Counter-terrorist financing measures: what impact for European humanitarian NPOs?

Over recent years, counter-terrorism measures have become an increasingly important feature in international and European policies. The European Commission has been developing policies in all sectors relevant to the prevention of terrorist attacks; among which the financing of terrorism. Countering the financing of terrorist activities is now a core component in EU’s strategy against terrorism, which seeks to address the new vulnerabilities of the financial system, such as the misuse of non-profit organisations (NPOs) by terrorist organisations.

Proposal for an EU-wide Code of Conduct for NPOs

Encouraged by the Financial Action Task Force (FATF)’s recommendations, a first Commission Communication in 2005 from DG Justice addressed the issue, and recommended among other things a Framework for a Code of Conduct to enhance transparency and accountability of NPOs and to reduce the risk of abuse of the non-profit sector. The Communication makes recommendations to EU Member States as well as to NPOs, which have, for example, to “verify the identity and good faith of their beneficiaries, donors and associate NPOs”, and “keep full and accurate audit trails of funds transferred outside their jurisdiction”. It nevertheless recognises that NPOs fulfil “vital and indispensable (tasks) to the citizens”, and it “aims to find an approach which minimises the risk of abuse without burdening the non-profit sector”.

An open consultation period, as well as a meeting in November 2005 between the EU Civil Society Contact Group (CSCG) and Commissioner Franco Frattini (DG Justice), gave the opportunity to NPOs to express their concerns about that framework. To date, the Code has never been implemented.

EU studies on NPO transparency

Subsequently, the former DG for Justice, Freedom and Security, commissioned two studies related to the transparency of NPOs at EU level in the context of counter terrorist financing. For each one, a meeting with representatives from the non-profit sector, including the members of the CSCG, was organized by the European Commission in order to discuss the findings of the report, before convening for follow-up actions.
The main conclusion of the “Study to Assess the Extent of Abuse of Non-Profit Organisations for Financial Criminal Purposes at EU level”, realized by the Matrix Knowledge Group in 2008, was the lack of evidence of financial abuse of NPOs.

The “Recent public and self-regulatory initiatives improving transparency and accountability of non-profit organisations in the European Union”, released by the European Centre for Not-for-Profit Law (ECNL) in 2009, acknowledges a growing number of self-regulatory initiatives enhancing NPO transparency and accountability existing at EU level.

Current elaboration of EU-wide voluntary guidelines for NPOs

Despite the inconclusive results of these studies, and the sparse evidence of the vulnerability of NPOs to abusive terrorist financing, the Stockholm Programme “An open and secure Europe serving and protecting the citizens” of 2010 calls the Commission to address further the issue. DG Home is now in charge of developing a Communication on voluntary anti-terrorist financing guidelines for EU based non-profit organisations, in the course of 2011. This Communication is intended both to raise awareness among NPOs of the risks of abuses by terrorists, and to encourage them to review their internal rules and practices. DG Home has paid attention to collaborating with and taking into account the views of NPOs for drafting this communication. A conference was organized on 2 July 2010, bringing together representatives of the Commission and of Member States and NPOs, in order to comment on a discussion paper released on 25 June 2010 on those voluntary guidelines. A consultation period was extended until mid September 2010. The Communication is due to be released in the first quarter of 2011, as announced by the Commission in the Action Programme of the Stockholm Programme.

Main concerns and remarks expressed by NPOs

The main messages of European NPOs coming out of the various consultations organized by the European Commission at the different stages of the process since 2005 were that:

- There is no need for new voluntary guidelines for NPOs at EU level as these would duplicate existing guidelines at national level as well as existing self-regulatory rules within organisations. Moreover, it is not possible to establish ‘one-size-fits-all’ guidelines relevant to the wide diversity of organisations;
- Risk identification criteria should be addressed with more caution (especially as many humanitarian organisations work inevitably in sensitive areas where they can easily be in contact with actors considered as terrorists), and the legal implications and possible sanctions on NPOs should be better clarified;
- The crucial role of NPOs and humanitarian/relief actors, and their contribution to stable and healthy societies, including in conflict areas, should be better acknowledged;
- The EU institutions and Members States should play a facilitating role in better understanding counter-terrorism measures and assessing their impacts on NPOs. EU institutions should further enhance consultation and collaboration with NPOs, which are themselves best placed to develop transparency and accountability measures, as well as to determine how to train their members against such abuses.

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8 To see also the Report on the implementation of the revised Strategy on Terrorist Financing from the Counter Terrorism Coordinator, Council of the EU, 3 June 2010.
9 Including the EU Civil Society Contact Group (CSCG), the European Foundation Centre (EFC), the Human Rights and Democracy Network, CEDAG, and EPHA
10 Based among others on the « Joint comments on the discussion paper ‘Voluntary guidelines for EU based non-profit organisations’ », by the European Foundation Centre (EFC), Cordaid, and the Samenwerkende Brancheorganisaties Filantropie (SBF), 10 September 2010
Sanctions and legal implications of counter-terrorism measures on NPOs: toward the US experience?

The Commission guidelines are not clear as to what would be the possible sanctions and legal implications of the whole process for NPOs at EU level. Comparatively, in the United States, counter-terrorism measures are far more developed, and impose far-reaching obligations and restrictions on NGOs.

Sanctions: freezing of assets

In the US, many sanctions have already been taken against American NPOs having allegedly not respected US counter-terrorism measures, such as the freezing of their assets. Some organisations in the US prefer now to decline US funding rather than accepting the highly restrictive and coercive requirements imposed by those.

Criminalization of humanitarian aid: the issue of the US material support clause

There have already been legal convictions of NPOs in the name of counter-terrorism. In June 2010, in a ruling called Hodler v. Humanitarian Law Project, the US Supreme Court upheld the constitutionality of a law criminalizing various forms of “material support” to a designated foreign terrorist organization (FTO). The definition of “material support” under the USA Patriot Act includes the provision of ‘property’, ‘services’, ‘training’, ‘expert advice or assistance’, or ‘personnel’ to an FTO. This highly controversial decision may thus have substantial impacts on humanitarian/relief engagement in areas where listed terrorist groups may operate.

Impact of US measures on European NPOs

Besides putting pressure on the EU to similarly strengthen its counter-terrorism measures, US legislation and decisions can have a direct impact on non-US organisations and has already resulted in the freezing of assets of several European organizations accused of financing Islamic extremists. In August 2003, the US Department of Treasury designated Interpal, a UK NGO supplying humanitarian relief to Palestinians, as a Specially Designated Global Terrorist organization, without any legal or evidential basis. The US designation caused two British banks to withdraw their funding to the organisation. In 2009, the United Kingdom’s Charity Commission finally released its conclusions that Interpal was not funding or supporting groups affiliated to terrorist activities.

Targeting of Islamic NPOs

As highlighted by the Interpal case above mentioned, Islamic NPOs are the principal targets for suspicion of collaborating with terrorist networks. In response to this trend, Islamic Relief, an NGO founded in the UK in 1984, initiated the establishment of The Humanitarian Forum in 2005, with the collaboration of Oxfam and the British Red Cross. The Forum brings together all types of humanitarian and development organisations, with a view to better integrate Muslim organisations and enhance their understanding and cooperation with other non-Muslim NGOs. “The real motivation behind the whole proposal is to help Islamic NGOs who have been targeted for suspicion, based on insinuation, to be given the opportunity to practice their humanitarian mandate”, explains Adeel Jafferi, Islamic Relief spokesman.

Risk of deteriorating the delivery of aid

Restrictive guidelines imposed on NPOs can discourage them from working in risky areas where terrorists may have activities or simply be present. It can even deter small NPOs from expanding their activities internationally for reasons including increased administrative burden. Moreover, the insistence on potential links between terrorists and NPOs can influence the public and donors, and bring mistrust towards NPOs, neglecting the central role they play in societies.

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11 Treasury's Terrorist Assets Report of 2006 estimated that 16,413,733 dollars in assets from “foreign terrorist organization,” which include charities and foundations, have been frozen since 9/11.

12 Such as the US Quakers – the Friends Committee on National Legislation –, which stated that anti-terrorism certification “offends the most basic principles of a free society”.

Further, restrictive guidelines and threat of sanctions imposed on NPOs may alter their relationship with local organisations and partners. It can indeed create a climate of fear and make them less willing to collaborate with local actors given the risks inherent in partners’ selection.

Finally, the whole topic brings difficult ethical issues into the debate. For example, should relief organisations provide aid to every person in need –in line with their mandate as well as with core humanitarian principles\(^\text{14}\) - even though those persons are knowingly/allegedly affiliated to terrorist organizations? Formulated in another way, one arrives at the cynical question of how should an aid worker react in front of a dying “terrorist”?

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Other relevant organizations:

The **International Centre for Counter-Terrorism (ICCT) – The Hague** is an independent knowledge centre that focuses on information creation, collation and dissemination pertaining to the preventative and international legal aspects of counter-terrorism.

\(^{14}\) The Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief states that “the humanitarian imperative comes first. Aid is given regardless of the race, creed or nationality of the recipients and without adverse distinction of any kind. Aid priorities are calculated on the basis of need alone.”