

AN ANALYSIS OF THE APPLICATION OF FINANCIAL ACTION TASK FORCE RECOMMENDATIONS AND ITS IMPLICATION ON CIVIL SOCIETY IN TURKEY

INFO NOTE

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Produced by Third Sector Foundation of Turkey (TUSEV), with support from the European Center for Not-For-Profit Law Stichting (ECNL), this information note sheds light on the policies and safeguards suggested by the Financial Action Task Force (FATF) against terrorist financing, money laundering, and financing of weapons of mass destruction and discusses their impact on civil society activities in Turkey. The Law on the Prevention of Financing of Proliferation of Weapons of Mass Destruction (hereinafter referred to as “the Law”) which entered into force on December 31, 2020; aims to mitigate these risks and comply with the FATF principles; however, these new measures will severely restrict civic space and stifle the activities of civil society organizations (CSOs).

Creating a more enabling environment for civil society and resolving overarching emerging problems facing CSOs in Turkey is at the center of TUSEV’s work. To this end, the Foundation closely monitors the laws and regulations affecting civil society to ensure that all changes are in accord with international standards and that they strengthen civic space. TUSEV’s role thus is to foster a dialogue on the prioritization and protection of civil society while developing mutually beneficial solutions for all stakeholders through meaningful participation and collaboration.

This information note focuses on anti-money laundering (AML) and counter terrorism financing (CTF) standards for civil society that were introduced by the FATF and analysis of the Law from the point of view of FATF Standards.¹ The following sections of the note will relay brief information about the FATF and mutual evaluation process, put Turkey’s membership to the FATF in perspective, offer details of the Law and its analysis with regard to the FATF

Recommendation 8 (non-profit organizations “NPOs”)², and introduce best practices from other countries related to civil society in terms high rankings. The information note will conclude by sharing key steps and recommendations for the future.³

¹ The standards set forth in general and views delivered as regards to Turkey by the FATF are the entire responsibility of the FATF and do not necessarily represent the views of TUSEV so long as incompatible with the international standards on freedom of association.

² While in FATF documents it is referred to as “non-for-profit sector” and “non-for-profit organizations”, applicable legislation in Turkey tackles only those civil society organizations that are registered as associations and foundations. Due to this reason, in this document, the wording “civil society sector” and “civil society organization (CSO)” refer to wordings “non-for-profit sector” and “non-for-profit organization” and vice versa.

³ There are several provisions in the Law, which go beyond FATF requirements. However, in this information note we limited the scope to the analysis of the Law regarding the FATF Recommendation 8.

WHAT IS THE FINANCIAL ACTION TASK FORCE? WHAT IS THE PROCESS OF MUTUAL EVALUATION FOR COUNTRIES?

The FATF is an inter-governmental organization whose goals are to create standards and promote the effective enforcement of legal, regulatory, and operational measures against money laundering and terrorist financing.⁴ The FATF has identified 40 Recommendations, which are internationally endorsed global standards to guarantee a coordinated global response to prevent organized crime, corruption, and terrorism.⁵ These recommendations aim to increase transparency, to guide countries in drafting the legislation and other measures necessary for this field, and to enable them to successfully take action against illicit use of their financial system.

The FATF evaluates each member countries' compatibility in terms of the set of recommendations and rank their technical compliance under four main categories: Compliant, largely compliant, partially compliant, non-compliant. The FATF conducts mutual evaluations of its members' levels of implementation of the FATF Recommendations on an ongoing basis. The FATF mutual evaluations are in-depth country reports analyzing the implementation and effectiveness of measures to combat money laundering and terrorist financing. Mutual evaluations are peer reviews, where member states assess one another. A mutual evaluation report provides an in-depth description and analysis of a country's system for preventing criminal abuse of the financial system as well as focused recommendations to the country to further strengthen its system. Effectiveness and technical compliance are the key components of the mutual evaluations. A complete mutual evaluation

takes up to 18 months. The FATF Plenary discusses and adopts two mutual evaluation reports at each of its 3 annual plenary meetings. Therefore, each assessment cycle approximately takes 7 to 8 years to complete.⁶

TURKEY'S MEMBERSHIP TO THE FATF AND THE COUNTRY EVALUATION PROCESS

Turkey has been a member of the FATF since 1991. Turkish Financial Crimes Investigation Board (MASAK) is the leading authority on the FATF Delegation in Turkey. MASAK operates under the Ministry of Treasury and Finance and works in coordination with the General Directorate for Relations with Civil Society on the planning and execution of the preventive measures concerning civil society.

The third mutual evaluation report on Turkey was adopted by the FATF Plenary on February 23, 2007. This report provides a summary of the anti-money laundering and counter terrorism financing measures that were in place in Turkey in September 2006 (the date of the on-site visit) and examines the Law No. 5549 on Prevention of Laundering Proceeds of Crime which was passed in October 2006. Turkey was rated non-compliant or partially compliant on 5 out of 6 Core Recommendations and partially compliant on 5 out of 10 Key Recommendations. As a result of this lack of compliance, the FATF Plenary placed Turkey in a follow-up process. The follow-up process is a desk-based review that monitors whether a country takes the necessary steps to strengthen its AML/CFT framework.⁷

During the on-going compliance process, the FATF published several public statements on Turkey's addressing its strategic AML/CFT

⁴ FATF. *Who We Are*. Access date: 8 February 2021. <http://www.fatf-gafi.org/about/whoweare/>

⁵ FATF. *What We Do*. Access date: 8 February 2021. <http://www.fatf-gafi.org/about/whatweddo/>

⁶ FATF. *Mutual Evaluations*. Access date: 8 February 2021. <http://www.fatf-gafi.org/publications/mutualevaluations/documents/more-about-mutual-evaluations.html>

⁷ FATF. (2007). *Mutual Evaluation Report of Turkey*. Access date: 8 February 2021. <http://www.fatf-gafi.org/countries/s-t/turkey/documents/mutualevaluationofturkey.html>

deficiencies. These deficiencies are namely the inadequate criminalization of terrorist financing (Special Recommendation II) and the inadequate implementation of legal framework for the identification and freezing of terrorist assets (Special Recommendation III).”⁸

In the Public Statement dated June 22, 2012, the FATF decided to call upon its members to apply countermeasures proportionate to the risks associated with Turkey, unless Turkey takes significant actions by October 2012.⁹

During the Plenary Meeting of the FATF in Paris on October 17-19, 2012, due to Turkey’s continued lack of progress in these two areas, the FATF decided in favor of suspending Turkey’s membership effective February 22, 2013.¹⁰

At the Second Plenary Meeting of the FATF in Paris on February 20-22, 2013, the FATF reversed its decision over the suspension of Turkey’s membership since the Turkish Grand National Assembly had adopted the Law on the Prevention of the Financing of Terrorism, which was signed into law on February 15, 2013. The new law had addressed most of the deficiencies raised by the FATF about terrorist financing, and it had provided the legal basis for the freezing of terrorist assets.¹¹

On June 27, 2014, as part of its ongoing review of Turkey’s compliance with the AML/CFT standards, the FATF decided to conduct an on-site visit to Turkey to check on Turkey’s progress with the implementation of the required reforms and actions, as well as its performance on

addressing the deficiencies that the FATF had previously identified.¹²

On October 22, 2014, the FATF released the Mutual Evaluation Report of Turkey. As a result of the sufficient steps that it took to accommodate the technical compliance with the Core and Key Recommendations since 2010, Turkey became no longer subject to the FATF’s monitoring process under its on-going global AML/CFT compliance process.¹³

In February 2019, MASAK published the Manual on Prevention of Nonprofit Organizations Against Abuse of Terrorism Financing¹⁴ featuring the measures that had been taken to address the risk of terrorist financing. Based on MASAK’s 2019 analysis, the highest TF risk was to be found within humanitarian aid organizations. The humanitarian organizations operating near the southern border of the country, within a close proximity to the conflict zones (of Syria and Iraq) were specifically deemed highly vulnerable to risk of abuse of terrorism financing. Apart from the aid organizations, the report had identified no risks in rights-based CSOs and those engaged in advocacy verified by the investigations conducted heretofore.

During the Plenary Meeting of the FATF in Paris on October 16-28, 2019, the Plenary decided to prepare a mutual evaluation report on Turkey (which was published in December of the same year). The report recommended that Turkey strengthen its ability to freeze the assets associated with terrorism, the financing of terrorism and the proliferation of weapons of mass destruction, as well as the assets that belong to the

⁸ FATF. (2010). *Improving Global AML/CFT Compliance*. Access Date: 8 February 2021. <http://www.fatf-gafi.org/countries/d-i/greece/documents/improvingglobalamlcftcomplianceupdateon-goingprocess-february2010.html>

⁹ FATF. *Public Statement*. Access Date: 8 February 2021. <http://www.fatf-gafi.org/countries/s-t/turkey/documents/fatfpublicstatement-22june2012.html>

¹⁰ FATF. *Outcomes of the Plenary Meeting of the FATF, Paris*. Access Date: 8 February 2021. <http://www.fatf-gafi.org/countries/a-c/argentina/documents/outcomesofthepenarymeetingofthefatfparis17-19october2012.html>

¹¹ FATF. *Outcomes of the FATF Plenary*. Access Date: 8 February 2021 <http://www.fatf-gafi.org/countries/s-t/turkey/documents/outcomesofthefatfplenary20-22february2013.html>

¹² FATF. (2014). *Improving Global AML/CFT Compliance*. Access Date: 8 February 2021. <http://www.fatf-gafi.org/countries/a-c/argentina/documents/fatf-compliance-june-2014.html>

¹³ FATF. *Mutual Evaluation of Turkey: 15th Follow Up Report*. Access Date: 8 February 2021. <http://www.fatf-gafi.org/countries/s-t/turkey/documents/fur-turkey-2014.html>

¹⁴ Financial Crimes Investigation Board (MASAK). (2019) *Guide to Prevent Fraud for Combating Financing of Terrorism*. P. 17. Access Date: 8 February 2021. https://cdn.vgm.gov.tr/genelicerik/genelicerik_1103_250619/terorun-finansmani-amaciyla-suistimalinin-onlenmesine-yonelik-rehber-turkce.pdf

entities designated by the United Nations Security Council without any further delay.¹⁵

On December 16, 2019, the Mutual Evaluation Report on Turkey was published.¹⁶ Turkey's technical compliance ratings out of 40 Recommendations were as follows:

- 12 Recommendations are compliant
- 16 Recommendations are largely compliant
- 10 Recommendations are partially compliant
- 2 Recommendations are non-compliant

So far as the compliance of Turkish civil society sector with the FATF principles, regulated by the provisions under Recommendation 8 and directly related to nonprofit organizations, is concerned, Turkey was rated as partially compliant.

The report issued the following assessments concerning Turkey's performance in the implementation of Recommendation 8:¹⁷

- As part of the National Risk Assessment (NRA), Turkey conducted a sectorial risk assessment in 2018 to identify the FATF defined subset of nonprofit organizations that are at risk of being abused as part of terrorism financing schemes. Yet, Turkey's supervision of the nonprofit sector is mainly focused on fraud and mismanagement instead of terrorist financing and Turkey's outreach and oversight efforts remain lacking.
- CSOs are vulnerable to abuse in the hands of international terrorism due to Turkey's geographic proximity to certain conflict zones. Based on this context, authorities consider humanitarian aid associations being at greater risk for abuse, particularly those that deal with extensive cash.

- CSOs remain unfamiliar with the outcomes of the risk assessment. CSOs did not participate in the national risk assessment. Further efforts in this area are needed.
- Turkey's legal framework lacks specific procedures to periodically review NPO risk, to conduct outreach and guidance to CSOs, or to work with CSOs to develop best practices on preventing TF abuse. The primary vehicles for oversight in Turkish law, such as required financial statement and internal audits, are overseen by authorities who are not focused on TF and are aimed primarily at preventing fraud and mismanagement. The framework is ambiguous as to when audits will take place and the auditing that takes place routinely is not based on any assessment of TF risk.
- Auditors focus primarily on financial management and fraud prevention as opposed to anti-money laundering and terrorist financing.
- Sanctions are too weak to be effective, proportionate or dissuasive.
- Proportionate measures to CSOs should be identified at risk of being abused as part of terrorist financing schemes. A targeted risk-based approach and outreach on how to identify, prevent and report terrorist financing, with a focus on those nonprofit organizations assessed as higher risk potential terrorist financing abuse would help avoid restricting and disrupting legitimate CSOs' activities.

As a follow-up, the FATF would require Turkey to implement the recommendations from the 2019 report and would conduct regular interim assessments to check how their recommendations are followed.

¹⁵ FATF. (2016). *Outcomes FATF Plenary, 2016*. Access Date: 8 February 2021. <http://www.fatf-gafi.org/countries/a-c/brazil/documents/outcomes-plenary-october-2019.html>

¹⁶ FATF. (2019). *Mutual Evaluation Report of Turkey*. Access Date: 8 February 2021. <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Turkey-2019.pdf>

¹⁷ Ibid. Pp: 176-182

ADOPTION OF THE LAW ON PREVENTING FINANCING OF PROLIFERATION OF WEAPONS OF MASS DESTRUCTION *

The FATF recommends focused and proportionate measures that avoid restricting and disrupting the activities of legitimate nonprofit organizations in its report. It also recommends that the audits target only the risky CSOs and be performed upon an identified risk of terrorist financing.

A number of measures and actions have been taken so far by Turkish authorities to mitigate the risks regarding money laundering and terrorism financing. The most recent one was the Law on the Prevention on Financing of Proliferation of Weapons of Mass Destruction, No. 7262¹⁸, which entered into force on December 31, 2020. The draft law had been evaluated and approved in a speedy process without outreach or consultation with relevant stakeholders, according to publicly known information. It was submitted to the Presidency of Turkish Grand National Assembly on December 16, 2020 and passed in the General Assembly on December 27, 2020.

As stated in the rationale of the Law, the main reasoning of the law is “to ensure full compliance with United Nations Security Council (UNSC) resolutions and related FATF Recommendations, strengthening legal and institutional capacity in combating terrorism financing and money laundering.” However, the Law exceeds the FATF requirements and impose wide sanctions and restrictions on civic space.

The Law introduces extensive amendments to 6 separate laws, including the Law on Collection of Aid and the Law on Associations.

The four articles, from 7 to 10, amend the Law on Collection of Aid, No. 2860:¹⁹

- Per Article 7 of the new Law, online aid campaigns now fall within the scope of Law No. 2860. This means that obtaining a permission before launching online aid campaigns has become mandatory. According to this new amendment, upon the detection of an unauthorized online aid campaign, the relevant governorship and the Ministry of Interior can request the removal of the content within 24 hours. In the event that the campaign organizer does not receive the subpoena, or fails to respond to it due to technical difficulties, both the ministry and the governorate can request the magistrate of peace to issue a blocking order for the website.
- Per Article 10, an administrative fine for the violation of the Law on Collection of Aid may be imposed from 5,000 to 100,000 TRY. In case of an unauthorized collection of aid on the internet, the prescribed lower and upper limits of fines are doubled. Those who aid and abet in any unauthorized aid collection also will be sanctioned with an administrative fine of 5,000 TRY if they fail to cease and desist despite a notice.
- Article 8 of the Law prescribes that the procedures and principles regarding the aid provided domestically and abroad shall be regulated with a bylaw. This amendment expands the law’s scope from receiving donations to providing donations. It will be important to monitor the upcoming regulation in the bylaw to evaluate how this will affect CSOs in practice.
- With Article 9, the auditors that review the collection of aid activities are authorized to request relevant information and documents from natural persons and legal entities, including banks as well as public

* This section is prepared with the support of Assoc. Prof. Ulaş Karan.

¹⁸ Law on Preventing Financing of Proliferation of Weapons of Mass Destruction, No. 7262. Access Date: 8 February 2021. <https://www.resmigazete.gov.tr/eskiler/2020/12/20201231M5-19.htm>

¹⁹ The Law on Collection of Aid was adopted during the military era in the early 1980s. It reflects a restrictive approach as regards to CSOs and to date no major changes have been made in this sense.

institutions and organizations. According to this article, the entities whose cooperation are requested are not at liberty to withhold information and documents by relying on the provisions in relevant laws.

Seven articles, from Article 11 to 17, amend the Law on Associations, No. 5253:²⁰

- With Article 11, the foreign associations and foundations operating in Turkey, whose headquarters are located abroad, have become subject to the provisions of Law No. 5253 on Associations.
- With Article 12, those convicted of crimes within the scope of the Law on the Prevention of Financing of Terrorism No. 6415, or of crimes of drug trafficking and money laundering, are prohibited from joining the organs of associations other than the general assembly, even if the sentences of those persons were pardoned. In the event that a prosecution is initiated against the board members or staff of associations and an indictment is issued by the public prosecutor as regards the aforementioned crimes, following the approval of the indictment by a penal court, the trial stage of the proceedings commenced and subsequently Article 15 allows the Minister of Interior to suspend the individuals or the organs that the relevant individuals hold a post as a temporary measure. According to this amendment, the Minister of Interior can immediately apply to the civil courts of first instance to request a temporary suspension of activities of the association and an approval of this decision and the dissolution of the association when the aforementioned “temporary measure” deemed ineffective. While the draft version of the Law included a clause authorizing temporary suspension of an association or foundation under investigation, this clause was modified after

the debate in the General Assembly. The Law hence orders the suspension of a CSO only if the latter is prosecuted.

- With Article 13, the scope of the audits performed on associations is also expanded, and the audits of the associations are prescribed to be carried out by public servants annually in every three years, based on risk assessments.
- Article 14 requires that the relevant administrative authority be notified prior to aids to be remitted abroad from Turkey became obligatory.
- Per Article 16, the penalties are imposed or the ones previously imposed are increased as below:
 - The sentence of imprisonment up to 3 months foreseen in Art. 32(k) of the Law for a failure to disclose all kinds of information, documents and records and allow a visit to the administrative places, establishments and their annexes upon the request of the supervisory board members of the association (internal audit) or relevant government officials (external audit) has been increased to 3 months to 1 year or a judicial fine.
 - According to the Art. 32(k), in the case that the mandatory books and documents that are kept by the associations are illegible or lost for a reason, this should be reported to the competent court that has jurisdiction over the district where the headquarters of the association is located. Those who do not notify the court within 15 days or submit the books during the auditing process will be sentenced to 3 months to 1 year in prison or a judicial fine.
 - According to Article 32(k), the violation of the obligation to notify the authorities about the aid sent abroad, as well as the obligation to transfer the aid through a bank, shall be subjected to an administrative fine from 5,000 TRY to 100,000 TRY.

²⁰ The Law on Associations was adopted in 2005 as a part of reforms made for EU accession process and superseded the previous law adopted during the military era in the early 1980s. Although the main focus was to approximate the law to the existing international standards, the amendments that have been made since then contradicted with this aim, including the last amendment subjected to this info-note.

- According to Article 32 (t) of the Law, those refraining from submitting information and documents requested by the auditors from public institutions, banks, individuals and legal entities limited to the scope of the audit, shall be subjected to an administrative fine 5,000 TRY to 100,000 TRY.
- According to Article 32(u), an administrative fine of up to 10% of the amount subject to the transaction will be imposed on the association executives who fail to make any expenditure and payments that is more than 7,000 TRY via banks and other financial institutions.
- In parallel with the amended Article 3 of the Law (as regards to indefinite prohibition of persons convicted of certain crimes from the executive bodies other than the general assembly of associations), an administrative fine of 1,500 TRY is applied to the persons working in the organs of the association despite being convicted of crimes within the scope of last paragraph of the Article 32 and the Law on the Prevention of Financing of Terrorism No. 6415, or of crimes of drug trafficking and money laundering, and to the executives of the association who despite written warning do not remove these persons from their duties within seven days. Failure to remove these persons from their posts on the aforementioned organs within 30 days may lead to a dissolution of the association.
- Per Article 17, the provisions of the Law on Associations can be applied to branches of associations, governing organizations of associations and foundations, representations of the associations and foundations that are headquartered abroad and their permissions to operate and develop cooperation in Turkey and in the event that there is no provision in this law, provisions of the Turkish Civil Code will be applied.

THE FATF RECOMMENDATIONS

The FATF's Recommendation 1 is an overarching standard to be applied to all sectors, including CSOs. It requires countries to apply a risk-based approach to identify, assess, and understand money laundering and terrorist financing threats facing a country.

Recommendation 8, on the other hand, is the only provision that elaborates on the ramifications of this phenomenon on civil society. Having established the vitality of civil society cooperation in the prevention of terrorist financing, Recommendation 8 calls on member states to ensure that anti-terrorism financing or money laundering measures do not become sources of harassment for civil society. In order to provide further clarification on the guidance regarding Recommendation 8, the FATF has published detailed interpretations of Recommendation 8.²¹ In 2016, FATF revised Recommendation 8 to make sure that it would be implemented in a risk-based and proportional way. Furthermore, observing that many countries had misinterpreted Recommendation 8 and had implemented it in a fashion that stifled the activities of CSOs, the FATF published the "Best Practices Paper on Combating the Abuse of Non-Profit Organizations"²² in June 2015.

²¹ FATF. *Recommendation 8: Non-Profit Organisations*. Access Date: 8 February 2021. <https://www.cfatf-gafic.org/documents/fatf-40r/374-fatf-recommendation-8-non-profit-organisations>

²² FATF. *Best Practices Paper on Combating the Abuse of Non-Profit Organisations (Recommendation 8)*. Access Date: 8 February 2021. <https://www.fatf-gafi.org/documents/documents/bpp-combating-abuse-npo.html#:~:text=FATF%20Recommendation%208%20requires%20that,for%20the%20financing%20of%20terrorism>

As acknowledged in the Interpretative Note to Recommendation 8²³ and Good Practices²⁴ published by the FATF, countries should take 4 main steps, which are illustrated below, to comply with the FATF's recommendation pertaining to CSOs:

1. *Conducting risk assessment of the civil society sector to identify risk of terrorist abuse.*
2. *Reviewing the extant laws and regulations on civil society law to ascertain whether they address the identified risks.*
3. *If discrepancies found, take risk mitigation measures that are proportionate to risk without restricting legitimate activities of CSOs.*
4. *Offering consistent solutions with international human rights law and other regulations*

ANALYSIS OF THE NEW LAW FROM THE PERSPECTIVE OF THE FATF RECOMMENDATIONS

FATF Recommendation 1 and 8 strongly emphasize that a risk-based approach be applied in combating the financing of terrorism. The risk-based approach necessitates that any measures or mechanism introduced to prevent the risk should be commensurate with the risks identified. It guarantees the diversity of the civil society sector, while refuting a "one size fits all" take on CSOs. The FATF's best practices offer a plenty of country cases where the governments refrain from presuming that all CSOs carry high risk and

passing an all-encompassing measure to limit CSO activities at large.

Therefore, to apply the risk-based approach effectively, countries should review the existing laws and regulations that concern CSOs in terms of their susceptibility and vulnerability to terrorist financing. The domestic review enables countries to get timely information on CSOs activities, size, and other related characteristics and to assess the adequacy of civil society laws and regulations. Moreover, such reviews provide valuable tools to take the necessary countermeasures against the designated group of CSOs to diminish their risk of falling victim to a terrorist financing scheme.

- **No risk based / focused approach:** The Law in its current form does not discern the specific subset of CSOs identified as vulnerable to be abused by terrorist financing plots. Rather, the measures and statutes of the Law are applied indiscriminately to the entire civil society sector. In other words, the risk-based and focused approach recommended and required by the FATF is missing.

Although Turkey did conduct a national risk assessment in 2018²⁵, it is not clear to what extent the provisions of the new Law are based on this risk assessment. The 2019 Mutual Evaluation Report on Turkey clearly states that "Turkey has conducted a sectorial risk assessment to identify the FATF-defined subset of NPOs that are at risk of terrorist financing abuse. However, Turkey's supervision of the NPO sector is mainly focused on fraud and mismanagement, instead of terrorist financing and Turkey's outreach and oversight efforts remain lacking."²⁶

The measures taken in the Law are applied to all CSOs in Turkey, without making any differentiation in terms of vulnerability to

²³ FATF. *Recommendation 8: Non-Profit Organisations*. Access Date: 8 February 2021. <https://www.fatf-gafic.org/documents/fatf-40r/374-fatf-recommendation-8-non-profit-organisations>

²⁴ FATF. *Best Practices Paper on Combating the Abuse of Non-Profit Organisations (Recommendation 8)*. Access Date: 8 February 2021. <https://www.fatf-gafi.org/media/fatf/documents/reports/BPP-combating-abuse-non-profit-organisations.pdf>

²⁵ FATF. *Countries: Turkey*. Access Date: 8 February 2021. <http://www.fatf-gafi.org/countries/#Turkey>

²⁶ FATF. (2019). *Mutual Evaluation Report of Turkey*. P:4 Access Date: 8 February 2021. <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Turkey-2019.pdf>

terrorist abuse. New provisions in the Law regarding regular and obligatory audit for all CSOs or restricting online aid campaigns for all CSOs are examples for the unfocused approach.

While a risk assessment procedure has been reportedly conducted, very little information is available on its conduct, duration, currency and the participation of CSOs. There are also no facilities available to CSOs to voice their concerns and objections.

FATF recommendations clearly underlines that measures taken to mitigate risk should not restrict or obstruct CSOs' access to financial resources or not dissuade civil society activities.

- **No protection for legitimate NPO activity:** The Law brings more restrictions upon CSOs' access to financial resources, and by doing so it discourages activities of CSOs in Turkey.

The existing civil society laws in Turkey have already stipulated highly restrictive and bureaucratic procedures and sanctions. For example, due to the immensely constricting Law on Collection of Aid, CSOs have been facing serious fundraising difficulties. Even before the amendments made by the Law, CSOs had to obtain a prior permission for each fundraising activity outside the premises of their headquarters. The procedure for obtaining initial permissions is highly bureaucratic and cumbersome. The evaluation process pertaining to permission applications for fundraising activity is tedious and trying at best for CSOs and is decided upon subjective criteria.

The amendments on the Law on Aid Collection will create a significant barrier to exercising the right to secure financial resources for CSOs. It will make fundraising more cumbersome and is likely to deter CSOs from applying for the permit.

Aside from the amendments to current provisions on aid collection, the Law brings more restrictive measures in the form of temporary suspension of CSOs, regular and mandatory audits, and increased penalties, which have little to do with the reparation and reinforcement of the pointed deficiencies. They create a stark contradiction to the principle of guaranteeing freedom of association and the FATF standards of encouraging legitimate activities of CSOs.

The FATF recommends that governments take proportionate measures to address TF related risks.

- **No proportionate measures:** The Law imposes disproportionate sanctions - both administrative and criminal including fines and imprisonment. Furthermore, some provisions exceed the FATF requirements.

The FATF makes the following case in point in the 2019 Mutual Evaluation: "sanctions are too weak to be effective, proportionate or dissuasive." Nonetheless, this observation should be evaluated carefully by considering the existing regulation and its deficiencies like a lack of cautionary mechanism in place. The new revisions regarding penalties are not proportionally compatible with conditions in Turkey.

Moreover, provisions in the Law such as temporary suspension of CSO activities and indefinite prohibition of the persons convicted of certain crimes from taking responsibility in organs of CSOs are not proportionate measures to address TF-related risks.

The FATF wants to guarantee that governments take effective measures to mitigate TF and ML risks.

- **Concerns about effectiveness of the measures:** The Law raises concerns about the effectiveness of the measures.

The new legislation authorizes the administration to conduct obligatory audit towards not only the incidents amounting to a crime but also on the institutional operations, including the activities of associations and foundations. Making audits for associations a regular and mandatory affair will cause highly cumbersome audit process considering the number of associations in Turkey. In addition, the fact that audits will be conducted by public officials who may not have the necessary experience to undertake this duty raises concerns over the efficiency of audits while laying unduly burdens upon the associations.

Recommendation 8 points that the public sector-CSO cooperation is of utmost importance while identifying CSOs' risk and mitigation strategies, increasing awareness, and fostering their ability to combat terrorist financing abuse within CSOs.

- **Lack of outreach:** No public attempt of outreach to civil society, or intention to cooperate with CSOs, was observed during the preparation stage of the National Risk Assessment. Similarly, engagement with civil society was visibly missing during the drafting of the new Law.

Reaching out to CSOs is not only important in terms of conducting an effective risk-assessment regarding the civil society, but it also a crucial component of devising effective mitigation strategies to address TF. Strengthening knowledge on terrorist financing abuse of CSOs, preparing guides and organizing workshops are important tools for protecting CSOs from potential abuse and risk.

The FATF clearly underlines that compliance with its Recommendations should not contradict a country's obligations under the International Covenant on Civil and Political Rights²⁷ and international human rights law to guarantee freedom of peaceful assembly and of association.

- **Divergence from international standards:** According to Article 90 of the Constitution of the Republic of Turkey, as a party to the international conventions that are duly put into effect, any laws that contradict and restrict the freedom of association beyond permitted limits should be applied or interpreted in a manner compatible with the international conventions. In this regard, amendments introducing restrictive measures such as restricting online aid campaigns and auditing for associations and increased penalties do not comply with the principles of international laws in many ways.

Apart from international laws, certain amendments in the new Law concerning the Law on Aid Collection and Law on Associations also contradict with the relevant provisions safeguarding freedom of association in Turkish Constitution.

²⁷ International Covenant on Civil and Political Rights. Access Date: 8 February 2021.
<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

BEST PRACTICES FROM OTHER COUNTRIES

There are several useful examples from other countries which may offer some guidance in addressing this matter.

BEST PRACTICES ON COMBATING THE ABUSE OF CSOS ²⁸		
Approach to Protect Civil Society Sector	Countries	Methods
NPO Engagement During the TF Risk Assessment	Kyrgyzstan	Engaging CSOs with the government-led group that is responsible of conducting risk assessment for the NPO sector. Representatives from NPO sector work with public officials to adopt a methodology created with the help of international consultancy. In line with the methodology, active engagement of the NPO sector is designed to improve efficiency of data collection, raise awareness regarding potential risks and build trust among the sectors.
	France	Writing a guide of good conduct about the risk of terrorist financing for CSOs to inform them about effective policies and implications and to promote due diligence processes.
Sectoral Outreach	Spain	Writing a guide of good conduct to assist responsible public officials in fulfilling their duties to ensure that CSOs are not used to reroute funds and resources to individuals or groups affiliated with terrorist organizations. The guide also includes standards and practices for CSOs to improve their capacities regarding their internal policies on three main areas: functioning of directing bodies, planning and technical monitoring activities, financial transparency.
	United Kingdom	Setting up a small outreach team to increase awareness on problems such as fraud and abuse by terrorist organizations. By developing cooperation with partners, the team aims to strengthen CSOs in protecting themselves from terrorist abuse.
	The United States of America	Engaging with the U.S. NPO sector, including community leaders, charities, donor in sustained dialogue. Outreach events are organized all over the country on regular basis to meet with all related stakeholders. Various guidance materials on the terrorist financing threat and risk mitigation best practices are also prepared and updated to effectively protect civil society sector from terrorist abuse.
	Canada	Writing a guide to support CSOs in compliance with legal and regulatory obligations related to combating terrorist financing. The guide provides suggestions for CSOs to improve internal governance, accountability and transparency standards, risk management mechanisms. To raise awareness in determining vulnerabilities to terrorist abuse and provide self-assessment tool for CSOs, a checklist is prepared and published online.
Supervision and Monitoring	Norway	Providing funding by the Norwegian government to the NPOs which are operating in higher risk areas. NPOs funded by the government become subject to supervisory measures like registration, reporting on use of funds, declaring income and expenditure.

²⁸ FATF, *Best Practices Paper on Combating the Abuse of Non-Profit Organisations (Recommendation 8)*. Access Date: 8 February 2021. <https://www.fatf-gafi.org/documents/documents/bpp-combating-abuse-npo.html#:~:text=FATF%20Recommendation%208%20requires%20that,for%20the%20financing%20of%20terrorism>

SUGGESTIONS AND CONCLUSION

In light of the information provided in this information note, it is clear that the Law on the Prevention on Financing of Proliferation of Weapons of Mass Destruction in Turkey is poised to stifle the operations and activities of CSOs. In that regard, it is not in compliance with the FATF standards and does not provide effective mechanisms to combat terrorist financing. As the best practices and experiences offered by the FATF reveal, the protection of fundamental rights, freedoms, and civic space is an indispensable tenet of compliance with

international standards.

TUSEV thus recommends the re-evaluation of Turkey's mitigation strategies to comply with the FATF's particular provisions regarding civil society. This reassessment, along with a participatory deliberative process legitimized by the cooperation of relevant stakeholders, public authorities, and CSOs is necessary for the development of a more enabling environment for civil society, and it can manifest fair and effective results. The following set of recommendations can help us get there:

- 1. Development of a comprehensive risk-assessment mechanism that is objective, inclusive and participatory, with engagement from civil society as shown in best practice guide by the FATF documents.*
- 2. Risk assessments should involve periodic review and a mechanism for objection. Once developed, the risk-assessment approach and its application should be communicated transparently to the public.*
- 3. Strengthening CSOs by increasing their know-how and awareness regarding TF/ML-related risks, approaches for mitigation of these risks, as well the FATF standards and requirements.*
- 4. Evaluation and amendment of existing civil society laws and regulations*
- (including the new Law) based on the identified risks and in line with FATF's recommendations.*
- 5. Formation of a joint multi-stakeholder working group to discuss how to best address the 2019 FATF report recommendations.*
- 6. Development of solutions to the shortcomings addressed by the FATF, which will support the enabling environment for civil society and comply with international human rights law.*
- 7. Strengthening coordination among public authorities that work to address TF/ML, as well as cooperation between the latter and civil society organizations.*

In conclusion, all regulations concerning civil society must take into consideration the protection of fundamental rights and freedoms, as well as the enabling environment for civil society. Combating money laundering and terrorist financing effectively is possible without disrupting civic space and to the fulfilment of the FATF Recommendations. Yet, this cannot be achieved without engaging civil society in identifying the best approaches. In light of our aforementioned recommendations, we invite all stakeholders to develop solutions through effective dialogue and collaboration.