MINISTERIO
DE ECONOMÍA
Y COMPETITIVIDAD

STATE SECRETARIAT
FOR ECONOMY AND BUSINESS SUPPORT

GENERAL SECRETARIAT
FOR THE TREASURY AND FINANCIAL POLICY

DEPUTY DIRECTORATE-
GENERAL FOR INSPECTION
AND CONTROL
OF CAPITAL MOVEMENTS

BEST PRACTICES IN THE FIGHT AGAINST MONEY LAUNDERING AND TERRORIST FINANCING. THE NON-PROFIT SECTOR

Non-profit organisations (NPOs) play a fundamental role in complementing public social action by channelling private efforts towards the achievement of objectives in the public interest. However, as has been noted internationally, NPOs are vulnerable to the risk of being misused for Money Laundering and Terrorist Financing activities.

Consequently, Article 39 of Law 10/2010 of 28 April, Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT), stipulates that "...*staff with management responsibilities within NPO organisations shall ensure that these organisations are not used for Money Laundering or to channel funds or resources to persons or entities linked to terrorist groups or organisations*". In particular, it stipulates that *"all foundations and associations shall keep, for at least ten years, records identifying all persons who contribute or receive, free of charge, funds or resources from the non-profit organisation, in accordance with Articles 3 and 4 of this Law*".

The reference to Articles 3 and 4 implies an obligation to identify not only the persons who contribute or receive funds, but also, where applicable, their beneficial owners. Article 4 defines a beneficial owner as

a) *The natural person or persons on whose behalf it is intended to establish a business relationship or to participate in any transactions.*
b) *The natural person or persons who ultimately own or control, directly or indirectly, more than 25 per cent of the capital or voting rights of a legal person, or who by other means exercise direct or indirect control over the management of a legal person. Exceptions are made for companies listed on a regulated market in the European Union or in equivalent third countries*
c) *The natural person or persons who own or exercise control over 25 per cent or more of the assets of a legal entity or instrument that manages or distributes funds, or, where the beneficiaries are yet to be designated, the category of persons for whose benefit the legal entity or instrument has been created or primarily operates.*

PASEO DEL PRADO, 6
28014 MADRID

This document sets out a series of best practices aimed at protecting the integrity and reputation of NPO organisations. As they are recommendations, they are not legally binding; however, alongside existing legal obligations, they help NPO organisations to protect themselves more effectively against the threat posed by those who seek to use them for criminal purposes. The risks to which each organisation is exposed, depending on its activities, geographical scope of operation or volume of funds managed, determine the relative importance of adopting these measures. Thus, a fundamental element in effectively preventing any abuse is for NPO to analyse and assess the inherent risks of the various activities they carry out and, on that basis, to focus and direct their controls, intensifying them in those areas or projects with objectively higher risks.

1. Functioning of Governing Bodies

The governing body plays a fundamental role in fulfilling the organisation's mission and ensuring its ethical operation. To prevent the infiltration of criminals, the organisation should have procedures in place to ensure the ethical and professional suitability of the members of its governing and administrative bodies – in particular the Board of Directors, the Board of Trustees, as well as, where applicable, Executive Committees or other delegated bodies, other senior management positions or individuals with responsibilities (authorised representatives, local office managers, etc.).

Each organisation should regulate the powers vested in its governing and representative bodies, defining their obligations and responsibilities, as well as the procedures for adopting resolutions.

Furthermore, the governing body should:

- Ensure that it has a sufficient minimum number of members to guarantee sound decision-making.
- Meet regularly and document the resolutions adopted.
- Play an active role in the strategy, planning and monitoring of the institution's activities.
- Adopt the necessary mechanisms to promote adequate financial transparency: establish policies or designate those responsible for approving expenditure, implement internal controls over expenditure programmes, and, where the volume of activity and the level of risk so warrant, commission annual external audits.
- Adopt mechanisms to prevent conflicts of interest and incompatibilities amongst members of the governing body.

2. Planning and technical monitoring of activities

The organisation should clearly define its corporate purpose and its beneficiary groups, and refrain from carrying out activities not intended to achieve that purpose. To this end, it should establish clear criteria for the selection of projects, which should be approved by the governing body.

The governing body should approve an annual programme of activities. The organisation should have pre-established criteria for selecting its counterparties, take proactive measures to verify their integrity, and ensure they are not infiltrated by or linked to Money Laundering or terrorist activities.

In the case of fundraising, the organisation should inform potential donors of the intended use of the funds and ensure that they are used for that purpose. Subsequently, it should provide donors with a detailed account of the activities carried out using the funds received.

The organisation should have internal systems in place to monitor and control its activities. These systems should be approved by the governing body. The systems should be capable of confirming:

- The effective implementation of the projects.
- The actual existence of the intended beneficiaries.
- In this case, the receipt of the funds by the beneficiaries
- The carrying out of planned purchases and expenditure.

The organisation should produce and retain progress and completion reports on the projects/activities

The risk of funds being diverted to engage in terrorist financing or other criminal activities (activities in areas where terrorist groups are established or exert influence, organised crime, etc.) should be included amongst the factors to be considered when deciding whether or not to undertake the project or activity. If the project or activity is undertaken, organisations should strengthen their monitoring of its effective implementation, without ruling out, where circumstances permit and without compromising the safety of the organisation's staff, the carrying out of additional on-site checks.

3. Financial transparency

The governing body should approve criteria for accepting donations. At least in the case of donations from companies and private organisations, as well as larger individual donations, these criteria should take into account publicly available information regarding the possible involvement or connection of such companies or organisations, or of their beneficial owners or senior management, in criminal proceedings relating to Money Laundering or Terrorist Financing.

The allocation of funds raised to each year's activities should be documented.

The organisation should draw up a budget of its income and expenditure and subsequently finalise the accounts. Both the budget and the final accounts should be approved by the governing body.

The organisation should maintain a detailed budget for each project, setting out the income received for that project and the expenditure, specifying the identity of the beneficiaries or, where this is not feasible, their characteristics. Monitoring of the technical implementation of each project should be complemented by supervision of the financial implementation (including the administrative budget) and any potential deviations.

NPsOs should establish procedures to ensure that the receipt of donations or grants, as well as the use of funds or their transfer to partners or beneficiaries, is carried out through the banking system, which facilitates controls to prevent Money Laundering and the Financing of Terrorism (AML/CFT). Consequently, the use of cash should be minimised. Wherever possible, and where the nature of the project or activity so warrants, it is recommended that a separate bank account be maintained for each project in order to facilitate the monitoring of the implementation of the various projects.

Some NPO organisations are legally obliged to submit annual accounts, accompanied by a report describing the activities carried out. In the case of foundations and associations declared to be of public benefit, these accounts must detail the source, amount and use of public funds received. Furthermore, in certain circumstances, non-profit organisations are required to have their accounts audited. Without prejudice to compliance with these legal obligations, the risk faced by the organisation in relation to Money Laundering and Terrorist Financing should be one of the criteria to be taken into account when an organisation decides voluntarily to submit its accounts or a specific project or activity to an external audit.