

TECHNICAL COMMUNIQUÉ CT-04/2021

Non-profit organizations (NPOs)

Andorra la Vella, 19th of October, 2021

Dear Sirs / Madams,

Non-profit organizations (hereinafter, NPOs), are, according to the definition established by the Financial Action Task Force (FATF) and also in article 3.19 of *Law 14/2017, of June 22, on the prevention and fight against money laundering and terrorist financing* (hereinafter, Law 14/2017), introduced by *Law 21/2019, of November 28, amending Law 14/2017*, all these legal persons or arrangements or organisations that primarily engage in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for carrying out other types of “good works”.

These organizations play an essential role in the world economy and in many national economies and social systems. Their efforts complement the actions done by governments and businesses in terms of provision of basic needs and services to people without economic resources around the world. In this regard, the FATF has also recognized the vital importance of these NPO, as well as the difficulty of providing assistance to those who need it, especially, when they are in conflict zones and areas.

Likewise, within the framework of the existing global campaign against terrorist financing (hereinafter TF), according to the FATF, terrorists or terrorist organizations use or abuse NPO to move funds, obtain logistical support, recruit terrorists or give any other support to terrorist organizations or terrorist operations.

This abuse of some NPO in the international context not only facilitates terrorist activity but also harms the confidence of donors and the reputation and integrity of the NPO.

Because of that, the FATF considers that the protection of NPO in terms of the preventing the financing of terrorism is a critical component of the global fight against terrorism and its financing, and also a necessary element to protect and preserve the integrity and reputation of NPO and the confidence of its donors.

Within the framework of these tasks of protection, the NPO should apply a risk-based approach to detect and mitigate those that could affect it.

Therefore, one should consider that the factors that contribute to a higher risk are, among others, the following ones:

1. In relation to the zone where the NPO operates, those who operate in the international context, and particularly in conflict zones (i.e., zones or areas closed to places where there is an active terrorist threat), have a higher risk and should be more careful in the use of funds they send abroad.
2. With regard to the types of activities those NPO engaged in activities related to social services, education, health and international cooperation have more risk than those developing another type of activity.

In this context, and in co-operation with the NPO sector, the Principality of Andorra identified and assessed, in 2016 within the framework of the National Risk Assessment (NRA), the risks to which the sector is exposed in Andorra. By way of conclusion, the characteristics of the subgroup of entities that are particularly susceptible to being used to TF have been identified, with the aim of focusing the control measures of the national preventive system on this subgroup of entities at risk of TF and establishing more effective mechanisms for combating it.

1. Key findings of the National Risk Assessment associated with NPOs

In the Andorran context, the TF risk associated with NPOs is, in general, medium-low, taking into account the following characteristics that define the sector:

- With regard to the structure and activity of the NPO sector:
 - Associations and foundations dedicated to "expressive" activities such as sports, leisure, art, culture, defence or representation of interests predominate, rather than "service" activities such as social services, education, health, international cooperation, etc.
 - The scope of action of most NPOs tends to be national rather than international.
 - NPOs that operate internationally have a limited volume of activity.

Nevertheless, all NPOs in the Principality of Andorra must be aware of the risks to which they are exposed, take extreme precautions and take all necessary measures to mitigate them.

From the study carried out on the sector in the framework of the NRA 2020, it can be seen that not all associations, foundations and other non-profit organisations are NPOs, as not all of them meet the FATF definition, i.e. their main purpose is not to raise and channel funds.

Moreover, not all NPOs present the same risk of being abused to finance terrorism. Those with the highest risk meet one or more of the characteristics described below:

- They provide funds, aid and/or services in risk areas, such as areas of armed conflict or jurisdictions with high levels of political instability.

- They use large volumes of cash both at the time of fundraising and at the time of providing aid.
- They have significant funds, essentially, if they do not implement adequate procedures to mitigate the risk of TF.
- They are service NPOs, which are more likely to be used for criminal activities.
- They collaborate with other entities outside the national territory.
- They have an excessively broad or generic name and corporate purpose.

Those NPOs that have more of these characteristics, especially if they are significant in terms of total activity, are more exposed to the risk of TF.

2. Main methods of abuse of NPO

In accordance with the studies accomplished by FATF and other organizations, the main methods and risk of abuse of NPO are, among other, the following ones:

1. Diversion of funds

Part or all of the funds raised for charity could be diverted to individuals, organizations or activities possibly linked to terrorism. This deviation could be done both by the NPO's members or outsiders (eg. fundraisers or other entities acting as partner).

In this context, it is essential that the use of funds raised is monitored in order to determine clearly their traceability and that, indeed, they have been used for the intended purposes. This is particularly relevant when funds raised are sent to conflict areas.

2. Affiliation with a terrorist activity

An NPO or its members maintain an operational affiliation with a terrorist organization or activities, or support terrorism.

3. Support for activities other than those of its corporate purpose

NPO-funded programs meant to support legitimate humanitarian purposes are manipulated at the point of delivery to support terrorism (for instance: educational or religious entities show a clear message in favour of terrorism).

4. Support of recruitment

NPO's resources can be used to organize meetings or activities that support terrorism, recruit and train terrorists in order to prepare terrorist attacks, give financial support to families of terrorists, publish material that evokes terrorism, etc.

5. *False representation*

Under the guise of charitable activity or using the name of another NPO, an NPO obtains funds or carry out activities that support or promote terrorism.

3. Risk indicators

Listed below are a number of indicators of risk that separately or together, may be likely to imply financing of terrorism.

The list of indicators includes, but is not limited to, the following ones:

Risk indicators related to donations

1. Large donations from a foreign entity or corporation to the account of an NPO, especially in the absence of a clear link between the entities.
2. The number of small denomination transfers deposited to an NPO account has increased without any obvious reason.
3. Cumulatively large and not adequately justified amounts, especially if made primarily in cash.
4. Multiple cash deposits into a personal account described as “donations” or “contributions to humanitarian aid” or similar terms.
5. Multiple cash deposits with a condition stating that cash must be transferred to an individual or an entity in a high-risk country.
6. High percentage of the donations / assets to an NPO are coming from or going to foreign states which do not correspond to the financial location of the donor.
7. High amounts of donations from a fictitious individuals to an NPO or made by persons who want to remain anonymous.
8. An individual receives donations in a bank account intended for charitable donations and transfers money to organizations that have been linked to terrorist financing.
9. Donation to an NPO has been intended only for very few beneficiaries.
10. Deposits using a combination of monetary instruments atypical to a legitimate business activity.
11. Organizations not intended to provide humanitarian charity, sending money to high risk jurisdictions.
12. NPO cannot justify properly the origin of the funds received as donations.
13. NPO cannot justify properly the use of the funds received as donations.

Risk indicators related to transactions

14. The expenses or transactions of the NPO are not related to the activity they usually carry out.
15. Use of the NPO to sell goods.
16. The payment of the goods acquired by the NPO is made to a third party and not to the importer or provider.
17. The expenses of the NPO are not proportionate to its activities.
18. Transactions conducted on behalf of an NPO which are inconsistent with the pattern and size of the organization's purpose or business.
19. Transactions characterized by large flows in a short periods of time and involving several NPOs that show unjustified links (for example, sharing the same managers).
20. Transfer of the majority of the raised funds to geographical areas habitually marked by activities and initiatives related to terrorist financing.
21. Individuals deposit funds into several accounts (which he/she is the account holder or has a power of attorney) and requests the transfer of the funds to themselves abroad for the purpose of donations.
22. Repeated cash contributions to NPO accounts that are subsequently transferred to other natural and legal persons' accounts.
23. Financial funds of NPOs are deposited into the accounts of natural persons.
24. The accounts that hold the NPO are used both for private purposes of its members and the NPO humanitarian activities.
25. NPOs structure transactions so as not to exceed the thresholds for identification and communication provided by law or avoid suspicions.
26. Requests to transfer or move NPO funds are accompanied by vague justifications.
27. Persons or entities related to terrorism transfer funds to accounts opened to NPO or its members.

Risk indicators related to management

28. Frequent changes of individuals with signatory powers over an NPO.
29. The name of an NPO changes frequently.
30. The NPO receives funds from other NPOs that are newly set up.
31. Misappropriation of funds (for example, funds are withdrawn from the bank account prior to being used for the NPO social activities).
32. Fictitious or non-existent advertisement of an NPO.

33. NPO are not registered and they are in a country where they must be registered.
34. NPO has opaque leadership or decision making structures.
35. NPO or NPO representatives use falsified documentation.
36. NPO members or representatives travel often to high risk countries or conflict zones.
37. NPO members or representatives are involved or engaged in terrorism or financing of terrorism.

It is advised to read these risk indicators alongside the TF typologies document published by the UIFAND, since certain indicators of this document also concern the NPO sector.

4. Measures to be applied by a NPO

1) Measures related to the prevention and fight against terrorist financing:

The first additional provision of Law 14/2017, amended by Law 21/2019, establishes that:

*"1. The board of directors, the protectorate, the patron or the corresponding representative body managing the interests of the organisation **must ensure that the organisation is not being used for money laundering purposes and/or to channel funds or resources to persons or entities related to terrorist groups or organisations**, in accordance with the provisions on prevention and fight against money laundering and terrorist financing.*

*To this end, **all organizations shall keep records of the identity of all persons that receive funds from the organization for ten years**, as well as, in the case of associations, the registers referred to in article 28 of the Qualified Law on Association. These books and registers shall be made available to the relevant persons from the administrative and judicial bodies competent in matters relating to the prevention and fight against money laundering, terrorism and terrorist financing as well as the Association Register, when applicable."*

Therefore, besides the registers and records already foreseen in the legislation in force related to associations and foundations, Law 14/2017 only makes one concrete action explicit, of mandatory compliance, to ensure that NPOs are not being used to channel funds or resources to persons and entities related to terrorist groups or organizations, which is keeping a register of all beneficiaries of funds or resources from the organization.

Nonetheless, NPOs must adopt a series of additional actions and mitigating measures in order to comply with the legal requirement to ensure that they are not used for terrorist purposes. These actions must be designed taking into account the characteristics of the NPO in particular, as well as the risk to which it is exposed. Notwithstanding this, the following actions can be listed as a minimum:

1. Identify and be aware of the TF risk that the NPO is exposed to. This action will correspond to the individual risk assessment (ERI, the acronym in Catalan) in all cases in which is explicitly required by the AML/CFT legislation.
2. Establish controls to ensure the integrity of the people who are part of the NPO's governance structure. These controls must verify, at the very least, that these persons

have not been designated by the United Nations Security Council as terrorists, persons who finance terrorism, who finance the proliferation of weapons of mass destruction, or who belong to organisations dedicated to these purposes.

3. Ensure that the members of the control bodies, or at least the person in charge of controlling the movement of NPO funds, attend training courses that provide information on the potential vulnerabilities of NPOs to being used to finance terrorism, on the risk of TF, and on the measures that NPOs can take to protect themselves.
4. Ensure that the financial statements are drawn up at least annually and that they are duly detailed in terms of income and expenses.
5. Implement controls to ensure that all funds are properly accounted for and earmarked for purposes consistent with the purpose and objectives of the NPO.
6. Keep records of NPO transactions, both domestic and international, sufficiently detailed and for a reasonable period of time to verify that the funds have been received and used for purposes consistent with the purpose and objectives of the NPO.
7. Adopt reasonable measures to document the identity of its most significant donors and beneficiaries, while respecting their confidentiality. In addition, at a minimum, it must be verified that these individuals have not been designated by the United Nations Security Council as terrorists, persons who finance terrorism, who finance the proliferation of weapons of mass destruction, or who belong to organisations dedicated to these purposes.

In addition to these essential actions, it is advisable to read the informative note on best practices aimed at the non-profit sector, which includes a series of best practices that develop and complement the minimum requirements of Law 14/2017.

2) Measures related to the submission of beneficial owner information

Associations and foundations must keep a register on their beneficial owners and submit it to their respective Registers. This register must contain, at a minimum, the following data:

- Name and surnames;
- Date of birth;
- Nationality and residence country of the beneficial owner;
- Nature and extent of the beneficial interest held.

For further information on the beneficial owner register, please check article 28 bis of the Qualified Law on association, of December 29 of 2000, and article 22 of Law 11/2008, of June 12, on foundations.

In order to help determining the figure of the beneficial owner, it is encouraged to read article 3.3 of Law 14/2017, alongside the “Guide on beneficial ownership” published by the UIFAND in October 2020.

Finally, and in the specific case of associations and foundations, the actions contained both in this Technical Communiqué and in the informative note on best practices aimed at the non-profit sector are to be understood without prejudice to the legal provisions already established in Law 11/2008 and in the Qualified Law on Associations.

This Technical Communiqué repeals Technical Communiqué CT-02/2020, of February 10th, related to associations, foundations and other non-profit entities.

We remain at your disposal for any additional clarification and we take this opportunity to greet you cordially.

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