

Philanthropy sector welcomes envisaged FATF revision of Recommendation 8 and related papers

Note by Hanna Surmatz, Head of Policy at Philea and member of WINGS EE on behalf of Philea and WINGS: submitted to the FATF online consultation on 18 August 2023

The Philanthropy sector as represented by Philea/WINGS clearly welcomes the envisaged revisions to the global counter-financing of terrorism policy on Non-Profit Organisations (NPOs); and FATF Recommendation 8 (R8) and its related Interpretative Note (IN) and Best Practices Paper (BPP). We consider this a significant step to reduce unintended consequences of this policy and to secure the space for public-benefit and philanthropy action. We have been advocating for a clearer wording of R8 and related papers for many years with a view to lowering the chilling effect that the implementation of FATF policy unfortunately has on the philanthropy sector and civil society more widely in several countries.

We are a member of the **core group of the NPO coalition on FATF** and have jointly worked on concrete comments and suggestions for wording on the draft texts, which we have submitted as an annex to the public consultation. We regret that the consultation period was short and over the summer weeks, which made it more difficult to collect inputs from our respective memberships. Nonetheless we are pleased to use the opportunity to comment as follows:

On the philanthropy sector

Philanthropy and foundations have a crucial role to play in addressing societal challenges around the world. In Europe, there are **more than 147,000 foundations**, some small/some large/some local scale or global. Together they account for more than €60 billion of annual giving and €511 billion in assets and endowments. Also globally philanthropy is a growing sector: [72% of the world's estimated 260,000 foundations have been established in the last 25 years](#). Their combined assets are over \$1.5 trillion and total annual expenditure has been estimated at \$150 billion (source: <https://www.beaconcollaborative.org.uk/the-uk-as-a-centre-of-excellence-for-international-philanthropy/>).

The chilling effects of counter-terrorism policy on our sector

We strongly believe in the important fight against money laundering and terrorism financing. We have however observed that elements of the policy have had unintended chilling consequences on the NPO sector, including the philanthropic and foundation sector. Some governments have also intentionally used the standards to close down civil society and philanthropy space to silence undesired actors. The security agenda has been listed by many experts as one of the key drivers behind shrinking civil society space: See for example: Hayes, Ben and Joshi, Poonam, 2020, "[Rethinking Civic Space in an Age of Intersectional Crises: A briefing for funders](#)" (Funders Initiative for Civil Society, May 2020). Also in Europe, we have seen restrictions imposed on the operating environment for the philanthropy

sector: See Philea's recent legal analysis across 40 countries in Europe "[Comparative Highlights of Foundation Laws](#)" based on [2020 legal research with country profiles of 40 EU and non-EU countries](#).

Our key comments on the current revisions

We acknowledge that the *revisions seek to address the problem of over-application of preventive measures to the NPO sector, including philanthropy, in some countries, recognising the negative impact this can have on legitimate NPO activities*. The suggested changes are a huge step forward to ensure that governments take a risk-based and proportionate approach without unduly restricting the NPO sector (including philanthropy) when implementing R8. They also reflect the constructive engagement that we have had with the FATF over the past years as part of the FATF PSCF and beyond.

As a member of the core group of the NPO coalition on FATF, we have regular exchanges with the FATF in a very constructive dialogue. In addition to the FATF NPO coalition's concrete suggestions for wording on the draft texts shared in the consultations, we recall some of the main comments from the philanthropy sector in the context of envisaged revisions around R8:

1. *We have experienced that a number of governments have considered that all NPOs including philanthropic organisations fall under the FATF policy and we welcome that the new wording clarifies the scope and application of the policy. Countries should identify the organisations which fall within the FATF definition of NPOs and then assess their terrorism-financing risks. This clarifies that only a subset of NPOs fall under the FATF definition and among them, only those at risk need to be identified. We consider however that the wording of R8 could further clarify that "when assessing the terrorism-financing risk of the sub-set of NPOs falling under the FATF definition, countries should review existing hard law as well as the due diligence and risk mitigation mechanisms applicable to and implemented by the sector to determine their residual risk– In many cases governments or the sector have developed regulations-measures for NPOs with potentially different intentions but these measures often already reduce potential TF risks–Countries should hence be required to consider such measures as part of the risk assessment, in order to determine the subset of NPOs actually at risk (residual risk) and to not miss out for example on information they are already collecting. Failing to do this could result in countries implementing measures that are not needed and/or are duplicative and/or are overly burdensome.*
2. We have experienced that some countries have introduced non-focused and/or disproportionate measures when implementing R8 without any consideration of risks. Such an approach has restricted legitimate NPO and philanthropic activities significantly. We welcome the clarification that countries should have in place focused, proportionate and risk-based measures, without unduly disrupting or discouraging legitimate NPO activities. In addition, we suggest to include a reference in R8 to the need to

address the real rather than the perceived risk. Countries should use empirical evidence (if any) rather than perceptions of the sector to determine risk.

3. The term “clandestine diversion” of funds as used in R8 and related papers is often politicised and lacks clarity. Hence we strongly recommend to not refer to “*concealing or obscuring the clandestine diversion of funds intended for legitimate purposes to terrorist organisations*” but rather refer to the need to be “*supporting NPOs to ensure their funds intended for legitimate purposes reach the legitimate receiver of such funds safely* .
4. Since the Interpretive Note (IN) stresses the need for governments to do **outreach to the NPO sector throughout the risk assessment and risk mitigation process**, we would suggest to also include this in R8 itself.
5. *We recommend that the concrete example of good government and NPO practice, currently listed in the IN under 4biii«should be moved to the Best Practices Paper, BPP»to avoid that governments consider this list as a binding list. In the BPP we welcome the inclusion of a DO NOT list for governments since this can also help them to better understand what is - and what is not - required when implementing R8.*
6. Generally, we want to stress that good country practices in the BPP (box3/4) should focus on measures **introduced by governments to address identified terrorism-financing risks in a targeted and proportionate way.** They should **not list measures that governments have introduced to address/regulate the entire NPO sector.** Where Government general regulation on NPOs (Civil Code/NPO/foundation laws/tax laws) address all NPOs (e.g. registration requirement for foundations in country A), such regulation is not a targeted TF measure (though might reduce TF risks) and should hence already be considered during the countries risk assessment when identifying the parts of the NPO sector at risk (see point 1 above on residual risk). Such existing regulation on all NPOs/philanthropic organisations may already create a lower risk profile for the NPO sector. Measures to address identified terrorism-financing risks have to be targeted and risk-based and should hence only address those NPOs that have been identified at higher risk and not all NPOs.
7. **Grantmaking NPOs or philanthropic organisations/foundations** (the sector that we mainly represent) are distinct and have different challenges than other NPOs. We recommend referring to them specifically and also to distinguishing them from public donors, or clarifying that donors can be public or philanthropic when donors are referred to in R8 related papers.
8. Our **sector’s cross-border activities and cross-border grantmaking** have been restricted by several governments since they consider such international activities as posing higher risks for terrorism-financing. Several governments have introduced so-called foreign funding restrictions or foreign agent laws

in the name of the counter-terrorism agenda. FATF has been confirming that such foreign funding restrictions cannot be based on FATF policy and that working internationally is not per se creating higher risks for terrorism financing. Where IN R8 refers to a *global presence and international operations that may be within or near those areas that are most exposed to terrorist activity* it would hence be important to add a statement that **international activities per se do not create higher terrorism-financing risks** (only when done in areas that are exposed to terrorist activity).

In this context we are hence very concerned that for instance in the Mexico example of the BPP (p.43), the pop-out box highlights the creation of a risk matrix that identified any cross-border transfer of money as an intrinsic risk factor. That has caused significant bureaucratic challenges for US (and other) grantmakers working in Mexico. This seems counter to the FATF understanding that working internationally is not (and should not be) an intrinsic risk factor. Yet for Mexico and other countries' approaches, "working internationally" is flagged as an acceptable determination of risk.

9. Regarding sectoral equity in the context of cross-border activities but also beyond, we would like to stress that there seems to be a lot of restrictions put on the NPO and philanthropy sector (including foreign funding restrictions), whereas business can operate freely, which raises a concern of sectoral equity.
10. Overall we would like to see more foundation/donor principles of good practice listed in the annex of R8 BPP and are hence sharing a list prepared by Philea and WINGS in this regard as an ANNEX to this document.

In line with the Global NPO Coalition on FATF, we welcome the draft changes and are hoping that the Plenary approves these in October 2023. We also know that this alone, while it will help reduce the scope for misinterpretation, will not entirely do away with the misapplication of R8. **The current revisions address only one part of the problem that NPOs face – the widely prevalent view in many jurisdictions that all NPOs are risky and conduct illegitimate activities. It does not quite address the other part of the problem: the underlying presumption that all governments are good and well-meaning.** To tackle the latter (i.e. in order to provide guarantees in terms of implementation for the changes suggested to the R8 and the IN), this is what is additionally needed:

- **Amendments to and adaptation in the FATF methodology**, so that egregious cases of NPO sector suppression, overregulation and de-risking can be identified and reflected by the assessment team and addressed within the MER and the ICRG processes.
- **Appropriate training content for assessors on R8 and IN**, which includes an understanding of the NPO sector and how it operates; and an understanding of States' obligations under various international treaties.

Please contact Hanna Surmatz, Head of Policy at Philea, for more information:
hanna.surmatz@philea.eu

About the NPO coalition on FATF

The Global NPO Coalition on FATF is a loose network of diverse non-profit organisations (NPOs) whose aim is to mitigate the unintended consequences of countering the financing of terrorism (CFT) policies on civil society in order that legitimate charitable activity is not disrupted. Since 2014, four organisations have developed strategies, and facilitated and coordinated the Coalition. They are supported by a core group of NPOs representing a wide range of interests across countries and regions. **Four organisations lead the Coalition:** Charity & Security Network; European Center for Not-for-Profit Law; Philea also on behalf of WINGS; and Human Security Collective.

About Philea

With individual philanthropies and national-level infrastructure organisations in over 30 countries as members, we unite over 10,000 public-benefit foundations that seek to improve life for people and communities in Europe and around the world.

Our **vision** is for philanthropy to use its full potential to co-shape and support a pluralistic, just and resilient society that centres people and planet.

Our **mission** is to enable, encourage and empower the philanthropic community to build a better today and tomorrow.

philea.eu

About WINGS

WINGS is the only global network of philanthropy support and development organisations. We are a community of more than 200 thought leaders and changemakers across 58 countries who are committed to growing and strengthening philanthropy to ensure that it reaches its fullest potential as a catalyst for social progress. We are committed to ending inertia, breaking down silos, challenging conventional wisdom and creating an enabling environment for philanthropy to flourish. Our goal is to encourage collaboration and ignite potential – to rally philanthropic actors everywhere to build a more just, equitable and sustainable world.

<https://wingsweb.org/>

<https://wings.issuelab.org/resource/wings-2023-2027-strategic-plan.html>

ANNEX – list of select resources by Philea and WINGS

- [Arab Foundations Forum \(2011\). Principles of Good Practice](#)
- [Center for Effective Philanthropy \(2016\). Sharing What Matters: Foundation Transparency](#)
- [GlassPockets \(2022\). Transparency self-assessment](#)
- [Global Partnership on Effective Development Cooperation \(GPEDC\) \(2011\). The Four Effectiveness Principles](#)
- [GrantCraft Guide \(2014\). Opening Up: Demystifying Funder Transparency](#)
- OECD, [DAC Recommendation on Enabling Civil Society in Development Co-operation and Humanitarian Assistance](#), July 2021
- Philea, [Comparative Highlights Of Foundation Laws: The Operating Environment for Foundations in Europe](#), 2022
- Philea, [Principles of Good Practice](#), May 2022
- [Philea Exploring Transparency and Accountability: Regulation of Public-Benefit Foundations in Europe – 2011](#)
- [WINGS \(2023\). Moving from Reflection to Action: A Guide on Transparency and Accountability for Philanthropic Organisations](#)

Here are some foundation related principles/ codes from three European countries:

- [Switzerland – Swiss Foundation Code \(updated 2021\)](#)
- [Germany – principles for foundations \(updated 2019\)](#)
- [Finland – principles for foundations \(2015\)](#)