



March 2016 - NPO input for the European Commission
Supranational Risk Assessment on Money laundering and terrorist financing (SNRA)
following an informal meeting on February 29th 2016

I. Key comments on process

1. The EC considers to be required by EU law to understand risks and elaborate policies to address risks of money laundering and terrorist financing.

The 4th AML Directive provides for a legal framework for the EU SNRA based on FATF INR1. **Article 6 of the Directive** foresees the following two tasks for the European Commission:

- a. Conduct an assessment of ML/TF risks
 - b. Make recommendations to Member States on suitable measures to address identified risks on a “comply or explain basis”
2. The EC has developed its **own methodology to do the SNRA**. However, it appears that the methodology is **very much based on the FATF guidance on national ML/TF risk assessment guidance**, for example when it comes to defining of the term “risk” as the “ability of a threat to exploit a vulnerability of a sector” and the suggested five step methodology. From non profit perspective, it is important to stress with regard to the five step approach that once a potential risk (based on a combination of assessed threats and vulnerabilities) is identified, the EU first has to review if **existing measures at EU/national level do not already address the risk – and only as a sixth step get to a potential identification of new mitigation measures**. This approach is also recommended in the FATF Best Practice Paper.

Since the SNRA methodology is modelled after the FATF guidance for national risk assessments, it follows the Financial Task Force premise that NPOs as a sector are particularly vulnerable. NPOs are however the only sector singled out in the SNRA and we wonder why the NPO sector is listed itself as a “macro risk product” and not simply mainstreamed to the macro risk products as the other sectors/users are. **We recommend to not single out the NPO sector as a “macro risk product” itself but to seek to formulate the risk products sector neutral.**

We understand that the following macro risk products were considered to be potentially applicable to NPOs (they actually appear to be the ones that the EC did not link to a specific sector):

- use of cash
- 500 EUR bank notes



- Cash intensive business
- Cash, gold and other precious metals couriers

Moreover, the NPO sector is itself listed as a Macro risk product with the risk products of:

- Collecting funds
- Transferring funds

As stated above it would be more consistent if macro risk products and risk products would be listed sector neutral. “Collection of Funds” / crowdfunding can happen by NPOs but also by private interest organisations. Similarly would transfer of funds also be possible by other entities. **Given that the actual abuse/risk of the NPO sector is considered low – it is not clear why the collection and transfer of funds by NPOs is singled out and for example collection and transfer of funds by for-profit entities is not mentioned in the same way.** Therefore, an activity based risk product would appear more appropriate.

We understand as a result of the first consultation meeting that access to pre-paid visa cards would be restricted. Although this measure is not connected to an NPO assessment of risk, we would like to be further informed and consulted on the practical implications. We are in fact concerned that decisions could have a negative impact on social inclusion as these cards are also used to prevent over-indebtedness, facilitate responsible and limit theft for youngsters, and travellers (including NGO staff) .

We are also aware of concerns linked to the use of social network, websites, google docs by terrorist groups, as well as piracy or identity thefts carried out by those groups. Nevertheless it is critical that future measures to build the capacity and means of NPOs to prevent attacks, rather than restricting their expression.

3. Consultation process

The Process appears well designed, however, it would be useful to share draft papers/interim notes with a wider NPO sector. The number of NPOs invited to the consultation will be happy to share the intermittent outcomes of the process, draft reports, within their networks so as to ensure participation from a broader and more diverse group of NPOs.

NPO sector would also be interested to review draft assessment of threat and vulnerability and level of risks and hence suggests that this is included in the consultation process.

II. Key points on financing of terrorism risk by NPOs

1. Wider impact 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 of such measures and to ensure that these are not counterproductive to the goals they try to achieve.

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.

They also contribute to the fight against corruption and money laundering acting as watchdogs and whistleblowers, but also through advocacy and projects contributing to education, human rights, social inclusion, or the protection of the environment.

The investments by development, democracy, human rights donors both private and public have proven to lead to conditions for social development that contribute to stable and prosperous societies that also benefit the private sector. For the private sector the most important indicator for investments decisions is whether the national government is stable on the longer term i.e. is there good governance (World Economic Report on Global Risks 016) Good governance has a direct correlation with democracy and human rights indicators. So measures, including CTF measures that would inhibit space for investments in democracy, human rights etc , for civic space are in the long run counterproductive.

The SDGs acknowledge the importance of investing in fragile countries to prevent conditions conducive to violent extremism, terrorism, criminal networks. Investments in development, peace, governance, civic space are therefore pivotal.

A move towards zero risk approach has to be avoided by the guidance of the EU SNRA. The current problems with de-risking by banks have led to problems for NPOs active in the humanitarian domain (see Thomson Reuters Foundation recent article “Syrians suffer as anti-terror laws squeeze charities” <http://news.trust.org/item/20160224000357-rtjoh/?source=fiHeadlineStory>). It also led to asks by banks to publically more known organizations to “act as shields” for smaller e.g. human rights organizations active in high risk areas in relation to transfer of cash. In essence it leads to “market failure” by banks, i.e. entire sectors, countries, clients/NPOS! are not any longer served. However, private business seems to have had experienced less problems. Are they not considered at risk?

The new UN prevention of violent extremism plan explicitly mentions the role of civil society in working on conditions conducive to prevent Violent Extremism and the Global Counter Terrorism Forum launched a fund for countering violent extremism activities at grassroots via local organizations (GCERF) – all require civic space and taking risks.



However, many NPOs have witnessed increased restrictions in their operations in certain world regions because of anti-terrorism law, notably affecting service provision and also capacity building activities on democracy, or even freedom of association.

Some of the measures in place not only lead to restriction of civic space, but are a source of further corruption, such as public administration being the mandatory receiver of funds to be transferred to national NPOs (eg Egypt).

We also alerted by increasing restrictions in EU countries because of the administrative measures related to anti terrorism.

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

2. 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*, <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 funnelling 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

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/>

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

- **National Risk assessments appear to give same picture**

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.

3. 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

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).



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 in a survey conducted within the EFC membership in February 2016 ahead of the February 29th consultation meeting that they have not heard of abuse in Europe but two members are aware of abuse cases in the past for example in India – faith based organisations and institutions mainly.

EFC members also stated in this context 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 of processes. And finally they recalled that several of their beneficiaries reported on what it takes to open a bank account these days, leave aside receiving foreign funding.

4 . 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.

5. 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.