



Submission by the Global NPO Coalition on FATF to the Financial Action Task Force consultation on guidance for Recommendation 24 and changes to Recommendation 25

December 2022

We welcome the opportunity to contribute to the public consultation on the draft guidance for Recommendation 24 as well as the review of Recommendation 25 with some general reflections in writing, and appreciated the opportunity to discuss this with FATF representatives during the virtual public consultation on December 2, 2022.

As representatives of the non-profit sector, we **support the important fight by the FATF as well as regional and national policymakers against money laundering and terrorism financing**. We also believe, like the FATF, that **measures put in place to deter financial crime must be risk-based and proportionate**, must take into account fundamental Human Rights and freedoms, and must not hamper legitimate charitable activity. The NPO sector **contributes with its own stringent due diligence efforts, awareness-raising exercises and through many of the sectors' activities/programmes** to identifying and mitigating potential risks related to money laundering and terrorism financing.

We are pleased to see that increasing evidence and the outcomes of National and Supranational Risk Assessments show that **risks related to NPOs have been lowered** in recent years. NPOs are generally legitimate actors and many of their activities contribute to lowering or preventing criminal behaviour in our societies. FATF and NPOs share complementary goals in preventing money laundering and terrorism financing, and in ensuring financing streams flow through legitimate, regulated channels, ultimately reaching their intended recipient.

OUR KEY ASKS:

1. Set out clearly in the guidance that the beneficial owner of an NPO is the one directing the organization or the one with whom ultimate responsibility of the organization rests.
2. Make clear in the guidance that the beneficiaries of NPOs are not to be confused with the beneficial owner.
3. Spell out in the guidance that if the information on who is directing/responsible for the NPO is already available with authorities – as it almost always is – then no duplication of information/effort is required.

SPECIFIC CONCERN WHICH REQUIRES CLARIFICATION IN GUIDANCE:

The term '**beneficial owner**' intends to provide transparency into complex for-profit company law structures with the aim of identifying those that benefit financially from such structures. The concept of a beneficial owner as the one benefiting financially in the case of for profit/private interest set-ups



does not fit the non-profit sector which explicitly does not benefit private interests but, rather, the general public. In the case of NPOs, the nature of the benefit is public (downstream) and not private (upstream). Clarification is hence needed on whether and how this policy should be applied to the non-profit sector, given that ownership is a false category as no private gain accrues to those in-charge. Potentially the BO would, in the case of public benefit organizations, be the one **'directing' the organization (the person with whom ultimate responsibility of the organization rests).**

UNINTENDED CONSEQUENCES

The unintended consequences of not making this point crystal clear in the guidance so far is already evident on the ground. Examples include:

- The **common misconception that 'beneficiaries' of charitable programmes are the 'beneficial owners'**. Financial institutions often ask for 'beneficiary' details – this ranges from scholarship recipients (as was the case in a Scandinavian country) to details of refugees benefiting from humanitarian aid (as reported by the Norwegian Refugee Council). **The guidance should make it clear that the downstream beneficiaries of public good are different from the 'beneficial owner' of the NPO (this is usually someone from the executive management).**

Country examples

- **Kosovo:** The [Central Bank of Kosovo guidance](#) stated: 'For entities that may not have shareholders such as non-profit organizations/NGOs, trusts, funds, and other similar legal arrangements, financial institutions shall ensure to identify the control structure and understand the legitimate purpose of the organization, including the identification of members of the controlling body, the supervisory board of directors, founders, executive management, and persons with equivalent or similar positions.' **While the Central Bank provided legitimate examples of options that could meet the BO requirement, Financial Institutions read the guidance as meaning that ALL the entities listed were to be treated as the beneficial owners of an NGO.** This led to the Financial Institutions asking for the details and the physical presence in the bank of all the entities listed: the supervisory board of directors, the founders, the executive management, and persons with equivalent or similar positions. In many cases our NPO partners informed us that the founders, for example, were long dead! So while the intent of the Central Bank was right, the understanding and implementation of the guidance was not. **Clearer guidance would have been helpful in this case,** with the entities listed separated by the word 'OR' instead of commas.
- **Nigeria:** Nigeria's Companies and Allied Matters Act (CAMA) revised in August 2020 is the legal regime governing beneficial ownership applicable to corporate entities. It requires persons who hold significant control (those who exercise at least 5% of the unrestricted voting rights at any general meeting of the public or private company) to disclose the particulars of such control. It also mandates the disclosure of beneficial interests in a company, even where such interests are held through nominal holders or in trust. Disclosures of multiple directorships are now compulsory and there is a prohibition of membership as a director in more than five public companies. The above provisions will help unmask the true human and legal persons behind



corporate entities, help the authorities combat asset shielding and uncover the quantum of interest/power/control they wield in those entities. However, these BO provisions, apply only to private companies limited by shares and to public companies. **In Nigeria, non-profits are primarily registered as Incorporated Trustees or Companies Limited by Guarantee. Such legal arrangements do not have shareholders, nor do their registered trustees have voting rights and weighted shares.** Therefore, our Coalition partners in Nigeria have always argued that CAMA 2020 as well as the numerous legislative proposals (esp. NGO Bills) designed to **regulate and interfere with foreign funding for non-profits under the guise of satisfying beneficial ownership requirements, lean towards overregulation** of the non-profit sector. **Long before the amendments to CAMA, the disclosure of the Board of Trustees was already a precondition for legal registration of non-profits under Part C (now Part F) of the statute.** Regarding the procedure for disclosure, the entity seeking registration must publish the names and designation of all intending trustees for a period of 28 days in two national dailies. This publication serves as a prior public disclosure of the individuals wishing to form a trust. **We feel that this due diligence requirement satisfies beneficial ownership requirements for non-profits in Nigeria.** The revised CAMA retains this due diligence and BO procedure.

Finally, Nigeria's CAMA empowers the Corporate Affairs Commission (CAC) to suspend or remove the trustees of a non-profit in certain circumstances. [Our Coalition member, Spaces for Change, has analysed CAMA provisions, flagging the potential dangers of this enlarged governmental power.](#) They argue that any decision that involves the suspension or removal of management/governance structure of an association sharply contrasts with the constitutional rights to free association and assembly. In other words, the removal of an association's trustees not only represents a sanction in its legal nature, but also constitutes severe restriction on the freedom of association. It is the duty of the courts to fully protect the right to fair hearing and fully investigate any breach of corporate duty.

Again, lack of adequate guidance on the part of the FATF is leading to the overregulation of the sector at the national level, as also the burdensome replication of reporting (unlike the multi-pronged approach that the FATF recommends).

- **North Macedonia:** A beneficial ownership registry was established in North Macedonia in January 2021 to comply with FATF Standards and the EU Directive. Even though the term 'owner' is highly uncommon in the sector, NPOs, as a specific form of legal entity in North Macedonia, are legally obliged to register their beneficial owners. For this purpose, NPOs need to identify their beneficial owner(s) as the 'natural person who otherwise controls the legal entity' which, for NPOs, is defined as a natural person who is authorized to represent the NPO, or has a controlling position in the management of the property of the organization, i.e. the legal representative(s).

As in many other countries, this information on the legal representative of associations and foundations can be obtained from the Registry of Associations and the Registry of Foundations (duplication).



The latest amendments (July 2022) to the Law on the Prevention of Money Laundering and Financing of Terrorism (LPMLFT) have introduced a new approach in determining the beneficial owner of foundations. With these amendments, the beneficial ownership of foundations is treated in the same way as trusts, by identifying any of the following functions: 1) founder; 2) trustee i.e. the Director of the Foundation, the Management Board, the Chairman, etc. as per statute; 3) protector (if any); 4) beneficiaries if determined in the statute; or 5) another natural person who, through direct or indirect ownership or in another way, exercises control over the foundation. **This obviously creates confusion among foundations that serve the public benefit** and, in particular, **in defining the end user (beneficiary) of the foundation's funds**. While the foundations themselves decide what information to include, some have received misleading guidance from institutions in terms of identifying the BO based on ownership share, similar to that of companies. And in practice, **challenges have been experienced in the operationalization of the BO register** such as the blocking of bank accounts for entities that have not registered their BO and high tariffs for registration after the initial deadlines. This has hampered the work of many grassroots organizations, homeowners' associations, and the like.

- **Latin America:** In the case of Latin America, our Coalition has observed that in some countries every member of the Board needs to be identified as a BO. In the particular case of **Mexico, all members have to be registered with the Financial Intelligence Unit, regardless of their role, responsibilities, or whether the person is the legal representative of the organization**. This has generated great uncertainty within several boards. Members of our Coalition have reported cases where board members have resigned, fearful of persecution from authorities in cases where their organization, e.g., engages in advocacy critical of the government, since there have been cases of mandatory audits or the cancellation of grantee permits of some CSOs that have been very vocal against the Federal government. Additionally, it has become increasingly difficult to find people eager to serve as board members considering one of the requisites is the mandatory appearance on the registry. **Modification of that recommendation to only register the legal representative** would ease the hampering effect that BO has on civil society's governance bodies.
- **Jordan:** In Jordan, **BO for NGOs (mostly associations and nonprofit companies providing services for communities) is misleadingly understood as identifying the project's beneficiaries** by many government organizations. Legally it is the case that Board Members/'owners'/authorisers of associations are vetted, and due diligence carried out according to a stringent legal framework that includes the submitting of personal and organizational information at the time of registration. The same is true for non-profit companies, including an approval of the disclosure form of the true beneficiary, and security approval from the Ministry of Interior.



PRIVACY CONCERNS

- While Beneficial Ownership Transparency as a global norm is recognized as a necessary step to tackle illicit financial flows, the unique nature of the non-profit sector (no ownership, public not private beneficiaries) calls for a tailored BO-approach, that is fit-for-purpose. While BO information needs to be available to competent authorities, the recent EUCJ ruling makes it clear that not all BO information needs to be put out in the public domain, and reinforces purpose limitation, proportionality and data minimalization in financial crime compliance data usage. A case in point is, for example, the public listing of BO details of a nonprofit working on LGBTQ+ rights in Uganda – a country where homosexuality is illegal. This has serious safety and security implications, apart from mere personal data protection concerns.

REITERATING KEY ASKS

1. Set out clearly in the guidance that the beneficial owner of an NPO is the one directing the organization or the one with whom ultimate responsibility of the organization rests.
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