

Enhancing Effective Implementation of FATF Standards on Nonprofits

*Lessons learnt from
mutual evaluation
processes*

**Meeting
Outcomes**

**Sept. 21, 2016
London, UK**

Regional meeting
Enhancing Effective Implementation of FATF Standards on
Nonprofits

September 21, 2016

Event organized by:

*European Center for Not-for-Profit Law
European Foundation Centre
Human Security Collective
Charity and Security Network*



In collaboration with:

*Charities Aid Foundation
Charity Finance Group*



This event is organized under the project: "Standing up Against Counter-Terrorism Measures that Constrain Civic Space". The project is supported in part by the grant from the Open Society Human Rights Initiative.



Enhancing Effective Implementation of FATF Standards on Nonprofits

Lessons learnt from mutual evaluation processes

Meeting outcomes

The regional expert meeting was organized by a core group of the Global NPO Coalition on FATF in London on September 21, 2016. The goal of the meeting was to address the evaluation process from a government, nonprofit and FATF perspective in light of the recent revision of FATF Recommendation 8 (R8) and its Interpretative Note (IN). Over the past few years, nonprofit organizations (NPOs), researchers, international organizations and the [UN Special Rapporteur on the rights to freedom of peaceful assembly and of association](#) have noted that the implementation of R8 has been one of the (un)intentional drivers impacting civil society. In response to these concerns, and to [input from the Global Coalition](#) and a wide group of stakeholders, FATF has revised some of its key documents. In addition, a [review of the 4th round of Mutual Evaluations undertaken by ECNL, EFC and HSC](#) showed that the implementation of the new effectiveness element related to the evaluations has not yet been clearly developed. Given this, NPOs and some governments have called for more guidance on how to assess the effectiveness of measures affecting the NPO sector. NPOs have also asked for the process to be more open and for more sustained engagement.

In light of this, the organizers of the event convened the meeting to reflect on the changes to policy, to contemplate on the learning from the evaluations completed, and to examine how NPO engagement can contribute to a more effective implementation and review of R8.

RECOMMENDATIONS

The overarching recommendation from the meeting is that there is need to develop a **genuine and continuous dialogue between the various stakeholders and NPOs, and concrete guidance for governments and evaluators** in order to improve the risk assessment and evaluation processes in order to make it easier for countries to prepare and for NPOs to engage in. Such guidance could be developed in a separate guidance document, or annexed to the Best Practice Paper.

Some concrete recommendations include:

- Encourage countries to use the opportunity of **country trainings offered by FATF, to prepare for the evaluation process. Include NPO elements into such trainings.**
- **Develop clearer guidance for governments and evaluators about the effectiveness review** – especially on how to measure effectiveness. It should be clear that the "rule-based" approach which affects the entire NPO sector is not in line with FATF standards, but an "evidence-based" or informed and targeted approach is.
- **Guidance to evaluators on engaging with the NPO sector.** Develop a standardized approach for NPO engagement that can consider the following good practices:
 - The importance of **meeting with diverse groups** during the site visits to get a broader perspective of issues and country specifics: non-profits that are working on the ground, those working with organizations engaged in service delivery, those with a broader view of FATF issues, those that are practitioners, those who represent networks or umbrella organizations. Avoid talking to GONGOs (Government NGOs).
 - Provide **information on how NPOs can be informed in advance in order to prepare for the evaluation** and ensuring that the relevant information they need to provide reaches the evaluators.

- Provide **guidance on how can NPOs can submit input to evaluators prior to the visit, particularly prior to completion of the scoping paper**, as it defines the parameters of the evaluation. There could be FATF templates for inputs made available to NPOs.
- Review **background material of the country to develop a holistic understanding** of the issues and reflecting that in the assessment.
- Review **self-regulation practices of the non-profit sector**, not only government policies and laws.
- Allow more **time for meeting with NPOs**, where needed.
- There is a need to continue to **facilitate learning** from other countries about how R8, evaluation and risk assessment processes have been implemented.
- **Raise awareness among evaluators** that untargeted measures and overregulation restricting the general operating space of the entire NPO sector will be considered ineffective (some evaluations already do this, so this practice should be standardized). Evaluators must be made aware that evaluations could also be used to stress the fact that governments should not overregulate unduly, or to point out that overregulation is non-effective from the FATF point of view, as is embedded in Immediate Outcome 10.
- **FATF Style Regional Bodies (FSRBs)**. FSRBs should streamline their methodology and approach on evaluation and NPO engagement. FATF member states should provide the necessary capacity to FSRB secretariats on NPO engagement and on effectiveness standards.
- **Enhancing risk assessments:**
 - There is much need for **guidance on the R8-related risk assessment process for governments**. There is guidance for R1, but not on identifying a subset of NPOs at risk of terrorist abuse, as required in the R8. There are challenges for identifying the sub-sectors at risk – particularly in terms of avoiding presumptions and presuppositions. There could be **common criteria that governments might use for identifying the parts of the NPO sector that are at risk**.
 - National risk assessments should be **made public** to the extent possible. The results inform and concern not just the evaluators but also the NPO sector. It allows NPOs to see whether appropriate mitigating measures (including self-regulation) exist and whether others, if any, need to be considered.
 - There should be **clear guidance to governments and evaluators that in the absence of a risk assessment or a risk-based/targeted** approach on R8 by the government, the country should not be deemed compliant with R8. Scoring well on R8 should be made difficult if no outreach to the non-profit sector is conducted, or if there was no prior discussion with NPOs on terrorism-financing and attendant risks.
 - **Regional variation** within a country in terms of identifying a risk is a challenge – there should be guidance on how the evaluation takes on board regional and sub-regional elements of risk in a country.
 - It was clarified that while the national risk assessment is a governmental process (sometimes governments outsource this exercise), it **must be preceded by outreach to the NPO sector** so that it can benefit from the input. FATF should draw on practices where assessments are done **in collaboration with the sector**, encouraging **governments to involve NPOs in the process and to carry out more outreach**.
- There is a need to build in follow up **steps after the evaluations and publishing the report**, which allow NPO input, to ensure that points of redress from the report are appropriately addressed and are proportionate.

FATF should clearly mark on the cover page (as opposed to inside the document) **the date when the documents were revised (R8, IN, methodology)** so the governments and NPOs use the latest version of the revised document. In addition, FATF should work with FATF SRBs to ensure **accurate translation of FATF documents** into local languages. These technical issues have proven to create difficulties and misunderstandings in practice.

MAIN POINTS AND TAKEAWAYS FROM DISCUSSIONS

The overall conclusion of the expert discussion was **that the joint efforts of government and NPO sector representatives are key** to developing a risk-based, targeted and effective approach to the prevention of the financing of terrorism.

1. Main learning and findings from the past evaluations

- Risk is the core of the FATF standard. For Recommendation 8 (R8), this is the risk of terrorism financing. In the current 4th round of FATF evaluations on R8, the level of implementation by countries is low - 63% of countries have been found to be non-compliant or partially compliant on R8.
- Effectiveness is key in relation to the methodology. There is a low level of implementation on effectiveness in the current 4th round of FATF evaluations on R8, namely the Immediate Outcome 10 of the Evaluation Methodology - only 20% of the countries assessed are doing well on it, others are low or moderately compliant.
- The overall question is: are countries being able to stop the money flow to terrorists? A "rule-based" approach, which affects the entire non-profit sector in a broad-brush fashion, is not in line with FATF standards. We need, instead, an evidence-based or informed and targeted approach.
- Evaluators ask for an effective, targeted approach. From the point of view of the evaluation, untargeted measures that restrict the operating space of the entire NPO sector should be considered as non-compliant. The evaluators can challenge the effectiveness and the use of resources of the country when they discover regulation imposed on the entire sector.
- If the government did not carry out risk assessment or risk-based approach, the country would likely not be compliant with R8. If no outreach to the non-profit sector was conducted, and if there was no discussion about terrorism financing and risks with NPOs, it should be made difficult for that country to score well on R8.
- In that respect, evaluations could also be viewed as an entry point to emphasise that overregulation is ineffective.
- FATF Style Regional Bodies (FSRBs) participate in all FATF working groups and meetings. There is a somewhat varying understanding among FSRBs of FATF standards and the evaluation process. However, the FATF does carry out a quality check on all FSRBs Mutual Evaluation reports to ensure consistency.

2. Challenges countries, evaluators and NPOs face during the evaluation process

- It is challenging for countries to prepare for an evaluation on R8, and they continue to ask the FATF for guidance on how to go about it.
- R8 is only one of the 40 Recommendations the evaluators review. The evaluators come with their own legal backgrounds and organizations who have participated in the process have said that they are not always cognizant about the NPO sector in general. This poses numerous challenges as evaluators may lack the knowledge and experience to interpret information provided by government authorities and NPOs on the non-profit sector and its specific context, and lack time to validate the information by comparing it with other but similar contexts.
- There are challenges for identifying the sub-sector of NPOs at risk. This also affects the decision on whom the evaluators should meet. Evaluators need to discuss R8 implementation with non-profits working on the ground, and those that operate close to terrorist threats and are aware of the risks. Not all relevant NPOs are invited to participate in the evaluations, and oftentimes it is not clear who has taken part in the evaluation.

3. Entry points for addressing some of the challenges

- The FATF conducts Assessed Country Trainings in some countries upon request, which includes practical guidance on how to put the evaluation process together and how to prepare for it given the evaluation timeline. Preparation for the evaluation of R8, information on NPO-relevant issues for the sector in the country (including broader developments in the country that may be relevant), and guidance on how to engage NPOs could be included as a part of that training.
- The scoping process conducted by the evaluating team ahead of the evaluation visit is an opportunity to provide NPO input in order to give the evaluators an appropriate background on the country's non-profit sector.
- The "Global Network Coordination Group", which includes all FATF and FSRB Secretariats, the International Monetary Fund and the World Bank, deals with coordination and horizontal issues, sharing good practice. They could share evaluation-related material developed by the FATF Secretariat among members to help facilitate and simplify the process. These might include templates and guidance on NPO engagement in the process.
- National risk assessments should be made public to the extent needed in order that NPOs understand the risks, and be informed if and when mitigating measures are proposed as also when evaluations are set to take place (knowing that there may be a need to have a public and private version).
- It was clarified that while the national risk assessment is a governmental process (sometimes outsourced to experts), it must be preceded by outreach to the NPO sector so that it benefits from the input of the NPOs. Countries that do no outreach to NPOs in development of the risk assessment are not R8 compliant. The FATF could provide guidance to governments on ways to involve NPOs in the process and in order to gain better quality of the process.