

INFORMATIVE NOTE ADDRESSED TO THE NONPROFIT ORGANIZATIONS SECTOR

Date: 8 July 2019

Purpose and rationale:

The importance of non-profit organizations (hereafter NPOs) in providing certain social services and in supplying in this way the deficiencies that may be shown by certain services provided by the public sector has been made patent on repeated occasions. Accordingly, special attention has been given to the NPOs with the aim of warning about their vulnerability to be used by terrorists or terrorist groups for the latter's own benefit.

Exercising the authority attributed to it by Article 55.2, a) of *Law 14/2017, of 22 June, on prevention and the fight against laundering of money or assets and terrorist financing* (hereafter *Law 14/2017*), subsequently to some on-site inspections carried out on this sector, UIFAND has drafted this document.

This document **does not add any new obligations** to those of reporting entities, except for those already contemplated in the laws on the fight against money laundering and terrorist financing (primarily *Law 14/2017*). In this respect, this informative note only seeks to provide NPOs with some guidelines and examples of good practices of action so that they may not be used to channel funds or resources to persons or entities linked to terrorist groups or organizations, taking into account in all cases the specific features and size of the organization concerned.

A. Obligations of non-profit organizations according to Law 14/2017

As provided in the first final provision of *Law 14/2017*, NPOs should keep, among others, a **journal of beneficiaries** who receive funds or resources, and a **journal of beneficial owners**, which, in the case of associations and foundations, should be provided to the respective Register.

B. Good practices

1. Knowledge of the risk of the NPO's activity

As a starting point, each NPO should **have a knowledge of the risks**, to which it is exposed, of being used to channel funds or resources for persons or entities linked to terrorist groups or organizations. This assessment should include both **vulnerabilities**, such as deficiencies in the operation of their governing and administration bodies, and **threats**, which include their beneficiaries, cooperating persons or entities, the geographical areas to which their

aid is addressed, or other characteristics such as, for example, the size of the organization, and the types or sources of financing.

After taking the preliminary step of identifying the risks, techniques should be developed for **mitigating** these risks in order to reduce them as far as possible.

2. Integrity of the organization and transparency

The knowledge and transparency of the governing bodies of an NPO are primary elements in the measures of prevention and control of terrorist financing. In this respect, in relation to the integrity of the NPO, it is recommended that its establishment and operation should be formalized in clear detailed documents (articles of association, charter, rules, etc.) which should contain a concise description of the goal and **purpose** of the NPO, and of the functioning of its **meetings**, the **composition** of its governing body, the **duties and responsibilities** of the members of the governing and administration bodies, the **rules regarding membership** in the NPO and the honourability of its employees, and the **policy regarding the acceptance** of donations.

Moreover, it is recommendable to draft an internal **code of ethics** which should contain provisions relating to **conflicts of interests**, and written procedures for controls of the **origin and destination of the funds** that pass through the NPO, as well as procedures for **reporting** in the event of detecting suspicions of terrorist financing.

Likewise, the NPO should introduce the controls necessary to ensure compliance with the local **laws** of the jurisdictions in which it is constituted or operates.

3. Due diligence and relation with cooperating persons or entities

Due diligence refers to the actions to be taken to obtain a greater knowledge of the persons and organizations with which the NPO cooperates, to identify the recipients of aid, and to verify the origin of the funds which are received.

In addition to the legal requirements that NPOs should keep a **journal of beneficiaries** who receive funds or resources, and a **journal of beneficial owners**, it is highly recommendable and even necessary **to identify and to verify the identity** of all persons who contribute, gratuitously, funds or resources above a certain reasonable amount defined by the internal rules of the NPO, and this should always be done before the respective contribution is made.

With respect to volunteer and cooperating fund-raisers, it is important to establish an **internal policy of selection criteria** which should allow the NPO to obtain a good knowledge of such fund-raisers' past record and reputation.

Lastly, the NPO should make the necessary verifications of cooperating persons and entities, donors and beneficiaries in order to assure that they are not **related to terrorist financing** and/or linked to terrorist persons, groups or organizations. This task may be carried out by periodically reviewing the **consolidated list of sanctions** of the United Nations Security Council (for further information, see the UIFAND website) and by carrying out **searches in public sources** relating to such persons.

All the documentation relating to due diligence should be **safely kept** for at least ten years.

4. Financial and accounting transparency

The actions of the NPO should be as transparent as possible, not only from the standpoint of the organization but also with respect to financial and accounting matters. Bearing this goal in mind, it is a good idea for the NPO to establish some solid controls for approval of the **annual budget**, to justify and to document all the **administrative expenses**, to establish a **policy for the acquisition of assets and the selection of suppliers**, to draw up and approve **financial accounts**, and to implement a **standard process** to be followed in cases of misuse of funds are discovered, which should describe the actions to be taken and the possible sanctions of staff and/or cooperating persons (dismissal, for example).

5. Planning and follow-up programmes

The governing body should understand the organization and act in its interest, and it should establish policies for planning, supervising and assessing the NPO's projects on a regular basis. In this respect, before beginning new projects, the NPO should **assess the risks** which could be entailed in terms of terrorist financing, and make the verifications which it deems appropriate according to the risk which may be foreseen in each case.

Once the project has been approved, it is important for the NPO to carry out a **full careful follow-up** of the transferred funds and to use, if possible, the **principal financial institutions** to ensure the traceability of the funds up to the payment of the service or the delivery of the goods to the beneficiaries. If the use of the conventional banking system is not possible (for example, in rural areas of developing countries or after natural disasters in remote areas), the NPO should consider having in place an **alternative system** complying with the local laws, which should provide sufficient assurance to protect the funds and their suitable use, and the NPO should establish processes for verification of the delivery of the respective aid to the recipients.

In this respect, it may be appropriate to enlist the involvement of the **local authorities** and other interested parties in order to ensure, on the one hand, the delivery of the humanitarian aid, and on the other, to reduce the risk of diversion of funds.

In the event that any **diversion** is detected or if an area bordering the destination of the funds comes to be controlled by a **sanctioned or designated entity or individual**, the NPO should reassess the feasibility of the project and put an end to the aid if it cannot ensure that the funds will not be used to finance terrorism.

The process of **assessing** the project should entail a periodic follow-up of the **identified risks**, of the results, and of the project's effectiveness and impact.

6. Access of NPOs to the financial system

With the aim of ensuring a suitable financial inclusion and in order to prove its commitment to the fight against terrorist financing, the NPO should provide full cooperation to the banking entity with which it operates. This cooperation initially implies a demonstration of the **knowledge and awareness of the risks** to which the NPO is exposed as a result of its

activity (study of projects, identification of beneficiaries, etc.), and of the **mitigation measures** which have been adopted.

The NPO should clear up any doubts which the banking entity may have with respect to the organization and the activity, such as, for example, whether the area of action of the NPO is a risk jurisdiction or is bordering on a conflictive area.

In relation to the operations which the NPO seeks to carry out through its bank account, it is advisable to specify the **processes for identification and selection** of beneficiaries, donors and cooperating persons and entities, as well as the methods of delivery of donations. Before the provision of services is effectively made, it is important that the NPO should provide a detailed explanation of the **purpose** of each transaction and provide the respective **explanatory and supporting documents**.

The Andorran and foreign associations which have their headquarters in Andorra or which carry out activities on Andorran territory, should submit to the banking entity a **certificate of the Register of Associations** stating that they are duly registered in it.

7. Knowledge of the rules for prevention of laundering of money or assets and of terrorist financing

Each NPO should see that its members and cooperating persons are duly informed of the latest legislative news of Andorra and of the jurisdictions where it acts. A knowledge of the rules in matters of prevention of laundering of money or assets and of terrorist financing may be achieved by the attendance of the NPO's members at **training sessions** on the matters concerned and this action may be accompanied by the establishment of a **reporting procedure** for the event in which the misuse of funds were to be detected within the NPO.

In this respect, it would be of interest for the NPO to appoint a person in charge of compliance in matters of prevention of terrorist financing, with sufficient authority and knowledge to analyse the risks to which the NPO is exposed in its activity, and to implement the appropriate mitigating and follow-up measures.

Supervision Area