



HOW CAN NON-PROFIT ORGANISATIONS BE INVOLVED IN THE FINANCIAL ACTION TASK FORCE EVALUATION PROCESS?

PAPER ON RECENT EUROPEAN FINANCIAL ACTION TASK FORCE
MUTUAL EVALUATIONS ON THE IMPLEMENTATION OF RECOMMENDATION 8

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This publication is produced under the project: "Standing up Against Counter-Terrorism Measures that Constrain Civic Space".

The project is supported in part by the grant from the Open Society Human Rights Initiative". The views in the paper do not necessarily represent the views of the Open Society Foundations.

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This paper has been prepared as part of a European project, undertaken by European Center for Not-for-Profit Law (ECNL), European Foundation Centre (EFC) and Human Security Collective (HSC), which aims to reduce the potential (unintended) negative consequences of the Financial Action Task Force (FATF) Recommendation 8, on the non-profit sector's operating environment.

The focus of this paper is on the mutual evaluation process that forms part of a range of wider activities put in place by FATF to advance its objectives.

The purpose of the paper is to provide Non-Profit Organisations (NPOs) with easily understandable information on how the FATF mutual evaluation processes work and how NPOs can be part of the process both in terms of "technical compliance" and the newly introduced "effectiveness" analysis.

Also, it sets out what could be done to potentially improve the FATF mutual evaluation processes by building on the experience of recent evaluations in Belgium, Norway and Spain. The target audience for this paper is NPOs; however, this paper should also inform governments, the FATF Secretariat and members and actual evaluators on how the evaluation processes of the implementation of FATF Recommendation 8 could be improved.

TIMELINE FOR EVALUATION PROCESS

Detailed timeline of the process can be found here:

<http://www.fatf-gafi.org/media/fatf/documents/methodology/FATF-4th-Round-Procedures.pdf>



1. EXECUTIVE SUMMARY OF KEY RECOMMENDATIONS FOR NPOS BASED ON THE KEY STAGES OF THE FATF EVALUATION PROCESS (ALL STEPS AND RECOMMENDATIONS ARE FURTHER ELABORATED IN DETAIL IN SECTION IV):

The following section sets out the main stages of the process and the key actions recommended for NPOs:

STEP 1.1. One year ahead of on-site visit – long-term preparation – engage with government and provide useful input

1. A year before the scheduled evaluation, NPOs should prepare input related both to the updates on **technical compliance** with regard to FATF Recommendation 8 and to any **NPO-sector-related risk assessment** that the country is undertaking (looking at potential risks in terms of being abused for terrorist financing and taking into account existing laws and self-regulatory mechanisms already in place to mitigate such risk). They should send this to the government and seek to meet with them to exchange views.

2. NPOs/NPO networks should, in this context, also consider undertaking their **own NPO risk assessment** and share/discuss it with their government.

3. NPOs should also share their **views on “effectiveness”** (“effectiveness” according to the revised Methodology is an: *“assessment of the adequacy of the implementation of R8 and of the achievement of a defined set of outcomes*) with their government. NPOs should prepare targeted comments on relevant “immediate outcomes” covering at least the following two core issues:

- a. Did a national/NPO risk assessment take place? Were NPOs involved? Did the government reach out to NPOs?
- b. If risk was identified, was there a targeted approach taken? Were measures taken to specifically target those at risk? Or were all NPOs targeted (hence a case of over-regulation)?

STEP 1.2. Six months ahead of the on-site visit – concrete preparations for the on-site visit – get a representative group of NPOs invited to this on-site visit and share information on the NPO sector

2. NPOs should provide the FATF Secretariat/their government with recommendations on the **composition of the evaluators’ team**.

3. Interested NPOs should request the government to **place them on the list for the evaluators’ on-site visit** as soon as the country evaluation process begins, and should also provide a list of other useful contacts the government should consider.

4. NPOs should request the government to make publicly available the **time and venue of the on-site visit**, for example on government websites.

5. In terms of agenda drafting, NPOs should send their **own proposals for the agenda** to the government and the FATF Secretariat. With regards to risk assessment and the review of technical

and effectiveness matters, the focus should be on self-regulatory or good practice initiatives by the sector.

6. NPOs should offer the evaluators/FATF Secretariat easily-understandable **preparation material** on Recommendation 8 and the relevant NPO traditions and laws (reference should be made to additional information studies on the state of civil society in the country), and even offer training sessions on the specifics of the NPO sector and the considered risks.

7. NPOs should **request relevant documents** (including draft sections of technical compliance and effectiveness summaries) in advance of the on-site visit and comment on them accordingly. The **NPO sector as well as other interested parties should provide written inputs** on technical compliance and effectiveness to governments, the evaluators as well as the FATF Secretariat in advance of the on-site visit.

STEP 2 On-site visit – talk to evaluators

8. NPOs can ask to meet assessors **without the presence of government**.

9. NPOs should be **ready to answer** questions related to their own perception of sectoral risk, self-regulatory approaches as well as hard law and sectoral practices during the on-site visit.

10. NPOs should request to receive and comment on a **short note of the on-site meeting** with the evaluators to ensure that the input was properly understood. This could be published, if agreed by all participating NPOs.

STEP 3 After on-site visit – seek to be involved in the drafting of the evaluation report

11. NPOs should request **access to and comment on the first draft of the evaluation report, which is written by the evaluators within 6 weeks of the on-site visit**. Even if the report is not shared, NPOs should inform the evaluating team/FATF Secretariat of its views on the potential lack of risk assessment, and the lack of a targeted approach and outreach, as well as informing them of the existence of over-regulation and misinterpretation with regards to Recommendation 8.

12. **NPOs should also seek to inform the wider FATF membership/delegations of its views in order to ensure that quality and consistency reviewers are made aware of this.**

13. NPOs/their umbrella organisations should request their governments for a **copy of the 2nd /3rd draft of the Mutual Evaluation Report (MER)** as soon as they are sent to them in order to be able to provide input .

STEP 4 Plenary Discussion

14. NPOs/their umbrella organisations should **liaise with other friendly national delegations ahead of the plenary discussion** to solicit support for key asks/comments on the draft MER.

STEP 5 Follow up Action

15. NPOs should request to be involved in the **follow up process** as soon as the MER is published.

SUGGESTED ACTION FOR THE FATF TO SUPPORT AND MIRROR NPO ACTIVITY

1. The FATF should alert governments in their guidance material to the fact that they **have to undertake a risk assessment with regard to Recommendation 8**. The guidance material needs to be clearer on how this should be done. Some countries have carried out no new or only limited new national risk assessments/specific risk assessments/reviews of the NPO sector, and this often without any involvement of NPOs. Governments have to be made aware that if no NPO-focused risk assessment is carried out, the country will be declared non-compliant. In the event that no proper risk assessment/review of the NPO sector has taken place, this will signal that the respective NPO laws/counter terrorism measures may potentially overregulate or be based on misinterpretation of Recommendation 8, which should then be reflected in the rating of the country. In a recent July 2015 regional workshop in Sarajevo on “The Prevention of Terrorist Abuse of Nonprofits in South and Eastern European Countries”, organised by the OSCE and the GCCS in collaboration with UN CTED, Moneyval representatives and participants stressed the lack of a risk assessment as a major concern for evaluators and the need to include NPOs in national risk assessments¹.

2. More guidance is also needed as to **how the actual risk assessment with regard to Recommendation 8 should be undertaken and on involving the NPO sector in this**. It should be clarified whether the general national level risk assessment should take Recommendation 8 into consideration, or if the better practice is for governments do a separate Recommendation 8 risk assessment, which could then feed into the national risk assessment. It should be made explicit in the guidance material that a risk does not exist if hard law and soft law approaches have already mitigated/addressed it. The revised Best Practice Paper (BPP) does provide some useful clarifications in this regard and it is hoped that this will improve future risk assessments with regard to Recommendation 8.

3. FATF guidance material should **ensure that governments seek NPO input on the national technical compliance update, on the effectiveness review and also on any NPO-sector-related risk assessment** that the country is undertaking well in advance of the on-site visit of the evaluators.

4. Clearer guidance is needed on how governments should undertake the “**effectiveness**” control. Several governments have (unofficially) reported that the new element of checking for effectiveness was difficult to implement since clear guidance on the process and the experience of other countries in applying it was lacking.

5. The **composition of the evaluators’ team** should be made publicly available (and NPOs should be able to provide input on this).

6. The FATF should provide **specific training for evaluators on NPO traditions and laws** – the training may need to be revised taking into account the risk-based approach (as clearly outlined in the revised Recommendation 8 BPP). Overall, the assessment methodology and procedures should be streamlined for the FATF Peer Review and for assessments done by the FATF Style Regional Bodies, the IMF and the WB. NPOs could provide input into the following:

- a. Common training modules for assessors with regards to R8/the risk-based approach.
- b. Common guidelines for the recruitment of trainers.
- c. FATF Training of Trainers with regards to R8/the risk-based approach.

¹ <http://fatfplatform.org/announcement/regional-workshop-se-europe-on-supporting-the-prevention-of-abuse-of-non-profit-organizations-for-the-financing-of-terrorism/>

7. The FATF should encourage governments to contact local NPOs/umbrella organisations to make sure a **representative selection of NPOs is invited to the on-site visit.**
8. **The time and venue of the stakeholder consultation should be made publicly available** well in advance. And NPOs should be given the opportunity to be present or represented at the meeting in order to ensure broad participation.
9. Input from NPOs should be sought in terms of **agenda drafting** for the on-site visit.
10. In addition, the evaluation process should collect **written input** from the wider NPO sector or other interested parties in advance of the on-site visit. Written input should be published online if authorised by the submitter.
11. To enable an efficient meeting, relevant documents (including draft sections of the technical compliance and effectiveness summary) should be shared both by the FATF/evaluators as well as by participating NPOs.
12. The FATF Secretariat/evaluators should ask NPOs if they would like the government to be present in the room.
13. The FATF Secretariat should prepare a **short note of the on-site visit meeting** and share this with assessors and NPOs to ensure that the NPO input was understood properly. This could be published online if agreed to by participating NPOs.
14. The FATF should ensure that the **first draft of the assessment report** put together by the evaluators should be made publicly available or at least be **shared** by assessors with respective NPO umbrella organisations for comments/reactions. This is currently not part of the process and needs to be changed. It is important that the NPO sector be able to inform the assessors' team at an early stage about its views on potential lacks in terms of risk assessment, a targeted approach and outreach, as well as on the propensity for over-regulation, misinterpretation, etc.
15. The FATF guidance to evaluators should ensure that **NPOs receive a copy of the 2nd/3rd draft of the MER to be able to provide input.**
16. The FATF Secretariat and respective government should **involve NPOs in the follow-up process for the respective country.**



II. CONTEXT AND KEY POINTS TO CONSIDER REGARDING FATF EVALUATIONS:

The Financial Action Task Force (FATF) has become the international standard setter for anti-money laundering and countering the financing of terrorism. Its 40 Recommendations are implemented by over 180 countries worldwide.

FATF has developed a very **powerful tool to check how well those countries are doing in implementing the 40 Recommendations** through mutual evaluations/other reviews. The FATF conducts peer reviews of each member on an ongoing basis to assess levels of implementation of the FATF Recommendations – evaluations by non-FATF members are carried out by eight FATF-Style Regional Bodies, the International Monetary Fund (IMF) and the World Bank (WB). FATF peer reviews follow a common methodology and process. Through the efforts of the eight FATF-Style Regional Bodies as well as the IMF and the WB, similar measures are also being implemented across the 193 members of the FATF Global Network, as part of their ongoing commitment and efforts to implement the FATF standards.

It has to be noted that evaluators need to evaluate all 40 standards. Of these, **Recommendation 8** sets out a broad requirement to regulate the non profit sector as a whole for greater transparency and accountability to prevent it from being abused for terrorist purposes. Non profit organisations (**NPOs**) are viewed as being **particularly vulnerable** to abuse for the financing of terrorism. Recommendation 8 is not a core or key recommendation that will result in the country being put on the FATF's black/grey list, but it remains important in the evaluation process because it singles out one sector (the only sector!) as being vulnerable for Terrorist Financing.

Governments (FATF members and non-members part of the global FATF network) generally wish to score well in evaluations since reputational risk is at stake. FATF lists jurisdictions that are deemed to be high-risk and non-cooperative, and countries want to avoid being listed as such. These listings, in turn, influence a country's international financial standing (as rated by Fitz, Moody's or Standard and Poor) with consequences for its trade and investment climate and/or its eligibility for aid. In April 2012, *Statewatch* and the *Transnational Institute* published research examining the Mutual Evaluation Reports on 159 countries with respect to Recommendation 8. It found that 85% were rated as "non-compliant" or only "partially compliant" with respect to Recommendation 8, which will have brought countries under pressure to introduce new regulations on the NPO sector, see <http://www.statewatch.org/analyses/no-171-fafp-report.pdf>. More recent studies illustrate that several countries worldwide have indeed introduced tighter regimes for the non-profit sector, and governments use counter terrorism arguments as part of the reasoning, see for example <http://www.icnl.org/research/journal/vol17ss1/Rutzen.pdf>.

Several researchers and experts, and even the FATF Secretariat and evaluators, have noticed that so far the evaluation system has had **no incentive for governments not to overregulate**, with the result that we have seen non-democratic countries simply close down the space for civil society and scoring very well in the evaluation process. The FATF Secretariat has stated that such cases of overregulation resulting in good scores have influenced them to review the evaluation methodology. Any evaluation system not grounded in a risk-based approach would now lead to negative scoring since the country's regulation would be deemed ineffective.

The third round of FATF mutual evaluations, which began in 2004, ended in 2014. The FATF began its **fourth round of mutual evaluations** in 2014, with the assessments of FATF members Australia, Belgium, Norway and Spain, all of which have now been concluded. In the fourth round, all FATF member countries will be examined against compliance with the new 2012 FATF Standards. The new evaluation process builds on the previous evaluations by strengthening the examination of **how effectively** the country is combating money laundering and the financing of terrorism.

The new element introduced in the fourth evaluation round is indeed this check for effectiveness. This implies that in addition to the technical compliance an effectiveness assessment needs to be undertaken. During this check for effectiveness, cases of overregulation will influence the evaluation of a country, hence creating a disincentive for countries to overregulate. However this new effectiveness element has caused **some internal and external criticism** due to the fact that it is not clearly defined and is difficult to measure, see more below. Other criticisms refer to some inconsistency or lack of clarity in FATF publications in terms of what governments should do, partly caused by the FATF need for “relatively quick political/economic/financial fixes”, e.g. the ISIL risk, the Iran deal, etc., and certainly also by the complexity of the FATF’s own architecture (relationship between FATF HQ in Paris and the FATF Style Regional Bodies (FSRBs)).

The FATF is currently reviewing the evaluation reports internally (the last batch of the third round as well as the first batch of the fourth round) to reflect on the weak and strong points of the evaluation regime and on how to improve it, including for assessing Recommendation 8. The issuing of a new Recommendation 8 Best Practices Paper and Typology Report are important inputs to this reflection as is the growing critical engagement by the NPO sector in relation to the process and substance of the evaluations.

From an NPO perspective it is important that the NPO sector becomes **involved in the entire evaluation process** and not just during on-site visits. They should be part of the Counter Terrorism Financing (CTF) risk assessment and of any specific NPO-focused risk assessment, including the review of technical compliance and “effectiveness” as well as the developing of potential measures to address a potential risk identified. A number of promising avenues for the involvement of NPOs can be identified following the experience with the recent mutual evaluations in Europe of Belgium, Norway, Spain and the wording of the new R8 Best Practices Paper. While this paper focuses on the European experience, there are other examples of NPO involvement in, for example, the domestic reviews of Indonesia or the Philippines, as well as more cases to learn from (including the Ethiopian one).

NPOs also consider it important that **assessors are well informed** about the respective legal system and culture. They should have **access to “balanced” information on the state of civil society** (also taking into account reports from, e.g., Civicus, Freedom House and the UN Special Rapporteur Maina Kiai as well as the UN Universal Periodic Reviews) in a country. They should also have access to reports by research groups on the risk of terrorist financing through NPOs (e.g., from the Global Center for Cooperative Security, CTED/NPO reports, the Statewatch and Human Security Collective report on Moneyval/Eurasia: <http://fatfplatform.org/wp-content/uploads/2015/08/Countering-Terrorism-of-Constraining-Civil-Society.pdf>).

This paper also intends to feed into the FATF internal reflection process. It builds on a review of existing FATF guidance papers related to mutual evaluations and the experience reported by NPOs as well as government representatives with regards to recent evaluations in European countries (Belgium, Norway and Spain) under the fourth round of evaluations under the new assessment rule. The focus is on an appraisal of countries’ evaluation of Recommendation 8. National NPOs provided country insights and shared their experiences in order to allow for the drafting of some recommendations/lessons learned for future reviews in other countries. Special thanks go to: Isabel Penalosa of the Spanish Association of Foundations, Ludwig Forrest from the King Baudouin Foundation and Francis Houben, Belgian NPO expert, as well as Birgitte Brecke of the Norwegian Association of NGOs.

III. PROCEDURES/PROCESS FOR FOURTH ROUND OF MUTUAL FATF EVALUATIONS AND HOW NPOS CAN/SHOULD BE INVOLVED IN THE PROCESS:

The FATF is, as of 2014, conducting a fourth round of mutual evaluations for its members based on the 2012 FATF Recommendations and the 2013 Methodology for Assessing compliance with the FATF Recommendations and the effectiveness of Anti-Money Laundering (AML)/Counter Terrorism Financing (CTF) Systems, the latter to be accessed here (<http://www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology%2022%20Feb%202013.pdf>).

The FATF issued procedures for this fourth round of evaluations in October 2013, which can be found here: <http://www.fatf-gafi.org/media/fatf/documents/methodology/FATF-4th-Round-Procedures.pdf>

The FATF evaluation calendar lists when countries are scheduled for review: <http://www.fatf-gafi.org/media/fatf/documents/assessments/Global-assessment-calendar.pdf>

The evaluations in the fourth round involve two inter-related components: **technical compliance** and **effectiveness**, the latter being the new element in the mutual evaluation process. While the technical compliance aspect helps assess whether the necessary laws/measures are in place, the effectiveness component assesses the adequacy of the implementation of the FATF Recommendations and whether a defined set of 11 Immediate Outcomes has been achieved.

The procedures and steps in the evaluation process, which can last up to one year, cover the following elements, put into context below with proposals on how NPOs can participate and provide input into the various steps of assessing a country's implementation of FATF Recommendation 8:

STEP 1.1. - Preparation for the on-site visit – long term planning

a. The country being assessed must provide information updates on **TECHNICAL COMPLIANCE** including an **understanding of the country's ML/TF RISKS**, no less than 6 months ahead of scheduled site visit, by using a pre-designed FATF questionnaire, which is publicly accessible in Appendix 3 of the FATF procedures.

The questionnaire includes three chapters which countries need to cover:

- Background and key documents

In this section, countries should note any significant changes to their AML/CTF system since the last evaluation. This includes new laws, regulations and enforceable measures as well as any changes in authorities responsible for each.

- Risk and context

Countries should provide assessors with documents about the ML/TF risks in their country and any important considerations about risk and context. This also includes information on the size and structure of various sectors/legal persons.

- Technical compliance information

Countries should provide information on their technical compliance for each Recommendation with the criteria used in the FATF methodology. For Recommendation 1 (risk-based approach) this could, for example, include for criterion 1.1. *the undertaking of a separate risk assessment on ML or FT, which is then used as the basis for the national strategic plan on AML/CTF, bringing together both ML and TF risks.*

RECOMMENDATIONS FOR NPO ACTION:

A year before the scheduled evaluation, NPOs should prepare and send input to their governments (and seek to meet with them to exchange views) both related to the updates on technical compliance and also into any NPO-sector-related risk assessment that the country is undertaking. In more detail:

- **NPO involvement in Technical Compliance review:**

NPOs should provide input into the national technical compliance update. NPOs should engage with academics/technical experts to provide information and technical expertise on both hard and soft laws governing the NPO sector in order to comment on technical compliance with Recommendation 8. With regard to Recommendation 1 (risk-based approach), NPOs should comment on when and how the risk assessment was undertaken and if they were involved in it. In Belgium and Spain, e.g., NPOs have provided some technical expertise and analysis of current rules governing the NPO sector, which was initially sent to the respective ministries and later on handed over to the evaluators. The Belgian Ministry of Justice invited NPO representatives to hear their views both on actual risk as well as on existing measures to protect the NPO sector.

- **Regarding NPO involvement in the risk assessment, two NPO actions are recommended:**

First NPOs/NPO networks should be invited to provide input into any general national risk assessment/specific risk assessment of the NPO sector. This risk assessment should look at potential risks and take into account existing laws (including criminal law) and self-regulatory mechanisms already in place to mitigate potentially-existing risks. As shown by the Norwegian case (see more information in the case study of Norway in Annex 1), governments and assessors may take voluntary and soft-law approaches into account, meaning that the lack of hard law can be compensated for. Voluntary/soft-law approaches can counter risks if these work well.

Secondly NPOs/NPO networks should in this context also consider undertaking their **own NPO risk assessment**, which could then feed into the national risk assessment/specific assessment of the NPO sector. In none of the recently-evaluated European countries did NPOs undertake their own risk assessment but clearly the evaluators were keen to understand NPOs' own assessment of risk. In the Belgian country report (see Annex 1 for more references) it was even mentioned as a negative that NPOs present during the country visit had no clear understanding of the potential risk. Belgian NPOs, on the other hand, were of the opinion that risk had been assessed with the conclusion that the laws already in place mostly work well and that NPOs in general are hence not at risk. They also stated that in their opinion no law can prevent black sheep from becoming criminals and that they consider it impossible to reduce this risk to zero.

Ideally, the government and NPOs should undertake a joint risk analysis or compare analyses of each sector prior to the FATF assessment – this seems to be feasible in democratic countries and probably could be best done via umbrella NPOs consisting of all types of civil society in the country (Indonesia and Philippines are good examples of this as well as, to some extent, Belgium and Norway). Such a joint risk analysis may however not be feasible in repressive or authoritarian regimes, or may only be done with government friendly or controlled NPOs (so called GONGOs). If such a collaborative or NPO-conducted risk assessment is not feasible, this should also be a signal to assessors about the state of civil society freedoms in the country (e.g., Ethiopia).

b. The assessed country must also provide information on **EFFECTIVENESS** based on 11 suggested immediate outcomes, no less than 4 months before the on-site visit.

The FATF methodology of 2013 provides some guidance on the framework for assessing effectiveness. Countries must provide evidence that its AML/CFT systems work well, otherwise assessors will conclude that the system is not effective. Several governments have (unofficially) reported that this new element of the effectiveness check was difficult to implement since clear guidance on the process was lacking, and so too the experience of other countries.

For the assessment of effectiveness, the FATF has adopted a hierarchy of defined outcomes: see the 2013 methodology for assessments. The 11 Immediate Outcomes are grouped according to three thematic Intermediate Outcomes, which ultimately all serve the high level objective in implementing AML/CFT measures: “*Financial systems and the broader economy are protected from the threats of money laundering and the financing of terrorism and proliferation, thereby strengthening financial sector integrity and contributing to safety and security*”. **Assessors must assess all eleven of the Immediate Outcomes and answer two overarching questions:**

- **To what extent is the outcome being achieved?**
- **What can be done to improve effectiveness?**

In the context of Recommendation 8 and NPOs, the focus should be on Outcomes 1 and 10 (and Outcome 5 to the extent that it deals with the protection of legal persons and arrangements, and their beneficial ownership, but this is not part of this paper/analysis). It has to be noted though that Recommendation 8 is only officially related to immediate Outcome 10. Immediate Outcome 1 should nonetheless also be considered in this context since it is the overarching outcome referring to a country’s understanding of TF risks and related measures to combat identified risks.

Immediate outcome 1: *Money laundering and terrorist financing risks are understood and, where appropriate, actions co-ordinated domestically to combat money laundering and the financing of terrorism and proliferation.*

Immediate outcome 5: *Legal persons and arrangements are prevented from misuse for money laundering or terrorist financing, and information on their beneficial ownership is available to competent authorities without impediments.*

Immediate outcome 10: *Terrorists, terrorist organisations and terrorist financiers are prevented from raising, moving and using funds, and from abusing the NPO sector.*

More specifically, Outcome 1 states, as the first two core issues to be considered, that a *country understand its AML/TF risks and how well these risks are addressed by national AML/CFT policies and activities*. The third stated core issue of Outcome 1 is the question of *how well the identified risks are addressed by national AML/CFT policies* and whether *high risk scenarios are distinguished from low risk scenarios*.

The methodology related to Outcome 1 lists under point a) 3 **outreach activities to private sector** as an example that could support the conclusions on the above Core Issues.

Clearly NPOs should be recipients of such outreach activities and NPOs should stress this during the assessment if governments have not reached out to them. For example, from the recently assessed countries, the Belgian Ministry of Justice reached out to key NPOs to alert them to the potential risk of TF abuse; the Norwegian government and NPO sector created a working group to assess the problems with illegitimate fundraising including for TF and the Spanish Treasury developed a best practices paper to combat ML and TF in consultation with the NPO sector, see also country case

studies in the annex. NPOs should be involved in the risk assessment and where appropriate in the development of targeted and appropriate measures to mitigate an identified risk and should hence also be part of analysing the effectiveness of the government approach. Countries should be made aware that a meaningful NPO involvement/outreach approach is key for “effective” implementation. In case NPOs have not been part of the process of analysing effectiveness this should be questioned by evaluators.

One of the core issues to be considered in the context of Immediate **Outcome 10** states: *To what extent, without disrupting legitimate NPO activities, has the country implemented a targeted approach, conducted outreach, and exercised oversight in dealing with NPOs that are at risk from the threats of terrorist abuse?*

NPO input into the effectiveness analysis can, in this context, alert governments and evaluators to the inappropriate identifying and addressing of a risk. NPOs should comment on the lack of:

- the proper identification of risk,
- a targeted approach, when a one-size-fits-all approach is the norm,
- outreach to the NPO sector,
- appropriate measures, whether that is manifest as over-regulation, or as measures seen to be in conflict with international fundamental rights, or that cause the disruption of legitimate NPO activity, etc.

RECOMMENDATIONS FOR NPO ACTIONS:

NPOs should also share with the government their views on the relevant outcomes for effectiveness. This is a crucial moment for the NPO sector to comment on potential lacks in terms of the risk assessment (Outcome 1 requires risk to be understood), targeted approach (Outcome 1 requires appropriate action to be undertaken, and Outcome 10) and outreach and the existence of over-regulation, misinterpretation, etc. NPOs should prepare targeted comments covering at least the following two core issues:

- a. Did a national/NPO risk assessment take place – were NPOs involved? Did government reach out?
- b. If risk was identified, was there a targeted approach taken? Were measures taken to specifically target those at risk? Or were all NPOs targeted (hence a case of over-regulation?)

STEP 1.2. Preparation for the on-site visit – short term planning

(6 months ahead of on-site visit)

c. FORMATION OF THE ASSESSMENT TEAM

According to the FATF guidance on procedures, for mutual evaluations the assessor team will usually consist of 4 volunteer expert assessors from among the FATF members (legal, financial, law enforcement) and the FATF Secretariat. The FATF President or Executive Secretary will inform the country being assessed of the composition of the team. Team members must attend a training seminar and the desired qualifications in order to qualify as a team member are: relevant experience, and knowledge of language, legal system, and other specific characteristics of the jurisdiction in question.

Since NPOs from the three recently-evaluated European countries reported that evaluators did not always know the NPO sector and belonged, in many cases, to different legal traditions/backgrounds,

the focus should be on ensuring relevant experience of the NPO sector along with knowledge of the legal system. It is clear that evaluators have to evaluate 40 Recommendations (and hence the assessor team cannot all be experts in all 40 areas) but efforts should be made to ensure that at least some NPO experience/understanding is included in the assessors' team and/or some NPO-focused training is potentially provided to them. It has to be noted that NPO legislation is especially rooted in the different cultures and traditions and must be seen and understood in this context. For example, in the case of Norway the non-hard-law regulation of associations has a long tradition and is compensated for by self-regulatory tools and practices, which may be equally effective, but this needs to be explained to evaluators who would not necessarily be able to use a checklist approach for the given scenario.

RECOMMENDATION FOR NPO ACTION:

COMPOSITION: NPOs should provide recommendations for the evaluators' team to the FATF Secretariat/their government. The composition of the assessment team should be publicly available and NPOs should provide input to the FATF Secretariat where appropriate.

Good training and preparation of assessors including specific training on relevant NPO traditions and laws is essential. NPOs could provide the evaluators with background material to the specific NPO laws/traditions and even offer training sessions on the specifics of the NPO sector and the considered risks. NPOs should, in this context, also seek to provide input into a potential revision of the evaluators' training guidance taking into account the risk-based approach (as clearly outlined in the revised Recommendation 8 BPP). Since the assessment methodology and procedures should ideally be streamlined for the FATF Peer Review and for assessments done by the FATF Style Regional Bodies, the IMF and the WB, NPOs should provide input on the following:

- Common training modules for assessors with regards to R8/the risk-based approach.
- Common guidelines for the recruitment of trainers.
- FATF Training of Trainers with regards to R8/the risk-based approach.

d. RESPONSIBILITIES OF THE EVALUATION TEAM:

According to the FATF guidance on procedures, the evaluation team has to produce an independent report; starting with the desk-based review for technical compliance based on information provided by the country and other reliable sources of information; drafting of the 1st draft note on technical compliance which is sent to the country approximately 3 months ahead of the site visit; preliminary analysis of 11 Immediate Outcomes sent to the country approximately 2 weeks ahead of the site visit; and identifying potential areas of increased focus during the site visit in agreement with the assessed country.

RECOMMENDATION FOR NPO ACTION

The first draft of the technical compliance and effectiveness note should be made publicly available or at least be shared by assessors with respective NPO umbrella organisations for comments/reactions. In the event that the draft is made publicly available, it is important that the NPO sector reviews and comments on it.

Even if the report is not shared, NPOs should inform the assessors' team/FATF Secretariat about its views on potential lacks in terms of risk assessment, targeted approach, outreach

and on the existence of over-regulation and misinterpretation – all this as part of the preparation of the on-site visit.

e. According to the FATF guidance on procedures, the programme/agenda for the on-site visit is drafted by the assessed country and the FATF Secretariat – guidance includes a list of authorities and businesses who would normally be involved in the on-site visit (civil society is mentioned under any other agency or body).

RECOMMENDATIONS FOR NPO ACTION:

PARTICIPATING NPOS: While governments/the FATF Secretariat/assessors should contact local NPOs/umbrella organisations to make sure a representative selection of NPOs is invited to the on-site visit, NPOs should themselves request the government, as soon as the country evaluation process begins, to be placed on the list for a meeting with the evaluators and provide a list of other useful contacts. Evaluators should meet with NPOs that work on money laundering, corruption and/or terrorist financing as well as the wider NPO sector, in particular those that may be affected by the country's implementation of AML/CFT recommendations.

TIME AND VENUE of the stakeholder consultation should be publicly announced well in advance so as to ensure the possibility of NPOs being present or represented at the meeting in order to ensure broad participation. **It this is not done, NPOs should request from their government that the time and venue be made publicly available, for example on the government website.**

AGENDA: In terms of agenda drafting, NPOs should send their own proposals to the government and the team of evaluators/the FATF secretariat. Within risk assessment and the review of technical and effectiveness matters, the focus should be on self-regulatory or good practice initiatives by the sector.

PREPARATION MATERIAL: NPOs should offer preparation material to evaluators/the FATF Secretariat on relevant NPO traditions and laws and offer training sessions on the specifics of the NPO sector and the considered risks. NPOs should, in addition, request relevant documents, including draft sections of technical compliance and effectiveness summaries. The wider NPO sector as well as other interested parties should provide written inputs on technical compliance and effectiveness to governments, the evaluators as well as the FATF Secretariat in advance of the on-site visit. Written input should be published online if agreed to by the submitting party/parties. In countries with repressive authorities NPOs should seek to provide their input via secure channels, e.g. via international NPO contacts, civil-society-friendly embassies or EU representations.

NPOs should, in this context, submit easily understandable and well-structured input/comments on Recommendation 8 in the language of the evaluators. Evaluators/the FATF Secretariat need to see input from relevant local NPOs on the implementation of R8 to be able to further analyse potential misinterpretation or overregulation by the government being assessed. Evaluators will generally welcome concise key points related to a specific Recommendation from concerned sectors. NPOs should also refer evaluators to additional information on the state of civil society (for example, reports from Civicus, Freedom House, the UN Special Rapporteur on the Rights to Assembly and Association Maina Kiai, UPR) as well as reports by research groups on risk of TF through NPOs (Global Center for Cooperative Security, CTED/NPO reports, Statewatch's recent report on Moneyval/Eurasia:



<http://fatfplatform.org/wp-content/uploads/2015/08/Countering-Terrorism-of-Constraining-Civil-Society.pdf>).

STEP 2 On-site visit – The assessment team spends at least 7 to 8 days in the country being assessed and meets with various concerned stakeholders

Assessors should meet with the private sector without a government official being present if there is concern that the presence of officials may inhibit the openness of the discussion.

RECOMMENDATION FOR NPO ACTION:

NPOs can ask to meet assessors without the presence of government representatives.

NPOs should be ready to answer questions related to their own perception of risk, self-regulatory approaches as well as hard law and their own practices for the on-site visit.

NPOs should request to receive and be able to comment on a short note of the meeting with evaluators in order to ensure that the NPO input was properly understood. This could be published on-line if agreed to by participating NPOs.

All evaluators from the countries listed in the annex were interested in knowing how the sector perceives its own risk of being abused for terrorist financing purposes. It is hence advisable to be prepared for this question ahead of the on-site visit. The NPO sector should potentially invest more in its own risk assessment. Evaluators, in all cases, were also interested in hearing from NPOs about their practice: about donor/beneficiary checks and technical details on registration, transparency and accountability requirements. In none of the cases was a note of the meeting shared with participants – hence there was no possibility of cross-checking whether the information provided and experiences shared by NPOs was understood correctly. It is hence recommended that such a meeting note is written and cross-checked.

STEP 3: Post on-site visit

First draft Mutual Evaluation Report (MER) written by the evaluators; 2nd draft MER prepared by evaluators implementing country comments; executive summary written; review of quality and consistency of MER (by volunteers from the FATF or FSRB delegations, FSRB and Secretariat and IFIs); face-to-face meeting of assessed country evaluators to discuss 3rd draft MER; revised executive summary and 4th draft MER sent to all FATF members ; issues for plenary discussion identified.

RECOMMENDATION FOR NPO ACTION:

- NPOs should request access to and comment on the first draft of the evaluation report, **which is written by the evaluators within 6 weeks of the on-site visit. Even if the report is not shared, NPOs should inform the evaluating team/FATF Secretariat of its views on potential lacks in terms of risk assessment, targeted approach, and outreach and on the existence of over-regulation and misinterpretation** with regard to Recommendation 8.
- NPOs should also inform wider FATF delegations about this discontent in order to ensure that quality and consistency reviewers are made aware of this.
- NPOs/their umbrella organisations should request to receive a copy of the 2nd /3rd draft of the evaluation report (MER) as soon as they are sent to the governments in order to be able to provide input.



STEP 4: Plenary discussion

RECOMMENDATION FOR NPO ACTION:

NPOs/their umbrella organisations should liaise with friendly national delegations ahead of the plenary discussion to ask for support for key asks/comments on draft MER.

STEP 5: Adoption of MER and Executive Summary and its publication on the FATF website, and follow-up process

- a. **Either regular follow-up:** the minimum standard for all members entails countries reporting back to plenary on a biennial basis setting out action taken since MER; re-ratings for technical compliance are possible at the follow-up stage
- b. **Enhanced follow-up:** plenary decides at its discretion – could entail reporting back more frequently and other enhanced measures for countries (including suspension or termination of membership of the jurisdiction)

RECOMMENDATION FOR NPO ACTION

NPOs should request to be involved in the follow-up processes.

ANNEX 1: COUNTRY SUMMARIES (short versions of country summaries because of confidentiality issues):

1. BELGIUM

Belgium has been a Member of the FATF since 1990. Belgium had received good scores in the previous assessment so the same was expected in the fourth evaluation round.

The full report if available here: <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Belgium-2015.pdf>

CONCLUSION OF ASSESSMENT

Partial compliance with regard to R8 (technical compliance) – Belgium was compliant in the last round:

- Shortcomings in awareness-raising on the part of the government. NPO sector does not seem to be aware of potential risk and not much action has been seen on this front since the last round of evaluation in 2010.
 - Lack of control on and transparency of parts of the sector
 - Proportionality of some measures questioned
- Moderate level of effectiveness (NPOs mainly mentioned in the context of Outcome 10):
 - Not all competent authorities and private and other sector bodies were included in the evaluation process
 - The relevant authorities and the NPO sector lack awareness of the existing risk
 - Timescales for enforcement measures are questionable/too long

Belgium must over the next few years show that it is working towards being fully compliant. At the next few FATF plenaries, Belgium will have to come up with so called progress-reports.

Process of evaluation from the NPO perspective – NPO exchange with government and team of assessors:

The Belgian NPO sector has a good relationship with the ministry responsible, in this case the Belgian Ministry of Justice. The Ministry of Justice had issued, a couple of years ago, an awareness-raising campaign on potential abuse of NPOs for TF, engaging with NPOs on the matter. The Ministry of Justice informed key Belgian NPOs/NPO networks in early 2014 about the upcoming evaluation and a meeting was arranged to exchange views both on risks, and measures in place to mitigate potential risks.

Representatives of the NPO sector were invited by the evaluators to a one-hour meeting during the site visits – only 4 NPOs were in the room with a 6–7 evaluators. The NPOs shared information about the Belgian association and foundation sector and the prevalent legal and fiscal environment. They also shared different documents with the evaluators such as codes of conduct and examples of individual NPO practice.

The relationship with the evaluators was limited to this short interview session (the Belgian Ministry of Justice was not present – NPOs met with the evaluators alone). There was no report shared after the meeting. There was a follow-up meeting with the Ministry of Justice after the on-site visit, in which the Ministry of Justice shared feedback and the potential need for further action. NPOs did not receive a draft MER, only the final report.

Issues raised by the evaluators during the on-site visit

Belgian international non-profit associations (Aisbl) and foundations did not seem to be the core of evaluators' attention – it was the smaller associations (Asbl) which appeared to be of more concern due to their lacking the appropriate transparency and accountability regulations.

Follow-up actions considered by the Belgian government with regard to Recommendation 8:

Following the publication of the report, legislative action may include the following:

1. **Registers of beneficial ownership** to be introduced in line with the EU Anti-Money-Laundering Directive as part of the implementation of Recommendations 24 and 25 (this was expected and due to happen anyway)
2. **More detailed/clearer rules on accounting and checking of the annual accounts of NPOs**
3. Update on **some type of information (e.g., changes to the governing board) to take place within a certain specified deadline** (there has been no formal deadline so far) and sanctions to be applied if the deadline is missed (there have been none so far)
4. More awareness raising around potential abuse of NPOs and religious organisations

2. NORWAY

Norway has been a member of the FATF since 1991.

The full report is available here: <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Norway-2014.pdf>

CONCLUSION OF ASSESSMENT:

Largely compliant with regard to R8 (technical compliance): However, the summary of the report lists the following two issues of concern:

- NPOs that are not in receipt of public funding are not required to implement controls and standards for NPOs
- There is a lack of proportionate and dissuasive sanctions for violations of the standards for NPOs.

In the last evaluation round Norway was rated non-compliant for these requirements. Weaknesses included *a need to review the laws and regulations that relate to NPOs; a lack of measures to ensure that terrorist organisations cannot pose as legitimate NPOs, or to ensure that funds/assets collected by or transferred through NPOs are not diverted to support the activities of terrorist acts or terrorist organisations.*

The new report now states that many of these deficiencies have been addressed since then. In 2007 the *Act on the Registration of Charitable Fundraising* established a voluntary licensing regime for the charitable collection of funds by NPOs. A joint government/NPO sector group is working to review the regime and propose amendments to the regulatory framework. The report also states that Norway has the capacity to obtain timely information on the relevant features, to identify NPOs that are particularly at risk of being misused for TF.

The report states that there has been outreach to NPOs. In 2012, the Ministry of Justice published the *“Guide on how to avoid terrorist funding: Your contribution can be misused”*. Norway has

included a number of NPO umbrella organisations in the working group to assess the problems with illegitimate charitable fundraising (including for TF) and possible measures to ensure the NPO sector is not misused, including for TF.

It is interesting to see that Norway did get largely compliant with regard to Recommendation 8 even though the association sector is considered “underregulated” (compared to Belgium, for example, which only got a partially compliant). There are no mandatory requirements to register in Norway (only foundations are required to register) but a range of mostly **voluntary measures are mentioned**, which are considered to compensate for that and promote transparency and accountability in the sector. NPOs are encouraged to register on a voluntary basis due to incentives including favourable taxation treatment and public funding. The collection of funds in Norway is not regulated but there is a voluntary register for fundraising, supervised by the Foundation Collection Control in Norway.

Given the largely voluntary nature of registration of NPOs in Norway, sanctions appear to be limited to removal of benefits accruable to NPOs. In the Weighing and Conclusions section the evaluation report (MER) nonetheless finally states: *Norway has implemented measures which generally meet the criteria for R.8. However, a few technical deficiencies remain, including those relating to available sanctions.*

Moderate level of effectiveness with regard to Immediate Outcome 10.

Norway has recognised the TF risk profile for NPOs and has taken steps to effectively implement a targeted approach to the part of the sector responsible for the bulk of overseas NPO activity.

Process of evaluation from an NPO perspective

In March–April 2014, FATF evaluators interviewed representatives of the government, companies and NPOs. The evaluation team consisted of representatives from the Ministries of Finance, Justice, and Treasury representatives from different countries) – there were no NPO experts among the evaluators and some evaluators faced language barriers.

Issues raised by the evaluators

The evaluators focused most on the fundraising aspect of civil society organisations and they were concerned with the lack of government oversight on fundraising (lack of measures to ensure that the collected assets were not directed to terrorist purposes, that the organisations are not sham NPOs). The evaluators recommended the example of UK, which has more government control and suggested that similar control mechanisms could also be considered for Norway. Evaluators were surprised that there are detailed laws on foundations but not for associations, which constitute the majority of the NPO sector (78 per cent) in Norway. **NPOs explained the context:** The freedom of association and to some extent its “underregulation” is highly valued across the political spectrum. Norway has 5 million inhabitants and 10 million members of associations: more than half of the population carries out volunteer work. Most organisations operate with tiny budgets and this may be one of the reasons why the Norwegian government may not find it important enough to set stringent controls on NPOs. Most internationally-operating NPOs are publicly funded and hence under the accountability control mechanisms of the government anyway. NPOs mentioned the various new voluntary mechanisms such as the association register, which was established in 2008. NPOs stated that from their perspective there is no need to take legislative measures since soft law approaches and voluntary schemes appear to work. They are sceptical towards any detailed administrative laws that could inhibit civil society from operating freely. If those were to be established:

- many organisations would have to close down immediately which would result in a democracy deficit;

- it would be difficult to establish new organisations (immigrants would be the most vulnerable group, given they establish many new organisations).

It can be concluded that the assessors were convinced of the voluntary approach.

Potential follow-up actions

According to the recommendations listed in the mutual evaluation report, it can be expected that the government will:

- work on a more robust national risk assessment, with full engagement by all relevant stakeholders, to comprehensively assess ML/TF risks, and disseminate the findings within government and the private sector and develop a national AML/CFT policy based on this with improved coordination. NPOs should seek to be part of this process.
- enhance its AML/CFT supervision and ensure that future supervision is undertaken on the basis of ML/TF risk.

However, given that Norway got a largely compliant (technical compliance) score with regard to Recommendation 8 and a moderate level of effectiveness with regard to Immediate Outcome 10, it is not expected that Norway will focus its actions on NPO supervision/regulation.

3. SPAIN

Spain has been a Member of FATF since 1990.

Full report can be downloaded here: <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Spain-2014.pdf>

CONCLUSION OF ASSESSMENT:

Largely compliance with regard to R8 (technical compliance):

Generally the legislative framework was considered adequate with several recent legislative measures around NPO transparency and accountability. Spain had recently introduced a new law that required the identification of donors and beneficiaries for donations above 100 EUR. The evaluators had some concern regarding the scattered registration/supervision of NPOs/foundations in Spain, i.e., the fact that organisations are registered by different authorities/different regional registries and therefore that it is difficult to oversee the sector. In addition private associations do not appear to be sufficiently supervised.

Spain's understanding of the risks was considered good, and its outreach to the NPO sector adequate. The preventive measures and monitoring criteria are considered to have been met with respect to foundations and associations of public interest (including some religious entities), which account for most of the sector's financial resources and international activities (although gaps remain for some other types of NPOs).

Overall Spain has a moderate level of effectiveness with regard to Immediate Outcome 10 (NPOs are mainly mentioned in the context of Outcome 10):

The final report (MER) states that both the Government and the sector seem to have a good understanding of risk. The report mentions positively that *Spain has implemented measures to prevent the abuse of NPOs by terrorist and their financiers. The Treasury published a best practices paper regarding the prevention of the misuse of NPOs for ML/FT, and some of the elements in the paper are now present in the new regulation.* It also states that *the NPO sector representatives met during the on site visit were aware of this guidance, and also appeared to have an adequate*

understanding of their TF risks. Outreach to the NPO sector on TF risk has been undertaken in the context of broader outreach on the wider terrorism risks associated with NPOs.

The report also states that *up until recently, preventative measures were weak, and supervision of the sector was not focused on the risks of terrorism and its financing.* It mentions the new regulation, which was only enacted just before the end of the on-site visit. The new regulation is considered to have *significantly strengthened the preventive measures (including rules aimed at “knowing your beneficiaries and associated NPOs”), and appoints the Protectorates responsible for supervising compliance with these new requirements: RD 304/2014 art.42.* It criticises that *information on NPOs is scattered across 84 separate national and regional registers.* One can conclude that Spain would have not received such a positive evaluation if it had not issued recent preventative measures.

The report also states that Spain has been successful in investigating and prosecuting activity connected to the collection and movement of terrorist funds through the NPO sector.

Spain’s evaluation is the first comprehensive review of a country’s anti-money laundering and counter-terrorist financing system and the first to be completed using the revised FATF Recommendations adopted in 2012. The 2014 MER report also includes recommendations to Spain on the improvements needed.

Process of evaluation from an NPO perspective

The on-site visit took place in April–May 2014 and 7 evaluators met 3 representatives from the NPO sector for an interview that lasted an hour-and-a-half. NPOs did not receive any questions in advance. The evaluators focused on how the NPO sector sees itself at risk.

NPOs had already provided some data in 2012 during the risk assessment phase. Treasury was provided with details on the number of foundations, the economic dimension, the areas of activity, etc. However the sector had not undertaken a risk assessment, and a **lesson learned** from Spanish NPOs was that NPO sectors should potentially invest more in sectoral risk assessments.

Spanish NPOs and foundations generally have good working relationships with the Spanish administration, an example of that is the cooperation with the Ministry of Economy and Competitiveness/Treasury for the production of a best practices guide to combat ML and TF.

Issues raised by the evaluators

NPOs expected the conversation with the evaluators to be focused on self-regulation, whereas it was more on legislation and how that is implemented by NPOs. The evaluators were not satisfied with the prevalent registration procedure for NPOs, i.e., the fact that organisations are registered by different authorities making it difficult for the sector to be overseen.

Follow-up action by governments – recent initiatives that could be linked to the FATF evaluation

The new law that requires Associations and Foundations to report on every donation above 100 EUR was motivated by the upcoming FATF evaluation and has certainly influenced the assessors to give Spain a positive score. In addition, there was an amendment proposed to the Foundation Law to put forward stricter supervisory mechanisms. The sector successfully advocated against the law amendment, which was then finally dropped.



ANNEX 2: ABOUT THE NPO COALITION ON FATF AND NPO MATTERS

Since 2013, the European and International civil society coalition on the FATF has stepped up its advocacy to influence an amendment of Recommendation 8 (R8) of the Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT) standard. Over 200 nonprofit organisations (NPOs) worldwide have endorsed the work of the coalition on influencing the revision of the R8 Typology paper and the Best Practices (policy) Paper (BPP). A core group, consisting of the European Center for Not-for-Profit Law (ECNL), the European Foundation Centre (EFC), Human Security Collective (HSC) and the Charity and Security Network (CSN), facilitates and coordinates engagement with the FATF and civil society constituents in a number of countries. An online civil society platform on the FATF (<http://www.fatfplatform.org>) has been launched to complement the existing FATF google group for timely outreach, information-sharing and communication.