



FINANCIAL ACTION TASK FORCE  
*THE PRESIDENT*

c/o Ms. Beatriz Balbin  
Chief  
Special Procedures Branch  
Office of the High Commissioner for Human  
Rights  
E-mail: registry@ohchr.org

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Your Ref: AL OTH 72/2020  
Our Ref.: 20201112PDG

Dear Professor Ni Aolain, Mr. Voule, and Professor Lawlor,

Thank you for your letter of 6 November 2020, written in your capacities as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 40/16, 41/12 and 43/16.

I appreciate you bringing this important matter to the attention of the Financial Action Task Force (FATF). We share your concerns regarding the allegations that Serbia misused its *Law on the Prevention of Money Laundering and the Financing of Terrorism* with the aim to restrict or coerce civil society actors for their work and criticism of the Government. The FATF takes such allegations seriously and considers actions such as the ones subject to these allegations antithetical to our Standards, particularly the risk-based approach set out in Recommendation 8 in relation to NPOs, and the role of the Financial Intelligence Unit set out in Recommendation 29.

The FATF is an international standard-setting body responsible for combatting money laundering, and the financing of terrorism and the proliferation of weapons of mass destruction. To achieve global implementation of the FATF Standards, the FATF relies on a strong global network of nine FATF-Style Regional Bodies (FSRBs), in addition to its own 39 members. While Serbia is not an FATF member, it is a member of the FSRB, MONEYVAL, which has responsibility for promoting the effective implementation of the FATF Standards by their membership.

The FATF Secretariat has followed-up with MONEYVAL and with the Serbian Government on the allegations outlined in your correspondence. Regarding your questions, we would like to report the following:

**Question 1: Please provide any additional information and/or comments you may have on the above-mentioned allegations**

The FATF and its global network of FATF-style Regional Bodies (FSRBs) assess compliance with the FATF Standards using a common assessment Methodology. The Methodology assesses both technical compliance (whether appropriate laws, institutional frameworks and other measures are in place) and how effective those measures are in combatting money laundering, terrorist financing and the financing of the proliferation of weapons of mass destruction. All countries that undergo such an

assessment (mutual evaluation) are subsequently placed in a robust follow-up process that is aimed at encouraging the country to address the deficiencies identified in its mutual evaluation report.

MONEYVAL published its most recent mutual evaluation of Serbia's anti-money laundering/combating the financing of terrorism (AML/CFT) system in April 2016. That mutual evaluation summarised the AML/CFT measures in Serbia as at the date of the on-site visit (28 September to 9 October 2015). One of the report's key findings was that Serbia had deficiencies with its implementation of measures to protect NPOs from terrorist financing abuse. In terms of technical compliance, Serbia was rated partially compliant with FATF Recommendation 8 and was found to have achieved a low level of effectiveness for Immediate Outcome 10 which assesses, *inter alia*, how well the country has implemented measures to protect NPOs from terrorist financing abuse.

Following its mutual evaluation in 2016, Serbia was placed in MONEYVAL's enhanced follow-up process. Simultaneously, Serbia entered the FATF's International Cooperation Review Group (ICRG) process of increased monitoring, which led to public listing in February 2018 and an action plan. This included requirements for Serbia to review the TF risks of its NPO sector and take any necessary risk-based measures to mitigate the risks identified; and ensure that appropriate and proportionate action is taken to ensure greater financial transparency and control over funds raised by NPOs at risk of TF abuse. In June 2019, following an on-site visit, the FATF determined that Serbia largely addressed its action plan, and was no longer subject to the FATF's increased monitoring and listing process, but remained in MONEYVAL's enhanced follow-up process.

MONEYVAL assessed Serbia's technical compliance with the standards in its most recent follow-up report, which was published in December 2019. In that report, Serbia was found to have raised its technical compliance with Recommendation 8 from partially compliant to largely compliant. However, an assessment of Serbia's implementation of those revised standards (which is particularly relevant to how its implementation of AML/CFT measures is impacting legitimate charitable activities) has not yet been conducted.

In November 2020, the FATF Secretariat, in cooperation with the MONEYVAL Secretariat, followed-up the allegations outlined in your letter with the Serbian authorities in writing. In response, Serbia stated that it sent out a request to a number of its commercial banks in order to conduct strategic analysis in preparation for its 2021 national risk assessment update. Serbia further states that this strategic analysis aims to assist the Administration for the Prevention of Money Laundering (APML, Serbia's Financial Intelligence Unit) and other authorities "*to better understand certain aspects of [Serbia's] system's risks and support operational capacities to combat ML/TF*". Serbia states that this request was made pursuant to Article 37 of its AML/CFT Law (requesting data from obliged entities), and that the APML—as an intelligence body—is entitled to request such information based upon the grounds of reasonable suspicion, rather than the level of suspicion required for investigation or prosecution.

Nevertheless, requests without grounds of reasonable suspicion are not in line with the requirements set out in the FATF Standards. For example, the Methodology under Recommendation 29 states that "*In the context of its analysis function, an FIU should be able to obtain from any reporting entity additional information relating to a suspicion of ML/TF. This does not include indiscriminate requests for information to reporting entities in the context of the FIU's analysis (e.g., "fishing expeditions")*." Moreover, it is unclear how requests on specific targets would support strategic analysis, which is meant to identify ML and TF-related trends and patterns.

We have been informed by MONEYVAL that its Bureau discussed this issue and concluded it will discuss this matter at its upcoming Plenary meeting in April 2021. Depending on the outcome of this discussion, the MONEYVAL Plenary may decide to subject this issue to further follow-up by requesting the Serbian authorities to take specific actions to rectify any shortcoming (if identified) and/or refer the issue to other Council of Europe bodies in accordance with their mandate, to be followed-up independently or jointly with MONEYVAL.

**Question 2: Please provide information on the measures undertaken to address and ensure that the national legislation passed pursuant to the FATF Standards and guidance do not contravene States' human rights treaty obligations. Please specify what actions are taken when national practice misuses such standards and guidance to undermine human rights obligations protected by customary and treaty law.**

The FATF is a membership-driven organisation that makes decisions based on the consensus of its membership. Our Standards and Methodology have been developed by our members with due consideration to their various international obligations and commitments, including international humanitarian law. Our Standards were developed to complement these obligations, as the FATF considers human rights obligations as an essential component when countering money laundering and terrorist financing.

The FATF also makes informed decisions based on the invaluable input from its large group of observer organisations, who participate in the development and revisions of its Standards and Methodology, as well as the discussion of our members' mutual evaluations. In particular, the United Nations and its bodies are important and active contributors to the FATF's discussions and plenary meetings. Our observers help to ensure that our Standards and assessments are in line with various international standards, including the protection of human rights.

Our Standards and Methodology also contain important safeguards against their potential misuse. For example, in June 2016, the FATF engaged extensively with NPOs to revise its Recommendation 8, related to the protection of NPOs from potential terrorist financing abuse. These changes ensure that Recommendation 8 is in line with the risk-based approach, and does not disrupt or discourage legitimate charitable activities. These revisions also clarify that not all NPOs represent the same level of terrorist financing risk and that some NPOs represent little or no risk at all.

With these changes, countries must continuously assess the terrorist financing risks of their NPO sectors that fall under the FATF's functional definition. The FATF defines an NPO as: "a legal person or arrangement or organisation that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of 'good works'." This definition is based on those activities and characteristics of an organisation that puts it at risk of TF, rather than on the simple fact that it is operating on a non-profit basis.

Once a country identifies the subset of its NPOs that fall into this definition, Recommendation 8 requires countries to assess the types and features of NPOs that may be vulnerable to terrorist financing misuse. Subsequently, if necessary, countries would take a targeted approach to implementing appropriate measures to protect those NPOs identified as most vulnerable for potential terrorist financing abuse. Importantly, the Interpretative Note to Recommendation 8 stresses that countries must find a balance between protecting the integrity of its NPO sector, and supporting the activities of legitimate NPOs.

To further ensure the appropriate implementation of its Standards, including on Recommendation 8, in July 2019, the FATF published Guidance on Terrorist Financing Risk Assessment. This Guidance builds on 2015 Best Practices for Combating the Abuse of Non-Profit Organisations (Recommendation 8). The 2019 Guidance includes a detailed chapter on identifying NPOs in line with the FATF's definition and assessing the terrorist financing vulnerabilities of the NPO sector. This chapter reiterates the risk-based approach to Recommendation 8 and includes a number of national best practices on the assessment of TF risks in the NPO sector.

In addition, as noted above, the FATF has included text within Recommendation 29 that outlines the role and responsibilities of the FIU. In part, it outlines that the FIU should conduct strategic analysis based on its own information as well as information provided by competent authorities (i.e., public authorities with AML/CFT functions), and does not state that the FIU can solicit information from its

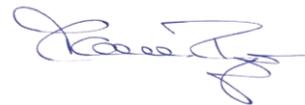
reporting entities in the course of developing strategic analysis products. To address concerns regarding the potential abuse of authority of FIUs by indiscriminately requesting information from its reporting entities, the FATF's Methodology, as cited in the excerpt above, explicitly states that such requests are not in line with Recommendation 29.

In summary, the FATF Standards are designed to protect NPOs from terrorist financing, while also ensuring that their legitimate charitable activities are not disrupted or discouraged. The Standards were drafted to ensure that they are in line with international principles on human rights and fundamental freedoms. It is in direct contradiction to the FATF Standards and categorically unacceptable if its measures are exploited and used to oppress human rights under the pretext of counter-terrorism. Should this be identified in the course of a mutual evaluation, a country would be assessed negatively for not implementing the risk-based approach outlined in the FATF's Standards.

Finally, as noted above and outlined in their correspondence to you, MONEYVAL will continue to monitor and follow-up on the serious allegations raised against Serbia. The FATF Secretariat will participate in the April 2021 MONEYVAL plenary meetings when this issue will be discussed. The FATF Secretariat will use as an opportunity to ensure that there is no ambiguity regarding the interpretation and proper implementation of the FATF Standards.

The FATF is grateful for the ongoing cooperation and engagement with the Office of the High Commissioner for Human Rights, as well as the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. Please accept the FATF's appreciation for the important work that your office undertakes. The FATF considers the protection of human rights a fundamental principle when countering terrorist financing, and we strive to ensure that our Standards are consistent with countries' obligations to respect freedom of association, assembly, expression, religion or belief, and international humanitarian law.

Yours sincerely,



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