Executive Summary

1.   This report provides a summary of the anti-money laundering and combating the financing of terrorism (AML/CFT) measures in place in Austria as at the date of the on-site visit (9 to 20 November 2015). It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Austria's AML/CFT system, and provides recommendations on how the system could be strengthened.

Key Findings

1)   Austria has a mixed understanding of its ML/TF risks. The NRA does not provide a holistic picture of ML/TF risks that are present in the jurisdiction. Each competent authority has its own concept of ML/TF risks based on its practical experience; however, in most cases they do not match with each other and do not provide a complete picture of country's ML/TF risks. Austria did not demonstrate that it had any national AML/CFT policies. Domestic cooperation mechanisms do not result in the development and implementation of policies and activities that would be coordinated in a systematic manner.

2)   A-FIU functions well as a predicate offence and associated ML investigation unit, rather than as a financial intelligence unit. The approach of the FIU with regard to STR analysis is primarily investigative (as opposed to intelligence approach). The FIU conducts only very basic operational analysis and does not conduct any strategic analysis to support the operational needs of competent authorities. The available IT-tools do not enable the A-FIU to cross-match STRs or conduct data-mining to find trends and patterns across STRs. The A-FIU does not conduct any analysis of TF-related STRs. There have been a number of instances (across different types of reporting entities) where customers became aware that an STR was filed in their respect and raised complaints directly against the reporting entity (and in some cases, the person who filed).

3)   Austria's ML offence is generally comprehensive and in line with the Vienna and Palermo Conventions. But Austria does not pursue ML as a priority and in line with its profile as an international financial centre. The need in practice to prove a predicate offence beyond a reasonable doubt in order to demonstrate the illegal origin of funds limits the ability to detect, prosecute, and

convict for different types of ML (in particular relating to foreign predicates and stand-alone ML). Sanctions applied by the courts for ML are not dissuasive, as penalties actually applied are very low (normally probation for a first time offense). As a result of these issues, prosecutors generally do not lay ML charges and instead focus on pursuing the predicate offence.

4)   Austria has a generally comprehensive framework for police powers and provisional and confiscation measures; however Austria does not pursue confiscation in line with its risk profile. A key deficiency is in the step ("sequestration") required to apply to freeze bank accounts which can only be obtained if the prosecutor can prove to the court that there is a specific risk that the assets will disperse without such an order.

5)   The authorities have a good understanding of the TF risks, and Austria exhibits many characteristics of an effective system for investigating and prosecuting those involved in terrorist actions. The legal framework for the investigation and prosecution of terrorist and TF is generally sound and there are specialised authorities for investigation, intelligence and prosecution in these fields. Every counter-terrorism investigation includes an investigation into potential TF. Some convictions on terrorist activities and TF were obtained.

6)   Austria has not undertaken a domestic review and comprehensively looked at potential risks within the NPO sector to identify which subset of NPOs that might be of particular risk of being misused for TF. However police authorities have identified and investigated some NPOs exposed to terrorist and TF risks and also conducted numerous targeted TF-related outreach to associations in the last years. There is insufficient monitoring and supervision of administrative requirements of the large majority of NPOs.

7)   Austrian financial sector supervisors appropriately conduct fit and proper tests and criminal background checks in licensing and registering credit institutions. The FMA also proactively targets unlicensed financial service providers as it considers these types of activities to be a key risk to the sector and has established a dedicated function to address these activities. In general, the FMA has a sound understanding of ML/TF risks present in the institutions it supervises. Based on this understanding, it has developed strategies using supervisory tools to risk rate the institutions it regulates, and its staff is appropriately qualified to perform assigned functions. However, effective implementation of these supervisory strategies is limited by a lack of adequate resources especially related to the supervision of higher risk credit institutions. The lack of adequate supervision regarding passported MVTS providers and e-money institutions is also a significant gap.

8)   Austria demonstrates many characteristics of an effective system for international co-operation. Austria provides assistance to countries who request it, and the Austrian authorities regularly ask their foreign counterparts for information and evidence. Most countries that gave input on the international co-operation of the Austrian authorities (speaking broadly) found it to be generally satisfactory. Conversely, Austria is generally satisfied with the co-operation that it receives.

Risks and General Situation

2.   Austria is one of the most developed countries in the world with a GDP of about EUR 329 296 billion in 2014. Austria has a highly-developed and robust financial market, with assets totalling approximately 355% of GDP. The financial system is dominated by banks that hold 75% of the total financial sector assets. Austria has one of the densest banking and branch networks in Europe and is dominated by the universal banking structure. Austrian banks generally provide the full range of banking services and only a few institutions have highly specialised business models.

3.   Austria's National Risk Assessment on ML/TF (NRA) was coordinated the Ministry of Finance (BMF), was finalised in April 2015, and published in October 2015. The work was conducted in the framework of a working group (WG NRA) which included representatives of all ministries and authorities responsible for combating money laundering and financing of terrorism. Austria finalised its first NRA in April 2015, and published it in October 2015. While the NRA was an important first step, and used elements of the FATF Guidance on National Money Laundering and Terrorist Financing Risk Assessment published in February 2013, it does not provide a holistic picture of ML/TF risks that are present in the jurisdiction.

4.   Theft, drug trafficking, and fraud are the main predicate crimes in Austria according to conviction and investigation statistics. Human trafficking/migrant smuggling is perceived to be high risk, but the ML-related knowledge is very limited, as there have been no convictions for ML related to these predicate offences so far.

5.   There is considerable ML risk associated with the activities of organised crime groups (originating in Italy or post-Soviet Union countries). Their areas of activity will often include drug trafficking, human trafficking and migrant smuggling, fraud, and tax crimes (especially VAT fraud). The proceeds are laundered through cash-intensive businesses (such as hotels, restaurants, and cafes), usually with straw men acting as directors and shareholders. Sometimes simpler techniques such as money remittance using straw men (or money mules) will be used.

6.   Being an important regional and international financial centre as well as a gateway to Central, Eastern, and Southeastern Europe (CESEE) countries, Austria faces a range of ML and TF risks. Austria is particularly vulnerable to proceeds from a variety of international crimes transiting through Austria such as corruption, embezzlement, etc. Companies established offshore with Austrian bank accounts are vulnerable for these purposes.

7.   TF risks are mainly associated with a considerable migrant population coming from conflict zones, some of whom may be sympathetic to extremist and terrorist organisations, including by providing financial support. The funds originate both from legal (salaries, social benefits) and illegal (theft, fraud, other petty crimes) sources. The movement of funds is usually conducted through money remittance service providers. Sometimes money transfers are performed through third countries. TF risks are influenced by the support of certain communities settled in Austria to conflict zones abroad, particularly in the regions of the north Caucasus and the Kurdistan region, and to Islamist terrorist organizations in countries as Iraq and Syria. Detected activities are mainly related to small cells, self-financed through legal and illegal means and, also, to Austrian residents travelling to conflict zones abroad to help foreign terrorist groups.

Overall Level of Effectiveness and Technical Compliance

8.   Following the last FATF evaluation in 2009, Austria made important reforms to its AML/CFT framework including by improving its ML and TF offences, and CDD provisions. Overall, Austria has a strong legal and institutional framework for combating ML and TF. The technical compliance framework is strong regarding legal and law enforcement requirements, preventive measures and supervision for FIs and DNFBPs. Improvements are still needed in national AML/CFT policy coordination, assessment of risk, and targeted financial sanctions.

9.   In terms of effectiveness, Austria achieves substantial results in the investigation and prosecution of persons who finance terrorism, in the implementation of targeted financial sanctions related to PF, and in international cooperation; moderate results in understanding of risk, transparency of legal persons and arrangements, confiscation, and targeted financial sanctions related to TF. Fundamental improvements are needed in the collection and use of financial intelligence, and investigation and prosecution of ML.

Assessment of Risks, coordination and policy setting (Chapter 2 - IO.1; R.1, R.2, R.33)

10.   Austria has a mixed understanding of its ML/TF risks. The NRA does not provide a holistic picture of ML/TF risks that are present in the jurisdiction. Each competent authority has its own concept of ML/TF risks based on its practical experience; however, in most cases they do not match with each other and do not provide a complete picture of country's ML/TF risks.

11.   Austria did not demonstrate that it had any national AML/CFT policies, and the risks are only taken into account individually by certain agencies to the extent that they consider useful for their day-to-day work. As a consequence, the objectives and activities of individual competent authorities are determined by their own priorities and often are not coordinated.

12.   Domestic cooperation mechanisms do not result in the development and implementation of policies and activities that would be coordinated in a systematic manner.

13.   As to date, Austria uses the findings of the risk assessments to a limited extent: to justify simplified due diligence measures for savings associations and support the application of enhanced due diligence measures for higher risk scenarios (with respect to certain high TF risk countries).

14.   Most entities subject to AML/CFT legislation are aware of their risks, although their knowledge varies between sectors.

Financial Intelligence, Money Laundering and Confiscation (Chapter 3 - IOs 6-8; R.3, R.4, R.29-32)

15.   Police routinely use the information that the A-FIU provides to investigate predicate offences and, to some extent, to trace criminal proceeds. Prosecutors, however, do not see STRs and the results of their analysis by the A-FIU as a valuable source of information as it does not give them sufficient evidence of a predicate offence and/or origin of funds.

16.   A-FIU functions well as a predicate offence and associated ML investigation unit, rather than as a financial intelligence unit. The approach of the FIU with regard to STR analysis is primarily investigative (as opposed to intelligence approach) as it seeks to identify predicate offenses that

could trigger a criminal case. Financial intelligence and other relevant information are rarely used in investigations to develop ML evidence.

17.   Due to the limitations in the analytical capabilities (both IT and human resources) of the A-FIU, and legal constraints ("competence checks") the A-FIU conducts only very basic operational analysis and does not conduct any strategic analysis to support the operational needs of competent authorities. The A-FIU's "protocol" system (rather than a database) does not enable the A-FIU to cross-match STRs or conduct data-mining to find trends and patterns across STRs. The A-FIU does not conduct any analysis of TF-related STRs after the initial competence check.

18.   With regard to TF, the BVT (central police agency in the field of terrorism and TF within the Ministry of Interior) receives all TF-related STRs from the FIU (without any analysis beyond the competence check) and then makes good use of this information, conducting its own analysis.

19.   The A-FIU and other competent authorities cooperate and exchange information and financial intelligence well, but the competent authorities do not protect the confidentiality of STRs after dissemination by the FIU. Once the FIU confirms a firm suspicion of ML or a predicate offence in an STR, a formal criminal investigation must be opened. At this (early) stage, the STR becomes evidence. There have been a number of instances (across different types of reporting entities) where customers became aware that an STR was filed in their respect and raised complaints directly against the reporting entity (and in some cases, the person who filed). This is mainly due to the rights of the accused and their rights to see evidence against them. This issue puts the whole reporting system at risk and raises serious concerns with regard to its effectiveness.

20.   Austria's ML offence is generally comprehensive and in line with the Vienna and Palermo Conventions. But Austria does not pursue ML as a priority and in line with its profile as an international financial centre. The need, in practice, to prove a predicate offence beyond a reasonable doubt in order to demonstrate the illegal origin of funds limits the ability to detect, prosecute, and convict for different types of ML (in particular relating to foreign predicates and stand-alone ML). Sanctions applied by the courts for ML are not dissuasive, as penalties actually applied are very low (normally probation for a first time offense). As a result of these issues, prosecutors generally do not lay ML charges and instead focus on pursuing the predicate offence.

21.   Austria has reasonably well developed investigative and prosecutorial capacities as well as a good legal foundation and sound institutional structures to that end. Authorities can reasonably detect clear-cut ML cases, but A-FIU's lack of operative analysis tools hinders the detection of more complicated cases.

22.   Austria has a generally comprehensive framework for police powers and provisional and confiscation measures; however only limited confiscation results have been achieved. The framework involves appropriate steps and measures to identify, seize, and confiscate assets after a conviction. The ARO-office is well functioning in its capacity as coordinator, provider of training and in tracing assets abroad using different channels. Even though a positive trend on confiscation has been demonstrated, Austria does not pursue confiscation in line with its risk profile. The methodical use of repatriation of assets could not be demonstrated, as statistics on such measures are not kept.

23.   A key deficiency is in the step ("sequestration") required to freeze bank accounts which can only be obtained if the prosecutor can prove to the court that there is a specific risk that the assets will disperse without such an order. This proves to be too high a legal burden to achieve, particularly

in the Vienna region. As a result of this and the need to focus on the predicate offence, prosecutors show a restraint to apply to seize such assets.

Terrorist Financing and Financing Proliferation (Chapter 4 - IOs 9- 11; R.5-8)

24.	The authorities have a good understanding of the TF risks, and Austria exhibits many characteristics of an effective system for investigating and prosecuting those involved in terrorist actions. The legal framework for the investigation and prosecution of terrorist and TF is generally sound and there are specialised authorities for investigation, intelligence and prosecution in these fields.

25.	Every counter-terrorism investigation includes an investigation into potential TF. Some convictions on terrorist activities and TF were obtained. Most of the investigations initiated do not result in prosecutions due to the lack of sufficient evidence to formally initiate an accusation by the Public Prosecutor Office and, additionally, the terms of imprisonment being applied in the convictions obtained so far are very low and do not seem to be dissuasive.

26.	Austria has a legal system in place to apply targeted financial sanctions regarding terrorist financing, but implementation has technical and practical deficiencies due to the procedures set at the EU level that impose delays on the transposition of designated entities into sanctions lists. The exception is the framework for Iran, where targeted financial sanctions are implemented without delay.

27.	No specific sanctions have been imposed for non-compliance with the TFS obligations.

28.	Some DNFBP sectors, such as lawyers and notaries, showed a good understanding of TFS obligations, while others such as the real estate sector and dealers in high-value goods did not. It is also not clear whether business consultants (i.e. company service providers) have an adequate understanding of their obligations and risks.

29.	Austria has not undertaken a domestic review and comprehensively looked at potential risks within the NPO sector to identify which subset of NPOs that might be of particular risk of being misused for TF. However police authorities have identified and investigated some NPOs exposed to terrorist and TF risks and also conducted numerous targeted TF-related outreach to associations in the last years. There is insufficient monitoring and supervision of administrative requirements of the large majority of NPOs, thus leaving associations potentially vulnerable to be misused for TF and other criminal purposes.

Preventive Measures (Chapter 5 - IO4; R.9-23)

30.	Banks have a good understanding of their ML/TF risks and AML/CFT obligations. The main risks that they face are associated with offshore customers and business activities.

31.	It is a major concern that Austrian banks play a systemic role in CESEE countries, yet there is no requirement to have a business wide compliance function that would apply to their branches and subsidiaries there. The interpretation of Austrian bank secrecy provisions by banks seems to be an obstacle to sharing customer information across international banking groups.

32.	Passported MVTS providers and e-money institutions providing services via agents are formally required to apply Austrian AML/CFT rules, but the lack of direct supervision raises questions as to their awareness and effective application of such rules.

33.   Notaries, lawyers, and accountants play a key role within the economic system as they are often involved in high risk business like company formations and real estate transfers. There are concerns whether they fulfil their gatekeeper role effectively.

34.   Offices services (providing business address and secretariat for companies in a professional way) are a growing business in Austria, and there are concerns that this sector is not aware enough about ML/TF vulnerabilities and risks.

35.   Dealers in high-value goods are not aware of their ML/TF risks and do not have sufficient risk mitigating measures in place.

36.   The DNFBP sectors in particular are reluctant to file STRs, since these were frequently shared directly with the customer involved at the early stage of the FIU's investigation into the STR. Financial institutions also indicated that their STRs filed were shared with customers, and this has made some more reluctant to file.

Supervision (Chapter 6 - IO3; R.26-28, R. 34-.35)

37.   With respect to market entry, Austrian financial sector supervisors appropriately conduct fit and proper tests and criminal background checks in licensing and registering credit institutions. The FMA also proactively targets unlicensed financial service providers as it considers these types of activities to be a key risk to the sector and has established a dedicated function to address these activities.

38.   In general, the FMA has a sound understanding of ML/TF risks present in the institutions it supervises. Based on this understanding, it has developed strategies using supervisory tools to risk rate the institutions it regulates, and its staff is appropriately qualified to perform assigned functions.

39.   However, effective implementation of these supervisory strategies is limited by a lack of adequate resources especially related to the supervision of higher risk credit institutions. A similar level of understanding of risks is not present among authorities that supervise a range of DNFBPs and therefore, the supervision of these business and professions is based more on statutory requirements rather than appropriate risk analysis or ratings.

40.   In some cases (particularly the local district authorities, who supervise inter alia company service providers and dealers in precious metals and stones), authorities lack the necessary expertise to conduct effective inspections.

41.   FMA has access to a full range of public and non-public supervisory actions that it can and does apply to achieve compliance. However, there are cases where the applications of these actions may not be proportionately applied, possibly due to resource limitations. Furthermore, financial penalties imposed by the FMA do not appear to be dissuasive. It is unclear if the authorities that regulate the DNFBP sectors have access to a similar range of sanctions and that they consistently apply these to achieve compliance within the sector.

42.   There is a lack of understanding of the activities and ML/TF risks associated with the on-line activities of foreign MVTS providers and e-money institutions in Austria. As a result, Austrian supervisory arrangements under the EU passporting rules do not provide adequate control of these ML/FT risks.

Transparency of Legal Persons and Arrangements (Chapter 7 - IO5; R. 24-25)

43.   Although there has been no formal risk assessment, the competent authorities' understanding of risks and vulnerabilities of legal persons and arrangements appears to be adequate. The authorities have taken important measures to prevent the misuse of legal persons. The company registry functions effectively and has a number of safeguards in place. On the other hand, the measures to prevent the misuse of Treuhand arrangements are limited.

44.   There is no central place where information on beneficial owners of Austrian legal persons and arrangements is kept. Beneficial ownership information is obtained and maintained individually by financial institutions and DNFBPs in the course of their CDD obligations. However, timely access to this information by the competent authorities is hindered by legal provisions and other professional secrecy restrictions. The sanctions provided for the violation of the information and disclosure requirements are generally effective.

International Cooperation (Chapter 8 - IO2; R. 36-40)

45.   Austria demonstrates many characteristics of an effective system for international co-operation. Austria provides assistance to countries who request it, and the Austrian authorities regularly ask their foreign counterparts for information and evidence. Most countries that gave input on the international co-operation of the Austrian authorities (speaking broadly) found it to be generally satisfactory; however, there were several exceptions. Conversely, Austria is generally satisfied with the co-operation that it receives.

46.   Based on the information, including statistics, supplied by the authorities, it is possible to determine the volume of international co-operation (including extradition) dedicated to AML/CFT, but not which types of ML cases. The authorities were not able to indicate among those requests, which are more particularly concerned with identification, seizing and confiscation of criminal assets.

47.   Regarding information sharing from the A-FIU, the level of suspicion of ML required hinders, in some cases, its ability to collect and share relevant information with foreign FIUs in some cases. Finally, the Austrian procedural rules and practices concerning extradition with non-EU countries raise some concerns with regards to its effectiveness.

Priority Actions

48.   The prioritised recommended actions for Austria, based on these findings, are:

- ◼ Austria should consider revising its ML/TF risk assessment(s) with a focus on actual ML/TF methods and techniques and with a stronger substantiation of the findings. Austria should make sure that the findings of the risk assessment(s) represent a coordinated, whole-of-government view of the ML/TF risks present in the jurisdiction.

- ◼ Austria should strengthen domestic cooperation mechanisms (such as through an AML/CFT interagency committee) to enhance the impact on the development and implementation of policies and activities that would be coordinated in a systematic manner. These mechanisms could also be used to assess overall effectiveness.

- Austria should reconsider A-FIUs role as an investigative unit and thus make it possible for it to disseminate information to domestic authorities and foreign counterparts without first opening an investigation. Austria should ensure that the contents of STRs and the fact of their submission remains confidential and does not come to the knowledge of anyone who is not directly involved in the analysis and investigation.

- The A-FIU should be given adequate authority and resources (financial analysts and IT tools) to be able to conduct comprehensive analysis of STRs and other financial intelligence. A-FIU should also build in-house analysis of FT-related STRs, or enhance cooperation and analysis of FT-related STRs with BVT.

- Austria should ensure that it can and does pursue ML investigations for the different types of ML consistent with Austria's risk profile – i.e. complex ML cases, professional money launderers, and ML related to foreign predicates. Austria should take the necessary measures to ensure that, in practice, a predicate offence does not need to be proven beyond a reasonable doubt in order to pursue and prosecute for ML.

- Due to the high threshold of proof needed to apply for the sequestration of (banking and real estate) assets, Austria should consider appropriate measures to ensure that this measure could be used more effectively by law enforcement and prosecutors. Austria should amend the law or procedures as necessary to lower the burdens that prosecutors face applying to sequester such accounts to ensure that pursuing proceeds of crime is made systematic.

- As a priority, Austria should review the adequacy of law and regulations relating to NPOs, and conduct a comprehensive domestic review of the sector to identify the features and types of subset of NPOs that are particularly at risk of being misuse for TF or other forms of terrorist support.

- Austria should ensure that Austrian banks have business wide compliance functions that apply to its branches and subsidiaries abroad, particularly given its role as a gatekeeper in CESEE. This should include issuing guidance on the banking secrecy provisions.

- Austria should ensure that MVTS providers and other financial institutions operating in Austria under the EU passporting regime are adequately aware of and are applying comprehensive AML/CFT measures. Austria should amend its laws to enable FMA to supervise these entities in accordance with the level and nature of risks they present.

- Austria should increase the resources of FMA's AML/CFT supervision unit to further enhance effective supervision. FMA should ensure that its risk-rating tool incorporates all relevant ML/FT risks identified in the NRA and other sources of risk information to ensure that its coverage of risks across the jurisdiction and sector is comprehensive and complete.

Effectiveness & Technical Compliance Ratings

Effectiveness Ratings

IO.1 - Risk, policy and coordination	IO.2 - International cooperation	IO.3 - Supervision	IO.4 - Preventive measures	IO.5 - Legal persons and arrangements	IO.6 - Financial intelligence
Moderate	**Substantial**	**Moderate**	**Moderate**	**Moderate**	**Low**

IO.7 - ML investigation & prosecution	IO.8 - Confiscation	IO.9 - TF investigation & prosecution	IO.10 - TF preventive measures & financial sanctions	IO.11 - PF financial sanctions	
Low	**Moderate**	**Substantial**	**Moderate**	**Substantial**	

Technical Compliance Ratings

R.1 - assessing risk & applying risk-based approach	R.2 - national cooperation and coordination	R.3 - money laundering offence	R.4 - confiscation & provisional measures	R.5 - terrorist financing offence	R.6 - targeted financial sanctions – terrorism & terrorist financing
PC	**PC**	**LC**	**C**	**C**	**PC**

R.7 - targeted financial sanctions - proliferation	R.8 - non-profit organisations	R.9 - financial institution secrecy laws	R.10 - Customer due diligence	R.11 - Record keeping	R.12 - Politically exposed persons
PC	**PC**	**LC**	**LC**	**C**	**PC**

R.13 - Correspondent banking	R.14 - Money or value transfer services	R.15 - New technologies	R.16 - Wire transfers	R.17 - Reliance on third parties	R.18 - Internal controls and foreign branches and subsidiaries
LC	**C**	**PC**	**PC**	**LC**	**PC**

R.19 - Higher-risk countries	R.20 - Reporting of suspicious transactions	R.21 - Tipping-off and confidentiality	R.22 - DNFBPs: Customer due diligence	R.23 - DNFBPs: Other measures	R.24 - Transparency & BO of legal persons
C	**C**	**C**	**PC**	**LC**	**PC**

R.25 - Transparency & BO of legal arrangements	R.26 - Regulation and supervision of financial institutions	R.27 - Powers of supervision	R.28 - Regulation and supervision of DNFBPs	R.29 - Financial intelligence units	R.30 - Responsibilities of law enforcement and investigative authorities
PC	**C**	**C**	**LC**	**PC**	**C**

R.31 - Powers of law enforcement and investigative authorities	R.32 - Cash couriers	R.33 - Statistics	R.34 - Guidance and feedback	R.35 - Sanctions	R.36 - International instruments
LC	**LC**	**PC**	**LC**	**C**	**LC**

R.37 - Mutual legal assistance	R.38 - Mutual legal assistance: freezing and confiscation	R.39 - Extradition	R.40 - Other forms of international cooperation	
LC	**LC**	**C**	**LC**	

C = Compliant
LC = Largely Compliant
PC = Partially Compliant
NC = Non-compliant