

Impact of anti-money laundering and countering terrorism financing measures on non-profit organizations in the Eastern Partnership region



European Center for
Not-for-Profit Law

What is the problem?

Globally there have been a number of cases when overregulation related to anti-money laundering and counter-terrorism financing (AML/CTF) has negatively affected nonprofit organizations (NPOs). Governments often justify those measures as necessary in order to comply with the standards of the Financial Action Task Force (FATF). Examples of the negative impact on NPOs include:

- **Bank de-risking:** banks introduce disproportionate requirements or directly limit the access to financial services for NPOs.
- **Introducing burdensome requirements for the whole NPO sector** instead of targeted, risk-based measures to those NPOs that are at high risk.
- **Use of FATF standards to limit fundamental human rights** and restrict NPO activities.

The aim of this brief is to show how this process has affected NPOs in the Eastern Partnership region and to outline some possible avenues for action.

What is FATF?

FATF is an inter-governmental body that is committed to preventing and responding to money laundering and terrorist financing. It has developed international standards that measure technical compliance (40 Standards known as “Recommendations”) and effectiveness (11 Standards known as “Immediate Outcomes”). FATF also assesses compliance with the standards directly or through one of its regional bodies (Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism /MONEYVAL/ for the Council of Europe members and Eurasian group for Belarus). The assessment of the countries’ compliance with the FATF Recommendations is carried out through peer review which results in the adoption of mutual evaluation reports.

Since 2016 FATF has started more consistent engagement with NPOs through its Private Sector Consultative Forum (where NPOs have been invited) and by [opening a communication channel](#) with CSOs during the mutual evaluation process. In February 2021, FATF started an initiative to study [the unintended consequences](#) of the misapplication of the FATF standards, specifically on NPOs.

FATF Standards for NPOs

In 2016 FATF introduced changes to its standard on NPOs (Recommendation 8) to ensure that NPOs **are not considered “particularly vulnerable to terrorist abuse”**. Now, the recommendation states that

“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...”

When assessing the situation with regard to NPOs, countries should comply with several key standards:

- **Risk-based approach:** *“Countries should identify, assess, and understand the money laundering and terrorist financing risks for the country, and should take action... aimed at ensuring the risks are mitigated effectively.”* (FATF Recommendation 1)
- **Effectiveness:** *“10.2. To what extent, without disrupting legitimate NPO activities, has the country implemented a targeted approach, conducted outreach, and exercised oversight in dealing with NPOs that are at risk from the threat of terrorist abuse?”* (Immediate Outcome 10)
- **Respect for fundamental freedoms:** *“It is also important for such measures to be implemented in a manner which respects countries’ obligations under the Charter of the United Nations and international human rights law”* (Interpretative Note to Recommendation 8)
- **Outreach to NPOs:** *“Countries should encourage and undertake outreach and educational programmes to raise and deepen awareness among NPOs “* (FATF Methodology, 8.2(b))

When these standards are not complied with, the mutual evaluation report would not consider that a country is compliant with the FATF standards related to NPOs. Therefore, the countries should take the following steps:



How do AML/CTF measures affect CSOs in the Eastern Partnership Region?

The global trends have been visible in the Eastern Partnership (EaP) region as well. Anti-money laundering and counter-terrorism financing regulations have had a major impact on NPOs due to the lack of a risk-based approach, lack of involvement of NPOs in risk assessments, burdensome requirements, lack of clear guidance on implementation and disproportionate sanctions.

COUNTRY	YEAR OF MER	RECOMMENDATION 8	KEY RECOMMENDATIONS FOR NPOS
ARMENIA	December 2015 (MER); July 2018 (First Follow-up Report)	Largely compliant (2015) Compliant (2018)	<p>Armenia should conduct a formal review of the entire NPO sector to identify which subset of entities falls within the FATF definition of NPO and then identify which NPOs in the subset could potentially pose a higher risk of FT. (2015)</p> <p>In its revised NRA, Armenia has identified those organisations that meet the FATF's definition of NPOs and has concluded that they entail in general a low FT risk. (2018)</p>
AZERBAIJAN	2014 (MER)	Compliant	No specific recommendations to NPOs.
BELARUS	2019	Partially compliant	<p>Competent authorities should conduct a comprehensive analysis of the NPO sector in the context of terrorist financing and develop mechanisms to apply risk-based supervision to the sector.</p> <p>Competent authorities are encouraged to intensify their work, including through training activities to raise awareness of the NPO sector on CTF issues.</p>

GEORGIA	September 2020	Non-compliant	There are no CTF focused, or risk-based measures developed. There are numerous legislative gaps in regulation of the NPO sector impacting effectiveness of the system. There was no outreach conducted to the sector and no guidance provided.
MOLDOVA	July 2019	Partially compliant	To conduct a thorough assessment to identify the types of NPOs which are vulnerable to FT abuse, and to continuously monitor the NPO sector.
UKRAINE	December 2017	Largely compliant	No detailed analysis of NPO risks has been conducted and it is unclear whether measures are appropriate to the risks. Little guidance is provided to NPOs or donors.

In **Armenia**¹, there are cases of banks requiring too detailed information for opening an account (e.g. passport data of all founders; contracts with donors; identification of the objective of the organisation and the purposes of funds received).

In **Azerbaijan**², NPOs need to comply with extremely burdensome requirements, especially having in mind that a large segment of the NPO sector consists of volunteer-based organizations that have no or very limited financial resources. The “*Law on the fight against the laundering of money or other assets obtained by criminal means and funding of terrorism*” obliges NPOs to have an internal control system, assign a responsible person, appoint an internal auditor, conduct customer identification and verification, provide information to the Financial Monitoring Service about suspicious transactions and conduct appropriate trainings. Non-compliance with the provisions of this Law is subject to fines reaching 15,000 AZN (approx. 7,900 EUR).

In **Belarus**³, the AML/CTF measures are not in line with the risk-based approach. Belarus has not carried out a sectoral risk assessment, but the national risk assessment showed that the risk for NPOs is low. Still, a new law, adopted on May 13, 2020, introduced additional reporting requirements for all public associations and foundations, regardless of the level of risk posed. Moreover, there was no outreach as the measures introduced were not discussed with the NPO sector neither during preparation of the law introducing the measures, nor during the preparation of the report form approved by the Ministry of Justice. According

1 2019 Armenia CSO Meter Report, <https://csometer.info/sites/default/files/2020-11/Armenia-CSO-meter-Final.pdf>

2 2019 Azerbaijan CSO Meter report, <https://csometer.info/sites/default/files/2020-11/CSO-Meter-Country-Report-Azerbaijan-ENG.pdf>

3 2020 Belarus CSO Meter Update, <https://csometer.info/sites/default/files/2021-02/CSO%20Meter%20Country%20Update%202020%20Belarus%20-%20ENG%20%28Final%29.pdf>

to the law, all NPOs are required to publish activity report together with a financial report by March 1 each year. As a result, in June 2021, several CSOs have been sanctioned with warnings for formally incomplete reports.

Georgia⁴ has been generally considered as a positive example with regard to NPO registration and operation (from the point of view of operational environment for civil society). However, in September 2020 the MONEYVAL adopted the Mutual Evaluation Report (MER) of Georgia. The report stated that Georgia is non-compliant with FATF Recommendation 8 on NPOs - the only recommendation where Georgia is considered non-compliant from a list of 40 recommendations. There are concerns that this may be used by the government to propose restrictive measure and put greater government control on the NPO sector.

In **Moldova**⁵, upon registration, NPOs have the obligation to submit a statement on the beneficial owner of the legal entity which is difficult for a nonprofit organization. NPOs are also affected by measures targeting money laundering prevention, when commercial banks block some international transfers. To unblock them, the banks ask NPOs to provide supporting documents (such as project documentation or any other evidential documents). In addition, the NPO sector risk assessment took place in 2020 without real engagement of NPOs and its results were not made publicly available.

In **Ukraine**⁶ a new Law of Ukraine “*On preventing and counteracting legalization (laundering) of the proceeds of crime, terrorist financing, and financing proliferation of weapons of mass destruction*” was adopted in 2019. In accordance with the new legal act, NPOs have an obligation to disclose their ultimate beneficial owner, which burdens the operation of NPOs as they do not have such. The Ministry of Justice should develop the form that CSOs should use to inform the state registrars about their ultimate beneficial owners and ownership structure and all changes in such information (as of June 2021 such a form has not been developed). Currently, when opening bank accounts, CSOs must fill in a bank form which indicates their final beneficiaries and/or CSO participants.

In addition, the National Bank Act allows banks to set up extra risk monitoring that limits the receipt or transfers of NPOs’ international funding, including to/from some EU countries that applies even to relatively small transactions in an amount equal to or lower than 15, 000 UAH (420 EUR). As a result, several NPOs have had their accounts blocked for up to seven days by banks or by financial monitoring institutions.

4 2020 Georgia Moneyval Mutual Evaluation Report, <https://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/MONEYVAL-Mutual-Evaluation-Georgia-2020.pdf>

5 2019 Moldova CSO Meter Report, https://csometer.info/sites/default/files/2020-11/CSO-Meter-Country-Report-Moldova-ENG_0.pdf

6 2020 Ukraine CSO Meter Update, <https://csometer.info/sites/default/files/2020-11/CSO-METER-Ukraine-country-update-2020.pdf>

Avenues for action

Most NPOs are not aware that many of the problems they face are a result of AML/CTF measures. They do not know about FATF or its standards. Therefore, the first step in any campaign against restrictive regulations is to **educate NPOs about the AML/CTF standards** and how they may affect their work.

A natural next step is to **build a coalition of NPOs** that understand and are well-versed in the FATF terminology and standards and can engage with the government.

It is also important to **educate government authorities** on the need to implement a risk-based approach and engage in outreach with the NPO sector. This may be the first step towards better interaction with the responsible state institutions and in building mechanisms for dialogue, engaging in risk assessment, education activities, etc.

Other **possible actions at the national level** that NPOs can take include:

- Map potential NPO risks related to AML/CTF and collect data.
- Engage in the NPO risk assessment to ensure that its findings and recommendations would not disproportionately affect NPOs and would not hinder their legitimate activities.
- Prepare a shadow/independent risk assessment of the NPO sector to support the government to better understand the sector.
- Design a structured dialogue with the government by establishing a mechanism through which NPOs can engage with the government on a regular basis.
- Engage in dialogue with banks and other important stakeholders to ensure they understand the NPO sector.
- Consider developing self-regulation standards to ensure that potential risks are addressed without the need of additional regulation.

When domestic avenues for action are insufficient, there are possibilities to engage also with various regional or global bodies. ECNL has developed a Briefer on "[What can CSOs do in case of combating financing of terrorism and anti-money laundering overregulation](#)".

On the global/regional level, NPOs can:

- Notify the [Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism](#), an independent expert appointed by the UN Human Rights Council. The Special Rapporteur can request clarification and raise the issue with the respective government or other AML/CTF bodies.
- Raise the issue with the FATF as part of their work on [identifying unintended consequences](#) or prior to an upcoming [mutual evaluation process](#).
- Notify a regional human rights mechanism such as the Council of Europe e.g. the [Human Rights Commissioner](#) or the [Conference of INGOs](#).

In an official letter, ECNL and a [coalition of NPOs](#) have recently requested MONEYVAL to open more to NPOs and engage in a regular dialogue with them, including to provide the possibility for NPOs to notify Moneyval of unintended consequences and abuse of FATF standards. If accepted, this proposal may open additional avenues for action at the regional level.

For any questions or problems that NPOs in the EaP region face related to AML/CTF, you can contact us at info@ecnl.org or follow us at <https://twitter.com/enablingNGOlaw>.



European Center for
Not-for-Profit Law

European Center for Not-for-Profit Law Stichting
5 Riviervismarkt, 2513 AM The Hague, Netherlands
www.ecnl.org
twitter.com/enablingNGOlaw



Co-funded by the European Union

This paper is made possible by the support of the American people through the United States Agency for International Development (USAID). The contents are the sole responsibility of the European Center for Not-for-Profit Law Stichting (ECNL) and do not necessarily reflect the views of USAID or the United States Government.

The paper was also supported by the Ford Foundation.

This paper was also produced with the financial support of the European Union. Its contents are the sole responsibility of ECNL and do not necessarily reflect the views of the European Union. The “CSO Meter: A Compass to Conducive Environment and CSO Empowerment” project is implemented by ECNL and its partners: Transparency International Anticorruption Center in Armenia; MG Consulting LLC in Azerbaijan; Civil Society Institute in Georgia; Promo-LEX Association in Moldova; and the Ukrainian Center for Independent Political Research (UCIPR).

