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Interpretative Note to Special Recommendation VIII: Non-Profit Organisations

Introduction

1. Non-profit organisations (NPOs) play a vital role in the world economy and in many national economies and social systems. Their efforts complement the activity of the governmental and business sectors in providing essential services, comfort and hope to those in need around the world. The ongoing international campaign against terrorist financing has unfortunately demonstrated however that terrorists and terrorist organisations exploit the NPO sector to raise and move funds, provide logistical support, encourage terrorist recruitment or otherwise support terrorist organisations and operations. This misuse not only facilitates terrorist activity but also undermines donor confidence and jeopardises the very integrity of NPOs. Therefore, protecting the NPO sector from terrorist abuse is both a critical component of the global fight against terrorism and a necessary step to preserve the integrity of NPOs.

2. NPOs may be vulnerable to abuse by terrorists for a variety of reasons. NPOs enjoy the public trust, have access to considerable sources of funds, and are often cash-intensive. Furthermore, some NPOs have a global presence that provides a framework for national and international operations and financial transactions, often within or near those areas that are most exposed to terrorist activity. Depending on the legal form of the NPO and the country, NPOs may often be subject to little or no governmental oversight (for example, registration, record keeping, reporting and monitoring), or few formalities may be required for their creation (for example, there may be no skills or starting capital required, no background checks necessary for employees). Terrorist organisations have taken advantage of these characteristics of NPOs to infiltrate the sector and misuse NPO funds and operations to cover for or support terrorist activity.

Objectives and General Principles

3. The objective of Special Recommendation VIII (SR VIII) is to ensure that NPOs are not misused by terrorist organisations: (i) to pose as legitimate entities; (ii) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; or (iii) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes but diverted for terrorist purposes. In this Interpretative Note, the approach taken to achieve this objective is based on the following general principles:

- a. Past and ongoing abuse of the NPO sector by terrorists and terrorist organisations requires countries to adopt measures both: (i) to protect the sector against such abuse, and (ii) to identify and take effective action against those NPOs that either are exploited by or actively support terrorists or terrorist organizations.
- b. Measures adopted by countries to protect the NPO sector from terrorist abuse should not disrupt or discourage legitimate charitable activities. Rather, such measures should promote transparency and engender greater confidence in the sector, across the donor community and with the general public that charitable funds and services reach intended legitimate beneficiaries. Systems that promote achieving a high degree of transparency, integrity and public confidence in the management and functioning of all NPOs are integral to ensuring the sector cannot be misused for terrorist financing.

- c. Measures adopted by countries to identify and take effective action against NPOs that either are exploited by or actively support terrorists or terrorist organisations should aim to prevent and prosecute as appropriate terrorist financing and other forms of terrorist support. Where NPOs suspected of or implicated in terrorist financing or other forms of terrorist support are identified, the first priority of countries must be to investigate and halt such terrorist financing or support. Actions taken for this purpose should to the extent reasonably possible avoid any negative impact on innocent and legitimate beneficiaries of charitable activity. However, this interest cannot excuse the need to undertake immediate and effective actions to advance the immediate interest of halting terrorist financing or other forms of terrorist support provided by NPOs.
- d. Developing co-operative relationships among the public, private and NPO sector is critical to raising awareness and fostering capabilities to combat terrorist abuse within the sector. Countries should encourage the development of academic research on and information sharing in the NPO sector to address terrorist financing related issues.
- e. A targeted approach in dealing with the terrorist threat to the NPO sector is essential given the diversity within individual national sectors, the differing degrees to which parts of each sector may be vulnerable to misuse by terrorists, the need to ensure that legitimate charitable activity continues to flourish and the limited resources and authorities available to combat terrorist financing in each jurisdiction.
- f. Flexibility in developing a national response to terrorist financing in the NPO sector is also essential in order to allow it to evolve over time as it faces the changing nature of the terrorist financing threat.

Definitions

- 4. For the purposes of SR VIII and this interpretative note, the following definitions apply:
 - a. The term *non-profit organisation* or *NPO* refers to a legal entity or organisation that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of “good works”.
 - b. The terms *FIU*, *legal arrangement* and *legal person* are as defined by the FATF Forty Recommendations (2003) (*the FATF Recommendations*).
 - c. The term *funds* is as defined by the Interpretative Note to FATF Special Recommendation II.
 - d. The terms *freezing*, *terrorist* and *terrorist organisation* are as defined by the Interpretative Note to FATF Special Recommendation III.
 - e. The term *appropriate authorities* refers to competent authorities, self-regulatory bodies, accrediting institutions and other administrative authorities.
 - f. The term *beneficiaries* refers to those natural persons, or groups of natural persons who receive charitable, humanitarian or other types of assistance through the services of the NPO.

Measures

- 5. Countries should undertake domestic reviews of their NPO sector or have the capacity to obtain timely information on its activities, size and other relevant features. In undertaking these assessments, countries should use all available sources of information in order to identify features and types of NPOs, which by virtue of their activities or characteristics, are at risk of being misused for

terrorist financing.¹ Countries should also periodically reassess the sector by reviewing new information on the sector's potential vulnerabilities to terrorist activities.

6. There is a diverse range of approaches in identifying, preventing and combating terrorist misuse of NPOs. An effective approach, however, is one that involves all four of the following elements: (a) Outreach to the sector, (b) Supervision or monitoring, (c) Effective investigation and information gathering and (d) Effective mechanisms for international co-operation. The following measures represent specific actions that countries should take with respect to each of these elements in order to protect their NPO sector from terrorist financing abuse.

a. Outreach to the NPO sector concerning terrorist financing issues

(i) Countries should have clear policies to promote transparency, integrity and public confidence in the administration and management of all NPOs.

(ii) Countries should encourage or undertake outreach programmes to raise awareness in the NPO sector about the vulnerabilities of NPOs to terrorist abuse and terrorist financing risks, and the measures that NPOs can take to protect themselves against such abuse.

(iii) Countries should work with the NPO sector to develop and refine best practices to address terrorist financing risks and vulnerabilities and thus protect the sector from terrorist abuse.²

(iv) Countries should encourage NPOs to conduct transactions via regulated financial channels, wherever feasible, keeping in mind the varying capacities of financial sectors in different countries and in different areas of urgent charitable and humanitarian concerns.

b. Supervision or monitoring of the NPO sector

Countries should take steps to promote effective supervision or monitoring of their NPO sector. In practice, countries should be able to demonstrate that the following standards apply to NPOs which 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.

(i) NPOs should maintain information on: (1) the purpose and objectives of their stated activities; and (2) the identity of the person(s) who own, control or direct their activities, including senior officers, board members and trustees. This information should be publicly available either directly from the NPO or through appropriate authorities.

(ii) NPOs should issue annual financial statements that provide detailed breakdowns of incomes and expenditures.

(iii) NPOs should be licensed or registered. This information should be available to competent authorities.³

¹ For example, such information could be provided by regulators, tax authorities, FIUs, donor organisations or law enforcement and intelligence authorities.

² The FATF's *Combating the Abuse of Non-Profit Organisations: International Best Practices* provides a useful reference document for such exercises.

³ Specific licensing or registration requirements for counter terrorist financing purposes are not necessary. For example, in some countries, NPOs are already registered with tax authorities and monitored in the context of qualifying for favourable tax treatment (such as tax credits or tax exemptions).

(iv) NPOs should have appropriate controls in place to ensure that all funds are fully accounted for and are spent in a manner that is consistent with the purpose and objectives of the NPO's stated activities.

(v) NPOs should follow a "know your beneficiaries and associate NPOs"⁴ rule, which means that the NPO should make best efforts to confirm the identity, credentials and good standing of their beneficiaries and associate NPOs. NPOs should also undertake best efforts to document the identity of their significant donors and to respect donor confidentiality.

(vi) NPOs should maintain, for a period of at least five years, and make available to appropriate authorities, records of domestic and international transactions that are sufficiently detailed to verify that funds have been spent in a manner consistent with the purpose and objectives of the organisation. This also applies to information mentioned in paragraphs (i) and (ii) above.

(vii) Appropriate authorities should monitor the compliance of NPOs with applicable rules and regulations.⁵ Appropriate authorities should be able to properly sanction relevant violations by NPOs or persons acting on behalf of these NPOs.⁶

c. *Effective information gathering and investigation*

(i) Countries should ensure effective co-operation, co-ordination and information sharing to the extent possible among all levels of appropriate authorities or organisations that hold relevant information on NPOs.

(ii) Countries should have investigative expertise and capability to examine those NPOs suspected of either being exploited by or actively supporting terrorist activity or terrorist organisations.

(iii) Countries should ensure that full access to information on the administration and management of a particular NPO (including financial and programmatic information) may be obtained during the course of an investigation.

(iv) Countries should establish appropriate mechanisms to ensure that when there is suspicion or reasonable grounds to suspect that a particular NPO: (1) is a front for fundraising by a terrorist organisation; (2) is being exploited as a conduit for terrorist financing, including for the purpose of escaping asset freezing measures; or (3) is concealing or obscuring the clandestine diversion of funds intended for legitimate purposes, but redirected for the benefit of terrorists or terrorist organisations, this information is promptly shared with all relevant competent authorities in order to take preventative or investigative action.

d. *Effective capacity to respond to international requests for information about an NPO of concern*

Consistent with Special Recommendation V, countries should identify appropriate points of contact and procedures to respond to international requests for information regarding particular NPOs suspected of terrorist financing or other forms of terrorist support.

⁴ The term *associate NPOs* includes foreign branches of international NPOs.

⁵ In this context, rules and regulations may include rules and standards applied by self regulatory bodies and accrediting institutions.

⁶ The range of such sanctions might include freezing of accounts, removal of trustees, fines, de-certification, de-licensing and de-registration. This should not preclude parallel civil, administrative or criminal proceedings with respect to NPOs or persons acting on their behalf where appropriate.