



Risk and Consequence: The Future of FATF Recommendation 8 for Financial Integrity and for Civil Society

26-27 September 2023

This two-day event, co-organised by the [EU AML/CFT Global Facility](#), the [Global NPO Coalition on FATF](#), and [GIZ](#), convened policymakers, standard setters, financial institutions, nonprofit organisations (NPOs), multilateral organisations, academics and think tanks to discuss the FATF financial integrity standards as they impact NPOs, and potential and innovative ways forward. The global convening followed on from a series of regional meetings (co-organised by the EU AML/CFT Global Facility and ICNL) to gather input for the revision of the FATF Standard related to NPOs (Recommendation 8) and the guidance paper on the implementation of the Standard (the Best Practices Paper) – new versions of both of which are expected post the October 2023 FATF Plenary meeting.

The need for revision was triggered by years of NPO advocacy, led by the Global NPO Coalition, forcing the FATF to set up the [Unintended Consequences](#) workstream in 2021, which is looking at mitigating the unintended impact of the implementation of their Standards – the four impacts identified included NPO suppression, de-risking, financial exclusion and the curtailment of Human Rights (with a focus on Due Process and Procedural Rights).

The meeting in Bonn was convened with an aim to take stock of where we are today with regards to the FATF financial integrity framework as it relates to NPOs and chart the course forward in terms of reforms. The event was kicked off by representatives from the German Government and the FATF Executive Secretary who called for a proportionate, risk-based and effective approach of the implementation of FATF Recommendation 8. They stressed that a balance between the mitigation of terrorism financing risk and a conducive legal, regulatory and policy environment for legitimate NGOs, civil society and community organisations is vital to address urgent social and humanitarian-related issues.

Policymakers speaking at the event called for a balance between fighting financial crime/ensuring financial integrity and the protection of civil society and civic space, stressing that fighting terrorism and protecting civic space are goals that are complementary, and that this can be achieved through an improved implementation of Recommendation 8. The standard setter agreed that implementation of Recommendation 8 had been challenging, but that things had been sought to be set right with the language changes made in 2016, as well as with the emphasis on the risk-based approach. However, the implementation of the risk-based approach was still problematic, they claimed, with disproportionate NPO laws being enacted, NPOs being erroneously classed as reporting entities, onerous customer due diligence requests being placed on NPOs, NPOs being de-risked, and human rights and due process contraventions being seen at large. The task now would be to monitor the implementation of the revised Standard and continue to actively engage around this at all levels (national/regional/international).

FSRB representatives laid out the challenges they saw in the implementation of Recommendation 8, including difficulties jurisdictions have with identifying FATF NPOs, and then with further filtering that down to identify the subset of NPOs potentially at risk through a sectoral Risk Assessment. Further challenges noted included those of financial exclusion, and those associated with mitigating risk



effectively and proportionately. Another FSRB representative said that ‘if nothing is broken, don’t try to fix it’, and that measures applied to the sector that were not risk-based needed to be rolled back. The problem of implementation lag at the FSRB-level when Standards were changed at the FATF level was also flagged. There were calls for more transparency at the global FATF level, for there to be more empowerment of the FSRBs, but also for the FSRBs to share more responsibility.

NPO representatives spoke about the problem of applying universal standards to contexts that are very particular in terms of their legal, political and constitutional architecture, and the systemic structural changes that are then wrought (leading often to overlapping regulatory frameworks). Also mentioned was the fact that while there may be changes at the normative level, this does not automatically translate to legislative changes at the national level or policy changes at the organizational level. Additionally, when new legislation on NPOs is proposed, it is often difficult to link that causally with the FATF evaluation process. NPOs also reiterated common problems that the Coalition has been flagging for years, including disproportionate supervision/audits, lack of engagement with the sector when assessing risk of the sector or developing policies for it, foreign funding restrictions (foreign agents laws), etc. The quality of Mutual Evaluations was also raised, particularly at the FSRB level, including the fact that Recommendation 8 translations into certain languages were not adequate or timely. A practical mechanism to challenge the assessment of Recommendation 8 was also raised, especially when it was at odds with developments on the ground. The question of ‘intended consequences’ of the implementation of the framework was raised, and on how to mitigate that. The Global NPO Coalition mentioned that it has been calling for changes to the methodology to address this, as well as the development of a specific training module on Recommendation 8 for both assessors and jurisdictions that will include information about the sector, about fundamental rights and freedoms, and about the impact of (un)intended consequences of misapplying the standards. The harm done by the FATF grey-listing process was pointed to repeatedly, especially in terms of shrinking space for civil society operations.

The UN Special Rapporteur on Counterterrorism and Human Rights presented findings from her [Global Study](#) on the Impact of Counter-Terrorism Measures on Civil Society and Civic Space. She pointed out the exceptionalism that the securitisation agenda including counterterrorism (CT) and countering violent extremism (CVE) has engendered, and the human rights deficits that prevail in its implementation. The lack of due process leaves a host of vulnerabilities, she said, not least on religious and ethnic minorities, women, LGBTQI+ peoples, and those fighting for land and water rights among others. There is no monitoring and evaluation on the use and abuse of CT and CFT measures, and no oversight. She mentioned UK, Australia and South Korea as the only three countries with independent oversight mechanisms to assess CT measures. The fact that there was no universally-accepted definition of terrorism was pointed to, as was the fact that soft law standards set by bodies such as the FATF were trumping hard law human rights and other treaties that States had all signed up to.

A multistakeholder panel discussed the issue of **financial exclusion**, and the policy incoherence between financial integrity and financial inclusion goals. The ongoing trisector dialogues in The Netherlands and UK were highlighted. The Dutch representatives from a bank, the Banking Association and a lead NPO in the dialogue spoke about the issues they see from their perspective, and how the roundtable dialogue process had helped all to try and solve the problem from both a technical and systemic point of view, with buy-in from both the banking supervisor and the regulator.



This has also led to innovations, including [Sector Baselines](#) for NPOs published by the Dutch Banking Association, and a [nonprofit portal](#) hosted by one of the leading banks on NPO onboarding, access and transfer issues. Additional guidance on NPOs and de-risking has been recently also provided by the European Banking Authority, with its annex on NPOs [[EBA ML/TF risk factors](#), pp.122–128] as well as the [joint EBA/European Commission Factsheet](#) addressed to NPOs. Germany is another country that is soon to embark on such a dialogue process. The representative from the UK mentioned the five Cs one should keep in mind:

- Currency: regulations and laws need to remain current, and reflect the evidence base (as does risk)
- Consistency: there needs to be consistency across initiatives. And domestic initiatives should be in line with international Standards.
- Coherence: there needs to be coherence between counterterrorism, human rights, development and peacebuilding aims
- Consultation: policy development and implementation should be consultative
- Continuous: the process is iterative

Another 'C' was mentioned in the discussion – that of 'clarity' in terms of the Standard and the guidance, but also something that dialogue between sectors helps foster, leading to potential narrative and cultural shifts.

Day 2 begun with a reiteration from a government representative that an understanding of the NPO sector by government was crucial. The French representative mentioned that dialogue on mitigating measures between the financial sector, which was an obliged entity, and NPOs, which are not, is critical. Sectoral self-regulation measures were highlighted, and NPOs encouraged to share these with banks. It was remarked that experience-sharing on the implementation of the revised Recommendation 8 within the global network would be crucial, as would education, training and outreach on the revisions. An FSRB representative noted that when it came to Recommendation 8 implementation, they were still seeing intrusive regulation, excessive legal requirements, disproportionate sanctioning and unwarranted de-risking.

Risk Assessments were believed to be critical, though there was mention of the fact that these were actually 'Risk Considerations' not 'Risk Assessments'. All-encompassing FATF guidelines, it was pointed out, often bump up against the risk-based approach – causing inherent blockages on both sides. There was a demand for clarity on what not to do. It was also mentioned that if there is low risk, the jurisdiction really didn't need to do anything – but found this extremely difficult to do (again, because of the inherent tick-box nature of the Standards). It was also pointed out that there needs to be conceptual clarity on what risk is (a matrix of threat/vulnerability/consequence – but that last is often left out). Moreover, participants drew attention to the fact that the definition of NPOs was unclear in the Standard.

On the panel on Risk Assessments, some of these thoughts were given further consideration. It was agreed that there was conceptual confusion around 'risk', and that also if there were a terrorism financing concern, then resources needed to be allocated to mitigate that. The first problem, it was mentioned, was that instead of a reallocation of resources, countries make it about asking for more resources. The second problem was that risk was then linked to a measure. The way around this, it



was presented, was to involve NPOs early: in Recommendation 1 through the National Risk Assessment process. The representative from the government of Seychelles gave a telling example: saying that terrorism financing in NPOs did not exist in their jurisdiction (of 100,000 people), so they were discussing a topic that was non-existent to begin with. But NPOs were deemed high-risk in the law, so the whole process was extremely painful (when they had other issues of greater importance such as corruption and money laundering to tackle). In reaction to this, an audience member commented that jurisdictions were being forced to respond to problems that they did not have, and it was then being reported on as incapacity. An NPO representative said that a Risk Assessment was not a silver bullet, but engaging in the process has helped them engage with otherwise non-traditional actors. Another mentioned that FSRBs needed typologies to calibrate risk, whether that risk was terrorism financing, money laundering or corruption.

Two **pieces of research** were presented. One was the **APG horizontal review** on the implementation of Recommendation 8 in its jurisdictions, presented by the Global Center on Cooperative Security. One of the main findings was that members were doing more on technical compliance requirements (tick-box exercise – leading to disproportionate supervision) than on effectiveness (Immediate Outcome 10). Additionally, assessors were struggling to determine effectiveness, given it is a higher burden to meet. The reduction of the Mutual Evaluation cycle from 10 to 7 years is also likely to have an impact on capacity at the FSRB level.

Human Security Collective presented its initial research findings on a foresight piece titled '**What would a world without Recommendation 8 look like?**'. Questions the research poses include: 'Would the removal of Recommendation 8 help alleviate the (un)intended consequences of the implementation of this framework for civil society and civic space?' and 'What does the Coalition, as also all the different stakeholders in this room, need to do around the issue going forward?' The exceptionalism meted out to the sector is examined in the research through three vantage points: the Standard itself, the national context, and the market. And the three vantage points are interrogated using a revolutionary and evolutionary (gradual change) approach. Some larger questions on the FATF framework and its operations (governance, accountability, transparency, funding) are raised in the study. And it concludes with raising some dilemmas, and pointing to what we would like to be taken forward and what left behind.

The FATF representative spoke about revision of the Standards, revision of procedures, revision of methodology, training of assessors and training of members, as all of a piece to tackle the mis-implementation of Recommendation 8. NPO representatives spoke about changing the methodology so that countries are not rewarded if they implement the Standard in a way that impinges on civic space, but rather incentivised and rewarded if they implement the Standard in a way that safeguards civic space.



Recommendations from breakout groups (end of Day 2):

For FATF:

- Focus on IO 10 (effectiveness) after October Plenary
- Professionalise evaluators (certification system?)
- Communicate clearly the changes that are being made to Recommendation 8, making clear that NPO sector needs oversight (but not supervision). Use public communications to effect a narrative change, whereby NPOs are seen as just another customer.
- Create an ombudsperson role (like UN 1267) or any other standing mechanism to address egregious misuse of the Standards
- Sanction violations/inappropriate implementation of Standards by referring those jurisdictions to the ICRG process, for example
- FSRBS should also have Private Sector Consultative Fora
- Ensure that FSRBs have a clear understanding of the FATF adjustments to/new interpretations of the FATF standards

For Banks:

- Be proactive about receiving training on the NPO sector. Cultivate NPO knowledge among staff through dedicated teams or persons. This will increase mutual understanding and level of trust. This knowledge, and the importance of financial inclusion for NPOs, should also be disseminated along the correspondent banking chain.
- Be clear about onboarding (CDD) and money transfer requirements for NPOs

For Governments:

- Push for a clear definition of NPOs by FATF and more human rights language in the Standards
- Allow access to civil society during FATF Plenaries
- Allow for broad engagement with civil society beyond Recommendation 8, so also including the SDGs.
- Consult local civil society and subsequently feed the input received into the global debate of FATF
- Implement evidence-based policies that are also risk-based. There is a need for more clarity and transparency in terms of the making of regulations and other governmental decision-making (and having the possibility of challenging the decisions in court).
- Work on the financial inclusion of NPOs, including the right to a bank account; provide more guidance to financial institutions on NPOs as customers. Address de-risking of NPOs as a matter of priority.

For NPOs:

- Increase collaboration through networks: NPOs need to work collaboratively, including with the private and public sectors
- Improve understanding of how AML/CFT norms and standards affect the sector

- Build evidence: document abuses carried out in the name of implementing CFT measures, including de-risking and financial exclusion
- Participate: demand access to spaces and mechanisms where norms are made and evaluated. Demand access to FATF Plenaries. Determine what the barriers to access are and how to mitigate those.
- Network: Make use of local and international networks (such as the Global NPO Coalition), including international institutions and bodies such as the G7, G20, FSRBs to communicate/achieve needs/make demands
- Ensure regulators/supervisors have the capacity to apply a risk-based supervision approach towards NPOs



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