



Global NPO Coalition submission on the public consultation on draft amendment text concerning the revision of R8 of the FATF Standards and its Interpretive Note

The Global NPO Coalition on FATF welcomes the proposed revision of R8 and its Interpretive Note as part of the process undertaken by the FATF to address the unintended consequences of the implementation of its Standards on the NPO sector and its operational environment.

R8:

The wording of the Standard itself is much clearer now.

It could, however, be further improved:

Countries should ~~review~~ **identify** the ~~adequacy~~ **organisations which fall within the FATF definition** of laws and regulations that relate to non-profit organisations ~~which the country has identified as being vulnerable to~~ **(NPOs) and assess their** terrorist financing ~~abuse risks~~. Countries should ~~apply~~ **have in place** focused and, proportionate **and risk-based** measures, **based on documented evidence of risk, and taking into account existing regulation and sectoral self-regulation measures** ~~without unduly disrupting or discouraging legitimate NPO activities~~, in line with the risk-based approach, ~~to such non-profit organisations~~. **The purpose of these measures is** to protect ~~them~~ **such NPOs** from terrorist financing abuse, including:

- a) by terrorist organisations posing as legitimate entities;
- b) by exploiting legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freezing measures; and
- c) ~~by concealing or obscuring the clandestine diversion of funds intended for legitimate purposes to terrorist organisations~~ **by supporting NPOs to ensure their funds intended for legitimate purposes reach the receiver of such funds safely.**

Rationale for additions:

- Countries should be required to consider the self-regulatory and internal due diligence and risk mitigation measures that NPOs already implement as part of the risk assessment, in order to determine residual risk. Failing to do this could result in countries implementing measures that are duplicative or overly burdensome.
- Countries should use empirical evidence (if any) rather than perceptions of the sector to determine risk.
- Diversion is often used as a scare tactic and politicised by those who weaponise it in the name of reducing aid in challenging contexts. It would serve us all well if the word 'diversion' could be removed altogether. (Wording then also needs to change in B5 of the IN ('to conceal or obscure the use of funds intended for legitimate purposes but **repurposed** for terrorist aims'.))

IN:

A3: 'The ongoing international campaign against terrorist financing has identified cases...': a qualifier would be useful here ('rare cases', 'some cases' – depending on the supporting data and evidence, which it will also be useful to cite).

A4: Amend to ensure this is in line with UN SCR 2462: 'It is also important for such measures to be implemented in a manner which respects countries' obligations under the Charter of the United Nations ~~and, and international law, including~~ international human rights law, and international humanitarian law and international refugee law.'

B5a: insert '**The rare**' before 'Past and ongoing terrorist financing abuse of NPOs requires countries to have in place focused, proportionate and risk-based measures in dealing with identified risks.'

B5d: This section needs an emphasis on rights, due process and procedural safeguards. For example, 'Actions taken for this purpose ~~should, must respect human rights, respect the rule of law, and~~ to the extent reasonably possible, minimise negative impact on innocent and legitimate beneficiaries...'

B5d: Delete the last line ('However, this interest...'). Immediacy of action is mentioned earlier in the paragraph. This last line could be used to justify measures that are not proportionate or risk-based.

B5e: To add at the end: 'It is not in line with Recommendation 8 to class NPOs as reporting entities, as though they were financial institutions or DNFBPs, thereby wrongly subjecting NPOs to legal obligations regarding entity level risk assessment, AML/CFT preventative measures, identification of suspicious transactions and reporting obligations and record keeping requirements. This is not the intention nor the purpose of Recommendation 8' (wording taken from draft BPP)

B5f: 'Developing cooperative and meaningful relationships...'

C6c: '**Countries may should also consider, where they exist, self-regulatory and internal transparency and accountability measures already implemented by NPOs as risk mitigation factors.**'

C6d i: 'should use all relevant sources of information...' to add 'taking into account the role of disinformation, often used to smear NPOs and the sector itself in many contexts'

C6d ii: 'could take a variety of forms and may or may not be a written product'. Recommend removing the phrase 'may or may not be a written product', as without a written product (sectoral Risk Assessment), it is difficult to hold a jurisdiction to account for the measures it then puts in place. It will be more prudent to stipulate a written product that is then also shared publicly with the NPO sector (either in its entirety or at least it's findings), in line with the FATF TF Risk Assessment Guidance recommendations on publishing risk assessment findings.

D7a(iii): There is a need to also emphasise the incentivising of financial institutions to encourage conduct of NPO transactions via regulated financial channels, as often it is not NPOs that need encouragement as much as financial regulators and financial institutions that are responsible for hindering such conduct. After 'Countries should encourage NPOs to conduct' add 'and incentivise financial regulators and governments to facilitate'.

Also, after '**the risks of using cash**' to add 'while being cognizant of the fact that NPOs need to be able to rely on flexible and diverse funding channels.' (we are thinking here, for example, of humanitarian funding into Myanmar in the current political context, a lot of which depends on the existing hawala



networks). As many of our Coalition members regularly point out, **informality is not evidence of irregularity.**

D7b: **remove the word 'monitoring' and leave just 'oversight'** (x2). Or replace both with **'accountability structures and additional support to NPOs...'** (x2)

D7b ii: replace 'monitor' with 'oversee'

D7b iii **It has always been the position of the Coalition that this section of the IN has led to a slew of unintended consequences, and that it needs to be moved altogether to the BPP.**

Additionally:

D7b iii: 'Appropriate authorities should be able to apply effective, proportionate and dissuasive sanctions for violations by NPOs or persons acting on behalf of these NPOs'. To add **'NPOs should be duly informed in advance, and rule of law and human rights respected, giving due opportunity for appeal and legal safeguards for NPOs to exercise their right to legitimate defence.'**

D7c i: To add **'in line with international law'** at the end of the sentence

D7c iv: 'is concealing or obscuring the ~~use clandestine diversion~~ of funds intended for legitimate purposes, but ~~redirected-repurposed~~ for the benefit of terrorists or terrorist organisations, that this information..'

E: again, to delete references to 'monitoring' from this section

While the Global NPO Coalition welcomes the draft changes and is hoping that the Plenary approves of these in October, we also know that this alone, while it will help reduce the scope for misinterpretation, will not entirely do away with the misapplication of the Standards. **The current revisions address only one part of the problem that NPOs face – the widely prevalent view in many jurisdictions that all NPOs are risky and conduct illegitimate activities. It does not quite address the other part of the problem: the underlying presumption that all governments are good and well-meaning.** To tackle the latter (so in order to provide guarantees in terms of implementation for the changes suggested to the R8 and the IN), this is what is additionally needed:

- **Amendments to and adaptation in the FATF methodology**, so that egregious cases of NPO sector suppression, overregulation, and de-risking can be identified and reflected by the assessment team and addressed within the MER and the ICRG processes.
- **Appropriate training content for assessors on R8 and IN**, which includes an understanding of the NPO sector and how it operates; an understanding of States' obligations under various international treaties, especially around the fundamental freedoms, international humanitarian law, international human rights law, and international refugee law; and an understanding of unintended consequences of the misapplication of the FATF Standards and their consequences for the sector and for society at large, including examples of positive and negative practices.



Definitions in Glossary:

On a larger point around the **NPO definition** (*...NPO refers to a legal person or arrangement or organisation that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of “good works”.*), while the distinction between a functional and legal definition is well made, the scope of that functional definition is still ambiguous, not helpful enough, and also possibly not adequately reflective of the current threat landscape. It might also be useful to provide examples of NPOs which are outside the scope of the FATF’s definition (cooperatives, mutual and non-financial trust funds, trade unions, political parties, private hospitals/health clinics, private schools/universities/ educational institutions...). This thorny question on the definition potentially calls for its own public consultation.

Beneficiaries: Considering the misapplication of this terminology in various jurisdictions which sees the inclusion of a broader scope of beneficiaries than intended within the R8/IN, we recommend clarifying this definition by adding the text from the now deleted footnote 9 of the IN: ‘This does not mean that NPOs or their financial institutions are expected to identify each specific individual, as such a requirement would not always be possible and would, in some instances, impede the ability of NPOs to provide much-needed services’.