

Public Consultation on draft amendment text

Revision of R8 of the FATF Standards and its Interpretive Note

The Financial Action Task Force (FATF) is considering proposals for draft amendment text to Recommendation 8 of the FATF Standards and its Interpretive Note (R.8/INR.8), which aims to protect NPOs from potential terrorist financing abuse.

In June 2022, the FATF Plenary agreed to consider amending R.8/INR.8 and established a Project Team to consider the necessary changes and gather relevant information.

The draft amendment text to R.8/INR.8 proposed for public consultation reflects the work and discussion of the Project Team. The revisions seek to address the problem of over-application of preventive measures to the NPO sector in some countries, recognising the negative impact this can have on legitimate NPO activities.

The FATF is consulting all interested stakeholders in advance of finalising the amendment text to R.8/INR.8. Views from practitioners, experts and stakeholders from the NPO sector and the financial institutions are welcome.

Of particular interest, comments and additional input is welcome regarding the issue flagged below:

Currently, para. 7(b)(iii) of the Interpretative Note to Recommendation 8 lists examples of measures that countries can apply to NPOs according to their terrorist financing risks exposure. However, in view of their inclusion in the body of the Interpretative Note 8, these examples may have been perceived by some countries or jurisdictions as compulsory. In order to remedy these unintended consequences and ensure that the examples serve the purpose of providing assistance to countries whilst avoiding creating new requirements, please indicate which of the following four options would in your view be best suited and explain the reason for their preference:

- i. Remove all examples of INR in 7(b)(iii) and insert them in the Best Practices papers (see box 5 of the Best Practice Paper); or*
- ii. Remove all examples from INR in 7(b)(iii) and transfer them in their entirety to a footnote to 7(b)(i); or*
- iii. Remove all examples from the INR in 7(b)(iii) and insert a footnote that mentions them in summary form (mirroring what is done in footnote 6 for sanctions), as follow: “Examples of measures that countries could decide to apply to NPOs according to identified risks include: registering or licensing NPOs, requiring NPOs to maintain specific information and publish financial statements, have in place internal controls and take reasonable measures to confirm information on beneficiaries and associate NPOs”; or*
- iv. Leave the current wording unchanged and keep the examples in their entirety in para 7(b)(iii) of INR.8.*

Please provide your response, including any drafting proposals to: FATF.Publicconsultation@fatf-gafi.org with the subject-line “Comments of [author] on the draft FATF R.8/INR.8 amendments”, by **18 August 2023 (18h00 CET)**.

While submitting your response, please indicate the name of your organisation, the nature of your activity, and your contact details. Please note that all submissions received during public consultation will be shared with FATF delegations.

You may insert any specific drafting proposals directly in the attached text of the draft **in tracked changes**. We will use your contact information only for the purpose of this public consultation and for further engagement with you on this issue.

At this stage, the FATF has not approved the draft amendment text to R.8/INR.8 and will consider the views received to revise the text before its proposal for adoption at the FATF October 2023 Plenary.

We thank you for your input in advance.

Amendments to the text of Recommendation 8 and its Interpretive Note

Text that has been moved is highlighted in green, amendments in the existing R.8/INR.8 are highlighted in red and deletions in strikethrough.

8. Non-profit organisations *

Countries should ~~review~~ **identify** the ~~adequacy~~ **organisations which fall within the FATF definition of laws and regulations that relate to non-profit organisations which the country has identified as being vulnerable to (NPOs) and assess their** terrorist financing ~~abuse risks~~. Countries should ~~apply~~ **have in place** focused ~~and~~, proportionate **and risk-based** measures, **without unduly disrupting or discouraging legitimate NPO activities**, in line with the risk-based approach, ~~to such non-profit organisations~~. **The purpose of these measures is** to protect ~~them~~ **such NPOs** from terrorist financing abuse, including:

- a) by terrorist organisations posing as legitimate entities;
- b) by exploiting legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freezing measures; and
- c) by concealing or obscuring the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.

INTERPRETIVE NOTE TO RECOMMENDATION 8 (NON-PROFIT ORGANISATIONS)

A. INTRODUCTION

1. Given the variety of legal forms that non-profit organisations (NPOs) can have, depending on the country, the FATF has adopted a functional definition of **an** NPO. This definition is based on those activities and characteristics of an organisation, which **may** put it at risk of terrorist financing abuse, rather than on the simple fact that it is operating on a non-profit basis. For the purposes of this Recommendation, NPO refers to a legal person or arrangement or organisation that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of “good works”. Without prejudice to Recommendation 1, this Recommendation only applies to those ~~NPOs~~ **organisations** which fall within the FATF definition of an NPO. It does not apply to the entire universe of ~~NPOs~~ **organisations working in the not-for-profit realm in a country**.
2. 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 FATF recognises the vital importance of NPOs in providing these important ~~charitable~~ services, as well as the difficulty of providing assistance to those in need, ~~often~~ **including** in high risk areas and conflict zones, and applauds the efforts of NPOs to meet such needs. The FATF also recognises the intent and efforts to date of NPOs to promote transparency within their operations and to prevent terrorist financing abuse, including through the development of programmes aimed at discouraging radicalisation and violent extremism.

3. ~~Some~~ NPOs may be at-risk of terrorist financing abuse by terrorists for a variety of reasons. NPOs enjoy public trust, which gives some access to considerable sources of funds, and in some contexts are cash-intensive. Furthermore, some NPOs have a global presence that provides a framework for national and international operations and financial transactions, that may be within or near those areas that are most exposed to terrorist activity. In ~~some~~ rare cases, terrorist organisations have taken advantage of these and other characteristics to infiltrate NPOs and misuse funds and operations to cover for, or support, terrorist activity. Also, there have been cases where terrorists create sham charities NPOs or engage in fraudulent fundraising for these purposes. The ongoing international campaign against terrorist financing has identified cases in which terrorists and terrorist organisations exploit some NPOs in the sector to raise and move funds, provide logistical support, encourage terrorist recruitment, or otherwise support terrorist organisations and operations. ~~As well, there have been cases where terrorists create sham charities or engage in fraudulent fundraising for these purposes.~~ This misuse not only facilitates terrorist activity, but also undermines donor confidence and jeopardises the very integrity of NPOs.
4. Therefore, protecting NPOs from terrorist financing abuse is both a critical component of the global ~~fight against~~ effort to prevent and combat terrorism and a necessary step to preserve the integrity of NPOs and the donor community. Measures to protect NPOs from potential terrorist financing abuse should be targeted and in line with the risk-based approach. It is also important for such measures to be implemented in a manner which respects countries' obligations under the Charter of the United Nations ~~and~~, international human rights and international humanitarian law¹.

~~3. Some NPOs may be vulnerable to terrorist financing 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. In some cases, terrorist organisations have taken advantage of these and other characteristics to infiltrate some NPOs and misuse funds and operations to cover for, or support, terrorist activity.~~

B. OBJECTIVES AND GENERAL PRINCIPLES

54. The objective of Recommendation 8 is to ensure that NPOs are not ~~misused~~ abused 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 Interpretive Note, the approach taken to achieve this objective is based on the following general principles:
- (a) ~~A risk-based approach applying~~ Past and ongoing terrorist financing abuse of NPOs requires countries to **have in place** focused, **proportionate and risk-based** measures in dealing with identified ~~threats~~ risks of terrorist financing abuse to NPOs. A risk-based approach is essential given the diversity within individual national sectors, the differing degrees to which parts of each sector may be ~~vulnerable to~~ **at-risk of** terrorist financing abuse, the need to ensure that legitimate ~~charitable~~ NPO activity continues to flourish, and the limited resources and authorities available to combat terrorist financing in each country.
- (b) Flexibility in developing a national response to terrorist financing abuse of NPOs is essential, in order to allow it to evolve over time as it faces **and responds to** the changing nature of the terrorist financing threat.
- (c) ~~Past and ongoing terrorist financing abuse of NPOs requires countries to adopt effective and proportionate measures, which should be commensurate to the risks identified through a risk-based approach.~~

¹ See also UNSC resolution 2462 (2019) paras 6 and 23.

- (c)(d) Focused, **proportionate and risk-based** measures adopted by countries to protect NPOs from terrorist financing abuse should not **unduly** disrupt or discourage legitimate **charitable-NPO** activities, **in line with the risk-based approach**. Rather, such measures should promote accountability and engender greater confidence among NPOs, across the donor community and with the general public, that **charitable-NPO** funds and services reach intended legitimate beneficiaries. Systems that promote achieving a high degree of accountability, integrity and public confidence in the management and functioning of NPOs are integral to ensuring they cannot be abused for terrorist financing.
- (d)(e) Countries ~~are required to~~ **should** identify and take effective and proportionate action against NPOs that either are exploited by, or **are** knowingly supporting, terrorists or terrorist organisations taking into account the specifics of the case. Countries 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, minimise negative impact on innocent and legitimate beneficiaries of **charitable NPO** 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, **consistent with the assessment of risk relating to a particular NPO**.
- (e) Countries should develop an understanding of the different degrees of TF risk posed to NPOs and of the corresponding different levels of mitigating measures they require. Many NPOs may face low TF risk exposure, may have adequate self-regulatory measures to mitigate such risks, and/or may already be subject to adequate level of legal and regulatory requirements, such that there may be no need for additional measures.² Countries should be mindful of the potential impact of measures on legitimate NPO activities and apply them where they are necessary to mitigate the assessed TF risks, without unduly disrupting or discouraging legitimate NPO activities. It is outside the scope of Recommendation 8 to apply measures to organisations to protect them from TF abuse when they do not fall within the FATF's functional definition of NPOs. It is not in line with Recommendation 8 to implement any CFT measures that are not commensurate to the assessed TF risks, and are therefore overly burdensome and restrictive.
- (f) Developing cooperative relationships among the public and private sectors and with NPOs is critical to understanding NPOs' risks and risk mitigation strategies, raising awareness, increasing effectiveness, and fostering capabilities to combat terrorist financing abuse within NPOs. Countries should encourage the development of academic research on, and information-sharing in, NPOs to address terrorist financing related issues.

C. **RISK ASSESSMENT AND MITIGATING MEASURES**

65. ~~Without prejudice to the requirements of Recommendation 1, since not all NPOs are inherently high risk (and some may represent little or no risk at all), countries should identify which subset~~ **varying degrees** of ~~organisations fall within the FATF definition of NPO. In undertaking this exercise, countries should use all relevant sources of information in order to identify features and types of NPOs, which,~~ **risk of TF abuse** by virtue of their **types**, activities or characteristics, ~~are likely to be~~

² In this context, **self-regulatory measures** ~~rules and regulations~~ may include rules and standards applied by self-regulatory organisations, ~~and~~ **accrediting institutions** and **umbrella organisations**.

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

at risk of terrorist financing abuse.³ It is also crucial and some may represent low risk. Without prejudice to the requirements of Recommendation 1:

(a) Countries should identify the types of organisations which fall within the FATF definition of an NPO.

(b) Countries should conduct a risk assessment of these NPOs to identify the nature of threats-TF risks posed by terrorist entities to the NPOs which are at risk as well as how terrorist actors abuse those NPOs to them.

(c) Countries should review the adequacy of measures, including laws and regulations, that relate to the subset of the NPO sector that may be abused for terrorism financing support in order to be able to take have in place focused, proportionate and effective actions-risk-based measures to address the TF risks identified, in line with the risk-based approach. Countries may also consider, where they exist, self-regulatory and internal risk mitigation measures.

(d) These exercises under letters (a) to (c):

- (i) should use all relevant sources of information⁴, including through engagement with NPOs,
- (ii) could take a variety of forms and may or may not be a written product-Countries,
- (iii) should also be reviewed periodically reassess the sector by reviewing new information.

(e) For NPOs identified to be at low-risk of TF abuse, countries may focus only on the sector's potential vulnerabilities to undertaking outreach concerning terrorist activities to ensure effective implementation of financing issues, and may decide to refrain from taking additional mitigating measures.

D. EFFECTIVE APPROACH IN IDENTIFYING, PREVENTING AND COMBATING TF ABUSE OF NPOS

76. There is a diverse range of approaches in identifying, preventing and combating terrorist financing abuse of NPOs. An effective approach should involve all four of the following elements: (a) sustained outreach, (b) targeted risk-based supervision or monitoring, (c) effective investigation and information gathering and (d) effective mechanisms for international cooperation. The following measures represent examples of specific actions that countries should take with respect to each of these elements, in order to protect NPOs from potential terrorist financing abuse-, without unduly disrupting or discouraging legitimate NPO activities:

- (a) Sustained outreach concerning terrorist financing issues
 - (i) Countries should have clear policies to promote accountability, integrity and public confidence in the administration and management of NPOs.
 - (ii) Countries should encourage and undertake outreach and educational programmes as appropriate to raise and deepen awareness among NPOs as well as the donor community about the potential vulnerabilities of NPOs to terrorist financing abuse

³ For example, such information could be provided by regulators, tax authorities, FIUs, donor organisations or law enforcement and intelligence authorities.

⁴ For example, such information could be provided by regulators, tax authorities, FIUs, donor organisations or law enforcement and intelligence authorities.

and terrorist financing risks, and the measures that NPOs can take to protect themselves against such abuse.

- (iii) Countries should work with NPOs to develop and refine best practices to address terrorist financing risks and vulnerabilities and thus protect them from terrorist financing abuse.
 - (iv) Countries should encourage NPOs to conduct transactions via regulated financial **and payment** channels, wherever feasible, keeping in mind the varying capacities of financial sectors in different countries and in different areas **and the risks of using cash of urgent charitable and humanitarian concerns**.
- (b) ~~Targeted~~ **Focused, proportionate and** risk-based ~~supervision~~ **measures, including oversight or monitoring of NPOs, where needed**

Countries should take steps to promote ~~effective supervision~~ **focused, proportionate and risk-based oversight** or monitoring **of NPOs**. A “one-size-fits-all” approach would be inconsistent with the proper implementation of a risk-based approach as stipulated under Recommendation 1 of the FATF Standards. In practice, ~~countries~~:

- (i) **Countries** should be able to demonstrate ~~that they have in place focused, proportionate and~~ **and** risk-based measures ~~apply~~ **applying** to NPOs ~~at risk of terrorist financing abuse~~. It is also possible that existing regulatory, **self-regulatory and internal risk mitigation measures**, or other measures may already sufficiently address the current terrorist financing risk to the NPOs in a jurisdiction, although terrorist financing risks to the sector should be periodically reviewed.
- (ii) Appropriate authorities should monitor the compliance of NPOs with the ~~requirements of this Recommendation, including the~~ **focused, proportionate and** risk-based measures being applied to them;⁵ **where needed**.
- (iii) Appropriate authorities should be able to apply effective, proportionate and dissuasive sanctions for violations by NPOs or persons acting on behalf of these NPOs.⁶ ~~The following are some examples of measures that could be applied to NPOs, in whole or in part, depending on the risks identified:~~
 - (i) ~~NPOs could be required to license or register. This information should be available to competent authorities and encouraged to be available to the public.⁷~~
 - (ii) ~~NPOs could be required to 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 could be publicly available either directly from the NPO or through appropriate authorities.~~
 - (iii) ~~NPOs could be required to issue annual financial statements that provide detailed breakdowns of incomes and expenditures.~~

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.

⁷ ~~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 could be required to 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 could be required to take reasonable measures to confirm the identity, credentials and good standing of beneficiaries⁸ and associate NPOs and that they are not involved with and/or using the charitable funds to support terrorists or terrorist organisations⁹. However, NPOs should not be required to conduct customer due diligence. NPOs could be required to take reasonable measures to document the identity of their significant donors and to respect donor confidentiality. The ultimate objective of this requirement is to prevent charitable funds from being used to finance and support terrorists and terrorist organisations.~~

~~(vi) — NPOs could be required to maintain, for a period of at least five years, records of domestic and international transactions that are sufficiently detailed to verify that funds have been received and spent in a manner consistent with the purpose and objectives of the organisation, and could be required to make these available to competent authorities upon appropriate authority. This also applies to information mentioned in paragraphs (ii) and (iii) above. Where appropriate, records of charitable activities and financial operations by NPOs could also be made available to the public.~~

(c) Effective information gathering and investigation

- (i) Countries should ensure effective cooperation, coordination 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 involved in terrorist financing abuse and/or 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 other forms of terrorist support; 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, that this information is promptly shared with relevant competent authorities, in order to take preventive or investigative action.

⁸ — 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.

⁹ — This does not mean that NPOs are expected to identify each specific individual, as such a requirement would not always be possible and would, in some instances, impede the ability of NPOs to provide much needed services

(d) Effective capacity to respond to international requests for information about an NPO of concern. Consistent with Recommendations on international cooperation, countries should identify appropriate points of contact and procedures to respond to international requests for information regarding particular NPOs suspected of terrorist financing or involvement in other forms of terrorist support.

ED. RESOURCES FOR SUPERVISION OVERSIGHT, MONITORING, AND INVESTIGATION

87. Countries should provide their appropriate authorities, which are responsible for ~~supervision~~ **oversight**, monitoring and investigation of their NPOs ~~sector~~, with adequate financial, human and technical resources.

Glossary of specific terms used in the context of this Recommendation

Appropriate authorities	refers to competent authorities, including regulators, tax authorities, FIUs, law enforcement, intelligence authorities, accrediting institutions, and potentially self-regulatory organisations in some jurisdictions.
Associate NPOs	includes foreign branches of international NPOs, and NPOs with which partnerships have been arranged.
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.
Non-profit organisation or NPO	refers to a legal person or arrangement or organisation that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of “good works”.
Terrorist financing abuse	refers to the exploitation by terrorists and terrorist organisations of NPOs to raise or move funds, provide logistical support, encourage or facilitate terrorist recruitment, or otherwise support terrorists or terrorist organisations and operations.
