration of NPOs by providing incentives such as preferential taxation treatment. NPOs are also required to register in order to open a bank account.

² The [Best Practices Paper \(BPP\)](#)



- Malta tightened the regulations on the using of funds by NPOs; however, it provides an incentive for accountability by making fundraising easier for publicly accountable and transparent NPOs.
- The Netherlands is testing out an innovative type of contract (co-regulatory model) between the sector and the government. Some transparency and accountability issues are left to the sector to organise through self-regulation and only if an assessment concludes that this does not work would legislation be considered.
- Norwegian NPOs active in higher risk areas generally receive part of their funding from the government and are subject to a number of supervisory measures, including the requirement to register, report on the use of funds, provide statements of income and expenditure, and ensure that they know their beneficiaries and associated NPOs.
- Ireland adopted a co-regulatory model of fundraising, which includes fundraising administration and operation to be regulated by Codes of Good Practice developed by the charity sector and approved by government.
- Poland introduced a Public Benefit Organizations and Volunteering Act 2003 with a new (voluntary) status for NPOs, imposing strict standards of accountability and transparency in exchange for more favourable tax treatment and other financial benefits. Significant investigation and supervision powers have been vested in the authority; however, inspections can only be undertaken on public benefit organization with regards to the fulfilment of its public tasks and the use of privileges described in the law.
- Audit requirements are also often linked to the size of an organization. This is the case for audits in public benefit foundations in Belgium, Bulgaria, Hungary, Poland, Ireland, Spain, Sweden and the UK.

2.3 EFFECTIVE INVESTIGATION AND INFORMATION GATHERING

Countries need to provide effective cooperation, coordination and information sharing among different levels of authorities (law enforcement, intelligence and regulatory agencies) or organizations that hold relevant information on NPOs.

- Portugal introduced legislation creating the Permanent Liaison Group for information sharing between the tax authority and the financial intelligence unit. This includes sharing relevant information concerning NPOs for potential terrorist abuse, such as donations received by NPOs, donations made by individuals to NPOs, and cross border transfers made through the financial system to beneficiaries in tax havens.
- UK Charity Commission's role includes fighting terrorism, therefore, it has close links with law-enforcement agencies (police and the National Terrorist Financial Investigation Unit). The Charity Commission is also placed within the government's counter-terrorism committee structure, which facilitates information-sharing and investigations.

2.4 EFFECTIVE MECHANISMS FOR INTERNATIONAL COOPERATION

Countries need to establish appropriate information and contact points and procedures to respond to international requests for information regarding particular NPOs suspected of terrorist abuse.

- Several countries, including Canada, New Zealand, the UK and Croatia, have developed online tools to make basic information about NPOs publicly available. These countries provide access



to online databases that allow the general public to search for and access information related to the status, activities, finances and basic information of NPOs.

RECOMMENDATIONS

The most important recommendation to countries when implementing measures to mitigate risk of terrorist abuse of NPOs are:

1. respect for the legal framework and its implementation for international obligations such as the freedom of association, assembly and expression as well as humanitarian law at all levels;
2. requirement for a broader national risk assessment, which would facilitate a targeted approach to identifying only those circumstances or NPOs most at risk and help develop a response accordingly;
3. recognition that no additional regulations should be applied if existing legislation and other measures (such as self-regulation mechanisms) are sufficient to mitigate the risks.

Resources:

The *FATF Best Practices Paper*:

<http://www.fatf-gafi.org/topics/fatfrecommendations/documents/bpp-combating-abuse-npo.html>

ECNL *Study on Recent Public and Self-regulatory Initiatives Improving Transparency and Accountability of Non-profit Organisations in the European Union*

http://ec.europa.eu/dgs/home-affairs/doc_centre/terrorism/docs/initiatives_improving_transparency_accountability_npos_avr09.pdf

EFC & DAFNE *Exploring Transparency and accountability regulation of public-benefit foundations in Europe*

<http://www.efc.be/publication/exploring-transparency-and-accountability-regulation-of-public-benefit-foundations-in-europe/>

HSC & Statewatch *Countering terrorism or constraining civil society: The impact of Financial Action Task Force recommendations on non-profit organisations in Central and Eastern Europe and Central Asia*

<http://fatfplatform.org/wp-content/uploads/2015/08/Countering-Terrorism-of-Constraining-Civil-Society.pdf>