

*This discussion paper is drafted on the basis of preliminary consultations and does not reflect any official position of the European Commission.*



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Directorate D : Internal security and criminal justice  
**Unit D2 : Combating economic, financial and cyber crime**

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**DRAFT RECOMMENDATIONS TO MEMBER STATES REGARDING  
A CODE OF CONDUCT FOR NON-PROFIT ORGANISATIONS TO PROMOTE  
TRANSPARENCY AND ACCOUNTABILITY BEST PRACTICES**

**An EU design for implementation of FATF Special Recommendation VIII –  
Non-profit Organisations**

The non-profit sector carries out vital humanitarian and other much needed public work, where citizens benefit from their indispensable services in fundamental areas of life. There is nevertheless evidence, that non-profit organisations have been exploited for the financing of terrorism and for other kind of criminal abuse. In order to protect the sector, to strengthen donor integrity and confidence, higher standards of transparency and accountability should be applied by non-profit organisations. This objective also responds to requests from EU Member State Governments and international bodies<sup>1</sup>.

Care must be taken to ensure that nothing is done to undermine the work or reputation of the vast majority of legitimate non-profit organisations operating at national, EU and international levels. By applying enhanced levels of transparency and accountability, non-profit organisations both demonstrate their responsibility towards public generosity and help guard against misuse. The present document aims to find an approach that minimises this risk of abuse, without over-burdening the sector.

Taking account of the vulnerabilities of the non-profit sector to terrorist financing and other criminal abuse, the Commission addresses a number of recommendations to Member States and a voluntary Code of Conduct for non-profit organisations acting in the European Union. It therefore covers organisations, legal or natural persons, legal arrangements or other types of body that “engage in the raising and/or disbursing funds for charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of good works.”<sup>2</sup> (“NPOs”).

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<sup>1</sup> The Financial Action Task Force in its Special Recommendation VIII; G8 Finance Ministers, “Finance Ministers’ Statement” of Deauville, 17 May 2003; G8 Justice and Home Affairs Ministers, “Recommendations for Enhancing the Legal Framework to Prevent Terrorist Attacks”, Washington, 11 May 2004.

<sup>2</sup> Financial Action Task Force Special Recommendation VIII Best Practices Paper

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## **A. RECOMMENDATIONS TO MEMBER STATES TO ADDRESS THE VULNERABILITIES OF THE NON-PROFIT SECTOR TO TERRORIST FINANCING AND TO OTHER CRIMINAL ABUSE**

The prevention of misuse of NPOs for terrorist financing and other criminal purposes requires integrated action from public authorities, non-profit organisations and donors at the national level. The following recommendations are addressed to Member States in order to help them assess how far progress has been achieved by all relevant actors in the fight against the misuse of NPOs for terrorist financing/ other criminal purposes and to identify what further measures are necessary at the national level.

### **A. 1. Oversight Mechanisms**

- Member States should ensure that they have designated competent authorities with responsibility to oversee the non-profit sector. The oversight role could either be dedicated to a single public body or entrusted to existing authorities.
- The oversight role of the competent authorities should include the following functions:
  - Operate publicly accessible registration systems for all NPOs operating on their territory, wishing to take advantage of preferential tax treatment, the right to collect funds from the public and the access to public grants. Registration would take the form of a notice rather than a prior approval for constitution. Member States should identify any categories of NPOs that fall outside the limit of their registration system and mitigate the risk that these gaps might pose;
  - Providing guidance to NPOs on financial transparency as well as advice to interested persons on vulnerabilities of the sector, risk indicators and guidance on how to identify suspicious activity;
  - There should be coordination among competent authorities with regard to investigation of abuse of NPOs;
  - Competent Authorities should have capacities to assess risk of abuse of individual NPOs and be empowered to request more detailed particulars where there is indication that the NPO may be operating unlawfully;
  - Tax Authorities should carry out effective and regular tax audits of non-profit organisations receiving special tax treatment.

The authorities responsible for overseeing the non-profit sector should establish an efficient cooperation structure in order to fulfil entirely the oversight functions assigned to them.

### **A. 2. Encourage compliance with the Code of Conduct**

To promote compliance, Member States should consider the following issues:

- Registration, enhanced transparency and accountability standards confirm a *visible status* for NPOs and help to acquire and maintain *public trust* and *credibility of not for profit work*;

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- **Privileged Tax Status, the award of public grants and the right to public fundraising (if regulated)** could be offered to all NPOs fulfilling the registration requirement and complying with transparency and accountability measures. A mechanism to ensure compliance may be a certification model as described below;
- The transparency and accountability principles and measures proposed in the Code of Conduct should be included in **existing labels** or in **labels to be developed**. Such systems could be run by public or private bodies and would examine compliance of NPOs with the transparency and accountability measures;
- **Private monitoring bodies** or **NPO umbrella organisations** should be encouraged to establish seals of approval or other similar mechanisms for NPOs compliant with the Code of Conduct.

### **A. 3. Awareness Programmes on Vulnerabilities of NPOs to Terrorist Financing and other Criminal Purposes**

NPOs have been misused for the purpose of transferring money to terrorist organisations and therefore, it is of key importance that Member States and NPOs are fully aware of indicators that might signal misuse of such organisations for terrorist financing and other criminal abuse. Member States should ensure that these indicators are widely known among all competent authorities, NPOs and potential donors. With a view to raising awareness, an indicative list of indicators on potential risks can be found in the Annex of this document.

On the basis of these risk indicators:

- Member States should initiate awareness programmes for the non-profit sector on risks/vulnerabilities of the sector to abuse;
- NPOs should be encouraged to assess their existing good practices to further strengthen the prevention of their misuse to terrorist financing and other criminal purposes;
- Guidance should be provided for the private sector (financial institutions, accountants, auditors and lawyers dealing with the non-profit sector) to facilitate detection of suspicious activity/transactions, including techniques notably used for infiltration of NPOs by terrorists.

### **A. 4. Investigation of abuse of non-profit organisations**

Co-operation/information exchange at national level should be lead and coordinated, if possible, by one of the competent authorities with responsibility for overseeing NPOs and include Tax Authorities, Financial Intelligence Unit, and law enforcement services. To facilitate national level information exchange, a person should be nominated in each of the entities representing **the single point of contact for information exchange** purposes in cases related to misuse of NPOs to terrorist financing. Dedicated information gateways should be established among these entities to ensure rapid and effective exchange. The investigation should be proportionate to the weight of identified risk.

**B. A CODE OF CONDUCT FOR NON-PROFIT ORGANISATIONS TO PROMOTE  
TRANSPARENCY AND ACCOUNTABILITY BEST PRACTICES**

By applying enhanced levels of transparency and accountability, NPOs both demonstrate their responsibility towards public generosity and help guard against misuse. The following requirements constitute a tool for NPOs to maintain public trust, to enhance credibility of their indispensable work and at the same time establish a framework for public authorities to identify and trace misuse of NPOs for terrorist financing and other criminal abuse.

- NPOs should produce and keep up to date the organisation’s “Basic Identification Form” that should be sent to the authority competent in fulfilling relevant registration functions. This authority should be informed of changes in the Basic Identification Form” and of winding-up of the organisation (together with a statement on how the net assets of the NPO will be distributed). The “Basic Identification Form” should also be held available at the registered office;

The “Basic Identification Form” should as a minimum include the following elements:

- Full (formal) name of the NPO, any the commonly used acronym or other informal name, business/working name and Registration Number (if appropriate);
- Address of the registered office, telephone/fax number/web site address (if appropriate) and a record of previous addresses and changes of addresses;
- Full (formal) name (incl. acronym) and address of sub branches of the organisation;
- A statement of the General Objectives, Policies and Priorities of the NPO;
- A description of the NPO’s organisational and decision-making structure, reflecting the size of the organisation and by indicating internal financial control systems
- Description of the geographical areas where funds are transferred to and received from;
- A list of Names of all members/directors/executive committee members or trustees and their responsibilities. Where appropriate the controller/beneficial owner of NPO should also be identified.

A list of the bank account numbers under the name of the NPO and any document on identifying information of persons should be kept on a confidential section of the register and should not be publicly accessible at the registered office of the NPO.

- NPOs should follow ***proper book-keeping*** and prepare ***Annual Financial Statements*** of income and expenditures. An ***Annual Report*** should be prepared containing the description and budget of activities, projects over last financial year and include a statement of how these have promoted the NPO’s General Objectives. NPOs should give details of their activities in line with the size of the organisation. The Financial Statements and Reports should be kept available at the registered office to public authorities having oversight responsibility.
- NPOs should keep full and accurate ***audit trails of funds*** transferred outside their jurisdiction/ country and of funds transferred to any person delivering service on behalf of the originator NPO.

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- Annual Financial Statements, Reports, minutes of trustees' meetings, records on required audit trails should be **held for at least 5 years** at the registered office of the NPO.
- The NPOs should use **registered bank accounts** for money flows in case of every transaction, whenever there is a possibility to use the formal banking system. All received money should be deposited to these accounts and the disbursement of money should be performed by means of these bank accounts. A certain amount of cash might serve for daily expenditure of the NPO.
- All NPOs should follow the **“Know your beneficiaries, donors and associate NPOs” rule**, which means that the NPO should make best endeavours to verify the identity, credentials and good faith of their beneficiaries, donors and associate NPOs.

### **C. CONSIDERATIONS AT THE EUROPEAN LEVEL**

Many NPOs operate in more than one Member State and target relief and other activities in third countries. Therefore, the efficient cooperation among Member States at the European level and internationally is of key importance in the prevention and fight against terrorist or criminal abuse. Additionally, it has to be considered how European Institutions could facilitate this cooperation and further encourage the compliance of NPOs with the present Code of Conduct.

#### **C. 1. Development of “European guidelines” or a “European label” for NPOs complying with the requirements of the Code of Conduct**

The possibility for further developing **“European guidelines”** or a **“European label”** based on the enhanced transparency and accountability measures as set out in the present Code of Conduct should be examined. The principles for such guidelines or label could be worked out at the European level.

- The European Commission will further consider whether Community funding of NPOs could be linked to compliance with the enhanced transparency and accountability measures;
- The European Commission will also further consider whether registration of NPOs as lobby organisations could be made conditional to compliance with requirements of the Code.

#### **C. 2. Cooperation in Investigation of abuse to terrorist financing at the European level**

Co-operation/information exchange at EU/international level should comprise a network made up of law enforcement **single contact points** with expertise in terrorist financing and knowledge of the NPO sector. The Commission will promote of an EU level co-operation/information exchange network among law-enforcement authorities and, where appropriate, other bodies competent to investigate possible abuse of NPOs.

- Further attention has to be given to the creation of **Joint Investigation Teams** in investigating of potential NPO abuse. Specialised JITs could start up in an autonomous

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way by gathering information on a case or at the request of a Member State, Europol or Eurojust.

- **CEPOL (European Police College)** training modules

CEPOL's role could be crucial in training senior police officers in highlighting vulnerabilities of the sector, typologies of abuse, promoting cooperation/information exchange and the potential role of JITs.

### **C. 3. European awareness programmes**

When contributing to charitable purposes via the non-profit sector, citizens living in the European Union have responsibility to make their best endeavours to verify the good faith of the organisation that they support. Therefore, at the European level, awareness programmes should be launched on the vulnerabilities of the non-profit sector to terrorist financing (and other criminal abuse) in order to emphasise the principle of “responsible giving”.

**The European Commission should assess the results achieved by the document to be elaborated after taking into consideration the comments received on this discussion paper and prepare a report after 3 years from its adoption.**

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**ANNEX**

**RISK INDICATORS CONCERNING THE ABUSE OF NON-PROFIT ORGANISATIONS TO  
TERRORIST FINANCING OR OTHER CRIMINAL PURPOSES**

The main aim of listing the following indicators of potential risks is to raise awareness of the non-profit sector, of public authorities and potential donors to vulnerabilities of the non-profit sector to terrorist financing. An indicator should not in any case be regarded in isolation, but should be evaluated in the context of other indicators and the organisational and legislative environment in which the NPO operates.

**A, Organisational structure and administration**

- The name of the NPO seems similar to the one of a widely known and reliable organisation;
- NPO chooses a form of activity that is not legally required to register or falls under minimal/ no supervision;
- The organisation is not registered or officially recognised as an NPO, but is operating like one;
- The NPO shares its registered office with other organisations;
- Managers/Directors/trustees hold positions in other NPOs and the organisations share the same accountant, financial advisor, lawyer or external auditor;
- The number of people employed by the NPO are inconsistent with the amplitude of activities/financial responsibilities of the NPO;
- The internet website of the NPO has not been updated in the last 12 months;
- The NPO has frequently changed its registered address;

**B, Purpose and activities of the organisation**

- There is little or no information available on the activities of the NPO;
- Organisation's objectives are tied to a particular political or religious affiliation;

**C, Management**

- There is discrepancy between the management and the stated objectives of the NPO;
- The NPO does not cooperate with public authorities in case of legitimate enquires;
- Trustees seem to exercise no influence over the management of the organisation;

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- Among trustees and/or managers of the NPO there are individuals designated on terrorist lists of the UN or the EU, or on commercially available money laundering watch-lists;

#### **D, Financial management**

- The NPO disposes of several different bank accounts, inconsistently with the size of its activities;
- No financial controls are applied, no annual financial statements, no external audits are prepared;
- No clear audit trail can be provided on any given transaction;
- There is a lack of clarity through which channels, payment methods funds are transferred for abroad;
- The general method of payment is cash transfers, or other methods outside the formal banking system;
- NPO achieves poorly performing investments that are linked to its trustees or managers;

#### **E, Financial Status**

- The number of projects/the total income of the NPO are not in line with the size of the organisation;
- There is a sudden change in the amount of funds distributed or funds collected;
- An inconsistency appears between income/expenditure of the NPO and its activities;
- The income structure of the NPO mainly relies on some main donors that are linked to managers or trustees of the organisation;

#### **F, Beneficiaries, donors and partner NPOs**

- There is a lack of clarity in which geographical area funds are collected;
- NPO transfers funds to high risk countries or jurisdictions<sup>3</sup> and lacks transparency regarding how these funds were transferred and used;
- NPO receives funds from high risk countries or jurisdictions and lacks transparency regarding the sources from which these funds originate;
- There is lack of transparency on partner NPOs operating in high risk jurisdictions or there is no clear trace of the existence of these organisations.

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<sup>3</sup> Where “high risk” is taken to mean countries or jurisdictions prone to corruption, instability, or conflict, or that have weak financial controls such as FATF “Non Compliant Countries or Territories”.