

# NAVIGATING 2023 CHANGES OF FATF RECOMMENDATION 8 AND BEST PRACTICE PAPER

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## I. Introduction

The revised [Recommendation 8 \(R8\)](#) and its Interpretive Note will require countries to protect civil society from terrorist financing abuse through the risk-based implementation of strengthened measures. The newly adopted amendments clarify that focused, proportionate and risk-based measures are at the core of an effective approach to identifying, preventing and combatting terrorist abuse of civil society. When implemented appropriately, they are designed to protect the integrity of the civil society sector without unduly disrupting or discouraging legitimate civil society activities.

*Among the many changes to R8, a few key updates include:*

- R8 now requires countries to periodically identify organisations that fall within The Financial Action Task Force (FATF) definition of non-profit sector (NPOs) and assess the terrorist financing risks posed to them. In other words, R8 does not apply to the entire universe of organisations working in the civil society realm: but only to those that fall within the FATF definition. Among these, only a small portion may be facing a “high risk” of terrorist abuse.
- R8 requires countries to have in place focused, proportionate and risk-based measures to address risks identified. A risk-based approach is essential given the diversity within domestic civil society sector and the varying degrees of risk of abuse they face. Many civil society organizations may already have adequate self-regulatory measures and related internal control measures to mitigate terrorist financing risks, such that national authorities do not need to take additional measures.
- Countries should be mindful of the potential impact of measures on legitimate civil society activities. Disproportionate obligations on organisations may hinder their legitimate activities and the delivery of much-needed services, thus affecting economic and other human rights. R8 clarifies that countries should ensure oversight or monitoring of civil society organizations, but they need not designate and supervise them as reporting entities or require them to conduct customer due diligence.

As the FATF notes, the revision of Recommendation 8 and the publication of the revised guidance “leaves no room for implementation of measures that are not proportionate to the assessed terrorist financing risks and are therefore overly burdensome or restrictive for organizations working in the not-for-profit realm”. ([quote on FATF website](#))



The FATF will now work to revise relevant parts of its Methodology for the next round of mutual evaluations. In the next round, each country will be assessed against these revised Standards and will need to demonstrate that they are taking a risk-based approach to preventing misuse of the non-profit sector, without disrupting or discouraging legitimate charitable activities.

We will continue to advocate with the FATF for changes to the FATF methodology and procedures to address abuses, also to include more robust training of assessors to be able to address restrictions and over-regulation during country assessment processes.

## II. Amended R8 (Full text)

Countries should identify the organisations which fall within the FATF definition of non-profit organisations (NPOs) and assess their terrorist financing risks. Countries should have in place focused, proportionate and risk-based measures, without unduly disrupting or discouraging legitimate NPO activities, in line with the risk-based approach. The purpose of these measures is to protect such NPOs from terrorist financing abuse, including:

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

## III. Key paragraphs in Interpretative Note to R8:

### D. EFFECTIVE APPROACH IN IDENTIFYING, PREVENTING AND COMBATING Terrorist Financing (TF) ABUSE OF NPOS

#### *(a) Sustained outreach concerning terrorist financing issues – emphasis is on outreach and engagement with civil society, working jointly with authorities*

- I. Countries should have clear policies to promote accountability, integrity and public confidence in the administration and management of NPOs.
- II. Countries should **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 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 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 areas and the risks of using cash.

**(b) Focused, proportionate and risk-based measures, including oversight or monitoring of NPOs – focus is on proportionate monitoring, not one size fits all (one law fits all) approach. Suggestion is to use existing and self-regulatory sector’s mechanisms to address risks.**

Countries should take steps to promote 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:

- I. Countries should be able to demonstrate that they have in place **focused, proportionate and risk-based measures applying to NPOs**. It is also possible that existing regulatory and self-regulatory measures and related internal control measures in place within NPOs, or other measures may already **sufficiently address** the current terrorist financing risk to the NPOs in a country, although terrorist financing risks to the sector should be periodically reviewed.
- II. Appropriate authorities should **monitor the compliance of NPOs with the focused, proportionate and risk-based measures being applied to them**.
- 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.

## IV. **Best Practice Paper (BPP) – FATF official guidance**

In addition to the revised R8, there is a [new guidance paper on the implementation of R8](#) that reflects the changes made and aims to assist in its effective implementation. The guidance paper also includes examples of good and bad practices – what jurisdictions should **NOT** do when implementing the provisions of R8.

### *Key paragraphs in BPP:*

*Para 32 (pg. 14) – Focus on continuous engagement of civil society during country risk assessment process, as well as including self-regulatory measures of the sector in this process*

32. It is vital that efforts to identify NPOs and assess TF risk include engagement with NPOs.



It is important to **ensure the participation of a representative sample of NPOs in the risk assessment process**, considering factors such as the size of entities, organisational capacities, nature of operations, and **diversity of participants**, and, when relevant, representatives that have reliable knowledge of unregistered or unlicensed NPOs.

To make sure that indeed all relevant groups of NPOs are included, the coordinating agency should make **every effort to reach as many different constituencies as possible**, for instance by administering online surveys and questionnaires and connecting with umbrella organisations. This is particularly important in jurisdictions where a lot of NPO activity is unregistered or unlicensed or otherwise takes place beyond the purview of authorities.

In countries **where self-regulatory organisations have been established that monitor or otherwise provide certain certification to their members**, these should also be included in the risk assessment. Establishing a **healthy ongoing productive working relationship with a representative section** of the sector is of paramount importance to the success to the risk assessment exercise.

*Para 34 (pg. 15) – using relevant sources of information – important if civil society want to send information to FATF / country assessors ahead of country mutual assessment*

34. Reliable domestic and international documents and reports that could provide useful sources of information include:

- Investigative reports or legal cases;
- Suspicious transaction reports;
- Regional or domestic TF-risk assessments from government, the NPO sector and the private sector;
- Domestic and foreign intelligence reports;
- Legal audits;
- Oversight bodies' or self-regulatory organisations' reports;
- Case studies and reports from NPOs;
- Reports from intergovernmental organisations;
- Financial institutions' publications; etc.

*Para 42 (pg. 17) – mitigating the terrorist financing risks – countries should first look at existing measures, also self regulation of civil society sector, prior to developing new regulation*

42. Before putting in place mitigating measures to address TF risks, **countries may consider existing measures in place within NPOs, including legal, regulatory, fiscal, administrative, policy measures by government (including outreach to the sector)**, and national CFT capacity more generally. Countries should consider, **where they exist, self-regulatory governance and transparency measures and internal risk mitigating measure at the sector and organisational level**. The existing measures to prevent and mitigate other risks and illicit activities **may sufficiently address** the TF risk faced by NPOs, while additional or different measures may need to be considered when existing measures are found inappropriate to mitigate the risk, or as the TF risk to the sector evolves and changes over time.

*Para 45 (pg. 17) – countries should consider negative impact on civil society by their measures*

45. Countries should be mindful of the potential impact of measures on legitimate NPO activities and apply them where they are necessary only to mitigate the assessed risks.

R.8 expressly acknowledges that the measures taken to protect NPOs should not unduly disrupt or discourage legitimate NPO activities. This implies that, for example, these measures should not unduly or inadvertently restrict or delay an NPO's ability to access or transfer resources to carry out its legitimate activities. Rather, such measures should promote transparency and engender greater confidence in the sector, across the donor community, financial institutions and with the general public that charitable funds and services are reaching their intended legitimate beneficiaries.

*Para 46 (pg. 17) – clarifies that civil society organizations are not reporting entities and should not conduct customer due diligence process*

46. R.8 does not require or intend countries to designate or supervise NPOs as reporting entities. FATF Recommendations do not require NPOs to conduct customer due diligence (“CDD”), nor do they require NPOs to undertake other preventative measures, such as detection and reporting of suspicious activity, along the lines of Recommendation 20.

Indeed, unlike FIs and DNFBPs, NPOs do not have customers to whom they provide services; they have donors whose funds pay for the NPOs' activities. That is a fundamentally different relationship.

*Para 47 (pg. 18) – countries must respect current international law and obligations including on human rights, in particular civic freedoms (association, assembly, expression)*

47. Complying with the FATF Recommendations should not contravene a country's obligations under the Charter of the United Nations, and international law, in particular, international human rights law, international refugee law and international humanitarian law (see also para. 8). Implementation of R.8 should respect and observe fundamental human rights and freedoms, such as freedom of opinion, expression, religion or belief, and freedom of peaceful assembly and of association. For instance, paragraph 23 of the UN Security Council Resolution 2462(2019) encourages Member States to work cooperatively with the non-profit sector in order to prevent abuse of such organisations including front organisations by and for terrorists, while recalling that States must respect human rights and fundamental freedoms, and recalls the relevant recommendation and existing guidance documents of the FATF in that regard, in particular its recommendation 8 (see also Preamble to UN Security Council Resolution 2129(2013)).

In addition, UN Security Council Resolution 2664(2022) introduces a humanitarian exemption for asset freeze provisions of UN sanctions regimes.





*Para 48 (pg. 18) – focuses on possible list of measures that countries could take, with warning this is not to be copied in every country and not for all civil society organisations*

48. The measures provided in Box 3 are some examples of measures that countries could decide to apply to NPOs, in line with a risk-based approach. The measures could apply to all NPOs or to a specific group of NPOs in whole or in part, as necessary and proportionate to the risks faced by them.

*Para 48 box examples list negative practice – examples of what countries should NOT do*

On the contrary, the measures provided in Box 4 are some examples of measures that are not aligned with R.8 requirements. To avoid any unintended consequences of the implementation of the FATF standards, countries should have in place focused, proportionate and risk-based measures to the NPOs.

*Para 52 (pg. 21) – focus is on country obligations to do awareness and education of civil society*

52. Countries should 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 TF abuse and TF risks, and the measures that NPOs can take to protect themselves against such abuse.

On-going co-ordination between oversight bodies and other government authorities in their engagement with NPOs ensures clear messages are sent on expectations for TF risk management. Some of the features of a well-coordinated inter-agency and NPOs outreach system could include regular information sharing, education and outreach with and across the NPO sector. This could take place in the context of a public private multistakeholder partnership.

*Para 54 (pg. 22) – focus is on engaging and consulting with civil society about mitigation measures and legislation and importance of continuous dialogue*

54. Countries should work with NPOs to develop and refine best practices to address TF risks and thus protect them from TF abuse. TF typologies evolve rapidly and the NPO sector may be able to detect these changes and inform the authorities.

Authorities should maintain ongoing and regular dialogue with the NPO sector to maintain an accurate and up-to-date understanding of risks, understand self-regulatory measures and related internal control measures in place within NPOs, and develop an adequate policy response (see 2.1.3 and 2.1.4). This could take the form of standing consultation forums, conferences or committees between a range of government agencies (oversight bodies, law enforcement agencies and the FIU, for example) and a range of participants from NPO sectors (see Chapter 4 on multistakeholder dialogue).

Financial institutions could also be included in these activities, to contribute identifying typologies and best practices to address TF abuse of NPOs. This provides an opportunity to discuss risks, guidelines or other policy developments. While the primary purpose of these events is not to provide specific feedback on specific NPOs, they can help to raise awareness of common challenges and responses.

*Para 58 (pg. 23) – country oversight and monitoring must be proportionate and focused – also including examples what countries should NOT do (see box page 24).*

58. Appropriate authorities should oversee or monitor the compliance of NPOs **with the focused, proportionate, and risk-based measures being applied to them.** The concepts of “oversight” and “monitoring” involve a spectrum of activities and tools available to supervisors that should be **applied in a risk-based manner.**

#### **Annex A – examples of good practice by governments and civil society sector**

Various countries put forward their examples, as well as civil society. It is important to read all of those with a context-specific lens (noting not all organizations would agree with good examples put forward by countries) and not to use those examples as specific copy-paste suggestions or guidance.



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