



Review of the Turkish Law no. 7262 on the Prevention of Financing of the Proliferation of Weapons of Mass Destruction

Global NPO Coalition on FATF is deeply worried about latest Turkish legislative changes which have the potential to further restrict freedom of association and to curb non profit activities in Turkey.

The legislation, already labelled controversial by the UN and regional bodies (see Annex 1), came into force on December 31, 2020 under the name of “Law no. 7262 on the Prevention of Financing of the Proliferation of Weapons of Mass Destruction”. The stated objective of the Law is, among others, to implement the Financial Action Task Force recommendations. However, most of the changes related to the non-profit sector either have no direct connection to this objective or provide for measures manifestly exceeding this aim. The Law introduces amendments to seven laws, including the “Law on Associations” and the “Law on Aid Collection”. Furthermore, it was elaborated without any consultation or contribution from stakeholders, particularly from the non-profit sector, despite it being directly concerned by these amendments, and was adopted by the Grand National Assembly of Turkey only 11 days after its submission.

The amendments allow the Minister of Interior to suspend staff members and/or executives of NPOs who are being prosecuted on terrorism-related charges and/or, subject to the approval of the court within 48 hours, to suspend the activities of the relevant NPO. The Law also significantly increases the administrative fines that apply to NPOs which would collect donations through online platforms without getting prior approval by the authorities. It includes several other provisions that allow the authorities to unreasonably restrict the activities of NPOs, including the possibility for the President of the Republic to freeze the assets of an NPO for allegedly financing terrorism, increasing the number and frequency of audits of NPOs and their partners, as well as a ban on NPO activities for individuals convicted of financing terrorism or drug trafficking. Here we note that any legislative measures taken within the implementation of the FATF standards should not be a copy-paste exercise of transposing regulation from some other jurisdiction into its own country context. Moreover, the development of legislative measures and its implementation highly depends on the country context, history, rule of law status and judicial independence.

For those reasons, specifically for Turkish context, these amendments raise serious concerns of further restrictions to NPO activities, which are already facing a long-term crackdown. In recent years, especially following the coup attempt in July 2016, NPO actors and human rights defenders have been continuously targeted with repressive laws and politically motivated criminal and administrative proceedings

aimed at silencing them and obstructing their work. Following the attempted coup, over 1,300 associations and foundations were closed down by executive decree.¹ In the context of a criminal justice system that has progressively lost its independence from the executive and has become more prone to being abused to crack down on NPOs, prominent NPO actors have faced judicial harassment, investigations, conviction and pre-trial detention based on vague and/or spurious terrorism-related charges in the absence of evidence of criminal acts²; the space for NPO work has narrowed dramatically, and the Law poses a dangerous threat to the very existence of an independent NPO sector in Turkey.

Moreover, based on our analysis jointly with Turkish NPOs, the legislative changes do not fulfill the FATF requirements from the standards of the Recommendation 8 nor Recommendation 1.

https://www.tusev.org.tr/usrfiles/images/MaliEylemGorevGucuSivilToplumEN_26022021.pdf

Notably:

- **No risk based / focused approach:** The Law in its current form does not discern the specific subset of NPO identified as vulnerable to be abused by terrorist financing plots. Rather, the measures and statutes of the Law are applied indiscriminately to the entire civil society sector. In other words, the risk-based and focused approach recommended and required by the FATF is missing.
- **No proportionate measures:** The Law imposes disproportionate sanctions – both administrative and criminal including fines and imprisonment. Furthermore, some provisions exceed the FATF requirements.
- **Concerns about effectiveness of the measures:** The Law raises concerns about the effectiveness of the measures, namely whether these would indeed ensure protection of NPO sector from the actual abuses. As remarked by FATF’s Best Practices Manual on Combating the Abuse of NPOs, “one size fit all” approach subjecting all organizations to the same measures is not an effective way to combat terrorist abuse of non-profit organizations and is more likely to disrupt or restrict their ability to carry out their legitimate activities.
- **Lack of outreach:** No public attempt of outreach to non profit sector, or intention to cooperate with NPOs, was observed during the preparation stage of the National Risk Assessment. Similarly, engagement with non profit sector was visibly missing during the drafting of the new Law.

¹ Amnesty International, *Weathering the Storm*, 26 April 2018, <https://www.amnesty.org/en/documents/eur44/8200/2018/en/>

² Amnesty International, *Brief on the human rights situation - Turkey’s state of emergency ended but the crackdown on human rights continues*, 1 February 2019 <https://www.amnesty.org/en/documents/eur44/9747/2019/en/>; Amnesty International report 2020/21, *The State of the World’s Human Rights*, 7 April 2021 <https://www.amnesty.org/download/Documents/POL1032022021ENGLISH.PDF>



- **Divergence from international standards:** Turkey is obliged to adopt counter-terrorism measures into its national legislation in line with its formal commitments to fully execute its obligations arising from international human rights law. According to Article 90 of the Constitution of the Republic of Turkey, as a party to the International Covenant on Civil and Political Rights (ICCPR) and to the European Convention on Human Rights (ECHR), Turkey's domestic laws should only restrict the right to freedom of association in a manner compatible with the Article 22 of the ICCPR and Article 11 of the ECHR. In this regard, amendments introducing overly restrictive measures such as limiting online aid campaigns and stringent frequent auditing for associations (in the context of deteriorating rule of law environment) and increased disproportionate penalties that could be abused to prevent the legitimate/lawful functioning of NPOs do not comply with the principles of international standards.
- **No protection for legitimate NPO activity:** The Law brings more restrictions upon NPO's access to financial resources, and by doing so it discourages activities of CSOs in Turkey.

We ask the Financial Action Task Force (“FATF”) to urge the Government of Turkey to review the Law no.7262, which abuses and contravenes the letter and spirit of the FATF recommendations on Combating Money Laundering and the Financing of Terrorism & Proliferation, especially contrary to the Recommendation 8 and Recommendation 1. Any new measures should be developed in line with the FATF's risk based approach, after conducted detailed and inclusive risk assessment of the NPO sector, and within requirements of Recommendation 8 and Recommendation 1 and with engagement of Turkey's CSOs, including human rights and humanitarian organizations.

Thank you for your consideration.