BEYOND FATF RECOMMENDATION 8: HOW ANTI-MONEY-LAUNDERING (AML) AND COUNTER-TERRORISM FINANCING (CTF) MEASURES IMPACT NPOS IN EUROPE

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Summary

Non-profit organisations (NPOs) in Europe are impacted by various policy frameworks, often missed at first glance. The Financial Action Task Force (FATF)'s 40 Recommendations on combating money laundering and terrorist financing is one such, with its Recommendation 8 dealing with NPOs and calling upon states to adopt measures towards those NPOs identified to be at risk of terrorism financing. **Other FATF Recommendations and EU-level policy, which target other sectors/players, also impact NPOs, either directly or indirectly**. While further analysis is needed to fully map and analyse the scope of the impact on NPOs, this paper aims to start outlining the consequences of wider AML/CTF rules for NPOs with a focus on rules related to transparency and beneficial ownership of legal entities and legal arrangements.

Of particular interest are **FATF Recommendations 24 and 25, which require countries to enhance the transparency and availability of information around beneficial ownership** (owners or controllers of legal entity)[1] of legal persons and legal arrangements, in order to ensure that beneficial owners are not being misused for purposes of money laundering or terrorism financing. The *beneficial ownership information* concept is designed primarily for the for-profit corporate world, with its clearly identifiable 'beneficial owners'. However, Recommendations 24 and 25 appear to apply to all legal entities, including NPOs. As NPOs do not have beneficial owners, since they benefit the general public and not private interests, there is a need to ensure that the application of 'beneficial owner' requirements at the national level either exclude NPOs or are adapted to reflect the nature of NPOs[2].

FATF Recommendations 24 and 25 are being implemented at the EU level through the **4th Anti-Money Laundering Directive** (in the process of being amended in line with the 2016 EC Counter Terrorism Action Plan[3]). This Directive goes beyond Recommendation 24 and 25, and requires "publicly available[4] registers of beneficial owners of all legal entities", with current proposals being made to extend this level of transparency to trusts and similar legal arrangements as well. Therefore, when assessing potential policy impact on NPOs in Europe, the FATF Recommendations need to be analysed in conjunction with the EU Directive.

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[1] **Beneficial owner** according to the FATF glossary refers to the natural person(s) who **ultimately owns or controls** a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those **persons who exercise ultimate effective control** over a legal person or arrangement.

[2] The FATF calls for adjusting the Recommendation to different legal persons

[3] The Directive, which sets out a framework designed to protect the financial system against the risks of money laundering and terrorist financing is, to a large extent, based on Recommendations adopted by the FATF. The Directive was adopted in May 2015 to improve the effectiveness of the EU's efforts to combat the laundering of money from criminal activities and to counter the financing of terrorist activities. http://europa.eu/rapid/press-release_IP-16-2380_en.htm

[4] For legal entities, access is given to those with legitimate interest

Parallel to this, , the European Commission launched an **EU Supranational Risk Assessment** (SNRA) exercise in February 2016 which resulted in the publication of a report in June 2017[5] analysing terrorism financing risks facing the internal market and proposing mitigating actions, including not only recommendations to Member States but also action at the EU level. The report considers NPO risk and suggests greater attention towards NPOs during the national-risk-assessment exercises undertaken, as well as some soft law measures at the European level. **It is, therefore, imperative that the sector engages[6] in and around this process.**

Finally, several FATF Recommendations[7] and EU measures have resulted in **decreased NPO access to financial services from banks,** which are imposing tighter Customer Due Diligence (CDD) mechanisms. More research and strategic analysis is needed to develop concepts to counter/engage around this trend and this paper suggests some ways forward.

1. FATF Recommendations - beyond Recommendation 8

1.1. NPOs as "obliged entities"?

Beyond Recommendation 8[8], FATF Recommendations, specifically those regarding AML issues, are generally targeted towards a narrowly-defined group of "obliged" entities – a country's financial institutions, natural or legal persons that provide money or value transfer services (MVTS) and designated non-financial businesses and professions (DNFBPs)[9]. They generally do not apply to NPOs, unless NPOs fulfil the criteria of "obliged entities"[10].

However, **several countries have introduced AML/CFT rules which target NPOs as obliged entities, appearing to go beyond what the FATF standards recommend.**

> For example, in **Azerbaijan**, during recent audits conducted by the Ministry of Justice, many NPOs were penalised (approximately USD 5,000 each) for alleged failure to exercise sufficient internal control in order to prevent ML/TF. Azerbaijan's AML/CFT Law[11] stipulates that non-governmental or religious organisations, part of whose activities consist of collecting, delivering or transferring funds, are all "*monitoring entities*" for the purposes of the law. They are required to identify and verify the customer, beneficial owner or authorised representative, to keep records and information on them, to ensure that all customer and transaction records and information (documents on due diligence) are made available to the supervising authorities on a timely basis and to apply internal AML/CFT control systems. The Ministry of Justice monitors the

[5] http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=81272

[6] EFC, ECNL and HSC were actively engaged in this process during 2016/2017 in collaboration with other European civil society networks.

[7] For example, Recommendation 10 on Customer Due Diligence and Record-keeping, Recommendation 16 on Reporting of Suspicious Transactions and Compliance

[8] R10, R11, R20, R22, R23

[9] DNFBPs - include casinos, real-estate agents, dealers in precious metals and stones, lawyers, notaries, other independent legal professionals and accountants, trust and company service providers.

[10] Initial analysis suggests that NPOs could be considered an obliged entity in the context of FATF Recommendations only in specific cases, e.g., if they were service providers for external clients involving financial or real estate transactions or if they are traders in goods with cash flows of a certain size.

[11] http://www.fiu.az/images/documents/en/laws/law_767.pdf

compliance of NPOs with the AML/CFT Law. The FATF-regional body's (Moneyval) evaluation report (done before the revision of Recommendation 8 though) for Azerbaijan from 2014 cited this as a positive measure.[12] In addition, it is implicit from the report that the Ministry of Justice uses these provisions to investigate NGOs, as evidenced from the widely-criticised clampdown on civil society in 2013.[13]

A similar inclusion of NPOs as "*monitoring entities*" for AML/CFT purposes was attempted in Macedonia during 2014 but later repealed by Parliament.

Even if NPOs are not considered to be "obliged entities", NPOs are impacted by other FATF Recommendations because NPO service-providersm, such as banks and financial tax advisors, are. This means, that service providers have to report on NPOs as their clients, and have customer due diligence (CDD) measures to comply with. Given credit institutions, financial institutions, auditors, accountants and tax advisors have been obliged to identify their contracting partner (which could be an NPO) and the beneficial owner, NPOs are increasingly facing additional administrative burdens in this regard.

1.2. FATF Recommendations 24 and 25 on transparency and beneficial ownership, and their application to NPOs

Recommendations 24 and 25 appear to cover a wide group of legal entities and legal arrangements[14] FATF has a long history of facilitating transparency and access to beneficial ownership information on legal persons and arrangements[15]. The revised standards as they stand now clearly distinguish between basic ownership information (legal owners of an entity) and beneficial ownership information (the persons who ultimately own or control that entity).

FATF Recommendations 24 and 25 require countries to increase transparency around legal entities and legal arrangements and information on **beneficial ownership of legal persons and legal arrangements**, e.g., to provide for adequate, accurate and timely information so that it is clear who owns the entity and what the control structure is. Countries should ensure that this information can be obtained or accessed in a timely fashion by competent authorities. There is no mention/intention of making this information available to a wider circle.

According to the glossary to the FATF Recommendation, *beneficial owner refers to the natural person(s) who ultimately owns or controls the costumer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement*

[12] Para 1220: " The sector is now subject to monitoring and the vulnerability to the financing of terrorism has been considered. The sector is also subject to the provisions of the AML/CFT Law and as such has been included within the definition of "monitoring entities". The sector is also subject to AML/CFT supervision in accordance with the AML/CFT Act", Report on 4th Assessment Visit, Moneyval (2014)40, https://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round4/AZE4_MER_MONEYVAL(2014)40_en.pdf

[13] Para 1200: "The Ministry of Justice advised the evaluators that in 2013 they reviewed the activities of seven organisations. A review includes looking at whether proper identification of the people involved has been undertaken, what internal controls are in place and whether any unusual transactions have taken place. These reviews resulted in one criminal case being opened which does not have ML elements but involves corruption, " ibid.

[14] Recommendations 24 and 25 explicitly target all legal persons and legal arrangements.

[15] The 2003 FATF standards on beneficial ownership were strengthened in 2012.

In-country implementation of the FATF Recommendations on transparency and beneficial ownership has proved challenging, prompting the FATF to develop a guidance paper in 2014. The aim of this paper is to assist countries design and implement measures that will deter and prevent the misuse of corporate vehicles such as companies, trusts and other types of legal persons and arrangements for money laundering, terrorist financing and other illicit purposes. **The focus clearly is on corporate structures, with shareholders and private-interest beneficiaries, the controls of which may be** circumvented by known or suspected criminals. Following a call from the G20 Finance Ministers and Central Bank Governors in April 2016, FATF issued a report to improve implementation of these standards (in collaboration with the Global Forum on Transparency and Exchange of Information for Tax Purposes)[16]. The FATF Recommendations and guidance, however, do not give any clear indication on how the concept should be applied to NPOs.

The key issue for NPOs in the context of Recommendation 24 is that it applies broadly to all "legal entities", which includes non-profit organisations (NPOs)[17] **even though the Recommendation appears to be designed for the for-profit corporate sector.** The definition in conjunction with the FATF 2014 guidance, however, makes clear that it also applies to NPOs, which are incorporated as legal entities and may take a variety of legal forms such as foundations, associations, limited liability companies or cooperative societies, depending on the jurisdiction. While transparency around decision making is more easily applied to the non-profit sector, the concept of beneficial ownership does not work quite as easily for non-profit organisations. NPOs, by definition, **do not have beneficial owners given** they benefit the general public. NPOs should therefore be excluded from providing beneficial ownership information as such and be asked to consider reporting on senior management/decision-making structures. The FATF calls for the adjusting of the Recommendation 24 to different legal persons.[18] Our initial review of the practical application of this, however, shows that this is rarely done and as of now there is insufficient guidance on how it would apply to NPOs.

With Recommendation 25, the FATF definition of beneficial owner also applies in the context of **legal arrangements**, *meaning the natural person(s), at the end of the chain, who ultimately owns or controls the legal arrangement, including those persons who exercise ultimate effective control over the legal arrangement, and/or the natural person(s) on whose behalf a transaction is being conducted*. The specific characteristics of legal arrangements and their different applicable laws make it more complicated to identify BO in practice. It is not clearly defined which type of legal arrangements (trusts and similar

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16 http://www.fatf-gafi.org/media/fatf/documents/reports/G20-Beneficial-Ownership-Sept-2016.pdf

17 "*Recommendation 24 applies broadly to "legal persons" meaning any entities, other than natural persons, that can establish a permanent customer relationship with a financial institution or otherwise own property. This can include companies, bodies corporate, foundations, anstalt, partnerships, or associations and other relevantly similar entities that have legal personality. This can include non-profit organisations (NPOs) that can take a variety of forms which can vary between jurisdictions, such as foundations, associations or cooperative societies* ", see FATF guidance_point 24: http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf

18 Recommendation 24 para 17: "... countries should ensure that similar types of basic information should be recorded and kept accurate and current by such legal persons, and that such information is accessible in a timely way by competent authorities".

legal arrangements) would be covered by Recommendation 25. The FATF guidance paper calls on countries to ensure that there is information on trusts, including information on the settlor, trustee and beneficiaries or class of beneficiaries. The FATF guidance in this context also lists measures, which improve the transparency of trusts such as establishing registration or other regulatory regimes for charitable trusts, offering the impression that charitable trusts would also be covered in addition to private interest trusts.[19] Given that the FATF recognises that many countries do not have trust law, it is not yet clear on which similar structures should be covered by Recommendation 25, if any. Clearly, information is again foreseen to be accessed only by competent authorities (in particular law enforcement authorities).

FATF's own assessment (through peer reviews) of country-level implementation of the revised 2012 standards revealed some significant challenges on the beneficial ownership question for legal persons and arrangements. Only two out of the nine countries evaluated since the standards were strengthened in 2012 had effective measures in place to prevent misuse of legal persons and arrangements. Specific problems identified in the implementation included: lack of accessible information on company registration; lack of implementation of customer due diligence measures; lack of sanctions on companies not keeping relevant information up-to-date; data protection and privacy laws[20].

There is little understanding on how these rules are applicable to NPOs (be they legal persons or legal arrangements/trusts) . Therefore, additional research and guidance is needed on if and how countries should apply the beneficial ownership requirements to NPOs.[21]

2. Implementation of FATF Recommendations at EU level

The EU, while implementing FATF policy, is also developing its own counter-terrorism and money-laundering strategy, which, in part, goes beyond what the FATF recommends. The 2016 fourth Anti-Money Laundering Directive (hence referred to as "Directive"), which sets out a framework designed to protect the EU internal market from the risks of money laundering and terrorist financing, is to a large extent based on recommendations adopted by the FATF. However, **the Directive goes beyond FATF Recommendation 24 in that it makes publicly-available central registers of beneficial ownership of legal entities a requirement.** Furthermore, some NPOs could also be considered obliged entities under the Directive if they fulfil certain requirements and hence be subject to reporting requirements under the Directive, see more below.

2.1. NPOs as obliged entities under the EU Directive?

Initial analysis suggests that NPOs could also, in specific cases, be considered obliged entities as defined in Article 2 of the Directive. These include NPOs providing services for external clients involving financial or real estate transactions; those involved in the

[19] see FATF guidance point 56: http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf

[20] See page 4 of the 2016 FATF report to the G20 on BO: http://www.fatf-gafi.org/media/fatf/documents/reports/G20-Beneficial-Ownership-Sept-2016.pdf

[21] In 2015, Transparency International carried out an assessment of the implementation of the G20 Principles on Beneficial Ownership, which sets out a framework intended to improve the transparency of beneficial ownership of companies and trusts. However, the assessment report does not review how beneficial ownership is or is not applied to the NPO sector. "Just for Show": http://www.transparency.org/whatwedo/publication/just_for_show_g20_promises

creation, operation and management of trusts, companies or similar structures; those who trade in goods and have a cash flows of a certain size; or those who provide gambling services. Some NPOs operate companies in order to undertake economic activities, and others run lotteries – activities which may bring them under the purview of Article 2.

If NPOs were considered to be "obliged entities", they would need to fulfil the obligations laid out in the Directive, namely:

- Identify and verify the identity of their customers and of the beneficial owners of their customers (for example, by ascertaining the identity of the natural person who ultimately owns or controls a company), and to monitor the transactions of and the business relationship with the customers;
- Report suspicions of money laundering or terrorist financing to the public authorities - usually, the financial intelligence unit; and
- Take supporting measures, such as ensuring the proper training of personnel and the establishment of appropriate internal preventive policies and procedures.

These additional administrative measures would further burden the sector, especially small-sized organisations, and cause the re-routing away of resources from the actual implementation of activities. It is also questionable whether these commercial-style obligations are proportionate and appropriate in the NPO context.

Further, Article 4 of the Directive states that Member States should extend the application of the Directive to those entities ***engaged in activities particularly likely to be used for money laundering or terrorist financing purposes***. A blanket coverage of NPOs under this provision is uncalled for, particularly in light of the recent revisions of FATF Recommendation 8 which calls for measures to be focused on those NPOs identified to be at risk.

Attention should also be focused on ensuring that countries have the **appropriate guidance on implementing the 4th AMLD, given countries may over-regulate and consider NPOs obliged entities even when they are not.**

> Example: The Bulgarian measures against Money Laundering Act[22] treats all non-profit entities, regardless of their purpose and scope of activity, as "*obliged entities*" with a full set of obligations and requirements for AML/CTF purposes. This includes registering with the National Security Agency (SANS), adopting internal rules for the control and prevention of money laundering and terrorism financing (and approval of rules by the President of SANS), and the obligation to identify clients, partners and others with whom the NPO has established relations (customer due diligence procedures). It also requires NPOs to declare the origin of funds upon receipt of payment, to inform SANS when making cash payments above a certain value, to collect information if in any doubt about money laundering and notify the SANS accordingly, to disclose information based on suspicion (suspicious transactions reporting), as well as to keep records and information. These requirements go beyond the FATF Recommendations (including beyond Recommendation 8).[23] NPOs are subject to heavy fines, for example, those that do not fulfil their obligation to register with SANS within the

[22] http://www.dans.bg/images/stories/EN-acts/zmip-091201-en.pdf

[23] These obligations are included in the FATF AML-related recommendations (namely, R10, R11, R20, R22, R23), but these are not targeted at NPOs at all.

4-month period can be fined between 1,000 and 25,000 EUR.[24] The latest Moneyval country evaluation report for Bulgaria (2013), which was still done under the old Recommendation 8 (hence not fully applying a risk-based approach) acknowledges that the list of entities subject to AML/CFT requirements goes beyond that prescribed by international standards[25]. However, it still regards this system as adequate and largely compliant with FATF Recommendation 8. In fact, the only objection the evaluators raised about the AML/CFT system in place was that there was no obligation for NPOs to hold information on persons owning, controlling or directing the NPO's activities (beneficial owners).[26] In the end, the Bulgarian evaluation report compares the AML/CFT legal framework in Bulgaria not only to the FATF standards, but also to the EU AML Directive and notes that Bulgaria goes beyond both these standards. The sector has raised concern that the Bulgarian approach was not in line with a risk based approach and the requirement for targeted and proportionate measures to address potential risks.

2.2. Beneficial Ownership (BO) registers of legal entities, trusts and similar legal arrangements

The EU, with its 4th Anti Money Laundering Directive, is looking at ways to improve transparency around the beneficial ownership of legal entities, including companies, foundations, trusts and trust-like arrangements. In "EU terms", beneficial ownership means, "*any natural person(s) who ultimately owns or controls…*": For companies/legal entities, this threshold is a 25% share ownership, though the 'senior manager' is considered the beneficial owner when no other beneficial owner can be identified. For trusts, trust-like arrangements and foundations, the 4th Money Laundering Directive suggests that information (or similar information) on the *settlor, trustee(s), protector, beneficiary or class of beneficiaries* be included.

The EU asked member countries to create such BO registers by June 2017, where ownership information on **legal entities** be made available to relevant authorities and those that have to carry out due diligence checks. Access to a limited subset of that information: (name, month and year of birth, nationality and country of residence, and nature and extent of beneficial ownership) should also be given to those with a "legitimate" interest. Who has a "legitimate" interest will be defined by national implementing laws.

For **trusts and other similar legal arrangements**, access to this beneficial ownership information is currently foreseen as limited to the relevant authorities and those that have to carry out due diligence checks.

The matter of access to these BO registers is still being debated as part of the discussion on the revision of the relevant Directive, as some have argued that those with "legitimate interests" should also be able to retrieve information pertaining to trusts and similar legal

[24] A recent case in Bulgaria shows these fines are being enforced: an NGO was registered with the court in 2012, but did not adopt internal rules on AML/CFT control or register with SANS till 2015. This 3-year delay in adoption of internal rules resulted in SANS monitoring its activities on site and scanning all their documentation (financial, contracts, personal files, etc.) for several months. The monitoring showed that there were no violations of AML/CFT measures, but only a delay in submitting the internal rules to SANS. For this, SANS fined the NGO 2,000 BGN (1,000 EUR).

[25] Para 11. Report on 4th Assessment Visit, Moneyval (2013)13.

[26] Para 1183. "The obligation for all the types of the NPOs to maintain and to make publicly available information on persons, who own, control or direct the activities, including senior officers, board member and trustees should be clearly provided", ibid.

arrangements. There is however strong resistance to this from some Member States and parts of the sector.

It is unclear how the issue of **public access to BO registers** will evolve at the country level. Given that it could result in "à la carte" implementation measures, it will be important for the sector to engage around this issue. The nonprofit sector has so far not opposed being included in the EU BO initiative around company and organisations' structures, as long as it is applied in a meaningful way to the non-profit sector. **The concept of "beneficial owners" is designed for the corporate and for-profit sector.** Public benefit organisations do not have "beneficial owners" since they benefit the general public. In these cases, however, information on decision makers, i.e. the board or senior management, should be considered appropriate – information which is, in most cases, already publicly available in either registries or official publications. The sector has however argued that the freedom of association and **privacy rights must be taken into account in this context and that existing company-/foundation-/association-registers should be used for this purpose so as not to create additional structures.**

Whatever avenue is eventually chosen, efforts should be made not to duplicate existing reporting structures and to ensure that data and privacy-protection rules are taken into account.

To accomplish this, guidance for the national level implementation could be developed to clearly state that no additional registers are required, and existing ones can be used to retrieve data needed.

In addition to extending the access to BO information of trusts and similar legal arrangements, the European Commission is currently proposing further ways to tackle the abuse of the financial system for terrorist financing purposes. This is through the **EU Counter-terrorism Action Plan and additional changes to the AML Directive[27], including**:

a) Adopting an EU blacklist to identify high-risk third countries with deficiencies in fighting money laundering and terrorism financing;
b) Ensuring a high level of safeguards for financial flows from high-risk third countries: the Commission will amend the Directive to include a list of all compulsory checks (due diligence measures) that financial institutions should carry out on financial flows from countries having strategic deficiencies in their national anti-money laundering and terrorist financing regimes. The suggested amendments will likely make it much more **burdensome and difficult to engage in philanthropic activities in certain regions** (e.g. to countries with deficiencies in fighting money laundering which are blacklisted by the EU). For example, it could be impossible or much more difficult to send/receive funds to or from these countries or regions. Possible listing includes countries already identified by the FATF as deficient in CT/AML protective measures.[28]

Therefore, there is a need to continue to engage with the EU on this initiative and see how potential problematic provisions can be mitigated, especially for civil society.

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[27] See http://eur-lex.europa.eu/resource.html?uri=cellar:e6e0de37-ca7c-11e5-a4b5-01aa75ed71a1.0002.02/DOC_1&format=PDF ; http://europa.eu/rapid/press-release_IP-16-2380_en.htm

[28] See FATF latest listing, for example Uganda, Myanmar, Bosnia and Herzegovina: http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/?hf=10&b=0&s=desc(fatf_releasedate)

3. Additional mitigation measures for NPOs highlighted by the EU SNRA

The European Commission (EC) undertook its first **Supranational Risk Assessment** (SNRA) (2016-17) to help the EU and Member States identify, analyse and address money laundering and terrorism financing risks for various sectors. The SNRA falls within wider attempts to strengthen EU rules to tackle money laundering, tax avoidance and terrorism financing[29] . It will need to be repeated again in two years' time. It analyses the risks in the financial and non-financial sector as well as looking into newly-emerging risks such as virtual currencies or crowdfunding platforms. The Report includes:

- an extensive mapping of risks per relevant area and a list of the means more frequently used by criminals to launder money;

-recommendations to Member States on how to address the identified risks appropriately, for example, by putting more emphasis on risk analysis, supervising specific activities, other EU-level measures, etc. The SNRA noted that NPOs may be exposed to terrorism financing risks.

The SNRA exhorts **Member States to ensure that national risk assessments cover NPOs in an appropriate manner**. It refrains from recommending new EU legislation, suggesting instead some **EU-level "soft law" measures** such as **more guidance for organisations receiving EU funding and a multi-stakeholder exchange** involving the financial sector engaged with the NPO sector.

The report also recognises the concern that financial institutions may be reluctant to provide financial services to parts of the non-profit sector (so called **bank de-risking**) and that this should be addressed when developing policies in this area.

As mentioned, the EC opted for a soft law approach, to be developed in a participatory manner with the NPO sector, rather than a hard, regulatory approach. This was a specific ask from the European NPOs of the Global NPO Coalition on FATF, under the lead of the European Center for Not-for-Profit Law (ECNL), the European Foundation Centre (EFC) and Human Security Collective (HSC). ECNL, EFC and HSC, in collaboration with Civil Society Europe (CSE), actively engaged with the EC in analysing potential supranational risk. As a follow-up to this process, ECNL, EFC and HSC, in collaboration with CSE, convened NPOs and transparency groups to discuss the results of the SNRA and agreed on steps to further engage with the European Commission around the report findings and measures suggested.

4. FATF Recommendations and EU measures encourage bank de-risking[30]

Several FATF Recommendations[31] and EU policies (in particular the EU AML Directive) have contributed to banks limiting services to NPOs, leading to what is known in common parlance as 'de-risking'. "Enhanced customer due diligence" (ECDD), which means additional scrutiny[32] is required for all non-resident customers, including all transactions with persons and entities in countries that have been marked by the FATF or FATF-regional-bodies during the mutual evaluations as having inadequate anti-money

[29] http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=81272

[30] See recent blog on de-risking here: https://www.opendemocracy.net/ben-hayes-lia-van-broekhoven-vanja-skoric/de-risking-and-non-profits-how-do-you-solve-problem-that-n

[31] For example, Recommendation 10 on Customer Due Diligence and Record-keeping, Recommendation 16 on Reporting of Suspicious Transactions and Compliance

[32] Interpretative Note to Recommendation 10, FATF

laundering and counterterrorism systems.[33] Customer due diligence (CDD) and ECDD are conducted on both the sender and the recipient of the transfer, including the intermediary sending institution. This affects philanthropy and cross-border giving, and fuels the black market, according to the FATF itself. [34]

Smaller NPOs, in particular, are affected as they are commercially not of interest to banks. It is hence recommended that these policies are assessed further in order to understand their impact, especially on small organisations or on organised movements. This will also enable the formulation of potential solutions to improve them from an NPO perspective.

Clear and detailed guidance is needed on how and when "information" obtained during the course of CDD/ECDD is translated into "risk", meaning, at what point do banks conclude that a particular transaction or a client is too risky for them to continue providing services to. In the absence of such guidance, banks appear to be extremely risk averse, to the extent that some NPOs are simply turned away or their accounts/transactions terminated without any explanation.[35] **So far, policymakers, regulators, banks, and other stakeholders have not been able to address de-risking structurally and systemically.** The information and protection of rights of those individuals or entities who are denied financial services (be that a bank account or a single transaction) on the basis of CDD measures should be considered.

In exchanges that the Global NPO Coalition on FATF have had with the FATF Secretariat, as well as with the EU during the course of 2016/2017, it became clear that the issue of de-risking of banks needs further action. More guidance as to how the FATF Recommendations should be implemented have already been issued: e.g., on the risk-based approach for banks and money value transfer services. Apart from legislative approaches, more analysis has been recently conducted on how the de-risking attitude of banks impacts in the NPO sector[36]. More could be done to work towards **solutions** by calling on the corporate-social-responsibility mandate of banks and even of potential reputational issues related to not serving the charitable sector given its important contributions to development/humanitarian and other public-benefit work The World Bank and the Association of Certified Anti-Money Laundering Specialists (ACAMS) held a second roundtable in January 2017 to help promote the access of humanitarian organisations to financial services and to discuss practical measures in terms of

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[33] 59 identified as of February 2016, http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/?hf=10&b=0&s=desc%28fatf_releasedate%29

[34] See: https://paymentscompliance.com/premium-content/news_analysis/de-risking-fuels-payments-black-market-fatf-warns

[35] See examples and recent report http://www.globalcenter.org/wp-content/uploads/2015/11/rr-bank-de-risking-181115-en.pdf

[36] The Charity & Security Network report on Financial Access for U.S. Nonprofits. Financial access difficulties faced by nonprofits include delays in wire transfers, requests for unusual additional documentation, increased fees, account closures and account refusals, see https://www.charityandsecurity.org/FinAccessReport and A report by the International Human Rights Clinic at Duke University School of Law and the Women Peacemakers Program in the Hague analyses how countering terrorism financing rules impact women's rights organising, women's rights organisations, and gender equality, including through de-risking. https://www.womenpeacemakersprogram.org/resources/report-tightening-the-purse-strings-what-countering-terrorism-financing-costs-gender-equality-and-security/

see also recent blog on the issue: https://www.opendemocracy.net/ben-hayes-lia-van-broekhoven-vanja-skoric/de-risking-and-non-profits-how-do-you-solve-problem-that-n

improving relations between NPOs and financial institutions; improving the regulatory and policy climate for financial access for NPOs; and building coalitions for sharing information and best practice[37].

Another de-risking concern that needs further action is related to the restriction or termination of correspondent banking relationships (CBRs) (i.e., the provision of banking services by one bank to another) and account closures of money transfer operators (MTOs). As with NPO de-risking, the termination of CBRs is related to regulation and risk, as also to economics (profitability). FATF Recommendations do not require banks to know their customer's customer. However, given banks remain liable, concerns around their de-risking attitude remain. **More guidance on CBRs is therefore recommended.**

5. Potential actions on beneficial ownership and de-risking issues:

a. Guidance for the NPO sector how to report on its "beneficial owners"

Under the FATF Recommendations, credit institutions, financial institutions, auditors, accountants and tax advisors are obliged to identify their contracting partner (which could be an NPO) and **their beneficial owner**. As a result, **NPOs/foundations increasingly find themselves required by these bodies to sign additional papers/templates and provide additional data/information related to the application of the Anti-Money Laundering Directive at the national level.** Hence **more guidance should be given to NPOs/foundations and service providers** as to how to answer requests by their service-providers, and whether outlining the governing structure instead of naming the (often non-existent) beneficial owner is sufficient.

b. Guidance for governments on how to introduce registers of beneficial owners of NPOs

When developing further action on this, the following recommendations should be considered:

a) First, any further measures proposed for NPOs should consider the existing transparency and accountability measures already adopted through government regulation or self-regulation to avoid overburdening the sector. The guidance could list such measures (e.g., legal requirement for publication of information on NPO internal governance).
b) Second, where there are specific requirements for NPOs, such as the requirement for registers of beneficial owners, then it is important to review whether existing models satisfy this requirement. For example, in some cases, existing registers of NPOs in the countries already include relevant information on NPO governing structure and therefore can provide the information needed, without requiring the duplicating of efforts for AML purposes. Guidance in this case should clearly state that no further registers are needed.

c. Consider actions to limit de-risking of banks

A thorough review and analysis as to how the de-risking attitude of banks can be reversed is needed. Could there be a normative guarantee for NPOs to access financial services? How can clear over-regulation be tackled, e.g., via FATF evaluations? How could soft law approaches/conversations/contracts between NPOs and the banking sector help? How can stakeholder approaches like the World Bank/ACAMS initiative help to develop practical solutions to prevent de-risking of NPOs, including the smaller ones that are

[37] http://fatfplatform.org/wp-content/uploads/2015/02/World-Bank-ACAMS-Report.pdf

especially affected by decreasing risk appetite by banks. Can this approach lead to a discussion about the need to review and revise AML/CFT rules relating to NPOs at the level of Central Banks and Central Banks supervisors?