The Global NPO Coalition on FATF

EFC/WINGS webinar – November 8th
How can philanthropy engage around FATF money laundering and terrorism financing policy and implementation?

Hanna Surmatz, *European Foundation Centre, member of the core group of the global NPO coalition on FATF*

For more information on the Global NPO coalition on FATF visit: www.fatfplatform.org

Civil Society and philanthropy Space

Increasing trend of restrictions on NPOs/philanthropy globally (CIVICUS and ICNL data):

- Termination/suspension
- Foreign funding restrictions
- Burdensome registration / reporting

What are motivations for governments?

- Governments concerned about civil unrest
- Control foreign funding flows – sovereignity arguments
- Security concerns: Fighting tax crime money laundering and financing of terrorism

Financial Action Task Force (FATF)

- Aim: counter money laundering and financing of terrorism
- Inter-governmental body (36 members) - G7 in 1989
- Over 190 jurisdictions implementing the 40 recommendations
- Country evaluations – non compliance negative impact on countries
- Not a legislator but a very powerful global framework setter!

- Old Recommendation 8: NPOs ”particularly” vulnerable
- Incorrect implementation of the Recommendation => overregulation
- EFC part of the global NPO coalition to engage with FATF
- Now formalized dialogue with FATF – 4 NPO seats on PSCF
- Summer 2016 FATF revised Recommendation 8

TAKE THE TIME TO READ:

New Recommendation 8 on NPOs (as of 2016)

Countries should review the adequacy of laws and regulations that relate to non-profit organisations ***which the country has identified as being vulnerable to terrorist financing abuse.*** *Countries should apply* ***focused and proportionate measures****, in line with the* ***risk based approach****, to such non-profit organisations to protect them from terrorist financing abuse,…*

versus old Recommendation 8 on NPOs

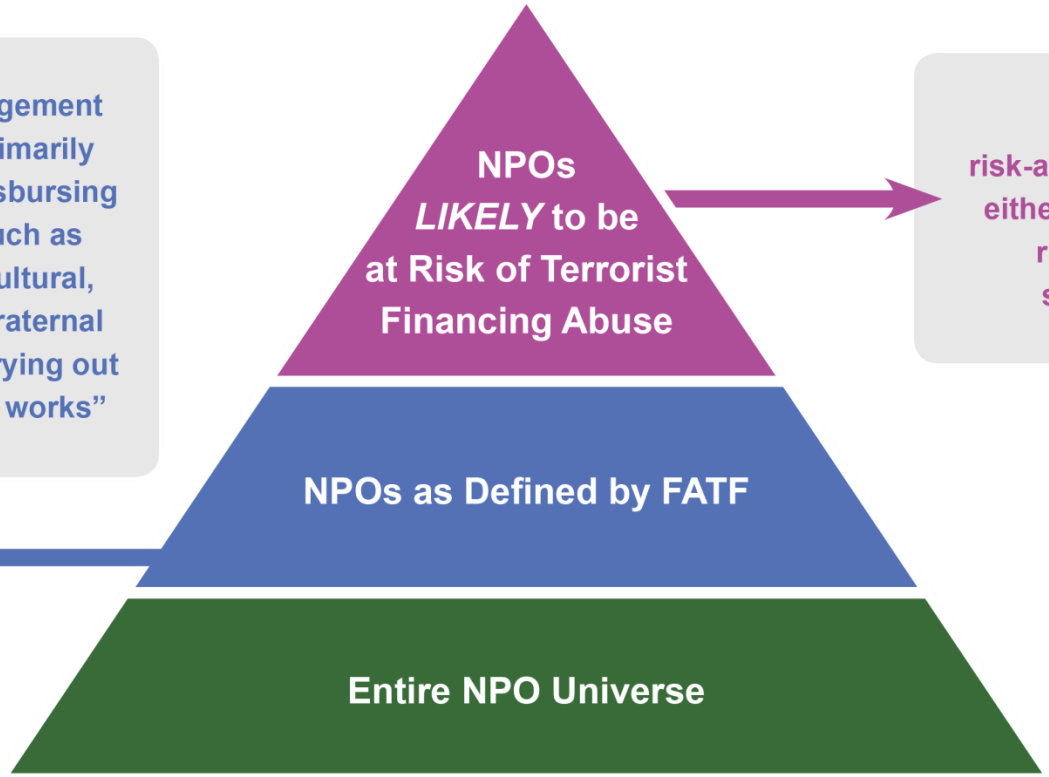
Countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. ***Non-profit organisations are particularly vulnerable, and countries should ensure that they cannot be misused:….***

Country level action required by new R8



THE RISK-BASED APPROACH & NON-PROFIT ORGANISATIONS (NPOS)

A legal person or arrangement or organisation that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of "good works"



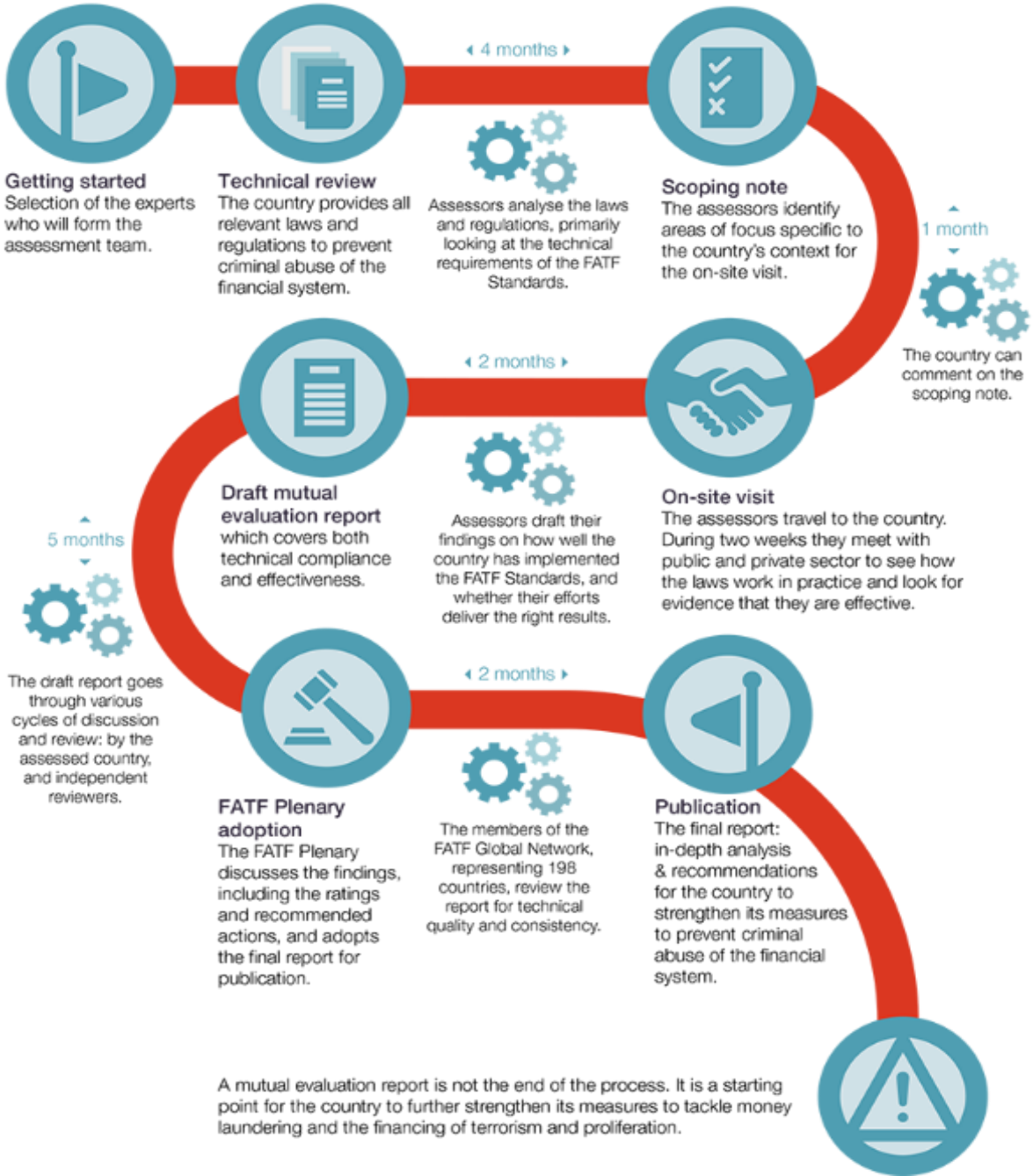
Determined after a risk-assessment is carried out either as part of the national risk-assessment or a standalone exercise

Evaluations are “effective” tools to ensure FATF policy implementation:

- **Over 190 countries are evaluated –** either
  - -peer review or
  - -review through FATF style regional bodies (Moneyval, etc)

- **Governments want to score well – low compliance leads to:**
  - **-**International political pressure
  - -Higher risk ratings (restrictions on international banking)
  - -Sanctions (in extreme cases)

The Mutual Evaluation Process



copyright FATF

FATF evaluations – NPO experience

- Governments did not reach out – neither in RA nor ahead of on-site visit nor after
- NPOs not aware of on-site visit and how to get involved / no clear transparent process
- Evaluators came with own legal system and traditions of the sector
- Feeling of talking into a box – not clear if input was understood / no follow up other than final report…

Questions asked by evaluators to NPOs during FATF on-site visits (2014-2016)

- Do you consider NPOs vulnerable to terrorist financing?
- Have NPOs taken steps to address vulnerabilities (self-regulation)?
- How do you ensure that money going across border is spent properly?
- What information/guidance is given by the government/regulatory authority to NPOs re terrorist financing
- National Risk Assessment – were you involved in the process? Do you agree with the findings?
- To what extent is country applying focused proportionate measures?
- Are there any ways the government could improve the fight against terrorism financing?

The evaluation of Norway (2014)

- **Long tradition of NPOs but no legislation on associations - only voluntary registers**
- **Meeting with evaluators focused** on lack of legislation / transfer of funds / checks on partners abroad
- **NPOs explained**: not only governments can provide control – members running transparent organisations can too

REPORT: largely compliant with R8

The evaluation of Belgium (2014)

- **Long tradition of NPOs detailed legislation on associations and foundations but not on smaller associations**
- **Meeting with evaluators focused** on awareness of risks by the sector / interplay legal and tax / transfer of funds / checks on partners abroad
- **NPOs shared information on hard law/soft law** retroactively more nuanced analysis of risks

REPORT: Partially compliant with R8 (last round largely compliant)

FATF Evaluation in the United States (2015-2016)

Natalie Ross

Senior Director, Global Philanthropy & Partnerships

Council on Foundations

U.S. FATF Evaluation (2015-2016)

Context: Evaluation occurred before revision of R8, so US was **evaluated under the old R8.**

What we did:

1. **Formed coalition of partners, led by Charity & Security Network** for ongoing engagement during evaluation process.
2. **Leading up to evaluation, engaged both FATF and US Treasury officials.**
3. **Drafted memo for FATF noting concerns.** Two umbrella organizations – Council on Foundations and Charity & Security Network - solicited member input and drafted comments. Six months before evaluation, **sent comments directly to FATF.**
    - We claimed: "U.S. counterterrorism laws, as applied to nonprofit organizations (NPOs), fall short of these standards due to over-regulation. This in turn impedes the laws' effectiveness in achieving FATF's desired outcomes."
4. **On site visit.** Unlike European country examples, no meeting with umbrella groups. Three unnamed service organizations visited.

U.S. FATF Evaluation (2015-2016)

Evaluation Outcome:

United States is **Partially Compliant** (using old Recommendation 8)

Key Findings:

- Main US terrorist financing threats do not include the nonprofit sector.
- US government regulation of NPOs is risk-based. *Note – US NPO coalition does not agree.*
- Tension between strict liability in law and risk-based approach to enforcement creates problems for NPOs, especially for banking services.

U.S. FATF Evaluation (2015-2016)

What we learned:

1. Research showed **information should be sent to FATF at least six months prior to the evaluation team's on-site visit** in order to be available to evaluators in drafting the "scoping paper," which outlines the areas of inquiry for the evaluation. *Don't wait for evaluators to arrive in order to engage in the process.*

2. **Without a template or form to use,** C&SN and COF's comments erred towards inclusiveness. FATF said it was too long. They request i**nput that is short and simple, following Immediate Outcome 10 criteria.** *CSN developing a report template.*

3. **Lack of transparency around selected service organizations for engagement during site visit.** FATF claims must be consistent across evaluations so can't share names of contacted organizations. *Notify FATF and evaluators if no outreach to NPOs during risk assessment process.*

How can philanthropy engage around FATF money laundering and terrorism financing policy and implementation?

WINGS-EFC Webinar

November 8 2017

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Spain FAFT evaluation

- 2010: AMLFT Act.

  - NPO obliged to preserve (10 years) registries with the indentity of donors (individuals or corporations giving money or resources) and beneficiaries (individuals or corporations receiving resources for free from the NPO).

  - Formal identity and real “owner” of these donors and beneficiaries.

Spain FAFT evaluation

- 2010: AMLFT Act.
  - Registries and data of donors and beneficiaries are not public.
  - Internal information at the disposal of public authorities in case it is required.

Spain FAFT evaluation

- 2010: AMLFT Act.

  - First problems or doubts in the aplication.
    - Who is the owner of the donors and specially of the beneficiaries (if they are other NPO, in developing countries, specially risk countries, etc …).
    - All the donations? Little amounts? Fundraising campaing?

  - NP sector complained to the Treasury with an adequate development of the new Law.

Spain FAFT evaluation

- 2012: risk assesment.

  - Treasury requires AEF any kind of information regarding the risks that the sector faces: risk assesment.
  - AEF provides Treasury with data: number of foundations, economic dimension, areas and countries of activity ….
  - ¿Is this a real risk assesment?
    - Aquille's heel of the third sector: we do not have a genuine risk assessment.

Spain FAFT evaluation

- 2013: best practices recommendations.

  - Treasury shares with AEF a first draft based on FATF recommendation 8 and previous BPP.
  - AEF gives their imput sharing the draft with some members:
    - Contains general and huge principles.
    - Lack of concrete tools for implementing best practices, specially for reduced NPO.

Spain FAFT evaluation

- 2013: best practices recommendations.
  - Draft was approved with some ammendments.
  - Is a “guide” is not a law or a decree or any kind of compulsory text.

Spain FAFT evaluation

- April 2014: Spain FATF evaluation.

  - Treasury contacts AEF as a representative organization of the sector and also an international developing NGO.

  - Evaluation was supossed to be focused on self-regulation tools of the sector, but many questions on Spanish regulation of the sector arised. Specially related to the registry and supervisory system.

Spain FAFT evaluation

- April 2014: Spain FATF evaluation.

  - Other questions about the mission and work of AEF as an umbrella organization: relationship with public authorities, training of our members, provision of information on their obligations and other activities etc ……

Spain FAFT evaluation

- May 2014: Regulation developing Anti Money Laundering Act (Decree).

  - Appproved by the Goverment just after the visit of evaluators.
  - Specified some of the requirements contributing to have some more clearance.
  - Obliged to indentify donors of more tan 100 euros.

Spain FAFT evaluation

- December 2014: Mutual evaluation report on Spain:

  http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Spain-2014.pdf

Spain FAFT evaluation

- December 2014: mutual evaluation report on Spain:

Recommendation 8 – Non-profit organisations.

Spain is largely compliant with R.8. The NPO sector in Spain includes foundations, associations, and religious entities, each with a different status, and subject to different preventive measures. Spanish authorities have a sound understanding of the risks in the NPO sector, and the requirements in place on NPOs were recently expanded to give associations and foundations specific AML/CFT obligations, including adding to a previous requirement to identify all their beneficiaries, and all donors of more than EUR 100. Nevertheless, some gaps remain in the requirements. The main technical concern is that Spain has a very complex institutional system for the oversight of NPOs, with 8 national and 76 regional bodies involved in overseeing the sector, which might lead to uneven monitoring. Spain has extensive domestic cooperation arrangements, but the extremely fragmented institutional arrangements may make the effective exchange of general information on TF aspects at the preventive level difiicult.

Spain FAFT evaluation

- 2015 and next years: some effects: not over regulation but OVERZEALOUS from supervising authorities on NPO.

  - Some guidance for supervising authorities of NPO were produced by AML/FCT authorities.
  - Supervising authorities started asking all NPO for the lists of donors.

Spain FAFT evaluation

- 2015 and next years: other events.

  - Registries and supervising authorities at national level were unified: a demand of the sector since 1994.

  - Paradox: tax reform: 75% deduction for donations up to 150 euros.

Current developments (2017)

- NPO sector: AEF, UNICEF, Spanish Red Cross, ONCE, Telefonica Foundation, Repsol Foundation, and other umbrella organizations and NGO (Spanish “coallition”) carry out their own risk assesment based on a survey:

  - 300 NPO answered.
  - Questions about: size, countries and fields of activity, origin of resources, methods of payment, financial channels and instruments (transfers, credit card, pay pal, cash), fundraising campaigns, internal risk control procedures.

Current developments (2017)

- Consultation to the Treasury:
  - Doubts of application based on the day to day experience of NPO.
  - Resolution 34/2017 from Treasury.
    - Some clarification and certain degree of de-risking.

Current developments (2017)

- Transposition of AMLFT Directive:
  - Public consultation (not closed):
    - Proposals from AEF and other NPO including an amendment (text) for article 39 AMLFT internal Act:
      - NPOs are not specified under Directive.
      - EC risk assesment [COM(2017) 340 final]: “significative risk” but depending on different factors: registration, among others.
      - New wording: simplified due diligence measures except in proved high risk situations.

Next steps

- Working in a good practices guide for the sector:

  - How a where indentify our risk according to the variety of NPO sector.
  - Concrete measures to mitigate these risks when they are identified.

Mexican CSO on fatf

Miguel de la Vega

Framework of restrictions derived from fatf

Financial restrictions are mainly based on Government requests of donor´s information that are difficult to get and/or violate privacy

If CSOs fail to comply they face heavy fines, therefore some are forced to reject grants when information is not complete

Banking restrictions are gradually excluding organizations derived from de-risking practices. Started as from HSBC money laundry scandal

Risk assesment published in 2016 concluded that Mexican CSO face any risk of finance to terrorism but low risk of money laundring

Civil society inner strategies

Articulate	• Diversity as a participation strategy • CSO, academics, activists, networks, media
Analyze	• Research efforts with advocacy as objective • Design of proposals through pro bono technical advice
Strengthen	• Dissemination of restrictions derived from FATF • Formation through workshops

Civil society external strategies

Mapping

- Criteria 1: Decision making capacity
- Criteria 2: Affinity to CSOs´ interests

Pressure

- Thorugh media and social networks
- By involving hundreds of organizatrions

Dialogue

- Stablishment of temporary dialogue spaces
- Request of formal public reply by authorities

Issues to consider:

- Engage with your government around risk assessment and risk mitigation measures before the evaluation
- Be well prepared for evaluation: Consider sharing information on sector, hard law/soft law
- Consider own sector analysis of risks

Follow the matter also post evaluation: “after an evaluation is before an evaluation”…

How can you engage?

- **Join the global NPO coalition:** Email to sign up is: info@fatfplatform.org
- **Disseminating** information to members/ through networks
- **Research, alert and report** effects on the ground / help monitor developments
- **Engage with governments** on risk assessment and in country evaluations
- **Engage with NPOs having a seat on the FATF PSCF** provide input ahead of the meeting/attend side events

FATF PSCF – meeting Spring 2017

The **Private Sector Consultative Forum** (PSCF) brings together representatives of sectors which are subject to AML/CFT requirements (the financial sector and other designated businesses and professions), civil society, and policy makers to discuss policy and implementation issues.

4 new NPOs seats in 2017. Seat for the philanthropic sector currently taken by Hanna Surmatz, EFC on behalf of WINGs.

- **General PSCF (March 20/21) – attended by 4 new NPOs**
- **Specific NPO event (March 22nd) on FATF evaluations – and risk assessments - participation of more NPOs**

FATF PSCF – meeting Spring 2017

March 20th - 21st

1. **On global priorities for 2017 – from NPO/Philanthropy perspective – key issues raised**
    - Financial inclusion/bank derisking – what are potential ways to address this? How can NPOs engage?
    - FATF NPO coalition work was presented by its Chair
    - Implementation issues on R8 - risk assessment, evaluation processes, cross-border philanthropy, etc.
    - Training of evaluators also with regard to R8
    - Impact on other Recommendations e.g. R 24/25

2. On dialogue on FinTech and RegTech – from Philanthropy perspective

- FinTech: new technologies in the financial services industry – to improve operational/customer engagement - characterized by small startups
- RegTech: systems that help produce regulatory data and reporting in a cost effective and timely manner.
- Seen as a risk but also as a tool by FATF

FATF PSCF – meeting Spring 2017

On TF risk indicators - Challenge to develop meaningful TF risk indicators for different sectors.

On financial inclusion

Focus was on financial inclusion goals for individuals.How can technology-driven financial inclusion initiatives potentially help enlarge scope of access to financial services.

On correspondent banking

2016 new FATF guidance on correspondent banking services as part of broader work on de-risking.

On Transparency of beneficial ownership – legal arrangements

- How does FATF R 25 apply to NPOs/Philanthropy? BO problem for organisations that benefit the general public
- Will trusts/similar legal arrangements/trusts get the same measures as legal entities?

On Best practices on overcoming obstacles in information sharing – need for data protection/privacy rights

Full note from NPOs for NPOs can be accessed here: http://fatfplatform.org/wp-content/uploads/2017/04/Report_PCF_Vienna_2017.pdf

FATF PSCF – meeting Spring 2018

- *1.* ***NPO de-risking***

Global NPO Coalition suggests broadening and deepening the multi-stakeholder discussion on the global issue of "de-risking" We suggest discussing this topic at the 2018 FATF PSCF side event.

- *2****. Implementing Recommendation 8 on national level***

Many countries still struggle to implement the new standard and engage NPOs in the process to produce effective measures against terrorism financing abuse. We suggest an in-depth experience sharing from across the globe on both risk-assessment and mutual assessment processes. Could be a part of the 2018 FATF PSCF as a side event or potentially a separate event.

- ***Recommendation 24/25 and its application to NPOs***

Remaining Global NPO Coalition asks towards the FATF

- *1. FATF internal guidance on NPO engagement and consultation*
- *2. FATF and FSRB training / education materials for assessors on revised Recommendation 8 standard*

Thank you !

Questions?

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