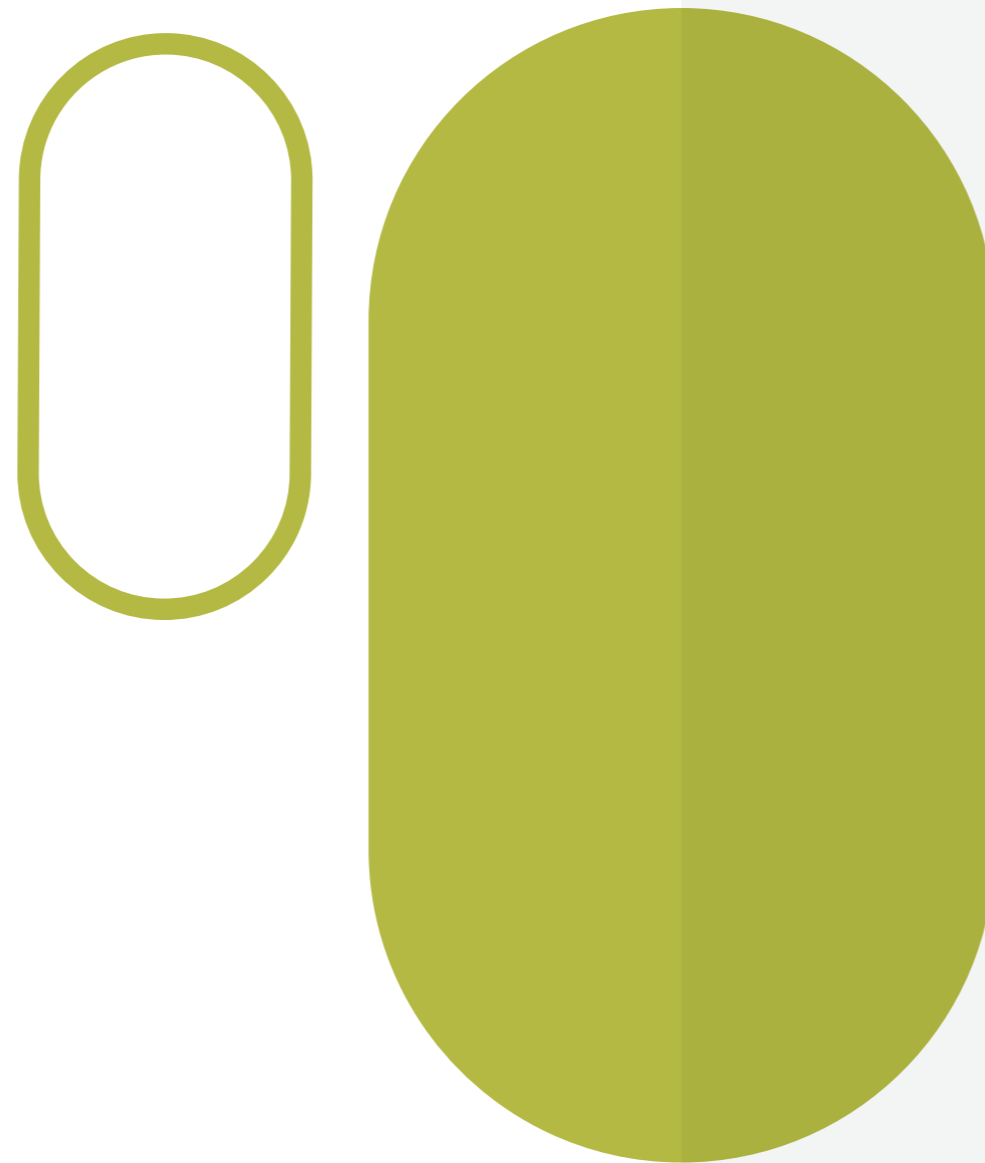




How do global policies against money laundering and terrorist financing affect the work of Non-Governmental Organizations?



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This brochure has been prepared by CiviKos Platform, with the support of Human Security Collective and is funded by GIZ. The brochure contains information on the Financial Action Task Force (FATF)'s recommendations against money laundering and terrorist financing, and how these affect the work of Non-Governmental Organizations (NGOs).



According to the FATF, money flow into and through NGOs is seen as a potential source of terrorist financing. Therefore, the FATF requires governments to protect the NGO sector from abuse or misuse for financial crimes by implementing a regulatory regime that adequately and effectively addresses the risks of terrorist financing in this sector. This terrorism financing framework was put in place in the weeks after the 9/11 terrorist attacks in the USA in 2001.

In Kosovo, NGOs continue to remain reporting entities under the Law on the Prevention of Money Laundering and Combating Terrorist Financing. In recent years they have also faced many issues in accessing banking services, such as: **the arbitrary closure of bank accounts without warning, the requirement for the founders of the NGO to be present at the opening and maintenance of the bank account, increase in maintenance fee for NGO accounts (and not for business accounts, for example), etc.**



What is Financial Action Taskforce - FATF)?¹

The Financial Action Taskforce (FATF) was established in 1989 and is based in Paris, and leads global action to tackle money laundering and terrorist financing. The 39-member body sets international standards to ensure national authorities can effectively go after illicit funds linked to drugs trafficking, the illicit arms trade, cyber fraud and other serious crimes.

Apart from the 39 members, almost all other countries are members of the FATF-Style Regional Bodies. Kosovo, for example, is part of the Council of Europe's Anti-Money Laundering Group (MONEYVAL) based in Strasbourg, France (Council of Europe)².



The FATF researches how money is laundered and terrorism is funded, promotes global standards to mitigate the risks, and assesses whether countries are taking effective action. In total, more than 200 countries and jurisdictions have committed to implementing the FATF's Standards as part of a co-ordinated global response to preventing organized crime, corruption and terrorism. Countries and jurisdictions are assessed with the help of nine FATF Associate Member organizations (the FATF-Style Regional Bodies) and other global partners including the IMF and the World Bank. There are 40 Recommendations which make up the FATF Standards, And national governments need to implement these Standards through laws and regulations in their own jurisdictions.

The FATF's decision-making body, the FATF Plenary, meets three times per year and holds countries to account if they do not comply with the Standards. If a country repeatedly fails to implement FATF Standards then it can be named a "Jurisdiction under Increased Monitoring" or a "High Risk Jurisdiction". These are often externally referred to as the "grey" and "black" lists.

¹ <https://www.fatf-gafi.org/en/the-fatf.html>

² <https://www.coe.int/en/web/civil-society/money-laundering>

What does FATF Recommendation 8 mean for Non-Governmental Organizations?

Of the 40 FATF Recommendations, Recommendation 8 dedicated solely to Non-Governmental Organizations. This Recommendation specifies a set of requirements to regulate the nonprofit sector as a whole for greater transparency and accountability, given money flows into and through NGOs are seen as a potential source of terrorist financing. Governments are required to protect the NGO sector from abuse or misuse for financial crimes by implementing a regulatory regime that adequately and effectively addresses the risks of terrorist financing in the sector.

Recommendation 8 was revised in 2016, following continued lobbying and advocacy by the Global NPO Coalition on FATF³, resulting in the removal of the long-standing attribute of non-profit organizations being "particularly vulnerable" to terrorism financing abuse, and the institution of the risk-based approach. The earlier language led to and continues to lead to over-regulation and inappropriate restrictions on NGOs, hindering their legitimate and essential work around the world.

According to the recommendations of the FATF, states should aim to increase the awareness of NGOs in this sphere.

Some of the actions that states should undertake are⁴:

-  Conduct a risk assessment of the NGO sector that identifies risk of possible terrorist abuse;
-  Review existing laws, regulations and self-regulatory programmes to see if they address identified risks;
-  Create a result that is consistent with obligations under international human rights and humanitarian law.
-  Ensure that proposed measures are proportional with identified risk and do not restrict the operation of NGOs;

All those four actions should be implemented in dialogue with the civil society sector.

³ <https://fatfplatform.org/>
⁴ https://ufr.gov.mk/wp-content/uploads/2020/05/KONEKT-Priracnik-za-SPP-FT_ENG.pdf

Revision of Recommendation 8

The new wording of Recommendation 8 clearly recognized that not all NGOs are at risk, and instructed countries to take a **risk-based approach** when considering terrorist financing measures.



The FATF calls on countries **to identify, assess and understand** the ML/TF risks they face through a National Risk Assessment Process.. The purpose is to ensure that countries can mitigate their ML/TF risks effectively, and the risk assessment is clearly intended to serve as the basis for an application of the risk-based approach, i.e. to ensure that the measures are proportional to the identified risks.

The principles of a risk-based approach are:



Evidence-based;



Inclusion of NGOs in process;



Proportionality or concrete actions proportional to the identified risks.

Risk-based Approach

The FATF emphasizes implementation of a risk-based approach to regulate the sector, so that the legitimate activities of Non-Governmental Organizations are not affected. However, the implementation of the Standards at the national level has not always been risk-based or proportionate, leading to unintended consequences for the sector, including operational difficulties affecting freedom of association and expression, as well as issues pertaining to financial access.



Instead of 'targeting only NGOs that are at risk' and 'then taking appropriate and proportional legislative or other measures to help mitigate that risk' the tendency of many governments is to **over-regulate** the NGO sector and have a one-size-fits-all approach for all NGOs, rather than a **risk-based approach**.

This is not effective either for the government in terms of its mandate in combating money laundering or terrorism financing or for NGOs in terms of their day-to-day operations.



NGOs around the world have faced operational and legal constraints. This has negatively affected the ability of NGOs to implement activities and protect the needs of beneficiaries, especially in areas in crisis or conflict.



In order to comply with FATF Standards, states can no longer adopt broad regulations that affect all NGOs while claiming that the entire sector is at risk.



Instead, states should use a risk assessment process to identify specific types of NGOs that might be vulnerable to terrorism financing and then take appropriate mitigating measures, which are proportional to the risk. This is also the basis of the new FATF/MONEYVAL assessment methodology that examines whether countries have undertaken the risk-based approach towards NGOs.

Examples of over-regulation of the NGO sector



Restrictions when establishing organizations: Introducing difficult requirements for licensing and governance;



Limitations on the ability to advocate for change: Limiting the ability of NGOs to socialize and labeling human rights defenders as terrorists.



Legal barriers that hinder the ability of NGOs to access foreign financial resources in the form of various grants and donations.



Burdensome reporting requirements.



Restrictions for NGOs by commercial banks on banking services.

Law on Freedom of Association in Non-Governmental Organizations in Kosovo

Freedom of Association in Kosovo is a freedom guaranteed by the Constitution and regulated by Law No.06/L-043 on Freedom of Association in Non- Governmental Organizations⁵.

According to this Law, adopted in April 2019, there are three forms of registration:

Association

Foundation

Institute

The highest decision-making body in NGOs, depending on the form of registration, is:



For the Association
Assembly of Members



For Foundations and Institutes
Governing Board

The founders of the organization do not have a leading role in the organization, except in cases where the same persons who founded the NGO hold the position of the member of the Assembly or the Board of the organization.

The Law on Freedom of Association obliges all NGOs to carry out their financial transactions through licensed banking institutions.

⁵ <https://gzk.rks-gov.net/ActDetail.aspx?ActID=19055>

Treatment of NGOs in Kosovo as Reporting Entities

In Kosovo, NGOs continue to be treated as reporting entities according to Law no. 05/ L -096 On the Prevention of Money Laundering and Combating Terrorist Financing⁶. As reporting entities, NGOs are obliged to take measures and establish controls to prevent and detect money laundering and terrorist financing.

Article 29. Specific NGO Obligations

1. All incomes and expenditures of NGOs are carried out through bank and financial institutions licensed by the CBK, through bank accounts opened on behalf of NGOs, with the exception of what is provided in paragraph 2. of this Article.

2. NGOs may:

2.1. receive/accept contributions in cash in the value which does not exceed the amount of five hundred (500) Euros or the equivalent value in a foreign currency, from a single source within one (1) single day. The total amount of the contribution received, according to this paragraph, during the year shall not exceed the value of one thousand (1.000) Euros.

2.2. pay/give to a single receiver cash that shall not exceed the amount of five hundred (500) Euros or the equivalent value in a foreign currency, within one (1) single day. The total amount of payments according to this paragraph during the year shall not exceed the amount of five thousand (5.000) Euros.

3. NGOs shall maintain financial data/ledgers that document all incomes and expenditures. These data shall identify the income by source, the amount, and manner of payment, and will identify the paid amount by the recipient, intended use of funds, and the manner of payment. Documents for financial data shall be maintained for five (5) years and shall be available upon request of the FIU-K and the competent body under the Law on Freedom of Association in the Non-Governmental Organizations.

4. NGOs shall report all suspicious acts or transactions to the FIU-K in accordance with the provisions of sub-paragraph 1.1. of Article 26 of this law within twenty-four (24) hours from the time when the act or the transaction is identified as suspicious.

⁶ <https://gzk.rks-gov.net/ActDetail.aspx?ActID=12540>



5. Upon submission of the annual report in agreement with the respective Law on Freedom of Association in Non-Governmental Organizations, an NGO shall disclose in the report the details and information provided by paragraph 2. of this Article.

6. Notwithstanding any other legal provision, the reports filed by NGOs pursuant to the Law on Freedom of Association in Non-Governmental Organizations, shall be made available upon request to the FIU-K.

7. The authorized representative pursuant to the Law on Freedom of Association in Non-Governmental Organizations shall in principle be a compliance officer and a contact person with the FIU-K, unless the NGO does not specify it differently with a written decision any other director, officer or employee of the NGO and duly notifies the FIU-K. The authorized representative who prepares or forwards reports pursuant to this Law shall be bound by the provisions of paragraph 4. Of Article 26 of this law.

8. In accordance with their obligations as reporting entities under this law, the board members and the staff with responsibility for the management of the NGO under the Law on Freedom of Association in Non-Governmental Organizations shall take appropriate due diligence measures to ensure that the NGOs shall not be used for money laundering or as distribution channels of funds or resources to individuals or entities associated with terrorist groups or organizations.

9. The FIU-K and the sectoral supervision authority may adopt, amend or repeal the sublegal acts consistent with the policies, objectives and purposes of this Law, as applied to on-Governmental Organizations pursuant to paragraph 2. of Article 66 of this Law.

Identification of the "Beneficial Owner" in NGOs

Countries are also increasingly imposing the beneficial owner identification requirement on NGOs, although NGOs are established very differently from for-profit entities. The "non-profit" principle applied to NGOs obliges them to use their income to achieve their mission and objectives, and not to distribute it to their leaders or to members of the organization. Therefore, taking into account the nature of their operations, NGOs in principle do not have a beneficial owner. However, every NGO, regardless of the how it was registered, has a control structure in place that is responsible for the operation of organization, and this leadership structure must be made available to the state authorities. It is a minimum legal requirement that every organization has to have an authorized representative and a decision-making structure, such as the Assembly of Members for Associations, or the Board for Foundations and Institutes. This matter is also regulated by Article 12 of the Law on Freedom of Association in Non-Governmental Organizations in Kosovo.



Article 12. The non-for-profit principle

1. NGO does not distribute net income or profits to any person.
2. Assets, incomes and profits of the NGO shall be used to support non-profit goals set for the organization.
3. Assets, incomes and earnings of the NGO shall not be used to bring profits, directly or indirectly, to any founder, director, official, member, employee or donor of the NGO, except the payment for the persons who perform work for the organization.

Although in Kosovo under Law No. 06/L-043 on Freedom of Association in Non-Governmental Organizations, the authorized person is responsible for opening and maintaining the bank account and has authorization to represent the legal entity, under the 2021 **ADMINISTRATIVE INSTRUCTION MF (FIU-K) 2021 FOR THE BENEFICIAL OWNER FOR REPORTING ENTITIES**⁷, the identification of beneficial owners of NGOs is regulated under the following Article 8:

Article 8. Identification of beneficial owners of NGOs

1. For Non-Governmental Organizations established based on the Law on Freedom of Association in Non-Governmental Organizations in Kosovo, reporting entities in order to identify and verify the beneficiary owner will implement due diligence measures to identify the governing structure of the NGO, the chairperson of the assembly for associations (when applicable), the members of the board of directors and executive management.

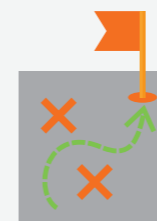
2. The authorized representative according to the Law on Freedom of Association in Non-Governmental Organizations in Kosovo, is a responsible person for providing information according to paragraph 1 of this Article.



⁷ https://fiu.rks-gov.net/wp-content/uploads/2021/07/UDHEZIM_ADMINISTRATIV_MF_NjIF-K_Nr_01-2021.pdf

How to protect from possible abuse for terrorist financing?

In order to protect NGOs from potential abuse for terrorist financing, it is recommended that NGOs follow basic principles of good governance, transparency and accountability, such as:



Mission and Values- Stick to the mission you have determined, and promote the values of democracy, equality and transparency.

Decision-making in the Organization - The organization should have a clear decision-making structure where more than one person is involved in decision-making processes. Promote the principles of democracy, non-discrimination based on gender, ethnicity, religion, etc.



Financial Transparency and Accountability - Organizations are recommended to publish their financial resources as also their annual financial reports to the public.

Clear Policies Against Corruption - The organization is recommended to have clear fundraising policies, which clearly address the prevention of corruption, conflict of interest, as well as clear mechanisms for reporting possible misuse.



www.civikos.net
info@civikos.net