

Executive Summary and Key Findings

Regional Workshop on Preventing Terrorist Abuse of Non-Profit Organizations

14-16 July 2015

Sarajevo, Bosnia and Herzegovina

From 14 to 16 July 2015, the Organization for Security and Co-operation in Europe (OSCE) and the Global Center on Cooperative Security, in consultation with the United Nations Counter-Terrorism Committee Executive Directorate (CTED), organized the Regional Workshop on Preventing Terrorist Abuse of Non-Profit Organizations for OSCE participating States of South-Eastern Europe. The meeting was supported and hosted by the Government of Bosnia and Herzegovina, and sponsored by United States Department of State.

The workshop aimed to facilitate dialogue among stakeholders on the risk of terrorist financing through the non-profit sector and to share good practices in managing this risk. Attendees included OSCE participating States from across South-Eastern Europe and neighboring regions as well as international experts and representatives from the non-profit sector. The OSCE previously partnered with the Global Center and CTED in organizing a similar meeting on this topic in Bratislava in October 2014 for Eastern-Europe, the Caucasus, Central Asia and Mongolia. These meetings followed a global-level initiative on protecting the non-profit sector from terrorist abuse led by the United Nations Counter-Terrorism Implementation Task Force (CTITF) from 2011-13.¹

Preventing Terrorist Abuse of the Non-Profit Sector

Participants in the meeting reflected on the evolution of concern for terrorist abuse of non-profit organizations (NPOs) since 2001 when the Financial Action Task-Force (FATF) adopted its recommendation that:

Countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Non-profit organizations are particularly vulnerable, and countries should ensure that they cannot be misused:

- a. by terrorist organizations posing as legitimate entities;
- b. to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freezing measures; and
- c. to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organizations.

This recommendation – “Recommendation 8” (R8) – has recently attracted attention at the global level. In 2013, FATF initiated a dialogue with representatives of the non-profit sector. In 2014, FATF published a research-based typologies report titled, *Risk of Terrorist Abuse in Non-Profit Organizations*, providing indicative examples of terrorist abuse of NPOs.² In 2015, FATF issued a revised *Best Practices Paper* on R8, summarizing guidance for States implementing R8 and reflecting on good practices within the non-profit sector.³ These documents (which are

considered non-binding) complement the existing FATF *Interpretive Note* on R8 (issued in 2006 and considered binding).⁴ In issuing the revised *Best Practices Paper*, FATF undertook to continue its dialogue with representatives of the non-profit sector.

Participants in the meeting heard expert presentations on the new typologies report and *Best Practices Paper*. Terrorism and violent extremism affect some States more than others and participants discussed varying levels of vulnerability to abuse among NPOs across the region. Risk varies according to the size, scope of operations, donors and beneficiaries, and internal governance practices of NPOs. Participants also noted the emergence in 2012 of FATF Recommendation 1 (R1), which confirms that States should adopt a risk-based approach in implementing all FATF Recommendations.

Participants debated how over-regulation may have unintended consequences by impeding the flow of needed goods and service from the non-profit sector and by impacting fundamental rights to freedom of association, assembly, expression and religion.

Implementing R8 in South-Eastern Europe

Consistent with global trends in compliance, OSCE participating States in South-Eastern Europe have found it challenging to implement R8. Many of those States are members of the FATF-style regional body, the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism of the Council of Europe, known as “Moneyval.” According to mutual evaluations carried out through Moneyval, most States are either “non-compliant” or “partially compliant.” Participants described specific challenges that they have encountered in implementing R8. Some States are yet to undertake the kind of review of the non-profit sector called for in R8 and its associated guidance, especially the *Interpretive Note*. Other States have undertaken such a review but it has been inadequate or incomplete, failing to provide the baseline of knowledge about the sector necessary to implement R8 in a proportional fashion. Indeed, in some States, basic information about the sector remains absent, including the number and type of NPOs in existence. On this point, participants generally acknowledged as good practice the idea of establishing a centralized registry or database of NPOs that is comprehensive, computerized and on the public record.

Pragmatically, participants recognized capacity gaps in some States regarding the ability to undertake and act upon a review of the non-profit sector. This is particularly evident in terms of efforts at outreach to the sector. Following expert presentations, participants discussed different methods for outreach, including through the publication of guidance, the use of technology to raise awareness, and face-to-face meetings, comprising group fora and one-on-one consultations. Such outreach activities may include an ongoing, structured dialogue with umbrella bodies, as well as ad hoc initiatives convened in response to specific events (such as the impact of foreign conflicts on domestic NPOs) or focusing on certain themes (such as practices of safe giving). Indeed, participants noted that outreach is vital in building relationships of trust with actors in the sector, which may be important in bringing to light or investigating instances of abuse. In this regard, outreach was described by participants as a “two-way street.” Some States in the region have initiated outreach measures in different forms, and they shared information and insights from their experience so far.

Further on the topic of outreach, participants discussed the role that banks play in facilitating NPO regulation and protection from abuse. In line with good practice, States in the region do not consider NPOs to be “reporting entities” for the purpose of implementing FATF Recommendations but, rather, simply require NPOs to use a bank account. Participants noted that a shared understanding of risks is an important part of the triangular relationship between States, banks and their NPO clients. Expert presentations covered the issue of “derisking,” which is the withdrawal or interruption of banking services to NPO clients perceived to be high-risk. Derisking has occurred in other regions where some banks have sought to avoid entirely – rather than manage – perceived risks from some NPO clients. Denial of banking services seriously inhibits the ability of NPOs to pursue their mandates. However, participants were informed of a forthcoming Moneyval study on this issue in the region, where derisking has not been prevalent to date.

Participants also discussed the monitoring and supervision of NPOs in the context of implementing R8. Several States have acted to improve their legal and administrative framework for NPO registration, for example, by clarifying the information required from NPOs at the time of registration. Participants shared experience in terms of NPO reporting and record keeping requirements. Participants recognized that these measures can be important in cases of suspected abuse, where access to information – and the ability to share it within and across governments – is vital. Here, participants benefited from expert presentations on investigation, reflecting on the range of administrative and criminal sanctions that may be sought, in line with the principle of proportionality.

While challenges are numerous, participants also noted the general increase in activity on this issue across the region. Many States in the region are new or emerging democracies and are in the process of opening and growing their economies. For them, anti-money laundering and counter-terrorist financing (AML/CFT) measures are being initiated from scratch. For example, most AML/CFT legislation across the region, and most financial intelligence units (FIUs), are of recent origin. Moreover, it is perhaps inevitable that state-civil society relations are prone to fluctuation as these systemic developments evolve.

Against this background, both expert and State participants reported on important instances of progress and good practices in the region. Indeed, the meeting demonstrated that States have proven responsive to the mutual evaluation process through Moneyval and recognize the importance of implementing R8 consistent with the risk-based approach, per R1. Some States have taken steps to address capacity gaps, for example, by adding or training staff and advancing expertise within the regulatory body. In some States, outreach has commenced in a systematic fashion and has included, for example, a series of seminars and guidance documents for NPOs. These measures have been useful to raise awareness of the risk of abuse within the non-profit sector. Some States have shared formal risk assessments with representatives of the sector. Several States are pursuing initiatives to develop civil society, including through the creation of dedicated agencies for this purpose and the elaboration of strategic-level documents, such as partnerships for open government. Overall, participants reflected, the region is positioned similarly to others, wherein challenges have been identified and responses are being informed by

a growing body of experience and good practices, as well as principles for proportional implementation.

Perspectives from the non-profit sector

The meeting provided an important opportunity for representatives of the non-profit sector to interact with relevant officials from their government and to network among themselves. In many cases, this was the first such opportunity for stakeholders to introduce themselves and share perspectives with these different groups of colleagues. NPO participants noted the variation in state-civil society relationships across the region, as well as other broad trends, for example, that the sector is growing and is increasingly diverse but lacks capacity overall.⁵ Some NPO participants noted that they had little or no awareness of R8 and the risk of terrorist abuse of the non-profit sector prior to the meeting, and expressed concern that this issue may add to the regulatory burden that already exists for many NPOs. In this regard, NPO participants noted that fundamental rights (to freedom of expression, faith, assembly and association) should be prioritized by civil society actors in their discussions with States on this matter. They welcomed statements, in FATF guidance and elsewhere, affirming the importance acting to protect the sector in a risk-based and proportional fashion, towards the primary goal of enabling the sector to pursue good works.

NPO participants acknowledged the vulnerability of the sector to different forms of abuse, including fraud and money laundering. (Relatedly, they noted that in some instances civil society is vulnerable to politicization, especially around election cycles). As stated, the risk of terrorist abuse of NPOs is not well known across the sector and there is a general need for awareness raising about both risks and government responses, especially the requirements of R8 and the mutual evaluation process. In particular, assessments of risk should be evidence-based and shared with the sector, so that NPOs are informed about the specific sources of vulnerability. Such information sharing is also a method for building trust and is more likely to facilitate co-operation from those within the sector who may be alert to poorly governed or otherwise vulnerable actors.

NPO participants welcomed discussion of outreach, noting that opportunities for dialogue between the sector and many governments are not yet well developed. They discussed developments at the global level regarding the formal dialogue between FATF and related advocacy on behalf of the sector⁶ and raised the idea of developing an analogous mechanism at the regional level. NPO participants also discussed how to develop responses to the issue within sector itself. Here, there was a discussion of how to leverage existing region-wide networks (such as the Balkan Civil Society Development Network) and initiatives (such as the European Union's Technical Assistance for Civil Society Organizations, or "TACSO," project) to raise awareness about this issue.

Overall, NPO participants affirmed that, for a range of reasons, the sector has a strong self-interest in good governance; responses to the risk of terrorist abuse should be considered in this light. In this regard, the interests of the sector may be seen to overlap with States' interests in protecting the sector from abuse. Pragmatically, participants reflected that it may not be easy to realize this confluence of interests in practice and that there are few precedents for managing

state-civil society relationships towards shared goals. But recognition of those shared interests is an important first step, alongside awareness raising and information sharing activities within the sector itself.

Endnotes:

¹ The findings of the CTITF-led process are summarized in the report, *To Protect and Prevent: Outcomes of a Global Dialogue to Counter Terrorist Abuse of the Non-profit Sector* (2013), available at: <http://www.globalcenter.org/publications/to-protect-and-prevent-outcomes-of-a-global-dialogue-to-counter-terrorist-abuse-of-the-nonprofit-sector/>.

² Available at: <http://www.fatf-gafi.org/topics/methodsandtrends/documents/risk-terrorist-abuse-non-profits.html>.

³ Available at: <http://www.fatf-gafi.org/topics/fatfrecommendations/documents/bpp-combating-abuse-npo.html>. For an appraisal of the new Best Practices Paper from the perspective of the non-profit sector, see European Centre on Not-for-Profit Law, et al., “The New FATF Best Practices Paper on NPOs” (2015), available at: <http://fatfplatform.org/wp-content/uploads/2015/07/Short-outline-of-changes-of-BPP-June-2015.pdf>.

⁴ Available at: http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf.

⁵ On these points, see: Ivana Rosenzweigová and Eszter Márkus, *Monitoring Matrix on Enabling Environment for Civil Society Development: Regional Report for 2014* (Balkan Civil Society Development Network and the European Center for Not-for-Profit Law, 2015) and; USAID, *The 2014 CSO Sustainability Index for Central and Eastern Europe and Eurasia* (June 2015).

⁶ For further information, see: www.fatfplatform.org.