

Milka Ivanovska Hadjievska



FATF RECOMMENDATION 8 ON NON-PROFIT ORGANISATIONS:

Mapping Key Findings and
Recommendations for
Countries in the
Western Balkans



October 2017



FATF
Recommendation
8 on Non-profit
organisations:
Mapping Key
Findings and
Recommendations
for Countries in the
Western Balkans

Contents

5	Introduction
7	FATF Standards and Recommendation 8 on Non-profit organisations
11	Main criticism towards the implementation of FATF standard 8
13	Overview of Recommendation 8 ratings
16	Summary of key findings by MONEYVAL on Recommendation 8
19	Summary of key recommendations by MONEYVAL
21	Recommendations for civil society organizations in the region
23	References
24	Appendix



FATF
Recommendation
8 on Non-profit
organisations:
Mapping Key
Findings and
Recommendations
for Countries in the
Western Balkans

Introduction

Legal experts and international civil society organisations have noted the increased use of the counter-terrorism agenda by governments as a main argument behind the new generation of restrictions on civic space (Hayes 2017). The international actors which create the counter-terrorism rules and policies are the UN, EU, Financial Action Task Force (FATF) and the Global Counter-Terrorism Forum (Hayes 2017, 7). The broad and ambiguous definitions of ‘terrorism’, ‘extremism’ and ‘radicalisation’ that some of these international bodies adopt seems to legitimise more constraining regulation and at some instances, repressive measures by governments targeting human rights defenders, journalists, political minorities etc. Therefore, it is crucial for civil society to be up to date with the international policies which support and urge the implementation of counter-terrorism standards concerning the operation of civil society organisations. However, following and understating the increasingly complex counter-terrorism rules issued by various international bodies is a challenging task at hand. The main aim of this document is to enhance civil society’s understanding of the overall mission of FATF, provide a condensed information on the character of FATF Special Recommendation 8 on Non-profit organisations (NPOs) and its implementation in the countries from the Western Balkans and Turkey.

The FATF is a very important, even though little known international body with a mandate to protect the financial system from money laundering and financing of terrorism (Hayes 2017, 14). The FATF¹ is an independent inter-governmental body established in 1989 that develops and promotes policies to protect the global

¹ For more information about the FATF, please visit the website: www.fatf-gafi.org

financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. FATF Recommendations are recognised as the global anti-money laundering and counter-terrorist financing standard.

The initial forty anti-money laundering recommendations were created in 1990. In 2001, they were complemented with eight (later nine) Special Recommendations on terrorist Financing. In 2012 the forty-original money laundering and the nine standards on terrorist financing were integrated in a single set of forty FATF recommendations, which in 2015 underwent minor revisions (Hayes 2017, 14). The FATF recommendations on terrorist financing are rooted and build on the United Nations Security Council Resolution 1373 adopted in 2001.

With the main aim to protect the international financial system, FATF collaborates with other international actors to identify threats and weaknesses on national level. There are eight² regional bodies which ensure the promotion and implementation of the forty recommendations covering 190 countries in total. The Council of Europe's Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) was formally established in 1997 as a Council of Europe Sub-Committee with mandate to ensure that member states implement effective measures to prevent money-laundering and financing of terrorism (Statewatch and Human Security Collective 2015, 10). Total of 30 states are subject to MONEYVAL's evaluations, including Serbia, Montenegro, Macedonia, Bosnia and Herzegovina, Croatia, Slovenia and Albania. Turkey is monitored by FATF and OECD, while Kosovo has not been a subject of mutual evaluation process yet. In the Global Assessments Calendar – July 2015 of FATF it has been announced that Kosovo will be evaluated under the 2013 methodology, but no dates were specified.

In the next section, FATF recommendation 8 as it stands in the current FATF methodology is introduced. This is followed by a brief overview of the main criticism on the implementation of FATF standards in relation to NPOs and FATF's monitoring methodology. Then, a summary of country ratings, key findings and recommendations concerning NPOs are presented. Finally, the text concludes with a list of recommendations for civil society organisations (CSOs) on how to protect civic space in the Western Balkans and Turkey from over-regulation related to the implementation of anti-money laundering and counter-terrorism standards.

² The eight bodies are: Asia/Pacific Group on Money Laundering, the Caribbean Financial Action Task Force, the Eurasian Group, the Eastern and Southern Africa Anti-Money Laundering Group, the Financial Action Task Force on Money Laundering in South America, the Inter-Governmental Action Group against Money Laundering in West Africa, the Middle East and North Africa Financial Action Task Force and the Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism.

FATF Standards and Recommendation 8 on Non-profit organisations

The implementation of the FATF standards in each member state is assessed via the Mutual Evaluation process. The mutual evaluation is conducted by a team of experts, practitioners from neighbouring countries, FATF regional bodies (MONEYVAL in the case of the countries from the Western Balkans), IMF and the World Bank. The team of inspectors conducting the country oversight and analysis rates each of the forty recommendations as: *non-compliant*, *partially compliant*, *compliant* or *largely compliant*. If countries fail to comply or largely comply with at least 10 core recommendations, they will be placed on a grey list and face economic consequences such as reduction of foreign investments, increase of the interest rates on credits, a reduction of the country's credit rating, rigorous checks on all financial transactions etc. FATF recommendations do not have the status of intergovernmental convention (like UN or EU instruments) but yet, in practice they shape national regulation through extensive monitoring processes and the threat of blacklisting (Hayes 2017, 20).

In the 2012 FATF recommendations, NPOs were rendered as particularly vulnerable to the abuse from terrorist organisations. In June 2016, the Recommendation 8 and the Interpretative Note to Recommendation 83 were revised and the scope of NPOs which will be subject to monitoring and supervision was clarified. Moreover, the revised recommendation was better aligned with the risk-based approach promoted by FATF (FATF 2016, 131). Today, FATF recognizes the need for tailor-

³ The main focus of this document is on Recommendation 8 on Non-profit organisations. However, it's important to note that Recommendation 24 on Transparency and beneficial ownership of legal persons may apply to other legal persons than companies, including foundations.

made measures for implementation of FATF recommendations across countries (FATF 2016, 7). The risk-based approach promoted by FATF suggests that countries should “*first identify, assess and understand the risks of money laundering and terrorist finance that they face, and then adopt appropriate measures to mitigate the risk.*” (FATF 2016, 8). Conducting a systematic domestic review of the NPO sector is the fundamental condition for successful implementation of recommendation 8 (FATF 2015, 11).

The recommendation 8 on Non-profit organisations defines the following general objectives:

“Countries should review the adequacy of laws and regulations that relate to non-profit organisations which the country has identified as being vulnerable to terrorist financing abuse. Countries should apply focused and proportionate measures, in line with the risk based approach, to such non-profit organisations to protect them 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.” (FATF 2016, 14)

The FATF gives a functional definition of non-profit organisations in the Interpretative Note of Recommendation 8. Non-profit organisations which fall under the scope of FATF standard are those whose characteristics and activities put them at risk of being abused for terrorist financing (FATF 2016, 54). More specifically, FATF standards require the supervision of non-profit organisations which account for a significant portion of the financial resources in the sector or international activities. Non-profit organisation is defined as 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”*” (FATF 2016, 54). Importantly, terrorist financing abuse is defined as the “*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*” (FATF 2015, 7; FATF 2016, 59). In the 2014 Typologies Report on Risk of Terrorist Abuse in Non-Profit Organisations issued by FATF, on the basis of 102 case studies from 14 countries, it was found that service-providing organisations were almost exclusively at risk of terrorist financing abuse, while none of the organisations in the case studies was engaging in ‘expressive activities’ (i.e. think tanks, advocacy groups) (FATF 2015, 13). Furthermore, service-providing organisations operating in a near proximity to an active terrorist treat were more strongly exposed to the risk of terrorist abuse (FATF 2015, 13).

As mentioned previously, to achieve the general objectives as defined in recommendation 8, the devised measures should be primarily based on a proportionate risk-based approach which identifies a subset of organisations which are most vulnerable to the threats of terrorist abuse in the country. The risk-based approach recognizes the diversity of national civil societies and the fact that not all NPOs are equally exposed to the threat of terrorist financing abuse (FATF 2016, 55). Moreover, the risk-based approach allows legitimate civil society activities to develop. The measures for prevention of terrorist abuse of NPOs should be: regularly re-assessed vis-à-vis new developments, effective and proportionate to the identified risks (FATF 2016, 55). FATF recognizes that implementation of systems which promote accountability, integrity and enhance trust among NPOs, beneficiaries, donors and the wider public are essential for preventing terrorist financing and support (FATF 2016, 55).

In summary, according to FATF (2015, 15) there are four crucial elements of an effective approach for the protection of NPOs: 1) ongoing outreach to the sector; 2) proportionate, risk-based supervision or monitoring; 3) effective investigation and information gathering and finally, 4) effective mechanisms for international cooperation.

FATF also proposes optional measures that could be applied to NPOs depending on the identified risks and the country context, including the following:

- “*(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.*
- (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.*
- (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, credential and good standing of beneficiaries and associate NPOs and that they are not involved with and/or using the charitable funds to support terrorists or terrorist organisations. 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. ”” (FATF 2016, 57-58).



Main criticism towards the implementation of FATF standard 8

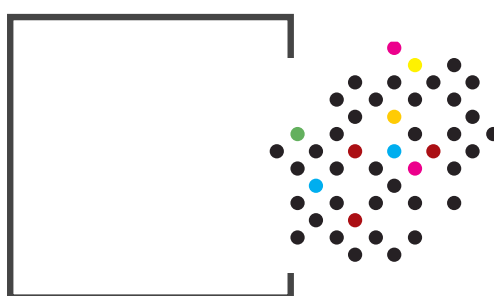
The European Center for Not-for-Profit Law (ECNL) has highlighted the risk from 'policy-laundering', meaning the use of FATF recommendations as an excuse for the introduction of restrictive and privacy-invasive mechanisms by states over civil society organisations. Even though FATF recommendation 8 is primarily aimed at a small subset of NPOs, in practice, regulation enacted by countries in line with the suggested FAFT measures usually applies to the whole sector and not only to targeted organisations (Statewatch and Human Security Collective 2015, 5). Importantly, measures promoted by FATF may overlook the fact that majority of NPOs across developing countries do not have administrative, human and other resources to comply with increased regulatory constraints (Halliday et al. 2014).

According to Hayes (2017, 7) and ECNL, the implementation of international frameworks for counter-terrorism contributed to the shrinking of civic space. Moreover, the implementation of these frameworks encouraged various constraints on accessing financial services by NPOs (i.e. exclusion from banking systems, delays or termination of transactions, detailed reporting about donors or beneficiaries). The obligations for due diligence imposed on financial institutions by FATF incentivises the exclusion of NPOs that work with sensitive communities' or in and around conflict zones as part of the general strategy of 'de-risking' of financial institutions. Small and Muslim organisations are more likely to be affected by the 'de-risking' strategies of financial institutions (Hayes 2017,29).

The operation of humanitarian and development organisations that work in and around conflict zones is particularly affected by the FATF. Because the provision of material support to terrorists has been widely criminalised, humanitarian organisations with activities in areas controlled by banned organisations risk to

be convicted of terrorism support. Even though cases of prosecuted international humanitarian organisations remain rare, those organisations which were subject to investigations face serious consequences on their operation (Hayes 2017, 36).

In the past, FATF methodology was criticized for mainly focusing on the countries' formal compliance with the standards. This approach failed to evaluate to what extent desired outcomes were effectively achieved by compliance with FATF standards. Specifically, "third round assessment reports have been widely and properly criticized for their failure to effectively guide state and non-state stakeholders" (Halliday et al. 2014, 7). Following this criticism, new methodology based on outcomes and objectives was developed. There is yet space for improvements in terms of standardisation of procedures for data gathering and analysis in accordance with social science criteria (Halliday et al.2014).



Overview of Recommendation 8 ratings

Due to their geographical position between the Middle East and Western Europe, it is believed that the countries in the Balkans region face threats of terrorism and terrorist financing. The existence of radicalised Islamic groups was identified in the region and a number of nationals of the countries in the region left to join the Islamic State (ISIS) as foreign fighters in Syria and Iraq. The migration movements across the region are an additional reason for concern in terms of potential terrorist abuse of NPOs. Identified cases of actual terrorist abuse of NPOs seem to be extremely rare (one example is a NPO in Serbia which received money to cover the traveling expenses of persons joining as foreign fighters in Syria), however, preventive mechanisms should be in place to avoid any risks related to terrorism support and terrorist financing through NPOs.

Based on the last available reports published by MONEYVAL (see table 1 for more information), majority of the countries in the region, including **Serbia, Croatia, Macedonia, Montenegro and Slovenia** have been rated as **partially compliant** with FATF recommendation 8 on Non-profit organisations. **Bosnia and Herzegovina and Albania** are rated as **non-compliant**. Bosnia and Herzegovina was found to be non-compliant in regard to Recommendation 8 in 2009 by MONEYVAL evaluation team. In 2011 an Action plan was adopted by the government to address the identified deficiencies which was followed by the submission of eight compliance reports to MONEYVAL documenting the actions of the government. In 2015, the parliament rejected the Law on the Establishment of a Joint Registry of Non-Governmental Organisations. The same year, due to various deficiencies including those related with anti-money laundering and counter-terrorism financing measures related to NPOs, FATF placed BiH on the grey list of countries which are high-risk and non-cooperative jurisdictions (Hayes 2017, 22; FATF website 2017).

Table 1: Rating per country in last available report

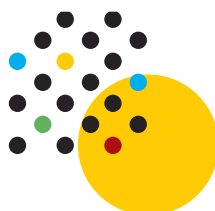
COUNTRY	LAST AVAILABLE REPORT	RATING OF RECOMMENDATION 8
Serbia	Anti-money laundering and counter-terrorist financing measures Serbia Fifth Round Mutual Evaluation Report April 2016 (MONEYVAL) ⁴	Partially Compliant
Albania	Report on Fourth Assessment Visit Anti-Money Laundering and Combating the Financing of Terrorism Albania 13 April 2011(MONEYVAL) 6th Regular follow-up progress report Fourth Round Mutual Evaluation Report of Albania September 2015	Non-compliant
Bosnia and Herzegovina	Report on Fourth Assessment Visit Anti-Money Laundering and Combating the Financing of Terrorism Bosnia and Herzegovina 17 September 2015 (MONEYVAL) ⁵	Non-compliant
Croatia	Report on Fourth Assessment Visit Anti-Money Laundering and Combating the Financing of Terrorism CROATIA 17 September 2013 (MONEYVAL)	Partially Compliant
Macedonia	Report on Fourth Assessment Visit Anti-Money Laundering and Combating the Financing of Terrorism The Former Yugoslav Republic of Macedonia 3 April 2014 (MONEYVAL)	Partially Compliant
Montenegro ⁶	Report on Fourth Assessment Visit Anti-Money Laundering and Combating the Financing of Terrorism Montenegro 16 April 2015 (MONEYVAL)	Partially Compliant
Turkey	15th Follow-up report Mutual Evaluation of Turkey October 2014 (FATF/OECD)	Level of compliance at least equivalent to a 'largely compliant' rating
Slovenia	Anti-money laundering and counter-terrorist financing measures Slovenia Fifth Round Mutual Evaluation Report June 2017 (MONEYVAL)	Partially Compliant

4 The focus of the fourth report was only on selected key and core FATF recommendations, thus for those recommendations which were not evaluated the ratings from the third report apply.

5 On MONEYVAL website it is said that the 'Follow up report (enhanced with application of Compliance Enhancing Procedures at step 1)' on Montenegro should be completed due April 2016, however there is no information of whether it has been completed.

BiH remains on the grey list of countries until today. Albania was found non-compliant on recommendation 8 and placed on FATF's grey list in the period 2012-2015 (FATF 27 February 2015).

Turkey is the only country that has been rated as **largely compliant** with recommendation 8. In the 15th Follow-up report Mutual Evaluation of Turkey from 2014⁶ it has been concluded that most of the deficiencies in relation to recommendation 8 were addressed by the Turkish authorities. In the same time, in various civil society reports Turkey has been given as an example of a country that passed a very restrictive and controversial terrorist-financing law in 2013 following the pressures from FATF. According to ECNL (2015), the Anti-Terror Law in Turkey illustrates how implementation of FATF standards may limit the freedom of expression and hinder political activities of civil society organisations.



⁶ Turkey is not monitored by MONEYVAL, but by FATF and OECD. Therefore, the structure of the report is different.



Summary of key findings by MONEYVAL on Recommendation 8

For the list of key findings per country see Table 2 in the appendix (please note that in the last available report on Turkey there is no list of key findings and recommendations comparable to the one for the countries monitored by MONEYVAL).

In majority of the countries, the monitoring teams found that the authorities did not undertake a comprehensive assessment of the characteristics and activities of the NPO sector to identify the subset of NPOs which are at highest risk of terrorist financing abuse. In the key findings on Montenegro and Macedonia it was specifically stated that no mechanism is in place for conducting such comprehensive and periodic assessments of the NPO sector. In BiH it was particularly highlighted that authorities lack and overall understanding of the size, characteristics and activities of the NPO sector. According to the publicly available reports, risk assessment of the non-profit sector exposure to financing of terrorism was conducted only in Albania in February 2012 (MONEYVAL 2015, 10). The last available reports on Serbia, Bosnia and Herzegovina and Macedonia conclude that in these countries the relevant state bodies have not undertaken a review of the adequacy of the non-profit regulation for the prevention of terrorist financing abuse of organisations.

Lack of outreach programs (raising awareness efforts) targeting the non-profit sector in relation to the threats of terrorism financing abuse was identified in all the countries except Macedonia.⁷ This means that in most of the countries in the Balkans NPOs remain largely unaware about the risks of terrorist financing abuse. In Croatia, even though a typology report of potential terrorist abuse was issued by the authorities, the MONEYVAL team suggested that awareness raising activities on the risks for NPOs should be further developed. In Slovenia, even though NPOs seem to be aware about the threat of financing terrorism abuses, the report noted that specific outreach activities to the NPO sector as well as donors on terrorist financing issues were not satisfactory.

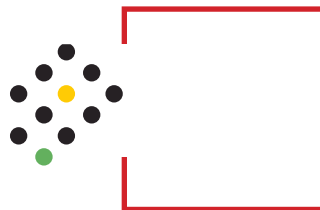
In Albania and Bosnia and Herzegovina, weaknesses of registration requirements of NPOs were identified, while in Macedonia the inspectors found that there is no adequate control mechanism to ensure the validity and veracity of registration documents of NPOs. Furthermore, deficiencies in the supervision mechanisms of NPOs were identified in Serbia, Albania, Bosnia and Herzegovina, Montenegro and Slovenia. In Serbia, for example it was noted that there is no central governmental body responsible for civil society monitoring and identification of illegal activities. In Bosnia and Herzegovina, there is no supervision of NPOs beyond supervision related to taxation compliance. In Montenegro, absence of sanctions related to possible breaches of the Law on NGOs were identified. In Slovenia the MONEYVAL team assessed that apart from bodies responsible for inspecting associations, no bodies with the competency to inspect other forms of NPOs were identified.

Another key finding is the inadequate (insufficient) reporting requirements placed on NPOs, as found by MONEYVAL inspection teams, and it applies to Albania, Croatia, Montenegro and Slovenia. Concretely, in Albania, Croatia and Montenegro there is no requirement for NPOs to keep records of their domestic and international transactions for at least five years. Also, in Montenegro, there is no requirement for the annual financial statements to contain detailed breakdowns of income and expenditure. Finally, in Slovenia the MONEYVAL team identified that foundations do not have to report changes in the members of the board of trustees.

⁷ Macedonian authorities were evaluated as successful in their outreach activities to the NPO sector for protection of terrorist financing abuse. In particular, the Financial Intelligence Office has issued Guideline for the NPOs on Prevention of Financing of Terrorism, a specific list of indicators for identifying suspicious transactions for money laundering and financing terrorism within civil associations and foundations and later an integral Handbook for implementation of AML/CFT measures and activities. Finally, in the period 2009-2010 the Financial Intelligence Office conducted four trainings specifically for the NPOs which were well attended (MONEYVAL 2014, 218).

In Bosnia in Herzegovina, it was noted that access to information on NPOs by the public and authorities is not satisfactory. In Slovenia, the founding acts as well as annual reports of associations, foundations and institutes are not publicly available.

Efficient information sharing among national authorities on the operation of NPOs is important mechanism for detecting and prevention of NPO abuse. In Serbia, Bosnia and Herzegovina and Slovenia there are no mechanisms for regular and proactive exchange of information among different authorities which are involved in registration and supervision of NPOs. Only in Bosnia and Herzegovina, being the only blacklisted country by FATF in the moment, the absence of mechanism for meeting international requests regarding NPOs operation was identified.



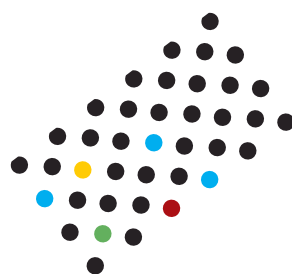


Summary of key recommendations by MONEYVAL

The central recommendation which applies to all countries is that they should conduct comprehensive and in-depth assessment of their NPO sectors in order to identify the terrorist financing risks for NPOs in their countries. Moreover, mechanisms should be put in place for period assessments of the sectors to ensure that the regulations and anti-terrorism and anti-money laundering measures in place are responsive to new developments and vulnerabilities. Any review of the NPO regulation in relation to terrorist financing abuse should be based on a comprehensive review of the NPO sector. The same applies to outreach and awareness raising campaigns devised by authorities. To maximise their effectiveness, they should be based on up-to-date information on the NPOs characteristics and the risks they are facing in the particular context. Authorities are especially encouraged to build on their previous experiences of cooperation with NPOs when developing outreach programs for prevention of terrorist financing risks as well as raising awareness about FATF standards. Finally, on the basis of identified risks for NPOs, monitoring and sanctioning systems in place should be reviewed and adapted.

In **Serbia**, MONEYVAL particularly recommends authorities to ensure greater transparency and control over fundraising activities of NPOs and effectively monitor their activities to identify terrorist financing abuses. In **Albania**, the MONEYVAL report advises the improvement of accuracy of registration procedure (though introduction of verification procedure for submitted information of NPOs) and introduction of sanctions for organisations that fail to submit updates on registration information. The list of specific recommendations that applies to **Bosnia and Herzegovina** is extensive and includes recommendations on the registration procedure, transparency and availability of NPO data,

enhancement of supervisory and sanctioning powers of authorities and their cooperation concerning the NPO sector. The MONEYVAL report recommends the implementation of legal and practical changes that would ensure that all NPOs in BiH are obliged to be registered in one central agency. Furthermore, they suggest that NPOs should be obliged to report regularly up-to-date information to the authorities or to the public. BiH is also asked to impose an obligation for NPOs to make publicly available (other) information on their operation (which is not held by authorities) upon request. The specific recommendations that apply to **Croatia** are: harmonisation of the legal framework that applies to all NPOs since the current regulatory framework is fragmented and enacted by various authorities; and enforcement of supervision and adequate sanctioning mechanisms for NPOs. In **Macedonia**, it is specifically recommended that the country should strengthen the review of information that organisations submit upon registration by re-introducing an authority which evaluates the circumstances and prevents provision of false data and establishment of NPOs for unlawful purposes. As a matter of urgency, the MONEYVAL team recommends the introduction of administrative authority which will supervise NPO compliance with the Law on NGOs in **Montenegro**. Furthermore, they recommend the introduction of requirements for NPOs to provide information on senior officers and other responsible persons in the organisation. In the direction of enhanced reporting requirements, the MONEYVAL team recommends the introduction of a mandatory requirement for recording information on all transactions of the organisations for at least five years and requirement for submission of annual reports with detailed information on income and expenditures. In **Slovenia**, there are no specific recommendations outlined except the general ones that apply to other countries that refer to the comprehensive assessment of the sector in terms of terrorist financing risks and conducting of targeted outreach to the sector.



Recommendations for civil society organizations in the region

How can civil society organizations in the Western Balkans develop strategies and actions for protection of civic space from over-regulation related to counter terrorism and anti- money laundering measures?

- 1) CSOs should familiarise themselves with the details of the most current MONEYVAL report on their countries and particularly the information provided under recommendation 8 on non-profit organisations.
- 2) In proposing solutions for the identified weaknesses in the national reports, CSOs can draw from case studies presented in the FATF guidance on 'Best Practices Combating the Abuse of Non-profit Organisations (Recommendation 8)' from 2015.
- 3) CSOs should monitor the effects from the new risk-based approach promoted by FATF on the application of recommendation 8 in their countries vis-à-vis international human rights law and the principles and standards which facilitate an enabling environment for civil society development (for example the recommendation for introduction of mandatory registration of NPOs in Bosnia and Herzegovina might be limiting for the freedom of associations and this should be critically examined by CSOs in BiH). Governments should be held accountable for any measures which are undertaken in response to FATF evaluation processes.
- 4) CSOs should aim to be included in the national processes for reviewing of non-profit regulation, the features of the civil society sector and its vulnerabilities with regards to terrorist financing. The identification of a subset of NPOs that are at high risk of terrorist financing abuse (if any) should be based on information coming from various relevant sources:

regulators, security institutions (i.e. police and intelligence agencies), donors, tax authorities, NPOs and beneficiaries.

- 5) Civil society may benefit from following and supporting academic and policy research on: 1) the impact of international anti-money laundering mechanisms on national non-profit regulations; 2) terrorist financing abuse of NPOs in the region; and 3) identification of practices of financial exclusion of NPOs as a result of financial institutions' 'de-risking' strategy. CSOs should be sufficiently informed on the extent to which abuse of NPOs by terrorists is a realistic threat in their countries and the region and use that knowledge to prevent 'over-regulation' of NPOs registration and operation. Cooperation with NPOs and other institutions which conduct research on security sector issues in the respective countries might be beneficial in this regard.
- 6) In the case of government proposals for adoption of restrictive measures for civil society, CSOs should be able to provide evidence (if applicable) that the existing (self)regulatory frameworks and standards for transparency and accountability in the sector are largely sufficient to protect organisations from potential terrorist abuse.
- 7) CSOs can devise educational programs and information campaigns (alone or in cooperation with governmental agencies, international and financial institutions) about the potential risks from terrorist financing abuse and the way NPOs and donors can protect themselves from such threats. These activities may complement already existing efforts for promotion of accountability standards and self-regulation practices of civil society.
- 8) CSOs may facilitate sharing of information on regional level (in the form of conference or workshops) among government bodies, civil society representatives and other relevant actors (i.e. financial institutions, donors) on their experiences, concerns and good practices in relation to the implementation of FATF standards on non-profit organisations. Intensifying cooperation between CSOs from countries with same ratings and similar challenges as identified by FATF in relation to terrorist financing abuse of NPOs should be encouraged (i.e. collaboration between actors from Albania and Bosnia and Herzegovina) but also transfer of best practices from countries that satisfy some standard to those that fail to meet the standard (i.e. Macedonian authorities' experience with outreach programs, trainings and guidance for NPOs for prevention of terrorist financing abuse may be beneficial for the other countries).

References:

- Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Text with EEA relevance) <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32015L0849> accessed on 01.10.2017
- ECNL. Standing up Against Counter-Terrorism Measures that Constrain Civic Space <http://ecn.org/what-we-do/policy-and-law-reform/standing-up-against-counter-terrorism-measures-that-constrain-civic-space/> accessed on 05.10.2017
- ECNL, EFC, HSC. 2015. Illustrative List of the Overregulation of Non-profit organisations
- FATF, High-risk and non-cooperative jurisdictions <http://www.fatf-gafi.org/countries/#high-risk> accessed on 30.09.2017
- FATF. 2015. Best Practices Combating the Abuse of Non-profit Organisations (Recommendation 8) <http://www.fatf-gafi.org/media/fatf/documents/reports/BPP-combating-abuse-non-profit-organisations.pdf> accessed on 02.10.2017
- FATF. 2015. Improving Global AML/CFT Compliance: on-going process – 27 February 2015 <http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/documents/fatf-compliance-february-2015.html> accessed on 07.10.2017
- Halliday, Terence C., Michael Levi, and Peter Reuter. 2014. Global Surveillance of Dirty Money: Assessing Assessments of Regimes to Control Money-Laundering and Combat the Financing of Terrorism
- Hayes, Ben. 2017. The impact of international counterterrorism on civil society organisations Understanding the role of the Financial Action Task Force, Analysis 68, Bread for the World – Protestant Development Service Protestant Agency for Diakonie and Development, https://www.brot-fuer-die-welt.de/fileadmin/mediapool/2_Downloads/Fachinformationen/Analyse/Analysis_68_The_impact_of_international_counterterrorism_on_CSOs.pdf accessed on 02.10.2017
- MONEYVAL reports are available here: <https://www.coe.int/en/web/moneyval/jurisdictions>
- MONEYVAL.2015. 6th Regular follow-up progress report Fourth Round Mutual Evaluation Report of Albania
- Statewatch and Human Security Collective. 2015. Countering terrorism or constraining civil society? The impact of Financial Action Task Force recommendations on non-profit organisations in Central and Eastern Europe and Central Asia <http://www.statewatch.org/news/2015/aug/fatf-countering-terrorism-or-constraining-civil-society.pdf> accessed on 06.10.2017
- United Nations Security Council Resolution 1373 <http://www.un.org/en/sc/ctc/specialmeetings/2012/docs/United%20Nations%20Security%20Council%20Resolution%201373%20%282001%29.pdf> accessed on 06.10.2017



APPENDIX

Table 2: Key findings per country that underpin current rating

COUNTRY	LAST AVAILABLE REPORT	KEY FINDINGS UNDERLINEING RATING OF R8
Serbia	Anti-money laundering and counter-terrorist financing measures Serbia Fifth Round Mutual Evaluation Report April 2016 (MONEYVAL)	<ul style="list-style-type: none"> ▶ No review was conducted of the adequacy of the legal framework relevant to the NPO sector; ▶ No review was conducted of the NPO sector with regard to its activities, size and vulnerability to FT; ▶ No systematic outreach activities to the NPO sector were carried out in relation to FT; ▶ Measures in place are not sufficient to ensure transparency, integrity and public confidence in NPOs; ▶ There is no central, dedicated governmental body with responsibility for monitoring NPOs and identifying abuses; ▶ There are no mechanisms in place to ensure prompt sharing of information on NPOs.
Albania	Report on Fourth Assessment Visit Anti-Money Laundering and Combating the Financing of Terrorism ALBANIA 13 April 2011(MONEYVAL)	<ul style="list-style-type: none"> ▶ No review of the NPO carried out; ▶ Lack of demonstrated outreach to the sector; ▶ Weakness of registration requirements; ▶ No supervision of NPOs; ▶ No requirement for NPOs to maintain records of transactions
Bosnia and Herzegovina	Report on Fourth Assessment Visit Anti-Money Laundering and Combating the Financing of Terrorism Bosnia and Herzegovina 17 September 2015 (MONEYVAL)	<ul style="list-style-type: none"> ▶ No review of the adequacy of the relevant laws in order to identify the risks and prevent the misuse of NPOs for terrorism financing purposes was undertaken; ▶ No review of the size, characteristics and activities of the NPO sector; ▶ Lack of outreach to the NPO sector; ▶ Shortcomings of the framework with regard to registration and access to information on NPOs; ▶ Lack of clarity with regard to the supervisory competencies; ▶ No particular mechanism established for responding to international requests regarding NPOs. ▶ Lack of an overall understanding of the size, characteristics and activities of the NPO sector; ▶ Supervision of NPOs is undertaken only for tax purposes; ▶ No mechanism in place to facilitate information exchange and cooperation in respect of NPOs between national authorities, lack of a proactive approach to information sharing in this respect.
Croatia	Report on Fourth Assessment Visit Anti-Money Laundering and Combating the Financing of Terrorism CROATIA 17 September 2013 (MONEYVAL)	<ul style="list-style-type: none"> ▶ Lack of the comprehensive review as well as regular update in relation to the vulnerability of NPOs to terrorist financing risks; ▶ No requirement to maintain, for a period of at least five years, records of domestic and international transactions; ▶ Apart from the issuance of typology reports, there has been insufficient outreach to the NPO sector and little awareness raising on risks for NPOs to be misused for TF.

Macedonia	<p>Report on Fourth Assessment Visit Anti-Money Laundering and Combating the Financing of Terrorism The Former Yugoslav Republic of Macedonia 3 April 2014 (MONEYVAL)</p>	<ul style="list-style-type: none"> ▶ No review of the adequacy of domestic laws and regulations that govern the NPO sector; ▶ No mechanism introduced for the periodic/systemic reassessment of the FT vulnerabilities of the NPO sector; ▶ Lack of an adequate control mechanism to ensure the veracity and validity of data and documents registered; ▶ No systemic/programmatic monitoring of the sector with a view to detecting potentially FT-related illicit activities.
Montenegro ⁶	<p>Report on Fourth Assessment Visit Anti-Money Laundering and Combating the Financing of Terrorism Montenegro 16 April 2015 (MONEYVAL)</p>	<ul style="list-style-type: none"> ▶ No mechanism is in place for conducting comprehensive assessments and periodic reassessments of the NPO sector; ▶ No outreach undertaken to the NPO sector for raising awareness about the potential risk of terrorist abuse and about the available measures to protect against such abuse, and promoting the transparency, accountability, integrity and public confidence in the administration and management of all NPOs; ▶ There is no supervision in place to sanction violations of the provisions of the Law on NGOs; ▶ No requirement to maintain records of domestic and international transactions; annual financial statements are not required to contain detailed breakdowns of incomes and expenditures of the NGOs. ▶ It has not been demonstrated that NPOs, which control significant portions of the financial resources of the sector and substantial shares of the sector's international activities have been identified, and are adequately supervised or monitored.
Turkey	<p>15th Follow-up report Mutual Evaluation of Turkey October 2014 (FATF/OECD)</p>	/

- ▶ No comprehensive identification has been undertaken to identify the features and types of NPOs which are likely to be at risk of TF abuse or the nature of threats posed by terrorist entities to the NPOs which are at risk as well as how terrorist actors abuse those NPOs.
- ▶ Founding acts of associations and foundations and annual reports of institutes and foundations are not published online;
- ▶ No specific outreach to the NPO sector or the donor community on TF issues has been conducted, nor have best practices been developed in cooperation with NPOs to protect them from TF abuse.
- ▶ Slovenia has not taken steps to promote effective supervision or monitoring over NPOs that demonstrate that risk based measures apply to NPOs at risk of TF abuse.
- ▶ There is no obligation on foundations to keep or register updated information on members of the Board of Trustees.
- ▶ There are no requirements on NPOs to take reasonable measures to confirm the identity, credentials and good standing of beneficiaries and associate NPOs and to confirm that they are not involved with or financially support terrorists or terrorist organizations.
- ▶ Except for associations, there are no bodies with powers to conduct inspections of NPOs' activities.
- ▶ Administrative sanctions on NPOs for failure to communicate changes to authorities are not sufficiently dissuasive.
- ▶ There are no mechanisms for regular information-sharing between the various competent authorities involved in registration and supervision of NPOs in order to identify and monitor NPOs at risk.

Table 3: Recommendations per country

COUNTRY	LAST AVAILABLE REPORT	KEY FINDINGS UNDERLINEING RATING OF R8
Serbia	Anti-money laundering and counter-terrorist financing measures Serbia Fifth Round Mutual Evaluation Report April 2016 (MONEYVAL)	<ul style="list-style-type: none"> ▶ A formal review of the NPO sector should urgently be undertaken with regard to its activities, size and vulnerabilities to FT and adequate awareness-raising programmes should be carried out in the sector. ▶ Appropriate and proportionate action should be taken to ensure greater financial transparency and control over funds raised by NPOs which are at the greatest risk of being misused by terrorists; ▶ Clear procedures or mechanisms should be put in place to effectively monitor the legitimate functioning of civil associations or foundations as well as religious organisations in order to identify FT abuses and to implement the sanctioning regime if necessary.
Albania	Report on Fourth Assessment Visit Anti-Money Laundering and Combating the Financing of Terrorism ALBANIA 13 April 2011(MONEYVAL)	<ul style="list-style-type: none"> ▶ Authorities should: ▶ Carry out a full risk assessment to establish what the TF risks are in the sector; ▶ Establish, on the basis of the above review, whether the current measures in place for recording and accessing information relating to NPOs are proportionate to the TF risks they pose; ▶ Improve the accuracy of the registration process for NPOs, including some form of verification of the information recorded and a sanctionable system for failing to update this information; ▶ • Develop a system for supervising or monitoring NPOs on the basis of the risk they present.

- ▶ The authorities should undertake a comprehensive assessment of the size, characteristics and activities of the NPO sector and evaluate this in the context of the potential ML and TF risks of the country, in order to formulate specific vulnerabilities of the sector or its individual components. Such assessments should be periodically repeated in order to ensure that new trends and developments are taken into consideration. Furthermore, on the basis of this information, a review should be done by the authorities of the legislation governing NPOs in place, as well as of the entire institutional framework related to the activities of NPOs;
- ▶ Legislative and practical changes should be implemented with regard to the registration framework in order to ensure that all NPOs operating on the territory of BiH are obliged to be registered and that all NPOs are registered only at one instance. In addition, a single registry of all NPOs should be established in order to enable accurate collection of data on the size of the sector, as well as to facilitate search and information gathering in particular for the purposes of law enforcement agencies;
- ▶ Availability of information on NPOs should be enhanced. NPOs should be obliged to keep the information required by the standards and all this information should be available to the public either directly or through a public authority. There should be a clear provision imposing an obligation on NPOs to provide the public with access to information held only by the NPO (and not included in the public register). This information accessible to public should be up-to-date;
- ▶ The framework in place, both through legislative measures and in practice, should ensure that the requirements to which NPOs are subject are implemented in practice. Clear supervisory and sanctioning powers should be attributed and inspections should be undertaken. The competent supervisors should have sufficient expertise to detect suspicious behaviours;
- ▶ Cooperation and coordination amongst national authorities in respect of their duties and information concerning the NPO sector should be enhanced. A pro-active approach should be adopted in order to ensure that the different components (supervisors, law enforcement agencies, institutions in charge of state security) are aware of the full picture of the NPO sector, its activities, characteristics, but also the broader context of general TF risks in the country;
- ▶ The authorities should undertake awareness raising activities for NPOs with regard to ML and TF risks and possible protection against them. Actions should be taken also in respect of promoting transparency, accountability, integrity and public confidence in the NPO sector.

<p>Croatia</p>	<p>Report on Fourth Assessment Visit Anti-Money Laundering and Combating the Financing of Terrorism CROATIA 17 September 2013 (MONEYVAL)</p>	<ul style="list-style-type: none"> ▶ The regulation of the NPO sector is fragmented and carried out by a number of authorities. It is advisable that the NPO legislation as well as the whole system to be harmonised on the basis of assessment of current legal framework and efficiency of the system. The Croatia authorities responsible for the supervision of NPO sector need to have a complete picture of the whole sector, particularly as to what are the most vulnerable NPOs. ▶ Law enforcement agencies should be more involved and play a key role in the combat against the abuse of NPOs by terrorist groups, including law enforcement agencies ongoing activities with regard to NPOs. <p>The Croatian authorities should:</p> <ul style="list-style-type: none"> ▶ undertake the sector specific review for the purpose of identifying those NPOs that are or may be at risk of being misused for TF; ▶ commence an outreach programs to the sector; ▶ raise NPOs awareness of the risks of being misused for TF; ▶ enforce supervision and monitoring of all NPOs; and harmonise legislation with regard to all types of NPOs (especially with regard to criteria VIII.2 and VIII.3 and demonstration of the appropriate measures (sanctions for violation) to all NPOs (primary legislative level).
<p>Macedonia</p>	<p>Report on Fourth Assessment Visit Anti-Money Laundering and Combating the Financing of Terrorism The Former Yugoslav Republic of Macedonia 3 April 2014 (MONEYVAL)</p>	<ul style="list-style-type: none"> ▶ The examination team recommends strengthening the mechanism by which the registration of false data and documents as well as the establishment of NPOs for unlawful purposes can be avoided (first of all, there should be again an authority for “ascertaining the circumstances” as the registration authority did at the time of the previous evaluation). ▶ The authorities should review the adequacy of domestic laws and regulations that govern the NPO sector. ▶ A systemic review of the NPO sector (either randomly or regularly) should be conducted which questions whether the domestic authorities possess timely information on the activities, size and other relevant features of the NPO sector (the occasional communication between the Financial Intelligence Office (FIO) and the competent body of the Ministry of Interior (MoI) should be sufficient in this respect). ▶ The examiners recommend introducing periodic reassessment of the sector so as to explore its potential vulnerabilities.

Montenegro ⁶	<p>Report on Fourth Assessment Visit Anti-Money Laundering and Combating the Financing of Terrorism Montenegro 16 April 2015 (MONEYVAL)</p>	<ul style="list-style-type: none"> ▶ It is recommended that the Montenegrin authorities amend the legislation which applies to the NPO sector to ensure that all the requirements apply equally to all NPOs. ▶ A mechanism should be established for conducting comprehensive assessments of the risks connected with the NPO sector, as well as for conducting periodic reassessments of the NPO sector by reviewing new information on the sector's potential vulnerabilities to terrorist activities. ▶ The authorities are encouraged to build on the experience of cooperation with representatives of NGOs on other topics, with the view to ensure comprehensive out-reach to NGOs about TF risks, as well as about the AML/CFT framework. ▶ Clear division of competencies between the different authorities involved should be defined to especially avoid negative competency conflicts. An administrative authority should be designated to conduct supervision over the implementation of the requirements of the Law on NGOs as a matter of urgency. ▶ Information on all senior officers of NGOs and persons, who own, control or direct their activities, should be publicly available. As for the information on the authorized persons and founders of NGOs, the information publicly available should be wide enough to enable the identification of these persons. ▶ A clear requirement of maintaining information on domestic and international transactions for at least five years, so as it will be possible to verify that funds have been spent in a manner consistent with the purpose and objectives of the organization, should be provided by the legislation. In addition, the requirement to issue annual records should specify that these should contain detailed breakdowns and expenditures.
Turkey	<p>15th Follow-up report Mutual Evaluation of Turkey October 2014 (FATF/OECD)</p>	/
Slovenia	<p>Anti-money laundering and counter-terrorist financing measures Slovenia Fifth Round Mutual Evaluation Report June 2017 (MONEYVAL)</p>	<ul style="list-style-type: none"> ▶ Conduct an in-depth risk assessment of the NPO sector, with involvement of all relevant stakeholders, to identify those NPOs most at risk for TF, and ensure that the risk-based approach to supervision of NPOs is in place. ▶ Conduct targeted outreach activities to the NPO sector regarding the prevention of potential TF abuse.

Copies of the publication can be ordered by e-mail (below).

Balkan Civil Society Development Network (BCSDN)

Address: Mitropolit Teodosij Gologanov 39/II-2, 1000 Skopje, Macedonia

E-mail: executiveoffice@balkancsd.net

Website: www.monitoringmatrix.net
www.balkancsd.net

Publisher: Balkan Civil Society Development Network (BCSDN)

Editor: Ilina Neshikj

Author: Milka Ivanovska Hadjievska

Design, preparation and print: Koma lab
Published in Macedonia, November 2017

CIP - Каталогизација во публикација
Национална и универзитетска библиотека
“Св. Климент Охридски”, Скопје

061.2(497-15)

FATF recommendation 8 on non-profit organisations : mapping key findings and recommendations for countries in the Western Balkans. - Skopje : Balkan civil society development network, 2017. - 32 стр. ; 30 см

Фусноти кон текстот. - Содржи и: Appendix

ISBN 978-608-65991-3-3

а) Невладини организации - Западен Балкан
COBISS.MK-ID 105156362

