

FATF



**OVERVIEW OF THE IMPLEMENTATION BY GEORGIA  
OF THE RECOMMENDATIONS ON FIGHT AGAINST  
MONEY LAUNDERING AND TERRORISM FINANCING**



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## Introduction

Russia's military aggression against Ukraine has been met with economic and financial sanctions from the civilized world. Effective enforcement of sanctions policy requires maximum transparency in order to expose hidden finances and prevent the misuse of beneficial ownership to avoid sanctions.<sup>1</sup> This document provides an overview of problematic issues related to money laundering and beneficial ownership in Georgia and presents examples of best practices in this area from across the world.

The Financial Action Task Force (FATF) is an independent inter-governmental body dedicated to promoting policies against money laundering, terrorism, and funding for weapons of mass destruction. To this end, FATF issued recommendations 2012 that have since been recognized as the international standard for combating money laundering and financing of terrorism. The FATF Standard sets out specific requirements for the judiciary, financial intelligence units (FIUs), and law enforcement agencies, as well as the private sector and its supervisors.<sup>2</sup>

There are remaining risks and challenges related to money laundering in Georgia that are being actively discussed at the international and local levels.<sup>3</sup> It is therefore important to assess the extent to which the current system in Georgia is in compliance with the FATF recommendations that have been recognized as the international standard with regard to these issues.

The recommendations of the Financial Action Task Force address issues related to policies and coordination for combating money laundering and terrorism, prosecution, and preventive measures; the powers and responsibilities of relevant bodies; access to and transparency of information about beneficial owners and international cooperation in this area.

According to the report released by the Committee of Experts of the Council of Europe on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) in November 2020, which assessed Georgia's compliance with the recommendations issued by the Financial Action Task Force in 2012, the country has fully implemented six of the 40 recommendations, mostly implemented 21 recommendations, 12 – partially, and 1 recommendation has not been implemented. The latter relates to existing legislation and practices with regard to non-profit organizations in the context of combating the financing of terrorism.

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<sup>1</sup> Anders Åslund and Maria Snegovaya, *The impact of Western sanctions on Russia and how they can be made even more effective*, Available at: <https://www.atlanticcouncil.org/in-depth-research-reports/report/the-impact-of-western-sanctions-on-russia/#h-effective-sanctions-require-more-transparency-enforcement-and-international-cooperation>

<sup>2</sup> MONEYVAL, Annual report 2020, p. 9, Available at: <https://rm.coe.int/moneyval-annual-report-2020-eng-final/1680a2b3a4>, Accessed on: 16.02.2022.

<sup>3</sup> IDFI, MONEYVAL Anti-money laundering and counter-terrorist financing measures, Georgia, evaluation report, p. 3, Available at: <https://idfi.ge/public/upload/Blog/MONEYVAL%20final%20GEO.pdf>, Accessed on: 16.02.2022.

The following overview focuses on the implementation of this latter recommendation. At the same time, it analyses the state of implementation of the recommendation related to beneficial ownership and transparency, which was marked as partially implemented in the 2020 MONEYVAL Mutual Evaluation Report. The document also briefly analyses existing shortcomings in Georgia in relation to other recommendations from the MONEYVAL report.

## Recommendation 8 – Non-profit Organizations (NPOs)

Under Recommendation 8 of the Financial Action Task Force, countries are required to review the adequacy of laws and regulations that relate to the portion of the NPO sector that may be abused for the financing of terrorism. This means that countries need to apply a risk-based approach in adopting appropriate measures.<sup>4</sup>

According to the Financial Action Task Force, a non-profit organization "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".<sup>5</sup> Thus, Recommendation 8 does not apply to all types of NPOs. It targets only those NPOs that pose a high risk of being used to finance terrorism.

The report published in 2020 by the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) of the Council of Europe identified three main areas in Georgia with significant shortcomings in the context of Recommendation 8: taking risk-based approach, sustained advocacy/communication, and applying risk-based monitoring.<sup>6</sup> According to the report, the relevant subset of non-profit organizations has not been identified in Georgia, nor have the characteristics and types of activities have been studied which would identify the most vulnerable and at-risk non-profit organizations in terms of the financing of terrorism. While the National Risk Assessment of Georgia did address a number of NPO-related issues, it did not adequately assess the risks related to the financing of terrorism. Specifically, Georgia has not studied the characteristics and forms of activities of non-profit organizations that indicate high risks of the financing of terrorism.<sup>7</sup>

According to the report, despite the fact that the Law on Facilitating the Suppression of Money Laundering and Terrorism Financing prescribes the obligation to update the National Money Laundering and Terrorism Financing National Risk Assessment once every two years, *periodic* assessment of this sector in Georgia, which would have reviewed the latest information on potential risks of terrorism financing, was

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<sup>4</sup> FATF, Combating the abuse of non-profit organisations, p. 10, Available at: <https://www.fatf-gafi.org/media/fatf/documents/reports/BPP-combating-abuse-non-profit-organisations.pdf>, Accessed on: 16.02.2022.

<sup>5</sup> FATF Recommendations, Interpretive note to recommendation 8, p. 58, Available at, <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>, Accessed on: 16.02.2022.

<sup>6</sup> MONEYVAL, Anti-money laundering and counter-terrorist financing measures, Georgia, fifth round mutual evaluation report, p. 199, Available at: <https://rm.coe.int/moneyval-2020-20-5th-round-mer-georgia/1680a03271>, Accessed on: 16.02.2022.

<sup>7</sup> Ibid, p.196-197.

not conducted. The lack of a specific policy to support strengthening accountability and confidence in the management and administration of non-profit organizations was also cited as a problem. The MONEYVAL report did not consider the obligations imposed on charitable organizations by the Tax Code for these purposes (including the requirement to submit an annual activity report and a financial report)<sup>8</sup> to be sufficient. At the same time, the report indicates that activities are not implemented in Georgia to facilitate communication with educational programs, non-profit organizations, and donors on the risks of terrorism financing and to provide them with information on the measures needed to eliminate the risks of terrorism financing. Also according to the report, steps to support effective supervision or monitoring have also not been taken.<sup>9</sup>

Although the Revenue Service and the National Agency of Public Registry possess some information on NPOs, the MONEYVAL team did not consider this to be an adequate mechanism that would guarantee effective cooperation, coordination, and exchange of information to the greatest extent possible between all the state bodies and organizations that possess corresponding information on non-profit organizations.

Unfortunately, the discrepancies identified in the report remain a problem to this day. The National Risk Assessment report that is available publicly is dated 2019. It appears that risk assessment has not been conducted in Georgia since 2019. Consequently, identifying non-profit organizations carrying the risk of terrorism financing that correspond to the FATF definition remains a challenge. The nature of the terrorism financing risks that non-profit organizations may face has not been identified, and measures, including legislation defining the subset of non-profit organizations that may be exposed to terrorism financing risks, have not been reassessed. The situation has not changed with regard to the challenges in communication with and oversight and control of the non-profit sector discussed above.

### **Good Practice with Regard to Recommendation 8**

To develop a risk-based approach, it is essential to prepare a sector review. Recommendation 8 requires states to conduct a domestic review of the entire NPO sector. This kind of review would make it possible to identify the subset of organizations that fall within the FATF definition of NPO and then identify which of these organizations could be present a higher risk for terrorist financing.<sup>10</sup> The national sector review can analyse the forms of NPOs, scope, size, activities, donor base, cross-border activities and funding, cash flow, means of payment, type and location of activities, and the risks associated with these elements.

For example, a domestic review of the NPO sector to assess the risks of abuse of non-profit organizations for the purposes of terrorist support in Canada was conducted for a number of reasons.<sup>11</sup> Firstly, they

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<sup>8</sup> Article 32 of the Tax Code of Georgia.

<sup>9</sup> The report also pointed to the lack of regulations in Georgia that would monitor the compliance of non-profit organizations with the requirements of Recommendation 8 of FATF.

<sup>10</sup> FATF, Combating the abuse of non-profit organisations, p. 11, Available at: <https://www.fatf-gafi.org/media/fatf/documents/reports/BPP-combating-abuse-non-profit-organisations.pdf>, Accessed on: 16.02.2022.

<sup>11</sup> Ibid, p. 12.

wished to avoid having a broader definition of the term "non-profit" than the one provided in Recommendation 8. One of the goals was to identify the organizations that are most vulnerable to the risks of terrorist financing. Additionally, Canada wanted organizations that were not at risk to be relieved of the burden of submitting reports. To this purpose, studies and publications by various governmental, academic, or non-profit entities were surveyed. Existing legislation and reporting requirements for NPOs were also reviewed. NPOs were grouped by similar characteristics, such as, for instance, purpose, activity, size, or job location, and these characteristics were compared to elements of the definition of NPO adopted by the Financial Action Task Force. The FATF typologies report on the Risk of Terrorist Abuse in Non-Profit

Organizations was also taken into account.<sup>12</sup> The sector review found that charitable organizations were at high risk of abuse for terrorist purposes in Canada, given the nature of their activities and characteristics. As such, charitable organizations in Canada fall under the definition of an NPO defined by the Financial Action Task Force. This still does not, however, mean that every charitable organization can be considered to be at risk of abuse. The sector review enabled Canada to focus on charitable organizations as a starting point for national risk assessment.

Ensuring the rapid and effective dissemination of information among relevant bodies (including law enforcement, intelligence and regulatory agencies, as well as self-regulatory organizations) is an important prerequisite for implementing Recommendation 8. Timely identification of cases of abuse of non-profit organizations for the purposes of terrorism and taking appropriate action can help states implement effective inter-agency cooperation or a whole-of-government approach, take into account/consider information of various types received from numerous sources,<sup>13</sup> as well as foster an environment of trust, which will give rise to conditions for public authorities to make information on the financing of terrorism related to certain non-profit organizations available from the public and the non-profit sector itself.<sup>14</sup>

Uninterrupted communication is allowed only with respect to organizations that are at high risk of abuse.<sup>15</sup> In practice, any stakeholder, governmental body, non-governmental actor, body regulating NPOs, or law enforcement body may be involved in the field of education and outreach related to specific terrorism risks.<sup>16</sup> In most countries, various government agencies, ministries, and departments share authority over non-profit organizations and the fight against the financing of terrorism, and in some countries, communication is done primarily through tax authorities, as non-profit organizations are most often in active contact with these bodies.<sup>17</sup>

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<sup>12</sup> According to this report, the ones carrying risks are, for the most part, non-profit organizations involved in the service sector. These services are mainly related to social services, education, or healthcare.

<sup>13</sup> This may be information from open sources, law enforcement, financial intelligence, or received from foreign governments.

<sup>14</sup> FATF, Combating the abuse of non-profit organisations, p. 20, Available at: <https://www.fatf-gafi.org/media/fatf/documents/reports/BPP-combating-abuse-non-profit-organisations.pdf>, Accessed on: 16.02.2022.

<sup>15</sup> FATF, Combating the abuse of non-profit organisations, p. 16, Available at: <https://www.fatf-gafi.org/media/fatf/documents/reports/BPP-combating-abuse-non-profit-organisations.pdf>, Accessed on: 16.02.2022.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

It is important that communication between governmental bodies and non-profit organizations be mutual. This kind of communication may also take place during the country's domestic sector review process or during the implementation of measures for risk mitigation. This approach enables countries to obtain relevant information about the specific needs, problems, risks, and challenges facing non-profit organizations. In turn, obtaining this information will facilitate the development of effective policies and risk mitigation measures with regard to NPOs. Additionally, the issues raised by non-profit organizations may play a crucial role in early detection of the risks of their abuse for terrorism. The implementation of measures for risk mitigation will be much more effective since NPOs are better informed about the risks of their potential abuse to finance terrorism.<sup>18</sup>

With regard to monitoring and oversight, Recommendation 8 does not require the same measures to be applied to all organizations. Measures taken by countries should be commensurate with, and proportionate to, the risks identified by the domestic review of the non-profit sector. Enhanced measures will be needed in relation to the organizations at higher risk.<sup>19</sup> Specific measures that may be taken against high-risk NPOs may include the obligation to obtain a license or to register,<sup>20</sup> the obligation to store information about their activities or those who supervise or manage their activities, publication of annual financial reports, oversight to ensure full accounting of funds and spending according to the activities declared by non-profit organizations, and others.

The following are examples of measures taken in different countries that, with regard to Recommendation 8, may be helpful in reducing the risks of the financing of terrorism in a variety of circumstances.

### ***Sweden***<sup>21</sup>

In Sweden, a survey of the non-profit sector was conducted in 2008 with the purpose of developing the risk-based approach. This covered grouping the non-profit sector by size, activity, or other relevant characteristics. The risks of terrorism financing and money laundering and the appropriateness of the laws were assessed, and recommendations for appropriate policies were developed. The 2014 national terrorism financing risk assessment report also addressed the threats arising in the non-profit sector, while the National Strategy for Combating Money Laundering and Terrorist Financing identified “acquisition of financing for beneficial owners abroad” as a high-risk area.

With regard to continuous flow of information on the issues related to the financing of terrorism, the Swedish Government's Coordinating Oversight Office has launched an education project to raise awareness and promote knowledge about the financing of terrorism in collaboration with government agencies, financial institutions, and Designated Non-Financial Business and Professions (DNFBP).

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<sup>18</sup> Ibid, p. 17.

<sup>19</sup> Ibid. p. 31.

<sup>20</sup> However, countries are not required to introduce specific licensing or registration requirements for the purpose of combating the financing of terrorism. For example, in some countries, NPOs are already registered with the tax authorities and are subject to oversight to assess whether they are eligible for a preferential tax regime.

<sup>21</sup> See, Mutual Evaluation Report Sweden - 2017.

Additionally, non-profit organizations are represented on a forum that disseminates information on the risks of terrorism financing. This forum is chaired by the Swedish Youth and Civil Society Agency.

Sweden has defined systems in place to promote transparency, security, and public trust in the management and governance of non-profit organizations. These systems, however, are self-regulatory in nature, and non-profit organizations participate on a voluntary basis. The Fundraising Council for Volunteering Organizations (FRIL) in Sweden has established an industry best practice code for its members. Additionally, the Swedish International Development Cooperation Agency (SIDA) imposes additional requirements on non-profit organizations that implement various aid projects on their behalf or receive funding from SIDA. These requirements include, among others, a transparency requirement regarding on how this assistance was used. As for monitoring, there is no single body responsible for monitoring compliance by non-profit organizations. Relevant registries are authorized to oversee compliance with the registration and reporting obligations, including the tax authority monitoring specific tax regulations and the County Administrative Board monitoring compliance with requirements set out for foundations. The latter is the registrar and supervisor of foundations and is authorized to request information from a foundation or request registration, conduct inspections, dismiss directors, or impose fines. Swedish Fundraising Control (SIK) and the Swedish International Development Cooperation Agency (SIDA) also monitor the compliance of NPOs with their (voluntary) requirements, or the compliance of the organizations from which they receive funds.

### **Good practices with regard to some of the criteria of Recommendation 8, in which significant shortcomings were identified in Georgia<sup>22</sup>**

#### ***Communication with the Non-profit Sector***

The French Treasury publishes a code of conduct on its website for associations that carry the risks of terrorism financing. The document aims to warn associations and their managers about this particular risk, to improve preventive measures, and to assist in the development of appropriate internal policies, procedures, and control mechanisms in order to achieve these objectives. The guideline explains FATF Recommendation 8 and outlines the measures to be taken.<sup>23</sup> It also reflects national and European regulations and mechanisms related to terrorism financing.<sup>24</sup> The French Financial Intelligence Unit (FIU) has published example typical cases and cautionary criteria that focus on the abuse of associations for terrorism financing purposes in its annual report and on the website of the Ministry of Finance.<sup>25</sup>

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<sup>22</sup> The examples surveyed below are from the following source: FATF, Combating the abuse of non-profit organisations, Available at: <https://www.fatf-gafi.org/media/fatf/documents/reports/BPP-combating-abuse-non-profit-organisations.pdf>, Accessed on: 16.02.2022.

<sup>23</sup> Awareness level in the sector, oversight and monitoring, effective collection of information and investigation, duty to respond to foreign requests regarding non-profit organizations

<sup>24</sup> Specifically, asset freezing, risk assessment; On legal requirements related to funding, including donations, etc.

<sup>25</sup> For example, the use of an association's bank account as a transit account and the absence of the association's actual operations or when a credit outflow occurs from an association's account to an individual's bank account.

The Charity Commission for England and Wales in the United Kingdom has set up a small information group to raise awareness on issues such as fraud and abuse, including by terrorist organizations, primarily in the charitable sectors. The aim of the group is to ensure effective and thorough cooperation with stakeholders so that charities (non-profit organizations) can protect themselves from being used for the purposes of terrorism. The information group focuses on charitable organizations working in high-risk areas. It also issues “warnings” on key issues, such as, for instance, in relation to proper investigation of partner agencies, monitoring, remittances on the international level, counter-terrorism legislation, and staffing and volunteering. In addition, the Charity Commission has published literature and information on the safe withdrawal of funds in Syria. The Commission has also worked with organizations and sector leaders to enable them to protect themselves from terrorism, fraud, and other types of threats.

### ***Oversight and Monitoring***

Norwegian NGOs operating in relatively high-risk areas receive part of their funding from the Norwegian government. They are therefore subject to a number of oversight measures, including the requirements to register, report on the utilization of funds, record revenues and expenses, and generate income and expense statements.

At the same time, the Norwegian Agency for Development Cooperation and the Ministry of Foreign Affairs are monitoring the use of international development assistance to prevent and detect various types of violations and crimes, terrorism financing among them. This is done through a variety of mechanisms, including audit reports, as well as on-site inspections of projects and funding recipients. These agencies conduct investigations and, if necessary, may share information with the Financial Intelligence Unit and the Police Security Service. Non-profit organizations are required to register in order to be able to open bank accounts. In addition, Norway facilitates the voluntary registration of non-profit organizations through incentives such as a preferential tax regime.

### ***Sharing Information***

A Permanent Liaison Group (PLG) has been set up in Portugal, a forum for sharing information between the tax authority and the Financial Intelligence Unit (FIU). The tax authority, which also cooperates with law enforcement agencies with regard to tax and money laundering offenses, can share information with bodies overseeing money laundering and counter-terrorism issues through this institution. Information is also shared for the purposes of preventing terrorism financing.

## **Recommendation 24 - Transparency and Beneficial Ownership**

The MONEYVAL evaluation team identified several shortcomings in Georgia in relation to Recommendation 24. Specifically, according to the report, the risks to legal entities had not been fully analyzed in Georgia. At the same time, the report indicated that existing mechanisms for obtaining

information on beneficial ownership could not provide accurate and up-to-date information. These mechanisms also did not provide for the identification of an authorized person who would be responsible for storing beneficial ownership information and would be accountable to the government. It was also highlighted that there is no mechanism to prevent the abuse of nominal share ownership in LLCs.

Recommendation 24 requires countries to have a mechanism that would define and describe the different types, forms, and key characteristics of legal entities in the country, as well as the procedures for establishing and recording information on these legal entities and the acquisition and registration of legal and beneficial ownership. This information should be public and accessible. At the same time, countries need to assess the risks of money laundering and terrorism financing that all types of legal entities in the country may carry.<sup>26</sup>

Shortcomings were identified by MONEYVAL in relation to the assessment of money laundering and terrorism financing risks. In this regard, the MONEYVAL team indicated that the 2019 National Risk Assessment report includes the risk assessment of legal entities that describes the existing framework. Cases where legal entities, especially LLCs, had been abused were also indicated. The MONEYVAL report indicated, however, that this document did not provide a systemic review of cases of abuse of legal entities registered in Georgia for money laundering and terrorism financing in the past, as well as the characteristics of the Georgian system that may make the system vulnerable to risks.<sup>27</sup> In place of a detailed analysis of the characteristics, the National Risk Assessment report presents such information in a fragmentary manner.

Unfortunately, a new National Risk Assessment document is not publicly available in Georgia, which gives us reason to believe that no risk assessment has been carried out in Georgia since 2019, despite the fact that the law requires the Government to approve this document once every two years. Consequently, in all likelihood, money laundering and terrorism financing risks in relation to legal entities have not been fully analyzed to this day.

In accordance with Recommendation 24, companies should keep basic information about them. They should additionally keep a registry of their shareholders or members, with the indication of the number and categories of shares owned by each shareholder (including the nature of their voting rights). Countries should have mechanisms in place to ensure accurate and timely updating of the above information. The report analyzed, in detail, the legislative regulations of Georgia with regard to each type of commercial organization as well as non-commercial legal entities. The report highlighted the fact that these are not required to maintain registers in Georgia, although information about them is stored at the National Agency of Public Registry.

As for non-profit organizations, the MONEYVAL report noted that existing legislation only prescribes the availability of information about founders, while data on other members of organizations is not required

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<sup>26</sup> Criteria 24.1 and 24.2.

<sup>27</sup> Examples from the report include access to virtual offices, the distribution of tax-free companies (specialty trading companies, international trading companies, and free industrial zone companies), and availability of corporate executives.

by existing legislation. It should be mentioned at this point that, according to the Civil Code, changes made by a non-commercial legal entity are required to be registered if they cause changes in the registration documentation.<sup>28</sup> At the same time, the registration of a non-profit legal entity is subject to the mandatory requirements for a commercial legal entity under the Code of Entrepreneurs, which, under the new Code of Entrepreneurs, also includes the founding agreement, where information on each partner must be indicated.<sup>29</sup> Therefore, this may also imply an obligation to update information for each new member in a non-commercial legal entity.

The published report also touched on cooperatives and pointed out that there is no general legislative provision that would oblige a cooperative to maintain a registry of members. It should be noted that this requirement was proscribed in the newly adopted Law on Entrepreneurs. Specifically, the governing body of the cooperative is responsible for maintaining a registry of members of the cooperative.<sup>30</sup>

Regarding the timely updating of information on legal entities, the report highlighted the fact that there was no deadline for changes to be entered into registered data. However, according to the government, the timely updating of the data was ensured by the requirement of the Georgian Law on Entrepreneurs of that time, according to which the share ownership rights and related obligations of a limited liability company and a limited partnership were only valid from the moment of registration in the register. The report found, however, a shortcoming in this area and indicated that this requirement of Recommendation 24 could not be considered fully fulfilled, as it was not clear whether it was possible to change ownership through agreement or inheritance prior to registration. The new Law on Entrepreneurs specifies that the management of the entrepreneurial partnership and/or a person authorized to represent it has the authority to register changes in data in the registry, and *data changes in case of share sale can be done at the request of the shareholder partner or acquirer, and in case of inheritance - at the request of the heir/heirs*.<sup>31</sup> The law, however, did not set a specific deadline for the changes.

As for the information related to the beneficial owners, according to the report, the existing mechanisms for obtaining accurate and up-to-date information on beneficial ownership are insufficient. Specifically, legal entities do not have the obligation to keep up-to-date information on beneficial owners or to indicate beneficial owners in the registry of the National Agency of Public Registry. Information on beneficial ownership is only available if the legal and beneficial owners of the legal entities are one and the same, which is not always the case.<sup>32</sup> Additionally, joint stock companies with more than 50 shareholders, as well as liable enterprises, are required to maintain a share registry by a licensed independent registrar who must, among other things, identify and verify the beneficial owners. The report indicated that these mechanisms do not ensure the timely disclosure of information about beneficial owners in cases where

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<sup>28</sup> Part 2 of Article 31 of the Civil Code of Georgia

<sup>29</sup> Paragraph 1 of Article 29 of the Civil Code of Georgia, Subparagraph c) of paragraph 2 of Article 5 of the Law of Georgia on Entrepreneurs

<sup>30</sup> Article 229 of the Law of Georgia on Entrepreneurs

<sup>31</sup> Paragraph 2 of Article 12 of the Law of Georgia on Entrepreneurs

<sup>32</sup> For example, if a shareholder is a foreign legal entity, only information about that legal entity will be provided.

the legal and beneficial owners of legal entities are different and when the legal entity has no relationship with a bank or a registry.

Additionally, since the data contained in the National Agency of Public Registry may not always contain information about beneficial owners, the report indicated that this could not ensure accurate and up-to-date information on beneficial owners. It was also highlighted that there is no provision of the law according to which one or more natural persons permanently residing in Georgia would be obligated to store information on beneficial ownership and would be held accountable to the government.

With regard to beneficial ownership, Moneyval report recommends that Georgia review existing systems and take steps to ensure that relevant, accurate, and up-to-date information on beneficial owners is always available in a timely manner to relevant authorities, especially for those companies that do not have relations with banks in Georgia. The team considered as one of the effective measures to resolve this problem the creation of a centralized, systematized database on beneficial owners.

In recent years, a number of Georgian civil society organizations, including the Institute for Development of Freedom of Information (IDFI), have called on the Georgian government to establish a registry of beneficial owners, which would ensure the collection of and access to information on the final owners of companies.<sup>33</sup> Unfortunately, despite the Georgian government undertaking an obligation to establish a registry of beneficial owners at the Anti-Corruption Summit in London in 2016, to date no such a registry has been created. The shortcomings identified in the implementation of the recommendation regarding beneficial ownership remains a problem.

Below, we survey the practice of European countries that have, for the most part, implemented Recommendation 24. The selected countries meet the criteria of the recommendation, in relation to which significant shortcomings have been identified in Georgia.

## **The Czech Republic**

The procedure for establishing legal entities in the Czech Republic is defined by the Civil Code and the Business Corporations Act, and information about this procedure is available on the website of the Czech Trade Agency. While the Risk Assessment Report does not assess the risks of all types of legal entities, it does evaluate the risks associated with the organizational form of some legal entities based on the analysis of the identified real threats.

In the Czech Republic, all legal entities are required to register in the public registry. Information to be registered includes company name, legal purpose of the establishment, legal form and status, office registration address, key regulatory powers, and a list of directors. All of this information is publicly

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<sup>33</sup> See. IDFI, The Concealed Beneficiaries Behind Fictional Characters, 2020, p.23, Available at: [https://idfi.ge/public/upload/Article/Beneficial-Ownership\\_ENG\\_29\\_01\\_2021.pdf](https://idfi.ge/public/upload/Article/Beneficial-Ownership_ENG_29_01_2021.pdf), Accessed on: 14.02.2022

accessible. At the same time, the law on the Czech Public Registry requires that the application information be submitted for registration **without undue delays**. The court conducting the registration process must register the information in the relevant public registry within 5 working days after the submission of the application. The law also stipulates an obligation to register information in the public registry **without undue delays** in case of any changes.<sup>34</sup>

With regard to beneficial owners, Czech law imposes an obligation to register in the registry of beneficial owners on all legal entities, as well as to keep up-to-date information on the identities of beneficial owners and continuous registration of such information. Beneficial ownership information should be registered **without undue delays** after the relevant occurrence. Additionally, responsible persons also have an obligation to obtain and store information about beneficial owners. According to the law, legal entities are also required to maintain up-to-date and accurate information about beneficial owners. Under Czech law, an authorized person is additionally obligated to submit a report containing the information on beneficial owners to the relevant authority.

Apart from this, relevant entities, including law enforcement agencies, have remote access to the registry of beneficial owners. The Law on Combating Money Laundering and Terrorism Financing also gives the relevant authorities the power to request information about a beneficial owner from a legal entity.

Additionally, Czech law prescribes administrative sanctions for failure to provide information in the public registry or for submitting inaccurate information. The court may apply a fine as a sanction or, in certain cases, liquidate the legal entity.

## **The United Kingdom**

UK law defines different types, forms, and key characteristics of legal entities. In addition to the types of legal entities registered with Companies House, the United Kingdom also recognizes other types of legal entities.<sup>35</sup> Information on their key features, the creation process, and the company's commitment to record production is publicly available at gov.uk. The characteristics and responsibilities of community benefit societies and cooperative associations are also publicly available. Information on their<sup>36</sup> key features, the establishment process, and the obligations of companies to produce records is publicly available at gov.uk. The characteristics and responsibilities of community and cooperative associations are also publicly available.<sup>37</sup> At the same time, the government provides electronic availability of information on the acquisition and storage obligations of information regarding beneficial owners of companies and partnerships.

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<sup>34</sup> Although not all legal entities are required to store information about their shareholders or partners.

<sup>35</sup> Community benefit societies and cooperative associations.

<sup>36</sup> Specifically, Limited Liability Societies and Partnerships.

<sup>37</sup> In the 2014 Cooperatives and Community Benefit Societies Act and the website of FCA (a financial regulatory body in the United Kingdom).

The United Kingdom's Companies House registry is public and contains records of the following information on legal entities: name, form and status, office registration address, constitutional and governing documents, and details of their director, member, or partner.<sup>38</sup> The obligation to store this information also rests with the relevant legal entities defined by law. They must also maintain an up-to-date registry of members or shareholders, including the number of shares held by each shareholder, the categories of shares, and the related voting rights. This information must be stored at the company registered address. Legal entities registered with Companies House must confirm information stored about them annually and notify the registrar of any changes within two weeks.

As for the information about beneficial owners in the UK, companies and partnerships are required to obtain and maintain up-to-date information on 'persons with significant influence'.<sup>39</sup> Information about them must be kept with the legal entity itself and also be registered with the Companies House, which maintains a public registry of "persons with significant influence". This information includes name, date of birth and nationality, de facto and registration address, date when they became a person with significant influence in the legal entity, information on the manner of control, and any restrictions on the disclosure of information relating to these persons. Financial institutions and DNFBPs are also required to identify and take reasonable steps to verify beneficial owners.

The United Kingdom requires legal entities to maintain accurate and up-to-date information on 'persons with significant influence'. The information must be reaffirmed annually. Companies and Scottish cooperatives registered with Companies House and must notify Companies House within 14 days of any changes.<sup>40</sup>

The United Kingdom has taken steps to ensure that companies work closely with the relevant authorities while determining beneficial ownership. All managers or partners of the company are responsible for fulfilling the obligations of the company and, consequently, for identifying and registering "persons with significant influence".<sup>41</sup> The UK Public Registry of 'persons with significant influence' further facilitates the ability of the relevant authorities to identify the beneficial owners of legal entities. Additionally, any entity has access to the information stores in the registries of Companies House.

The United Kingdom imposes a number of sanctions to ensure that legal entities comply with their transparency obligations. For instance, failure to submit the information required by law will lead to the refusal to register a legal entity. Delayed delivery of information is punishable by a fine. Providing inaccurate information can be punishable by up to two years in prison, an undefined amount of fines, or both.

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<sup>38</sup> Unlike companies, associations are registered with the FCA and are required to provide the following information: name of the association, office registration address, type and function of association, membership and voting rules, name and address of members and deputy. Most of the information is public.

<sup>39</sup> The definition of 'persons with significant influence' is largely in line with the definition of beneficial owner as put by FATF.

<sup>40</sup> Companies House-b. In the case of other legal entities, their existing records must be updated within 14 days and Companies House must be notified within an additional 14 days.

<sup>41</sup> A company is required to have at least one natural person director. While the law does not impose residency requirements on natural person directors or partners, the residential address information must be provided to Companies House.

## Overview of Challenges Associated with Other FATF Recommendations

According to 2020 Moneyval Evaluation Report of Georgia, the country has fully complied with the Financial Action Task Force recommendations regarding money laundering offenses, secret legislation on financial institutions, correspondent bank, anonymity and confidentiality, responsibilities of investigative and law enforcement agencies, as well as extradition. Recommendations that have been largely implemented relate, among others, to national cooperation and coordination, confiscation and contingency measures, terrorism financing, consumer prudence measures, accounting, funds, or benefit transfer services, and the responsibilities of supervisory, law enforcement, and investigative bodies.

Below, we survey the main challenges associated with the implementation of the FATF recommendations identified in the Moneyval Evaluation Report.<sup>42</sup>

According to the MONEYVAL report, Georgia has achieved a high level of effectiveness in the area of international cooperation and investigations and prosecution of the financing of terrorism, and a low level of effectiveness in preventing terrorist organizations and their sponsors from acquiring funding, transferring and utilizing funds, and abusing the non-profit sector. In all other areas, Georgia received a medium effectiveness evaluation.<sup>43</sup>

The report identified shortcomings and deficiencies in identifying, analyzing, and understanding in-depth specific threats, weaknesses, and risks. In addition to the activities of legal entities and the abuse of non-profit organizations, these risks have been identified in relation to the real estate sector, trade-based money laundering and terrorism financing, as well as the use of cash in the economy.

The MONEYVAL report highlighted that the influence of the informal economy and the widespread use of cash on money laundering and terrorism financing in Georgia has not been sufficiently analyzed. It is important to study these influences, as the use of cash for money laundering purposes is a common practice. It should also be noted that, according to the report, significant shortcomings were observed in the application of the Consumer Due Diligence (CDD) requirements by most of the non-financial sector and professions. This problem also exists with regard to the application of these requirements by the National Agency of Public Registry to the real estate sector.

At the same time, according to the report, despite the fact that casinos are associated with the highest risks of money laundering and terrorism financing in the country, the Ministry of Finance does not in practice supervise casinos for the purposes of combating money laundering and terrorism financing. At the same time, there are technical shortcomings in terms of licensing requirements for casinos, which poses a significant threat to the effectiveness of these requirements in preventing criminals or their

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<sup>42</sup> Aside from the recommendations that have already been discussed (namely, Recommendations 8 and 24).

<sup>43</sup> See in-depth. IDFI, MONEYVAL Assessment of Georgia on Money Laundering (ML) and Terrorism Financing (TF), p. 4.

accomplices from controlling or managing these establishments. Additionally, the degree of oversight in the fight against money laundering or terrorism financing is not commensurate with the degree of risk. The low level of reporting suspicious transactions remains a problem.

With regard to the National Risk Assessment report, the evaluation team noted that the report neglects Georgia's geographical proximity to places where terrorist groups operate. At the same time, the potential risks of terrorism financing have not been adequately assessed.

The government also failed to confirm that a number of areas left unattended do in fact contain low risks of money laundering and terrorism financing. With regard to the issue of the real estate sector, the report underlined that there is no leverage in Georgia to prevent money laundering and/or the use of the sector to finance terrorism.

According to the MONEYVAL report, there were gaps in the assessment of money laundering and terrorism financing risks, both in terms of risk awareness and the activities of relevant agencies in relation to these risks.

According to the report, potential cases of money laundering have not been properly identified and the number of investigations is small compared to the scale of crimes that take place in the country. When potential cases of money laundering are identified, however, investigation of these cases is carried out in an effective manner. Nevertheless, the prosecution of money laundering cases only partially reflects how widespread criminal threats are. At the same time, the number of convicts in money laundering cases is small. The number of convicts in cases involving legal entities is also low. As for the fight against the financing of terrorism, according to the report, as a rule, such cases are investigated and prosecuted effectively.

The report also noted that law enforcement rarely uses financial intelligence for in-depth analysis in its investigations into money laundering cases. Not only that, Georgia does not have sophisticated analytical mechanisms for tackling financial information and obtaining data. At the same time, the report indicated that the number and quality of existing reports related to questionable financial activity were low in sectors other than banking. The report also criticized the fact that the financial intelligence unit does not have sufficient human resources.

## Conclusion

The recommendations of the Financial Action Task Force are a key foundation on which countries can achieve the common goal of combating money laundering and terrorism financing. Non-compliance with the implementation of the recommendations related to non-profit organizations remains a challenge. The publicly available National Risk Assessment report is dated 2019. Consequently, it is reasonable to assume that no risk assessment has been carried out in Georgia since 2019, despite the fact that Georgian law prescribes an obligation to implement this report every 2 years (at least) and publish it. Thus, problems

persist in the development of the risk-based approach, continuous communication, and risk-based monitoring/supervision. Best practice indicates that conducting a sector review of non-profit organizations is an important prerequisite for identifying significant risks.

Unfortunately, problems remain in the implementation of the recommendation regarding the beneficial owners of legal entities. Thorough analysis of the risks of terrorism financing with regard to legal entities remains a challenge as well. Mechanisms for obtaining information about beneficial owners cannot provide for accurate and up-to-date information. The fact that legal entities are not required by law to store up-to-date information on beneficial owners or to register it with the National Agency of Public Registry is problematic. It is important to ensure a high level of transparency with respect to beneficial ownership, which is a topic IDFI has been discussing for a number of years.

As the review of the MONEYVAL report showed, although significant changes have taken place in Georgia in the fight against money laundering and terrorism financing, some significant challenges remain in the system. IDFI calls on the government to not spare efforts in implementing the recommendations of the Financial Action Task Force, including the recommendations regarding non-profit organizations and beneficial ownership, which has gained even more importance against the imposition of economic and financial sanctions on Russia by the civilized nations of the world, for the effective implementation of which, as noted at the outset, maximum transparency and, consequently, full implementation of the FATF recommendations are vitally important.