



Risk Assessment Scoping Paper

The risk based assessment approach and mutual evaluations as the cornerstone to validating the effectiveness of Recommendation 8

Summary of the paper

Since the start of the fourth round of mutual evaluations in 2014 the Financial Action Task Force (FATF) has been, more so than ever before, pushing countries to conduct a risk assessment of the non profit organization (NPO) sector. The assessment needs to be conducted prior to the designing and implementing of rules and regulations in order to prevent/mitigate the abuse of non profits for terrorism financing. The risk based approach is the yardstick the FATF requires to validate whether the operationalization of the standard is effective in relation to the risk identified by the country.

Measuring the effectiveness of standard implementation is complex. The FATF has embarked on a process to measure effectiveness through the use of an assessment or evaluation methodology that validates prescribed outcomes for all 40 recommendations. The outcome pertaining to Recommendation 8 (R8) states that *“Terrorists, terrorist organizations and terrorist financiers are prevented from raising, moving and using funds, and from abusing the NPO sector”*. A core issue to be considered by evaluators in determining whether the outcome is achieved is formulated as follows: *“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 threat of terrorist abuse”*.

The evaluation methodology is clear that evaluations should look into the rules and regulations for non profits, and engage with the non profits at risk without disrupting legitimate NPO activity. It calls for a targeted approach towards non profits at risk, and not for the implementation of broad brush measures for the entire NPO sector.

Backed by the 2015 R8 Best Practices Paper which promotes a targeted approach, and advises countries to adhere to International Humanitarian Law, International Human Rights Law and the International Covenant on Political and Civil Rights when implementing R8, the current mutual evaluation methodology looks at laws, rules, regulations *and practices* to address non profits at risk. The BPP further mentions the improbability of a zero-risk approach to implementing R8, and the avoidance of designing additional soft and hard measures if existing rules and regulations prove to be adequate in mitigating the terrorism financing risks for non profits.

A consequence of this shift in focus is that the category of non profits singled out in the Interpretive Note (IN) to R8, i.e., *non profits which account for 1. a significant portion of the financial resources under control of the sector and 2. substantial share of the sector’s international activities*, is not *a priori* more vulnerable than other non profits as assumed by the IN.

Conducting a risk assessment is a first step to avoiding the design and operationalization of rules and regulations that are overbroad and thus costly, and that may not lead to the desired outcome, or worse prove harmful or counterproductive to legitimate non profit activity. The FATF is obviously still grappling with ways of validating a risk based approach for all of its recommendations,

including R8. Since the NPO sector is singled out as being “particularly vulnerable” to terrorism financing in the Recommendation, the taskforce stresses the importance to authorities of a domestic review of the sector, which would lead to a clearer picture of those at risk and the types of measures needed to be designed and implemented in order to prevent or mitigate identified risks. The aim is that evaluators will use the outcome of this domestic review on non profits to validate the overall Anti Money Laundering (AML)/Countering the Financing of Terrorism (CFT) framework and corresponding practices of a country.

This paper aims to provide guidance on ways to navigate the complex FATF R8 landscape in relation to operationalizing a risk assessment. From the outset it is clear that a risk based approach related to non profits can only succeed if non profits are part of the process of assessing risk in the first place. An appropriate risk assessment of non profits which will ideally take place within the contours of a domestic review requires:

- A multi-stakeholder process, convened and facilitated by a team comprising government representatives and NPOs.
- An analysis of the relation between non profits and terrorism or violent extremism that would provide a solid basis to identifying and determining potential vulnerabilities, risks and abuses of NPOs (of those that are genuinely at risk).
- An analysis, with support from NPOs, of existing hard and soft laws, rules and regulations that affect the legal, financial, operational and political space of NPOs directly or indirectly and of existing non profit “self-regulatory” transparency and accountability measures to address terrorism financing abuse.
- An analysis of NPO regulatory and supervisory authorities at the national and local levels in relation to *the risk of NPO abuse for terrorism financing*.

A risk based approach may lead to a more targeted operationalization of the country’s AML/CFT framework to address non profits at risk. However, it remains founded on the assumption that the NPO sector is *particularly* vulnerable to terrorism financing, which in light of available evidence and current knowledge on the financing of, e.g., IS, foreign terrorist fighters and similar groups would at least merit an open-minded and unbiased revision by the taskforce.

Introduction to a Risk Based Approach

The Risk Assessment Scoping Paper and the Evaluation Paper are written to alert and inform NPOs and other relevant stakeholders about changes in the FATF’s policy with regards to R8. These changes can be explained in relation two recent developments: 1) positive strides made by the transnational FATF NPO working group in pushing for continued dialogue with the FATF, and 2) realization by the FATF that the implementation of its standard across its memberships and the FATF Style Regional Bodies (FSRBs) needs to be streamlined in order to be made more effective.

The results of the fourth round of mutual evaluations, conducted using a methodology that aims to show the effective operationalization of the anti-money laundering and countering of terrorism financing (AML/CFT) standard by the authorities, have led to a realization by the FATF of the need for consistency in its AML/CFT policy development, implementation and evaluation cycle. A key

dimension is the nexus between risk based assessment and evaluation. To be able to validate whether a country has operationalized the 40 recommendations of the FATF standard effectively, evaluators need to assess the money laundering and terrorism financing risks the country faces and how they have addressed these.

As is evident, national money laundering and terrorism financing risk assessments are often lacking or incomplete. At times, given the fast-paced nature of developments in these fields, they are obsolete. Evaluators face the difficulty of measuring effectiveness without having an appropriate “benchmark”. In a recent regional workshop in Sarajevo on “The prevention of terrorist abuse of nonprofits in South and Eastern European countries”, organized 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 as well as emphasizing the need to include NPOs in national risk assessments.¹

Financing of terrorism activities, networks and business models have become a major issue for the G20 and members of the FATF since the advent of ISIL and other violent extremists groups. The FATF is called upon as a task force to address the growing concerns of (international) terrorism financing through the standard, in particular through pushing for stricter implementation of Recommendations 5 and 6 in relation to adequate and up-to-date country risk assessments. With regard to R8, there are various signals, including a potential revision of its Interpretive Note (IN), which we hope to have more clarity on prior to the FATF’s October 2015 plenary.

In the past three years the transnational FATF NPO working group has strengthened its dialogue with the FATF, which has led to two quite major breakthroughs in 2015. Recommendations by the group for the revision of the R8 Best Practices Paper (BPP), a policy document to guide governments in the operationalization of the Recommendation, were to a large extent included in its final version. Additionally, in its June 2015 plenary, the FATF agreed to holding an annual discussion with NPOs and to continuing constructive engagement with the sector on an ad hoc basis.

In view of these developments, our European coalition of non profit organizations has produced two papers: one on an R8-related risk based approach and the other on R8 effectiveness evaluation. The papers are best read together for a comprehensive picture on the challenges countries face in navigating the operationalization of the FATF standard and on how non profits can best engage authorities in their countries and the FATF to ensure that they are involved in risk assessments and evaluations.

From a rule to a risk based approach, from evaluating rule compliance to measuring effectiveness

1. The FATF is, more than ever before, pushing governments to conduct a national risk assessment on money laundering (ML) and terrorism financing (TF). It issued a guidance paper on risk assessment

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

in 2013,² and though this guidance is not a standard, it does provide step-by-step instructions on how a national AML/CFT risk approach could be conducted in line with the obligations set out in Recommendation 1 (R1).³ This paper will shed light on the connection between R1 and R8 when it comes to assessing the terrorism financing risks NPOs face and what the FATF expects from governments in terms of evidence and analysis.

2. The text of R1 lays out a number of basic principles with regard to risk assessment.⁴ First, it calls on countries to “identify, assess and understand” the ML/TF risks they face, and states that countries should also designate “an authority or mechanism to co-ordinate actions to assess risks”. The goal of the standard is to ensure that countries can mitigate their ML/TF risks effectively, and the risk assessment is clearly intended to serve as the basis for an application of the risk based approach, i.e., “to ensure that measures ... are commensurate with the risks identified.”⁵

3. A risk assessment is an essential foundation in allocating AML/CFT resources efficiently. Furthermore, the Recommendation indicates that risk assessments carried out by countries should be used for determining higher and lower risks that may then be addressed by applying enhanced measures or allowing simplified measures respectively.

4. The Recommendation concludes by requiring that financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs) should also be able to identify, assess and take effective action to mitigate ML/TF risks. In elaborating on the specific obligations and decisions for countries, the Interpretive Note (IN) to R1 states that countries should take steps to identify and assess their ML/TF risks on an “ongoing basis.” The objectives of the process at the country level are: (1) to provide input for potential improvements to the AML/CFT regime, including through the formulation or calibration of national AML/CFT policies, (2) to help in prioritizing and allocating AML/CFT resources by competent authorities, including through feeding into any risk assessments conducted by such competent authorities (e.g., supervisors) and (3) to feed into the AML/CFT risk assessments carried out by financial institutions and DNFBPs.

5. In cases of higher and lower risk determination, country-level risk assessments have very specific roles: where countries identify higher risks, they should ensure that their AML/CFT regime addresses these risks. Where countries identify lower risks they may decide to allow simplified measures to be applied in relation to some of the FATF Recommendations.

6. The outcome of such an assessment would provide a yardstick on the current state of the country’s AML/CFT regime which would, in turn, facilitate the evaluation of the effectiveness of the standard. So far, only a small minority of countries conduct a national risk assessment around ML or TF, and often in conjunction with other nationwide risk assessments. The FATF guidance on National

² http://www.fatf-gafi.org/media/fatf/content/images/National_ML_TF_Risk_Assessment.pdf

³ The paper refers to national risk assessments unless specifically stated otherwise.

⁴ The full text of Recommendation 1 is on page 13 <http://www.fatf-gafi.org/topics/fatfrecommendations/documents/fatf-recommendations.html>

⁵ <http://www.fatf-gafi.org/topics/fatfrecommendations/documents/fatf-recommendations.html>

Money Laundering and Terrorist Financing Risk Assessment gives five examples of country-level assessments.⁶

7. The absence of or poorly-conducted country risk assessments complicate the work of assessors who have to evaluate whether the standard works in practice. Their assessments now have to show whether the institutional, legal, political and social arrangements, and the rules and regulations as well as practices in a country are adequate in dealing with its ML/TF risks instead of merely checking, as was the former evaluation practice, whether the existing rules and institutions are in place to implement the standard. *The evaluations have moved from a rule- to a risk-based assessment.* Recommendation 1 of the standard – Assessing Risks and Applying a Risk Based Approach – has become an overarching one for the implementation of all other Recommendations.⁷

The consequences for the implementation of Recommendation 8

8. The R8 Typology/Risk of Terrorist Abuse in Non Profits report of 2014 and the revised R8 Best Practices Paper (BPP) of 2015, both of which are not mandatory documents, strongly recommend that the design of an AML/CFT national framework to protect “the NPO sector” from abuse by terrorists or accomplices has to be based on an assessment of the risk of the sector. The implementation of R8 should not be in isolation but in conjunction with the overarching R1 requirement of a risk-based approach. Both documents refer to the IN of R8.⁸

9. The revised BPP says that in practice, conducting a domestic review of the entire NPO sector is a fundamental and necessary starting point for the proper implementation of R8, because it enables countries to:

- a) determine which NPOs in their country fall within the scope of the FATF definition of a *non-profit organization* and to which NPOs the country’s TF mitigation measures should therefore apply;
- b) better understand the domestic NPO sector, including size, type, locations and activities;
- c) understand the TF risks facing their specific NPO sector, and determine the laws, regulations and other measures already in place to mitigate those risks, in line with R8;
- d) take the results of the domestic review into account in the context of their national risk assessment, as appropriate; and
- e) ascertain whether the laws, regulations and other measures already in place are commensurate with the risks identified, in line with Recommendation 17, and whether additional measures are needed to mitigate the risk or whether the current measures are sufficient.

Elements of a country’s domestic sector review could include: the size, type, and scope of NPOs, their activities, their donor base, cross-border activity and financing, movement of funds, means of payments, type and location of activities engaged in, services provided, and the level of

⁶ Australia, the Netherlands, New Zealand, Switzerland and the USA.

⁷ <http://www.cari.org.ar/pdf/crimenorganizado-marteau-2013.pdf>

⁸ The full R8 Interpretive Note http://www.fatfgafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf (page 52–58).

risk associated with these elements (BPP, June 2015, paras 14, 15, pages 11,12). Examples of domestic reviews that addressed the potential ML and TF risks facing NPOs include those conducted by NPO umbrella organizations in the Philippines and Indonesia respectively.⁹

10. The R8 Typology report and the R8 BPP emphasize that a domestic review is the benchmark upon which a country's NPO oversight framework on terrorism financing and money laundering should be developed and assessed. An immediate outcome (number 10) of the new assessment methodology is that:

“Terrorists, terrorist organisations and terrorist financiers are prevented from raising, moving and using funds, and from abusing the NPO sector. The characteristics of an effective system are: Terrorists, terrorist organisations and terrorist support networks are identified and deprived of the resources and means to finance or support terrorist activities and organisations. This includes proper implementation of targeted financial sanctions against persons and entities designated by the United Nations Security Council and under applicable national or regional sanctions regimes. The country also has a good understanding of the terrorist financing risks and takes appropriate and proportionate actions to mitigate those risks, including measures that prevent the raising and moving of funds through entities or methods which are at greatest risk of being misused by terrorists. Ultimately, this reduces terrorist financing flows, which would prevent terrorist acts. This outcome relates primarily to Recommendations 1, 4, 6 and 8, and also elements of Recommendations 14, 16, 30 to 32, 37, 38 and 40”.

Outcome 10.2 on R8 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 threat of terrorist abuse?* (pages 38,39, 114–116 of the Effectiveness Assessment Methodology).¹⁰

11. If the outcome of the assessment is a low risk profile for the sector, the country would need to design a light regime to prevent abuse of the sector or be able to rely on existing legislative and regulation frameworks. If the outcome is a medium or high risk profile for the sector, authorities need to fix system deficiencies or design a legislative and regulatory framework that would effectuate oversight of the sector with the purpose of preventing terrorism financing. If the evaluators conclude that there is no terrorism financing risk within the NPO sector no actions are needed.

12. The R8 Typology report provides guidance for countries seeking to conduct a risk assessment of the NPO sector. The R8 BPP provides policy guidance in relation to the country context and the design of a proportionate approach to prevent abuse of the sector. The BPP strongly advises governments to adhere to international principles or treaties related to civil society freedoms such as article 22 of the International Covenant on Civil and Political Rights. Both documents urge authorities to reach out to non profits in their countries to explain the FATF standard and the importance for an

⁹ <http://fatfplatform.org/wp-content/uploads/2015/06/Indonesia-NPO-domestic-review-Eng-FINAL.pdf> and http://code-ngo.org/home/images/stories/pdf/Philippine_NGO_Sector_Assessment_Full_Report.pdf

¹⁰ <http://www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology%2022%20Feb%202013.pdf>

adequate implementation for which input from the sector is required. The BPP even goes so far as to advise continued dialogue between authorities and NPOs on R8 monitoring and implementation.

13. At first glance, the current guidance papers on R8 and the outcome of compliance with the recommendation as formulated in the assessment methodology frame provide useful recommendations for a proportionate and context specific implementation of R8. The papers outline a logical order in the FATF standard implementation and assessment process. The first step is to conduct a domestic review that identifies and determines the strengths and weaknesses of the country's AML/CFT system in relation to potential abuse of the NPO sector. The domestic review would lead to the identification of subsets of non profits, if any, at risk. It would determine the acceptable threat and risk level in the country or in a certain geographic area in a country where these targeted subsets of NPOs are active. A domestic review would naturally feed into a national risk assessment exercise. A well conducted risk assessment would be able to give an indication of commonalities and differences for the various sectors that are up for scrutiny by the FATF evaluators.

The FATF urges countries both in the recommendation and in the typology and BPP guidance papers to conduct a domestic risk assessment of the NPO sector. The Assessment Methodology Paper for the fourth round of evaluations is written entirely on the assumption that countries organize a national NPO risk assessment previous to designing and implementing AML/CFT rules and regulations for the sector. The expectation of the FATF is that the domestic NPO risk assessment would be integrated in a national risk assessment exercise for evaluators assessing the implementation of R8.

14. The domestic review and risk assessment lay the foundation for a risk based approach. Based on the outcome of the domestic review one can identify and determine more precisely how to address organizational or sectoral weaknesses for preventing or mitigating terrorism financing in targeted subsets of the NPO sector. These deficiencies pertain to risk categories of financial, operational and material support via NPOs for terrorist activities or groups. The FATF have identified indicators for each risk category.

15. A system to monitor targeted NPOs at risk using the indicators would provide updated information to enable adaptability of rules, regulations and implementation practices to prevent abuse if required. The system has to fit the resources and priorities of the authorities.

16. Evaluators assessing the effectiveness of R8 are now able to compare the outcome of a domestic review, or a nationwide risk assessment of which a domestic review is an element, with the AML/CFT system in place.

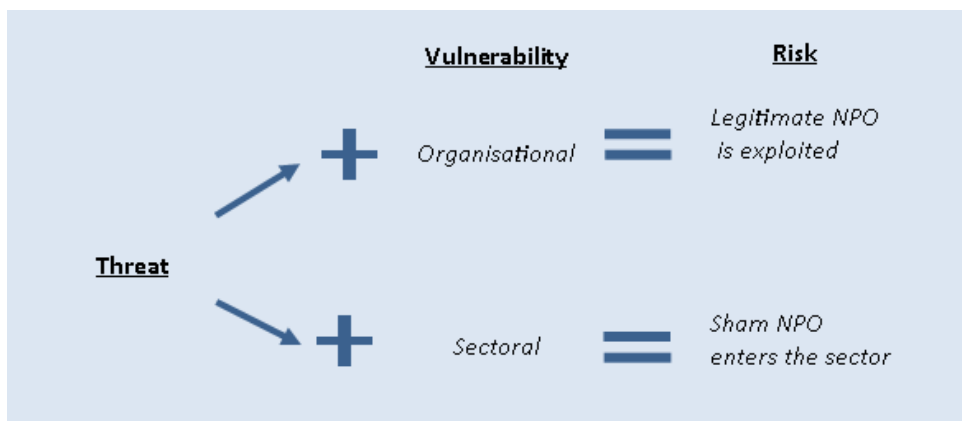
However, a closer look at this supposed logical order explained above throws up a number of challenges and exposes numerous gaps.

With regard to the risk assumptions and risk indicators for NPOs presented in the typology report

17. The FATF R8 Typology study¹¹ prejudices the most important question of all: whether the NPO sector as a whole faces a systemic threat or suffers from unique systemic vulnerabilities. There is no attempt to compare the instances of abuse of the non profit sector collected for the report with, for example, a representative sample of for-profit organizations, or to analyze the data in the context of the wealth of evidence amassed by academia and civil society. A literature review conducted and case studies analyzed by a group of scholars suggest that a majority of the cases of terrorist abuse were through sham charities or related to the designation of social or political wings of organizations that use terrorism to pursue their agenda. Organizations complicit in such activities are distinct from legitimate NPOs and require dedicated strategies to combat them rather than top-down approaches to the sector as a whole.

The FATF understanding of risk is the potential of a terrorist threat exploiting a vulnerability, resulting in the damaging of an NPO or the NPO sector.

Threats + Vulnerabilities = Risks



(Source: R8 Typology report 2014)

Threat – Anything that can exploit an organizational or sectoral vulnerability, intentionally or accidentally, and damage the NPO. A *terrorist threat* is what R8 is trying to protect against.

Vulnerability – Weaknesses or gaps in the eco-system of the NPO that can be exploited by terrorists to gain unauthorized access to the NPO. *Vulnerability is a weakness or gap in protection efforts by government authorities. In the BPP, the FATF underscores that self-regulatory measures and protocols by NPOs for protection against fraud and corruption may be suitable for protection against their vulnerability to terrorism threats. Government protection would not be needed if these self-regulatory measures proved to be effective.*

18. Organizational vulnerability occurs when a legitimate non profit is exploited for terrorism purposes from the inside, e.g. through a diversion of “clean charitable money” for terrorist ends. Sectoral vulnerability is when a sham non profit poses as a charity to disguise fundraising and programming for terrorist activities.

¹¹ <http://fatfplatform.org/wp-content/uploads/2015/02/NPO-Sector-Typology-Position-Paper-FATF.pdf>

19. How is risk “measured”? Based on an analysis of 102 case studies, the FATF has developed risk indicators for seven categories where non profits are at risk of abuse. A distinction is made between a risk indicator and a terrorist abuse indicator. A risk indicator suggests abuse or risk of abuse of the NPO that may be terrorism related but may have alternative explanations. A terrorist abuse indicator suggests abuse or risk of abuse that is directly linked to terrorist activity. The presence of these indicators would lead to a stronger certainty that the abuse or risk is terrorism related, as opposed to alternative explanations. Each of these indicators may be useful for governments and/or NPOs.¹² The FATF recommends the use of as many sources as possible to gauge risk of abuse. To be able to determine the threat and risk environment and whether the AML/CFT regime is addressing the risk adequately, evaluators rely on information from authorities involved in regulating NPOs: the Financial Intelligence Units or FIUs, financial services institutions/banks, branch organizations, umbrella NPO organizations and intelligence sources. The use of credible academic research, studies related to the operational space of civil society, relevant UN reports, and evaluation reports from non profits is encouraged.

20. The BPP states that zero risk is not possible. This acknowledgement is a step in the right direction as compared to the IN of R8 which seemingly has a zero-risk approach in relation to preventing terrorism financing via non profits. Governments have to decide on a risk mitigation approach depending on available resources and the political and legal conditions in relation to current and evolving threats. In conversations with the FATF and its delegates, NPOs have alerted the task force and governments to the fact that in high risk, conflict- or terrorism-prone circumstances humanitarian and peacebuilding organizations (have to) deal with listed groups. These organizations have developed strategies to work around or within the conflict. Humanitarian organizations provide money or other resources to listed groups in order to access communities in need of humanitarian support. Providing material support to facilitate dialogue with listed groups is a well-known and documented practice among peacebuilding organizations working in high risk areas. The complexities of working in terrorism-prone areas need to be understood by the FATF and validated not only from a technical point of view (adhering to the standard) but from a humanitarian and political point of view as well. This is a salient point as finances for humanitarian and peacebuilding organizations operating in these areas may come from ministries of foreign affairs.

21. An analysis of the case studies in the R8 Typology Report led the FATF to conclude that service delivery organizations that operate near a terrorist threat, especially those active in the arenas of health, education, housing, and other social services, are at a greater probability of being abused for terrorist purposes. NPOs involved in recreational activities, culture and arts, advocacy and those representing interests groups are hardly or not at all at threat of such abuse. Service delivery organizations are in general cash-driven and therefore attractive for terrorists.

22. The FATF R8 Typology study uses a conceptual framework for the R8 risk assessment based on the work of a scholar who concludes that policies around countering terrorism financing which operate on

¹² The full risk indicator matrix including the cases upon which it was built can be found here: <http://www.fatf-gafi.org/media/fatf/documents/reports/Risk-of-terrorist-abuse-in-non-profit-organisations.pdf> (chapter 6: Risk and Terrorist Abuse Indicators, pp. 65–73)

the belief that “terrorist groups typically have vast, unified, and often quite sophisticated financial infrastructures”, are misconstrued.¹³ Terrorists finance and support their activities from parts of the everyday economy, often within the context of informal economies. Broad brush measures are not useful to detect financial or material support. The scholar recommends the analyzing of terrorist support as interactions with existing value chains. For example, terrorist factions may participate in the value chain by adding value in exchange for securing resources for themselves, or intervene in the value chain to secure these directly. An NPO risk assessment should shed light on ways financial, economic and social value chains are most at risk of becoming (ab)used by terrorist groups. The FATF underscores the fact that research into these issues may be too costly for a country and resorts to the recommendation that authorities should use all available resources for a risk assessment, including information from NPOs on the ways they deal with risk.

23. The transnational NPO working group is critical of the risk approach as laid out in the FATF R8 Typology Report:

The theoretical framework for analysis lacks definitional nuance and infers a systemic vulnerability of the NPO sector as a whole from a small number of instances of abuse. It then conflates vulnerability (the possibility that something could happen) and risk (the increased likelihood that something will happen) to imply a need for a comprehensive regulatory approach of the NPO sector. There is also no attempt to identify the opportunity costs attendant in addressing the perceived threat. This is particularly problematic because the “worst case scenario” provides the basis for the approach to the sector as a whole. The assumption presented in the report is that NPOs closest to areas prone to terrorism are most at risk and should therefore be subject to the most robust preventative strategies. Anecdotal, primarily US-based, evidence shows that NPOs active in areas prone to terrorism have already become increasingly risk-averse and are limiting or ending their engagement with local organizations or communities in areas where they may be needed most because of the cumbersome legal and regulatory environment. The withdrawal of NPOs may undermine the fight against terrorism as it leaves extremist organizations/groups to then provide social services to communities in these areas, and who, by doing so, may gain a stronghold among vulnerable populations. The consequences of risk-averse decision-making by NPOs active in high risk and terrorism-prone areas must be properly assessed and analyzed alongside the perceived risks and vulnerabilities and actual instances of abuse.¹⁴

24. In over 50 countries worldwide, a legal and regulatory environment has been created that pushes back the financial, legal and operational space of civil society.¹⁵ This push back is partially caused by counter terrorism measures, used by governments as a pretext to clamp down on civil society organizations considered to be anti-national or representing or supporting groups in society that undermine the national “identity”, security or societal values.

A survey of Non-Profit Organizations (NPOs) conducted in 2014 by the Charity and Security Network and the transnational FATF NPO working group for a “shadow report” of the FATF Typology study focused on

¹³ Timothy Wittig, <http://www.fatf-gafi.org/media/fatf/documents/reports/Risk-of-terrorist-abuse-in-non-profit-organisations.pdf> (pages 12,13,14)

¹⁴ <http://fatfplatform.org/wp-content/uploads/2015/02/NPO-Sector-Typology-Position-Paper-FATF.pdf>

¹⁵ <http://www.icnl.org/research/journal/vol17ss1/Rutzen.pdf>

the impact on NPOs of the proliferation of CT measures and the steps NPOs take to prevent or mitigate risk. It identified three trends:

1) The overall NPO experience is that actual abuse is very rare. 2) There is a wide variety of NPO approaches to risk management and due diligence. 3) Financial exclusion through de-risking, via money transfer delays and bank account closures, is a serious concern as it pushes money out of transparent and regulated channels.¹⁶

25. The FATF does, to certain extent, recognize this NPO concern and states in their Typology Report that:

*“The complexities inherent in R8 have been and will remain difficult to navigate. However if these complexities are not properly navigated, the integrity of the NPO sector will remain at risk”.*¹⁷

The task force is grappling with its position vis à vis adherence to International Humanitarian Law (IHL) and Human Rights Law (HRL), and its obligation to implement international counter terrorism measures, which is its mandate. It is interesting to note that an organization that has the authority to deeply influence a country’s financial and legal framework takes an overtly careful stance when it comes to an implementation of R8 at the national level adhering to IHL and the HRL:

*“In states where there is a risk that R8 will be used to exacerbate systemic abuse of civil society, the protection of human rights is part of a broad based discussion. Indeed the United Nations General Assembly has identified violations of human rights, political exclusion and related issues as ‘conditions conducive to the spread of terrorism’. One aspect of the discussion is the state’s international obligations both in terms of security standards and the maintenance and protection of human rights. The other aspect of the discussion is the norm of national sovereignty which limits the extent to which international actors can dictate affairs at a national level. Simultaneously promoting the benefits of a vibrant civil society and the security provided by robust counter terrorism measures is often the goal of international actors; but such simultaneous goals may not be shared by national governments. In these cases it is important to differentiate between the objectives of the international standard (in this case the FATF recommendations) and the quality of the national-level implementation of the standard”.*¹⁸

In the current antagonistic climate for, in particular, western-funded civil society active on transformative initiatives, the depiction of NPOs as being vulnerable and at risk of terrorist abuse plays into the hands of ill-intentioned or ill-informed governments that already have designed or are in the process of designing restrictive laws and regulations to push back anti-nationalist, foreign-inspired, and state-undermining non profits. The “terrorist” label is one more weapon in their armoury, and comes with the legitimization of an international and powerful regime. Even countries like Belgium, given a “partial compliance” verdict from the FATF in the last Mutual Evaluation Report (MER) of the country, feel obliged to remedy their regulatory system for oversight now of “small nonprofits”. The Belgian government does not consider the environment for non profits to be one which is at risk of terrorism abuse,

¹⁶ <http://fatfplatform.org/wp-content/uploads/2015/02/NPO-Sector-Typology-Position-Paper-FATF.pdf>

¹⁷ <http://www.fatf-gafi.org/media/fatf/documents/reports/Risk-of-terrorist-abuse-in-non-profit-organisations.pdf> (para 19, page 7)

¹⁸ <http://www.fatf-gafi.org/media/fatf/documents/reports/Risk-of-terrorist-abuse-in-non-profit-organisations.pdf> (para 87, page 33, 34)

yet the FATF assessors judged it to be based on one case in the past eight years and on the changing threat level in the country due to (returning) foreign terrorist fighters.

With regard to the definition of ‘NPO’ in the IN and the BPP

26. The Typology Report and BPP indicate that R8 has to be applied to NPOs as defined by the FATF:

*“A legal person or arrangement or organization 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”.*¹⁹

The BPP stresses that the definition does not apply to the entire universe of NPOs:

*“Recommendation 8 does not apply to the NPO sector as a whole. Countries should take a targeted approach to implementing the measures called for Recommendation 8, including oversight and regulatory mechanisms, based on an understanding of the diversity of the NPO sector and the terrorism risks faced by the domestic NPO sector. Given the variety of legal forms that NPOs can have, depending on the country, the FATF has adopted a functional definition of NPO. This definition is based on those activities and characteristics of an organization which put it at risk of terrorist abuse, rather than on the simple fact that it is operating on a non-profit basis. Recommendation 8 only applies to those NPOs which fall within the FATF definition of a non-profit organization”.*²⁰

27. This is a change from the focus of the IN on a subset of NPOs that should be subject to additional supervision and monitoring because they account for (1) a significant portion of the financial resources under control of the sector; and (2) a substantial share of the sector's international activities. R8 IN C5 (b). The Moneyval presentation at the July 2015 regional workshop on prevention of terrorism abuse of NPOs signals this change as well.²¹

28. The current focus on NPOs at risk – not necessarily the same as indicated in the IN C5 (b) subset – logically follows from the FATF’s emphasis on R1 as the overarching approach to a proportionate and context-specific AML/CFT framework. The BPP reiterates the conclusion drawn from the NPO Typology study that NPOs have a stronger propensity to risk: *“The risks facing NPOs engaged in service activities are not equal. There is a stronger risk of abuse for NPOs providing service activities ‘in close proximity to an active terrorist threat’. This may refer to an NPO operating: i) in an area of conflict where there is an active terrorist threat; or ii) domestically in a country where there is no conflict, but within a population that is actively targeted by a terrorist movement for support and cover. In both cases the key variable of risk is not geographic, but the proximity to an active threat. Importantly, this does not always correspond to geographic areas of conflict or low-governance(....) Ultimately, the principal considerations for determining which NPOs are at a higher risk of abuse are*

¹⁹ <http://www.fatf-gafi.org/media/fatf/documents/reports/BPP-combating-abuse-non-profit-organisations.pdf>

²⁰ <http://www.fatf-gafi.org/media/fatf/documents/reports/BPP-combating-abuse-non-profit-organisations.pdf> (page 6)

²¹ <http://fatfplatform.org/wp-content/uploads/2015/08/NPO-Saraeivo-RWS-Executive-Summary.pdf>

*the value of their resources or activities to terrorist entities, and the proximity to an active terrorist threat that has the capability and intent to abuse NPOs”.*²²

29. The emphasis on a domestic review upon which the R8 risk regime would be based should be seen as a move in the right direction. The guidance given by the revised BPP to governments on conducting a domestic review and risk analysis is informed by human rights standards and treaties, humanitarian principles, and transparency and accountability standards developed by NPOs. Nevertheless the assumption that the NPO sector suffers from a systemic vulnerability to terrorism abuse and therefore requires the protection of the FATF regime to safeguard its integrity remains, in our opinion, false. The outcome of the survey carried out by the Transnational NPO Working Group on the FATF gives ample evidence to corroborate this.²³ As long as this assumption is at the core of the IN of R8, navigating the FATF regime will remain a challenge for NPOs and for governments that act in good-faith. For ill-intentioned governments, it provides further legitimacy in designing (additional) restrictive laws, rules and regulations for non-profits.

30. To prevent authoritarian and less democratic governments from misusing or abusing the guidance given by the revised BPP on targeting NPOs that are: not cash intensive; often foreign-/western-funded and advocates of social, political or economic change at the grassroots level; and/or involved in conflict meditation with proscribed groups, the evaluation team and the FATF would have to validate the quality of a domestic review approach. We may assume that if the authorities have not conducted a domestic review but have nevertheless designed a supervisory regime for NPOs that restricts their financial, legal and operational space, that the FATF evaluators would judge that the country has inadequately regulated or overregulated the sector. If the authorities have conducted a domestic review but with only a small subset of NPOs, e.g., Governmental NGOs (GONGOs) and think tanks leaning towards the establishment, which has then resulted in restrictive measures against non profits critical of government and its public policies, as well as of the corporate sector, the FATF would need to conclude that R8 may have been used to stifle social and political critique and dissent instead of mitigating terrorism financing. If a country does conduct a national risk assessment and carry out a domestic review of the NPO sector related to terrorism financing and money laundering or has reliable proxy reviews on the relation between non profits and terrorism financing or money laundering, assessors will be able to gauge the effectiveness of the regime based on reliable data.

The importance of an inclusive process in taking on a risk based approach through a domestic review

31. The FATF pays less attention to the importance of due process for conducting domestic reviews and risk assessments while this, in our opinion, is key. It is important in order to arrive at a legal, regulatory and implementation framework that will do justice to the freedoms of peaceful assembly and association for civil society writ large, and also for targeted measures that would effectively address non profits that are wittingly or unwittingly abused for terrorism financing. A domestic

²² <http://fatfplatform.org/wp-content/uploads/2015/02/NPO-Sector-Typology-Position-Paper-FATF.pdf>
<http://www.fatf-gafi.org/topics/fatfrecommendations/documents/bpp-combating-abuse-npo.html>

²³ <http://fatfplatform.org/wp-content/uploads/2015/02/NPO-Sector-Typology-Position-Paper-FATF.pdf>

review would provide more insight into what types of non profits could contribute to mitigating violent extremism and what would be required for their financial, legal and operational space. In our view, an adequate NPO domestic review requires:

- A multi-stakeholder process, convened and facilitated by a team comprising government representatives and NPOs. Ideally this team would be guided and mentored by a person or group that is trusted by “both sides” and able to maintain an impartial stance towards the process and the stakeholders.
- An analysis, with support from NPOs, on existing hard and soft laws, rules and regulations that affect the legal, financial, operational and political space of NPOs directly or indirectly and of non-profit “self-regulatory” transparency and accountability measures. It would also include an analysis of the relation between non profits and terrorism or violent extremism that would provide a solid basis to identify and determine potential vulnerabilities, risks and abuse of subgroups of NPOs.
- An analysis, in addition, of NPO regulatory and supervisory authorities at the national and local levels in relation to *the risk of NPO abuse for terrorism financing* as a resource to enable evaluators to gauge the effectiveness of the AML/CFT regime.

32. The BPP provides examples of domestic reviews which, in the FATF’s view, are good practice. We would consider the domestic reviews conducted in the Philippines and Indonesia as exemplary models of a multi-stakeholder process. Both domestic reviews were carried out within the context of a Charity Commission model as developed in the UK and supported by the World Bank, which largely determined the extent and design of the process, and its objectives.²⁴ The domestic review in the Philippines was conducted prior to the 2009 Mutual Evaluation Report of the country (under the third round of evaluations) and provided meaningful input to the assessment:

*“The main recommendations in the report are to enhance coordination of regulatory agencies and develop and enhance structures that improve dialogue between NPOs and the government, improve proportionality in terms of regulation, develop rules that would enhance formalization of NPOs, and improve data quality and dissemination of NPO information. The Philippines is to be commended for having undertaken such a comprehensive review of its NPO sector. Having been finalised only in August 2008, the Report is still being considered by the Philippine Government, but the report was endorsed in a ‘validation workshop’ held as part of the process and there are plans to hold a meeting of relevant agencies to discuss what can be done in response to the report. If adopted and implemented, the recommendations contained in the NPO Sector Report would certainly strengthen the Philippines’ regulation of its NPO sector, including in the areas of concern from an AML/CFT perspective”.*²⁵

These domestic reviews were however conducted previous to the new/fourth round assessment methodology where the Risk Assessment–Evaluation nexus takes precedence and has consequences for the focus of the domestic review.

²⁴ <http://fatfplatform.org/wp-content/uploads/2015/06/Indonesia-NPO-domestic-review-Eng-FINAL.pdf> and http://code-ngo.org/home/images/stories/pdf/Philippine_NGO_Sector_Assessment_Full_Report.pdf

²⁵ http://fatfplatform.org/wp-content/uploads/2015/02/Republic-of-the-Philippines_MER_2009.pdf

With regard to the Mutual Evaluation Reports and Assessment Teams

31. The validation of a domestic review and national risk assessment occurs during the MER process. In the fourth round of assessments, assessors have to understand and validate the country's technical compliance with the FATF standard and the country's effective implementation of the standard. The methodology set out for assessment of compliance with the FATF standard and the effectiveness of the AML/CFT systems states: *"The technical compliance component of the Methodology refers to the implementation of the specific requirements of the FATF Recommendations, including the framework of laws and enforceable means; and the existence, powers and procedures of competent authorities. For the most part, it does not include the specific requirements of the standards that relate principally to effectiveness. These are assessed separately, through the effectiveness component of the Methodology. The FATF Recommendations, being the recognised international standards, are applicable to all countries. However, assessors should be aware that the legislative, institutional and supervisory framework for AML/CFT may differ from one country to the next. Provided the FATF Recommendations are complied with, countries are entitled to implement the FATF Standards in a manner consistent with their national legislative and institutional systems, even though the methods by which compliance is achieved may differ. In this regard, assessors should be aware of the risks, and the structural or contextual factors for the country".*²⁶

32. Assessors are not selected for their experience with and/or knowledge of non profits. They are selected for their legal, financial, supervisory and law enforcement background in relation to terrorism financing and money laundering.²⁷ The interpretation of secondary and primary resources available to assessors thus remains dependent on their openness and willingness to perceive non profits for their merits to the country's prosperity, stability and security in relation to AML/CFT good governance requirements of authorities and non profits.

33. The effectiveness of R8 is measured based on Outcome 10.2 of the fourth round of evaluations which 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 threat of terrorist abuse?"²⁸

Evaluators also have to validate:

- What is the level of licensing or registration for NPOs? To what extent is a risk-sensitive approach taken to supervise or monitor NPOs at risk from terrorist abuse, and appropriate preventive, investigative, criminal, civil or administrative actions and co-operation mechanisms adopted?

²⁶ <http://www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology%2022%20Feb%202013.pdf>

²⁷ <http://www.apgml.org/mutual-evaluations/page.aspx?p=a901712a-54e4-4b3b-a146-046aefca6534>

²⁸ Pages 38,39, 114–116 of the Effectiveness Assessment Methodology <http://www.fatf-gafi.org/media/fatf/documents/methodology/fatf%20methodology%2022%20feb%202013.pdf>

- How well do NPOs understand their vulnerabilities and comply with the measures to protect themselves from the threat of terrorist abuse?²⁹

34. In theory it gives assessors sufficient room to critically validate the approach taken by authorities to prevent TF abuse of NPOs through existing frameworks, supervisory mechanisms and practices. Resources such as the revised BPP and references made in the document to self-regulatory NPO mechanisms, and critical reports on abuse/misinterpretation of counter terrorism measures such as R8 and its consequences for civil society freedoms are now readily available to assessors.

35. In a positive vein, it is noted that theory can indeed become practice. The ‘partially compliant’ outcome concerning R8 in Ethiopia, as formulated by the assessors in the MER of that country in 2014/2015, shows their critical assessment of over-broad NPO regulations with hardly any relation to a terrorist threat or to NPO vulnerability to that threat. The assessors outline unfounded overregulation of the sector by the Ethiopian authorities:

*“With regard to the oversight of NPOs, Ethiopia has very detailed provisions and directives outlining procedures for licensing, requirements for annual reporting of activities, statement of accounts, and audit, the categories of operational and administrative costs, as well as the powers of the Charities and Societies Agency or the FIC to supervise and sanction NPOs. These provisions apply to all charities and societies regardless of risks, the portion of the financial resources under the sector, or the share of the sector’s international activities. **While the licensing and regulation of NPOs is the prerogative of the government, such a broad level of oversight is not required from an AML/CFT perspective. The current blanket approach is in any event not justified by assessed TF risks.** Some NPOs have indicated a disruption of legitimate activities resulting due to Proc. No. 621/2009. For example, Foreign Charities and Ethiopian Resident Charities and Societies -- NGOs that receive more than 10% of their financing from foreign sources -- are prohibited from engaging in essentially all human rights and advocacy activities. However, Ethiopian Authorities argue that the Proc. No.62/2009 does not prohibit these NGOs from performing their humanitarian activities, but rather that it only prohibits these NGOs from interfering in the internal political affairs of the country. The 46 law also requires associations to allocate at least 70% of their budget to program activities and no more than 30% to administrative costs, a category that is broadly defined and therefore a difficult threshold to meet (prescribed under Proc. No. 621/2009, Article 88, and outlined in Directive No. 02/2011). In practice, there has not been a focus on the terrorist financing issue within the NPO sector, and the Charities and Societies Agency has limited expertise in the area of terrorist finance. As there has not been a review of the potential vulnerabilities of the sector to identify the features and types of NPOs at risk from the threat of terrorist abuse, a targeted approach to identify NPOs at risk has not been yet been developed. Assessors were not provided with any examples of instances where the issue of terrorist abuse has been the subject of NPO supervision, monitoring, or investigations. While international charities may receive training from their headquarters, NPOs have not been provided training or any outreach on the risks of terrorist abuse by Ethiopian officials. Representatives of the CSA and NPOs*

²⁹ <http://fatplatform.org/wp-content/uploads/2015/08/NPO-Saraeivo-RWS-Executive-Summary.pdf>
<http://fatplatform.org/wp-content/uploads/2015/08/NPO-abuse-presentation.pdf>

met during the on-site visit identified a need and an interest in obtaining training to understand TF risk and possible actions to mitigate those risks.”³⁰

36. The outcome of the Belgian and Australian MERs however show that countries which one would rate as compliant in terms of NPO oversight when it comes to mitigating terrorist financing risk of the sector, were only judged to be partially compliant.

37. The Australian FIU, Austrac, conducted a domestic review on Terrorism Financing in 2014 prior to the effectiveness assessment of the country. The review report, based on a thorough analysis, specifically mentions that non-profits are vulnerable to terrorism financing: *‘Charities and NPOs may be used to raise funds for groups engaged in foreign conflict and as a cover to transfer funds offshore. Funds for legitimate humanitarian aid may also be diverted in Australia, or at their destination, and used to support terrorist groups. Terrorism financing occurs through commingling of legitimate funds with funds collected for terrorist groups. This is especially the case for donations collected through charities and NPOs. Commingling can disguise funds raised for terrorism financing among legitimate donations. It can also add to the total pool of funds directed towards a terrorist group.’*³¹

Nevertheless, the country was rated as being ‘partially compliant’ with R8 as stated in the FATF MER:

*“Australia has not implemented a targeted approach nor has it exercised oversight in dealing with non-profit organisations (NPOs) that are at risk from the threat of terrorist abuse. Authorities have not undertaken a review of the NPO sector to identify the features and types of NPOs that are particularly at risk of being misused for TF. Despite the general risks identified by the authorities in the NRA, Australia has not undertaken a risk review of the NPO sector to identify the features and types of NPOs that are particularly at risk of being misused for TF. Subsequently, there is no TF-related outreach to, or TF-related monitoring of, this part of the sector that would be at risk and that account for a significant share of the sector’s activities”.*³²

It seems that while the evaluation team was commending the work of the Australian Charity Committee (ACNC) in raising the transparency and accountability standards of NPOs in order to prevent abuse for terrorism financing, this alone could not be considered an adequate implementation of R8. What was needed was a risk assessment of the sector, prior to the designing and implementing of tailor-made rules and regulations for those NPOs at risk.

38. The risk assessment–effectiveness nexus poses new challenges as can be concluded from the change in the way that the FATF defines NPOs at risk. What effectiveness is remains unclear and open to interpretation. From the Spanish MER, e.g., one can read that while the country was largely compliant with R8, the evaluators found that it could not show an adequate implementation of UNSCR 1373 and 1276 in relation to R8. These resolutions are related to the listing of terrorists and asset freezing procedures. The evaluators found prison sentences too low for the terrorism financing

³⁰ <http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/WB-ESAAMLG-Mutual-Evaluation-Report-Ethiopia-2015.pdf> (para 142, pages 45,46)

³¹ <http://www.austrac.gov.au/publications/corporate-publications-and-reports/terrorism-financing-australia-2014>

³² <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Australia-2015.pdf>

crimes committed.³³ If effectiveness is measured in terms of the quality of the criminal law system, one can conclude that the fourth round of the FATF's MERs may influence the way terrorism financing crimes are prosecuted at the national level: the more persons and institutions that are prosecuted for terrorism financing, the more effective the country's system. This may potentially lead to more pressure on the intelligence and prosecuting system and pertaining institutions such as the national counter terrorism coordinating bodies, intelligence agencies, FIUs, public prosecutors offices and criminal courts.

Navigating the complexities of R8 in relation to a risk based approach

39. The incorporation by the FATF in the R8 BPP of civil society practices and standards to prevent fraud and corruption as mechanisms that could be extended to include terrorism financing, and the strong references to the International Covenant on Civil and Political Rights, International Human Rights and International Humanitarian Law supports our ambition to develop an approach that avoids the overregulation of NPOs. It provides momentum to articulate these standards along with the effectiveness assessment framework and the overarching R1. The R8 BPP also states that zero risk is unachievable and requires governments to be realistic and proportionate in the development and implementation of laws and regulations that would prevent and mitigate the risk of NPOs being abused for terrorism financing.

40. We have been able to benefit from past experiences such as in Indonesia and the Philippines where NPO umbrella organizations in collaboration with the Financial Intelligence Unit (FIU) – as a technical, relatively independent government body – have conducted domestic reviews. And again, from on-going activities in Kyrgyzstan and Indonesia where civil society and the FIU are in the process of designing an engagement model for conducting a risk assessment based on the practices and concerns of NPOs, in anticipation of the FATF evaluation.

41. Our coalition needs to articulate to our colleagues and to the FATF adequate ways of a national risk assessment practice and the means for NPOs to become involved. This report shows that the FATF in fact pushes for a domestic risk assessment of the NPO sector because the IN to R8 and the Recommendation itself identifies NPOs as being *particularly* vulnerable to terrorism financing abuse. As long as the IN to R8 and the Recommendation itself remain unchanged in the standard, governments have to show they have developed, *implemented and monitored* TF rules and regulations that are based on a terrorism financing risk assessment of NPOs. The FATF typology paper provides guidance, including risk indicators, for authorities conducting such assessments. It does not include the participation of NPOs in the assessment, which we deem to be crucial. The domestic reviews conducted in Indonesia and the Philippines would merit dissemination as a model for a risk assessment *process*. The multi-stakeholder approach that was tested and found useful by the actors involved should become an FATF-endorsed practice.³⁴ In countries where a dialogue

³³ <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Spain-2014.pdf>

³⁴ Other sources for guiding our coalition in designing domestic reviews and risk-based approaches are provided by DRR civil society coalitions http://www.preventionweb.net/english/hyogo/gar/2013/en/home/GAR_2013/GAR_2013_14.html

between NPOs and ministries of Finance and Foreign Affairs and other relevant ministries and institutions has been developing, NPOs need to become involved in the domestic risk assessment process or in reviewing NPO risk assessment analyses conducted by authorities. In countries where the authorities are suspicious of civil society or the potential positive contribution NPOs can make in preventing terrorism financing, our coalition will be able to open up space for a multi-stakeholder process through Open Government Partnership or other multi-stakeholder platforms.

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- Sarajevo Regional Workshop on R8: Moneyval PPT on NPO abuse and Regional Workshop executive summary
- Submission to US MER desk review by US NPO consortium led by Charity and Security Network and Council of Foundation (2015)
- LSE blog on Timothy Wittig (2014)
- Literature study on Terrorism Financing by Marieke de Goede at the University of Amsterdam for the Dutch National Intelligence Services (2007)

In addition approaches produced by the independent expertise centre International Risk Governance Council, IRGC, that works in collaboration with, among others, the OECD/DAC on national risk assessments may be useful.
<http://www.irgc.org/publications/core-concepts-of-risk-governance/>

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