

**NOTE (17/03/2017) – prepared by EFC, ECNL, HSC and CSE**  
**NPO input for the European Commission – March 2017**  
**Supranational Risk Assessment (SNRA) on**  
**Money Laundering (ML) and Terrorism Financing (TF)**  
***following a consultation meeting on March 14<sup>th</sup> 2017***

**I. Key comments on draft EC paper shared by EC March 9<sup>th</sup> 2017**

**We understand from the March 14<sup>th</sup> consultation meeting that there is not enough time within the current SNRA analysis period to re-open the risk analysis related to NPOs but we would welcome if the following 4 key points could be taken into account for the final version of the paper. In the current political climate in which the situation has become more difficult for civil society in several EU Member States, we are of the opinion that extra caution needs to be taken when drafting policy papers/assessments on NPOs being potentially at risk for terrorism financing:**

**1. Analysis to distinguish more clearly between collection and transfer of funds**

In the draft EC analysis, the two NPO risk scenarios related to NPOs are not clearly distinguished (the product currently only mentions “collect”), neither for defining the scope, nor related to the potential threat or vulnerability scenario, while in reality fundraising/collection and distribution of funds are distinct actions with potentially different TF risks, and with separate legislation and NPO practice to mitigate potential risks. If both are to remain included in the same section of the EC paper, it would be good to distinguish the two more clearly and to amend the title to ensure it covers the two scenarios.

**2. “Expressive” NPO activities should not include party political engagement**

The draft suggests that expressive NPOs may engage in party political activities, whereas party political engagement is not allowed in most member states. The reference to political parties should hence be removed, as it is unnecessary for the purpose of the risk assessment and can potentially create confusion.

**3. Be more clear on which NPOs are considered higher risk based on the risk-based approach**

The draft analysis of the EC should take a risk-based approach in line with FATF Recommendations 1 and 8 (R1 and R8) and their respective Interpretative Notes (IN). According to the risk-based approach only a subset of NPOs can be considered to be at risk based on identified risk indicators, and not the entire NPO sector. It would be helpful if the EC could more clearly define which subsets of NPOs are most at risk from an R8/IN perspective and the precise **risk indicators** on which this is based (e.g. NPOs in proximity

to a terrorist threat and/or high risk populations) and list them in one section – e.g. as follows:

- Humanitarian organisations are inherently more at risk (if in proximity to a terrorist threat and/or high risk populations, which should be added) – but paper suggests that measures appear to address risk.
- Service NPOs, which are located in conflict/war areas, high-risk countries or in contact with high-risk customers, in particular when engaging in cash transfers.

#### 4. Analysis of whether existing measures for NPOs potentially address the risks

Once the subsets of NPOs considered to be at risk are more clearly spelled out, the paper could more explicitly review if existing EU and national measures and (self) regulatory frameworks already address those risks. Given the time constraints maybe the following could be spelled out:

- For humanitarian (and expressive/service organisations?), funded by the EU/bi-laterals, the monitoring appears in place.
- For service-delivery NPOs and other subsets considered to be at risk, specific national measures could be mentioned, which may differ from country to country. That diversity, however, does not necessarily imply less effective risk mitigation measures. The NPO sector is regulated by a system of civil law/tax law/charity law/ML and CFT laws, which can be and are rooted in the different cultural and legal traditions. Though different, it is evident that national approaches are in place in many cases.
- Even though NPOs are not directly targeted by the AMLD, the national implementation rules do also apply to them via rules on the banking sector/financial services, etc. and on Beneficial Ownership.
- **Controls of collection of funds within EU seem quite good. Some weakness is identified when dealing with transfer of funds or expenditure outside the EU.** Again reference should be made to the EU AMLD framework and respective implementation rules covering some risks related to money transfers via banks/financial service providers.

There is mention that a *balance needs to be found between the CT agenda and the legitimate objectives of humanitarian NPOs*, and we want to argue that this balance needs to be found for all NPOs. And to make sure that the outcome of the EU SNRA process does not impact the fundamental freedom of association.

## II. Comments on CT risks mitigation measures

Following the March 14<sup>th</sup> consultation meeting, we would like to recall the following comments on possible mitigation measures:

### 1. On the three options listed:

In terms of possible terrorism financing risk mitigation measures, the draft text lists three options: what they would look like should be spelled out, along with which concrete risks they seek to address:

- A: Baseline scenario, i.e. no specific action required except the implementation of the AMLD4 (**preferred scenario**)
- B: Non-regulatory options, i.e. non-legislative measures that could be suggested at sectoral, national or EU level (**could provide useful strengthening of existing national and EU-level regulatory efforts, see more below**)
- C: Regulatory options, i.e. legislative initiatives at EU level (**We do not see room for further EU-level regulatory options – current risks seem sufficiently addressed by national and EU-level regulatory actions and could be further strengthened by non-regulatory options; where there is room is in legislative/non-legislative moves towards ensuring better access for NPOs to banking services and formal channels for cross-border transactions.**)

Here are some ideas for soft measures under option B):

- bank de-risking should be addressed through multistakeholder exchanges involving, potentially, banks/businesses/regulators/NPOs) and other avenues to ensure better access to financial services/bank accounts.
- ensure better NPO involvement in member-state/national level Risk Assessments (RAs) and the EU SNRA, as well as the evaluation process at all stages (so that they are not only able to raise awareness but also provide valuable input and information about the sector and thus make both processes more effective in implementing FATF standards/EU policy/national efforts).
- involve NPOs in the development of informational and awareness programs designed to counteract ML/TF abuse (at member state as well as at the EU level)
- value and encourage the existing awareness-raising initiatives in the NPO sector and support them by providing awareness-raising materials (at member state as well as at EU level)
- provide for regular analysis of the NPO sector through research

### 2. No rules-based approach can provide for zero risk

Appropriate rules on transparency and accountability appear to be in place in most EU countries but an entirely "rule based" approach is unlikely to address potentially identified risks. There is no zero-risk approach. In addition, a rule-based approach which affects the entire non-profit sector is not in line with FATF standards, but an intelligence-based or

informed and targeted approach would be. There may hence be room for self-regulatory measures around mitigating terrorism financing risks.

### **3. 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.

### **4. The work of NPOs contributes to reducing terrorism risks**

European NPOs and foundations play an important role in developing education, peace and democracy, in gender equality, in the inclusion of discriminated groups, in social and health services and employment, and in areas of conflict or in areas where the radicalisation discourse is widespread. They also contribute to the fight against corruption, money laundering and terrorism financing, acting as watchdogs and whistle-blowers.

## **III. Key NPO comments on the SNRA process and wider Counter-Terrorism-policy context**

**Below we recall some of our general comments on the SNRA process and the wider CT policy context:**

### **1. EU Counter Terrorism measures fit for purpose taking a rights based approach**

We consider it very important following recent terrorist attacks, that policy drivers, including the EU, ensure that its policies and suggested measures in this regard are fit for purpose, based on careful assessment and review, and take into account fundamental rights and values.

### **2. Important to cross-check EU initiatives with global Counter Terrorism Policy and member-state-level action**

Actions emanating at the EU level must be co-ordinated with existing efforts at the UN, FATF and member-state level. There has to be a clear strategy of why certain measures are suggested/adopted at EU level (as implementer of existing UN/FATF policies or as own policy) and some at member-state level. In the context of the EU SNRA, the EU needs to be aware of and link up to national FATF risk assessments/evaluations and references to national risk assessments should be more clearly spelled out.

### **3. Important to ensure policy coherence between various EU initiatives**

It is important to carefully cross-check the SNRA exercise with existing EU Counter terrorism and Counter-Terrorism-financing measures already in place or underway. Since several different sections of the EU are engaged in policy (EEAS, DG Justice, DG Home, DG Devco, DG ECHO, DG NEAR, DG Tax), it is essential to be clear, in terms of

coherence, where the competences lie and the effectiveness of existing and potential new policy.

**4. Need for a more open SNRA consultation process with the wider NPO sector**

Given the diversity of the NPO and philanthropy sector, it is important that the consultation related to the SNRA process is open and enables participation of the wider NPO sector. Information and documents for comments should be published on the EC website to ensure that all interested parties can review and comment. Deadlines to respond to draft papers should allow for interaction with the wider sector.

**5. Need for ongoing dialogue between the EU and the NPO sector on ML and TF issues**

There should be continued dialogue between the NPO sector and policymakers to explore how the objectives of ML and TF risks can be addressed without unnecessarily restricting the operating environment for NPOs, see also the improved dialogue of the NPO sector with FATF on the matter.