



November 2016 – NPO input for the European Commission Supranational Risk Assessment on Money Laundering and Terrorist Financing (SNRA) following the EC consultation meeting on 4 October 2016

We, Civil Society Europe (CSE), European Center for Not-for Profit law (ECNL), European Foundation Centre (EFC), and Human Security Collective (HSC), are taking the lead on behalf of an informal and wide European NPO coalition working on the impact of counterterrorism (CT) policy on NPOs. We would like to thank you for the informative and constructive meetings you have so far organised around the EU supranational risk assessment and we are looking forward to continuing to working with you on this important issue. We take this opportunity to send you our comments on:

- I. SNRA in the wider CT policy context
- II. the SNRA process itself
- III. the initial findings of the SNRA as they were presented at the 4 October 2016 consultation meeting in Brussels at which all four organisations were present
- IV. risks and mitigation measures.

We are aware that several organisations and networks that are part of our informal NPO coalition have sent separate individual and/or joint responses and input on the SNRA, and trust that while repetition may be inevitable, this contribution will support your efforts to assess the level of risk NPOs face with regards to money laundering and terrorism financing.

Representing NPOs/foundations working for the promotion and/or implementation of human, social, cultural and environmental rights, either as grant givers, in the delivery of services or as advocacy organisations, we are aware and concerned about terrorism threats both in Europe and in third countries. Several NPOs work in high-risk areas in order to provide assistance to the population as well as to promote positive measures aimed at social inclusion and human rights education, which contribute to fighting extremism.

We are also increasingly aware of the need to raise more awareness in/among our networks in Europe of these threats. Many organisations have already taken a number of steps in this direction.

At the same time, we firmly believe that measures must be fit for purpose and proportionate to the effective level of threat, while ensuring the respect of the fundamental rights of citizens as well as a freely operating civic space. We are concerned that in a number of countries, including in the European Union, measures and legislations have been developed that have had an unintended chilling effect on civic space, notably on the freedom of assembly, and on the ability of NPOs to register and to access funding¹. Curtailing civic space for organisations working for the promotion of fundamental rights and social inclusion will weaken the fight against terrorism and limit the rights of citizens.

¹ https://civilsocietyeuropedoteu.files.wordpress.com/2016/10/civicspaceineuropesurveyreport_2016.pdf



Given the importance and critical nature of these measures, we believe that it is important to foster a thorough dialogue between all actors involved, including Financial Intelligence Units (FIUs) and Law Enforcement Authorities at the EU and national levels along with civil society organisations.

I. Key NPO comments on the SNRA in the wider counterterrorism policy context

1. Important to engage in assessments before engaging in EU policy making

We are of the opinion that EU counterterrorism/terrorism financing (TF) as well as money laundering (ML) policies must be developed based on careful evaluation and impact assessments. We welcome the fact that the EC is engaging in an assessment of risks, including a review of existing measures in place, before considering developing new/different proposals/measures to address ML/TF risks.

2. EU counterterrorism policy must be fit for purpose and have a rights-based approach

We consider it critical that following recent terrorist attacks, policy setters and drivers, including the EU, ensure that policies and suggested measures in this regard are fit for purpose, taking into account fundamental rights/values and based on a careful assessment and review of threats/risks and the adequacy of existing measures. The EU must ensure that human rights and fundamental freedoms are upheld when developing policy, and when, e.g., Financial Action Task Force (FATF) standards or UN Security Council Resolutions (SCR) or economic sanctions are implemented. NPOs have reported widely on the unintended consequences of CT/ML policies, including large-scale de-risking by banks and the overregulation of the sector.

3. Important to cross-check EU initiatives with global counterterrorism policy

Actions at the EU level must be coordinated with existing efforts at the UN, FATF and Member-State level. There has to be a clear strategy of why certain measures are suggested/adopted at the EU level (as implementer of already-existing UN/FATF policies or own policy) and at Member-State level.

4. Important to ensure policy coherence between various EU initiatives

It is important to carefully cross-check the SNRA exercise with existing EU counterterrorism and terrorism financing measures already in place or underway. Since different sections of the EC are engaged in policy (EEAS, DG Justice, DG Home, DG DevCo), it is important to be clear where the competences lie and what the effectiveness is of existing and potential new policy.

Also, policy is being developed within the EU ML/CT file while the SNRA is still in the making: the revision of the 4th AML Directive based on the Counterterrorism Action Plan is

underway, and Member States have already started implementing the original version. It is not entirely clear how the SNRA will relate to this ongoing implementation work.

5. Competence at EU level versus at national level

CT and CTF policies and measures are, at the end of the day, implemented at Member-State-level. Coherence of implementation must be ensured. Member States also carry out counterterrorism-related business at the level of the G6 and at other more informal meetings. Additionally, EU action must carefully assess national efforts/measures inasmuch as they differ from EU policy.

In the context of the EU SNRA, it is also important that the EU is aware of and links up to national FATF risk assessments/evaluations.

II. Key comments on the dialogue/process related to SNRA and beyond

1. Need for a more open SNRA consultation process with the wider NPO sector

Given the diversity of the NPO and philanthropy sector, it is important that the consultation related to the SNRA process be open and enable the participation of the wider NPO sector. So far, only a smaller fraction of NPOs have been involved in the process. Information and documents for comments should be published on the EC website to ensure that all interested parties can review and comment. Notice for consultation meetings should be sent well in advance and deadlines to comment on documents should allow for sufficient time. Acknowledgement of contributions and their potential impact would also be welcomed.

It would also be useful that NPOs are invited to a discussion on this matter at the relevant meetings organised by the European Commission with the Member States.

2. Need for ongoing dialogue with NPO sector on EU/EC ML and TF issues

There should be continued dialogue between the NPO sector and policy makers to explore how the objectives of ML and TF risks can be addressed without unnecessarily restricting the operating environment for NPOs. See also the improved dialogue of the NPO sector with FATF on the matter.

3. Recommendation to also involve NPOs in SNRA/EC dialogue with other sectors

Given that measures primarily addressed to other sectors such as banks and other financial service providers also massively impact the NPO sector, it is recommended that NPOs be included in these conversations as well.

4. Collaboration around awareness-raising efforts

NPOs, private and public donors and policy makers can also build awareness within and outside their respective communities about the potential risks of and actions/practice to help prevent TF abuse.

III. Key comments on initial findings as presented by the EC on 4 October 2016

1. Wrongful classification of NPO-specific risk products

As stated in our earlier contribution, we would consider it more appropriate if macro risk products and risk products are listed and analysed as being sector neutral. “Collection of funds”/“transfer of funds” are tools used by other sectors such as businesses and public actors. And, “crowdfunding”/“cash flows”/“pre-paid cards”, etc., are again not unique to the NPO sector.

2. Analysis does not clearly distinguish between collection and transfer of funds by NPOs

In the risk analysis as presented by the EC on 4 October 2016, the two NPO risk scenarios are not clearly distinguished, either in terms of defining the scope or in terms of the potential threat or vulnerability. In reality, fundraising/collection of funds and the distribution of funds are distinct actions with potentially different TF risks, and with separate legislation and NPO practice to mitigate potential risks.

Are all collection of funds by NPOs covered by the EC risk scenario? Or is it only collections by specific types of NPOs and/or from specific sources?

Similarly, are all transfer of funds by NPOs within the EC’s scope?

Such an approach would appear to consider the entire NPO sector at risk, which is clearly not in line with a risk-based approach as stipulated by the FATF. The revised FATF Recommendation 8 clearly establishes that it is not the entire NPO sector that is at risk but only those parts which work within certain risk contexts, be they geographical or topical.

3. The threat analysis does not appear to take an evidence- and risk-based approach

We are of the opinion that the initial threat analysis as presented at the 4 October 2016 consultation meeting, does not take into account an evidence- and proper risk-based approach. Our comments are included under each italic section, which summarises the EC initial analysis:

Threat = intent and capability for terrorist groups and criminal organisations to use this scenario:

- *modus operandi is not frequently used by terrorist groups*

For both scenarios (collect and transfer), the analysis comes to the conclusion that this **modus operandi is not frequently used by terrorists**, which is in line with results from our consultation with NPOs on the matter (NPOs responding to an internal inquiry undertaken during Autumn 2016 stated that they had not come across either TF abuse or suspicious transactions either within their own or a partner organisation).

- *however, when they are misused, NPOs represent a significant threat, in particular as far as foreign terrorist fighters are concerned. They can use these structures quite easily (easy to set up) and may access to cash to finance their travels*

Clearly, if used the **modus operandi represents a threat** but that would apply to most vehicles used for TF. We question, hence, why the EC categorised the threat level as “significant”. Based on our analysis, we think it is incorrect to say that terrorists can use the structures in place for collecting/transferring funds via NPOs easily. Such a simplistic statement overlooks the fact that most sections of the NPO sector are highly regulated via tax laws/others laws/banking practice/reporting practices, etc.

- *Collection/transfers of funds through NPOs do not require specific expertise in particular because cash is still the basis of a large number of transfers of funds considered.*

Based on our analysis, we do not think that such a broad statement is appropriate. One cannot say that one does not require expertise and knowledge to collect/transfer funds via NPOs. Again, a simplistic statement such as this overlooks the fact that most sections of the NPO sector are highly regulated via tax laws/others laws/banking practice/reporting practices, etc.

4. The “vulnerability” analysis does not appear to take an evidence- and risk-based approach

The initial analysis of the EC considers the TF vulnerability related to the collection and transfer of funds by NPOs as “significant” (level 3) for the following reasons – our comments, again, are directly under each EC finding:

- *(i) risk exposure: NPOs located in high risk areas and high risk customers are exposed to risk. Often cash donations traceability of source and transfers (when sent abroad) difficult.*

Several NPOs have acknowledged that there is potential for abuse when financial transactions take place outside the regulated system – for instance, when the cash transaction volume is high. This is, however, not the case for most of the NPO sector where fundraising, donations, etc. are largely transacted via the banking system, particularly in the context of organised philanthropy. There may be cash transactions in emergency/disaster/refugee situations but most of this activity is funded by government or quasi-government organisations with strict procedures and controls in place.

The internal inquiry among select members/partners of the NPO coalition revealed that organisations with access to significant financial resources (from different sources) and engaging in transfers across borders was a scenario with a medium level of risk. The fact that an organisation’s activities had a major international scope was of itself generally not considered to pose a risk.

- **(ii) risk awareness:** *no centralised framework, varies from one Member State to another. Authorities are not able to provide meaningful guidance or assistance. Risk awareness still low! Measures are often considered as overregulation. Humanitarian activities seek exemption from countering terrorism (financing) measures.*

We consider that the risk awareness has increased significantly over the past few years and for that reason cannot be rated as “low”. There have been increased efforts at both the government/authority level as well as the sector level. Member States and charity regulators have engaged in awareness raising campaigns (see for example the UK Charity Commission efforts or efforts by the Belgian Ministry of Finance). The sector itself has picked up on the issue at sector-level conferences and events. The NPO coalition on FATF has been informing NPOs about FATF policy and national implementation/evaluations at various national events.

NPOs are aware of the potential for abuse when financial transactions take place outside the regulated system. This is, however, not the case for most of the NPO sector where fundraising, donations, etc. are largely transacted via the banking system, particularly in the context of organised philanthropy. There may be cash transactions in emergency/disaster/refugee situations but, here again, risk awareness is high and there are strict procedures and controls in place.

- **(iii) legal framework and controls in place:** *the existing AML/ CFT is currently considered as adequate to address the specific needs of the NPO sector. Controls/registration processes are not equal depending on the Member State. Competent authorities tend to consider that controls in place are quite good concerning the collection of funds within the EU. However, some weaknesses appear when dealing with transfers of funds or expenditures outside the EU.*

Self-regulatory and regulatory frameworks are in place in all Member States and it appears that existing AML/CFT rules are adequate in addressing existing TF and ML risks.

- **Hard law**

We agree that existing AML/CFT systems appear to adequately address potential risks. Controls and registration processes for NPOs are indeed not the same across all Member States but this should not be considered a weakness of the system or of inadequate controls and checks.

The NPO sector is regulated by a system of civil law/tax law/charity law/ML and CFT laws, which have evolved out of and can be explained according to the different cultural and legal traditions and history of the different Member States.

- **Banking sector checks**

Philanthropic actors have reported that **banks** undertake Know Your Customer (KYC) , AML and FATF Recommendation 8 related checks.



- **Auditor checks**

For those NPOs being audited, audit controls imply additional checks and controls.

Auditors of several philanthropic actors look at internal controls and due diligence processes to ensure that the money given to grantees is not subject to fraud or otherwise being inefficiently used. Terrorism financing is part of the broader check on fraud, given it would be a misuse of funding provided or funding being provided to a fraudulent organisation. INGOs (International NGOs) are subject to internal controls and due diligence processes and have to undergo audit controls to prevent fraud.

- **Guidance by governments/regulators**

Some governments/charity regulators have issued concrete guidance for charities to prevent TF abuse, see, for example, the Charity Commission for England and Wales toolkits:

<https://www.gov.uk/government/publications/charities-and-terrorism>

- **Self-regulation – codes of conduct**

In addition there are sector-initiated **codes of conduct** developed by the fundraising as well as the wider philanthropic sectors, which often include guidance on governance, reporting, monitoring of the use of funds, knowing your donors and knowing your beneficiaries.

Codes, e.g., include internal procedures (sometimes based on donor regulation) and the 6-eye-principle on signatures for financial transfers.

There is a strong self-interest to act professionally, to be transparent and accountable and to ensure that no abuse takes place.

- **Individual good practice**

In response to new and intensified risks of acting in certain areas/regions, most larger NPOs/philanthropic organisations have adopted sophisticated and professionalised risk management approaches, which cover not only areas of security and safety but also fiduciary, legal, reputational, operational and information risks. Examples include:

- Security briefings and awareness raising around risks for staff
- Risk assessments/monitoring: if an NPO is planning a programme in a country with a high risk of designated terrorist activity, or involving a cash transfer, appropriate risk assessments and mitigation measures are carried out, documented and kept/updated where appropriate throughout the programme
- Policies on anti-fraud, bribery and corruption, and CFT
- Due diligence practice and checks: most NPOs have clear policies in place to ensure that funds and resources are fully accounted for and not diverted to terrorists. NPOs undertake due diligence on donors and beneficiaries (the use of software to screen



partners against certain lists was reported, cross-referenced with data published by specialised bodies such as Transparency International (TI)). This avoids dealing with organisations who might be involved in with money laundering and/or terrorism financing.

In order to mitigate risks, many philanthropic organisations do not transact in cash and in many cases insist upon partners having audited accounts. They perform strict due diligence on partners, and meet with beneficiaries, check finances, carry out unannounced visits and inspections, etc. Several have already developed or are developing a whistle-blower mechanism.

The segment of the NPO sector that is actively engaged with antiquities and heritage has developed protocols to fight illicit trafficking of cultural artefacts. After the Medici case and the high profile cases in 2006 involving American museums, the sector has fully adjusted their acquisition policies to the 1970 Convention. This includes a detailed process of inventorying and ensuring provenance and due diligence in current collections and acquisitions. Guaranteeing the proper funding of ICOM's International Observatory on Illicit Traffic in Cultural Goods and strengthening initiatives such as the Red Lists Database is the most effective way to fight against illicit trafficking of high value goods and antiquities. ICOM actively disseminates the already existing ethical code² and publishes strong statements when a case of malpractice is unveiled.

Within the EU, Italy and Greece lead the way in the private antiquities market in identifying and reclaiming pieces suspected of having been illegally trafficked. However, lack of funding has compromised their work, as well as work in countries such as Belgium where links between terrorist attacks and the illicit art trade were unveiled. Ensuring proper funding is crucial to monitoring the private market where most of this illegal trading takes place. There are some indications that the online market for minor pieces in terms of value is increasingly relevant. Yet, there is not sufficient data to assess the extent of this phenomenon.

To sum up, NPOs believe that good governance arrangements, financial checks and risk management policies and procedures that fit the specific needs and size, activities and areas of operation of NPOs, are the best tools to safeguard against a range of potential abuse, including terrorist financing and money laundering. NPOs are aware of potential risks but in most cases do not consider themselves at risk because of the careful mitigation measures and practices in place. However, that said, a zero-risk scenario does not exist.

² http://icom.museum/fileadmin/user_upload/pdf/Codes/code_ethics2013_eng.pdf

IV. Additional comments on CT risks and mitigation measures

1. No rules-based approach can provide for zero risk

Appropriate rules on transparency and accountability appear to be in place in most EU countries but an entirely "rule based" approach is unlikely to address potentially-identified risks. There is no such thing as a zero-risk approach. In addition, a rule-based approach which impacts the entire non-profit sector is not in line with FATF standards, but an intelligence-based, informed and targeted approach would be. There may, hence, be room for self-regulatory measures around mitigating terrorism financing risks.

2. Wider impact of mitigating measures

In assessing the potential risk and in the evaluation of the possible mitigating measures, it is important to consider the overall impact of such measures and to ensure that these are not counterproductive to the goals they try to achieve.

Compliance with counterterrorism laws/measures could lead to compromising humanitarian principles as outlined in separate comments within the SNRA process submitted by VOICE. NPOs have reported that they have withheld support from certain beneficiaries. Several NPOs have reported delays due to administrative procedures caused by additional laws and regulations. NPOs have also reported that they have tried to mitigate potential risk with self-imposed over-regulation.

Additionally, the current problems with de-risking by banks have led to problems for NPOs active in the humanitarian domain (see Thomson Reuters Foundation recent article "Syrians suffer as anti-terror laws squeeze charities", <http://news.trust.org/item/20160224000357-rtjoh/?source=fiHeadlineStory>). However, this is also affecting other NPOs. De-risking has led banks to ask the publically better-known organisations to "act as shields" for smaller, e.g. human rights, organisations active in high risk areas in relation to the transfer of cash. In essence this leads to "market failure" by banks, given entire sectors, countries, clients/NPOs are no longer being served. However, private business does not seem to be facing the same problems. Are they not considered as being at risk?

3. Other sectors at risk

Within our exchange, questions came up as to whether and how the **weapons industry** is risk assessed as regards ML/TF issues: "BNP Paribas also recognizes that international trade in weapons is particularly exposed to the risk of corruption and money laundering. Trade in non-controversial arms may finance dictatorial and/or corrupt regimes and terrorist groups. BNP Paribas is therefore implementing a CSR policy specific to the defence sector to address the above-mentioned risks and define consistent rules for all the Group's activities worldwide.



³ This appears to be a separate issue to the one on illicit trafficking of arms, which is covered by regulations and directives. Additionally, the **oil and energy sector** is covered by FATF, and public reports demonstrate that it has been used for terrorism financing, and we wonder if this is also covered by the EU SNRA.

4. NPO work contributes to reducing terrorism risks

European NPOs and foundations play an important role in education, peace and democracy building, gender equality, inclusion of discriminated groups, social and health services and employment, as well as in areas of conflict or in areas where the radicalisation discourse is widespread. They also contribute to the fight against corruption, money laundering and terrorism financing, acting as watchdogs and whistle-blowers.

The Sustainable Development Goals acknowledge the importance of investing in fragile countries to prevent conditions conducive to violent extremism, terrorism and criminal networks. Investments in development, peace, governance and civic space are therefore vital.

The new UN Prevention of Violent Extremism plan explicitly mentions the role of civil society in tackling conditions conducive to Violent Extremism. The Global Counter Terrorism Forum (GCTF) has launched a fund for countering violent extremism activities at the grassroots level via local organisations (GCERF) – all of which requires a fully operational civic space and the taking of calculated risks.

It is hence counter-productive if NPOs witness increased restrictions in their operations because of anti-terrorism laws.

5. NPOs interested to continue dialogue

We believe that dialogue between NPOs and the European Commission must be enhanced, as well as dialogue with the relevant working groups involving Member-State-representatives.

We remain at your disposal to increase exchange and share best practice among Member States, but do not see the need for EU-level regulation with regards the NPO sector.

We would like to be involved in discussions on cross sectoral issues, while possibly mitigating measures that have an impact on the NPOs sector.

³ <https://www.bnpparibasfortis.com/docs/default-source/our-responsibility/en/csr-sp-001-en-defence.pdf?sfvrsn=4>