



Public Consultation on the Revision of Recommendation 8

Non-Profit Organisations (NPOs)

The NPO sector and the threat environment in which it operates have evolved, governments' experiences in implementing Recommendation 8 have advanced, and self-regulatory mechanisms have also evolved. The FATF therefore sees the need to revise Recommendation 8, as a matter of priority, to align with the results of the [Typologies Report](#), the recently updated [Best Practices Paper](#), and the latest exercise of [revising the Interpretive Note to Recommendation 8](#).

The FATF wishes to receive your views and specific proposals to the text of Recommendation 8, in English or French, to FATF-NPOconsultation@fatf-gafi.org no later than **Friday 29 April 2016, 18:00, CET**.

Please note that this exercise is intended to be a focused and limited revision of Recommendation 8. The FATF currently has no plan to re-open the revision of the FATF Standard as a whole.

Due to resource constraints, the FATF Secretariat can only accept input which is submitted according to the instructions and following the template, and/or is submitted before the above deadline.

The FATF will not be able to consider any submission that does not meet the above criteria.

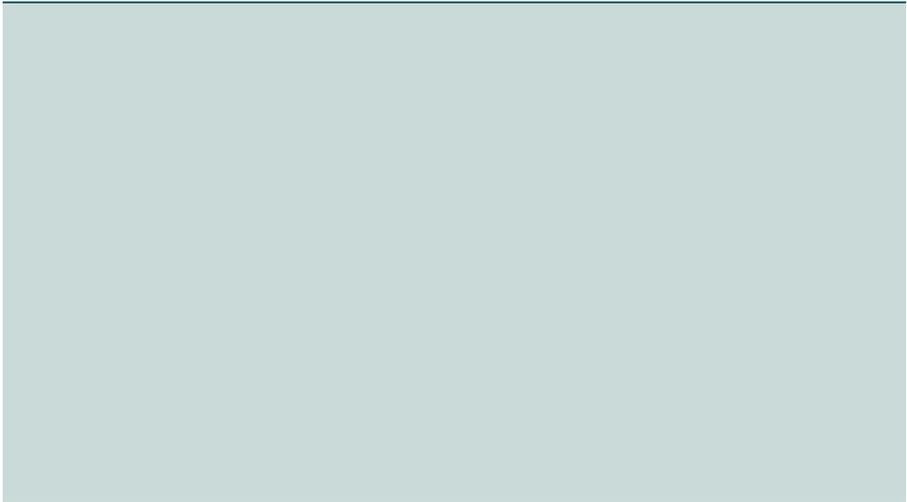
Going forward, the FATF will discuss the input received through the [Consultation and Dialogue meeting](#) held on 18 April 2016 and this consultation exercise, with a view to finalising the revisions to Recommendation 8 and its Interpretive Note in June 2016.

For further details concerning this public consultation, please see:

www.fatf-gafi.org/publications/fatfrecommendations/documents/public-consultation-npo-r8.html

1. Name of organisation represented and/or person submitting comments (if applicable)	
<p>ASOCIACIÓN ESPAÑOLA DE FUNDACIONES (AEF) – SPANISH ASSOCIATION OF FOUNDATIONS Isabel Peñalosa Legal Adviser and Director of Institutional Relations</p>	
2. Country in which your organisation is based/primarily resides (mandatory field)	
<p>SPAIN</p>	
3. All the countries in which your organisation operates (mandatory field)	
<p>AEF operates primarily in Spain but is also member of other international organizations or working groups such as DAFNE (Donors and Foundations Network in Europe), WINGS (Worldwide Initiatives for Grantmaker Support), ECCVAT (European Charities’ Committee on Valued-Added Tax) or the Global NPO Coalition on FATF (http://fatfplatform.org/about/)</p>	
4. Which of the following entities do you represent (mandatory field)	
<p>Please indicate the entity or entities you represent</p> <p>C: AEF is a non-profit and public benefit private association, officially acknowledged as of general interest, which gathers more than 950 Spanish foundations of all sizes and fields of interest and also a few delegations of foreign foundations based in Spain (www.fundaciones.org) The main objectives of AEF are the following:</p> <ul style="list-style-type: none"> a. Represent and defend the interests of the associates and of the foundation sector as an outstanding part of Civil Society. b. Improve the management and the professionalization of foundations, promoting their 	<ul style="list-style-type: none"> A. Government; or B. A service NPO (meaning an NPO which primarily raises or disburses funds for charitable, religious, cultural, educational, social or fraternal purposes, or for carrying out other types of “good works”); or C. An expressive NPO (meaning an NPO which primarily focuses on sports and recreation, arts and culture, interest representation or advocacy such as political parties, think tanks and advocacy groups); or D. A donor/concerned member of the public

- transparency and good governance.
- c. Articulate and strengthen the foundation sector, promoting contact and collaboration among foundations and fostering the knowledge society has about foundations.



5. General comments

Please limit your general comments to one page only. Comments exceeding this length will not be considered.

Recommendation 8 (R8) sets out a broad framework for the regulation of the non-profit (NPO) sector to prevent abuse by terrorists. The premise is that NPOs are seen as being particularly vulnerable to abuse for the financing of terrorism in a number of ways that FATF R8 sets out, such as by being a conduit for funds, by obscuring diversion of funds and by being a front for terror organisations. This broad brush tarring of the entire sector is contrary to the evidence base, and has been criticised by the NPO sector.

In addition, R8 has had numerous unintended consequences as several governments have tightened rules on the NPO sector beyond what is required under R8. Cases of overregulation include difficulties faced in accessing and distributing financial resources, cumbersome registering and licensing laws, and increased state surveillance and regulation of the sector without any targeted and/or risk-based approach. As a result, the application of R8 in many cases has meant the shrinking of the financial, operational and political space of NPOs in particular and of civil society in general. Additionally, the parts of civil society most affected are likely to be organisations working in high-risk and high-need areas on development, conflict and human rights. This is entirely counterproductive to mitigating terrorist threats. One of the potential factors contributing to a greater risk of terrorist abuse is these very restrictive measures on NPOs, which force NPOs to potentially go underground or use less formal channels to continue their work.

Thus, we recommend a change in language in R8, in particular abolishing the phrase: “Non-profit organisations are particularly vulnerable” and introducing a risk-based targeted approach to mitigating terrorist abuse, in line with newly adopted FATF approach within the R8's Interpretative Note revision and the latest Best Practice Paper on Combating the Abuse of Non-Profit Organisations (Recommendation 8).

We welcome revisions of the Interpretive Note and Best Practices Paper, to avoid R8 being a tool for shrinking financial, operational and political space of NPOs in particular and of civil society in general. To bring this process to a closure, there is a pressing need to revise R8 accordingly, in order to have a coherent and consistent standard that will fulfil FATF goals of mitigating abuse of terrorist financing and assist NPOs in being frontrunners in developing programmes and activities that help defuse terrorism threats.

Finally, the suggested revision of R8 below is in line with the call issued in the statement by Maina Kiai, United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, at the Financial Action Task Force Consultation and Dialogue Meeting with Non-Profit Organisations held on 18 April 2016. The Special Rapporteur called on the FATF to "leverage its leadership position to positively influence governments' approach to counter-terrorism mechanisms away from measures that constrain civic space."

6. Specific proposal to amend the text of Recommendation 8 (R.8)

Please provide your specific proposals to amend the text of R.8, if any, in tracked changes. This exercise is intended to be a focused and limited revision of R.8. The FATF currently has no plan to re-open the revision of the FATF Standard as a whole.

8. NON-PROFIT ORGANISATIONS - CHANGES INDICATED IN BOLD

Countries should review the adequacy of laws, regulations and **programs to address the level of risk** related to entities that can be abused for the financing of terrorism. **Where some non-profit organisations are found to be at risk, countries should address identified risks with a proportionate and targeted approach, consistent with countries obligations to respect fundamental human rights and international humanitarian law. Abuse may be by terrorist organisations:**

- (a) posing as legitimate entities;
- (b) exploiting legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freezing measures; and
- (c) concealing or obscuring the clandestine diversion of funds intended for legitimate purposes to terrorist **purposes**.