



Implications of anti-terror and money-laundering regulations on CSOs financing and what CSOs can do

There are concerns over the effects on civil society organisations of recommendations made by the Financial Action Task Force. CIVICUS spoke to representatives of four organisations – Charity Security Network, Human Security Collective, European Foundation Centre and European Centre for Not-for-Profit Law – about how the work of the Financial Action Task Force affects CSOs and how CSOs can mitigate the unintended negative consequences

1. What is the Financial Action Task Force and how does it impact civil society?

The Financial Action Task Force (FATF) is a both a policy-making and enforcement body initiated by the Group of 7. It focuses on combating money laundering and countering the financing of terrorism. It has adopted 40 recommendations (one of them on non-profit organisations (NPOs) called Recommendation 8) and it evaluates country compliance with these recommendations. FATF has grown to be a particularly relevant and strong body as it gives ratings to countries based on these recommendations and with this it determines whether a country is a credible/good place for doing business¹. Governments want to score well in these evaluations since reputational risk is at stake. Over 180 countries have committed themselves to implementing its recommendations.

Recommendation 8 (R8) sets out a broad framework for regulation of the non-profit sector to prevent abuse by terrorists. The premise is that NPOs are seen as being particularly vulnerable to abuse for the financing of terrorism in a number of ways that FATF R8 sets out such as by being a conduit for funds, by obscuring diversion of funds and by being a front for terror organisations.

This broad brush tarring of the entire sector is contrary to the evidence base and has been criticised by the NPO sector. In addition, R8 has had numerous unintended consequences as several governments have tightened rules on the NPO sector beyond what is under R8.² Cases of overregulation include difficulties faced in accessing and distributing financial resources, cumbersome registering and licensing laws, and increased state surveillance and regulation of the sector without any targeted and/or risk based approach. It has also given rise to fears of “policy laundering”, that is of states introducing surveillance/privacy-invasive measures to suit their agendas under the guise of implementing FATF standards and infringements on humanitarian aid, basic human rights, namely the right to freedom of expression and association, and the right to privacy have been reported⁴.

¹ For more see www.fatfplatform.org, and ‘Counterterrorism’ used to crackdown on civil society | Ben Hayes | TEDxLiberdade <https://www.youtube.com/watch?v=Pj6TyN35GIE>

² http://fatfplatform.org/wp-content/uploads/2015/07/Catalogue-of-government-overregulation-July-2015_final-edited.pdf

As a result, the application of R8 in many cases meant the shrinking of the financial, operational and political space of NPOs in particular and civil society in general. Additionally, the parts of civil society that are most affected are most likely to be the organisations working in high risk and high need areas on development, conflict areas and human rights. This, ironically, is counterproductive to mitigating terrorist threats. One of the potential factors contributing to a greater risk of terrorist abuse is these very restrictive measures on NPOs, which force NPOs to potentially go underground or use less formal channels to continue with their work. (For more information on FATF, please see the coalition website on FATF/NPO matters: <http://fatfplatform.org>).

2. *What is being done to reduce the negative impact of restrictions on legitimate funding for civil society activities imposed by FATF?*

A global NPO coalition spearheaded by several NPOs³ seeks to ensure that FATF's countering-the-financing-of-terrorism measures do not disrupt legitimate NPO activities and that there is sustained dialogue between FATF and the NPO sector.

The NPO coalition has pursued the following strategy in response to FATF's policies: Without endorsing FATF Recommendation 8, engaging in a constructive dialogue with the FATF secretariat and FATF member countries to influence its policy and ensure that the unintended consequences of its policies and the potential for overregulation at the national level can be mitigated. We have several achievements so far:

- Acknowledgement by the FATF Secretariat, the FATF President and many FATF members that FATF Recommendations have had unintended and damaging consequences on the NPO sector and its very legitimate and much-needed activities, which need to now be mitigated.
- A significant positive change in the FATF discourse on NPOs and the concern around shrinking space for civil society this past year
- A good and constructive working relationship with the FATF Secretariat, with FATF agreeing at its June 2015 plenary meeting in Australia to enhance its engagement with NPOs by holding annual meetings in addition to ad hoc exchanges on technical matters. The terms of reference for this engagement still need to be worked out in order for it to be effective and meaningful.
- NPO input was integrated in the revised Best Practices Paper (BPP) related to Recommendation 8 which is an important achievement, because the BPP sets the guidelines for governments on how to implement this recommendation and it now contains language that considers NPO needs, emphasises the importance to respect fundamental rights of individuals and NPOs, and to avoid overregulation, amongst others.⁴

³The activities are led by Charity & Security Network (CSN) in the US and, in Europe, the European Center for Not for Profit Law (ECNL), the European Foundation Centre (EFC), the Human Security Collective (HSC), the International Center for Not for Profit Law (ICNL).

⁴ For more see <http://fatfplatform.org/best-practices-paper/>

We also try to engage as many NPOs in the dialogue with FATF – however, we encountered several challenges. NPOs are not all aware of FATF and its policies and the tremendous impact they can have on their functioning, and it is difficult to get NPOs interested since the topic appears (and indeed is) rather technical and abstract. So we set up our [web platform](#) where we try to explain the situation, and publish information that may be useful for the NPOs to engage locally or with us.

Furthermore, FATF has, until now, had no clear consultation process with the NPO sector in place and even more it operates in a very opaque manner, some of its processes being closed to the general public. Moreover, deadlines for responding to FATF policy work are generally short since FATF itself works to tight deadlines. The NPO working group coalition working on preparing papers for co-signatures and buy-in therefore has, by default, also had very little time to consult with the wider NPO sector. So this is why we are asking for clear rules of engagement for strengthened FATF dialogue with NPOs.

3. How can civil society groups at national and international levels be involved in the above efforts?

The global NPO coalition includes individual NPOs and foundations as well as larger NPO networks such as CIVICUS, the Council on Foundations, DAFNE and WINGS. We encourage national level NPOs, network members and anybody affected to engage in influencing FATF policy with a clear focus on Recommendation 8.

So we welcome any interested NPO or network to join the coalition by contacting Andrea Hall at the Charity & Security Network (ahall@charityandsecurity.org).

It is very important that a wide range of NPOs engage in the FATF discourse both at the global FATF policy level as well as at the national implementation level. NPO input can only be representative/meaningful if more parts and regions of the world are included in the debate. NPO networks not yet involved in the process should be recruited and global civil society networks could play an important role in spreading the word among NPOs.

Furthermore, we see the following areas for engagement of NPOs with the coalition and their governments:

- More NPOs should be involved in the policy dialogue with FATF. They can support our request for drafting clear rules of engagement for strengthened FATF consultation with NPOs to ensure meaningful and inclusive participation of NPOs.
- The relevant FATF policy work on Recommendation 8 will continue. Next steps may include a revision of the Recommendation 8 Interpretative Note (IN); it is important to engage in this reform processes to ensure that NPO sector is not treated as being particularly vulnerable for terrorist financing abuse and the measures proposed affects its work.
- NPOs should engage with their governments on the implementation of Recommendation 8 and ensure they are part of any NPO-specific risk assessment to ensure that NPO

needs and existing laws and self-regulation mechanisms are considered and that proposed measures do not overregulate the sector.

- NPOs should look at when evaluations in their countries are scheduled and seek ways to actively engage and contribute to these processes and the findings.
- The NPO working group will continue analysing the impact of other FATF recommendations on the NPO sector; we look forward to receiving information from NPOs and governments on how FATF framework is applied and affects the sector.

4. *What message would you like to convey to decision makers and civil society with regard to FATF?*

For NPOs:

- Help us influence FATF policy: understand FATF, join our coalition, review documents open for consultation, submit comments;
- Engage in your country in law reforms to ensure they reflect your needs; learn about what's happening, raise awareness among other NPOs;
- Advocate to be engaged in and actively contribute to evaluation processes;
- Monitor and collect information as to how FATF inspired laws and policies restrict the sector and engage in reform to improve local laws.

For governments:

- Reach out to the NPOs to include them in dialogue on issues arising from the FATF framework, consult them in development of FATF related policies and laws; make sure any measures are proportionate and do not overregulate the sector;
- Open up and include broad group of NPOs in evaluations going on in the countries;
- Undertake risk assessment and parallel look as to whether existing laws and self-regulation practices are enough to address the identified risk;
- Share good practices to encourage progressive implementation of the FATF recommendations.

1. <http://www.fatf-gafi.org/pages/aboutus/>
2. FATF (2013). *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation: The FATF Recommendations*. Paris: FATF/OECD. http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf (accessed 1 Sept 2015)
3. FATF (2014). *Risk of Terrorist Abuse in Non-Profit Organisations*. Typologies Report. Paris: FATF/OECD. <http://www.fatf-gafi.org/media/fatf/documents/reports/Risk-of-terrorist-abuse-in-non-profit-organisations.pdf> (accessed 1 Sept 2015)
The NPO response to the Typologies Report: <http://fatfplatform.org/typology-review/>
4. Hayes, Ben (2012). *Counter-terrorism, 'Policy Laundering' and the FATF: Legalising Surveillance, Regulating Civil Society*. Amsterdam/London: Transnational Institute and Statewatch.
5. <http://www.fatf-gafi.org/topics/high-riskandnon-cooperativejurisdictions/>