Global NPO Coalition on FATF

INPUT TO FATF UNINTENDED CONSEQUENCES WORKSTREAM:
DE-RISKING/FINANCIAL EXCLUSION

1. NPOs around the world are impacted by issues of financial access – inordinate delays in cash transfers, onerous due-diligence requirements, inability to open bank accounts and arbitrary closure of bank accounts – collectively classed as 'de-risking' activities by financial institutions. De-risking affects all types of NPOs, but especially those that operate in, transfer money to, or are present in high-risk jurisdictions.

2. The increasing focus on access (or difficulties in access) to financial services for NPOs is more than justified given that NPOs account for USD 2.2 trillion in operating expenditures, making the sector 'larger than the GDP of all but six countries' (and still growing). In other significant findings, NPOs account for, on average, 7.4 per cent of the total workforce and 4.5 per cent of gross domestic product (GDP) (rising to more than 5 per cent in many countries).

3. The drivers of de-risking are complex, but the FATF Standards play an outsized role, which FATF guidance alone (on the risk-based approach) has been unable to solve. These Standards are transposed into various national laws, so the line to the Standards when it comes to attribution will likely remain dotted in most cases (unlike the sanctions regime, for example, where the attribution line is quite straightforward). The national judicial and regulatory context then determines how supervisors and financial institutions behave. This behaviour currently leads to the de-risking of NPOs. Therefore, **de-risking, including the de-risking of NPOs, has to be integrated into the Standards and the Mutual Evaluation process as an unintended effect of the FATF process that impacts and undermines the efficacy of the process itself, and which needs systematic monitoring and reporting on through the tool of the Mutual Evaluation.**

4. The de-risking of NPOs is related to the financial inclusion agenda (the billions of 'unbanked' individuals). NPOs are critical to the organizing and capacity building of the 'unbanked' so that they can access the formal financial sector. When NPOs are de-risked, this affects the financial inclusion agenda too. See more here. As the FATF outlined in its report to the G20 leaders in 2018 : 'De-risking remains a challenge for the countries affected. Loss of access to banking services for some remittance service providers and non-profit organisations remains a key concern for the global community. This has a wider impact on financial inclusion and efforts of governments and business sector to provide essential services to those who need help around the world'.

5. **Empirical research**, carried out across the globe, has consistently highlighted the scale of the problem facing NPOs.

   UK: Impact of Money Laundering and Counter Terrorism Regulations on Charities (Charity Finance Group), 79% of charities surveyed said they faced difficulties accessing or using mainstream banking channels and most of them do not know why they are de-risked

USA: Financial Access for US Non-profits (Charity and Security Network), two-thirds of those surveyed reported a problem with financial access, including with delayed transfers, refusals to open bank accounts, increased due diligence, etc. A recent **Yale University** study (forthcoming) has found that the frequency with which these problems occur has increased.

Netherlands: Protecting Us By Tying Our Hands (Wo=Men and HSC) found that 70% of those surveyed, working on women's human rights and gender equality, had faced financial access barriers. More than half of those surveyed said they had resorted to carrying cash to ensure that programmes were carried out.

This report built on the findings of an earlier study (Duke University and WPP) looking at the cost of CFT on gender equality and security.

Yemen, Somalia, Syria, Palestine: Counter-terrorism, bank de-risking and humanitarian response: a path forward (THF, ODI and LSE), found that an environment has been created where security is prioritized over the humanitarian imperative, leading to programmes being delayed to the point where they were no longer relevant, or programmes being occasionally discontinued. The research also found that **Muslim charities have faced the greatest obstacles in accessing financial services** even as they bear greater responsibility in implementation in many regions, and that **de-risking was contributing to war economies and the expansion of informal and potentially corrupt channels for financial access and the transfer of funds.**

Tunisia: Financial Access Issues Facing CSOs in Tunisia (HSC, *et al.*), reveals that 44% of those surveyed have experienced bank de-risking, whether in the form of facing burdensome requests for additional documentation (61%), problems opening a bank account (50%), delays in bank transfers (29%) or a significant **increase in banking fees** (29%). This, in turn, not only impedes charitable activity but also causes money to be driven outside the formal banking sector, thus only increasing TF risk.

Kosovo: Research conducted (CiviKos) reveals that bank de-risking is pervasive. This included the closing of bank accounts without prior notification, higher maintenance fees for NGO accounts as opposed to individual or corporate accounts (sectoral inequity), and unusual due-diligence requirements (resulting from conflation of the 'beneficial owner' with the founder of the organization rather than the person legally authorized in statute).

Mexico, Argentina, Ireland: A study (HSC, ECNL) that seeks to understand the phenomenon of de-risking as it stems from global AML and CFT rules, delving into the practices and perspectives of relevant stakeholders – NPOs, financial institutions, governments, regulators and international organizations – unpick the mechanisms of governance and accountability involved in and through the chain of decision-making.

6. **Cross-country studies** like this one (VOICE) highlight that issues relating to bank de-risking, including blocked or delayed transactions and funds returned, are among the highest ranking impediments for NPOs. This one (InterAction) flags curtailed services to humanitarian organizations by banks and private sector companies in an effort to mitigate all risk to their institutions. And this one (LSE, C&SN) finds that NPOs have robust risk mitigation and due diligence procedures in place to comply with CFT rules and regulations: something that banks and regulators have a limited understanding of.

7. The **European Banking Authority**, on the basis of evidence it gathered recently,
    a. observes that **de-risking is a continuing trend** that has implications from an ML/TF risk, consumer protection and financial stability point of view
    b. revised its ML/TF Risk Factors Guidelines, which clarify that the application of a risk-based approach to AML/CFT does not require financial institutions to refuse, or terminate, business relationships with entire categories of customers that are considered to present higher ML/TF risk
    c. launched a public consultation on changes to its existing Guidelines on risk-based AML/CFT supervision. The proposed Guidelines require competent authorities to take stock of the extent of de-risking in their jurisdiction and **address de-risking in their ML/TF risk assessments**.

   Additionally, the EU has appointed an EU-level contact point for humanitarian aid in environments subject to EU sanctions, clearly acknowledging de-risking as an issue.

8. The **Alliance for Financial Inclusion and CENFRI toolkit** on Inclusive Financial Integrity seeks to align 'financial inclusion and AML-CFT outcomes with respect to the formulation and implementation of related policy and regulation', and emphasizes that NPOs 'are vital for the organizational capacity, capacity building and empowerment of FDPs [forcibly displaced persons], women, MSMEs and other vulnerable groups. However, they are adversely affected by AML-CFT frameworks that are not inclusive and have been on the end of unjustified de-risking. Countries should consider including NPOs as target groups in their financial inclusion agendas and should explicitly link this to the financial integrity strategy'. NPOs have played a critical role during the COVID-19 pandemic, and financial access for NPOs 'should be supported and strengthened', the toolkit states.

WHY WE SHOULD CARE

9. De-risking is undermining the very goals of the FATF Standards by moving money into less-transparent channels (such as cash carry, unlicensed hawalas, etc.). This increases TF risk and decreases the effectiveness of the financial integrity standards.

ONGOING EFFORTS/ADVOCACY:

10. **Data gathering**: The United Nations' Inter-Agency Standing Committee (IASC), the highest-level humanitarian coordination forum of the UN system, now has a live database set up to capture counterterrorism, including CFT, measures affecting humanitarian action and document impact across different contexts. Given the sensitivity of the issue, and confidentiality concerns, data reporting/gathering remains problematic.

11. **Robust sectoral Risk Assessments**, part of the FATF risk-based approach, are key to effective oversight of the NPO sector, as well as to ensuring that the sector is not subject to unintended consequences stemming from the implementation of FATF Standards in country. Currently, not many countries have carried out a proper sectoral TF Risk Assessment, with the sustained involvement of the sector, taking into consideration already-existing laws/regulations and sectoral self-regulation measures. A robust Risk Assessment is likely to also lend comfort to banks, who can then focus due-diligence efforts on the subset of NPOs flagged as potentially being at higher risk of TF abuse. FATF and FSRB jurisdictions should be trained on NPO sectoral Risk Assessments, and assessors sensitized to the topic.

12. **Multi-stakeholder country-level dialogue processes**, to discuss solutions to de-risking: these are ongoing, for example, in The Netherlands, UK, and several countries in the Western Balkans, involving various ministries, private banks, the Financial Intelligence Unit, the regulators, the Banking Association, and NPOs, to try and find solutions to the problem, including addressing the integrity/inclusion policy incoherence, the need for more risk-sharing among stakeholders, and the business and human rights imperative of banks.

13. **Multi-stakeholder international dialogue processes**, to discuss the de-risking of NPOs among international stakeholders. These have involved the World Bank[1] and ACAMS, the Ministry of Finance of the Netherlands, as well as dialogue processes focussed on sanctions (see here and here) along with AML/CFT impacts and the attendant difficulties in money transfers to 'high-risk' jurisdictions.

14. **Supervisors** (supranational and national) should monitor and report on institutional decisions to use enhanced due-diligence in lower risk scenarios. NPO financial exclusion (not just access but usage) should be measured, and guidance to FIs should be clear. This is essential if the current 'zero risk' culture is to be addressed. This is an example of supervisory guidance on customer due-diligence which does not mention the revised Recommendation 8 – common across other such guidance documents seen.
The European Central Bank, for example, has published its expectations on how banks should manage climate and environmental risks in their balance sheets. Central Bank supervisors are beginning to make choices which align with worldwide developments such as climate change and sustainability for peoples' prosperity and wellbeing. Increasing humanitarian need,

[1] This particular dialogue process did not meet its intended goals in the allocated timeframe due to insufficient interest from US Treasury and FI regulators.

accelerated by Covid, demands the swift transfer of money to reach the most vulnerable – currently hampered by bank de-risking.

15. **Risk management and compliance toolkits *for NPOs***, to raise awareness of counterterrorism-related risks so that organizations can identify and mitigate these. See here (NRC toolkit) and here (*Risk Management Principles Guide for Sending Humanitarian Funds into… High-Risk Jurisdictions*, Graduate Institute, *et al*.). And ***for banks*** (NYU Law, ABN AMRO Bank *et al*., forthcoming) on how their internal CDD practices on screening NPOs need improvement. The report approaches de-risking from a human rights and business perspective, making the case that banks' discretion to de-risk NPOs is limited by and should be guided by their responsibility to respect human rights under the United Nations Guiding Principles on Business and Human Rights (UNGPs) and the OECD Guidelines for Multinational Enterprises.

16. **Role of multilaterals in solving de-risking**
    a. **G20**: The need for the G20 Member States and bodies to recognize NPOs as a sector that is negatively affected by bank de-risking and discuss how to address the issue. This could involve **tasking the Global Partnership for Financial Inclusion** (GPFI) to set up a sub-group on financial access for NPOs (or amend the mandate of an existing group, such as the one looking at the impact of de-risking on small and medium enterprises [SMEs]) and monitor the impact of bank de-risking on NPOs. The G20 **could also task the FATF to address the issues specific to FATF-related processes**: the FATF risk-based approach (RBA) and peer evaluation of compliance with this approach needs to be complemented by the training of its evaluators to look into the potential de-risking attitudes of banks as part of the FATF's effectiveness component in its methodology.
    b. **Financial Stability Board**: report SWIFT data related to delays and denials of NPO transfers – part of promoting institutional-level good practice, including specific policy and reporting reforms, to ensure financial access for NPOs.
    c. **Global Counterterrorism Forum (GCTF)** is developing a Good Practice Memorandum on "Ensuring the Effective Implementation of Countering the Financing of Terrorism Measures While Safeguarding Civic Space", also looking at the de-risking of NPOs and possible solutions.

MODALITIES IN TERMS OF THE WAY FORWARD:

17. Even though there are many resources being devoted to the problem, it has not been enough. The FATF has issued guidance over the years on financial inclusion and correspondent banking, attempting to clarify the international Standards to avoid misunderstandings that could contribute to de-risking. This has, however, not been successful in tackling the problem. **Solutions need to move upstream, and this means changes to the FATF Standards, procedures and methodology**.

18. **FATF Standards need to be reformed in a way that incentivizes financial access for NPOs.** The current framework privileges financial integrity at any cost, making overregulation the accepted standard in many countries.

19. A **change in discourse and culture** is needed to solve this issue: this will only come about through a change in FATF Standards, procedures and methodologies.

20. A **shift in the FATF evaluation methodology** could penalize overregulation that leads to overcompliance by financial institutions that then leads to de-risking. The FATF Mutual Evaluation methodology could include a specific outcome for NPOs under Immediate Outcome 10, which would look not only at overregulation (the non risk-based and overzealous compliance with AML/CFT laws and regulations) but also at financial exclusion due to overcompliance by financial institutions and correspondent banks leading to the wholesale, and not risk-based, de-risking of NPOs.

21. **A recognition that de-risking undermines financial integrity,** as mentioned earlier, by moving money into less-transparent channels which increases risk and decreases effectiveness.

22. A **training module** focussing on de-risking and NPOs for both the FATF's Standards training package as well as for the assessors.

23. A **formal recognition of the problem and role of disinformation in de-risking** and a call for states to proactively combat disinformation about NPOs, particularly disinformation that seeks to tie NPOs to allegations of terrorism. What is not commonly recognized is the increase in politically-motivated disinformation manufactured in an attempt to discredit or delegitimize NPOs through accusations of associations with terrorism (see here and here for more). It is important to triangulate negative information found about NPOs, even if the information appears to come from "credible" open sources, or to seek out contrary information on the same NPOs.

24. The culture change needed to solve the problem of de-risking of NPOs will only come about if this **change is wired into the financial integrity Standards** of the FATF. This includes:
    a. monitoring and mitigation of de-risking and financial exclusion behaviour in and through the assessments
    b. changes to the FATF methodology to address NPO de-risking (the relevant Recommendations and Immediate Outcomes)
    c. sanctions for jurisdictions that misapply the Standards

25. De-risking of NPOs is costing lives, and the FATF has a chance to address the issue now through this workstream as well as the ongoing Strategic Review, to ensure that its Standards stay relevant and focussed, and are effective in delivering its mandate of fighting financial crime.