



BALANCING RISK AND INCLUSION: EXAMINING BANKING PRACTICES AND REGULATORY APPROACHES TOWARDS NPOS AND DERISKING IN TUNISIA

TABLE OF CONTENT.

| | | |
|-------------|--|-----------|
| I. | INTRODUCTION | 01 |
| II. | MISSION GOALS | 01 |
| III. | LITERATURE REVIEW | 02 |
| | DERISKING PRACTICES IN TUNISIA AND CONSTRAINTS LINKED TO FINANCIAL INSTITUTIONS | 02 |
| | THE UNINTENDED CONSEQUENCES ON CIVIL SOCIETY ORGANIZATIONS | 03 |
| | THE INTERNATIONAL DYNAMICS TO COUNTER MONEY LAUNDERING AND TERRORISM FINANCING | 04 |
| | WHAT IS REQUIRED FROM BANKS WHEN RELATED TO NPO? | 05 |
| | THE DESIRE OF BANKS TO AVOID FINES AND SANCTIONS | 06 |
| | THE DRIVERS BEHIND THE DERISKING OF BANKS | 06 |
| | THE BANKS DERISKING IS HINDERING FINANCIAL INCLUSION OF NPOS | 07 |
| | THE IMPORTANCE OF STAKEHOLDER DIALOGUE IN ADDRESSING FINANCIAL INCLUSION CHALLENGES FACED BY NPOS | 08 |
| IV. | RESEARCH METHODOLOGY | 09 |
| V. | FINDINGS OF THE RESEARCH | 11 |
| | THE LEGAL FRAMEWORK OF COUNTER-TERRORISM IN TUNISIA AND ITS EXPLICIT LINK WITH THE ACTIVITIES OF ASSOCIATIONS | 11 |
| | OVERVIEW OF THE BANK SECTOR IN TUNISIA | 12 |
| | AN UPDATED NATIONAL ASSESSMENT OF RISKS RELATED TO NON-PROFIT ORGANIZATIONS (NPOS) IN TERMS OF TERRORISM FINANCING (TF) IN TUNISIA | 14 |
| | DECISIONS TO SUSPEND THE ACTIVITIES OF ASSOCIATIONS ISSUED BY THE NATIONAL COUNTER-TERRORISM COMMISSION | 15 |

| | |
|---|----|
| THE BENEFICIAL OWNER OF NPOS | 15 |
| LEGAL FRAMEWORK AND RISK ASSESSMENT IN TUNISIA | 16 |
| DUE DILIGENCE RELATED TO THE IDENTIFICATION OF THE CUSTOMER AND THE BENEFICIAL OWNER OF THE OPERATION OR TRANSACTION AND THE POSITION OF THE PERSON ACTING ON THE CUSTOMER'S BEHALF | 16 |
| DUE DILIGENCE COVERS NOT ONLY NPOS, BUT ALSO PERSONS WITH KEY RESPONSIBILITIES IN INTERNATIONAL ORGANIZATIONS AND THEIR FAMILIES | 17 |
| TYPE OF INFORMATION REQUIRED FROM NPOS IN THE DUE DILIGENCE PROCESS | 18 |
| INTERNAL MEASURES OF DUE DILIGENCE WITHIN NPOS | 19 |
| BANKS PROTECT THEMSELVES AGAINST THE RISK OF BEING USED FOR MONEY LAUNDERING AND TERRORIST FINANCING PURPOSES | 20 |

VI. CONCLUSION 21

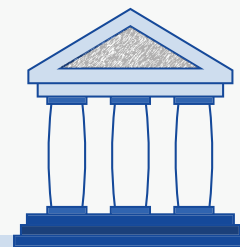
VII. RECOMMENDATIONS 23

| | |
|---|----|
| RECOMMENDATIONS ADDRESSED TO THE INTERNATIONAL CENTER FOR NON-PROFIT LAW (ICNL) | 23 |
| RECOMMENDATIONS ADDRESSED TO NPOS IN TUNISIA | 25 |
| RECOMMENDATIONS ADDRESSED TO BANKS AND FINANCIAL INSTITUTIONS | 26 |

LIST OF ACRONYMS

| | |
|---------------------------------------|--|
| FATF | Financial Action Task Force |
| ICNL | - International Center for Non-Profit Law |
| CSO | - Civil Society Organization |
| NPO | - Non-Profit Organizations |
| AML | - Anti-Money Laundering |
| CFT | - Combating the Financing of Terrorism |
| UNOCHA | - United Nations Office for the Coordination of Humanitarian Affairs |
| HSC | - Human Security Collective |
| ECNL | - European center for non-profit law |
| ML | - Money laundering |
| TF | - Terrorism financing |
| CDD | - Customer due diligence |
| RBA | - Risk-Based Approach |
| BIAT, UIB, UBCI, BNA, STB, ATB | |
| NRA | - National Risk Assessment |
| CTF | - Counter-Terrorism Financing |
| CNLCT | - National Counter Terrorism Commission |
| BCT | - Central Bank of Tunisia |
| ACM | |
| CTAF | - Tunisian Financial Analysis Commission |
| JORT | - Official Journal of the Tunisian Republic |

I. INTRODUCTION



The research aims at supporting ICNL's work on civic space in the region and more particularly in Tunisia contributing to the protection and support of local partners' work for it to be more relevant and impactful. It is also an opportunity to document Tunisia case study/best practice for dissemination in other countries and in the region in general.

In accordance with the Financial Action Task Force (FATF) dynamics in the region and in Tunisia, this research aims to identify the various constraints faced by civil society organizations. It will allow all partners and actors to identify the opportunities for improvement to better contribute to the respect of recommendation 8.

Whereas Tunisia was evaluated as compliant with recommendation 8 by the FATF, the government postponed sharing the results of NPOs assessment with civil society actors and no analysis nor any result has been made public since 2020.



II. MISSION GOALS

The mission aims to document, analyze, and assess the current methodologies of risk assessments put in place by banking institutions in Tunisia and/or the perception of these same institutions of CSOs-related operations, measures, and frameworks (top management and operational services). This approach would lead to gathering data aiming at answering the following questions:

Explore if the banks have an understanding of the specificities of NPOs sector and what is the impact of derisking on the landscape;

Identify if the financial institution has an internal Risk Based Approach and if the banks have internal risk assessment mechanisms; This will also explore if the bank conducts risk-based supervision and monitoring, effective investigation and information gathering;

Explain how customer due diligence is conducted by banks on NPOs in Tunisia including the screening frequency, the criterias used by banks for the screening process and on which aspects ((i) establishing business relations; (ii) carrying out occasional transactions: (i) above the applicable designated threshold ; or (ii) that are wire transfers..);

Explain the internal and external process if any that is applicable to CSOs if they want to open bank accounts;

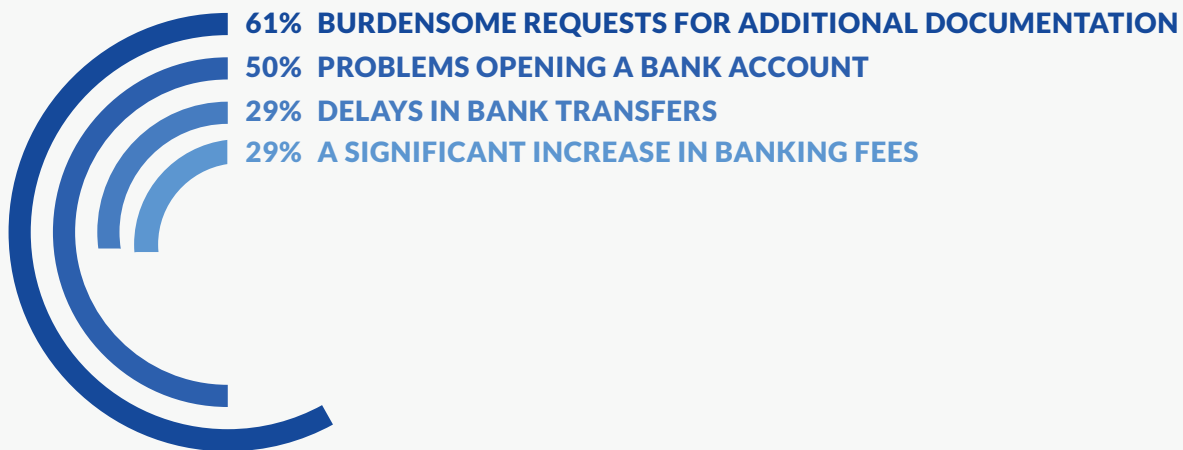
Better explore the drivers behind derisking of banks and the key stakeholders intervening in the process.

III. LITERATURE REVIEW



DERISKING PRACTICES IN TUNISIA AND CONSTRAINTS LINKED TO FINANCIAL INSTITUTIONS

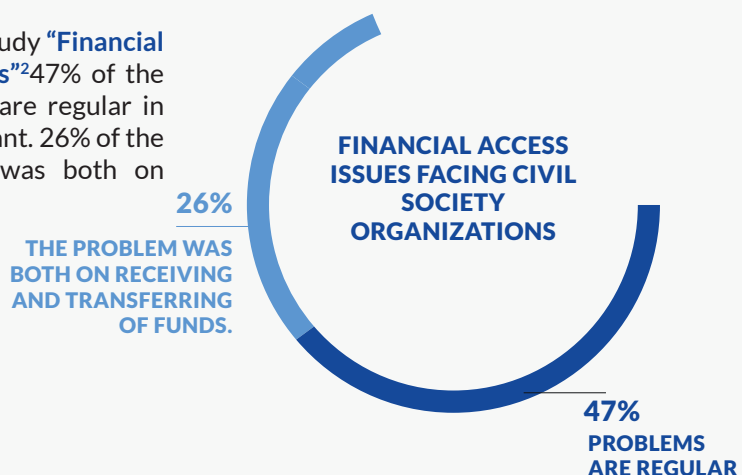
The literature reviewed as part of this mission confirms that the risks associated with bank derisking are prevalent throughout the world, and Tunisia is no exception. This is largely driven by the counterterrorism and anti-money laundering dynamics. Indeed, according to research¹ published by the Human Security Collective, 44% of the surveyed CSOs experienced bank derisking whether that was in terms of facing burdensome requests for additional documentation (61%), problems opening a bank account (50%), delays in bank transfers (29%) or a significant increase in banking fees (29%).



According to the same study, some financial institutions have implemented new measures to terminate or restrict certain customer categories including non-profit organizations (NPOs). These categories are considered by the financial institution as with high risks.

According to the survey conducted within the study “Financial access issues facing civil society organizations”² 47% of the responding CSOs report that these problems are regular in contrast to 15% as occasional and 12% as constant. 26% of the surveyed CSOs affirmed that the problem was both on receiving and transferring of funds.

On whether the problem was more with receiving foreign funds or the disbursement/transferring of funds within the country, 26% of those surveyed said it was both, 9% that the problem was with receipt of funds only and 5% said they had problems with disbursement only.



1. Human Security Collective, Financial access issues facing civil society organizations in Tunisia https://www.hscollective.org/assets/Tunisia_Derisking_FINAL.pdf

2. Survey, study financial access (bank derisking) issues facing civil society organizations in Tunisia - HSC, ECNL, ICNL, Green Ace, Kawakibi

THE UNINTENDED CONSEQUENCES ON CIVIL SOCIETY ORGANIZATIONS

In its Guidance on AML/CFT measures and financial inclusion, the FATF acknowledges that excessively cautious safeguards could lead to the unintended consequence of excluding legitimate businesses and consumers from the formal financial system.³

According to a study published by Stuart Gordon and Sherine El Taraboulsi-McCarthy in 2018⁴, while limiting or reducing funding flows to designated terrorist organizations is clearly in the best interest of the states, they have also had unintended consequences both on the states and on the civil society sector. Banks have been increasingly hesitant of engaging with humanitarian organizations, closing accounts, and delaying or blocking transactions. This denial of access to financial services has impacted the work of CSOs limiting the access to beneficiaries to the support. In some cases, the beneficiaries themselves have taken a precautionary approach to the risks more specifically the ones related to reputation.

Beyond the restrictions themselves, and according to the same study, being denied an operation/ transaction by a bank also constitute a reputational risk for the CSOs and individuals. The case studies confirm that it also affects the relationship between CSOs and donors **"Donors seem to be responding to bank de-risking by selecting regions and organizations that present as little bureaucratic burden and reputational risk as possible."**⁵

In his report⁶, and according to an independent study conducted by the United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA) and the Norwegian Refugee Council published, David Anderson G.C insists on the tendency towards "self-censorship" was noted from CSOs which is likely and caution on the part of their bankers which likely to undermine their ability to support people. He pointed up to an emergent need for practical and operational guidance according to the context and advised that **"counter- terrorism laws and measures should be subject to exclusions or exceptions for humanitarian action"**⁷.

The limitations that have been enforced on non-profit organizations (NPOs) and scrutinized encompass:

- 1 **INTENSIVE MONITORING OF NPO ACTIVITIES**
- 2 **LIMITATIONS ON THE ABILITY OF NPOS TO SECURE FUNDS AND MAINTAIN BANK ACCOUNTS**
- 3 **OBLIGATORY DISBANDMENT, REMOVAL FROM OFFICIAL RECORDS, OR EXPULSION OF NPOS.**

Under each of these classifications, there exist diverse restrictions, difficulties, and prerequisites that hinder the capacity of NPOs to function optimally, achieve their objectives, acquire resources, and occasionally, sustain their operations.⁸

In Tunisia, and according to the study⁹ published by **HSC, ECNL, ICNL, GREEN ACE AND KAWAKIBI**, the bank derisking have impacted civil society organizations and have caused delays in terms of programs and projects. Moreover, it is likely to increase informal money transfer (through cash programming) and exclusion from the formal financial institutions and sectors thus expanding the risk of money laundering. Operationally, according to the same report, meeting the due diligence (both from banks and donors) requirements, leads NPOs to spend more time, effort and resources over the time that needs to be spent to respond to beneficiaries' needs. Often, NPOs in Tunisia are not aware of these risks and the drivers behind bank desrisking.

3. FATF Guidance on AML/CFT measures and financial inclusion, with a supplement on customer due diligence

4. Stuart Gordon and Sherine El Taraboulsi-McCarthy (2018). 'Counter-terrorism, bank de-risking and humanitarian response: a path forward. Key findings from four case studies.

5. ibidem

6. David Anderson G.C, Third report on the operation of the terrorist asset freezing ETC. ACT 2010 (Reviewed period: Year to 16 september 2013)

7. Ibidem

8. High-Level Synopsis of the Stocktake of the Unintended Consequences of the FATF Standards

9. Human Security Collective, Financial access issues facing civil society organizations in Tunisia https://www.hscollective.org/assets/Tunisia_Derisking_FINAL.pdf

THE INTERNATIONAL DYNAMICS TO COUNTER MONEY LAUNDERING AND TERRORISM FINANCING

Worldwide, financial regulators and supervisors worldwide are more sensitive to combat risk of insecurity, more specifically the risk of financing of terrorism and money laundering.

Global standards have been put in place to ensure a compliance of the financial actors to money laundering (ML) and terrorism financing (TF). In this sense, the Financial Action Task Force (FATF) has set out **40 Recommendations** on which countries are peer-evaluated periodically. These recommendations have been endorsed by each country in their efforts to join the global dynamic. Endorsing the recommendations implies that countries promote, adjust their laws and regulations to align with them. One of these recommendations is Recommendation 8 specific to regulation of the Non-Profit Organizations sectors.

FATF Recommendation 8 and its interpretive note requires that laws and regulations governing non-profit organizations be reviewed to ensure that these organizations cannot be used for terrorist financing.¹⁰ It also recognizes the vital role played by NPOs in the society, providing relief and support to groups in need, and in times of crisis.

According to FATF, **"NPO refers to a legal person or arrangement or organization 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"."**¹¹

The objective and principles of recommendations 8, are protection rather than sanction. Indeed, the objective is to protect NPOs from terrorist financing abuse while not disrupting or discouraging legitimate NPOs activities (and more specifically charitable ones).

The interpretive note states that a risk-based approach should be taken when applying the measures with the identified threats to ensure that the sector continues to flourish.

The approach towards developing the response nationally should be flexible and adaptive to the context and the measure needs to be effective and proportional to the risks. Within the measure, the interpretive note states that not all NPOs are inherently high risk, subsequently, countries should **"use all relevant source of information in order to identify features and types of NPOs, by virtue of their activities or characteristics, are likely to be at risk of terrorist financing abuse"**¹².

Even if the regulatory measures have been integrated at bank level, **"Banks consider nonprofits to be at high risk for financial crime, expensive for compliance and low profit in general, resulting in the terminating of or a refusal to take on relationships with many NPOs"**¹³

FATF recommend an approach involving four elements as stated in the interpretive note as follows:

SUSTAINED OUTREACH

In the sense that countries must have policies to promote accountability, integrity and public confidence in the administration and management of NPOs; conduct outreach and educational campaign and programs to deepen the awareness of NPO about the existing risks and vulnerabilities of the sector; to work closely with NPO in identifying the best practices to protect themselves from terrorist financing abuse and finally encourage financial inclusion of NPOs.

10. FATF, Best Practices on Combating the Abuse of Non-Profit Organizations

11. Interpretive Note to Recommendation 8 (Non-profit organizations)

12. Ibidem

13. Website Global NPO coalition on FATF

TARGETED RISK-BASED SUPERVISION OR MONITORING

In the sense that a “one fits all” approach is inconsistent (as stipulated in the recommendation 1), thereupon the FATF suggests that the existing regulatory measures may already be sufficient. The authorities must, however, monitor the compliance of NPOs with the requirements of the jurisdiction and apply effective, proportionate and dissuasive sanctions for the violations (by NPOs or person action on their behalf)

EFFECTIVE INVESTIGATION AND INFORMATION GATHERING

In the sense that countries need to be able to ensure coordination and sharing of information, effective mechanisms for international cooperation while deploying investigative expertise and capabilities to examine NPOs that are suspected. Countries should also have the necessary information to respond to international requests about NPO of concern.

WHAT IS REQUIRED FROM BANKS WHEN RELATED TO NPO?

01

RISK-BASED APPROACH

In its recommendations and guidelines, when linked to the regulatory frameworks the FATF encourages a risk-based approach (RBA)¹⁴. This RBA is based on a national assessment of Money Laundering (ML) and Terrorism Financing (TF) including the NPO sector. When properly conducted, and according to the recently published Guidance for TF Risk Assessment¹⁵, the FATF recommends to government to “not to view NPOs as inherently at risk for TF abuse but to value and validate financial and administrative measures already taken by NPOs to prevent risk”¹⁶.

The evaluation of risk within the financial institutions should be based on a combination of customer risk factors, geography and countries risk factors and Product, service, transaction, or delivery channel risk factors¹⁷.

In its publication, Best practices combating the abuse of non-profit organizations (Recommendation 8), the FATF tries to assist the financial institutions in the proper implementation of a Risk Based Approach in relation with NPOs. Indeed, the document clearly stated that not all NPOs are high risk and some of them represent small or no risk at all. A proper application of a risk-based approach is likely to facilitate access to financial services for NPOs¹⁸.

02

CUSTOMER DUE DILIGENCE (CDD)

14. <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatfguidanceontherisk-basedapproachtocombatingmoneylaunderingandterroristfinancing-highlevelprinciplesandprocedures.html>

15. FATF (2019). Terrorist Financing Risk Assessment Guidance. <https://www.fatf-gafi.org/publications/methodsandtrends/documents/terrorist-financing-risk-assessment-guidance.html>

16. <http://www.fatf-gafi.org/media/fatf/documents/reports/Terrorist-Financing-Risk-Assessment-Guidance.pdf>

17. Ibidem

18. Best practices combating the abuse of non-profit organizations (Recommendation 8)

The recommendation 10 of FATF states that Financial institutions are required to undertake customer due diligence (CDD) in relation to their clients in the following aspects

I. ESTABLISHING BUSINESS RELATIONS;

II. CARRYING OUT OCCASIONAL TRANSACTIONS:

I. ABOVE THE APPLICABLE DESIGNATED THRESHOLD (USD/EUR 15,000)

II. CARRYING OUT OCCASIONAL TRANSACTIONS

III. THERE IS A SUSPICION OF MONEY LAUNDERING OR TERRORIST FINANCING

IV. THE FINANCIAL INSTITUTION HAS DOUBTS ABOUT THE VERACITY OR ADEQUACY OF PREVIOUSLY OBTAINED CUSTOMER IDENTIFICATION DATA¹⁹.

The same recommendation (10) states that these principles that financial institutions should conduct CDD should be set out in law. Moreover, when applying the measures that should determine to which extent they are using a risk-based approach (RBA) (in accordance with the Interpretive Notes to this Recommendation and to Recommendation 1)²⁰.

THE DESIRE OF BANKS TO AVOID FINES AND SANCTION

According to Keatinge in her article 'Counter terrorism finance efforts threaten NGO financial access' published in the Huffington Post, intrinsically, these closures comes from the desire of the banks is the desire of banks to rid themselves of any business that might possibly expose them to fines and sanctions **"for contravening this increasingly tough global regulatory stance towards the facilitation (purposeful or otherwise) of illicit finance, in particular in security-related areas such as breaches of sanctions and the financing of terrorism."**²¹

On the other hand, Banks and money transfer agencies are required to carry out extensive due diligence on their customers to fulfill compliance requirements and face large fines if they are found to be in contravention of any of these regulations.²²

THE DRIVERS BEHIND THE DERISKING OF BANKS

In their publication 'At the Intersection of Security and Regulation: Understanding the Drivers of De-risking and the Impact on Civil Society Organizations'²³, HSC and ECNL, have illustrated through case studies from Brazil, Mexico, Ireland, the drivers behind desrisking from banks and why the difficulties from their measures implemented are evolving on unprecedented scale.

¹⁹. Recommendation 10 FATF: <https://www.cfatf-gafic.org/index.php/documents/fatf-40r/376-fatf-recommendation-10-customer-due-diligence>

²⁰. The Interpretive note to recommendation 10 on CDD.

²¹. Keatinge, T. (2014) 'Counter terrorism finance efforts threaten NGO financial access', Huffington Post

²². HSC and ECNL (2018). At the Intersection of Security and Regulation: Understanding the Drivers and Impact of 'Derisking' on Civil Society Organizations.

²³. At the Intersection of Security and Regulation: Understanding the Drivers of De-risking and the Impact on Civil Society Organizations' (HSC/ECNL) https://www.hscollective.org/assets/Uploads/Reports/8f051ee3cb/Understanding-the-Drivers-of-De-Risking-and-the-Impact-on-Civil-Society-Organizations_1.pdf



THE BANKS HAVE AN OBLIGATION OF COMPLIANCE:

As a matter of fact, the financial services sectors have not only embedded and internalized the AML/CFT regulations but also applied them and developed their own mechanism, regulations to avoid the risk of non-compliance.²⁴



THE AML/CFT WERE INCLUDED IN THE BROADER FRAMEWORK OF THE BANKING REGULATIONS:

This has been translated, on the national level, through directives, measures and laws issued by central banks and the regulatory authorities. If not applied, banks could face both sanctions and reputational damage.



IT IS NOT SIMPLY THE RISK OF FINANCIAL PENALTIES, BUT THE ASSOCIATED REPUTATIONAL COSTS THAT COME WITH ENFORCEMENT ACTIONS PREDICATED ON ALLEGATIONS OF COLLUSION WITH ORGANIZED CRIMINALS OR TERRORIST GROUPS THAT ARE DRIVING DE-RISKING IN THIS CONTEXT.²⁵



BANKS ARE REASSESSING THE LEVEL OF RISK THEY IS WILLING TO ACCEPT OR TOLERATE IN ITS OPERATIONS AND ACTIVITIES - COST-BENEFIT ANALYSIS:

when potentially facing the above mentioned sanctions and reputational damage, some banks have taken the decision to avoid NPOs and other typology of client (considered as high risk to AML/CFT) even if it could present a risk in terms of profits for the banks.²⁶

"Other drivers of de-risking also include fear of supervisory actions, reduced risk appetite in banks, and reputational concerns."²⁷

THE BANKS DERISKING IS HINDERING FINANCIAL INCLUSION OF NPOS

The FATF defines de-risking as



THE PHENOMENON OF FINANCIAL INSTITUTIONS TERMINATING OR RESTRICTING BUSINESS RELATIONSHIPS WITH CLIENTS OR CATEGORIES OF CLIENTS TO AVOID, RATHER THAN MANAGE, RISK IN LINE WITH THE FATF'S RISK-BASED APPROACH.



24. ibidem

25. ibidem

26. ibidem

27. High-Level Synopsis of the Stocktake of the Unintended Consequences of the FATF Standards

Derisking in practices have resulted in some of the countries, including Tunisia loss of access to financial services or limiting the access to NPOs. According to the FATF,



DE-RISKING IS BY THIS DEFINITION INCONSISTENT WITH A PROPER APPLICATION OF THE RBA PROMOTED BY THE FATF, WHICH IS CENTRAL TO THE EFFECTIVE IMPLEMENTATION OF THE FATF RECOMMENDATIONS²⁸.



As a results of derisking, and the NPOs measures related to refusal of opening of bank account, higher cost on transactions and/or delays in transactions may lead to placing some of the financial transaction outside the financial system²⁹.

NPOs may also face delayed and higher cost transactions and some financial transactions may be more likely to take place outside the regulated financial system because of de-risking.

THE IMPORTANCE OF STAKEHOLDER DIALOGUE IN ADDRESSING FINANCIAL INCLUSION CHALLENGES FACED BY NPOS

Dialogue between the NPOs, financial institutions and supervisory authorities have been identified by FATF and worldwide s as potential solution to overcome the challenges faced by NPOs when related to the FATF measures and their implementation on the respective countries



IT IS GOOD PRACTICE FOR COUNTRIES TO WORK WITH THEIR FINANCIAL SECTOR AND SUPERVISORY AUTHORITIES TO FOSTER A MUTUAL UNDERSTANDING OF WHAT CONSTITUTES APPROPRIATE IMPLEMENTATION OF A RISK BASED APPROACH AND WORK TOWARDS FACILITATING FINANCIAL INCLUSION OBJECTIVE³⁰.



As an illustrative example, the Dutch multi-stakeholder roundtable on addressing financial access challenges for NPOs have been successful in developing a banking portal³¹. Beyond outline how NPO clients are assessed by the banks, what are the different documents required from NPOs, their rights and gives an overview of the sector risk assessment, the portal provides relevant stakeholders with the tools to facilitate their financial access.

The landing page of the portal states as follows:

²⁸. High-Level Synopsis of the Stocktake of the Unintended Consequences of the FATF Standards

²⁹. Ibidem

³⁰. Best practices combating the abuse of non-profit organizations (Recommandation 8)

³¹. <https://www.abnamro.nl/en/commercialbanking/about-abnamro/know-your-client-centre/associations-and-foundations.html>

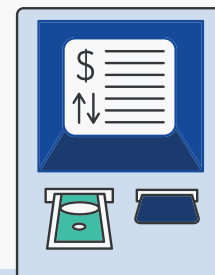


WE WANT YOU TO BE ABLE TO SAFELY DO YOUR BANKING EVERY DAY. ONE OF THE WAYS WE ENSURE THIS, IS BY HAVING UP-TO-DATE AND ACCURATE INFORMATION ON OUR CUSTOMERS. THIS IS ALSO STATED IN THE PREVENTION OF MONEY LAUNDERING AND FINANCING OF TERRORISM ACT (WWFT). FOR NON-PROFIT ORGANIZATIONS (NPOS), WE CAN REQUEST SPECIFIC INFORMATION AND DOCUMENTS. WE ARE HAPPY TO EXPLAIN MORE ABOUT THIS. BASED ON DUTCH AND INTERNATIONAL LAW, WE ARE OBLIGED TO ASSESS CUSTOMERS FOR POSSIBLE MONEY LAUNDERING, TERRORIST FINANCING, VIOLATIONS OF (INTERNATIONAL) SANCTIONS AND OTHER INDICATORS OF FINANCIAL CRIME. BY LAW, BANKS ARE REQUIRED TO REPORT UNUSUAL TRANSACTIONS TO THE FINANCIAL INTELLIGENCE UNIT (FIU). WE STRIVE TO ENSURE THAT THE INFORMATION WE REQUEST IS IN PROPORTION TO ANY RISKS³².



It is also important to note, this initiative is likely to enhance the relationship between the bank and its clients in the sense that it lays the foundation for an open, transparent, and easy to understand communication thus a more sustainable win-win relationship.

To emphasize on how powerful such a mechanism is in improving the implementation of FATF measures concerning NPOs' access to financial services, Lia van Broekhoven and Sangeeta Goswami in their paper 'Can stakeholder dialogues help solve financial access restrictions faced by non-profit organizations that stem from countering terrorism financing standards and international sanctions?'³³ have underpinned several examples of multi-stakeholders dialogue such as: the UK Trisector Working Group (established by the Ministry of Home Affairs to address the impact of counterterrorism and counterterrorism financing measures on NPOs working internationally), The World Bank-ACAMS Financial Access Stakeholder Dialogue, the dialogue between the French government, the French National Bank, banks and NPOs in the country.



IV. RESEARCH METHODOLOGY

PHASE 1: LITERATURE REVIEW

This phase is essential to kickstart the research and consists of reviewing the documents relating to the context and to the actors' scope of action according to the research scenario adopted. Laws, regulations, media coverage, and any scientific literature related to the subject are analyzed in the present report.

³². <https://www.abnamro.nl/en/commercialbanking/about-abnamro/know-your-client-centre/associations-and-foundations.html>

³³. Lia van Broekhoven and Sangeeta Goswami, 'Can stakeholder dialogues help solve financial access restrictions faced by non-profit organizations that stem from countering terrorism financing standards and international sanctions?', International Review of the Red Cross (February 2022)

PHASE 2: DATA COLLECTION

This phase aims to collect information from the different stakeholders based on the research questions defined above and listed in the detailed methodology of the research. This list was predefined in consultation with the ICNL team.

A total of **20 interviews** were to be conducted as part of this assignment.

Within the framework of this mission, **3 banks were identified**.

A public bank, a private Tunisian bank and a branch of an international bank. The post office will also be targeted, given its extensive coverage across the country.

For each bank, several counterparts were identified to trace the decision-making process and the transmission of information within the institution. The semi directive interviews were the main tool of this study. Apart from the interviews and within the framework of the mission, 2 focus groups were initially planned.

PHASE 3: DRAFTING OF THE SUMMARY REPORT OF FINDINGS

This phase aims to collect information from the different stakeholders based on the research questions defined above and listed in the detailed methodology of the research. This list was predefined in consultation with the ICNL team.

PHASE 4: FINAL REPORT

The final report will synthesize all information gathered throughout the mission, offer a broad overview of the current state of human rights activism in Tunisia and offer strategic recommendations on how to best support the most promising initiatives.

LIMITATIONS OF THE STUDY

In examining the limitations of this study, it is imperative to acknowledge the profound influence of political developments on the civic space in Tunisia and its repercussions on financial institutions. As of late, a noticeable shift in the landscape has occurred, as the Tunisian government's approach towards civil society organizations (CSOs) has transformed significantly. From the information collected in the interviews, apparently, the Counter Terrorism Commission (CTC) has now assumed supervision over CSOs, placing them under intense scrutiny in relation to terrorism financing and money laundering. This represents a fundamental shift from our previous collaboration with CTAF in 2019, where CSOs were considered low risk. The change in circumstances is underscored, according to the interviews conducted, by an increasing number of CSOs being subject to legal proceedings based on suspicions of involvement in terrorism financing and money laundering.

Furthermore, tensions and pressures on the central bank and financial institutions have mounted as the President of the Republic, Kaïs Saïed, has become directly involved in addressing financial irregularities. His personal intervention in matters related to financial institutions, exemplified by his examination of the Banque Nationale Agricole (BNA), demonstrates the gravity of the situation.

The President's explicit assertion that foreign funds channeled through associations need rigorous control underlines the growing emphasis on state oversight. This is further echoed by the president's assertion that many associations have become conduits for foreign funding to political parties, a practice strictly prohibited by law. The involvement of the Central Financial Crimes Brigade in investigations related to money laundering, and the President's calls for legal proceedings, have introduced new challenges to the operating environment of both CSOs and financial institutions. These developments, coupled with the President's strong stance against foreign interference and corruption, create an environment fraught with uncertainties and heightened scrutiny. Given the rapidly evolving nature of this context and the multifaceted challenges it presents, conducting the research mission has been increasingly complex and unfeasible.

Indeed, although several official letters and communications were addressed to various banks and financial institutions in Tunisia (La Poste, BIAT, UIB, UBCI, BNA, STB, ATB), as well as public authorities (the Central Bank, the Tunisian Financial Analysis Commission, the Tunisian for Counter Terrorism Commission), these requests remained unanswered. Through informal channels, the research team also attempted to contact the individuals concerned, most of whom declined interviews and redirected the team to the Central Bank. The two individuals who did engage in interviews explicitly expressed their desire to remain anonymous.

V.

FINDINGS OF THE RESEARCH



THE LEGAL FRAMEWORK OF COUNTER-TERRORISM IN TUNISIA AND ITS EXPLICIT LINK WITH THE ACTIVITIES OF ASSOCIATIONS

Articles 102, 100, 99 and 106 of the organic law³⁴ explicitly mention associations and NPOs. Indeed, according to the same law, associations are obliged to implement the necessary due diligence procedures and in particular:

IN TERMS OF DONATION AND FINANCIAL AID:

Refuse and avoid any donations or financial aid of unknown origin, or resulting from illegal activities considered by law to be a crime, or from natural or legal persons, organizations or structures with proven involvement, inside or outside the territory of the Republic, in activities linked to terrorist crimes.

They need to verify both persons and organizations on the list of organizations, natural persons and legal entities can be found in the national list³⁵ and the UN list³⁶.

They are also required to refuse any sum of money from abroad, except through an approved intermediary based in Tunisia, and provided that the law in force does not prevent such acceptance.

³⁴. Organic Law No. 9 of 2019 of January 2019, 23, amending and completing Organic Law No. 26 of August 2015, 7 on the fight against terrorism and the prevention of money laundering

³⁵. http://www.cnlct.tn/fr/?page_id=1684

³⁶. http://www.cnlct.tn/fr/?page_id=1683



IN TERMS OF TRANSACTIONS:

Reject any sum of money in cash equal to or greater than the equivalent of five hundred dinars (500 D), even if this is done by means of multiple payments with a suspected link between them.



IN TERMS OF MEMBERSHIP:

Refuse membership's fees whose value exceeds the legal limit specified by law (Article 99³⁷).



IN TERMS OF MANAGEMENT:

Keep accounts in a daily book that includes all receipts and expenses and to keep a list of receipts, transfers, and deposits with a foreign connection, including a statement of the amounts involved, their cause and date, identifying the natural or legal person concerned. Copies shall be sent to the departments of the Central Bank of Tunisia.

Moreover, they need to prepare an annual budget and keep accounting records and documents, (whether on a physical or electronic medium), for a period of at least ten years from the date on which the transactions were carried out.

In case an association or non-profit organization suspected of being associated with persons, organizations or activities linked to the offenses referred to in the law³⁸, or which has violated the rules of due diligence as defined, the president of the competent territorial court of first instance may permit an external audit to be conducted by one or more specialized experts, appointed by virtue of an authorization based on a request from the Minister of Finance.

According to the same law, the Minister of Finance may require prior authorization from suspected legal entities for the acceptance of any financial transfers received from abroad.

It is also important to note that this is not applicable to NPOs whose annual revenues or available savings do not reach a certain ceiling to be determined by decision of the Minister of Finance are exempt from the obligations of the provisions of this chapter.³⁹

OVERVIEW OF THE BANK SECTOR IN TUNISIA

The Tunisian financial system comprises the Central Bank of Tunisia, 23 resident banks, 7 offshore banks and 13 financial institutions, including 2 corporate banks, 8 leasing companies and 2 factoring companies. The banking system has succeeded in setting up an extensive network of representative offices and branches. There are currently more than 1905 branches over the country.⁴⁰ Three of these banks are state-owned (STB, BNA and BH). It is also important to note that the National Postal Office is one of Tunisia's leading financial players. Thanks to its unique geographical presence throughout the country, it is able to offer a wide range of financial services to citizens, whether banked or not, and above all to collect deposits.

³⁷. Organic Law No. 9 of 2019 of January 2019, 23, amending and completing Organic Law No. 26 of August 2015, 7 on the fight against terrorism and the prevention of money laundering

³⁸. Ibidem

³⁹. The research was unable to define the limit mentioned in the law, given the non-accessibility of the Ministry of Finance's decision.

⁴⁰. Website - Ministry of Finance in Tunisia: <http://www.finances.gov.tn/fr/apercu-general-1>

THE TUNISIAN FINANCIAL SYSTEM



THE CENTRAL BANK OF TUNISIA



23

RESIDENT BANKS

07



OFFSHORE BANKS

13

FINANCIAL INSTITUTIONS



2



CORPORATE BANKS



8



LEASING COMPANIES



2

FACTORING COMPANIES

1905

BRANCHES OVER THE COUNTRY.



STB BNA BH



3

STATE-OWNED BANKS



NATIONAL POSTAL OFFICE

AN UPDATED NATIONAL ASSESSMENT OF RISKS RELATED TO NON-PROFIT ORGANIZATIONS (NPOS) IN TERMS OF TERRORISM FINANCING (TF) IN TUNISIA

In 2017, Tunisia released its initial national risk assessment, which concluded that Non-Profit Organizations (NPOs) posed a high risk of being exploited for TF due to the geopolitical context at the time and changes in the associated legal framework. Additionally, the outcome of the National Risk Assessment (NRA) resulted from a methodology that only involved public authorities and did not include civil society.

It is noted that one of the 40 recommendations by the Financial Action Task Force (FATF), specifically Recommendation 8, focuses on NPOs and their risk of being used for TF. Regarding this recommendation, Tunisia was deemed partially compliant in its second follow-up report discussed during the 25th plenary of the Middle East and North Africa Financial Action Task Force (MENAFATF).

By the end of 2017, Tunisia came under the supervision of FATF's International Cooperation Review Group (ICRG) due to identified strategic deficiencies in its Anti-Money Laundering (AML) and Counter-Terrorism Financing (CTF) regime. One of the gaps at that time was the lack of effective supervision of the NPO sector. To address these vulnerabilities and mitigate the identified risks within the NRA, a series of measures were taken by competent authorities, including:



- **Adjusting the legal and institutional framework;**
- **Strengthening human resources within the regulatory authority,**
- **Identifying NPOs at risk of being exploited for TF;**
- **Conducting inspection missions;**
- **Imposing necessary sanctions;**
- **Raising awareness among NPOs about TF risks they face.**

In light of the measures taken since 2018, particularly within the framework of the FATF action plan, Tunisia requested a review of its level of compliance with the aforementioned Recommendation 8, and achieved a level of substantial compliance. MENAFATF experts concluded that Tunisia should update the national risk assessment for NPOs. To achieve this, Tunisia opted for a participatory approach, devising collaborative methods of reflection and planning to yield more objective and contextually adapted results for NPOs.

Consequently, a working group was established at the end of 2018, comprising representatives from competent authorities, including CTAF, the General Directorate of Associations and Political Parties under the Presidency of the Government, CNLCT, BCT, and ACM, alongside civil society representatives. In addition to extensive participation and stakeholder control over the evaluation process, the working group adopted a methodology developed by the British firm "GreenAcre" to enhance their capacity and skills in evaluating NPOs. This methodology was designed to assist jurisdictions in complying with the requirements of FATF's Recommendation 8, which mandates countries to assess the TF risk within the NPO sector.

This approach allowed Tunisia to address the deficiencies identified in its mutual evaluation report and action plan, leading to full compliance with FATF's Recommendation 8 in its fourth follow-up report. Moreover, the close cooperation between CTAF, competent authorities, and Tunisian civil society facilitated the identification of TF risks faced by NPOs in Tunisia. This risk level shifted from high to medium to low, and a review of the measures and strategy established in 2017 was conducted to further mitigate risks in this sector. The following is the risk matrix for the NPO sector.

DECISIONS TO SUSPEND THE ACTIVITIES OF ASSOCIATIONS ISSUED BY THE NATIONAL COUNTER-TERRORISM COMMISSION

The national counter-terrorism commission is responsible for freezing the assets of individuals and organizations for which the Commission has sufficient evidence of their involvement in terrorist crimes. It is also important to note that the Commission is required to identify the names of individuals and organizations suspected of involvement in terrorist crimes in Tunisia, and to communicate them to administrative authorities and financial institutions.

The commission has frozen, in the national list of persons, organizations and entities associated with terrorist infractions, several NOPs and persons related to NPOs. Indeed, in the last year (*from the updates of the 04th of october 2023*), the commission have frozen the activities of three associations:

Iman associations (جمعية الإيمان), Marhama Association For Social and Charity (جمعية مرحمة للمشاريع الاجتماعية والخيرية) and **association Tunisia for social development** (جمعية تونس التنموية الاجتماعية) and seven persons with suspected implication to terrorist activities that have been engaged in associations.

When analyzing the reasons of listing:



- **For individuals related to NPOs:** The use of associations and their activities to attract children and young people and to convey and promote messages of hatred, intolerance and violent extremism, the use of associations to raise funds for terrorist activities and the abuse of space for illicit purposes.

- **For NPOs:** A strong suspicion of terrorist financing, and the use of the association's account as a central account for accepting foreign funds.

Even if the number is small compared to the total number of associations in Tunisia, it is enough to keep associations as a high risk of terrorist financing for the Tunisian authorities. There seems to be a political will to keep associations rated at high risk.

It also appears that the cases of several other associations are currently being examined by the commission on suspicion of terrorist financing and money laundering.

THE BENEFICIAL OWNER OF NPOS

There seems to be some confusion/difficulty in the financial institutions, banks, and National Post Office when it comes to identifying the beneficial owner of the NPOs.

In the CTAF decision⁴¹, the beneficial owner is defined as the person or persons directly or indirectly holding a percentage equal to or greater than the capital or voting rights. Voting rights may be applicable to NPOs. In the case of uncertainty in identifying the real beneficial owner, the beneficial owner is defined as the person or persons who exercise real or legal power over the management or administration arrangements, or over the general assembly or operations.

⁴¹. Decisions of the Tunisian Financial Analysis Commission No. 10-2018 of June 2018 ,8 revising decision No 3-2017

If uncertainty persists, the beneficial owner is defined under this Decision as the person who performs the coordination/management function within the institution.

In general, reporting entities must identify the beneficial owner(s) as the individual(s) who exercise(s) by whatever means, de facto or de jure, a power of control over the management, administrative or executive bodies, or over the general assembly, or over the operation of the legal entity.

LEGAL FRAMEWORK AND RISK ASSESSMENT IN TUNISIA

The circular addressed to banks and financial institutions **No. 2017-08 of September 19⁴², 2017, as amended by Circular No. 2018-09 of October 18, 2018**, regulates the framework of internal control rules for managing the risk of money laundering and terrorism financing.

It sets out the measures to be taken and procedures to be implemented by banks and financial institutions to fight money laundering and the financing of terrorism.

According to this circular, in the fourth article of the first chapter, banks and financial institutions must take appropriate measures to identify, assess and understand the money laundering and terrorist financing risks to which they are exposed, considering risk factors such as customer profile, countries or geographical areas, products, services, transactions or distribution channels.

More specifically, they need to document their risk assessments ; consider all relevant risk factors before determining the overall level of risk and the appropriate level and type of appropriate measures to be applied to mitigate these risks, including assessing the level of vigilance against the risk profile; and to keep these assessments up to date.

VERIFYING THE IDENTITY PRIOR TO OPEN THE BANK ACCOUNT - CUSTOMER IDENTIFICATION FORM

According to the same circular, banks and financial institutions need, as soon as it enters a business relationship with a customer and/or, where applicable, his agent, verify the customer's identity and the scope of his activity, as well as his banking and financial environment. They are requested to conduct an interview during the first contact, for which a customer identification form is filled and must be signed by an authorized person and placed in the customer's file.

This interview aims at legally **identify the person**; have a clear understanding of **the account holder's activities, income and assets account holder**; when the customer is a legal entity, any indication of its current operations including among other things, recent financial statements, to obtain, when the customer is a legal entity, any information on its constituent elements, the aims pursued, the procedures for its management and representation, as well as the identity of the persons who set it up and those who manage it, and the beneficial owners; and to understand and obtain information on the purpose and intended nature of the relationship.

42. <https://www.apbt.org.tn/wp-content/uploads/09/01/2023-Circulaire-de-la-BCT-aux-banques-et-aux-etablissements-financiers-n%C2%B09-02018-du-18-Octobre-2018.pdf>

According to **article 5 of the circular**, the customer identification needs containing the minimum information in accordance with the appendix 1 of the circular.

For association the minimum of information required are:



- Association name;
- Address of head office;
- Names and surnames of persons authorized to carry out financial transactions and their national identity card numbers;
- Bylaws of association and reference to the extract from the *Journal Officiel de la République Tunisienne (JORT)* relating to the incorporation of the association;
- Any information needed to assess the association's financial situation, in particular financial statements and, where applicable, auditors' reports;
- Identity of the beneficial owner(s).

DUE DILIGENCE RELATED TO THE IDENTIFICATION OF THE CUSTOMER AND THE BENEFICIAL OWNER OF THE OPERATION OR TRANSACTION AND THE POSITION OF THE PERSON ACTING ON THE CUSTOMER'S BEHALF

According to the circular⁴³, banks and financial institutions must undertake due diligence concerning the identification of the customer and the beneficial owner of the operation or transaction, as well as the position of the person acting on behalf of the customer. This diligence is particularly important in the following situations:



- When the client wants to open a bank account: It's essential to verify the customer's identity and assess the beneficial owner in such cases.
- When the client carries out occasional transactions: This applies when the value of these transactions is equal to or greater than an amount set by the Minister of Finance, whether they are conducted as a single operation or in multiple operations that appear to be linked.
- When the client conducts transactions in the form of electronic funds transfers: For electronic fund transfers, the same level of due diligence should be maintained.
- If there is a suspicion of money laundering or terrorist financing: In cases where there are suspicions related to money laundering or terrorist financing, a high level of scrutiny is required.
- If there are doubts regarding the veracity or relevance of the customer's previously obtained identification data: In such instances, it's crucial to address any doubts and verify the accuracy and relevance of the customer's existing identification data.

Indeed, according to the decision of the Tunisian Financial Analysis Commission No. 2018-12 of May 30, 2018 relating to guidelines for combating money laundering and the financing of terrorism concerning non-profit organizations, in particular associations, banks and financial institutions need, when dealing with NPOs, to conduct due diligence in the following cases: before and during the establishment of a business relationship with the organization ; When there are doubts about the accuracy and adequacy of previously obtained data about the organization; When carrying out occasional transactions with a value of ten thousand dinars or more, or using wire transfers, whether in the form of a single transaction or split into several linked transactions and when there is a suspicion of money laundering or terrorism financing.

⁴³. Circular addressed to banks and financial institutions No. 08-2017 of September 2017 ,19, as amended by Circular No. 09-2018 of October 2018 ,18 regulates the framework of internal control rules for managing the risk of money laundering and terrorism financing

It is also important to note that, Banks and financial institutions and the National Post Office are among the persons subject to the reporting obligation mentioned in **chapter 107 of the Basic Law no. 62 of 1972 of August 1, 2016** on combating terrorism and preventing money laundering amended by in accordance with **Basic Law No. 9 of 2019 of January 23, 2019**⁴⁴

According to the law on the fight against terrorism and money laundering⁴⁵, banks, financial institutions, and the National Post Office, need to take due diligence measures, such as:



- **Avoid opening or maintaining anonymous accounts or accounts with clearly fictitious names, and verify, based on official documents and other documents issued by reliable independent parties, the identity of their regular or occasional customers, and record all necessary data enabling them to be identified.**
- **Verify official documents and other documents issued by reliable independent parties, including: the identity of the beneficiary of the transaction and the quality of the person carrying it out, Legal entity constitution, its legal arrangements, its legal form and its registered office...**
- **Identify the beneficial owner and take reasonable steps to verify his or her identity using information or data from reliable sources.**

It is important to mention that the law⁴⁶ authorizes banks, financial institutions and the National Post Office to refuse to open an account, to start or continue the business relation if they evaluate that the above-mentioned data is insufficient or obviously fictitious. If necessary, they should consider making a suspicious declaration.

DUE DILIGENCE COVERS NOT ONLY NPOS, BUT ALSO PERSONS WITH KEY RESPONSIBILITIES IN INTERNATIONAL ORGANIZATIONS AND THEIR FAMILIES

Beyond NPOs, according to the law⁴⁷ due diligence needs to be applied to persons with key responsibilities in international organizations. It refers not only to current ones but also to the person that held such a position in the past (i.e. directors, deputy directors, members of the Executive Board and all those who hold similar positions.). It includes relatives up to at least the first degree of family relationship, as well as persons related to them.



TYPE OF INFORMATION REQUIRED FROM NPOS IN THE DUE DILIGENCE PROCESS

Several associations have reported abusive requests for information from banks and financial institutions in general. However, according to the CTAF decision⁴⁸, the collection of this information is required by these institutions as part of the due diligence process. Among the information required from NPOs we can mention:

- **Identification data, including: organization name, legal form, registered office address, Head office and branches (if any), details including postal number, telephone and fax numbers and e-mail address.**
- **If the main activities are not carried out at the head office, following details are required: the actual address of the activity, the type of activity carried out, the date of establishment, the names of the components and persons authorized to sign for the organization including their nationalities and telephone numbers, the purpose and nature of the business relationship, and any other information or documents that the persons concerned deem necessary.**

⁴⁴.Organic Law No. 9 of 2019 of January 23, 2019 amending and supplementing Organic Law No. 26 of August 7, 2015 on the fight against terrorism and the prevention of money laundering.

⁴⁵. Organic Law No. 9 of 2019 of January 23, 2019 amending and supplementing Organic Law No. 26 of August 7, 2015 on the fight against terrorism and the prevention of money laundering.

⁴⁶. Ibidem

⁴⁷. Ibidem

⁴⁸. Decision of the Tunisian Financial Analysis Commission No. 12 of 2018 dated May 1, 2018 on guidelines for combating money laundering and the financing of terrorism in relation to non-profit organizations, in particular associations.

- Obtaining official documents or copies identical to their originals or certified if necessary.
- Current regulations proving the creation of the association and the exercise of its activities in accordance with the legislation in force in Tunisia or abroad.
- Copies of authorizations issued by the association to individuals who represent it, including: the nature of the relationship with the associations, and identification of the authorized individual and identification of the beneficial owner.
- Additional identification, including: full name, date and place of birth, national identification card, nationality, nature of work, address of permanent residence, telephone number, full details of identification document for Tunisian persons, passport number for non-Tunisian persons, and any other information or documents necessary to complete the identification process.
- Original official documents or an exact or certified copy which prove the validity of the representation or agency in the case where a person or entity deals with persons authorized by the organization or under an agency.
- Information on the organization's management rules, including structure and management, as well as the names of the people concerned who hold general management positions in the organization.

The circular grants financial institutions discretionary powers to collect any other information and documents they deem useful.

All the documents and data mentioned above apply to associations only.

Banks, financial institutions, and the National Postal Office need to collect additional data to verify the identity of the beneficial owner. The latter needs to be obtained from official and reliable sources in a manner that assures the institutions are aware of and trust the beneficial owner. Additionally, they must retain copies of all this information and documentation.

For all the above information, financial institutions must verify the veracity of the information through neutral and reliable sources.

Representatives of banks and financial institutions are also required to update the documents, data and information they obtain as part of their due diligence procedures. They are also required to monitor ongoing operations as part of an ongoing relationship with the organization. They must record and retain the data that concerns them.



INTERNAL MEASURES OF DUE DILIGENCE WITHIN NPOS

According to the CTAF decision⁴⁹, NPOs must use accounting standard 45⁵⁰ specific to associations, political parties and NPOs to ensure the availability, veracity and transparency of financial statement information in particular, donors, managers, public authorities and the state. More specifically, among the measures NPOs must:

- Keep a register of members' subscriptions, updating all information and subscription amounts. The association needs to provide a receipt for extracting the subscription or contribution;
- In addition to contributions and subscriptions, must keep a register of any other financial resource. It must include the donor's identity, address and position. If the donor is a legal entity, it must include the company name, fiscal identity, trade register number and purpose.
- Inform the central bank of all resources received from abroad, whatever their form.
- Publish foreign aid, donations and grants.

⁴⁹.Decision of the Tunisian Financial Analysis Commission No. 12 of 2018 of May 1, 2018 on guidelines for combating money laundering and the financing of terrorism in relation to non-profit organizations, in particular associations.

⁵⁰.Order of the Minister of Finance of February 13, 2018, approving the accounting standard for associations, political parties and other non-profit organizations.

- Explain precisely the income from its activities and the income generated by its properties or projects.
- Explain precisely who provided the public funding and the projects and activities for which the funding was awarded.⁵¹
- Endeavor to disburse funds to the beneficiaries of activities, by bank transfer or cheque exclusively to the beneficiary. Under no circumstances may they finance political parties.
- Exercise due diligence regarding their accounts with banking and financial institutions. They must allow these accounts to be managed only with the joint signature of two persons authorized by their management structures.
- Take appropriate due diligence measures to verify, on the basis of official documents and other records issued by neutral and reliable sources of identification for its members, donors and beneficiaries of its activities.
- Be responsible for any suspicious transactions or operations that they have monitored in the course of their activities. They may report, even after the transaction or operation has been carried out, if new information becomes available showing that it is a suspicious transaction or operation. NPOs must not reveal any information concerning the information provided and the resulting measures.
- Implement ongoing training programs for their staff on the laws and regulations in place to fight against terrorism and money laundering. These training should also enable the staff to acquire more knowledge on policies, principles, procedures and internal controls applied by NPOs to combat money laundering and terrorist financing operations.

It is also important to note that NPOs' whose annual resources exceeding **one hundred thousand (100,000) dinars** need to set up an internal control system. This system should allow the NPOs to define the risks to which the organization may be exposed in terms of money laundering and terrorist financing, the measures to prevent and deal with these risks and they need to ensure that revenue and payment transactions are completed following due diligence measures to fight terrorism and prevent money laundering.

- Associations must also refuse to accept any financial resources whose source is unknown or which result from illegal acts considered by law to be a misdemeanor or felony, or from Natural or legal persons, organizations or structures proven to be involved, inside or outside the territory of the Republic, in activities linked to terrorist offenses, or In cash equal to or greater than the equivalent of five thousand dinars, but this may be agreed in terms of multiple payments that enter into the establishment of a relationship between them.

BANKS PROTECT THEMSELVES AGAINST THE RISK OF BEING USED FOR MONEY LAUNDERING AND TERRORIST FINANCING PURPOSES

According to article 10 of the circular⁵², banks and financial institutions needs to implement appropriate risk-based programs including:



- compliance control systems;
- selection procedures to ensure that employees are appointed according to rigorous criteria;
- an ongoing training program for employees;
- an independent audit function;

⁵¹.Government order n ° 5183 of the year 2013 relating to public funding as revised revised for the benefit of associations

⁵².Circular addressed to banks and financial institutions No. 2017-08 of September 19, 2017, as amended by Circular No. 2018-09 of October 18, 2018 regulates the framework of internal control rules for managing the risk of money laundering and terrorism financing

- policies and procedures for sharing information required for customer due diligence and money laundering/terrorist financing risk management;
- the provision of information from branches and subsidiaries relating to customers, accounts and transactions, where required for the purposes of fighting money laundering and the financing of terrorism, to compliance functions at group level. This information must include data and analyses of transactions or activities that appear unusual, if such analyses have been carried out. Similarly, the division of compliance should also share this information with branch and subsidiary compliance officers where relevant and appropriate for risk management purposes; and
- satisfactory guarantees as to the confidentiality and use of the information exchanged, including guarantees to prevent disclosure.

The vigilance system should be at least equivalent to the requirements mentioned above if not more. Moreover, Banks and financial institutions needs are required to set up formalized, clear and rapid internal procedures enabling them to check, at any time, that the customer or beneficial owner is not on a national⁵³ or UN list⁵⁴ of persons, organizations or entities with a proven link to terrorist crimes or crimes to finance the proliferation of weapons of mass destruction⁵⁵.

VI. CONCLUSION



In conclusion, the legal framework in Tunisia places significant emphasis on preventing money laundering and terrorist financing, particularly concerning non-profit organizations (NPOs) and individuals with key responsibilities in international organizations. The regulations outlined in the circular and associated decisions require meticulous due diligence and risk assessment by banks and financial institutions. This comprehensive summary has shed light on the intricate processes and measures in place, from customer identification and information collection to ongoing monitoring and reporting.

These regulatory efforts aim to safeguard the financial sector, mitigate the risk of associations and NPOs becoming conduits for illicit activities, and contribute to Tunisia's broader counter-terrorism efforts. Financial institutions play a critical role in enforcing these anti-money laundering and anti-terrorist financing measures, working in collaboration with the National Counter-Terrorism Commission and other stakeholders. In the following sections, we delve into the implications and recommendations that can enhance the effectiveness of these regulations, ensuring the robust protection of the financial system while upholding the principles of transparency and compliance.

UNDERSTANDING NPOS AND DERISKING:

The legal framework in Tunisia explicitly addresses the association of non-profit organizations (NPOs) with counter-terrorism measures. This framework obligates NPOs to implement rigorous due diligence procedures to prevent involvement in illegal activities related to terrorist financing. Additionally, regulations emphasize the importance of understanding and mitigating money laundering and terrorist financing risks associated with NPOs.

⁵³. http://www.cnlct.tn/fr/?page_id=1684

⁵⁴. http://www.cnlct.tn/fr/?page_id=1683

⁵⁵. Circular addressed to banks and financial institutions No. 2017-08 of September 19, 2017, as amended by Circular No. 2018-09 of October 18, 2018 regulates the framework of internal control rules for managing the risk of money laundering and terrorism financing

RISK ASSESSMENT AND BANKING APPROACH:

Banks and financial institutions are required to conduct risk assessments to identify, assess, and understand the money laundering and terrorist financing risks they face. These assessments consider various risk factors, including customer profiles, geographical areas, activities, services, and transactions. Furthermore, they must document these assessments, keep them up-to-date, and use this information to determine the appropriate measures to mitigate these risks.

SUPERVISION, CUSTOMER DUE DILIGENCE, AND SCREENING:

To counter money laundering and terrorist financing, financial institutions are obligated to conduct due diligence on NPO customers. This includes verifying the identity of customers, understanding the nature of their activities, and conducting interviews during the initial contact. They must also follow specific guidelines related to information collection and identification of beneficial owners.

OPENING BANK ACCOUNTS FOR CSOS AND NPOS:

Banks and financial institutions must follow detailed customer identification procedures for associations and NPOs. These procedures encompass collecting a range of information, including organization details, official documents, authorizations, and information about the individuals involved. The goal is to ensure transparency in financial relationships and prevent illicit activities.

DERISKING DRIVERS AND STAKEHOLDER INVOLVEMENT:

Despite the relatively small number of associations affected, the suspension of activities by the National Counter-Terrorism Commission raises concerns about the risk of terrorist financing within Tunisia. Several other associations are under examination for possible involvement in terrorist financing and money laundering. Moreover, it is essential to verify the identity of beneficial owners and understand their financial arrangements to mitigate risk.

VII. RECOMMENDATIONS



RECOMMENDATIONS ADDRESSED TO THE INTERNATIONAL CENTER FOR NON-PROFIT LAW (ICNL)

EMPOWERMENT THROUGH KNOWLEDGE

ICNL should continue to provide knowledge for NPOs in Tunisia. Workshops, seminars would be organized, and online resources could be created to equip Tunisian NPOs with the know-how needed to comply with Tunisian anti-money laundering and anti-terrorist financing regulations.

LEGAL SHIELD

ICNL should continue to provide knowledge for NPOs in Tunisia. Workshops, seminars would be organized, and online resources could be created to equip Tunisian NPOs with the know-how needed to comply with Tunisian anti-money laundering and anti-terrorist financing regulations.

CHAMPION CLARITY

In collaboration with local and international allies, ICNL should advocate for more transparent and standardized guidelines tailored to NPOs in Tunisia.

SHOWCASING SUCCESS

INCL could document and promote the adoption of best practices among NPOs. Sharing success stories and case studies can be a powerful way to demonstrate how organizations can effectively harmonize their operations with regulations while continuing to make a positive impact.

ICNL could also consider forging strategic partnerships with banks and financial institutions in Tunisia to foster a collaborative environment focused on enhancing compliance with anti-money laundering and anti-terrorist financing regulations. The areas for collaboration could encompass the following:

TRAINING AND CAPACITY BUILDING:

CNL could collaborate with banks and financial institutions to develop training programs targeting bank personnel. These programs could focus on providing a deep understanding of the unique risks associated with non-profit organizations (NPOs) and international organizations. Offering insight into the regulatory landscape and due diligence requirements specific to these entities can help institutions navigate compliance more effectively.

INFORMATION SHARING AND REPORTING:

Encourage banks and financial institutions to establish mechanisms for sharing information regarding suspicious activities related to NPOs. ICNL can serve as an intermediary platform for aggregating and anonymizing data to identify broader trends and risks. This collaborative approach helps in real-time risk assessment and reporting.

MUTUAL RISK MITIGATION STRATEGIES:

Work together to develop strategies for mutual risk mitigation. ICNL can provide expertise on best practices for NPOs to minimize risk exposure. Simultaneously, banks and financial institutions can share insights on their due diligence procedures and risk assessment criteria. This cross-pollination of knowledge can result in more effective risk management.

NPOS AWARENESS INITIATIVES:

Collaborate on NPOs awareness campaigns to educate NPOs about the importance of financial transparency and the role of banks in safeguarding against money laundering and terrorist financing. Joint initiatives can help dispel misconceptions and foster a spirit of cooperation.

POLICY ADVOCACY JOINTLY CONDUCTED WITH BANKS AND FINANCIAL INSTITUTIONS:

Partner with banks financial institutions to advocate for policies that streamline compliance while maintaining security. Joint advocacy efforts can help influence regulators to create more comprehensive, clear, and consistent regulations.

RECOMMENDATIONS ADDRESSED TO NPOS IN TUNISIA

SHIELDING FROM WITHIN

NPOs must invest in building robust internal compliance systems that align seamlessly with anti-money laundering and anti-terrorist financing regulations in Tunisia. This includes thorough risk assessments, comprehensive financial records, and regular updates.

COLLABORATIVE ENGAGEMENT WITH BANKS AND FINANCIAL INSTITUTIONS:

PROACTIVE COMMUNICATION:

NPOs must initiate open and proactive communication with banks and financial institutions. They need to reach out to these entities to clarify their organization's mission and financial activities.

TRANSPARENCY AND ACCOUNTABILITY:

NPOs must maintain a policy of regular reporting to banks and financial institutions about their financial activities. They need to provide insights into how funds are allocated and any due diligence measures taken to ensure financial integrity.

CONTINUOUS EDUCATION AND TRAINING:

NPOs need to invest in training for their members and staff to ensure they are well-versed in the nuances of compliance with anti-money laundering and anti-terrorist financing regulations.

INFORMED ADVOCACY:

NPOs need to collaborate with organizations such as the International Center for Non-Profit Law (ICNL) to advocate for clearer, standardized, and consistent guidelines that make compliance more manageable.

DATA SHARING AND COLLABORATION:

NPOs need to engage in information exchange with their banks and financial institutions. They need to be able to provide clear and comprehensive documentation to facilitate due diligence. This cooperation ensures smooth transactions while respecting regulatory requirements.

RECOMMENDATIONS ADDRESSED TO BANKS AND FINANCIAL INSTITUTIONS

MUTUAL RISK MITIGATION

Banks and Financial Institutions should engage in sharing of best practices. They should work with NPOs to develop strategies for mutual risk mitigation. They may share insights on their due diligence procedures and learn from NPOs about their internal compliance systems and best practices.

OPEN DIALOGUE

Encourage open dialogue between staff and NPO representatives. This will help the staff seek clarifications and gain a deeper understanding of NPO activities and missions.

LEVERAGE EXTERNAL RESOURCES

Banks and financial institutions can collaborate with organizations such as the International Center for Non-Profit Law (ICNL) for access to external resources and expertise. ICNL can offer guidance on compliance requirements and provide valuable insights into NPO operations.

ICNL INTERNATIONAL CENTER
FOR NOT-FOR-PROFIT LAW

