



DRAFT NPO input for European Commission Risk Assessment February 29th 2016 – draft HS 25/2/2016

SUGGESTED Key points – Focus is on financing of terrorism risk:

1. Actual abuse cases of NPOs to finance terrorism are rare

While there have been incidents of abuse in our sector, the evidence suggests the frequency and severity of such abuse is very low¹.

- **FATF typology report**

The Financial Action Task Force (FATF) typology report FATF (2014) is only based on 100 case studies coming from a sector that is composed of millions of NPOs. Knowing that the FATF report includes findings from intelligence and criminal investigation sources, we consider this to be a relevant list of cases of abuse, showing a low percentage of actual risk. *Risk of Terrorist Abuse in Non-Profit Organisations*. Typologies Report. Paris: FATF/OECD. <http://www.fatf-gafi.org/media/fatf/documents/reports/Risk-of-terrorist-abuse-in-non-profit-organisations.pdf>

The report shows that, of the few NPOs that have been found to be funneling money to terrorist groups, a majority were front organisations that served no charitable purpose. Few organisations had funds diverted to terrorists through fraud by a bad actor.

- **European Commission studies to explore the vulnerability of the NPO sector**

EU level Studies to assess the actual abuse of NPOs for criminal purposes and to analyse the existing regulatory and self-regulatory framework of NPOs with regard to transparency and accountability originate from 2008 and 2009. The European Commission commissioned two studies to explore the current situation relating to the vulnerability of NPOs to terrorist abuse in the EU.² These studies point to the need for increased exchange and sharing of best practices among the Member States, but do not substantiate the need for EU-level regulation. **In fact, the research found that proof of actual abuse of NPOs and**

¹ Transnational NPO Working Group on FATF, “NPO Sector Risk and Risk Mitigation Survey Analysis,” February 2014. See Annex III <http://fatfplatform.org/typology-review/>

² Study to Assess the Extent of Abuse of Non-Profit Organisations for Financial Criminal Purposes at EU Level (Matrix, 2008) and Study on recent public and self-regulatory initiatives improving transparency and accountability of non-profit organisations in the European Union (ECNL, 2009).



foundations was limited, and demonstrated that there is no evidence of a vulnerability of the sector compared to other sectors.

- **National Risk assessments**

We have been informed that latest national risk assessments only show rare abuse of the NPO/charity sector for terrorism financing, see for example the recent UK risk assessment.

- **Focus to shift to actual sources of terrorist financing**

It appears that terrorist groups mainly use various other sources of income: Oil sales by IS, various criminal activities, human as well as wildlife trafficking etc and we suggest that measures should focus on actions where funds for terrorist organisations are actually coming from.

We consider that the focus is being switched to all of these known sources rather than what is low risk that has already been severely regulated.

2. Perceived risk of abuse for financing of terrorism according to 2013/2014 NPO research/survey low and compliance mechanisms in place

The global NPO coalition conducted a limited research and drafted a response to the above mentioned FATF Typologies Report: <http://fatfplatform.org/typology-review/>

The response was based on a 2013/2014 survey among NPOs (51 NPOs participated in the survey) to map actual abuse cases and perceived risk and vulnerability. Respondents identified themselves in six categories: Democracy Builders, Development, Grantmaking, Humanitarian, Human Rights Defenders and Peacebuilders. A majority of the organizations (78%) were headquartered in Europe or North America. Their programs operate in all parts of the world, with many working on more than one continent. 70.5% of respondents have activities in conflict or disaster areas and may therefore be considered at a higher risk compared to other NPOs. A large majority (80%) work with local partners in the field. These organizations have special procedures in place to select and manage their local NPO partners. Overall, the respondents perceived their risk of abuse **very low**.

The 2013/2014 NPO survey also revealed that legitimate NPOs generally undertake an own risk assessment, which takes a variety of forms, depending on many variables. These include geographic location, type of activity, history of engagement in the area and more. Thus, the selection of specific risk mitigation measures is best left to the expertise and

discretion of the NPOs, based on their experience and specific circumstances, see Annex 3 in typology comments. A list of examples of standards and guidance provided by NPO umbrella groups and experts are included in the above-mentioned annex 3.

Taking into account the 2013/2014 survey and a number of NPO meetings that the risk appears to be limited to a smaller number of NPOs which fulfil the following criteria:

- Access to significant financial resources (from different sources) and transfer of funds across border
- International scope of activities
- Working with local partner organisations, which may be under suspicion (hence due diligence on partners required)

A March 2015 ODI report on *UK humanitarian aid in the age of counter terrorism: perceptions and reality* highlighted at the time that risks were higher for newer UK charities (eg charities that were established to respond to Syria Crisis). But again this is still an extremely low number.

<http://www.odi.org/publications/9301-counter-terrorism-legislation-law-uk-muslim-ngos-charities-commission-humanitarian>

Several EFC members stated ahead of this consultation meeting that they have not heard of abuse in Europe but some are aware of abuse in the past for example in India - religious organisations and institutions mainly.

EFC members have stated that they have controls in place starting with due diligence on those they fund to checking official lists. Their banks also check and have added a whole layer. And finally their beneficiaries reported on what it takes to open a bank account these days, leave aside receiving foreign funding.

3. Types of NPO abuse according to NPO desk research

The NPO literature review of 2013/2014 (<http://fatfplatform.org/typology-review/>) demonstrated that terrorist financing appears to come from a wide variety of sources, including kidnapping, bribery, smuggling, trade in diamonds and other commodities, and financial fraud, to name a few and that NPOs do not contribute in any significance to the financing of terrorism.

The desk top research showed three distinct forms of terrorist abuse by NPOs: Complicit organizations that intentionally support a terrorist group, legitimate organizations exploited by outsiders and legitimate organizations exploited by insiders. The circumstances



of each type are different and will require a different approach for risk mitigation, prevention and law enforcement.

Input suggested that *Complicit organizations* are the most frequent type of abuse. It also suggested that they are primarily detected through financial investigations, leading to the conclusion that enforcement of these types of organizations is best done through police and/or financial intelligence units. Non profit sector regulation is not as likely to be an effective means of detecting these groups.

Organizations exploited by outsiders face risks, which come primarily from the dangerous environments they operate in rather than a lack of oversight, regulation or due diligence.

The research shows that *exploitation of NPOs by insiders* is very rare and occurs less often than diversion by complicit or externally exploited organizations. Prevention in the form of good governance and adherence to applicable ethical principles contributes to this low rate of abuse.

4. Specific study of 2011 concludes that transparency and accountability rules appear to address potential risks of public benefit foundations

A 2011 EFC/ECNL study analyses whether existing public regulation and self-regulation answer the need for transparency and accountability of public benefit foundations.

<http://efc.issuelab.org/resource/exploring-transparency-and-accountability-regulation-of-public-benefit-foundations-in-europe>

The main **rationale** for rules about transparency and accountability of public benefit foundations is (a) their specific governance structure (foundations generally have no members, no owners or shareholders who would have a vested interest in ensuring the pursuance of the public benefit purpose and controlling governance against abuse), (b) their receipt of a specific public benefit status/tax exemptions (and ensuing increased accountability to the public and the state), and (c) the public role and impact of foundations, many of which aim to tackle the symptoms of society's problems and bring about social change. Another element is certainly the prevention of potential abuse of the foundation sector for criminal purposes such as money laundering or terrorism financing.

The 2011 legal comparative analysis shows that at that time **no obvious/fundamental gaps exist** regarding the legal framework for accountability and transparency of public benefit foundations in Europe. In all countries a certain standard is guaranteed: There are duties in order to ensure that the public benefit foundation uses its assets in order to provide public benefit purposes instead of promoting private benefit purposes. Additionally, there is a fundamental control structure in order to replace the non-existing "owners" of the public benefit foundation, including reporting/auditing requirements, governance requirements, and

state supervision. The usual recipients of transparency and accountability information are the state supervisory authority (in foundation law), the tax authority (in tax law) and the general public (either directly or via the authorities). The information provided appears to be appropriate to enable a fundamental control/supervision on whether foundations fulfil the legal requirements in particular the pursuance of their public benefit purposes (and governing organs pursue their duties of due diligence and care). In general appropriate measures are in place to enforce existing rules. While no fundamental gaps in legislation were detected, there may be **room to improve accountability and transparency in some cases**.

An important tool to improve accountability and transparency **is self-regulation**, as already in place in many countries. Self-regulatory mechanisms are flexible tools to optimise effective operations, accountability and transparency of public benefit foundations through common standards. In many countries one or more initiatives of self-regulation already exist. In some countries the self-regulation model still could be improved. More awareness-raising of the mechanism could lead to greater acceptance of self-regulatory mechanisms in the sector and beyond. Self-regulatory mechanisms tend to lack compliance mechanisms and there is generally a lack of proper monitoring of applications and their impact.

5. Impact assessment of mitigating measures

In assessing the potential risk and in the evaluation of the possible mitigating measures, it is important to consider the overall impact not only on the Not for Profit sector.

European and International based NPOs and foundations play an important role in developing education, peace and democracy building, gender equality, inclusion of discriminated groups, social and health services and employment, in areas of conflict or in areas where the radicalisation discourse is widespread.

Many NPOs have witnessed increased restrictions in their operations in certain world regions (eg in the middle East and north Africa) because of revision of anti-terrorism law, notably affecting service provision and also capacity building activities on democracy, including projects funded by the European Union.

We believe that the European Union and its Member States must while ensuring full respect of the AML/CFT directive should facilitate NGOs operations and cooperation with local associations that contribute to countering terrorism at its roots.