

FACTSHEET

THE IMPACT OF BANKS & NGOS' AML/CTF OBLIGATIONS ON CIVIC SPACE



RIGHTS
DEMOCRACY

RECLAIM

ABOUT RECLAIM

RECLAIM is a newly established NGO that works to amplify the voices of European civil society in their struggle to promote democratic, just and inclusive societies at home and abroad. Our goals are to counter democratic backsliding and ensure that European civil society, in all its diversity, can continue to work unhindered.

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More analysis and reports can be found on RECLAIM's website at reclaiming.eu

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BACKGROUND

Table 1. What is de-risking?

De-risking or de-banking can be defined as the practice of financial institutions to exit relationships with and close the bank accounts of clients perceived to be high risk.

Such decisions can be connected to reasons such as increasing AML and CTF scrutiny, low profit, and risk of reputational damages.

This practice leads banks to minimize their own risk exposure while leaving clients - especially non-profit organisations (NPOs) - deprived of basic banking services.

What is a FinTech compliance company or KYC data aggregator?

“FinTech compliance” companies are companies that ease the operational burdens of compliance with due diligence processes linked to AML and CTF regulations through AI and data aggregation. Their role is prominent in the banking sector due to sector-specific legislation.

Over the last decade, the European Union has adopted *several laws* on counterterrorism financing (CTF) and anti-money laundering (AML), laying down numerous obligations on different actors.

Among them, financial institutions are required to vet their clients by determining their risk of being involved in such activities (i.e. Know Your Customer or KYC assessments). Such checks also cover NGOs and human rights organisations. Private philanthropies and grant-making NGOs, although they are not “obliged entities” under EU law, perform similar checks on their partners to comply with counter-terrorism clauses in donor agreements.

Such controls are extremely expensive, in so far as financial institutions, donors, and NPOs need to procure privately-owned FinTech software databases and pay for expensive legal advice.

When data provided by the FinTech companies is wrong or of substandard quality, banks need to seek further evidence and verify the information provided. In these cases, the cost of due diligence might outbalance the benefit they can have from accepting small NGOs as client – driving de-risking: the increasing trend of banks hindering or even cutting off NGOs’ access to their services.

PROBLEMS TO RESOLVE:



DE-RESPONSIBILISATION OF PUBLIC AUTHORITIES. Compliance checks raise human rights concerns that cannot be entirely devolved to privately-owned companies, especially in the lack of specific legislation concerning access to screening software, individuals' data protection guarantees and minimum threshold of reliability of the information collected.



COMPLIANCE AGGREGATORS ARE POORLY REGULATED. KYC FinTech Companies, based in the EU and in the UK are subject to the GDPR and the 2018 Data Protection Act. They must ensure the respect of individuals' right to data protection. However, their obligation to communicate to public authorities their impact on data protection is not mandatory, but subject to companies' evaluation of the gravity of such an impact.



ACCESS TO BASIC BANKING SERVICES IS UNEVEN ACROSS MEMBER STATES. Access to banking services is crucial for NGOs to operate and exercise their activities. As it currently stands, EU legislation does not recognise NGOs' right to access to such services. While some Member States are starting to consider the issue, NGOs operating in different Member States are facing unjustified disparities in accessing basic banking services (e.g., open a bank account).

POLICY RECOMMENDATIONS TO THE EU

RECOMMENDATION #1

Perform study on the impact of de-risking on NPOs. The EU Fundamental Rights Agency (FRA), the Commission and the European Parliament should conduct in-depth quantitative studies on the impact that de-risking and de-banking have on NPOs in Europe.

RECOMMENDATION #2

Raise awareness about the misuse of CTF/AML measures to close civic space. The Commission and EU Member States should push-back against the disproportionately high focus on risk of terrorism financing abuse of civil society and raise banks' awareness about the pervasive nature of defamation campaigns and misuse of counter-terror obligations in the relevant international forums (FATF) and policy documents (e.g. EC Supra-National Risk Assessment)



[3' Read] Reuters Special Report on governments misapplication of FATF standards to close civic space.

RECOMMENDATION #3

Address the lack of regulatory clarity at international level. The EU and its Member States should insist on a revision of *FATF recommendation 8* to (a) include and clearly define key terms (including “beneficiary,” “reasonable measures,” and “risk-based approach”) and to (b) warn against the risks of violating NPOs right of freedom of association (and its corollary, the ability to access financial resources).

RECOMMENDATION #5

Safeguard individuals’ right to data protection. The Commission and Member States should push for the adoption of compulsory data protection impact assessments for FinTech KYC Companies and make it mandatory to share them with the data protection authority in every Member State where they deliver their services.



[20’ Read] RECLAIM Brief Counterterrorism Financing AI-powered Software: Known Risks to HRDs

RECOMMENDATION #4

Set standards and guidelines for the private sector. The Commission and EU Member States shall set specific human rights standards that FinTech and commercial banks need to respect when (a) collecting personal information and determining the level of AML/CT risk and (b) for individuals to request and have wrong information corrected.

RECOMMENDATION #6

Provide for basic banking services for NGOs. The Commission should propose the adoption of a Directive setting minimum standards for the protection of NPOs, including the recognition of the right to access basic banking services – as recommended by the EP. The Commission should build on the existing legislation in some Member States (e.g. Belgium) to avoid replicating the same shortcomings.



[3’ Read] RECLAIM Factsheet on how to ensure NGOs’ equal access to basic banking services across the EU.

PRIVATE SECTOR RECOMMENDATIONS

While EU institutions can provide critical support to strengthen NGOs’ rights when dealing with financial institutions, the latter also have business and human rights responsibilities under the UNGP on Business and Human Rights. Specifically, companies should:

RECOMMENDATION #1

Safeguard individuals’ right to data protection. Providers of risk management software should maintain their operations in conformity with their obligations under the GPDR by (i) contacting the people and organisations they flag and undertaking (ii) public human rights assessment of their data processing practices and external independent audits on their algorithms, their data sources, and the quality of the data they use.

RECOMMENDATION #2

Invest in highly skilled staff and non-automatised procedures. The financial services industry, notably bank and payments services providers, should never automatise onboarding decisions. They should adopt appropriate and human rights-respectful guidelines and set standards. They should provide training to their staff to learn which procedures and safeguards they shall apply when liaising with NGOs.

FACTSHEET SERIES

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