

Countering terrorism or constraining civil society?

The impact of Financial Action Task Force recommendations on non-profit organisations in Central and Eastern Europe and Central Asia



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1. Introduction: an enabling environment for civil society?

The Arab uprisings that began in late 2010 galvanised ‘pro-democracy’ governments in the West into a reaffirmation of their commitment to supporting civil society organisations (CSOs) working under repressive and authoritarian regimes. The US State Department launched a Strategic Dialogue with Civil Society in 2011, and two years later President Obama launched the Stand with Civil Society campaign, “a global call to action to support, defend, and sustain civil society amid a rising tide of restrictions on its operations globally”.¹ The European Union (EU) established the European Endowment for Democracy² and committed to “a more strategic engagement with CSOs” and the mainstreaming of CSO dialogue across “all external instruments and programmes and in all areas of cooperation”.³ The United Nations is also committed to the “enabling environment for civil society” which it views as central to the realisation of its Millennium Development Goals.⁴ Running counter to (and part of the reason for) this recent affirmation of support for the “enabling environment” is the spread of restrictive civil society laws around the world. These laws can prohibit or impede the formation of CSOs, restrict their access to domestic and international funding and hinder their day-to-day operations. The trend toward restriction is demonstrated by reports from the International Centre for Non-profit Law (among others), which has documented the introduction of such laws in more than 50 countries,⁵ and the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association.⁶ It is a trend that the Carnegie Endowment for International Peace recently described as “global”, “lasting” and intimately related to “fundamental changes in international politics”.⁷

Paradoxically, the changes in international politics cited by Carnegie include international counter-terrorism standards, devised by democratic states after 9/11, which provide a justification for less democratic and repressive governments to introduce restrictive laws and regulatory environments for CSOs. The standards in question, which are explained in the following section, advance the hypothesis that non-profit organisations are particularly vulnerable to abuse or exploitation by terrorist groups. Concomitant to this perceived risk is the requirement that all states ensure that they have robust laws and procedures in place to combat the “threat”. This problem was first examined in detail in a report we published in 2012 entitled “Legalising Surveillance, Regulating Civil Society”.⁸ In this follow-up report we revisit the report’s core assumption – that these standards are a vehicle for the imposition of restrictive CSO laws – by examining their implementation in 17 countries in central and eastern Europe and central Asia.

¹ *U.S. Support for Civil Society*, The White House, 23 September 2014: <http://www.whitehouse.gov/the-press-office/2014/09/23/fact-sheet-us-support-civil-society>

² European Endowment for Democracy: <https://www.democracyendowment.eu/>

³ *EU Council conclusions on The roots of Democracy and sustainable development: Europe’s engagement with Civil Society in external relations*, 15 October 2012:

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/132870.pdf

⁴ *Outcome document for the UN Summit to adopt the Post-2015 Development Agenda*: <https://sustainabledevelopment.un.org/content/documents/7261Post-2015%20Summit%20-%202020June%202015.pdf>

⁵ *Global Trends in NGO Law*, International Center for Not-for-Profit Law: <http://www.icnl.org/research/trends/index.html>

⁶ *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, Maina Kiai, 24 April 2013: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39_EN.pdf

⁷ *Closing Space: Democracy and Human Rights Support Under Fire*, Carnegie Democracy and Rule of Law Program, February 2014: <http://carnegie.ru/2014/02/20/closing-space-democracy-and-human-rights-support-under-fire>

⁸ *Counter-terrorism, ‘policy laundering’ and the FATF: legalising surveillance, regulating civil society*, Transnational Institute/Statewatch: <http://www.statewatch.org/analyses/no-171-fafp-report.pdf>.

2. Parameters of the study

This study is concerned with the implementation of Financial Action Task Force (FATF) Recommendation 8 on combating the potential “abuse” of non-profit organisations (NPOs) for the purpose of terrorist financing in Central and Eastern Europe (CEE) and Central Asia. Its aim is to ascertain the impact of this Recommendation on the regulatory framework for non-profits in selected countries, and how this in turn affects the freedom of association and expression of NPOs. This is done by examining two regional formations of the FATF: “MONEYVAL”, encompassing the CEE, and the “Eurasian Group” covering central Asia.

In this section we outline our methodology and explain the background to the FATF’s recommendations on counter-terrorist financing; the evolution of Recommendation 8 on NPOs; the FATF’s evaluation and enforcement mechanisms; and our working hypothesis: that these mechanisms are being used as a global vehicle for top-down NPO regulation that may provide less democratic and repressive governments with the legitimacy to enact laws that unduly restrict the legitimate activities of non-profits.

2.1 The FATF & Recommendation 8

The FATF (also known as *Groupe d’Action Financière* (GAFI)) is an international consortium of governments that was established following the G7 Summit in Paris in 1989. The FATF was given a mandate to examine money laundering techniques and trends, national and international counter measures, and to develop a comprehensive framework to combat money laundering. In 1990 it adopted 40 detailed recommendations to that effect (the ‘AML’ recommendations).

In the aftermath of 9/11 the FATF’s mandate was extended to terrorist financing and a further eight “Special Recommendations” were quickly added to the AML standards; a ninth was added in 2004 (the ‘CFT’ recommendations). These measures reflected the approach of the US PATRIOT Act and UN Security Council Resolution 1373 on counter-terrorism which sought to criminalise material and financial support, intentional or otherwise, for designated terrorist groups. In 2012, following a three-year review, the AML and CFT Recommendations were merged into a single set of 40 “AML-CFT” standards.⁹ The AML-CFT framework was also extended to countering the ‘financing of proliferation’, reflecting the sanctions adopted against Iran by some but not all FATF members. All but a handful of countries around the world are now committed at ministerial level to putting the recommendations into practice. Yet despite its global policy-making role, there is no intergovernmental convention underpinning or regulating the activities of the FATF.¹⁰

Because of the Financial Action Task Force, laws designed to criminalise support for terrorist organisations are increasingly linked to regulations governing charities and non-profits. The hypothesis promoted by the FATF is that terrorists hide behind CSOs or use them to funnel money, requiring states to enact a range of counter measures. The FATF’s standards now represent an essential element of the global “good governance” agenda promoted United Nations, European Union, International Monetary Fund (IMF), World Bank and regional development banks. According to FATF Recommendation 8 (R8):

⁹ *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation - the FATF Recommendations*, FATF: http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf

¹⁰ The FATF is based at but independent of the intergovernmental Organisation for Economic Cooperation and Development (OECD) in Paris.

Countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Non-profit organisations are particularly vulnerable, and countries should ensure that they cannot be misused:

- (i) by terrorist organisations posing as legitimate entities;*
- (ii) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures;*
- (iii) and to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.*

Whereas FATF R8 simply calls on states to review the adequacy of their laws and regulations as far as they relate to non-profits, the FATF's "interpretative note",¹¹ "best practices"¹² and "handbook for countries and assessors"¹³ significantly expand the requirements stemming from the recommendations, calling *inter alia* for the licensing or registration of non-profits, the introduction of extensive record-keeping, reporting and vetting requirements (including a "know your beneficiaries and associates" principle) and encouraging increased police scrutiny of the non-profit sector. In implementing FATF Recommendation 8, states are encouraged to use the guidance and best practice to inform their domestic policy development. Taken together, these documents expand the focus of R8 from counter-terrorism to CSO transparency and accountability writ large.

At the same time, the drafters of Recommendation 8 made some attempt to restrict the focus of the regime to legal entities or organization that primarily engage in raising or disbursing funds. Moreover, the supervisory measures are then further restricted to those organizations accounting for "a significant portion of the financial resources and a substantial share of the sector's international activities".¹⁴ Taken together these measures should limit the reach of R8 to a small subset of what most countries would regard as their non-profit sector (i.e., excluding small and informal organizations, advocacy groups and many others). In practice, however, it appears to be very rare that legislation regulating non-profits is limited to specific groups. Moreover, the FATF's R8 typologies report (see further below), suggests that counter-terrorism specialists appear much more concerned with smaller, informal organisations with little public visibility in donor countries, than the likes of World Vision and the Bill and Melinda Gates foundation.

The FATF's top-down model has been criticised by CSOs, who until very recently have not been consulted on its development or implementation. A major criticism is that the actual involvement of non-profits in terrorist activity remains extremely rare relative to the size of the NPO sector. And although there have certainly been the occasional cases of "front" or "sham" charities and CSOs that have been found guilty of terrorist financing, it is argued that these can and should be dealt with through the ordinary criminal law.¹⁵ In 2009 a UN Counter Terrorism Implementation

¹¹ *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation - the FATF Recommendations*, FATF: http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf

¹² *Best Practices on Combating the Abuse of Non-Profit Organisations (Recommendation 8)*, FATF: <http://www.fatf-gafi.org/topics/fatfrecommendations/documents/bpp-combating-abuse-npo.html>

¹³ *AML/CFT Evaluations and Assessments: Handbook for Countries and Assessors*, FATF: <http://www.fatf-gafi.org/media/fatf/documents/reports/Handbook%20for%20assessors.pdf>

¹⁴ See Recommendation 8, Interpretative Note: http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf

¹⁵ A report for the European Commission, published in 2008, found "limited abuse of foundations" (see *Study to Assess the Extent of Abuse of Non-Profit Organisations for Financial Criminal Purposes at EU Level*, European

Task Force working party called on states to “avoid rhetoric that ties [non-profits] to terrorism financing in general terms, because it overstates the threat and unduly damages the [non-profit] sector as a whole.”¹⁶

A nascent dialogue between the FATF Secretariat and representatives of the non-profit sector promises piecemeal reform to the key R8 guidance documents. In July 2014 the FATF produced a new “Typologies” report on Recommendation 8 designed to highlight the *modus operandi* used by terrorist financiers.¹⁷ It was based on just over 100 (unpublished) case studies, derived from governments and open sources, of terrorist abuse in the NPO sector. The report was strongly criticised by CSOs and non-profits for conflating “vulnerability” and “risk”, implying that “the NPO sector as a whole faces systemic risk or abuse” (in the absence of a credible evidence base), and for failing to recognise the counter-risk of over-regulation to NPOs “doing critical work that saves lives and provides an alternative to the terrorist narrative”.¹⁸

In June 2015, the FATF published a revised its “Best Practices” guidance for “Combating the Abuse of Non-Profit Organisations” in accordance with Recommendation 8.¹⁹ Unlike the “Typologies” paper, and following a more constructive dialogue with civil society,²⁰ the revised best practices paper takes into account some of the concerns raised by civil society since 2012. Specifically, the revised paper recognizes the vital work of civil society and the principle that “not all NPOs are high risk, and some may represent little or no risk at all”. It also recognises that “a “one size fits all” approach to all NPOs is not appropriate, either in terms of how countries supervise and monitor the sector, or how financial institutions manage business relationships with customers who are NPOs”; and notes that the self-regulatory mechanisms that the non-profit-sector has developed and implemented can help prevent abuse; and that it means that a “one size fits all” approach to all NPOs is not appropriate”. The revised best practices also clarify that R8 “does not apply to the NPO sector as a whole”; is intended “to apply only to those NPOs that pose the greatest risk of terrorist financing abuse”; and that the best practices “are not mandatory elements of the FATF Standards”.

Importantly, the revised best practices also stress that in accordance with R8 a full risk assessment of the terrorist financing threat in the non-profit sector should be undertaken in order to determine whether new regulations are necessary. This also reflects the “risk-based approach” (RBA), which was introduced into the FATF standard-setting machinery in 2012 following a full review of the 40 Recommendations. It is supposed to allow countries “within the framework of

Commission Directorate General Justice, Freedom & Security: http://ec.europa.eu/home-affairs/doc_centre/terrorism/docs/study_abuse_non_profit_orgs_for_financial_criminal_purposes_avril09.pdf). The UK Charities Commission has also reported that “actual instances of abuse have proved very rare” (see *Counter-terrorism strategy*, Charity Commission: http://www.charitycommission.gov.uk/our_regulatory_activity/counter_terrorism_work/ctstrategy.aspx) and the U.S. Treasury has acknowledged that the vast majority of the 1.8 million U.S. charities “face little or no terrorist financing risk” (see *Charities End Dialogue With Treasury Over Guidelines That Stifle Effective Global Grantmaking*, Council on Foundations Press Release, 22 November 2010: <http://foundationcenter.org/pnd/news/story.ihtml?id=315500008>).

¹⁶ *Final report of the Working Group on Tackling the Financing of Terrorism*, United Nations Counter Terrorism Implementation Task Force: <http://siteresources.worldbank.org/FINANCIALSECTOR/Resources/wg5-financing.pdf>

¹⁷ *Risk of Terrorist Abuse in Non-Profit Organisations*, FATF: <http://www.fatf-gafi.org/media/fatf/documents/reports/Risk-of-terrorist-abuse-in-non-profit-organisations.pdf>

¹⁸ *Charity & Security Network, Human Security Collective Send Recommendations to Financial Action Task Force*, 6 March 2014: http://www.charityandsecurity.org/news/FATF_Typologies_Recommendations

¹⁹ *Best Practices on Combating the Abuse of Non-Profit Organisations (Recommendation 8)*, FATF: <http://www.fatf-gafi.org/topics/fatfrecommendations/documents/bpp-combating-abuse-npo.html>

²⁰ See further *The Non Profit Platform on the FATF*: www.fatfplatform.org

the FATF requirements, to adopt a more flexible set of measures, in order to target their resources more effectively and apply preventive measures that are commensurate to the nature of risks, in order to focus their efforts in the most effective way". The RBA was a tacit acknowledgement that at least some countries had been over-zealous in their implementation of the FATF requirements, and the first attempt to make proportionality a primary consideration.

Because of the lengthy FATF policy cycles, neither the risk-based approach nor the revised best practices were in place when the countries examined in this study were implementing R8. They will of course be relevant when these countries are next evaluated.

2.2 Evaluation and enforcement mechanisms

Since its establishment the FATF has evolved into an increasingly influential global law enforcement, policy-making and compliance body. The core FATF group has grown from 15 to 36 members,²¹ and eight further regional FATF formations replicate its work across the world – two of which, 'MONEYVAL' and the 'Eurasian Group' are the subject of this report.²²

More than 180 countries are now committed at ministerial level to implementing the standards. Their efforts are kept under continuous review by the FATF and its regional bodies with an extensive cycle of assessment and follow-up mechanisms used to evaluate and improve states' compliance with each of the 40 Recommendations. Every 5-6 years, all states committed to the FATF's standards are subject to a "peer review" to assess their compliance with the 40 Recommendations. Teams of inspectors made up of officials from neighbouring states, FATF regional bodies, the World Bank or IMF visit and analyse the laws and practices of each country, awarding a grade – "compliant", "largely compliant", "partially compliant" or "non-compliant" – for each of the Recommendations.²³ Because the FATF standards have become a central feature of the global "good governance" agenda – they even made it into the 2011 "Busan Declaration" on aid effectiveness²⁴ – good compliance ratings from the FATF are seen as particularly important to developing countries seeking aid, trade and investment.

Moreover, if they fail to cooperate with the FATF, "non-cooperating territories" are named-and-shamed and face formal "blacklisting". Following an evaluation, all countries must report back periodically on the measures they have enacted to address any shortcomings identified by their review. The fourth round of "mutual evaluations" has just got underway. The governments of countries with "strategic AML/CFT deficiencies" – that is, states that fail to comply or largely comply with ten or more "key and core" recommendations – are placed on the "grey list" must

²¹ The FATF members are Argentina, Australia, Austria, Belgium, Brazil, Canada, China, Denmark, European Commission, Finland, France, Germany, Greece, Gulf Co-operation Council, Hong Kong, Iceland, India, Ireland, Italy, Japan, Republic of Korea, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Portugal, Russia, Singapore, South Africa, Spain, Sweden, Switzerland, Turkey, the UK and USA.

²² Eight FATF regional formations replicate the work of the 36 member-FATF: the APG (Asia/Pacific Group on Money Laundering); CFATF (Caribbean Financial Action Task Force); EAG (Eurasian Group on money laundering and terrorist financing); ESAAMLG (Eastern and Southern Africa Anti-Money Laundering Group); GAFISUD (Financial Action Task Force on Money Laundering in South America); GIABA (Inter Governmental Action Group against Money Laundering in West Africa); MENAFATF (Middle East and North Africa Financial Action Task Force); and MONEYVAL (Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism).

²³ The Basel Institute on Governance has begun mapping the CFT compliance ratings of FATF member states, see: <http://www.baselgovernance.org/big/news-archive/interactive-counter-terrorist-financing-world-map/>.

²⁴ ^{4th} High-Level Forum on Aid Effectiveness, Busan, Republic of Korea, 29 November – 1st December, Busan Partnership for Effective Development Cooperation: http://www.aideffectiveness.org/busanhl4/images/stories/hlf4/OUTCOME_DOCUMENT_-_FINAL_EN.pdf.

submit to an FATF International Cooperation Review Group and agree an Action Plan and timetable for reform, both of which are subject to further monitoring.

A controversial Terrorism Financing Bill approved by the Turkish Parliament in February 2013 demonstrates the power of these enforcement mechanisms.²⁵ Critics had long argued that the draft law would be used to further stifle political opposition in a state that has been strongly criticised by the UN Human Rights Committee (among others) for using counter-terrorism laws against politicians, activists, lawyers, journalists and human rights defenders.²⁶ At its October 2012 plenary, the FATF issued a formal threat to suspend Turkey's membership by February 2013 unless the Bill was adopted.²⁷ Prior to the Parliamentary vote, the Turkish Justice Minister warned legislators that if they failed to back the bill "the Turkish economy may face serious problems... money transfers from and to Turkey would be possible only after checks by the FATF... caus[ing] serious problems for Turkey's exports, imports and hot money flow."²⁸ To underscore the extent of the pressure attached to FATF compliance, the global credit rating agency, *Fitch*, issued a written statement welcoming the subsequent adoption of the law.²⁹

2.3 The hypothesis: R8 and political space

The obvious danger in encouraging less democratic and repressive states to adopt new civil society laws and non-profit regulations in the name of counter-terrorism is that it encourages such regimes to adopt wide-ranging laws that restrict the legitimate activities or "political space" of CSOs when transposing the requirements.

In April 2012 *Statewatch* and the *Transnational Institute* published research examining the mutual evaluation reports on 159 countries with respect to R8.³⁰ It found that 85% were rated as "non-compliant" or only "partially compliant", fuelling concerns that all of these countries could come under pressure to introduce new regulations that threaten civil society space. The report highlighted that the FATF and its regional formations have already endorsed or encouraged restrictive non-profit regulations in countries like Burma/Myanmar, Cambodia, Colombia, Egypt, India, Indonesia, Paraguay, Russia, Saudi Arabia, Sierra Leone, Tunisia and Uzbekistan. At the FATF plenary in October 2012, the USA, Canada, France, Italy, Japan and the UK circulated a statement endorsed by the World Bank expressing concern that R8 "is being used as justification to suppress the activities of legitimate NPOs [not-for-profit organizations] and charitable and civil society organizations" and clarifying that this is not the intention of the Recommendation.

²⁵ *Parties divided over terror financing bill*, *SESTimes.com*:

http://turkey.setimes.com/en_GB/articles/ses/articles/features/departments/national/2011/12/20/feature-01; *Turkish parliament approves anti-terrorism financing law*, Reuters: <http://www.reuters.com/article/2013/02/07/us-turkey-financing-law-idUSBRE91614K20130207>

²⁶ See for example *Concluding observations on the initial report of Turkey adopted by the Committee at its 106th session, 15 October to 2 November*, United Nations Human Rights Committee (2012):

<http://www2.ohchr.org/english/bodies/hrc/docs/.../CCPR-C-TUR-CO-1.doc>

²⁷ *Outcomes of the Plenary meeting of the FATF, Paris, 17-19 October 2012*, available at: <http://www.fatf-gafi.org/topics/fatfgeneral/documents/outcomesoftheplenarymeetingofthefatfparis17-19october2012.html>.

²⁸ *Panel approves bill for prevention of terrorism financing*, *Hurriyet Daily News*, 26 January 2013:

<http://www.hurriyetdailynews.com/panel-approves-bill-for-prevention-of-terrorism-financing.aspx?pageID=238&nid=39865>

²⁹ *Turkey Terrorism Law Should Reduce Risk to Market Access*, *Fitch Wire*, 12 February 2013:

http://www.fitchratings.com/gws/en/fitchwire/fitchwirearticle/Turkey-Terrorism-Law?pr_id=782547

³⁰ *Counter-terrorism, 'policy laundering' and the FATF: legalising surveillance, regulating civil society*, *Transnational Institute/Statewatch*: <http://www.statewatch.org/analyses/no-171-fafp-report.pdf>.

As noted above, foreign policy concerns for the “enabling environment” are frequently contradicted by the actions that states demand in the name of “counter-terrorism”. Diplomatic cables released by *Wikileaks* show that the US government had hitherto encouraged strict R8 compliance in (among others) Azerbaijan,³¹ Bahrain,³² India,³³ Kuwait,³⁴ Morocco,³⁵ Nigeria,³⁶ Russia,³⁷ Saudi Arabia,³⁸ the United Arab Emirates³⁹ and Yemen,⁴⁰ none of whom are known for maintaining a favourable climate for non-profits favouring freedom of association.

In 2013, in preparation for the fourth round of mutual evaluations, the FATF revised its assessment methodology to make it more “effectiveness-led”,⁴¹ reflecting the new “risk-based” approach described above. Instead of simply asking whether states had the correct laws in place to implement the FATF Recommendations (technical compliance), assessors are now also tasked with evaluating the practical effectiveness of the measures in question: “the extent to which the defined outcomes are achieved”.⁴² In respect to R8 the result of national implementing measures is supposed to be that “Terrorists, terrorist organisations and terrorist financiers are prevented from raising, moving and using funds and from abusing the NPO sector.”⁴³ Moreover, assessors are now asked to weigh “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.”⁴⁴ However, in the absence of further guidance and dedicated expertise on the enabling/disabling environment for civil society, it remains unclear if and how the evaluators will weigh any negative impacts of restrictive legislation and practice on CSOs and non-profits into their assessment.

Our previous report noted how “effectiveness” had been perceived in previous R8 evaluations of countries with particularly poor human rights records such as Saudi Arabia (“outclasses many

³¹ Cable from US Embassy Baku, *AZERBAIJAN PASSES MONEY LAUNDERING/TERRORIST FINANCING LAW*, 17 February 2009: <http://wikileaks.org/cable/2009/02/09BAKU130.html>

³² Cable from US Embassy Manama, *CHARITIES AND MENA-FATF PLENARY IN CAIRO*, 17 March 2006: <http://wikileaks.org/cable/2006/03/06MANAMA418.html>

³³ Cable from US Embassy New Delhi, *U.S. TREASURY AND GOI DISCUSS PROLIFERATION AND TERRORIST FINANCE CONCERNS*, 17 October 2008: <http://wikileaks.org/cable/2008/10/08NEWDELHI2671.html>

³⁴ Cable from US Embassy Kuwait, *DEMARCHE DELIVERED ON CHARITIES AND MENA/FATF*, 15 March 2006: <http://wikileaks.org/cable/2006/03/06KUWAIT889.html>

³⁵ Cable from US Embassy Rabat, *DEMARCHE DELIVERED ON CHARITIES AND MENA/FATF*, 15 March 2006: <http://wikileaks.org/cable/2006/03/06RABAT469.html>

³⁶ Cable from US Embassy Abuja, *TERRORISM FINANCE: COUNTERING TERRORIST ABUSE OF THE CHARITABLE SECTOR*, 21 April 2009: <http://wikileaks.org/cable/2009/04/09ABUJA676.html>

³⁷ Cable from US Embassy Moscow, *SIXTEENTH SESSION OF U.S.-RUSSIA WORKING GROUP ON COUNTERTERRORISM*, JUNE 19-20, 2008, MOSCOW, RUSSIA, 3 July 2008: <http://wikileaks.org/cable/2008/07/08MOSCOW1875.html>

³⁸ Cable from US Secretary of State, *TERRORISM FINANCE: ACTION REQUEST FOR SENIOR LEVEL ENGAGEMENT ON TERRORISM FINANCE*, 30 December 2008: <http://wikileaks.org/cable/2009/12/09STATE131801.html>

³⁹ Cable from US Embassy Abu Dhabi, *UAE PREPARED TO DISCUSS CHARITIES AT MENA-FATF*, 15 March 2006: <http://wikileaks.org/cable/2006/03/06ABUDHABI1006.html>

⁴⁰ Cable from US Embassy Sanaa, *PART THREE OF FOUR: RESULTS OF FINANCIAL SYSTEMS ASSESSMENT TEAM VISIT TO YEMEN MAR 1-7, 2007*, 24 July 2007: <http://wikileaks.org/cable/2007/07/07SANAA1424.html>

⁴¹ FATF issues new Mechanism to Strengthen Money Laundering and Terrorist Financing Compliance Paris, 22 February 2013: <http://www.fatf-gafi.org/topics/mutualevaluations/key/fatfissuesnewmechanismtostrengthenmoneylaunderingandterroristfinancingcompliance.html>

⁴² *Methodology for assessing technical compliance with the FATF recommendations and the effectiveness of AML/CFT systems*, FATF (p.17) <http://www.fatf-gafi.org/media/fatf/documents/methodology/fatf%20methodology%2022%20feb%202013.pdf>

⁴³ *Ibid*, at p117.

⁴⁴ *Ibid*.

other systems... rather effective”) and Uzbekistan (“a comprehensive system of monitoring and oversight over the NPO sector”). It is hoped that the information provided in this report can assist evaluators in making more nuanced judgements about the impact and legitimacy of NPO laws and their relationship to freedom of association and expression.

2.4 Council of Europe (MONEYVAL)

MONEYVAL is the Council of Europe’s Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism.⁴⁵ The Council of Europe is the intergovernmental organisation designed to safeguard and promote the European Convention on Human Rights. It is comprised of 47 member states, 28 of which are also members of the EU. The Council of Europe describes itself as the EU’s “leading human rights organisation” and is a vocal advocate of freedom of expression and assembly.

MONEYVAL was formally established in 1997 as a Council of Europe (CoE) Sub-Committee with a mandate to ensure that member states complied with their AML and (later) CFT requirements. Although MONEYVAL is a CoE body, only 30 states are subject to its evaluations.⁴⁶ A further 20 international bodies and any member of the FATF have observer status and can attend MONEYVAL meetings. In 2011 MONEYVAL’s statute was revised to make it an independent monitoring mechanism within the CoE that is answerable directly to the Committee of Ministers.⁴⁷

Like the FATF, MONEYVAL assesses its members’ compliance with the 40 Recommendations (and related international Conventions)⁴⁸ through a peer review process of mutual evaluations. According to the MONEYVAL website: “Its reports provide highly detailed recommendations on ways to improve the effectiveness of domestic regimes to combat money laundering and terrorist financing and states’ capacities to co-operate internationally in these areas”.⁴⁹ MONEYVAL also has a mandate to conduct typologies studies of money laundering and terrorist financing methods, trends and techniques.

This report suggests that in carrying out its mandate to implement CFT requirements among Council of Europe member states, MONEYVAL is failing to take sufficient account of the CoE’s obligations to Articles 1 (respecting rights), 10 (expression) and 11 (association) of the European Convention on Human Rights.

2.5 The Eurasian Group on Combating Money Laundering and the Financing of Terrorism

The Eurasian Group (EAG) was established in 2004 at the initiative of Russia and five other founding states: Belarus, China, Kazakhstan, Kyrgyzstan, Russia and Tajikistan. Membership was expanded in 2005 to include Uzbekistan, and in 2010 to include India and Turkmenistan (India is

⁴⁵ See MONEYVAL website: <http://www.coe.int/t/dghl/monitoring/moneyval/>

⁴⁶ See MONEYVAL website: http://www.coe.int/t/dghl/monitoring/moneyval/Countries/Country_profiles_en.asp

⁴⁷ The Committee of Ministers of the Council of Europe or commonly the Committee of Ministers is the Council of Europe’s decision-making body. It comprises the Foreign Affairs Ministers of all the member states, or their permanent diplomatic representatives in Strasbourg.

⁴⁸ Specifically, the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the United Nations Convention against Transnational Organised Crime, the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism, the Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing and the relevant implementing measures and the 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, concluded within the Council of Europe.

⁴⁹ See MONEYVAL website: http://www.coe.int/t/dghl/monitoring/moneyval/About/MONEYVAL_in_brief_en.asp

also a member of the Asia/Pacific Group on Money Laundering (APG)).

The EAG has 14 observer states⁵⁰ and 18 observer organisations,⁵¹ which can participate (but not vote) in working group and plenary meetings; circulate written statements to EAG members on matters of interest relating to the EAG's remit; and receive public documents and decisions of the EAG. According to the EAG website:

*The EAG was created for the countries of the Eurasian region not included in the existing FATF-style regional groups and is intended to play an important role in reducing the threat of international terrorism and ensure the transparency, reliability and security of the financial systems of states and their further integration into the international infrastructure for combating money laundering and terrorism financing (AML/CFT). The creation of the group coincided with the launch of efforts to create conditions for the formation and development of effective anti-money-laundering systems in the region.*⁵²

Like MONEYVAL, the EAG has a mandate to conduct mutual evaluations to assess its members' compliance with AML-CFT standards, assist them in implementing the FATF Recommendations and to analyse regional trends/typologies and develop best practice.⁵³ Additionally, the EAG can also oversee technical assistance aimed at improving compliance with FATF standards in selected member countries.

In respect to FATF Recommendation 8, the EAG conducted its own 'Money Laundering with the Use of Nonprofit Organizations Typology Research' in 2011-12.⁵⁴ The study was led by Kazakhstan's Financial Intelligence Unit, which drafted a questionnaire and submitted it to all EAG member states and observers (a total of 41 states and organisations). Responses came from just four member states – Belarus, Kazakhstan, Russia and Uzbekistan – and three observers – Armenia, Ukraine and the United States. Those responses that were returned varied “in terms of completeness”, and none of the countries that responded identified terrorist financing or money laundering through NPOs as being a major problem. Indeed Armenia, Belarus, Kazakhstan and Uzbekistan all explicitly stated that “no actual cases” involving the misuse of NPOs for money laundering or terrorist financing had been identified.

2.6 Methodology

For this study we selected the 17 MONEYVAL and EAG member countries that received a “non-compliant” rating for Recommendation 8, whether in the first or second round of evaluations. An overview of MONEYVAL and EAG evaluations is provided in the table below (an overview for all MONEYVAL/EAG countries – not just those rated non-compliant – is provided in the annex). This

⁵⁰ These are Italy, United States, Ukraine, Germany, Moldova, Turkey, Armenia, Afghanistan, Lithuania, Poland, Serbia, Montenegro, France and Mongolia.

⁵¹ These are the Asia/Pacific Group on Money Laundering (APG), Asian Development Bank, Collective Security Treaty Organisation (CTSO), Commonwealth of Independent States (Executive Committee) (CIS), Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), United Nations Counter-Terrorism Committee (UN CTC), Egmont Group, Eurasian Economic Community (EEC), Eurasian Development Bank, European Bank for Reconstruction and Development (EBRD), Financial Action Task Force on Money Laundering (FATF), International Monetary Fund (IMF), Interpol, Middle East & North Africa Financial Action Task Force (MENAFATF), Shanghai Cooperation Organisation (SCO), Organisation for Security and Cooperation in Europe (OSCE), United Nations Office for Drugs and Crime (UNODC) and the World Bank.

⁵² See Eurasian Group website: http://www.eurasiangroup.org/history_mission.php

⁵³ See Eurasian Group website: http://www.eurasiangroup.org/history_mission.php

⁵⁴ See Eurasian Group website: http://eurasiangroup.org/files/Typologii%20EAG/WGTYP_2012_7_eng.pdf

gave us a broad cross-section of countries and evaluations, including those countries that were most likely to have introduced changes to (or have been put under pressure to change) national law.

Table 1: Evaluations of non-compliant MONEYVAL and EAG countries

Country	Evaluation date, Rating	Evaluation date, Rating	FATF sub-group responsible
Albania	July 2006, NC*	April 2011, NC	MONEYVAL
Andorra	July 2008, NC	March 2012, PC*	MONEYVAL
Bosnia and Herzegovina	December 2009, NC	Not yet conducted	MONEYVAL
Croatia	April 2008, NC	September 2013, PC	MONEYVAL
FYR Macedonia	July 2008, NC	April 2014, PC	MONEYVAL
Holy See	July 2012, NC	Not yet conducted	MONEYVAL
Hungary	September 2010, NC	Not yet conducted	MONEYVAL
India	June 2010, NC (assessment by APG)	Not yet concluded	APG/EAG
Kazakhstan	June 2011, NC	Not yet conducted	EAG
Kyrgyzstan	June 2007, NC	Not yet conducted	EAG
Malta	September 2007, NC	March 2012, PC	MONEYVAL
Montenegro	March 2009, NC	Not yet conducted	MONEYVAL
Poland	June 2007, NC	April 2013, PC	MONEYVAL
San Marino	April 2008, NC	September 2011, LC*	MONEYVAL
Serbia	December 2009, NC	Not yet conducted	MONEYVAL
Slovakia	September 2006, NC	September 2011, NC	MONEYVAL
Tajikistan	December 2008, NC	Not yet conducted	EAG

* Key: NC = non-compliant; PC = partially compliant; LC = largely compliant.

There were a number of constraints upon the research, which took place in the second half of 2014. These stemmed principally from the difficulty in obtaining information from desk-based research. The primary sources of information on national NPO regulation systems were the reports of MONEYVAL and the EAG which, while giving a clear insight into official positions and thinking on NPO regulation as far as it relates to anti-money laundering and terrorist financing, could not always be verified from alternative sources.

Attempts were made to obtain further information from civil society actors in some of the countries in question and from the MONEYVAL and EAG Secretariats. Whereas several CSOs were able to point us in the direction of further information, the FATF regional formations failed to answer any of the multiple requests for information that we sent them. This was particularly problematic because only a small fraction of relevant reports relating to the follow-up of evaluations carried out by MONEYVAL and the EAG are available on their websites. Without this information it is difficult or impossible to ascertain the precise influence that adherence to FATF recommendations and review procedures has had on national legislation affecting the profit-sector.

Despite these limitations, there was enough information available for this study to enable us to provide, for each of the 17 case study countries and territories listed in the table above, a snapshot of the legal and political climate in which non-profits operate and an overview of the MONEYVAL or EAG evaluation report(s) together with any follow-up process. This enables us to draw some basic but important conclusions about overall the impact of the R8 regime, and to develop some Recommendations for the FATF and its regional formations, and for those seeking to engage with them in order to promote an enabling environment for civil society.

3. Findings: impact of R8 in selected MONEYVAL and EAG countries

3.1 Overview

The mutual evaluations of R8 in the EAG and MONEYVAL regions have had a significant impact. Although nine of the countries selected for study had only been subject to one mutual evaluation (see Table 1, above), 15 of the 17 countries we examined can be seen to have adopted legislative amendments to their NPO regulatory frameworks, or to have proposed new legislation following or in anticipation of their evaluations. What is more difficult to quantify in the absence of available information, is how these measures impacted civil society organisations.

Of the eight countries that have been subject to two assessments (all of which are MONEYVAL members), these were an average of 4.7 years apart. As can be seen from the table above, in six of the eight countries, the R8 rating improved in the second evaluation (Albania and Slovakia were the exceptions). The EAG members we examined have only been subject to one mutual evaluation.

As to the time taken for states to introduce legislative amendments or new legislation, the average was 2.1 years (this is based on measures that states reported to the FATF regional bodies in accordance with the review process).⁵⁵ In the sections that follow we provide a more qualitative analysis, with a country-by-country overview of all those MONEYVAL and EAG countries that were rated non-compliant by their respective FATF sub-group. This is woven into a broader national assessment of the political and legal environment – enabling or otherwise – in which civil society operates.

3.2 Albania

Albania is a parliamentary democracy located in the south-west of the Balkans region of Europe, and is populated by some three million people. It been a NATO member since 2009 and is a potential candidate for EU accession. The current republic was established in 1991 following the dissolution, in the midst of the collapse of communism, of the dictatorial Socialist Republic – “one of the harshest and [most] idiosyncratic communist regimes.”⁵⁶ Democratic standards have varied since then: “each of Albania's post-communist elections have been marred by claims of electoral fraud,” and all governments have had to face “high unemployment, widespread corruption, dilapidated infrastructure, powerful organised crime networks, and combative political opponents.”⁵⁷

The current constitution was established in 1998 following the 'Pyramid Crisis' of 1997: following

⁵⁵ This figure is based on the time elapsed between the evaluation in which a state was rated non-compliant with R8, and the date of the legislation introduced or presented by states to argue in favour of their compliance with R8. In many cases this involves legislation that it seems countries were already intending to implement, or had implemented already, but was in any case used to argue that their regulatory systems met the requirements of R8. For example, Serbia noted its September 2009 Law on Associations, which was actually passed two months before the country underwent a FATF evaluation. For two of the 15 states in question – Andorra, and FYR Macedonia – it has not been possible to determine the month of the legislation in question. Therefore in order to provide a conservative estimate, December has been used. For Kazakhstan it has not been possible to determine either the month or year of legislation mentioned in its reports to the EAG. Again, to provide a conservative estimate, the date of the September 2013 follow-up report has there been used.

⁵⁶ *Strengthening Civil Society and Democratic Structures in Albania – Lessons Learnt*, International Centre for Non-profit Law, 2009 (p.5): <http://www.icnl.org/research/library/files/Albania/enalb.pdf>

⁵⁷ *Albania*, CIA World Factbook: <https://www.cia.gov/library/publications/the-world-factbook/geos/al.html>

the collapse of a number of Ponzi schemes, “Albania descended into civil disorders and violence in which the government was toppled and 2,000 people were killed.”⁵⁸ While the country has been significantly more stable since then, with coalition governments elected in 2009 and 2013, in January 2011 three demonstrators were killed during anti-government protests “organised by the opposition Socialist Party to protest alleged corruption and electoral fraud.”⁵⁹

Analysts paint a mixed picture for civil society. According to a 2009 report written as part of a German government project: “Twenty years after the fall of communism, despite some positive achievements, Albania is still struggling to develop a vibrant civil society.”⁶⁰ A 2010 report by CIVICUS was more positive, saying that: “In the past two decades since the demise of the dictatorship, Albanian civil society has made great strides, reaching today's moderately developed level.”⁶¹ An assessment by the Bertelsmann Stiftung in 2012 considered that: “Citizens are largely apathetic, with modest to low rates of participation in civic activities, volunteering or membership in associations and networks.”⁶² Furthermore:

*[T]he government's weak capacity, the shifting of personnel between political and civil society groups and the political co-opting of various groups have undermined the independent role of much of civil society.*⁶³

Albanian civil society organisations were asked by CIVICUS in 2010 whether they felt that their “country's regulations and laws for civil society are fully enabling, moderately enabling, or quite limiting,” and whether their organisation has “ever faced any illegitimate restriction or attack by local or central government.” With regard to the second question, 72% of organisations surveyed said they had never been subject to any such restriction or attack, but nearly a quarter had. Almost 39% of those surveyed felt that the legal framework for civil society was “quite limiting”, nearly 52% saw it as only “moderately enabling”, while just 1.2% saw it as “fully enabling”.⁶⁴ At the same time, CIVICUS considers Albania to have a low level of “state effectiveness”, a criteria that assesses whether the state can fulfil its functions or not.

This inability maybe reflected in the assessments of the country undertaken by MONEYVAL in relation to its regulation of NPOs. In July 2006, MONEYVAL's first evaluation report found that:

Albanian authorities clearly need to improve the situation as regards the non-profit sector. The examiners believe that ways could be found to encourage greater transparency of this sector on a mutual trust basis and with adequate measures (preferential taxation regime, audit of NPOs receiving donations, public control in case of public subsidies, background

⁵⁸ *Albanian Rebellion of 1997*, Wikipedia: https://en.wikipedia.org/wiki/1997_rebellion_in_Albania

⁵⁹ *Albania: Independent Inquiry Needed Into Protester Deaths*, Human Rights Watch, 26 January 2011: <http://www.hrw.org/news/2011/01/26/albania-independent-inquiry-needed-protester-deaths>

⁶⁰ *Strengthening Civil Society and Democratic Structures in Albania – Lessons Learnt*, International Centre for Non-profit Law, 2009 (p.6): <http://www.icnl.org/research/library/files/Albania/enalb.pdf>

⁶¹ *Civil Society Index for Albania: in search of citizens and impact*, CIVICUS, 2010 (p.1): <http://www.icnl.org/research/library/files/Albania/albaniacsoi.pdf>

⁶² *Albania Country Report*, BTI 2012 (p.14): http://www.bti-project.org/uploads/tx_itao_download/BTI_2012_Albania_02.pdf

⁶³ Ibid.

⁶⁴ *Civil Society Index for Albania: in search of citizens and impact*, CIVICUS, 2010 (p.27): <http://www.icnl.org/research/library/files/Albania/albaniacsoi.pdf>

checks of founders etc.).⁶⁵

Albania's non-compliant rating was based on a number of factors. MONEYVAL assessors found: "No measures in place to prevent the unlawful use of NPOs in relation to ML/TF (no review of risks, common practice of double bookkeeping, no policy for the supervision and control of NPOs)."

In April 2011 MONEYVAL assessors visited the country for an assessment as part of the third round of evaluations. Their efforts had produced little change:

Albania appears to have taken no additional steps in relation to supervision of the NPO sector since the Third Round MER, or in relation to the information held about them. The legislation in place is the same as it was then, and Albania now reportedly has 1651 registered NPOs.

NPOs are now classified under the AML/CFT Law as a class of customer to which enhanced due diligence measures should apply, but this does not address the criteria of SR VIII.⁶⁶

In fact, in 2009 the government established for the first time a budget of \$1.2 million for "civil society support, while also adopting a law to establish an agency to support civil society interests." However: "Details on NGOs that receive state funds, disclosed on the state agency's website, shows that the groups are mostly insignificant organizations known for their closeness to the government."⁶⁷ And, whatever the effects of the new budget and agency on civil society, it did not meet the requirements of MONEYVAL, which considers the need for action in Albania particularly urgent:

[T]he State Intelligence Service demonstrated a good awareness of the history of NPOs with suspected Islamic links in Albania... some of which were believed to be fronts for al-Qaeda linked activities... further action by the authorities is needed.

Albania was again found non-compliant – it had failed to carry out a review of the NPO sector; there was a "lack of demonstrated outreach to the sector"; registration requirements were weak; there was no supervision of NPOs and no requirement for them to maintain records of transactions. MONEYVAL has then, evidently failed thus far to effect any changes in the Albanian system for the regulation and control of NPOs. At time of writing in 2014, Albania remains on the grey list of countries with systemic AML-CFT deficiencies and is scheduled to be reviewed again in the first quarter of 2017.⁶⁸

3.3 Andorra

Andorra is a "tiny principality... located in the high mountains of the Pyrenees between France and Spain". The country's first constitution was passed in 1993, which established a parliamentary

⁶⁵ *Third round detailed assessment report on Albania*, MONEYVAL, 11 July 2006:

[http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round3/MONEYVAL\(2005\)37Rep-ALB3_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round3/MONEYVAL(2005)37Rep-ALB3_en.pdf)

⁶⁶ *Report on Fourth Assessment Visit*, MONEYVAL, 13 April 2011:

[http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round4/ALB4_MER_MONEYVAL\(2011\)3_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round4/ALB4_MER_MONEYVAL(2011)3_en.pdf)

⁶⁷ *Albania Country Report*, BTI 2012 (p.8): http://www.bti-project.org/uploads/tx_itao_download/BTI_2012_Albania_02.pdf

⁶⁸ *Global Assessments Calendar*, FATF: <http://www.fatf-gafi.org/media/fatf/documents/assessments/Global-assessment-calendar.pdf>

government and demoting the ruling princes to an honorary role.⁶⁹ The country “has relied on banking secrecy, tourism and duty-free trade to become a financial and commercial success,” and personal income tax was only introduced last year as part of a government effort to “progressively bring [Andorra's] tax system in line with international standards.”⁷⁰ It has a population of just over 85,000 people,⁷¹ and according to MONEYVAL's 2012 evaluation report, some 373 NPOs, made up of foundations, general associations and foreign associations.⁷²

Andorra was found non-compliant with the requirements of R8 in July 2008, during MONEYVAL's third round of evaluations:

*No steps seem to have been taken under SR VIII and those responsible for the register [of NPOs] have not been involved or consulted. The legal arrangements are not very stringent, for example bank accounts and on-going accounts are not obligatory. The risks are considered to be small, given Andorra's size and the nature of its associations, but there has not been any formal assessment of risks.*⁷³

Nearly four years later, in March 2012, Andorra was assessed as part of the fourth evaluation cycle, and was upgraded to partially-compliant. This was largely due to the adoption of a new Foundations Act (No.11/2008), which governs various aspects of the functioning of both public and private foundations registered in Andorra. However, the assessors found “no changes in the regulation, operation or supervision of associations [Andorra's other type of NPO aside from foundations] since the 3rd round evaluation.” Abuse of NPOs by terrorists was nevertheless unlikely, the assessors noted:

*Although, in view of the particularities of NPOs operating in Andorra, the risk of misuse of this sector for terrorism financing can be regarded as low, this analysis is not based on an objective assessment of the situation.*⁷⁴

This was one of several factors that underlay the partially-compliant rating:

- The legal framework governing the requirements in respect of financial transparency and record keeping and updating is not fully satisfactory, in particular as there is no possibility of imposing sanctions;
- Andorra has not performed any specific review any weaknesses in this sector that could give rise to terrorist activities;

⁶⁹ *Andorra profile*, BBC News, 1 May 2014: <http://www.bbc.co.uk/news/world-europe-17028050>

⁷⁰ *Andorra bows to EU pressure to introduce income tax*, The Telegraph, 2 June 2013: <http://www.telegraph.co.uk/news/worldnews/europe/andorra/10094209/Andorra-bows-to-EU-pressure-to-introduce-income-tax.html>

⁷¹ *Andorra*, CIA World Factbook: <https://www.cia.gov/library/publications/the-world-factbook/geos/an.html>, accessed 10 June 2014

⁷² *Report on the 4th Assessment Visit*, MONEYVAL, 8 March 2012 (p.147): http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round4/AND4-MER_MONEYVAL%282012%291_eng.pdf

⁷³ *Third round detailed assessment report on Andorra*, MONEYVAL, 23 July 2008 (p.119): [http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/progress%20reports/MONEYVAL\(2008\)36ProgRep-AND_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/progress%20reports/MONEYVAL(2008)36ProgRep-AND_en.pdf)

⁷⁴ *Report on Fourth Assessment Visit – Summary*, MONEYVAL, 8 March 2012 (p.12): [http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round4/AND4-SUMMMONEYVAL\(2012\)1_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round4/AND4-SUMMMONEYVAL(2012)1_en.pdf)

- No awareness-raising measures have been taken in respect of NPOs regarding the risks of their being misused for terrorist purposes and the protective measures available;
- Effectiveness of implementation not established: (1) very limited involvement of the competent authorities in the implementation of SR VIII; (2) it is not clear to what extent the registers of associations and foundations are kept up to date in practice; (3) partial oversight exercise by the authorities regarding this sector.

Andorra is scheduled to be evaluated again towards the end of 2016.⁷⁵ Apparently the country still has some way to go to satisfy MONEYVAL's evaluators. Given their own assessment of the risk posed to NPOs in Andorra by terrorism, it seems somewhat preposterous that the micro-state should be forced to enact new NPO regulations in the name of counter-terrorism.

3.4 Bosnia and Herzegovina

Bosnia and Herzegovina is located in the west of the Balkans and is bordered by Croatia, Serbia and Montenegro. It has a population of approximately 3.8 million people. The country “declared sovereignty in October 1991 and independence from the former Yugoslavia on 3 March 1992 after a referendum boycotted by ethnic Serbs,” who “responded with armed resistance aimed at portioning the republic along ethnic lines.” The conflict ended in November 1995 with the signing of the Dayton Peace Accords and the creation of a “cumbersome, decentralised government” overseeing a “bloated, deadlocked and ethnically dependent” system. This, in part, led to the widespread protests that broke out across the country in February 2014.⁷⁶

Just as many people in the country distrust their own government(s), so too are they disdainful of civil society organisations (CSOs). According to a report produced for the UN Volunteers programme:

*[C]ivil society and CSOs are generally viewed with a certain degree of indifference, disengagement and/or mistrust by the public in Bosnia and Herzegovina... The legitimacy and value of civil society, in the public's eye, is further diminished by the sector's weakness in promoting its accomplishments and its overall lack of transparency.*⁷⁷

The issue of transparency was raised multiple times in the UN report, which emphasised that:

*The lack of transparency – financial or otherwise – prevents members of the public and government from being able to judge whether or not CSOs are actually conducting the work that they purport to be engaged in. This lack of accountability also undermines the credibility of CSOs when calling for increased government transparency and accountability, with respect to the allocation of government funds.*⁷⁸

Relationships between civil society and the government also suffer from “low levels of

⁷⁵ *Global Assessments Calendar*, FATF: <http://www.fatf-gafi.org/media/fatf/documents/assessments/Global-assessment-calendar.pdf>

⁷⁶ *Fueling the Bosnian Protests*, World Policy Blog, 21 February 2014: <http://www.worldpolicy.org/blog/2014/02/21/fueling-bosnian-protests>

⁷⁷ *Civil Society in Bosnia and Herzegovina – Seeking the Way Forward*, United Nations Volunteer programme, 2011 (p.10): <http://www.unv.org/fileadmin/photodb/Bosnia%20&%20Herzigovina/Seeking%20the%20Way%20Forward%20-%20Civil%20Society%20in%20Bosnia%20and%20Herzegovina.pdf>

⁷⁸ *Ibid.*, p.9

cooperation and coordination... at all levels.”⁷⁹ According to USAID:

*Registration authorities have made it common practice to deny CSOs the right to use the words ‘center’, ‘institute’, or ‘agency’ in their names. Even though this is not directly prohibited by law, they argue that it is necessary to prevent people from confusing CSOs with government institutions.*⁸⁰

Notably, however, CSOs appear to have had significant protection from state interference, for better or worse. USAID wrote in 2012:

*Current legislation requires a CSO to have an assembly, board, and statute, but does not allow for government interference with internal management or the scope of activities defined in its statute. The state can only dissolve a CSO if its operations directly conflict with the BiH constitution. In addition, any CSO that does not hold a meeting of its assembly every two years is supposed to be automatically dissolved. In reality, however, there is no mechanism to monitor or enforce this requirement.*⁸¹

Reforms to the legislative and regulatory framework for NPOs have proved difficult for the government to implement. Despite consistent, significant pressure from the MONEYVAL group, a R8-compliant framework has not yet been implemented.

In December 2009 an evaluation of Bosnia and Herzegovina (BiH) undertaken as part of MONEYVAL's third round of evaluations found the country non-compliant with the requirements of R8. The evaluators noted the following as factors underlying the rating:

- No review of the adequacy of the relevant laws in order to identify the risks and prevent the misuse of NPOs for terrorism financing purposes;
- Lack of outreach to the NPO sector;
- Deficiencies of the registration mechanism;
- Deficiencies of the supervisory activities and inspections;
- No explicit legal requirement for the NPOs to maintain business records for a period of at least five years;
- Lack of sufficient national cooperation and information exchange between the national agencies which investigate money laundering/terrorist financing cases;
- No particular mechanism established for responding to international requests regarding NPOs.

The first follow-up report (discussed by officials in December 2010) noted little change, and it was subsequently decided by the MONEYVAL group to place BiH under “Compliance Enhancing Procedures”. This “requires a non-complying member to provide a report or regular reports on its

⁷⁹ Ibid. p.10

⁸⁰ ‘Bosnia and Herzegovina’ in *The 2012 CSO sustainability index for central and eastern Europe and Eurasia*, USAID (p.2): <http://www.usaid.gov/sites/default/files/documents/1863/BIH.pdf>

⁸¹ Ibid.

progress in implementing the reference documents,”⁸² significantly increasing the scrutiny under which a state is placed, in the hope of goading it into implementing the relevant measures. “MONEYVAL emphasised that, in order to show a firm political commitment, the action plan should be approved at the Government level.” Government approval was given in October 2011.⁸³

The country subsequently submitted eight compliance reports between April 2011 and December 2013 detailing its efforts. The December 2013 report is particularly noteworthy in relation to its comments on R8:

With regard to steps taken to remedy the deficiencies in Special Recommendation VIII, the Ministry of Justice of Bosnia and Herzegovina prepared amendments to the Law on the Establishment of a Joint Registry of Non-Governmental Organisations in Bosnia and Herzegovina, which also did not receive support and has also been rejected by the Parliamentary Assembly [along with proposed amendments to the Criminal Code].

USAID described this as a “major setback” for the NPO sector, citing the centralised database and unified registration procedures as the benefits of the proposed law. Whatever its merits, the authorities did not consider parliamentary procedure to be an obstacle to introducing the measures:

Considering this [the parliament's lack of support], the BiH authorities have decided that the Joint Registry of Non-Governmental Organisations in Bosnia and Herzegovina will be established through application of the Memorandum of Understanding of the Joint Registry...⁸⁴

Nevertheless, this was not enough for MONEYVAL which declared that: “the majority of the objectives of the Action Plan have still not been addressed.” Thus: “The Committee decided to apply step (iv) in respect of Bosnia and Herzegovina, which foresees a high-level mission to the country.”⁸⁵ It is unclear whether this mission has taken place, but pressure from MONEYVAL continues – in June 2014 it issued a statement noting its ongoing concern over “deficiencies in the anti-money laundering/combating the financing of terrorism (AML/CFT) regime.” MONEYVAL called on:

States and territories evaluated by MONEYVAL and other countries to advise their financial institutions to pay special attention by applying enhanced due diligence measures to transactions with persons and financial institutions from or in Bosnia and Herzegovina in order to address the money laundering and financing of terrorism risks.⁸⁶

The case of Bosnia and Herzegovina is problematic for several reasons. First, it appears that

⁸² *Bosnia and Herzegovina - 3rd Compliance Report*, MONEYVAL, December 2011 (p.3-4): http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/Compliance/MONEYVAL%282011%2923_CEPSBIH03_en.pdf

⁸³ *Public statement under Step 3 of MONEYVAL's Compliance Enhancing Procedures in respect of Bosnia and Herzegovina*, MONEYVAL, 1 June 2014: <http://www.fatf-gafi.org/media/fatf/documents/statements/MONEYVAL-public-statement-Bosnia-and-Herzegovina-Jun-2014-en.pdf>

⁸⁴ *Bosnia and Herzegovina - 8th Compliance report*, MONEYVAL, 10 December 2013 (p.7): [http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/Compliance/MONEYVAL\(2013\)20_BiH_8thCEP.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/Compliance/MONEYVAL(2013)20_BiH_8thCEP.pdf)

⁸⁵ *Ibid.*, p.11.

⁸⁶ *Public statement under Step 3 of MONEYVAL's Compliance Enhancing Procedures in respect of Bosnia and Herzegovina*, MONEYVAL, 1 June 2014: <http://www.fatf-gafi.org/media/fatf/documents/statements/MONEYVAL-public-statement-Bosnia-and-Herzegovina-Jun-2014-en.pdf>

pressure from the Council of Europe in the form of MONEYVAL has encouraged the government to sidestep parliament to implement laws regulating the non-profit sector. Given the breadth of the MONEYVAL Action Plan and its potential impact on civic freedom, it may be questioned whether this is an appropriate course of action. Second, in a country where the government should be striving to create better conditions for CSOs to work in, it is questionable whether this environment should be shaped by the demands of counter-terrorism. The “naming-and-shaming” of Bosnia and Herzegovina coupled with the current non-compliant rating in respect to R8 makes knee-jerk measures more likely, although the country is not scheduled for full evaluation again until the end of 2021.⁸⁷

3.5 Croatia

Croatia lies to the north of Bosnia and Herzegovina and has a population of just over 4.2 million. The country is a “unitary democratic parliamentary republic,” and “adopted its present constitution in 1990 and organised its first multi-party elections.” Its declaration of independence on 8 October 1991 was one factor in the break-up of Yugoslavia.⁸⁸ It is the newest member state of the European Union, having acceded to the EU in July 2013.

Representatives of Croatian civil society organisations were asked for a 2011 CIVICUS report whether the country had an “enabling” legal, regulatory and policy environment. The results suggest that:

Specifically, when asked about the regulations and law for civil society in Croatia, only 7.6% of respondents find them fully enabling. The majority finds them moderately enabling (55.1%, while 28.1% of respondents think regulations and laws are quite limiting, and 9.2% find them highly restrictive. Concerning their experiences of any illegitimate restriction or attack by local or central government, it is worrying that 79% of respondents reported facing such restriction or attack, and only 21% did not have such experience.

Furthermore, representatives of CSOs were asked how often, in their opinion, the state overly interferes in the activities of CSOs. More than 75% think that the state often and sometimes overly interferes, where only 4.3% thinks it does not interfere. Already earlier CSI results showed that the state overly interfered in civil society activities and had a paternalistic attitude.⁸⁹

Croatia received its non-compliant rating after being evaluated in April 2008 as part of MONEYVAL's third round of evaluations. The report highlighted two factors:

- no special review of the risks and not any sort of ongoing monitoring of the NPO sector have been undertaken; and
- financial transparency and reporting structures are insufficient and do not amount to effective implementation of criteria VIII.2 and VIII.3 [Recommendation 8 points 2 and 3).

Two progress reports followed (in March 2009 and April 2011) and the country was evaluated

⁸⁷ *Global Assessments Calendar*, FATF: <http://www.fatf-gafi.org/media/fatf/documents/assessments/Global-assessment-calendar.pdf>

⁸⁸ *Croatia*, Wikipedia: <https://en.wikipedia.org/wiki/Croatia>

⁸⁹ *Building identity: future challenges for CSOs as professionals in the societal arena*, CIVICUS/CERANEO, January 2011 (p.42-43): <https://www.civicus.org/downloads/CSI/Croatia.pdf>

again in September 2013 as part of the FATF's third evaluation round. This saw the country upgraded to partially-compliant status, with the assessors noting that "there have been some amendments related to the NPO sector legal framework," primarily the establishment of a register of NPOs established and maintained by the Ministry of Finance "in which all NPOs must be registered regardless of when they were established."

The Ministry of Finance also proposed that: "in order to improve supervision of NPOs... a Law on the NPO Sector Accounting should be adopted after the period covered by the [MONEYVAL] on-site visit."⁹⁰ However, there was "no clear evidence that Croatian authorities have sufficient resources for supervision and monitoring of the NPOs," and the report warned that the "level of governmental terrorist awareness specially in relation to domestic cooperation needs to be strengthened by participation of all involved authorities with providing outcomes in writing (informing NPOs of their obligations and potential risks)."

Greater involvement of law enforcement authorities in the supervision of NPOs was recommended, and the report urged the Croatian authorities to:

- undertake the sector specific review for the purpose of identifying those NPOs that are or may be at risk of being misused for TF;
- commence an outreach programs to the sector;
- raise NPOs awareness of the risks of being misused for TF;
- enforce supervision and monitoring of all NPOs; and
- harmonise legislation with regard to all types of NPOs.

Three key factors underlay the 'partially-compliant' rating awarded to Croatia:

- lack of the comprehensive review as well as regular update in relation to the vulnerability of NPOs to terrorist financing risks;
- no requirement to maintain, for a period of at least five years, records of domestic and international transactions;
- apart from the issuance of typology reports, there has been insufficient outreach to the NPO sector and little awareness raising on risks for NPOs to be misused for TF.

Given the apparently restrictive environment for civil society in Croatia and the amendments already made to comply with R8 it is of concern that MONEYVAL is pushing for yet more rigorous standards in the name of counter-terrorism. Its next review is scheduled for 2019.⁹¹

3.6 Former Yugoslav Republic of Macedonia

The Former Yugoslav Republic of Macedonia (hereafter Macedonia) is a landlocked state surrounded by Greece to the south, Bulgaria to the east, Serbia to the north and Albania to the

⁹⁰ *Report on Fourth Assessment Visit*, MONEYVAL, 17 September 2013 (p.223):

[http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round4/CRO4-MERMONEYVAL\(2013\)15_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round4/CRO4-MERMONEYVAL(2013)15_en.pdf)

⁹¹ *Global Assessments Calendar*, FATF: <http://www.fatf-gafi.org/media/fatf/documents/assessments/Global-assessment-calendar.pdf>

west. It was “spared the inter-ethnic violence that raged elsewhere in the Balkans following the break-up of Yugoslavia... but it came close to civil war a decade after independence.” An uprising in 2001 demanded “greater rights for the ethnic Albanian minority,” creating “a wave of refugees” as “the rebels made territorial gains.” A peace deal was brokered and greater rights for ethnic Albanians were formalised by constitutional amendments in late 2001,⁹² although tensions persist with inter-communal violence and riots in 2013 and 2014.⁹³

The 2011 CIVICUS *State of Civil Society* report notes that Macedonia has “a relatively narrow political and civil space,” although “67% of CSOs surveyed believe the current legislation is enabling, and around 85% are satisfied with CSO registration procedures.” However, “18% report experience of illegal restrictions, such as interference or oral threats from officials.”⁹⁴ A 2012 USAID report said that:

*The legal environment deteriorated in 2012 as the authorities’ attitudes towards CSOs worsened. The government blatantly mistrusts CSOs that are critical of its policies, sometimes even publicly denouncing them as traitors. As a result, many CSOs practice self-censorship.*⁹⁵

This followed legal changes introduced by the government through the 2010 NGO Law. The law itself came after Macedonia was found non-compliant with R8, although it is not clear the NGO Law itself was a response to MONEYVAL’s demands (see further below).

There were two factors underlying the non-compliant rating, the same as those given for Croatia (see above):

- no special review of the risks and not any sort of ongoing monitoring of the NPO sector have been undertaken; and
- financial transparency and reporting structures are in practice not existing and thus do not amount to effective implementation of criteria VIII.2 and VIII.3

Two subsequent progress reports were submitted by the country to the MONEYVAL Secretariat, in September 2009 and September 2011, and in April 2014 the report on the latest mutual evaluation of the country⁹⁶ was approved. This upgraded Macedonia's status to partially-compliant, with a number of problems remaining

- no review of the adequacy of domestic laws and regulations that govern the NPO sector;
- no mechanism introduced for the periodic/systemic reassessment of the FT vulnerabilities of the NPO sector;

⁹² *Macedonia Profile*, BBC: <http://www.bbc.co.uk/news/world-europe-17553072>

⁹³ *Ethnic Albanians clash with police in Macedonia*, Reuters, 2 March 2013: <http://www.reuters.com/article/2013/03/02/us-macedonia-violence-idUSBRE92109V20130302>; 27 Arrested, 6 Injured in 2nd Day of Riots in Skopje, Novinite, 21 May 2014: <http://www.novinite.com/articles/160680/27+Arrested,+6+Injured+in+2nd+Day+of+Riots+in+Skopje>

⁹⁴ *State of Civil Society 2011*, CIVICUS, April 2012: <http://socs.civicus.org/>

⁹⁵ ‘Macedonia’ in *The 2012 CSO sustainability index for central and eastern Europe and Eurasia*, USAID (p.2): <http://www.usaid.gov/sites/default/files/documents/1863/MKD.pdf>

⁹⁶ *Report on Fourth Assessment Visit*, MONEYVAL, 3 April 2014: http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round4/MKD4-MERMONEYVAL%282014%291_en.pdf

- lack of an adequate control mechanism to ensure the veracity and validity of data and documents registered; and
- no systemic/programmatic monitoring of the sector with a view to detecting potentially FT-related illicit activities.

The latest evaluation report notes a number of legislative changes made since the third round evaluation, although it is not clear that changes were made to meet the requirements of MONEYVAL. For example:

[T]he old LCAF [Law on citizens' associations and foundations] was replaced by the new LAF [law on associations and foundations] in 2010, but this change does not seem to be generally motivated by the threat of terrorist financing. There is, however, at least one CFT aspect in which the new legislation goes beyond the former one, and this refers to the possibility to prohibit the operations of an NPO in case of terrorism-related and similar activities.⁹⁷

The main purpose of the NGO Law, according to USAID, was to introduce “public benefit status, providing public benefit organisations with special tax and customs exemptions.” However, there has been reluctance amongst NPOs to apply for the new status – as of 2012, only two had done so, as groups “fear being labelled pro-government if they apply because of the current political environment in the country.”⁹⁸

Five months after the publication of MONEYVAL's Evaluation report in April 2014, Macedonia adopted a new Law on Prevention of Money Laundering and Financing of Terrorism in an attempt to harmonize local legislation with international standards, but, reflecting the concerns of civil society, this expressly excluded NGOs and foundations from the list of entities obliged to report suspicious transactions to FIUs.⁹⁹

Since the autumn of 2014 there have been widespread protests in Macedonia following the disclosure of wiretapped conversations implicating the Government in a number of unlawful practices, including a campaign to suppress and persecute critical voices in the country. Prominent civil society activists are among 20,000 people whose phone calls were recorded.¹⁰⁰

3.7 The Holy See (including Vatican City State)

The Holy See (including the Vatican City State)¹⁰¹ – best known as the home of the Catholic Pope – may be small, but there are nevertheless “a number of organisations that are registered within the

⁹⁷ Ibid., p.217.

⁹⁸ ‘Macedonia’ in *The 2012 CSO sustainability index for central and eastern Europe and Eurasia*, USAID (p.2): <http://www.usaid.gov/sites/default/files/documents/1863/MKD.pdf>

⁹⁹ *Countries/Jurisdictions of Primary Concern – Macedonia*, US State Department: <http://www.state.gov/j/inl/rls/nrcrpt/2015/supplemental/239247.htm>

¹⁰⁰ *Insights on the current protests in Macedonia: An interview with two leading civil society activists*, CIVICUS, 27 May 2015: <http://www.civicus.org/index.php/en/media-centre-129/news-and-resources-127/2231-insights-on-the-current-protests-in-macedonia-an-interview-with-two-leading-civil-society-activists>

¹⁰¹ According to *Wikipedia*, “the ‘Holy See’ is not the same entity as the ‘Vatican City State’, which came into existence only in 1929 because of the Lateran Treaty; the Holy See, the episcopal see of Rome, dates back to early Christian times” (*Holy See*, *Wikipedia*: https://en.wikipedia.org/wiki/Holy_See). The Holy See (including Vatican City State) is the terminology employed by MONEYVAL.

VCS [Vatican City State] that fall within the FATF definition of 'non-profit organisations'."¹⁰² A July 2012 evaluation by MONEYVAL rated it non-compliant, noting the following:

- no comprehensive review of the adequacy of the relevant laws in order to identify the risks and prevent the misuse of NPOs for terrorism financing purposes;
- lack of systematic outreach to the NPO sector;
- no comprehensive monitoring activities and inspections for the whole NPO sector;
- no explicit legal requirement for the NPOs to maintain business records for a period of at least five years;
- no formal mechanism established for national co-operation and information exchange between the national agencies which investigate ML/FT cases relating to NPOs; and
- no formal mechanism established for responding to international requests regarding NPOs.

The state has not yet been re-evaluated by MONEYVAL, but its response to the initial evaluation, detailed in a progress report submitted in December 2013, seems that it is keen to take on board the recommendations made. According to the progress report, the “authorities are currently reviewing the laws applicable to NPOs that have their legal seat in the Vatican City State,” and Pope Francis has decided “to subject all NPOs having canonical legal personality and legal seat in the territory of Vatican City State to the Vatican anti-money laundering and countering of terrorism laws.” A “new law to regulate the NPO sector” was also reportedly “to be adopted in the course of the coming weeks,” in order to:

*[R]eaffirm the duty of all NPOs to inscribe themselves in the State registries, to keep updated the relevant information regarding their senior management and beneficial owners, possess detailed books and records, and to apply the 'KYB' [know your beneficiary] rule. Adequate sanctions will be imposed for the violation of those rules.*¹⁰³

In short, it appears that the Holy See is doing all it can to align its legislation and policy with that required by R8. Whether non-profits at the Vatican face or pose a terrorism financing risk is a moot point. Its next evaluation is scheduled for 2018.¹⁰⁴

3.8 Hungary

Hungary is a landlocked state in central Europe which a population of around 10 million. It became an EU member in 2004. The country is formally a parliamentary representative democratic republic, with the Prime Minister as “head of government of a pluriform multi-party system, while

¹⁰² *Mutual Evaluation Report: Anti-Money Laundering and Combating the Financing of Terrorism – The Holy See (including Vatican City State)*, MONEYVAL, 2012: http://archive.org/stream/MONEYVAL-2012-17_MER_HS_en/MONEYVAL-2012-17_MER_HS_en_djvu.txt

¹⁰³ *The Holy See (including Vatican City State), Progress report and written analysis by the Secretariat of Core and Key Recommendations*, MONEYVAL, 9 December 2013 (p.30): http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/progress%20reports/MONEYVAL%282013%2928_HS_ProgRep1_en.pdf

¹⁰⁴ *Global Assessments Calendar*, FATF: <http://www.fatf-gafi.org/media/fatf/documents/assessments/Global-assessment-calendar.pdf>

the President is head of state and holds a largely ceremonial position.”¹⁰⁵ However, in recent years democratic standards and civil liberties have come under assault from the government:

Dissatisfaction with the centre-left coalition government's handling of the economy from 2002 to 2010 coincided with the rise of the right-wing nationalist party Jobbik, known for its anti-Semitic and anti-Gypsy rhetoric, and a move to the authoritarian right by the Fidesz party, which won parliamentary elections in 2010 and 2014.

The two-thirds parliamentary majority gained by Fidesz in 2010 allowed it to throw out the comparatively liberal post-communist constitution and replace it with a constitution that critics say cements the governing party's hold on power and removes checks and balances essential for the healthy functioning of a democracy. Fidesz insists that the constitutional change was necessary in order to complete the work of eradicating the legacy of communism.

*Fidesz scored another comfortable victory in the 2014 election, albeit with a reduced majority, while the right-wing Jobbik party increased its share of the vote from 17% to 20.5%.*¹⁰⁶

Some of those on the receiving end of the government's attacks have been civil society organisations. In June 2014 the Hungarian Civil Liberties Union accused the government of Prime Minister Viktor Orban of waging “a war against civil society” (see further below).¹⁰⁷ The victory of the Fidesz party and its attempts to crack down on the freedoms of civil society happened to coincide with its second FATF evaluation, in which it was found non-compliant with R8.

Hungary was first assessed for compliance with the provisions of R8 in 2005, with the report (prepared by the IMF) concluding that it was partially-compliant. However, the next round of evaluation – which took place in September 2010, after FATF revised and expanded the provisions of R8 – found Hungary to be non-compliant.

In 2005 it was recommended that in order to improve its rating, the authorities should “conduct a review of the sector in order to be fully compliant with the FATF recommendations,” looking “broadly at increasing the transparency in the sector, strengthening the legal basis for supervision and oversight over NPO fundraising.” Furthermore, the authorities “should consult widely with the sector on ways of improving transparency and reporting.”¹⁰⁸

The authorities evidently failed to do so, despite the fact that “[m]ost of the elements of the action plan as set out in the 3rd round report appear to have been addressed and overall progress has continued to be made since the adoption of 3rd round mutual evaluation report.” The September 2010 report found that, in relation to R8, there was:

- no special review of the risks in the NPO sector undertaken;
- insufficient outreach to the NPO sector on FT risks;

¹⁰⁵ *Politics of Hungary*, Wikipedia: https://en.wikipedia.org/wiki/Politics_of_Hungary

¹⁰⁶ *Hungary profile*, BBC News, 10 April 2014: <http://www.bbc.co.uk/news/world-europe-17380792>

¹⁰⁷ *Why is the Hungarian Government Waging a War on Civil Society?*, European Liberties Platform, 25 June 2014: <http://www.liberties.eu/en/news/hungary-ngo-war>

¹⁰⁸ *Third round report on Hungary*, MONEYVAL, 9 November 2005 (p.101): http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round3/MONEYVAL%282005%2917-I_Rep-HUN_en.pdf

- there is no formalised and efficient system in place that focuses on potential vulnerabilities;
- no clear legal provisions in place to require and maintain information on NPOs purposes and objectives in relation to their activities;
- no clear identification of those NPOs that account for a significant portion of financial resources under the control of the sector and a substantial share of the sector's international activities; and
- no specific meaningful measures or sanctioning capability for the most vulnerable parts of the sector.

These deficiencies led Hungary being placed under “regular follow-up” measures¹⁰⁹ in accordance with MONEYVAL’s Rules of Procedure.¹¹⁰ The third report written as part of this process (the only one currently made public by the MONEYVAL Secretariat) came in September 2013, and noted the efforts taken by the authorities to meet the requirements of R8. For example, a “review of the non-profit sector was undertaken” and as a consequence, “the authorities report that... several provisions were amended and enacted enhancing the transparency of the sector and other significant improvements have been proposed.” In more detail:

*The proposals take into account the judicial practice as well as experiences and practices of the European Union and other Member States. A complex system of legal rules have been developed by establishing new accounting rules, extending the rules on court deposit, publicity, penalty and setting up a freely accessible and searchable electronic database/register, as well as by the extension of rules related to bankruptcy, liquidation and winding-up proceedings for non-governmental organisations (NGOs)... These measures increase significantly the transparency in the NPO sector and ensure effective fight against illegal activities.*¹¹¹

It was also “clear” that steps “to raise awareness in the NPO sector” were being taken, but their effectiveness could not be assessed “from a desk-based review.” A new legal framework (Act CLXXV) set up new requirements on registration and transparency, as well as setting out “sanctions for senior officers of NPOs.” The report concluded that “it would appear that Hungary has made considerable progress in remedying the identified deficiencies.”¹¹²

This may have pleased the MONEYVAL secretariat, but the new provisions have to be seen in a

¹⁰⁹ 3rd regular follow-up progress report - 4th round mutual evaluation of Hungary, MONEYVAL, September 2013 (p.6): http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/follow-up%20report%204round/MONEYVAL%282013%2917_HUN_4Follow-upRep.pdf

¹¹⁰ Regular follow-up will apply where the mutual evaluation report shows that there are significant deficiencies in the State or territory's AML/CFT system. This process is thus applied in two circumstances: (a) Where any of Recommendations 1, 5, 10, 13 or Special Recommendations II or IV are rated either PC or NC; or (b) Where the Plenary so decides. See Rule 48(a), *Revised rules of procedure*, MONEYVAL, September 2013: http://www.coe.int/t/dghl/monitoring/moneyval/About/Rules_en_2013.pdf

¹¹¹ 3rd regular follow-up progress report - 4th round mutual evaluation of Hungary, MONEYVAL, September 2013 (p.47): http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/follow-up%20report%204round/MONEYVAL%282013%2917_HUN_4Follow-upRep.pdf

¹¹² 3rd regular follow-up progress report - 4th round mutual evaluation of Hungary, MONEYVAL, September 2013: http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/follow-up%20report%204round/MONEYVAL%282013%2917_HUN_4Follow-upRep.pdf

wider context:

*There are no formal restrictions to association or assembly rights [in Hungary]. Activities of NGOs however have been seriously curtailed, either by the personal takeover of the leadership of formally independent associations or by the withdrawal of financial support. Act 2011: CLXXV on the right of association is the legal basis for inequalities in state sponsoring, which allows that pro-government associations receive more funds than do associations that are critical of the government...*¹¹³

The government's arguments in favour of the new Act were that it would ensure "more legitimate and transparent functioning in the civil society sphere, and thereby increased trust in NGOs, and a growth of assertiveness in the civil sphere."¹¹⁴ In practice, however, the government has become increasingly assertive towards NGOs – in May 2014 "Hungarian government agents... raided the offices of three non-government organisations that help distribute Norwegian grants," claiming that the grants "sought to exert political influence"¹¹⁵ and that some funds were awarded to "a small green-liberal party, Politics Can Be Different."¹¹⁶ The case is ongoing, with the majority of targeted NGOs challenging the government's actions.¹¹⁷ While the provisions put in place to satisfy MONEYVAL's requirements may not have been invoked directly in the May raids, the lesson from Hungary is – as with Bosnia and Croatia – that the Council of Europe should take great caution in demanding new NPO legislation that could facilitate further state abuses. The next evaluation is scheduled for the start of 2016.¹¹⁸

3.9 India

India's compliance with FATF standards has long been a topic of interest to powerful institutions, notably the US government. An April 2006 US diplomatic cable notes "strong interest" from "top GOI [government of India] officials" in joining the FATF and the Egmont Group.¹¹⁹ Later that year a US cable notes the possibility of using the G8 for "pushing India to implement anti-money laundering legislation."¹²⁰ A February 2007 cables demonstrates that US government officials were exhorting the Indian government to "improve their anti-money laundering regime and compliance with international standards under the Financial Action Task Force (FATF) to combat incidents of terrorism financing."¹²¹ A November 2009 cable notes how the Indian government's "goal of

¹¹³ *Hungary Country Report*, Bertelsmann Stiftung, 2014 (p.7): <http://www.bti-project.org/fileadmin/Inhalte/reports/2014/pdf/BTI%202014%20Hungary.pdf>

¹¹⁴ *Questionnaire by SR on freedoms of peaceful assembly and association to NHRI*, Office of the Commissioner for Fundamental Rights, 2012 (p.7):

<http://www.ohchr.org/Documents/Issues/FAssociation/Responses2012/NHRI/Hungary.pdf>

¹¹⁵ *Hungary raids NGOs, accuses Norway of political meddling*, Reuters, 2 June 2014:

<http://uk.reuters.com/article/2014/06/02/uk-hungary-norway-funding-ngo-idUKKBN0ED1RK20140602>

¹¹⁶ *Government Control Office agents raid offices of three NGOs that help distribute Norwegian grants – Norway summons Hungary's ambassador*, Free Hungary, 3 June 2014: <http://www.freehungary.hu/index.php/56-hirek/2930-government-control-office-kehi-agents-raide-offices-of-three-ngos-that-help-distribute-norwegian-grants>

¹¹⁷ *Hungarian NGOs defy government auditors, risk loss of tax number*, Budapest Beacon, 29 June 2014: <http://budapestbeacon.com/public-policy/hungarian-ngos-defy-government-auditors-at-risk-loss-of-tax-number/>

¹¹⁸ *Global Assessments Calendar*, FATF: <http://www.fatf-gafi.org/media/fatf/documents/assessments/Global-assessment-calendar.pdf>

¹¹⁹ *Scenesetter for April 19 US-India CT joint working group*, 18 April 2006:

https://search.wikileaks.org/plusd/cables/06NEWDELHI2587_a.html

¹²⁰ *G-8 seeks to coordinate CT efforts with India*, 7 September 2006:

https://search.wikileaks.org/plusd/cables/06NEWDELHI6254_a.html

¹²¹ *Scenesetter: India counter-terrorism joint working group*, 13 February 2007:

https://search.wikileaks.org/plusd/cables/07NEWDELHI909_a.html

becoming a full member in the Financial Action Task Force” was leading it to implement a variety of new anti-money laundering measures. For example, changes to the Prevention of Money Laundering Act (PMLA) were introduced:

[N]on-governmental bodies including charitable trusts, temples, churches, mosques and educational institutions under the purview of the PMLA... The amendments will place NPOs under higher scrutiny by banks and financial institutions for large money transactions and suspicious transactions.

The cable noted:

Despite NPO concerns that the amended PMLA may make receiving assistance more difficult, the GOI is working hard to make sure no stones are left unturned as it readies itself for the FATF mutual evaluation beginning at the end of November. Regardless of its motives, stricter oversight of NPOs is a welcome addition to the GOI's anti-money laundering.¹²²

The “stricter oversight” so desired by the US was not enough to ensure a successful FATF evaluation. India was rated as non-compliant in a July 2010 joint report by the FATF and one of its regional sub-groups, the Asia/Pacific Group on Money Laundering (APG; India is also a member of the EAG, but has not yet faced evaluation by the Eurasian Group). The FATF/APG report recommended that India should:

- undertake a comprehensive NPO sector review capturing all data necessary, including the adequacy of domestic laws in the NPO sector;
- undertake a detailed risk assessment of the sector for terrorist financing;
- undertake comprehensive outreach to the NPO sector from abuse for terrorist financing as well as wider outreach in relation to good governance and accountability;
- ensure that NPOs maintain information on the identity of the persons who own, control or direct their activities, including senior officers, board members and trustees;
- demonstrate that appropriate measures are in place to sanction violations of oversight measures or rules by NPOs or persons acting on behalf of NPOs, other than those registered under the Income Tax Act and the FCRA [Foreign Contribution Regulation Act];
- implement measures to ensure that all NPOs are licensed and/or registered as such and make this new information available to the competent authorities.

At the same time as the adoption of the report, India was placed in the regular follow-up process. It also presented to FATF's June 2010 plenary meeting “a detailed Action Plan to improve compliance of its Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) regime, including with respect of the nine core and key Recommendations.”¹²³ The country

¹²² *New Delhi weekly econ office highlights for the week of November 23-27, 2009*, 27 November 2009: https://search.wikileaks.org/plusd/cables/09NEWDELHI2395_a.html

¹²³ *8th follow-up report*, FATF, June 2013 (p.5): http://www.fatf-gafi.org/media/fatf/documents/reports/mer/India_FUR8_2013.pdf

subsequently submitted regular follow-up reports to FATF.¹²⁴

Due to its overall progress, the country was removed by the FATF from the regular follow-up process in June 2013. The eighth report drafted as part of that process, approved by FATF in the same month, noted significant progress in remedying the deficiencies identified, although a number remained only “partially addressed”. This was the case with the requirements of R8:

*The Review of Foreign Contribution by NPOs and the new Foreign Contribution (Regulation) Rules, 2010, together with the outreach activities being undertaken, enable the authorities to focus on higher risk NPOs. While India has clearly made progress with regard to SR.VIII, its level of compliance is not yet equivalent to LC [largely compliant].*¹²⁵

Some of the measures taken by India to fulfil FATF requirements were condemned by civil society organisations. As noted in the report *Legalising Surveillance, Regulating Civil Society*:

*The Indian government drew up new regulations in advance of the publication of the FATF report and adopted the Foreign Contribution Regulations Act (FCRA) in mid-2010. The FCRA was condemned by CIVICUS, a global civil society alliance, for allowing broad executive discretion to designate organisations as being of “political nature” and prevent them from receiving foreign funds. This is particularly problematic for organisations concerned with issues like human rights that rely more heavily on foreign grants to fund their activities. FCRA also places an arbitrary cap of 50% on the administrative expenses of an organisation receiving foreign funding; while those organisations that are given permission to receive funding from abroad must re-apply for permission from the government every five years.*¹²⁶

Media reports in June 2014 showed that a number of international organisations operating in India – including Greenpeace International, Cordaid, Amnesty International and Action Aid – had come under the scrutiny of the country's Intelligence Bureau (IB), which accused them of “using people-centric issues to create an environment which lends itself to stalling development projects.”¹²⁷ The FCRA, which was amended specifically to meet the requirements of the FATF, was invoked by the IB – it “advised the government to cancel the [FCRA] registration of Greenpeace, re-assess its tax compliance and place all its international affiliates on a home ministry watch list.”¹²⁸

The Bureau's report followed a previous assessment of Greenpeace as a “threat to national economic security,” apparently due to its campaigning against fossil fuels and nuclear energy.¹²⁹ The country's Home Ministry subsequently ordered the Reserve Bank of India to ensure that “prior permission is sought before any donation is made to NGO Greenpeace by two overseas contributors,” namely Greenpeace International and Climate Works Foundation. Greenpeace India's Executive Director, Samit Aich, has argued that the restrictions were motivated by a “nexus

¹²⁴ India presented reports in June October 2010, February 2011, June 2011, February 2012, June 2012, October 2012, February 2013 and June 2013. The eighth report (June 2013) is the only follow-up report publicly available.

¹²⁵ '8th follow-up report, FATF, June 2013 (p.42): http://www.fatf-gafi.org/media/fatf/documents/reports/mer/India_FUR8_2013.pdf

¹²⁶ *Counter-terrorism, 'policy laundering' and the FATF: legalising surveillance, regulating civil society*, Transnational Institute/Statewatch, February 2012 (p.32): <http://www.statewatch.org/analyses/no-171-fatf-report.pdf>

¹²⁷ *IB Report NGO*, Firstpost, Scribd, June 2014: <http://www.scribd.com/doc/229493571/IB-Report-NGO>

¹²⁸ *IB to govt: Cancel Greenpeace India's FCRA registration*, The Indian Express, 19 June 2014: <http://indianexpress.com/article/business/business-others/ib-to-govt-cancel-greenpeace-indias-fcra-registration/>

¹²⁹ *IB to govt: Cancel Greenpeace India's FCRA registration*, The Indian Express, 19 June 2014: <http://indianexpress.com/article/business/business-others/ib-to-govt-cancel-greenpeace-indias-fcra-registration/>

between industry and government”.¹³⁰ Bharati Sinha, a Greenpeace India spokeswoman, said: “We welcome regulation of NGOs, but our concern is that the law is being used to curb criticism of government policies.”¹³¹ In June 2015 a further 4,470 NGO’s had their licenses to receive foreign funds cancelled.¹³² It must be hoped that FATF evaluators will address these concerns in their next evaluation of the country.

3.10 Kazakhstan

Kazakhstan is a central Asian country the size of western Europe, and since becoming independent from the Soviet Union has had one president, Nursultan Nazarbayev. He has “remained in power virtually unchallenged” since 1991, focusing “on economic reform while resisting moves to democratise the political system.”¹³³ *Human Rights Watch* noted in its *2014 World Report* that the country’s “poor human rights record continued to deteriorate in 2013, with authorities cracking down on free speech and dissent through overly broad laws. Authorities maintain strict controls on freedom of assembly and religion.”¹³⁴

The environment for CSOs is restrictive and has worsened in recent years:

*In 2012 the legal environment governing CSOs and the sector's public image worsened. The Law on Religious Activities and Religious Associations places restrictions on religious groups and the government increased pressure on CSOs during the year. Public image was affected by the government's increased control of social networks and the perception perpetuated by Russian mass media of CSOs as foreign agents.*¹³⁵

The CIVICUS Civil Society Index for 2008-2010 found that a “majority of CSO representatives (62.9%) believe that Kazakhstan’s legal framework is either ‘moderately enabling’ or ‘fully enabling’,” but that 27.3% of respondents had faced “illegitimate restriction or attack by local or central government.” There are “significant challenges facing civil society, including high levels of corruption, limited political rights and personal freedoms, and significant constraints on the rule of law and state effectiveness.”¹³⁶ Recent changes to the Criminal Code and the introduction of a new Law on National Security have also led to concerns that CSOs may face further restrictions.¹³⁷ As with India, the country’s efforts to address money laundering and terrorist financing have also been a regular subject interest for the United States.¹³⁸ The EU has also recently stepped up its

¹³⁰ *Nexus between govt, industry at work against us: Greenpeace*, The Indian Express, 20 June 2014:

<http://indianexpress.com/article/india/india-others/nexus-between-govt-industry-at-work-against-us-greenpeace/>

¹³¹ *Greenpeace and Other Advocates Fear Clampdown After Leaked Report*, New York Times, 12 June 2013:

<http://india.blogs.nytimes.com/2014/06/12/greenpeace-and-other-advocates-fear-clampdown-after-leaked-report/>

¹³² *4,470 NGO Licences cancelled: Sisodia’s Kabir, DU, JNU on list*, The Indian Express, 10 June 2015:

<http://indianexpress.com/article/india/india-others/government-cancels-licence-of-4470-ngos/>

¹³³ *Kazakhstan country profile*, BBC News, 31 January 2012: http://news.bbc.co.uk/2/hi/asia-pacific/country_profiles/1298071.stm

¹³⁴ *Kazakhstan*, Human Rights Watch World Report 2014: <http://www.hrw.org/world-report/2014/country-chapters/kazakhstan>

¹³⁵ *Kazakhstan*, USAID, undated (p.1): http://www.usaid.gov/sites/default/files/documents/1863/KAZ_0.pdf

¹³⁶ *Civil Society Index in Kazakhstan*, CIVICUS, March 2011:

<http://unpan1.un.org/intradoc/groups/public/documents/nispacee/unpan045464.pdf>

¹³⁷ *Kazakhstan*, USAID, undated (p.2, p.5): http://www.usaid.gov/sites/default/files/documents/1863/KAZ_0.pdf

¹³⁸ See Wikileaks cables: <https://cablegatesearch.wikileaks.org/cable.php?id=05ALMATY4353>,

<https://cablegatesearch.wikileaks.org/cable.php?id=06ASTANA591>,

<https://cablegatesearch.wikileaks.org/cable.php?id=08ASTANA2447>,

<https://cablegatesearch.wikileaks.org/cable.php?id=09ASTANA925>

efforts at counter-terrorism cooperation with Kazakhstan and other countries in the region.¹³⁹

Kazakhstan was subject to a mutual evaluation by the EAG in 2011, with the report published in June that year. It noted that: “At the time of the on-site mission, the AML/CFT system in the country was functioning for less than one year, which made it impossible to judge on its effectiveness.”¹⁴⁰

The visit found Kazakhstan non-compliant with R8 on a number of grounds:

- No regular analysis of the NPO sector to identify FT risks or any awareness-raising activities on issues of AML/CFT were conducted;
- A system for monitoring the activities of larger NPOs does not exist;
- No special mechanisms for the timely exchange of information on NPOs, both at a national and international level, in case of suspicion of ML/FT are available;
- The range of sanctions for violations of the law is too narrow, and is not used for AML/CFT.

The report recommended that the Kazakh government:

- Assess the effectiveness of the established system for registration and monitoring of the NPO sector for the purpose of AML/CFT;
- Establish mechanisms for reporting and monitoring the activities of larger NPOs;
- Include topics on the risks posed by ML/FT to the sector into the regular schedules of awareness-raising programs attended by NPOs;
- Establish specific mechanisms for the timely exchange of information on NPOs at the international level in the case of suspicion of ML/FT.

The Kazakh government argued that the rating should be altered to “partially compliant”,¹⁴¹ but was not successful in having it changed.

The June 2014 EAG plenary meeting discussed a follow-up report on the country and noted Kazakhstan's “progress in removing deficiencies related to core and key recommendations.” It called for “Kazakhstan to continue effort to improve national AML/CFT system,” and to remove a number of other deficiencies. The follow-up report demonstrates a vast number of legal and administrative changes introduced to satisfy the requirements of the FATF recommendations.¹⁴²

In response to the its non-compliance with R8, Kazakhstan noted in the follow-up report its typology research, 'Misuse of Non-Profit Organizations for Money Laundering' (see section 2.5,

¹³⁹ *EU deepens dialogue on counter terrorism with five central Asian countries*, Council of the European Union, 9297/14, 28 April 2014:

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/142409.pdf

¹⁴⁰ *Mutual Evaluation Report. Anti-Money Laundering and Combating the Financing of Terrorism – Republic of Kazakhstan*, EAG, June 2011, p.7: http://www.eurasiangroup.org/ru/restricted/MER_2011_1_KAZ_rev.1_eng.doc

¹⁴¹ *Addition #1 to AML/CFT Mutual Evaluation Report – 2011*, EAG, 2011, p.25:
http://www.eurasiangroup.org/ru/restricted/MER_2011_1_KAZ_ADD.1_eng.doc

¹⁴² *The second follow-up report on the Republic of Kazakhstan*, EAG, June 2014, p.12:
http://www.eurasiangroup.org/files/MERs%20-%20ENG/Kazakhstan/FR_2014_4_rev_2_eng.pdf

above). It stated furthermore that in response to deficiencies identified in the report, it had amended Article 16 of its AML/CFT Law to “collection information on the activities carried out by non-profit organizations for combating money laundering and terrorist (extremist) financing.” Article 17 was also amended to allow the state to “request information from non-profit organizations on their activities for combating money laundering and terrorist (extremist) financing.” A decision of Kazakhstan's Coordinating Council on Law, Order and Crime Control now allows the Ministry of Finance's Financial Monitoring Committee to engage in “identification and curbing the activities of 'destructive' organisations.”¹⁴³ The report argues that these changes address all the deficiencies identified by the EAG with regard to R8.

The effects of these changes on CSOs remain unclear. The number of new laws introduced in recent years further restricting basic rights of association and expression suggests that the government needs no excuses for new measures, and more may be forthcoming. In July 2014 government statements indicated that “laws affecting human rights groups are likely to be tightened even further.”¹⁴⁴ It must be hoped that the relationship between the requirements of R8 and the rights to freedom of association and expression are duly noted at the next scheduled evaluation in 2018.¹⁴⁵

3.11 Kyrgyzstan

Kyrgyzstan is a landlocked and mountainous country in central Asia, bordered by Kazakhstan to the north, China to the east, Tajikistan to the south and Uzbekistan to the west. It has a population of around 5.4 million people¹⁴⁶ and is a member of the Organization for Security and Cooperation in Europe (OSCE), the United Nations, the Commonwealth of Independent States amongst other international organisations. In 2010 the 1993 constitution was replaced by a popular vote, which enforced a move from a “presidential system to a parliamentary system.” When the 2010 constitution was voted in, interim president Roza Otunbayeva commented that: “The people have put a full stop on the epoch of authoritarian, nepotistic management.”¹⁴⁷

However, according to the BBC:

*Kyrgyzstan's democratic credentials were regarded as relatively strong in the immediate post-Soviet era, but under President Akayev - who led the country after independence - corruption and nepotism took and democratic freedoms were diminished.*¹⁴⁸

In 2000 Joyce Connery was able to state: “The climate for NGOs in Kyrgyzstan is considered better than that of the other Central Asian states... The government is not the major problem facing most of these organizations; the sustainability issue [in terms of funding] is.”¹⁴⁹ A more recent EU

¹⁴³ Ibid., pp.168-9: http://www.eurasiangroup.org/files/MERs%20-%20ENG/Kazakhstan/FR_2014_4_rev_2_eng.pdf

¹⁴⁴ Kazakhstan, Kyrgyzstan and Tajikistan: Human rights NGOs under increasing pressure from the authorities, Article 19, 21 July 2014, <http://www.article19.org/resources.php/resource/37628/en/kazakhstan,-kyrgyzstan-and-tajikistan:-human-rights-ngos-under-increasing-pressure-from-the-authorities>

¹⁴⁵ Global Assessments Calendar, FATF: <http://www.fatf-gafi.org/media/fatf/documents/assessments/Global-assessment-calendar.pdf>

¹⁴⁶ Kyrgyzstan profile – Facts, BBC News, 23 May 2013: <http://www.bbc.com/news/world-asia-16187180>

¹⁴⁷ New Kyrgyz constitution approved, Al Jazeera, 28 June 2010: <http://www.aljazeera.com/news/asia/2010/06/201062873510612781.html>

¹⁴⁸ Kyrgyzstan profile - Overview, BBC News, 30 July 2014: <http://www.bbc.com/news/world-asia-16186907>

¹⁴⁹ Caught Between a Dictatorship and Democracy: Civil Society, Religion and Development in Kyrgyzstan', The Fletcher Journal of Development Studies, Volume XVI, 2000, pp.10-11: <http://fletcher.tufts.edu/Praxis/Archives/~media/Fletcher/Microsites/praxis/xvi/Connery.pdf>

assessment of the country notes that CSOs consider there to be “a shrinking space of activities under the pressure of Government policy... a downward trend in the exercise of the right to freedom of assembly”. There are also “clear signals from CSO leaders that they do not feel safe or they have doubts about their security while pursuing their activities in the regions of the country.”¹⁵⁰

Despite these problems, the EU considers civil society in the country to be “without doubt the most vibrant and active in Central Asia.” According to the EU there are an estimated 8,000-12,000 registered NGOs, but “despite the large number... there are fewer than 600-700 that operate throughout the country. The most influential and active NGOs are concentrated in the capital, Bishkek.”¹⁵¹ A USAID paper on the country suggests that although “there are approximately 11,500 registered CSOs in Kyrgyzstan... only about 1,500 of these are currently active as many inactive organizations remain on the books due to the complicated procedures to close and de-register an organization.”¹⁵²

Kyrgyzstan was evaluated for compliance with the then 40+9 recommendations in 2007 and fared badly – the EAG found it non-compliant with 15 recommendations and partially compliant with 18. Kyrgyzstan was rated as non-compliant with R8, and subject to the following observations:

- No reviews of legislation relating to NPOs have been carried out;
- No reviews of NPO sector have been carried out to identify risks of terrorism financing abuse;
- There are no outreach programs to the NPO sector;
- There is no system of supervision, monitoring and sanctions with regard to a significant portion of the sector;
- There are no mechanisms to verify [sic] the information on the beneficial ownership of NPOs;
- There are no special mechanisms for information exchange at national and international levels on NPOs suspected of terrorism financing.

The Kyrgyzstan government contested this rating in the subsequent meeting of the EAG secretariat: “Current rating is NC. Kyrgyzstan considers that the rating should be PC.” This was justified on the grounds that:

Supervision for NPOs is carried out by the General Prosecutor’s Office within the framework of general supervision aimed at all commercial and non-commercial entities and ensuring the observance of the legislation of Kyrgyzstan.

The evaluation team did not agree, saying that “rating of NC is justified”: “The supervision carried out by the General Prosecutor’s Office is not NPO-oriented,” and: “There are other factors underlying the rating (see above).”

¹⁵⁰ Kyrgyzstan – EU country roadmap for engagement with civil society 2014-17, 30 July 2014, p.2: http://eeas.europa.eu/delegations/kyrgyzstan/documents/eu_kyrgyzstan/2014_09_24_cs_roadmap_final.pdf

¹⁵¹ Ibid.

¹⁵² 'Kyrgyzstan', *The 2012 CSO sustainability index for Central Europe and Eastern Europe and Eurasia*, USAID, undated, p2: <http://www.usaid.gov/sites/default/files/documents/1863/KGZ.pdf>

The Kyrgyzstan produced follow-up reports in 2007, 2008 (twice), 2009, 2010 and 2012 to try to demonstrate that it was taking steps to achieve compliance. However, this failed to satisfy – in 2011 the FATF designated Kyrgyzstan as a “jurisdiction which has strategic AML/CFT deficiencies” and placed it on the “grey list” of countries subject to in-depth monitoring. This is akin to receiving a written warning, and Kyrgyzstan subsequently made “a high-level political commitment to work with the FATF and EAG to address its strategic AML/CFT deficiencies.”¹⁵³

The first three progress reports produced by Kyrgyzstan under the follow-up process record that with regard to SR8:

*The Security Council Working Group (Presidential Decree No. 178 dated 04.09.07) will consider the issue of misuse of NPOs for TF purposes. The FIS is currently studying the information in relation to NPOs received from financial institutions.*¹⁵⁴

The fourth and fifth reports noted that:

*The Financial Security Service of Kyrgyz Republic is collecting, integrating and analyzing information in relation to NPOs received from the reporting persons to identify terrorism financing abuse.*¹⁵⁵

Kyrgyzstan’s sixth progress report noted:

*Pursuant to paragraph 3.2 of Article 3 of the Law of KR "On AML / CFT", the FIS is drafting regulations aimed at preventing the use of funds raised, received, sent or remitted by a non-profit organization as part of its charitable activities for money laundering and terrorism (extremism) financing.*¹⁵⁶

In July 2014 it was removed from the FATF’s “grey list”:

*The FATF congratulated Kyrgyzstan for the significant progress made in addressing the strategic AML/CFT deficiencies identified in their mutual evaluation reports and the action plans agreed with the FATF. From now on, Kyrgyzstan will work with respective FATF-style regional bodies [i.e. the EAG] to address these issues.*¹⁵⁷

While the ‘peer pressure’ model employed by the FATF and its sub-groups may have had provided the Kyrgyz government with opportunities to enforce more stringent oversight of the NPO sector, the environment in which that oversight takes place is becoming increasingly hostile. According to the *International Center for Non-for-Profit Law*:

¹⁵³ Improving Global AML/CFT Compliance: on-going process – 14 February 2014, FATF, 14 February 2014:

<http://www.fatf-gafi.org/countries/j-m/kyrgyzstan/documents/fatf-compliance-feb-2014.html#Kyrgyzstan>

¹⁵⁴ First progress report on the implementation of recommendation of the EAG mutual evaluation, EAG, 2007:

http://www.eurasiangroup.org/ru/news/FR_2007_2_eng_.doc; Second progress report on the implementation of recommendation of the EAG mutual evaluation, EAG, 2008: http://eurasiangroup.org/ru/news/FR_2008_2_eng_.doc;

Third progress report on the implementation of recommendation of the EAG mutual evaluation, EAG, 2008:

http://eurasiangroup.org/ru/news/FR_2008_4_eng_.doc

¹⁵⁵ Fourth progress report on the implementation of recommendation of the EAG mutual evaluation, EAG, 2009:

http://eurasiangroup.org/ru/news/FR_2009_4_rev2_eng_Kyrgyzstan.doc; Fifth progress report on the implementation of recommendation of the EAG mutual evaluation, EAG, 2010: http://www.eurasiangroup.org/FR_2010_5_eng.doc

¹⁵⁶ Sixth progress report on the implementation of recommendation of the EAG mutual evaluation, EAG, 2012:

http://www.eurasiangroup.org/files/MERs%20-%20ENG/Kyrgyzstan/FR_2012_3_rev.2_eng.doc

¹⁵⁷ Kyrgyzstan removed from FATF non-co-operative countries list, with OSCE assistance, OSCE, 3 July 2014:

<http://www.osce.org/bishkek/120724>

In 2013 there were several efforts to limit civil society space: (1) the draft law on Money Laundering, which provided for new reporting requirements for CSOs; (2) the draft law on Unregistered CSOs, which would prohibit unregistered CSOs, whereas legislation currently in force allows for unregistered CSOs in Kyrgyzstan; (3) the draft law on Treason, which would allow for the designation of any person working with a foreigner as a traitor; and (4) the draft law on Foreign Agents, which is similar to the so-called Russian Law on Foreign Agents. The first three initiatives were rejected thanks to the advocacy efforts of CSOs, but the latter – the draft law on Foreign Agents – is still on the Parliament’s website for public discussion, and could be initiated at any time.¹⁵⁸

Although they were not passed into law, the first two of these proposals chime neatly with some of the objectives of R8. With regard to the “foreign agents” law, inspired by similar Russian legislation designed to suppress critical NPOs, Human Rights Watch has noted that it:

[W]ould create criminal liability for the leaders of nongovernmental organizations “whose work incites citizens to refuse to fulfil their civic duties or commit other unlawful acts.” This overbroad and vague formulation could have the effect of criminalizing any type of civil disobedience, even moderate forms...

The law would also impose additional burdensome reporting requirements on nongovernmental organizations and could lead to a public perception that nongovernmental groups are “foreign spies.” It would also allow authorities to suspend nongovernmental organizations that have not registered as “foreign agents” for up to six months without a court order.¹⁵⁹

The law appears to have some support in high places – an article in state-owned newspaper *Slovo Kyrgyzstana* (The Word of Kyrgyzstan) endorsed it in March 2014,¹⁶⁰ although at the time of writing it is yet to be adopted.¹⁶¹ As with Kazakhstan, new laws that appear to have increased restrictions on civil society organisations may have been introduced irrespective of the R8 requirements.

The next review is scheduled for October 2016.¹⁶² Civil society organisations in Kyrgyzstan are working together to try to influence the assessment and it must be hoped that FATF evaluators contact them.

3.12 Malta

Malta is made up of seven islands in the Mediterranean (three are inhabited), 50 miles south of Sicily. Formerly a British colony, it became independent in 1964 and is a republic with a “parliamentary system and public administration... closely modelled on the Westminster

¹⁵⁸ *NGO Law Monitor: Kyrgyz Republic*, International Center for Not-for-Profit Law, 28 May 2014:

<http://www.icnl.org/research/monitor/kyrgyz.html>

¹⁵⁹ *Kyrgyzstan: Reject ‘Foreign Agents’ Law*, Human Rights Watch, 5 December 2013:

<http://www.hrw.org/news/2013/12/05/kyrgyzstan-reject-foreign-agents-law>

¹⁶⁰ *Kyrgyzstan: Backsliding on Rights*, Human Rights Watch, 7 April 2014:

<http://www.hrw.org/news/2014/04/06/kyrgyzstan-backsliding-rights>

¹⁶¹ *Russia Pushes Kyrgyzstan to Adopt Draconian Legislation Ahead of Joining Customs Union*, The Jamestown Foundation, 27 October 2014: [http://www.jamestown.org/single/?tx_ttnews\[tt_news\]=43007&no_cache=1](http://www.jamestown.org/single/?tx_ttnews[tt_news]=43007&no_cache=1)

¹⁶² *Global Assessments Calendar*, FATF: <http://www.fatf-gafi.org/media/fatf/documents/assessments/Global-assessment-calendar.pdf>

system.”¹⁶³ It became an EU member state in 2004 and since then “much work has been done to strengthen civil society, largely through new legislation and the set up of a Commission that regulates the sector.” The subsequent creation of the Malta Council for the Voluntary Sector “has enabled the sector to extend beyond the regulatory remit and support Voluntary Organisations through networking, training and mentoring programmes, activities that promote volunteering, and a voice for change.”¹⁶⁴

However, these changes did not meet the requirements of the FATF recommendations. Malta was rated as non-compliant with R8 in September 2007 as part of MONEYVAL's third round of evaluations. The evaluators found that there was:

- No special review of the risks in the NPO sector undertaken;
- No general guidance to financial institutions as to the risk (in the light of Best Practice Paper for SR VIII);
- Insufficient legal regulation of NPO sector;
- No specific measures in place to ensure that terrorist organisations cannot pose as legitimate non-profit organisations.

Monitoring of Malta's situation continued under the regular follow-up process, and its first progress report (approved by MONEYVAL in December 2008) stated that:

The AML/CFT regime in Malta has undergone a major overhaul since the last evaluation. The prevention of Money Laundering and Funding of Terrorism Regulations of 2003 were radically amended by Legal Notice 42 of 2006 with the aim to further align and harmonise the regulations with the FATF 40 as revised in June 2003.

A second progress report followed in December 2010, and a fourth assessment visit report was adopted in March 2012. Taken together, the reports demonstrate the efforts made by Malta to meet FATF requirements. Malta introduced guidelines for financial institutions in relation to NPOs, and also introduced new legislation regulating the non-profit sector (the 2007 Voluntary Organisations Act and Second Schedule of the Civil Code), which it argued dealt with the majority of MONEYVAL's criticisms. Furthermore, “[t]he FIAU [Financial Intelligence and Analysis Unit] has made recommendations to the Office of the Attorney General to enhance the harmonisation of the Voluntary Organisations Act with Special Recommendation VIII.” The act also established “the position of Commissioner of [voluntary organisations], including his duties and functions.”

However, the 2012 assessment report, which was based on an evaluation that took place in June 2011, noted:

Despite the adoption of new legislation, no domestic review of the activities, size and relevant features of the non-profit sector for the purpose of identifying the features and types of the NPOs that are at risk of being misused for terrorist financing was conducted by the authorities. Also, there are no clear rules for the registration procedures and no form for the constitutive deed and statute of an organisation is required (even no authorised

¹⁶³ Malta, Wikipedia: <https://en.wikipedia.org/wiki/Malta#Politics>

¹⁶⁴ Malta, Euclid Network, undated: <http://www.euclidnetwork.eu/programme-areas/geographical-areas-in-which-we-work/civil-society-in-europe-country-profiles/malta.html>

*signature is required... In practice no awareness-raising programming has been initiated which is dedicated to the NPO sector... By the time of the on-site visit, no training on AML/CFT issues was provided for the NPOs.*¹⁶⁵

The evaluators were also unsatisfied with the supervision and sanctions regimes – their “effectiveness are difficult to assess as they haven't been tested in practice,” and the “sanctions provided seem not be dissuasive enough. A stronger sanction regime should be in place.” Nevertheless, the compliance rating for R8 was upgraded to partially compliant, while an action plan outlined further MONEYVAL requirements. Along with harsher sanctions, the plan demanded – amongst other things – that the Maltese authorities establish compulsory registration for NPOs; “develop a targeted risk assessment to determine the TF risks in the NPO sector”; identify the NPOs that “control significant parts of the financial resources of the sector and the ones conducting international activities”; “implement supervising and monitoring systems”; and ensure “controls and checks on the source of funds and on beneficiaries”.

It would appear that by May 2013, at least, some of MONEYVAL's demands had not been met. The newspaper *Malta Today* reported:

Catholic organisations and beneficiaries of the Community Chest Fund enjoyed blanket exemptions from successive government ministers over the last five years, in a bid to receive grants and financial aid without being enrolled with the Office of the Commissioner for Voluntary Organisations (CVO).

The exemptions, granted by social policy ministers under whom the CVO falls, has allowed church organisations to accept monies and government grants without being regulated or legally accountable – an observation with Commissioner Kenneth Wain said has created a “deficit of public accountability which damages the [voluntary] sector as a whole.”

(...)

*At least 60 exemptions out of a total of 91 were awarded to church or religious lay organisations, as well as: parishes, the Maltese and Gozitan dioceses for the receipt of EU or national government funds, band clubs, and other charitable institutions and clerical charities that support the homeless, orphaned children, the elderly and other vulnerable members of society.*¹⁶⁶

While this is demonstrative of the influence wielded by religious organisations within Malta, it is less clear what effect the implementation of new legislation and regulations has had on civil society organisations in the country as there is limited public information available. R8 compliance is certainly being used to push through new non-profit regulations,¹⁶⁷ but on the available evidence it is not possible to judge whether FATF requirements have made it more difficult for CSOs to operate. It must be hoped that this question is given due regard in the next mutual

¹⁶⁵ Report on Fourth Assessment Visit – Malta, MONEYVAL, 6 March 2012, p.15-16:

http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round4/MLT4_MER_MONEYVAL%282012%293_en.pdf

¹⁶⁶ Church groups consistently exempted from accountability on government funds, *Malta Today*, 2 May 2013:

<http://www.maltatoday.com.mt/news/national/26479/church-groups-consistently-exempted-from-accountability-on-government-funds-20130501>

¹⁶⁷ Prevention of Money Laundering and Funding of Terrorism Activities in Malta, CSB Advocates, 7 October 2011:

<http://www.csb-advocates.com/malta-law-articles/prevention-money-laundering-and-funding-terrorism-activities-malta>

evaluation, scheduled for 2017.¹⁶⁸

3.13 Montenegro

Following the dissolution of Yugoslavia in 1992, Montenegro became part of the Federal Republic of Yugoslavia, and in 2003 “the looser State Union of Serbia and Montenegro.” Following a vote, the country seceded from the State Union and became an independent republic in June 2006.¹⁶⁹ In 2008 the country applied for EU membership and is currently a candidate country; accession negotiations began in June 2012. “By mid-September 2014, twelve negotiating Chapters, including the rule of law Chapters, 23 – *Judiciary and fundamental rights* and 24 – *Justice, freedom and security*, have been opened, out which two Chapters (25 – *Science and research* and 26 – *Education and culture*) have been provisionally closed. Opening benchmarks have been set for eleven Chapters.”¹⁷⁰

USAID's most recent *CSO Sustainability Index* noted: “Civil society in Montenegro experienced some improvements in 2012, although significant problems remain.” One notable issue is that “CSOs fear that tax and other inspections can be used to pressure those that criticize the government.”¹⁷¹

In March 2009, following an evaluation as part of MONEYVAL's third round, Montenegro was found non-compliant for the same reasons as many other non-compliant states:

- Not yet carried out a review of domestic legislation that relate to NPOs vis-à-vis terrorist financing;
- No adequate access to information in order to identify the features and types of NPOs at risk for terrorist financing purposes;
- No measures implemented to ensure that terrorist organisations cannot pose as legitimate NPOs, or to ensure that funds/assets collected or transferred through NPOs are not diverted to support the activities of terrorist or terrorist organisations;
- No measures in place to require and maintain information on NPOs purposes and objectives in relation to their activities;
- No measures or procedures in place to respond to international requests for information regarding particular NPOs that are suspected of TF or other forms of terrorist support;
- The system is further weakened by the fact that R.5 has not been implemented with regard to beneficial ownership.

Progress reports followed in March 2010, March 2012, December 2012 and December 2013.

¹⁶⁸ *Global Assessments Calendar*, FATF: <http://www.fatf-gafi.org/media/fatf/documents/assessments/Global-assessment-calendar.pdf>

¹⁶⁹ *Montenegro*, CIA World Factbook, undated: <https://www.cia.gov/library/publications/the-world-factbook/geos/mj.html>

¹⁷⁰ *The European Union in Montenegro*, European Union Delegation to Montenegro, undated: <http://www.delme.ec.europa.eu/code/navigate.php?Id=56>

¹⁷¹ 'Montenegro', *2012 CSO Sustainability Index*, USAID, undated, p.3: <http://www.usaid.gov/sites/default/files/documents/1863/MNE.pdf>

As with most of the other MONEYVAL states, Montenegro began implementing changes to its regulation of NPOs following its mutual evaluation report. A new Law on Non-Governmental Organisations was adopted in June 2011 to regulate “the issue of procedure, registration, terms and forms of association of citizens in Montenegro.” This amended a 2007 Law and the changes, according to the Montenegrin government, “precisely define the terms under which an NGO can perform its business activity.”¹⁷² The government also introduced a “revised version of the Law on the Prevention of Money Laundering and Terrorist Financing (LPMLTF)... The purpose of the LPMLTF is to align the preventive measures with the 2012 FATF Recommendations.”¹⁷³

These changes allowed the government to demand that NGOs change their byelaws to accord with the new legal framework, or be “deleted from the Register”. According to the figures available in the MONEYVAL reports, this led to the removal of just over 1,100 NGOs from the official register (from 4,000 to 2,895). However, USAID reports far more dramatic figures: “of the almost 6,000 CSOs [civil society organisations] registered in 2011, over 4,500 failed to harmonise their statutes... and were deleted from the registry.” However, “a number of for-profit entities were registered as CSOs, which distorted the overall picture of the sector.”¹⁷⁴ Those remaining are subject to a revised oversight regime carried out by the Administration for the Prevention of Money Laundering and Terrorist Financing, established under the LMPLTF. This “supervises humanitarian organisations, NGOs and NPOs regarding the implementation of the LMPLTF and the bylaws adopted upon this Law.” is “carried out through the compliance officer”.¹⁷⁵

The sector has since reported problems with undue pressure from the authorities:

*CSOs fear that tax and other inspections can be used to pressure those that criticise the government. When the leader of the strongest environmental CSO, Green Home, decided to leave the sector and start a political party... the Tax Administration visited the organisation without proper notice. Furthermore, it violated the law by reviewing the organisation's finances for the last few years, despite the fact that the organisation's finances were just reviewed in 2011. Criteria for choosing organisations to inspect, inspection reports, and findings are not made public.*¹⁷⁶

According to the Montenegro government, “Most of registered NGOs are not active or they do not have any registered transaction which could be defined, on any basis, as suspicious.”¹⁷⁷ It is therefore of concern that the government was pressed by the Council of Europe to introduce more stringent oversight NPO – measures that may have provided the authorities in Montenegro

¹⁷² Progress report and written analysis by the Secretariat of Core Recommendations, MONEYVAL, 7 December 2012, p.123-4:
[http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/Progress%20reports%20y/MONEYVAL40\(2012\)25_MT_NProgRep3_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/Progress%20reports%20y/MONEYVAL40(2012)25_MT_NProgRep3_en.pdf)

¹⁷³ Fourth 3rd Round Written Progress Report Submitted to MONEYVAL, MONEYVAL, 12 December 2013, p.5:
http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/Progress%20reports%20y/MONEYVAL%282013%2926_MONprogrep4.pdf

¹⁷⁴ 'Montenegro', 2012 CSO sustainability index for central and eastern Europe and Eurasia, USAID, p.1:
<http://www.usaid.gov/sites/default/files/documents/1863/MNE.pdf>

¹⁷⁵ Second 3rd Round Written Progress Report Submitted to MONEYVAL, MONEYVAL, 5 March 2012, p.111:
[http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/Progress%20reports%20y/MONEYVAL\(2012\)7_MGR_ProgRep2_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/Progress%20reports%20y/MONEYVAL(2012)7_MGR_ProgRep2_en.pdf)

¹⁷⁶ Ibid., p.3.

¹⁷⁷ Fourth 3rd Round Written Progress Report Submitted to MONEYVAL, MONEYVAL, 12 December 2013, p.123:
http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/Progress%20reports%20y/MONEYVAL%282013%2926_MONprogrep4.pdf

with new legal avenues to undertake restrictive actions against organisations on political grounds. The country is not scheduled for review again until 2021.¹⁷⁸

3.14 Poland

Despite the historic role of civil society in the overthrow of communism in Poland, a 2012 article suggests that Polish society is largely uninterested in the work of civil society organisations, that CSOs lack the ability to communicate effectively with the public and government, and that the government did not have a strategy for civil society until 2011. In numerical terms:

*Currently there are about 71,000 associations and 12,000 foundations – associations and foundations representing two basic types of civic organizations in Poland. It may seem like a lot, but for a country with a population of more than 38 million, the number is rather moderate. By comparison, neighboring Slovakia, with 5.5 million inhabitants, is home to over 34,000 registered NGOs. In Hungary, where the population is around 10 million, there are more than 66,000 NGOs. Moreover, it has to be taken into account that about one-third of registered organizations in Poland are, in fact, not active.*¹⁷⁹

A 2006 report for CIVICUS found that:

*[E]ven if law guarantees the possibility of advocacy and criticism towards the government, there are some limitation [sic] in practice. These are a consequence of the organizations' dependence on public funds, and may also be related to the client relationship on both local and national level. A poorly developed social dialogue constitutes another problem that leads to the lack of government response to criticism.*¹⁸⁰

Regarding oversight, the CIVICUS report noted that “audits are performed quite rarely. But when they are, they tend to be painful and awkward. Representatives of the organizations point out that auditors from the Supreme Chamber of Control (NIK) often abuse their powers and audit not only the way public resources are spent, but all the activities of the organizations.”¹⁸¹ Concerns on other issues have been raised in reports by other organisations (see further below).

An evaluation of Poland as part of MONEYVAL's third round was published in November 2007 and found the country non-complaint, noting that:

No special review of the risks in the NPO sector has been undertaken. Though there is some financial transparency and reporting structures; the measures do not amount to effective implementation of the essential criteria VIII.2 and VIII.3. Consideration needs to be given to ways in which effective and proportionate oversight of this sector can be achieved in the context of SR.VIII [R8].

In the years that followed it seems the government made considerable efforts to comply with the requirements of R8. Indeed, Poland argued that it had met the requirement to undertake an “analysis of threats posed by the NPO-sector” in May 2006, which led to legal proposals in June

¹⁷⁸ *Global Assessments Calendar*, FATF: <http://www.fatf-gafi.org/media/fatf/documents/assessments/Global-assessment-calendar.pdf>

¹⁷⁹ *Civil Society in Poland – Empty Shell in Free Market Jungle*, V4 Revue, 2 April 2012: <http://visegradrevue.eu/?p=544>

¹⁸⁰ *The Challenge of Solidarity*, CIVICUS, February 2006, p.46: http://www.civicus.org/new/media/Poland_Country_Report.pdf

¹⁸¹ *Ibid.*, p.48.

2007 that “sets more precise rules for supervision to be exercised over the foundations,” as well as more stringent requirements on “internal control authorities, procedure to recall members of management bodies and the arrangements on allocating property values after the liquidation of the foundation.”¹⁸²

Further legal changes saw amendments in March 2010 to the Act on Public Benefit and Voluntary Work, laying down “a duty on NPOs to clearly define the scope of their paid and unpaid public benefit activity (non-profit activity) in articles of association. This provision is complementary to previously introduced regulation...” The new provisions also forbade NPOs from using “funds received from 1% of personal income tax donated by taxpayers, under separate provisions, in their business activity,” along with more stringent reporting requirements with regard to these provisions. Furthermore, any payments “equal to or exceeding the value of 15,000 EURO, originating also from more than one operation” were to be “subject to control within the scope of compliance with AML/CFT provisions.”¹⁸³

In its second progress report, published in September 2010, the government also argued that the requirements to issue guidance to financial institutions and to raise awareness about R8 amongst “existing control bodies engaged with the NPO sector” were satisfied. However, following Poland's fourth round assessment, which was approved by MONEYVAL in April 2013, it was only upgraded to partially compliant status. MONEYVAL justified this on the grounds that there had only been a “limited review of the risks in the NPO sector”; the “steps taken to enhance financial transparency and reporting structures do not amount to effective implementation of the essential criteria VIII.2 and VIII.3”; and that there was still a “lack of effective and proportionate oversight of this sector”.

Poland's next mutual evaluation is scheduled for 2018. Any demand for tighter NPO regulations should be considered in the light of USAID's 2012 assessment that:

*CSOs are independent in their activity and management, yet the number of formal requirements and legal regulations that they must observe once registered (over 200 according to estimates by Klon Jawor Association) poses a significant challenge. This is especially discouraging for smaller CSOs with little capacity, as the standards are the same irrespective of a CSO's size or budget.*¹⁸⁴

3.15 San Marino

San Marino, landlocked by Italy, is “an echo from an era when city-states proliferated across Europe,” and “is said to be the world's oldest surviving republic.”¹⁸⁵ After the Holy See and Monaco, it is the third smallest state in Europe.¹⁸⁶ In October 2013 a majority of those voting approved a referendum to begin association negotiations with the EU, but the referendum was

¹⁸² Poland Progress Report 2008, MONEYVAL, 23 July 2008, p.46-47:

[http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/progress%20reports/MONEYVAL\(2008\)12ProgRep-POL_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/progress%20reports/MONEYVAL(2008)12ProgRep-POL_en.pdf)

¹⁸³ Second 3rd Round Written Progress Report, MONEYVAL, 27 September 2010,:

[http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/Progress%20reports%202y/MONEYVAL\(2010\)16_ProgRep2_POL_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/Progress%20reports%202y/MONEYVAL(2010)16_ProgRep2_POL_en.pdf)

¹⁸⁴ 'Poland', *The 2012 CSO sustainability index for central and eastern Europe and Eurasia*, USAID, 2012, p.2:

<http://www.usaid.gov/sites/default/files/documents/1863/POL.pdf>

¹⁸⁵ San Marino country profile – Overview, BBC, 10 February 2015: <http://www.bbc.co.uk/news/world-europe-17842338>

¹⁸⁶ San Marino, CIA World Factbook, undated: <https://www.cia.gov/library/publications/the-world-factbook/geos/sm.html>

nullified due to low turnout.¹⁸⁷ The country has traditionally been a tax haven, although “in the wake of the global financial crisis of 2008-9 this status has come increasingly under threat, and the republic has pledged to make its banking system more transparent.”¹⁸⁸

MONEYVAL demanded greater transparency from the country's small NPO sector in April 2008, when its secretariat approved a report rating San Marino as non-compliant with R8. The usual factors were highlighted:

- San Marino has not yet reviewed the adequacy of domestic laws and regulations that relate to non-profit organisations vis-à-vis FT nor has conducted periodic review of the sector for FT vulnerabilities;
- No review of the risks in the NPO sector has been undertaken, though there is some transparency;
- It is unclear whether there is an adequate legal basis to implement measures to ensure accountability and transparency;
- No outreach to the NPO sector with a view to protecting the sector specifically from FT abuse;
- No requirement for the NPO sector to keep detailed records or to keep them for a period of at least five years;
- No specific points of contact and procedures have been identified to respond to international requests for information regarding particular NPOs.

On the basis of this and insufficient levels of compliance with a number of other measures, “the Plenary [meeting] agreed to initiate the application of compliance enhancing procedures (CEP) in respect of San Marino.” San Marino tried to avoid being placed on the “grey list” by reporting that: “the Government planned to take urgent measures to ensure that the draft AML/CFT law would be adopted by the Parliament by July 2008,” and “proposed to make a report to the next Plenary without the formal launching of compliance enhancing procedures.” In fact, this new law was adopted even earlier, in June 2008.¹⁸⁹ However, the MONEYVAL Chairman argued that ceding to San Marino's request “would deviate from the Committee's procedures,” and the meeting therefore “decided to apply Step 1 of the Compliance Enhancing Procedures and requested San Marino to provide a compliance report at the next Plenary meeting,” detailing the measures taken “to address the deficiencies underlying the recommendations which were rated Non-Compliant and Partially Compliant.”¹⁹⁰

The first report as part of the Compliance Enhancing Procedure came in July 2008, with MONEYVAL's summary stating: “The report indicated that the authorities are reviewing the non-

¹⁸⁷ *San Marino rejects EU accession*, European Voice, 23 October 2013: <http://www.europeanvoice.com/article/san-marino-rejects-eu-accession/>

¹⁸⁸ *San Marino country profile – Overview*, BBC, 10 February 2015: <http://www.bbc.co.uk/news/world-europe-17842338>

¹⁸⁹ *Law no. 92 of 17 June 2008 on Provisions on Preventing and Combating Money Laundering and Terrorist Financing*.

¹⁹⁰ *26th plenary meeting of MONEYVAL, Strasbourg, 31 March – 4 April 2008*, MONEYVAL, 30 June 2008, p.14-15: http://www.coe.int/t/dghl/monitoring/moneyval/Activities/MONEYVAL%282008%2919-SumPlen26_en.pdf

profit sector in order to prepare draft legislation, however no details were provided.”¹⁹¹ More significant developments had taken place by the time of the second report in December 2008:

*A review of the non-profit sector is underway and a draft law regulating the activity related to NPOs will be submitted to the Government. Monitoring action was taken by the judge of supervision which led to the winding up of one non-profit organisation and strict monitoring and control of 3 other associations.*¹⁹²

The third report as part of the Compliance Enhancing Procedure was approved by MONEYVAL in September 2009, and noted that in the period between the second and third reports a number of changes had been implemented as a result of San Marino reviewing “the adequacy of laws and regulations related to NPOs”.¹⁹³ These changes included:

- A draft act on the NPO sector was prepared following the Decision of the Congress of State (no. 34 of 16 February 2009) and was submitted to the Great and General Council on 16 June 2009;
- A separate database on members is established for all registers related to legal persons (associations, foundations, cooperatives, consortiums);
- On 27 May 2009, the Council of Twelve, which is the authority responsible for supervising NPOs, adopted decision no. 30 (27 May 2009) which requires the NPO sector to register data and information regarding funding and funds received for at least 5 years... and to provide a yearly report to the Judge of Supervision;
- The FIA has initiated the analysis on financial flows on the funding sources of associations and foundations;
- The FIA is preparing specific instructions on the abuse of associations and foundations to be sent to obliged parties to facilitate reporting obligations;
- In 2008, the Judge of Supervision has taken action against 4 associations and 5 non profit foundations which were subject to formal winding up and in 2009, against 2 foundations and 1 association.

MONEYVAL's evaluation of San Marino as part of the fourth assessment round sums up the legal and regulatory changes introduced:

A number of measures were adopted since 2008 to address the deficiencies identified... which include provisions of the Law no. 129 (2010) the Congress of State (Decisions no. 34 and 55 of February 2009), by the Council of Twelve (Decision 30 of 27 May 2009), by the FIA (review of the sector and FIA Instruction no. 2010-05 of 8 July 2010), the conclusion of a Memorandum of Understanding between the Council of Twelve, the Judge of Supervision of NPOs and the FIA (2009, as renewed in 2010), and various outreach measures and

¹⁹¹ San Marino first compliance report, MONEYVAL, 9 July 2008, p.8:

[http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/Compliance/MONEYVAL\(2008\)17-CEPSM01_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/Compliance/MONEYVAL(2008)17-CEPSM01_en.pdf)

¹⁹² San Marino second compliance report, MONEYVAL, 12 December 2008, p.9:

[http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/Compliance/MONEYVAL\(2008\)39-CEPSM02_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/Compliance/MONEYVAL(2008)39-CEPSM02_en.pdf)

¹⁹³ San Marino third compliance report, MONEYVAL, 24 September 2009, p.12-13:

[http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/Compliance/MONEYVAL\(2009\)32-CEPSM03_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/Compliance/MONEYVAL(2009)32-CEPSM03_en.pdf)

*supervisory measures were taken.*¹⁹⁴

The country was duly upgraded to largely-compliant, with the main obstacles remaining relating to the possibility of ensuring the effectiveness of the new legislative and regulatory requirements; lack of consolidation of new legislation (the MONEYVAL complains that the new requirements are set out in “various legal texts”); and a lack of demonstration of the effectiveness of state supervision of the sector.¹⁹⁵

In summary then, in the space of a year-and-a-half, MONEYVAL’s R8 compliance resulted in San Marino making wholesale changes to its existing legal and regulatory framework for CSOs, leading to the closure of 12 organisations.

3.16 Serbia

Serbia is a parliamentary republic in south-eastern Europe with a population of nearly 7.2 million people.¹⁹⁶ After the breakup of Yugoslavia, Serbia and Montenegro declared a new Federal Republic of Yugoslavia in April 1992; following Montenegro's secession in 2006 it became an independent state.¹⁹⁷ In March 2012 the country was granted EU candidate status.¹⁹⁸

USAID noted that, in 2012, “the legal environment for Serbian CSOs improved,” with CSOs commenting on “increasing cooperation with and support from the governmental Office for Cooperation with Civil Society.” November 2012 figures from the Serbian Business Registry Office indicated that there were “18,544 citizens associations (an increase, for reasons that are unclear, of almost 15 per cent over the past year), 46 foreign associations, and just over 400 foundations and endowments registered in the country.”¹⁹⁹

However, despite these improvements the country received a low score of just 0.40 on the CIVICUS 2013 *Enabling Environment Index*, ranking it 54th in the world.²⁰⁰ Research by the OSCE in 2010 found that there have been “incidents of non-transparent grant-making and seemingly arbitrary decisions on collaborations with the CSO sector,” with one research participant noting that “the direct influence of individuals in power... decide over most things on the local level.”²⁰¹ An EU report from 2006 noted that “NGO activities that imply criticism of the government and in particular those that draw attention to sensitive, often unpopular issues such as war crimes are publicly denigrated.”²⁰² More recent reports make little mention of such issues. USAID's 2012 overview notes that the Serbian Progressive Party (which developed out of the right-wing nationalist Serbian Radical Party) has “made negative statements about the civil sector in the past. Such statements, however, were not repeated during the 2012 election period, and the party has

¹⁹⁴ San Marino: Report on Fourth Assessment Visit, MONEYVAL, 29 September 2011, p.210:

[http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round4/SMR4_MER_MONEYVAL\(2011\)20_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round4/SMR4_MER_MONEYVAL(2011)20_en.pdf)

¹⁹⁵ Ibid., p.217-18

¹⁹⁶ 2011 census, figures available at: <http://popis2011.stat.rs/?lang=en>

¹⁹⁷ Serbia, CIA World Factbook, undated: <https://www.cia.gov/library/publications/the-world-factbook/geos/ri.html>

¹⁹⁸ Serbia and the European Union, The Delegation of the European Union to the Republic of Serbia, undated: <http://www.europa.rs/en/srbija-i-evropska-unija.html>

¹⁹⁹ Serbia, 2012 CSO Sustainability Index: <http://www.usaid.gov/sites/default/files/documents/1863/SRB.pdf>

²⁰⁰ Enabling Environment Index 2013, CIVICUS, p.24: <http://www.civics.org/downloads/2013EEI%20REPORT.pdf>

²⁰¹ Strengthening Civil Society in Serbia, OSCE, June 2010, p.38: <http://www.osce.org/serbia/68666?download=true>

²⁰² Standard Summary Project Fiche – IPA centralised programmes, European Commission, undated, p.1: http://ec.europa.eu/enlargement/pdf/serbia/ipa/civil_society_en.pdf

not pursued anti-civil society politics since taking office.”²⁰³

In December 2009 Serbia was evaluated by MONEYVAL and found non-compliant. A key problem was that:

*The evaluation team could not explore the complex regime of NPO-s in Serbia in the absence of sufficient information. The lack of transparency apparently features the threefold system [sic]. The necessity of reviewing and re-regulating the regime has been recognised by the authorities and was pointed out during the on-site visit by various interlocutors.*²⁰⁴

The factors underlying the non-compliant rating were as follows:

- No review of adequacy of laws and regulations;
- No outreach to the NPO sector;
- No measures to promote effective supervision or monitoring of NPOs which account for a significant portion of financial resources under control of the sector and a substantial share of the sector’s international activities;
- NPOs are not required to maintain information on the identity of persons who own, control or direct;
- Lack of appropriate measures in place to sanction violations of oversight measures or rules by NPOs or persons acting on their behalf;
- No requirements to record necessary information on domestic and international transactions;
- No implementation of measures to ensure that authorities can effectively investigate and gather information on NPOs;
- Contact points and procedures to respond to international requests for information regarding particular NPOs have not been identified.

MONEYVAL’s proposed action plan²⁰⁵ proposed numerous measures for Serbia to remedy these deficiencies. The country’s attempts to meet these demands are outlined in significant detail in two subsequent progress reports, published in December 2010²⁰⁶ and December 2012,²⁰⁷ which make note of conferences, meetings, the convening of working groups, and relevant legislative

²⁰³ Serbia, 2012 CSO Sustainability Index, USAID, p.1-2:

<http://www.usaid.gov/sites/default/files/documents/1863/SRB.pdf>

²⁰⁴ Mutual evaluation report, MONEYVAL, 8 December 2009, p.246:

[http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round3/MONEYVAL\(2009\)29Rep_SER3_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round3/MONEYVAL(2009)29Rep_SER3_en.pdf)

²⁰⁵ Ibid., p.308-309.

²⁰⁶ First 3rd Round Written Progress Report Submitted to MONEYVAL, MONEYVAL, 8 December 2010, p.81-4:

[http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/progress%20reports/MONEYVAL\(2010\)33ProgRep-SRB_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/progress%20reports/MONEYVAL(2010)33ProgRep-SRB_en.pdf)

²⁰⁷ Second 3rd Round Written Progress Report Submitted to MONEYVAL, MONEYVAL, 3 December 2012, p.153-161:

[http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/Progress%20reports%20y/MONEYVAL\(2012\)30_SERPr ogRep2_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/Progress%20reports%20y/MONEYVAL(2012)30_SERPr ogRep2_en.pdf)

and regulatory changes and provisions. The next evaluation is due in 2015.²⁰⁸

3.17 Slovakia

Slovakia became an independent presidential republic in 1993 after the division of Czechoslovakia. There is a 150-seat parliament, whose representatives are elected for four years, and presidents are elected for five-year terms with limited powers. The country has a population of 5.4 million. Immediately following independence it faced “growing international criticism of the lack of respect for minority rights and the democratic process shown by the authoritarian prime minister, Vladimir Meciar.”

Meciar was ousted in October 1998 by a broad coalition of other parties led by Mikulas Dzurinda, who “took the country in a complete change of direction.” Dzurinda's government “forged ahead with an economic reform programme and was rewarded with a boost in foreign investment and was rewarded with a boost in foreign investment.”²⁰⁹ Dzurinda was prime minister when Slovakia became an EU and NATO member state in 2004, but he was replaced by Robert Fico in 2006. The country subsequently joined the Schengen area in 2007,²¹⁰ and in January 2009 adopted the euro as its currency.²¹¹

According to *Freedom House*, “Slovakia's civil society remains vibrant and enjoys a predominantly positive public image. The legal and regulatory environment for civil society is free from excessive state pressure and bureaucracy, and nongovernmental organizations (NGOs) enjoy favourable tax laws.”²¹² On the other hand, the organisation EEA Grants (which administer funding from Iceland, Liechtenstein and Norway “to 16 EU countries in Central and Southern Europe”) stated in November 2013 that: “Civil society in Slovakia faces several constraints and challenges and lacks a supportive legal and fiscal environment.”²¹³ USAID notes that following 2012 elections in which the SMER (Direction) party won a majority: “The CSO community, particularly watchdog and human rights organizations, feared renewed backlash against civil society based on SMER's actions during their tenure in office from 2006 to 2010. However, the new government's relationship with CSOs has been non-confrontational to date.” The state “remains distant and unapproachable to CSOs.” In 2012, there were some 38,500 CSOs in the country.²¹⁴

Slovakia was found by MONEYVAL to be non-compliant with R8 in September 2006, with the assessors finding that there was:

No special review of the risk in the NPO sector undertaken, though there is some financial transparency and reporting structures regarding foundations. However these measures do not amount to effective implementation of Essential Criteria VIII.2 and VIII.3.

²⁰⁸ *Global Assessments Calendar*, FATF: <http://www.fatf-gafi.org/media/fatf/documents/assessments/Global-assessment-calendar.pdf> at p.3.

²⁰⁹ *Slovakia profile – overview*, BBC News, 18 March 2014: <http://www.bbc.com/news/world-europe-17847682>

²¹⁰ Slovakia, European Commission, undated: http://europa.eu/about-eu/countries/member-countries/slovakia/index_en.htm

²¹¹ *Slovakia*, CIA World Factbook, undated: <https://www.cia.gov/library/publications/the-world-factbook/geos/lo.html>

²¹² *Slovakia*, Nations in Transit 2012, Freedom House: <http://www.freedomhouse.org/report/nations-transit/2012/slovakia>

²¹³ *Supporting civil society in Slovakia*, EEA Grants, 8 November 2013: <http://eeagrants.org/News/2013/Supporting-civil-society-in-Slovakia>

²¹⁴ *Slovakia*, 2012 CSO Sustainability Index, USAID p.1, p.7: <http://www.usaid.gov/sites/default/files/documents/1863/SVK.pdf>

*Consideration needs to be given to ways in which effective and proportionate oversight of this sector can be achieved in the context of SR VIII.*²¹⁵

The Slovakian government's relationship with MONEYVAL is interesting, as it has to significant degree rejected the core assumptions upon which R8 is based: that civil society poses a terrorist financing threat that requires specific counter measures by the state. In 2011, five years after the original non-compliant rating, Slovakia was assessed by MONEYVAL for a second time, and again found to be non-compliant with R8.

In its September 2006 report, MONEYVAL made a number of demands of Slovakia:

- Formal analysis required of threats posed by the sector as a whole;
- Assess adequacy of current legal framework;
- Consider how effective and proportionate oversight can be achieved (including program of verification and direct field audits in particular vulnerable sectors);
- Consider guidance to FIs [financial institutions] on specific risks of this sector; and
- Consider whether further measures need taking in the light of the Best Practices Paper for SR.VIII.

These demands were cursorily addressed in the September 2007 follow-up report. The Slovakian government stated that "formal analysis of the sector as a whole" would be undertaken as part of the "National action plan together with the competent authorities within the Ministry of Interior." It also pointed to an "AML/CFT draft Act" which designated "all kinds of non-profit organisations as an obliged entities and defined who is considered to be a beneficial owner". It argued that the demand for "effective and proportionate oversight" was met by the country's Financial Intelligence Unit (FIU)m which would be afforded powers under the new AML/CFT Act "if organisation keeps a list of beneficial owners". The FIU would also create guidance to financial institutions. Consideration of further measures would take place after analysis of the application of the new law.²¹⁶

In September 2009 the second progress report was approved by MONEYVAL. The demand for a formal analysis was this time more-or-less rejected:

*Risks analysis regarding NPO's and their abusing, especially with regard to financing of terrorism, was under consideration at new preventive AML/CFT Law process creating [sic]. Due to the situation in the field of terrorism financing in Slovakia (there were no cases of NPO's abusing for FT, or terrorist attacks in the territory of the Slovak Republic so far), it does not seem that there is an urgent need for such analysis.*²¹⁷

²¹⁵ Third round detailed assessment report on Slovakia, MONEYVAL, 14 September 2006:

[http://www.coe.int/t/dghl/monitoring/moneyval/evaluations/round3/MONEYVAL\(2006\)09Rep-SVK3_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/evaluations/round3/MONEYVAL(2006)09Rep-SVK3_en.pdf)

²¹⁶ Written Progress Report submitted to MONEYVAL by Slovakia, MONEYVAL, 12 September 2007, p.34-5:

[http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/progress%20reports/MONEYVAL\(2007\)17Progrep-SVK_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/progress%20reports/MONEYVAL(2007)17Progrep-SVK_en.pdf)

²¹⁷ Second 3rd Round Written Progress Report Submitted to MONEYVAL, MONEYVAL, 23 September 2009, p.63:

[http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/Progress%20reports%202y/MONEYVAL\(2009\)19-ProgRep2SVK_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/Progress%20reports%202y/MONEYVAL(2009)19-ProgRep2SVK_en.pdf)

With regard to assessing the adequacy of the current legal framework, the Slovakian authorities referred to the by-that-time Law on AML/CFT. This “quite strictly determines... the obligations for the [NPOs]... keeping a list of beneficial owners [and to] submit this list to any of the reporting entities and to the FIU, in case of a written requirement...” A similar reference to the new law was made with regard to the demand for “effective and proportionate oversight of the sector”: “The Slovak FIU is the authority to control the [NPOs] for compliance to the AML/CFT Law.” As for guidance to financial institutions, the Slovak authorities noted that:

As yet, there has been no special guidance on the risks inherent in the sector of [NPOs]; however, the importance of gathering sufficient data on the NPO before establishing a business relationship by a bank or foreign bank’s branch is underlined in the Methodological guidance of the Financial Market Supervision Unit of the National Bank of Slovakia...

Finally, with regard to considering the need for further measures, it was noted that there would be a “FIU review after at least one year of the preventive law entering into force.”²¹⁸

These responses were deemed inadequate. MONEYVAL’s next assessment of Slovakia, approved at a meeting in September 2011, stated that:

*[I]nsufficient steps have been taken to bring the Slovak system into conformity with SR.VIII. A review of the sector has still not been undertaken and there has been insufficient outreach to the NPO sector. Concerns remain about the transparency of the sector and insufficient steps have been taken to strengthen the legal basis for supervision and oversight over NPO fundraising.*²¹⁹

Furthermore:

*Although there is some transparency and reporting structures regarding some NPOs (e.g. Foundations), the system which has been put in place is insufficiently comprehensive in its present form. There remains a pressing need to address SR VIII. This should be accompanied by significant awareness raising activities for both the relevant government departments and the NPO sector.*²²⁰

Due to the country’s lack of compliance with numerous recommendations Slovakia was placed under the regular follow-up process, reserved for countries whose “mutual evaluation report shows there are significant deficiencies in the State or territory’s AML/CFT system.” The country was scheduled to provide MONEYVAL with a progress report no later than September 2013 and is “encouraged to seek removal from the follow-up process within three years after the adoption of the 4th round MER, or very soon thereafter.”²²¹

The progress report has not been published but it was discussed by MONEYVAL in September 2013, with the pressure brought to bear on the successive governments apparently having an effect: “The Slovak Republic acknowledged the deficiencies in the NPO sector.” A further “interim

²¹⁸ Ibid., p.63-64.

²¹⁹ Report on Fourth Assessment Visit, MONEYVAL, 26 September 2011, p.13:
[http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round4/SVK4_MER_MONEYVAL\(2011\)21_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round4/SVK4_MER_MONEYVAL(2011)21_en.pdf)

²²⁰ Ibid., p.157.

²²¹ Rules of Procedure, MONEYVAL, p.15:
http://www.coe.int/t/dghl/monitoring/moneyval/About/Rules_2013_ENG.pdf

report” on overall progress was requested for the group’s April 2014 meeting.²²² Neither the report nor a record of the meeting this has been published, and MONEYVAL’s secretariat did not respond to requests for further information. The next mutual evaluation of the Slovak Republic is scheduled for 2017.²²³

3.18 Tajikistan

Tajikistan is a presidential republic, of which Emomalii Rahmon has been president since November 1994. The People’s Democratic Party of Tajikistan dominates the legislature and its ongoing power, as well as Rahmon’s continual electoral victories, has led to accusation of electoral corruption and vote-rigging. Independent press outlets are restricted, as is much online material. “In practice, no public criticism of the regime is tolerated and all direct protest is severely suppressed and does not receive coverage in the local media.”²²⁴

Following the overthrow of President Askar Akaev in Kyrgyzstan and civil unrest in Uzbekistan in 2005, “the Tajik government decided to take certain measures to avoid similar events in Tajikistan.” This included “among other things harsh control over the activities of both local and international NGOs, the mass media, and the adoption of new laws and regulations on public and religious associations’ activities in the country.”²²⁵ According to USAID: “The legal environment remains very challenging. Public associations complain of bureaucratic obstacles and increasing corruption during the registration process.” Furthermore, government inspections for reasons ranging from tax compliance to general compliance with the law “increased in frequency,” primarily for CSOs “working on human rights or media issues.”²²⁶ Despite these concerns, the *International Center for Not-for-Profit Law* considers civil society in Tajikistan to be one of the country’s “most dynamically developing sectors”.²²⁷

The country was a founder state of the EAG, and was first subject to a mutual evaluation in June 2007 by a team of assessors from the World Bank. They noted in their report that:

This assessment was fraught with failures by the some [sic] agencies of the Government of Tajikistan (GOT) to provide requested information and cooperation that made it impossible to provide a complete and accurate evaluation of the international standards for AML/CFT in Tajikistan.

Furthermore:

Tajikistan does not have any AML/CFT regime in place, nor does it have a strategy to prevent, detect, disrupt dismantle money laundering [sic] or the financing of terrorism

²²² 42nd plenary meeting, Strasbourg, 16-20.09.2013, MEETING REPORT, MONEYVAL, 20 November 2013, p.6: http://www.coe.int/t/dghl/monitoring/moneyval/Activities/MONEYVAL%282013%2933_42meetingreport_EN.pdf

²²³ Global Assessments Calendar, FATF: <http://www.fatf-gafi.org/media/fatf/documents/assessments/Global-assessment-calendar.pdf>

²²⁴ Tajikistan, Wikipedia: <https://en.wikipedia.org/wiki/Tajikistan#Politics>

²²⁵ Civil Society Organizations and Policy Process in Tajikistan, Journal of Emerging Knowledge on Emerging Markets, Volume 4, November 2012, p.5: <http://digitalcommons.kennesaw.edu/cgi/viewcontent.cgi?article=1094&context=jekem>

²²⁶ Tajikistan, 2012 CSO Sustainability Index, USAID, p.1, p.2: <http://www.usaid.gov/sites/default/files/documents/1863/TJK.pdf>

²²⁷ NGO Law Monitor: Tajikistan, International Center for Not-for-Profit Law, 25 October 2014: <http://www.icnl.org/research/monitor/tajikistan.html>

*activities, or to investigate, prosecute and confiscate the proceeds of these crimes.*²²⁸

The country was rated as non-compliant with the vast majority of FATF Recommendations and Special Recommendations. This was the case for Special Recommendation VIII, with the authors of the first mutual evaluation report noting that they “were not able to obtain any meaningful information regarding legal persons and arrangements.” Amongst other issues, no efforts were made by the authorities to “obtain timely information on the activities, size and other relevant features of the country’s non-profit sectors for the purpose of identifying the NPOs that are at risk of being misused for terrorist financing,” and they “did not demonstrate that they have taken steps necessary to promote effective supervision/monitoring of the risky NPOs.”²²⁹

Tajikistan initially argued that it should be considered partially-, rather than non-compliant, with SR VIII, but retracted this position after discussion amongst the EAG. The country was placed under the enhanced follow-up procedure but it was not until the fourth follow-up evaluation, the report for which was published in December 2010, that it noted any significant progress on the recommendations made in regard to SR VIII.

The 2008 mutual evaluation visit found that:

The authorities did not review the adequacy of legislation related to the non-profit organizations and cannot obtain timely information on the activities, size and other relevant features of their non-profit sectors for the purpose of identifying the NPOs that are at risk of being misused for terrorist financing.

In the December 2010 follow-up report Tajikistan noted that it “reviewed the legislation on noncommercial organisations which entailed adoption of innovative legislation on noncommercial organisations.” More specifically:

Article 21 Law of the Republic of Tajikistan on Public Associations of July 27, 2010 [which amended a 2007 law] binds noncommercial organisations (NCO) with provision of the founders’ details upon registration. According to Art. 17 of this Law, persons proved to be related to terrorist organisations cannot act as NCOs founding members.

However, the EAG was not entirely satisfied:

*Tajikistan representatives claim that these amendments result from the legislation review concerning NPOs carried out by the Ministry of Justice. However, it is still unclear whether this was a comprehensive analysis of the NPO sector (i.e. including other laws and bylaws, and the sector size and nature of activities of its participants), and whether other competent authorities were involved. It should be noted that this Law does not apply to such NPOs as religious organizations, political parties and some other organizations regulated in their activities by special acts. The above facts may raise doubts about efficiency of activities carried out in respect of NPOs.*²³⁰

The report also noted that Tajikistan was finalising a draft law ‘On Anti-Money Laundering and Terrorist Financing’, which it was expected would be “introduced to the Government in December

²²⁸ *Mutual Evaluation Report*, EAG, December 2008, p.9: <http://eurasiangroup.org/ru/news/tajikistan.pdf>

²²⁹ *Ibid.*, p.13.

²³⁰ *The fourth follow-up report on the implementation of the EAG mutual evaluation recommendations*, EAG, 2010: p.5, http://www.eurasiangroup.org/FR_2010_7_eng.doc

2010.” The fifth follow-up report came in June 2011, and the sixth in November 2011, but neither recorded any progress made by Tajikistan in relation to SR VIII. The seventh follow-up report in May 2012 also made no mention of SR VIII, but did note that:

*The country has made significant progress in eliminating the deficiencies revealed earlier with regard to both Core and Key Recommendations of the FATF. Special AML/CFT regulations and other regulatory acts and comments to the AML/CFT Law should be further developed.*²³¹

The *International Center for Not-for-profit Law* has documented numerous laws that restrict the ability of individuals and CSOs to exercise their rights to freedom of association and expression, and measures that inhibit the activities of CSOs. This includes a proposed Law on NCOs, which “is viewed with great concern by Tajik civil society,” as it would significantly “complicate registration” for organisations. July 2014 amendments to the Law on Meetings, Rallies, Demonstrations and Marches “restrict foreign citizens from participating at meetings, rallies, demonstrations and marches,” while amendments to the Law on State Fees adopted two days later “significantly increased the cost of registration” for “branches and representative offices of foreign NPOs,” and “will most likely be burdensome on smaller NCOs.” As the *Center* notes: “These two recent restrictive initiatives underscore the fact that the legal environment for civil society in Tajikistan is not yet fully enabling and is not necessarily moving in a more enabling direction.”²³²

As with the other former Soviet republics examined in this report, the government of Tajikistan does not necessarily need the cover of international AML/CFT standards to introduce new measures to restrict the activities and abilities of civil society, and the specific relationship between the demands of the EAG and the introduction of new measures requires further clarification. However, once again the concern must be raised that demands for stricter oversight and regulation of CSOs in the name of counter-terrorism can clearly be used to justify measures to suppress the activities of organisations of which the government does not approve. Tajikistan’s next mutual evaluation is scheduled for 2017.²³³

²³¹ *The Seventh Follow-Up Report on the Implementation of the EAG Mutual Evaluation Recommendations*, EAG, 2012, p.15: http://www.eurasiangroup.org/files/MERs%20-%20ENG/Tajikistan/FR_2012_1_eng_rev_1.docx

²³² *NGO Law Monitor: Tajikistan*, International Center for Not-for-Profit Law, 25 October 2014: <http://www.icnl.org/research/monitor/tajikistan.html>

²³³ *Global Assessments Calendar*, FATF: <http://www.fatf-gafi.org/media/fatf/documents/assessments/Global-assessment-calendar.pdf>

4 Conclusion

This study has examined the implementation of Financial Action Task Force Recommendation 8 on combating the potential “abuse” of non-profit organisations for the purpose of terrorist financing in 17 countries in Central and Eastern Europe, Central Asia and India. It aimed to ascertain the impact of this Recommendation on the regulatory framework for non-profits in selected countries, and how this in turn affects the freedom of association and expression of NPOs. Despite the limitations of the research, which relied on limited sources to ascertain the impact of the FATF R8 regime, it is possible to draw five significant sets of conclusions.

1 A vehicle for NPO regulation

It is clear that in respect to the majority of countries examined here, the mutual evaluation process has been successful in exerting enough pressure on states to comply partially, if not fully, with the requirements of R8. Of the countries under examination in this report, all have introduced some new legislation or regulatory standards in response to the MONEYVAL/EAG evaluation process, even though not all (in particular Slovakia) appear to be in agreement with the assumptions on which R8 is based. Even those states which were deemed by FATF to be consistently uncooperative – perhaps the best example being Bosnia and Herzegovina – have gone some way towards satisfying the demands made of them. Indeed, in doing so the BiH government was willing to override parliamentary opinion and introduce new requirements through an administrative procedure. Similarly, San Marino, which is not a country that one would expect to have a face a significant terrorist financing risk from its non-profit sector, rewrote its entire NPO regulatory framework at the behest of MONEYVAL. This confirms earlier findings that the FATF R8 compliance mechanism (i) is an important vehicle for the imposition of NPO regulations worldwide, and (ii) can override parliamentary scrutiny of draft legislation that has a critical impact on freedom of association and expression. This is tremendously important for regional formations of the FATF such as MONEYVAL and the EAG because their membership includes many countries where civil society already faces significant government hostility and state repression.

2. Evaluators influenced by lack of regulation, not risk assessment

Whereas Recommendation 8 requires that a full risk assessment of the terrorist financing threat in the non-profit sector should be undertaken in order to determine whether new regulations are necessary, this has not been done by many of the MONEYVAL and Eurasia group members. Where states did undertake such a review and conclude that their NPO sectors face a minimal risk (e.g. Andorra, Kazakhstan, Montenegro and Slovakia), the evaluators still called upon those countries to introduce new NPO regulations. Similarly, whereas the reach of R8 is supposed to be expressly limited to a small subset of what most countries would regard as their non-profit sector (i.e., excluding small and informal organizations, advocacy groups and many others), we found that in practice there was no attempt on the part of states meeting their R8 obligations to limit their regulatory or supervisory measures in this way. This has been of only minimal concern to the evaluators, whose recommendations in respect to the countries we examined were clearly designed to fulfil perceived gaps in the regulatory framework rather than to address in a manner the risk posed by a subset of the NPO community.

3 Restrictive impact on the political space of NPOs

In respect to the hypothesis that international anti-money laundering and counter-terrorist financing mechanisms are being used as vehicle for the imposition of regulations on the NPO sector and providing less democratic and repressive governments with the legitimacy and opportunity to enact laws that unduly restrict the legitimate activities of non-profits, the findings of the report are a less clear cut – but significant nonetheless. As noted above it is certainly the case that some of the governments in question are highly restrictive with regard to what NPOs can and cannot do – but there simply is not enough information in the public domain to fully ascertain the *direct* results of the imposition of FATF standards. However, the danger of overly restrictive measures engendered by FATF requirements and compliance processes is abundantly clear, and we are particularly concerned about the potential impact of R8 compliance measures on civil society in BiH, Croatia, FYROM, Hungary, India, Kazakhstan, Kirgizstan, Poland, Serbia and Tajikistan. It is also clear that the demands for more stringent oversight and regulation of the NPO sector made by FATF regional formations were a significant factor in the passing of legislation subsequently used against NPOs. Hungary and India provide the most clear-cut examples in this report of states unduly restricting the legitimate activities of civil society organisations; in both cases laws that were passed at least partly to satisfy FATF requirements were used to justify and enact repressive legislation. There is certainly a need for more in-depth empirical studies that examine further the relationship between international AML/CFT enforcement mechanisms, national law, and the legal and regulatory environment in which NPOs operate. Regardless of the extent of any correlation, in the absence of guidance on how to ensure that any regulatory measures designed to implement R8 also *actively protect* the political space and rights to freedom of association and expression of CSOs and non-profits, the FATF will continue to provide an opportunity for those states who do wish to clampdown disproportionately on their NPO sectors.

4. MONEYVAL: a conflict of interest in the Council of Europe

MONEYVAL's impact in the eight countries examined in this report shows that it has managed to achieve more strident R8 compliance, with six states having been upgraded from 'non-compliant': Andorra, Croatia, FYR Macedonia, Malta, Poland and San Marino. As noted above, in some of these countries, there are concerns that the regulations prompted by MONEYVAL's evaluations have shown little or no concern as to whether the legislation is either proportionate to the threat, or whether it adversely affects the freedom of association and expression rights of NPOs. The disregard of democratic procedures in, for example, Bosnia and Herzegovina, is also problematic. These issues arguably matter more for MONEYVAL than other regional FATF-style organisations because it is a Council of Europe (CoE) body. The CoE describes itself as "the continent's leading human rights organisation" and has clear obligations under the European Convention on Human Rights to ensure that any exercise of coercive powers by state agencies that restrict fundamental rights is 'necessary in a democratic society'. The European Court has held that such 'necessity' implies two things: (i) that an interference with fundamental rights corresponds to a pressing social need; and (ii) that it is proportionate to the legitimate aim pursued. The 'proportionality' standard adopted by the Court is that if a measure has been adopted which infringes human rights, "it will not be considered disproportionate if it is restricted in its application and effect, and is duly attended by safeguards in national law so that the individual is not subject to arbitrary treatment".²³⁴ These principles should guide MONEYVAL's interpretation and enforcement of the FATF Recommendations but appear to have been wholly disregarded.

²³⁴ Judgment in Case MS v Sweden (1997), 27 August 1997.

5 The Eurasian Group: an inappropriate forum for non-profit regulation

In the three EAG countries we examined – Kazakhstan, Kyrgyzstan and Tajikistan – there was a flurry of government activity intended to meet the requirements of R8. The measures introduced by all three countries faced sharp criticism from human rights organisations for their repressive nature; their contribution towards a “disabling environment” is clear (although in Kyrgyzstan's case two of the proposed measures were withdrawn following pressure from civil society). It is important to point out that there are a whole host of influences on the policy choices of governments in this region, and that Russia's increasingly hostile stance towards CSOs and non-profits pre-dates its membership of the FATF. However, its membership of the EAG, the wider composition of that group and the prevailing attitudes toward civil society mean that the FATF's R8 regime could have a detrimental effect on civic freedom across the EAG region. The position of the current Modi government (and its predecessors) in India toward civil society is increasingly aligned with that of Putin's Russia, adding to the substantive concerns as to whether the EAG is an appropriate body for the regional development and implementation of non-profit regulations.

5 Recommendations

1. Building on the new risk-based approach and revised best practices around Recommendation 8, the FATF should develop detailed guidance for the regional formations on how to safeguard civil society space and avoid undue restrictions in the application of counter-terrorism measures. This guidance should clearly explain how states can limit the impact of CFT measures to only those NPOs that represent a “significant portion of the financial resources and a substantial share of the sector’s international activities” in accordance with the requirements of R8.
2. The current round of mutual evaluations must ensure that the “risk-based approach” is properly applied in respect to R8, so that states that identify no tangible risk of terrorist financing in their non-profit sectors, or deem their existing laws to be adequate in terms of addressing any such risks, are not subject to new legislative requirements. States should be required to publish their R8 risk assessments so that NPOs and independent experts are able to assess their merits.
3. In accordance with the new “effectiveness-led” assessment methodology, all FATF and regional-FATF formation evaluators should be trained on the importance of developing and maintaining an “enabling environment” for civil society organisations and given guidance on how to assess the negative impacts of NPO regulatory frameworks. The reports of the UN Special Rapporteur on Freedom of Association and the recommendations of expert organisations such as the International Centre for Non-profit Law, CIVICUS and others should provide a basis for the guidance and training.²³⁵
4. The FATF should develop a mechanism that enables NPOs and civil society organisations to engage constructively in R8 evaluation processes. This is particularly important where mutual evaluations are inaccessible to civil society because of the state-centred nature of the process and the composition of bodies like the EAG. The FATF Secretariat should facilitate access to the process by ensuring that NPO perspectives can be brought to bear on in-country evaluations where meetings with evaluators are not feasible.²³⁶ Non-profits and civil society organisations should engage proactively with these mechanisms by providing submissions on the impact of existing NPO regulations.
5. The entire evaluation process, including post-evaluation reports and recommendations, national action plans and any follow-up measures, should be subject to full and proactive public disclosure at the national level in order to enable parliaments and civil society to participate in any reforms. In particular, national parliaments must be fully consulted prior to the adoption of FATF/regional FATF formation national action plans, and on all subsequent measures arising from those plans.
6. The Council of Europe should establish as a matter of urgency a dialogue between MONEYVAL and fundamental rights experts to assess the impact of AML-CFT demands in CoE states on the human rights to freedom of association and expression as set out in European convention.

²³⁵ See for example the *UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association’s Factsheet series*: <http://freeassembly.net/factsheets/>; the *Civic Space Initiative*: <http://www.icnl.org/csi/index.html>; and *Civil Society Space and the United Nations Human Rights System: A Practical Guide for Civil Society*: http://www.ohchr.org/Documents/AboutUs/CivilSociety/CS_space_UNHRSysstem_Guide.pdf

²³⁶ Specifically, we are concerned here that previous regional ‘outreach’ efforts have resulted in civil society groups being brought before national intelligence and security agencies and asked to reflect upon government policies in extremely intimidating – even dangerous – circumstances.

Annex: Table: all MONEYVAL/EAG countries

Key

NC: non-compliant; PC: partially compliant; LC: largely compliant; C: compliant; EAG: Eurasian Group on Combating Money Laundering and Financing of Terrorism; IMF: International Monetary Fund; APG: Asia/Pacific Group on Money Laundering; MONEYVAL: Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism.

Country	Evaluation date, Rating	Evaluation date, Rating	FATF sub-group responsible
Albania	July 2006, NC	April 2011, NC	MONEYVAL
Andorra	July 2008, NC	March 2012, PC	MONEYVAL
Armenia	September 2009, PC	Not yet conducted	MONEYVAL
Austria	June 2009, PC (assessment by IMF)	Not yet conducted	FATF (Austria listed as MONEYVAL member on CoE website)
Azerbaijan	December 2008, PC	Not yet conducted	MONEYVAL
Belarus	December 2004, C (assessment by IMF) December 2008, PC (assessment by EAG)	Not yet conducted	EAG
Bosnia and Herzegovina	December 2009, NC	Not yet conducted	MONEYVAL
Bulgaria	April 2008, PC	September 2013, LC	MONEYVAL
China	2007, LC	Not yet conducted	EAG
Croatia	April 2008, NC	September 2013, PC	MONEYVAL
Cyprus	February 2006, PC	September 2011, PC	MONEYVAL
Czech Republic	September 2007, PC	April 2011, PC	MONEYVAL
Estonia	December 2008, PC	Not yet conducted	MONEYVAL
FYR Macedonia	July 2008, NC	April 2014, PC	MONEYVAL

Georgia	February 2007, PC	July 2012, PC	MONEYVAL
Guernsey	December 2010, PC (assessment by IMF)	Not yet conducted	MONEYVAL
Holy See	July 2012, NC	Not yet conducted	MONEYVAL
Hungary	September 2010, NC	Not yet conducted	MONEYVAL
India	June 2010, NC (assessment by APG)	Not yet concluded	APG/EAG
Isle of Man	August 2009, LC (assessment by IMF)	Not yet conducted	MONEYVAL
Israel	July 2008, LC	December 2013, LC	MONEYVAL
Jersey	August 2009, C (assessment by IMF)	Not yet conducted	MONEYVAL
Kazakhstan	June 2011, NC	Not yet conducted	EAG
Kyrgyzstan	June 2007, NC	Not yet conducted	EAG
Latvia	June 2007, C	July 2012, C	MONEYVAL
Liechtenstein	September 2007, PC	Not yet conducted	MONEYVAL
Lithuania	November 2006, PC	December 2012, PC	MONEYVAL
Malta	September 2007, NC	March 2012, PC	MONEYVAL
Moldova	December 2007, PC	December 2012, LC	MONEYVAL
Monaco	December 2007, PC	September 2013, PC	MONEYVAL
Montenegro	March 2009, NC	Not yet conducted	MONEYVAL
Poland	June 2007, NC	April 2013, PC	MONEYVAL
Romania	July 2008, PC	April 2014, PC	MONEYVAL
Russia	June 2008, PC (joint assessment by EAG, FATF and MONEYVAL)	Not yet conducted	EAG/MONEYVAL

San Marino	April 2008, NC	September 2011, LC	MONEYVAL
Serbia	December 2009, NC	Not yet conducted	MONEYVAL
Slovakia	September 2006, NC	September 2011, NC	MONEYVAL
Slovenia	May 2005, PC	March 2010, PC	MONEYVAL
Tajikistan	December 2008, NC	Not yet conducted	EAG
Turkmenistan	November 2010, PC	Not yet conducted	EAG
Uzbekistan	June 2010, PC	Not yet conducted	EAG