FATF

Anti-money laundering and counter-terrorist financing measures

Austria

Mutual Evaluation Report

September 2016

The Financial Action Task Force (FATF) is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global anti-money laundering (AML) and counter-terrorist financing (CTF) standard.

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This assessment was adopted by the FATF at its June 2016 Plenary meeting.

Citing reference:

FATF (2016), *Anti-money laundering and counter-terrorist financing measures - Austria,* Fourth Round Mutual Evaluation Report, FATF, Paris
www.fatf-gafi.org/publications/mutualevaluations/documents/mer-austria-2016.html

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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

MUTUAL EVALUATION REPORT

Preface

This report summarises the AML/CFT measures in place as at the date of the on-site visit. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of the AML/CFT system, and recommends how the system could be strengthened.

This evaluation was based on the 2012 FATF Recommendations, and was prepared using the 2013 Methodology. The evaluation was based on information provided by the country, and information obtained by the evaluation team during its on-site visit to the country from 9 to 20 November 2015.

The evaluation was conducted by an assessment team consisting of:

- Ms. Indira CRUM, Office of the Comptroller of the Currency, Department of the Treasury, the United States (financial expert)
- Mr. Gonzalo GONZÁLEZ DE LARA, General Secretariat of the Treasury and Financial Policy, Spain (legal expert)
- Mr. Giovanni ILACQUA, Financial Intelligence Unit at the Bank of Italy, Italy (law enforcement expert)
- Ms. Christina PITZER, Federal Financial Supervisory Authority, Germany (financial expert)
- Mr. Jan TIBBLING, Swedish Economic Crime Authority, Sweden (law enforcement expert).

The assessment process was managed by Mr. Kevin VANDERGRIFT, Senior Policy Analyst and assessment lead; Mr. Sergey TETERUKOV and Ms. Helen KWAN, Policy Analysts, all FATF Secretariat.

The report was reviewed by Mr. Kwiwoong LEE, Korea Financial Intelligence Unit, Korea; Mr. Radoslaw OBCZYNSKI, International Organization of Securities Commissions; and Mr. Lionel WONG, Monetary Authority of Singapore, Singapore.

Austria previously underwent a FATF Mutual Evaluation in 2009, conducted according to the 2004 FATF Methodology. The 2009 evaluation and 2014 follow-up report have been published and are available at www.fatf-gafi.org.

Austria's 2009 Mutual Evaluation concluded that the country was compliant with 6 Recommendations; largely compliant with 19 and partially compliant with 24. Austria was rated compliant or largely compliant with 5 of the 16 Core and Key Recommendations. Austria was placed under the regular follow-up process immediately after the adoption of its third round Mutual Evaluation Report. Following additional steps taken to address deficiencies identified, Austria exited the regular follow-up in February 2013.

CHAPTER 1. ML/TF RISKS AND CONTEXT

49. Located in central Europe, Austria is a country with a land area of almost 84 000 km^2 and has a population of approximately 8.5 million. Austria is surrounded by eight countries: Germany and the Czech Republic to the north, the Slovak Republic and Hungary to the east, Italy and Slovenia to the south, and Switzerland and Liechtenstein to the west. The capital of Austria is Vienna. German is Austria's national language while Croatian, Hungarian and Slovenian are official languages at a local level in some parts of the country.

50. Austria is a democratic republic established as a federal state comprising nine autonomous states (Bundesländer): Burgenland, Carinthia, Lower Austria, Salzburg, Styria, Tyrol, Upper Austria, Vorarlberg, and Vienna. These Länder exercise all of the rights which have not been assigned to the Federation (Bund). The Federal President (Bundespräsident) is the head of state, who designates the Federal Chancellor (Bundeskanzler) to exercise all functions that are not assigned to the Bundespräsident by the Federal Constitution. The Federation's Legislative power is exercised by the Parliament which is constituted of two chambers, namely the Chamber of Representatives (Nationalrat) and the Chamber of States (Bundersrat). The Nationalrat takes precedence over the Bundesrat except when the rights of the Länder are concerned. Each Bundesland also has its own parliament (Landtag) which exercises the legislative powers within its own domestic competence.

51. Austria is a civil law country. The Federation is the source of the jurisdiction of the Courts of Justice (i.e. all courts of justice are federal courts).Federal law and Länder law have the same status. Nevertheless, the civil, entrepreneurial, criminal and financial law (including tax and anti-money laundering legislation) are part of the Bund legislation and apply throughout Austria.

52. Austria has been a member of the European Union (EU) since 1995 and a member of the Eurozone since 1999. It is also part of the Schengen Area. Austria is attractive to foreign investors for its access to the EU market and its proximity to the Central, Eastern and Southeastern European (CESEE) countries. The EU has a significant influence on Austria's AML/CFT system. EU AML/CFT Regulations directly apply in Austria, along with Austrian measure transposing the 3rd EU Money Laundering Directive into Austrian domestic law.

ML/TF Risks and Scoping of Higher-Risk Issues

Overview of ML/TF Risks

53. Being an important regional and international financial centre as well as a gateway to 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. In many cases, a lawyer or another professional intermediary will be acting as a trustee for such companies.

54. Credit institutions' services are attractive as a ML/TF vehicle given their accessibility as well as the relatively low costs. This is also reflected in the vast number of STRs filed in 2014, of which 1 507 out of 1 673 were filed by credit institutions.

55. 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

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trafficking, human trafficking and migrant smuggling, fraud, and tax crimes (especially VAT fraud). The proceeds are often 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.

56. 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.

57. The real estate sector is perceived to be used for investment of illicit proceeds stemming from organised crime and corruption from geographic areas of high risk. A Treuhand arrangement will often be used in real estate transactions.

58. Cash movements are also seen as posing higher ML/TF risks. This includes bulk cash smuggling to and from the EU, and within the EU countries, and potential settlement in hawala and trade-based money laundering. Finally, the use of cash in purchasing high-value goods (such as cars, jewellery, and antiques) also poses ML/TF risks.

59. According to its NRA, Austria considers the use of Bitcoins as a high ML risk (especially in connection with "Darknet"), mainly due to the fact that the issue has come up during drug investigations, and the authorities lack knowledge on the extent of the phenomenon. To this end, a joint Austrian-German project, called "Bitcrime", has been initiated with a view to enhance their knowledge and provide tailor-made solutions for dealing with virtual currencies.

Country's risk assessment & Scoping of Higher Risk Issues

Country's risk assessment

60. The Ministry of Finance (BMF) was designated to act as a co-ordinating authority with respect to the National Risk Assessment. 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. It includes both ML and TF risks. The NRA used elements of the FATF Guidance on National Money Laundering and Terrorist Financing Risk Assessment published in February 2013. More specifically, the Austrian NRA report is a compilation of analyses of individual risk factors listed in the Annexes I and II of the FATF Guidance with a rating (low, medium, or high) assigned to each. Austria did not adequately demonstrate that it has comprehensively identified and understood its ML/TF risks; the NRA does not provide a holistic picture of ML/TF risks that are present in the jurisdiction. Competent authorities did not conduct separate formal risk assessments in their respective field of responsibility, with the exception of the Notary Chamber which produced ML/TF risk analysis using the same model as the NRA.

61. The NRA identified certain predicate offences as high risk: organised crime, human trafficking, smuggling, drug trafficking, corruption, VAT fraud, and other types of fraud, such as phishing, theft, and customs/excise tax evasion. Among the main vulnerabilities the NRA mentioned domination of organised crime, credit institutions, and their links with other financial intermediaries

on the international level. Also, the NRA identified certain areas of high risk such as use of Darknet, virtual payments, cash in cargo, hawala, and offshore corporate structures.

Scoping of Higher Risk Issues

62. In deciding what issues to prioritise, the assessment team reviewed material provided by Austria on technical compliance and effectiveness and supporting documentation, including reports relating to ML/TF risk. The issues listed present not only the areas of higher ML/TF risks (including threats and vulnerabilities), but also contain issues that were of concern or particular interest to the assessment team based on material provided before the on-site visit:

- **National coordination and the National Risk Assessment**: AML/CFT cooperation among the involved institutions in Austria seems to be relying on informal working groups. The team explored whether this affected the effectiveness of the national coordination. The NRA appears to be a compilation of various risk factors as laid out in the FATF Guidance. The team explored whether the authorities and private sector had appropriate understanding and prioritisation of risks and whether this had impact on the mitigation measures adopted in the country.
- **Investigation and prosecution of ML crimes**: 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. Organised crime (Italian, East European) presents high-risk from the ML point of view. There do not seem to be any estimates on the amount of money generated. Special attention thus needed to be put on the framework for investigating and prosecuting ML and to what extent it targets the identified risks properly.
- **Role of Austrian financial system as a "gatekeeper"**: Austrian banks have a systemic role in Central, Eastern, and Southeastern European (CESEE) countries. A number of branches and subsidiaries of Austrian banks in these countries were involved in ML and corruption investigations. The team therefore explored whether this may create risks of exposure of Austrian financial system to criminal money and specific role and AML/CFT responsibilities of Austrian banks and their supervisor in this context.
- **High-risk clients and private banking**: Some Austrian banks specialise in private banking and are considered as higher-risk since they have foreign PEPs as clients. This is a relevant issue in relation to CDD measures applied in Austria, in particular regarding the sources of funds for higher risk customers and proper identification of beneficial ownership in order to mitigate potential risks.
- **Beneficial ownership and registers of legal persons and legal arrangements**: There are no general requirements for trusts to be registered; a partial obligation exists for *Treuhands* where they are administered by a lawyer

or civil law notary. The team therefore explored the practice of setting up *Treuhands,* their main use in the Austrian economy, the usual contracting parties, involvement of regulated professions, etc. Accounts at Austrian banks are sometimes offered by various intermediaries, such as TCSPs (referred to in the legislation as "business consultants), as part of a trust or a legal arrangement package. It is important to understand how this issue is perceived and addressed by the authorities and the private sector practitioners. Favourable tax treatment of holding structures and certain legal persons (*Stiftung*) creates incentives for placement of funds in the Austrian financial system.

- **Potential restrictions to international cooperation**: The team explored the system for requesting banking information in the international request context where in some instances it is necessary to provide extensive details about the facts of the case in order to solve the alleged crime which may stall investigations and responding to MLA requests, or even result in leaks to the account holder and make the evidence unusable.

Materiality

63. Austria is one of the most developed countries in the world with a GDP of about EUR 329 296 billion in 2014. The most important sectors of Austria's economy in 2014 were wholesale and retail trade, transport, accommodation and food services (22.8%), industry (22.1%) and public administration, defence, education, human health and social work activities (17.7%). Austria's main export partners are Germany, Italy and the US, while its main import partners are Germany, Italy and Switzerland.[1] All financial services that comprise FATF's definition of FIs are provided in Austria, and all DNFBPs are present. 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. Finally, as indicated above, Austrian banks have a systemic role as a gateway to CESEE countries.

Structural Elements

64. The key structural elements for effective AML/CFT control appear to be present in Austria. Political and institutional stability, accountability, transparency and rule of law are all present. Responsibility for developing and implementing AML/CFT policy in Austria is shared between relevant authorities whose statutes and roles are well-defined.

[1] European Union (ND), Austria, http://europa.eu/about-eu/countries/member-countries/austria/index_en.htm.

Background and other Contextual Factors

Overview of AML/CFT strategy

65. Austria does not have any formalised national AML/CFT strategy, and Austria did not demonstrate that it had national AML/CFT policies, and hence the NRA only takes the risks into account individually by certain agencies to the extent that they consider useful for their day-to-day work. Similarly, the objectives and activities of individual competent authorities are determined by their own priorities and are not necessarily coordinated with each other. There is a level of national co-operation and co-ordination on an informal basis, but it does not reflect on the development and implementation of policies and activities.

Overview of the legal & institutional framework

66. The following are the main ministries and authorities responsible for formulating and implementing the government's AML/CFT and proliferation financing policies:

Ministries and coordinating committee

- **NRA Working Group**: This was a designated working group responsible for the preparation of the NRA which included representatives of all ministries, authorities and self-regulating bodies responsible for combating money laundering and financing of terrorism.
- **Federal Ministry of Finance (BMF)**: BMF is the national coordinator for AML/CFT issues and in particular the NRA. It is also responsible for the proposals of amendments to legislations concerning the regulation and supervision of the financial sector. The Tax and Customs Department is a unit within the BMF which oversees policies on tax and cross-border movements of currency and BNIs. The Department has the competency of proposing revisions of the ZollR-DG and FinStrG. The BMF is also the supervisory authority for casinos and in charge of any proposals of amendments to the GSpG.
- **Federal Ministry of Justice (BMJ)**: BMJ carries out overall responsibility for criminal law (StGB and StPO). It is also responsible for regulating the activities of lawyers and notaries as regards to the RAO, NO and DSt. The BMJ is in charge of international cooperation in the context of extradition and MLA. Additionally, it has a statutory role in legal acts relating to legal persons and arrangements (the Company Register).
- **Federal Ministry of the Interior (BMI)**: Public security, criminal investigations and law enforcement are the core functions of the BMI. The A-FIU and BVT are the police and intelligence units specialised in combating ML and TF. The ARO within the police acts as a coordinator and provider of training in tracing assets abroad using different channels. The BAK is the unit responsible for the prevention of and the fight against corruption.

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- **Federal Ministry of Europe, Integration and Foreign Affairs (BMEIA)**: BMEIA covers matters relating to public international law and European law, whether Austria's compliance with international obligations and the negotiation of international treaties, or the coordination of the country's policy for justice and home affairs in international and European levels.
- **Federal Ministry of Science, Research and the Economy (BMWFW)**: BWMFW is responsible for issuing and updating certain regulations and guidance for certain DNFBPs including real estate agents, dealers in precious metal and stones, business consultants and accountants. It is also responsible for preparing legislative proposals under the Trade Act (GewO).

Criminal justice and operational agencies

- **The A-FIU**: The A-FIU is established to combat money laundering as required by relevant sectoral legislations as well as financing of terrorism by receiving, analysing and disseminating information and by conducting pertinent international cooperation. It also has a central function in the coordination of combatting ML within Austria.
- **The BVT**: It is the central police agency in the field of terrorism and TF. The central department of the BVT in Vienna has one group specialized in FT and there are also nine Provincial Agencies for State Protection and Counter-Terrorism (Landesämt fur Verfassungsschutz, LVs), that are part of the BVT structure. In addition to its functions as investigative police agency, the BVT also exercises the tasks of a civil intelligence service as source to initiate and develop investigations and possible networks.
- **Courts and prosecution authorities**: The StPO provides for four different types of courts, depending on the maximum length of the possible sentence. Court rulings in civil law and penal law matters are the exclusive responsibility of independent judges. Judges are appointed by the BMJ on the basis of an objective selection procedure. The appointment of senior judges is reserved to the Bundespräsident. The function of the public prosecution is to protect public interest in the administration of justice. This primarily involves conducting investigations, in cooperation with the criminal police, laying charges against persons, and representing the indictment in penal proceedings. Public prosecution offices are separate from the courts, and are bound by instructions received from the senior public prosecution offices and ultimately of the BMJ. The General Procurator's Office, set up with the Supreme Court, is directly responsible to the BMJ and does not have the right to issue any instruction to the offices of public prosecution and the offices of senior public prosecutors.

Financial sector supervisors

- **Financial Market Authority (FMA)**: The FMA serves as the integrated supervisor of all financial institutions and activities. It is an autonomous institution under the law which is placed under direct parliamentary control. Its functions include issuing regulations, granting licenses, as well as supervising and enforcing prudential and AML/CFT requirements. It is responsible for conducting specific AML/CFT examinations in financial activities which are in its remit. With effect from 1 January 2011, the FMA established a specialist AML/CFT division with a view to strengthening its commitment to effectively monitor and enforce financial institutions' AML/CFT efforts.
- **Oesterreichische Nationalbank (OeNB)**: The OeNB, Austria's Central Bank, monitors credit and financial institutions and payment institutions for compliance with targeted financial sanctions. In exercising their respective functions, the OeNB can request necessary information from natural and legal persons to identify and process data; this right also includes the power to consult on-site examinations and off-site analysis.
- **Local district authorities**: These are responsible for the licensing and prudential supervision of all activities conducted under the GewO, including insurance intermediaries. Their function includes checking compliance with AML/CFT measures and issuing administrative sanctions for regulatory breaches

DNFBP supervisors and self-regulatory bodies

- **BMF** is the supervisory authority for casinos.
- **Local district authorities**: These are responsible for the licensing and prudential supervision of all activities conducted under the GewO, including trust or company service providers, real estate agents and dealers including auctioneers. Their function includes checking compliance with AML/CFT measures and issuing administrative sanctions for regulatory breaches.
- **Boards of the Regional Bars**: These are the responsible authorities for monitoring lawyers' compliance with the professional regulations including AML/CFT requirements and measures.
- **The Regional Chamber of Civil Law Notaries**: This body is the responsible authority for monitoring notaries' compliance with the professional regulations, including AML/CFT requirements and measures.
- **The Chamber of Chartered Public Accountants and Tax Consultants**: This body is in charge of monitoring compliance with the legal professional requirements (which includes AML/CFT provisions) of the public accountants and tax consultants.

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- **The Austrian Economic Chambers (WKO)**: It coordinates and represents the interests of the Austrian business community on a national and international level. It also provides information and advisory services to their members. By law, governments are obliged to consult with the WKO on legislative projects and important regulations. Many legal provisions involve the WKO in decision-making and administrative procedures, and may entrust them with supervisory or regulatory powers.

Overview of the financial sector and DNFBPs

Table 1. **Overview of the Number and Size of Financial Institutions in Austria**

Type of Financial Institution	Number of Institution (as of 1 January 2015)	Balance sheet total in EUR billion (as of 1 January 2015)	Percentage of Share in the Financial Market	Percentage of GDP Ratio
Credit Institutions	**764**	**873**	**75**	265
Joint stock banks and private banks	*42*	*259*	*22*	***78.5***
Savings banks	*49*	*151*	*13*	***46***
Raiffeisen cooperatives	*498*	*275*	*24*	***83.5***
Volksbanken cooperatives	*53*	*43*	*4*	***13***
Mortgage banks	*10*	*60*	*5*	***18***
Building societies	*4*	*24*	*2*	***7.5***
Special-purpose banks	*78*	*61*	*5*	***18.5***
EEA banks in Austria (freedom of establishment)	*30*	--	--	**--**
Insurance Companies	**95**	**114**	**10**	35
Pension Funds	**14**	**19**	**1**	6
Investment Funds	**2 152**	**163**	**14**	49
Payment Institutions	**3 (as of May 2015)**			
E-money Institutions	**0**			
Insurance Intermediaries	**17 181**			
Total	**3 026**	**1 169**	**100**	**355**

67. After a decade of rapid expansion, especially in CESEE countries, Austria has a highly-developed, robust and diverse 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. Due to the historically developed decentralised structure of the banking sector outside of metropolitan areas, there are a large number of independent banks with a limited local and regional market orientation and size. The three largest credit institutions (ERSTE Group, UniCredit Bank Austria and Raiffeisen Bank International) together account for approximately 30% of the total banking sector in Austria. Apart from their dominance of the domestic financial market, Austrian credit institutions have significant cross-border linkages, most notably in the CESEE region. Owing to the proximity, central location and historical links, Austrian banks embarked on a strong expansion in Eastern Europe. This resulted in Austria being named as one of the 25 systemically important financial centres by the IMF in 2010, establishing itself as a "gatekeeper" for the CESEE region.[2]

68. Austria's banking landscape can be divided into broad categories based on legal form and traditional business focus. These are, in order of asset size, cooperatives banks, joint stock companies (i.e. primarily private banks), savings banks, mortgage banks and other specialized institutions such as building societies. The Austrian banking sector is characterized by small and medium-size cooperative and savings banks with universal banking business models. These banks form the three large, decentralized (multi-tiered) banking groups in Austria that account for 75% of the banking sector; Raiffeisen, Volksbanken and Sparkassen. There are 473 Raiffeisen banks (1st tier local banks) that own eight Raiffeisen Landesbanken (RLB, 2nd tier state banks) and ultimately the Raiffeisen Zentralbank Öesterreich AG (RZB, 3rd tier). The Raiffeisen banks have established the Raiffeisen Bank International AG, which covers the group's foreign branches and subsidiaries. There are 46 Sparkassen and one specialized institution that addresses the needs of the underbanked. These banks own the Erste Bank der Oesterreichischen Sparkassen AG, which in turn, owns the Erste Group Bank AG.

69. The Volksbanken group, which is currently undergoing consolidation, includes 41 regional Volksbanken, five specialized banks, four home loan cooperatives and a building society. The Österreichische Volksbanken AG controls the group. Although the FMA applies both sets of measures to all the banks in the three groups, it focuses its supervisory efforts on the eight state RLB banks, the Erste Bank der österreichischen Sparkassen AG and the Österreichische Volksbanken AG since group compliance and some operational functions are centralized at this level.

70. The Austrian insurance sector has gone through a period of consolidation and established a large presence in the CESEE region in the past 15 years. The life insurance sector dominates non-life in terms of assets, making up more than two-thirds of total assets. Currently, 28 insurance companies operate life insurance businesses. The top five companies in the life insurance sector are responsible for over 50% of premiums. Foreign subsidiaries with significant shares in the market include Italian, German and Swiss insurers. Similar to Austrian banks, Austrian insurers expanded abroad, particularly in CESEE countries such as Czech Republic, Poland and Slovakia, which account for about two thirds of total CESEE premiums. Due to the early expansion into CESEE and owing to the fact that primary insurance markets are predominantly domestic, Austrian insurance groups (e.g. Vienna Insurance Group, UNIQA Group, GRAWE Group, Merkur Group and Wüstenrot Group) conduct business in CESEE primarily via subsidiaries.

[2] IMF (2012), Enhancing Surveillance: Interconnectedness and Clusters – Background Paper, www.imf.org/external/np/pp/eng/2012/031612B.pdf**Error! Hyperlink reference not valid.**.

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71. The provision of investment services is primarily dominated by credit institutions. Apart from traditional banking services such as deposits, current accounts and loans, Austrian banks generally also cater to their customers' investment needs and offer a wide array of investment products and services. 27 of the 29 investment fund management companies and the real estate-investment fund management companies (management companies) are owned by Austrian banks. In addition to credit institutions, investment services undertakings and investment firms are licensed to provide investment services such as portfolio management and investment advice. In 2014, investment firms and investment service undertakings reported customer assets under management worth EUR 49 billion.

72. Payment services in Austria are primarily provided by licensed credit institutions as part of the conventional banking services package. Apart from banks, three commercial payment service providers (PSPs) are licensed in Austria. However, a number of PSPs from other EU/EEA countries offer payment services in Austria via the EU's "passporting" regime. Currently a total of 281 PSPs from EU countries are notified in Austria. Of these, 10 offer services via agents, and 4 contract more than 2 agents. In total, 372 agents of foreign PSPs were notified to the FMA as of May 2015.

73. The DNFBP sectors in Austria are quite diverse in terms of the number and financial volume of transactions in comparison to the financial sector. However, risks associated with the misuse of most of DNFBP sector (with the exception of casinos) were not properly addressed in the NRA. Coupled with the fact that the implementation of AML/CFT measures is not as strong as those in the financial sector, the DNFBP sector could be perceived as having a higher level of ML/TF risk. The following table illustrates an overview of the DNFBPs in Austria.

Table 2. **Overview of DNFBPs in Austria**

Type of DNFBP Entities	Number of Entities	Size of Sector
Tradespersons		
Business consultants (who may act as company service providers)	*16 912* *(as of 31 March 2015)*	***No information provided***
Real estate agents	*4 792* *(as of 30 September 2015)*	***Revenue: TEUR 1 333 462*** ***Profit (before tax): TEUR 449 435***
Dealers of high value goods such as jewels, watches, art, antiques and precious metals	*5 110* *(no information on the cut-off date)*	***Revenue: TEUR 2 085 956*** ***Profit (before tax): TEUR 387 368***
Lawyers	***5 940 lawyers*** ***(of which 80 were established European lawyers) and 2 072 trainee lawyers (as of 31 December 2014)***	***As far as the size of the sector of lawyers, civil law notaries and patent lawyers is concerned, the overall turnover for all three sectors for 2012***

Type of DNFBP Entities	Number of Entities	Size of Sector
		amounted to EUR 2.13 billion according to the "Study on the national economic growth of the Liberal Professions in Austria" conducted by the Research Institute of Liberal Professions of the Vienna University of Economics and Business
Civil law notaries	***1 016 (as of mid-November 2015, of which 506 were candidate notaries)***	
Casinos and gambling services	***1 licensee for all kinds of lotteries (subsidiary of the casino licensee); 1 licensee for all 12 casinos***	***Revenue:*** ***CASAG EUR 258 million*** ***ÖLG: EUR 3.151 million*** ***Profit:*** ***CASAG: EUR 3 million*** ***ÖLG: EUR 40 million***
Accountants	***2 281***	

Overview of preventive measures

74. There is no general (horizontal) AML/CFT law in Austria. Preventive Measures for financial institutions and DNFBPs (in accordance with the definition laid down in the Glossary annexed to the FATF-Methodology) are to be found in several Austrian laws, as listed below –

Financial institutions

Table 3. **Overview of Financial Institutions and DNFBPs: Regulation and Supervision**

Financial Activity	Type of Financial Institution	AML/CFT	
		Legislation	**Supervision**
1. Acceptance of deposits and other repayable funds from the public	Credit Institutions	BWG	**FMA**
2. Lending	Credit Institutions	BWG	**FMA**

Financial Activity	Type of Financial Institution	AML/CFT	
		Legislation	**Supervision**
3. Financial leasing	Credit Institutions	BWG	**FMA**
	Domestic Financial Institutions	BWG	**FMA (sanctioning)**
4. Money or value transfer services	Credit Institutions/ Payment Institutions	BWG/ZaDiG	**FMA**
5. Issuing and managing means of payment	Credit Institutions/ E-Money Institutions	BWG/E-GeldG	**FMA**
6. Financial guarantees and commitments	Credit Institutions	BWG	**FMA**
7. Trading in: (a) money market instruments (cheques, bills, certificates of deposit, derivatives etc.); (b) foreign exchange; (c) exchange, interest rate and index instruments; (d) transferable securities; (e) commodity futures trading.	Credit Institutions	BWG	**FMA**
8. Participation in securities issues and the provision of financial services related to such issues.	Credit Institutions	BWG	**FMA**
9a. Collective portfolio management	- UCITS ManCos (as Credit Institutions) - Real Estate Investment Fund ManCos (as Credit Institutions) - Severance Fund ManCos (as Credit Institutions) - AIFMs	BWG/ InvFG/ AIFMG/ BMSVG	**FMA**
9b. Individual Portfolio Management	- Investment Firms - UCITS ManCos - Real Estate Investment Fund ManCos - AIFMs	WAG (per cross-reference from BWG / InvFG/ AIFMG)	**FMA**
10. Safekeeping and administration of cash or liquid securities on behalf of other persons	Credit Institutions/ domestic financial institutions	BWG	**FMA (sanctioning)**

Financial Activity	Type of Financial Institution	AML/CFT	
		Legislation	**Supervision**
11. Otherwise investing, administering or managing funds or money on behalf of other persons	Credit Institutions	BWG	**FMA**
	- Investment Firms - Investment Fund & Real Estate Investment Fund ManCos	WAG	**FMA**
12. Underwriting and placement of life insurance and other investment related insurance (This applies both to insurance undertakings and to insurance intermediaries (agents and brokers).	Life Insurance Undertakings	VAG	**FMA**
	Insurance Intermediaries	GewO	**Local District Authorities**
13. Money and currency changing.	**Credit Institutions**	**BWG**	**FMA**

75. For all Recommendations that impose requirements on financial institutions, which cover all financial activities in the FATF Glossary, three groups of entities in Austria will be described as:

Financial Institutions, which include –

- Credit institutions regulated by the Banking Act (BWG), whose AML/CFT obligations are set out in the Art. 40-42 BWG, and
- Domestic financial institutions and other financial institutions that are regulated by the Securities Supervision Act (WAG), Payment Services Act (ZaDiG), E-Money Act (E-GeldG), Investment Funds Act (InvFG), Alternative Investment Fund Managers Act (AIFMG) and Corporate Staff and Self-Employment Provision Act (BMSVG), whose AML/CFT obligations are defined by reference to the Art. 40-42 BWG;
- Insurance Undertakings regulated by the Insurance Supervision Act (VAG), whose AML/CFT obligations are set out in the Art. 98a-98h VAG, and
- Insurance Intermediaries regulated by the Trade Act (GewO), whose AML/CFT obligations are set out in the Art. 365m-365z GewO.

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DNFBPs

Table 4. **DNFBPs and their legislation and supervision**

Type of DNFBP	Performed by	AML/CFT	
		Legislation	Supervision
a) Casinos	Casinos (*Spielbanken*) Internet casinos (*elektronische Lotterien*)	GSpG[3]	**Ministry of Finance**
b) Real estate agents	Real estate agents	GewO[4]	**Local district authorities**
c) Dealers in precious metals	Trade craftsmen	GewO	**Local district authorities**
d) Dealers in precious stones			
e) Lawyers, notaries and other independent legal professionals	Lawyers	RAO	**Boards of the Regional Bars**
	Civil Law Notaries	NO	**Regional chambers of Civil Law Notaries**
	Chartered public accountants and tax consultants	WTBG	**Chamber of Chartered Public Accountants and Tax Consultants**
	Accountancy professionals	BiBuG	**Chamber of Economy**
f) Trust and company service providers	**Business consultants**	**GewO**	**Local district authorities**

[3] The GSpG (Gaming Act) covers a number of different types of gambling establishments. They are: (1) casinos (*Spielbanken*) covered by Art.21 GSpG, (2) electronic lotteries (*elektronische Lotterien*) covered by Art.12a GSpG, and (3) slot machines halls (*Automatensalons*) and individual gambling installations (*Einzelaufstellungen*) covered by Art.5 GSpG. As the FATF standards do not define the term "casino" it is difficult to make a determination whether "slot machines halls" or even "individual installations" should be treated as casinos for the purpose of the evaluation. For consistency reasons, in this analysis, the approach taken in the previous evaluation of 2009 will be followed whereby only gambling facilities defined as "casinos" (*Spielbanken*) are considered. Besides that, on-line gambling services (including internet casinos) do not fall under the category of casinos (*Spielbanken*), but rather under the category of electronic lotteries (*elektronische Lotterien*).

[4] Persons that are covered by the GewO (Trade Act), i.e. real estate agents, dealers in precious metals and stones, business consultants, will be referred to as "tradespersons".

Overview of legal persons and arrangements

76. The following types of legal persons can be established in Austria: general partnerships (*offene Gesellschaft*), limited partnerships (*Kommanditgesellschaft*); limited liability companies (*Gesellschaft mit beschränkter Haftung – GmbH*), stock corporations (*Aktiengesellschaft – AG*), cooperative societies (*Genossenschaft*), private foundations (*Privatstiftung*), and associations (*Verein*).

77. The company form most commonly used in Austria to pursue commercial activities is a (private) limited liability company. A private limited liability company (GmBH) can be founded by one or more persons and has a minimum capital of EUR 35 000. There is also a special form of the Limited Liability Company ("gründungsprivilegierte GmbH" – "LLC with founder´s privilege") where the actual liability can be reduced to EUR 10 000 for the first ten years of the company´s existence.

78. There is also a public limited liability company form in Austria, which is a stock corporation. The total number of stock corporations is approximately 1 600, of which about 80 are listed for trading on a stock exchange. Listed companies also have to comply with capital market legislation.

79. Apart from limited liability companies and stock corporations, there are also cooperative societies in Austria. Cooperative societies are corporations without a fixed number of members and without a fixed capital. They can be established either with limited liability (which is common practice), or with unlimited liability (which is quite rare). The purpose of a cooperative society is to assist its members (e.g. farmers, consumers) economically.

80. In a general partnership all partners are personally liable without limitation for the debts of the partnership. In a limited partnership, there are two different types of partners: partners who are liable without limitation and partners whose liability is limited to a certain amount. Partners can be natural persons as well as legal persons. There is no minimum capital for partnerships, as there always has to be at least one partner who is personally liable without limitation. Partnerships are typically used for SMEs.

81. A private foundation is a specific legal person without owners, members, or shareholders. The founder dedicates funds to the private foundation, which are administered by the foundation´s executive board for a specific purpose defined by the founding deed (e.g. granting maintenance to the founder's family members, who are then called "beneficiaries").

82. Association is the main legal form for entities that are pursuing non-profit activities. An association is defined as a voluntary union of at least two persons, organized by statutes, that serves for a certain, common purpose, any other than profit. Among other things, the statutes have to contain the following: the name of the association, its seat (must be in Austria), a clear and comprehensive declaration of the purpose, the intended activities and the manner of covering the financial needs, regulations regarding membership, other information about the organization (e.g. Board of Directors).

83. There are some other specific forms of legal persons provided in the legislation, such as European companies (Europäische Gesellschaften), European economic interest groupings (Europäische wirtschaftliche Interessensvereinigungen), and European Cooperative Societies

(Europäische Genossenschaften), however they are not considered for the purposes of the evaluation as they play no significant role in Austrian business reality.[5]

84. Below are the statistics on the quantity and types of legal persons established in Austria in 2012 – 2014.

Table 5. **Quantity and types of legal persons established in Austria**

Type of Entity	2011	2012	2013	2014
Limited Liability Company (*GmbH*)	124 474	127 281	131 874	137 840
Limited Partnership (*KG*)	42 619	42 914	42 959	43 033
General Partnership (*OG*)	17 524	18 038	18 359	18 690
Private Foundation (*Privatstiftung*)	3 313	3 293	3 269	3 243
Cooperative Society (*Genossenschaft*)	1 853	1 838	1 817	1 800
Stock Corporation (*AG*)	1 856	1 760	1 664	1 591
Association (*Verein*)	117 828	118 973	120 168	120 861
Total	**309 467**	**314 097**	**320 110**	**327 058**

85. Common law trusts cannot be set up under Austrian law. However, Austria has its own type of legal arrangements, namely the Treuhand. The Treuhand is a civil contract which is not regulated in law, but is based on the general principle of the autonomy of the contracting parties and delimited by jurisprudence and doctrine. It is created when a person, the Treuhänder (or trustee), is authorized to exercise rights over property in his or her own name, on the basis of and in accordance with a binding agreement with another person, the Treugeber (or settlor).

86. There are two main types of Treuhand, the Fiducia and the Ermächtigungstreuhand. With the Fiducia most of the rights are transferred to the Treuhänder, whereas the Ermächtigungstreuhand only entails a transfer of certain rights such as the right to manage the assets. The Treuhand can exist without any written record. It can be concluded between any two persons capable of being party to a contract. In practice, however, it is often lawyers and notaries that act in this capacity. The Treugeber and the Treuhänder may choose to inform third parties of the legal arrangement between them (offene Treuhand or open Treuhand) or not (verdeckte Treuhand or hidden Treuhand).

87. The Austrian Treuhand is a very common feature of the Austrian economy. Treuhand arrangements are very often used in the case of property purchases, when a lawyer or a civil law notary is appointed as a Treuhänder. The buyer deposits the purchase price into an escrow account which is maintained by the lawyer or notary (escrow agent). Pursuant to the agreed conditions of the escrow, the escrow agent is not allowed to transfer the money to the seller before all conditions set out in the escrow agreement have been met (usually, once the buyer has been registered in the land register as the new owner). The involvement of an escrow agent is to protect both parties to an agreement. Moreover, property purchases are mainly financed by banks. Each year, approximately 30 000 to 40 000 notarial escrows are registered in the Register of Escrows of the Austrian notary

[5] 31 European companies, 30 European economic interest groupings, and not a single European cooperative society were registered as of the end of 2014.

chamber. However, this represents only fraction of the Treuhand arrangements, and more precise figures are not available.

Overview of supervisory arrangements

88. Supervision of financial institutions' compliance with regulatory requirements (including AML/CFT) is mandated to the FMA by the FMABG. As an independent, integrated supervisory authority, the FMA is tasked with the micro-prudential regulation and conduct supervision of financial institutions and their compliance with the relevant regulatory laws and regulations as laid down in the various Austrian legislations. This includes supervision of –

- credit institutions (Department I) in cooperation with the OeNB and the ECB within the framework of the EU's Single Supervisory Mechanism (SSM);
- insurance undertakings and pension funds (Department II);
- securities markets and investment service providers (Department III); and
- conduct-of-business (Department IV).

89. The FMA pursues three statutory objectives when performing its supervisory activities –

- contributing towards the smooth functioning and stability of Austria as a financial market;
- protecting investors, creditors and consumers in accordance with the statutory provisions; and
- taking preventive action in relation to compliance with supervisory standards while consistently punishing any violations of these standards.

90. The FMA is responsible for performing on-site inspections at credit institutions for AML/CFT purposes; while the OeNB remains responsible for conducting on-site inspections in the context of prudential banking supervision as well as monitoring credit and financial institutions and payment institutions for compliance with targeted financial sanctions as set out in SanktG.

International Cooperation

91. Notwithstanding its status of an international financial centre (see section on "Materiality" above), there is a lack of detailed information and analysis on the transnational aspects of Austria's ML and TF risks which may lead to a challenge to effective implementation.

92. Neighbouring countries such as Germany, Liechtenstein, as well as the United States and Russia, are Austria's most important partners in international cooperation with respect to ML/TF issues. According to the A-FIU's data, most international requests came from Germany, Russia, Liechtenstein and Switzerland; whereas according to the BMJ's data on MLA, the U.S. and Ukraine were Austria's most significant partners.

93. The BMJ Department IV is the designated central authority pursuant to a number of EU and UN Conventions on which Austria heavily relies for providing and requesting MLA and extradition.

Bilateral treaties are in place regarding non-EU countries. Other competent authorities such as the A-FIU, BVT, FMA and tax authorities are well engaged in international cooperation with their foreign counterparts.

CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION

Key Findings and Recommended Actions

Key Findings

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, 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.

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

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).

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

Recommended Actions

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 implement national AML/CFT policies that would be based on the findings of the risk assessment(s). These policies should provide a clear strategy to address the risks identified (with established deadlines, responsible authorities, etc.).

Austria should put in place mechanisms to assess its overall AML/CFT effectiveness and periodically review them to see how the measures are functioning and how Austria can improve, including by collecting comprehensive statistics on ML/TF matters.

Austria should strengthen domestic cooperation mechanisms (such as 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 make sure that DNFBP sectors (particularly, company service providers and dealers in precious metals and stones) are aware of their ML/TF risks.

94. The relevant Immediate Outcome considered and assessed in this chapter is IO1. The recommendations relevant for the assessment of effectiveness under this section are R1-2.

Immediate Outcome 1 (Risk, Policy and Coordination)

Country's understanding of its ML/TF risks

95. Despite their efforts in this area, Austria demonstrated only limited understanding of its ML/TF risks.

96. Austria has not comprehensively identified its ML/TF risks. Although Austria conducted a National Risk Assessment (NRA), the document does not provide a complete and holistic picture of ML/TF risks present in the jurisdiction. The country's approach to developing its NRA focused more on individual factors such as predicate offences, corruption, socio-economic profile of the country, etc. that might contribute to the actual risks (i.e. ML/TF methods and techniques), regardless of whether these factors are relevant in the ML/TF context. As a result, the NRA is structured as a list of 176 risk factors with a rating of "low", "medium" or "high" assigned to each factor. In most cases, these factors are considered in isolation from each other and from the actual ML/TF risks that exist in the country. The result is that important and useful information on the actual ML/TF risks is lost in excessive details that do not have immediate relevance. It should be noted that risks associated with the misuse of most of DNFBP sectors (with the exception of casinos) were not given proper consideration in the NRA.

97. Besides the shortcomings in the methodology used to conduct the NRA, the document lacks adequate support for its findings and conclusions. Narrative sections in the analysis of many of the risk factors are only general descriptions of the factors without any supporting data, typologies or case studies. As reported by Austria the basis for the analysis was mostly expert judgements and perception surveys, as reliable statistics were usually not available. The absence of strong support may indicate that the country's understanding of its risks is based more on subjective perception and judgement and less on complete and objective data, information and analysis. Both forms of support are needed for a thorough understanding of the magnitude and materiality of the ML/TF risks present in the Austrian jurisdiction.

98. Finally, the findings of the NRA do not seem to represent a coordinated, whole-of-government view of the ML/TF risks present in the jurisdiction, but are rather a collection of individual judgements by each competent authority. Furthermore, representatives of some competent authorities do not seem to be aware of the NRA at all.

99. Apart from the NRA, each competent authority has its own picture of ML/TF risks based on its practical experience. However, in most cases these pictures are not integrated with each other, and critical connections between them are not recognized or fully considered.

100. On one hand, law enforcement agencies' view of ML risk is focused primarily on domestic predicate offences (fraud, drugs) and self-ML (e.g. using wire transfers through money remittance companies). They also identified the emergence of new payment methods such as virtual currencies as being a risk present in the jurisdiction based on theoretical rather than practical evidence. This risk concern did not appear to be shared by other authorities (such as supervisors). On the other hand, the financial supervisor is more concerned about third-party ML involving lawyers and other

professional intermediaries with legal privilege in connection with potential proceeds of corruption and other white collar crimes originating in Eastern Europe.

101. TF risks seem to be well identified and understood by the competent law enforcement agency (BVT), but not necessarily fully taken into account by the supervisors (e.g. TF risk factors are not reflected in the supervision risk tool).

102. Summing up the above, it can be stated that there is no single national picture of ML/TF risks in Austria and hence the understanding of these risks is limited.

National policies to address identified ML/TF risks

103. Austria did not demonstrate that it has any national AML/CFT policies. The NRA does not prioritise the ML/TF risk factors, nor does it propose a clear strategy to address them (with established deadlines, responsible authorities, etc.). Several agencies said that they take into account some of the risks identified in the NRA to the extent that they consider useful for their day-to-day work; however, they could not provide a specific example of such practice. Policy changes are largely driven by factors such as the EU Directives and FATF reports, rather than solely internally harmonised process.

Exemptions, enhanced and simplified measures

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

Objectives and activities of competent authorities

105. The objectives and activities of individual competent authorities in this field are determined by their own priorities and often are not coordinated with each other. For example, a new risk-based tool for supervision does not take into account all relevant findings of the NRA or the risks identified by the LEAs.

106. There are, however, individual examples of measures taken by competent authorities based on their assessment of risks:

- enhancing the information exchange between FIU and tax authorities through abolishment of Article 41 para. 6 BWG;
- facilitating and speeding up of access to banking information through a decree by the Ministry of Justice of 13 August 2013, and creation of the central registry of bank accounts (operational by fall 2016);
- EC-funded project on "Joint investigation to combat drug trafficking via the virtual markets (Darknet) within and also into the EU" carried out by the Criminal Intelligence Service of the BKA;
- The “BitCrime” project conducted by the Austrian Ministries of the Interior and of Finance, together with their German counterparts, with the main objective of

identification, prevention and reduction of organized financial crime, such as money laundering, with particular regard for virtual currencies.

2

National coordination and cooperation

107. There is a level of national co-operation and co-ordination on an informal basis under the leadership of the Ministry of Finance. It takes place in the form of AML/CFT *jour fixe* meetings which are held on a quarterly basis. These meetings are attended by the most relevant AML/CFT stakeholders (i.e. BMF, BMJ, A-FIU, FMA, BVT) and serve the purpose of discussing ongoing work and future tasks with respect to policy issues. However, their outcomes do not have an impact on the development and implementation of policies and activities that would be coordinated in a systematic manner. The assessment team believes that this is due to the informal nature of these meetings and the fact that each ministry is independent from the others and therefore does not consider itself to be bound by the outcomes of these discussions.

Private sector's awareness of risks

108. Most entities subject to AML/CFT legislation are aware of the findings of the NRA; however they either could not demonstrate how they would use them to fulfil their obligations, or stated that these findings did not provide new information or were not useful.

109. Apart from what is communicated to them in the NRA, different FIs and DNFBPs demonstrated various levels of awareness of ML/TF risks. Generally, the financial sector has a strong awareness of the risks that are communicated to its representatives through the dialog with the FMA. Lawyers, notaries, and casinos seem to be also adequately informed concerning the risks they are facing. However, tradespersons have demonstrated very little knowledge of ML/TF risks during the on-site.

Overall conclusions on Immediate Outcome 1

110. **Austria has a moderate level of effectiveness for IO1.**

CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

Key Findings and Recommended Actions

Key Findings

IO6

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.

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.

Due to the limitations in the analytical capabilities (both IT and human resources) of the FIU, and legal constraints ("competence check") the 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.

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) and then makes good use of this information, conducting its own analysis.

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 protections for 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.

IO7

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.

There are mixed understandings of the real threats and risks, partly due to deficiencies in the NRA but mainly on a shortage of detailed, reliable and comprehensive statistics about the different types of ML investigations and prosecutions that are being pursued.

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.

IO8

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.

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.

Recommended Actions

IO6

Austria should ensure that financial intelligence is used to develop ML evidence.

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.

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 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.

IO7

Austria should adequately prioritise the investigation and prosecution as a serious and stand-alone offence. In this area, Austria should also consider raising available sanctions for ML.

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 ML.

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.

To effectively combat crime and in particular ML and TF, Austria should ensure that the process of appealing an indictment is properly expedited.

IO8

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.

Continue to enhance ARO's resources and ability to assist in tracing and identifying assets that may become subject to seizure and confiscation.

Ensure a more dissuasive system for seizing and confiscating falsely/not declared or disclosed cross-border movements of currency/BNI.

111. The relevant Immediate Outcomes considered and assessed in this chapter are IO6-8. The recommendations relevant for the assessment of effectiveness under this section are R.3, R4 & R29-32.

Immediate Outcome 6 (Financial intelligence ML/TF)

Use of financial intelligence and other information

112. The main source of financial intelligence in the Austrian ML/TF system is STRs submitted by the reporting entities. These reports are better described as suspicious activity reports (SARs) as a typical report often includes multiple transactions along with the description of the client's profile, his/her behaviour etc. The report also contains CDD records and other relevant information (such as

other accounts and products used by the customer). However, for consistency purposes, the term "STR" will be used throughout the report.

113. All STRs are sent to the A-FIU which is special unit in the BKA with responsibility to investigate ML. Once an STR is received, it is stored in electronic form (in Word/PDF format) and then certain details from the STR (identity of the suspected persons or companies) are entered in the BKA's protocol system (which is not an FIU database) along with other criminal records kept by the police.

114. Another source of financial intelligence is cross-border cash declarations above the threshold of EUR 10 000 that are collected and kept by the Customs office of the BMF. All cash declarations are provided to the BKA on a monthly basis, and they are made available to all units in the BKA (including the A-FIU and the BVT).[6]

115. Besides this financial data, all police units (including the A-FIU and the BVT) regularly access registers of residents, company and business registers, the land register, and the criminal police information system, which includes information on on-going criminal investigations, convictions, arrest warrants, car registration and other personal information, such as weapon prohibitions etc., and information on undercover operations. Furthermore, the A-FIU and BVT have indirect access to data held by tax and customs authorities, which can be retrieved on demand. They both have access to a social security database which they use to understand the socio-economic profile of the persons in question.

116. The A-FIU's approach to STR analysis can be described as purely investigative since it looks primarily for evidence as opposed to gathering intelligence and analysing it. The A-FIU is mainly focused on identifying predicate offenses that could trigger a criminal case. When an STR is received the FIU conducts the so called "competence check" in order to establish whether the A-FIU is competent in relation to a possible link of the STR with a predicate offence for ML under the Criminal Code (pursuant to Art. 165 StGB). For that purpose, the A-FIU has the authority to request further information from the reporting entities, including those which did not report an STR. These requests are complied with within a week's time period.

117. In case of a suspicion of a specific predicate offence or ML in connection with a criminal organisation, the analysis procedure has to be discontinued and the relevant STR may be transferred to the competent unit in the Ministry of Interior (e.g. in case of corruption, the competent unit will be BAK, in case of TF or PF – BVT). If there is no possibility to establish a strong link to a specific predicate offence in the first place, the STR will often be disregarded. If the A-FIU does confirm a "firm suspicion" to identify a predicate offence during this "competence check" process, it must open a formal criminal investigation.

118. Police routinely use the information that the A-FIU provides in the context of predicate offence investigations. As the A-FIU and other police units of the BKA have access to the same protocol system, in case there is an STR with respect to a particular person, police will be able to know that fact (but they will not be able to see the contents of the STR). In this case the A-FIU will always be requested to provide the information from the STR, although the exact figures of such requests are not available. Also, the A-FIU may be asked to request additional information from financial institutions in order to trace the proceeds of the crime.

[6] Please refer to the statistics of cash declarations in the Immediate Outcome 8 (Confiscation).

Table 6. **FIU requests to obtain financial information from the reporting entities**

	2010	2011	2012	2013	2014
Total	225	268	314	218	339
On behalf of other competent authorities	n/a	115	118	89	100

119. There were a number of cases where the financial intelligence provided by the FIU for the on-going investigations of predicate offences contributed to securing ML convictions (see cases 1-3 in the write-up on IO7). However, prosecutors often do not see STRs and the results of their analysis by the FIU as a valuable source of information as it does not give them direct evidence of a predicate offence and/or the origin of funds. It is not possible to make any overall judgement as to how useful the STR information is for the ML prosecutions or convictions since statistics or other information on this is not available.

120. Despite the potential to access financial intelligence and other relevant information, these are rarely used in investigations to develop standalone ML evidence. The statistics on the extent to which financial intelligence was used to identify new targets, or to seize assets was not available. Although, according to the authorities, there have been individual cases where financial intelligence was used for those purposes, no case examples were provided. These facts lead to the conclusion that the role of financial intelligence in the Austrian AML/CFT system is very limited.

121. With regard to TF investigations, the BVT, as mentioned above, directly receives all TF-related STRs from the FIU (after initial competence check) and then BVT conducts its own analysis of them independently from the FIU. STR information is checked against all databases that the BKA has access to (either directly or through other public authorities) with the purpose of establishing the economic background of the suspect, sources of funds, contacts and relationships of the person. BVT maintains a TF-related database that it uses to enhance its analytical capabilities. If necessary, the BVT requests additional information from the reporting entities through the A-FIU. Also, the BVT routinely accesses the cash declaration database.

122. According to the BVT's own estimates, most of the cases (around 2/3) they investigate are initiated by STRs. Statistics below shows the outcomes of their analytical work. Although the numbers of final convictions for TF remain limited, it appears that the BVT is making good use of the STR information in its operative work.

Table 7. **Outcomes of BVT analytical work**

	2011	2012	2013	2014	2015 (as of June)
TF-related STRs received by BVT	41	92	64	58	46
Reported to the public prosecutor	n/a	n/a	42	33	19

STRs received and requested by competent authorities

123. The A-FIU receives all STRs submitted by the reporting entities. Most of the reports come from the banks (see below), however the largest share of the reports is sent by only several major

banks (in fact 83% of credit institutions had not reported any STRs in the year preceding the evaluation). A-FIU also receives reports from other competent authorities that may indicate possible ML or TF.

Table 8. **Suspicious Transaction Reports Submitted to A-FIU**

	2011	2012	2013	2014
Credit institutions, of them	1 858	1 457	1 255	1 507
banks	*856*	*947*	*941*	*1177*
money remitters (including Western Union)	*1002*	*510*	*314*	*330*
Tradespersons	4	14	5	4
Insurance	4	10	13	19
Lawyers	8	8	10	12
Casinos	2	3	2	3
Notaries	1	3	7	4
Public accountants and tax advisers	1	2	1	3
Auctioneers	0	0	1	1
Commercial accountants	0	0	1	0
Real estate agents	0	0	1	0
Other public authorities	237	168	194	120
Total	**2 115**	**1 665**	**1 490**	**1 673**

124. Most STRs (around 90%) are received in Word or PDF format via an encrypted e-mail channel established by the FIU. Some of the STRs (mostly from the tradespersons) are submitted in paper format. In this case they are manually scanned and converted into an electronic file. All STRs are entered in the protocol system of the BKA where they are kept for 6 years counting from the moment of last access. According to the evaluation of the FIU, BVT and other police units if the BKA, the information contained in the STRs is complete, accurate and reliable. As mentioned above, STRs are mostly SARs, with a complete analysis of the customer behaviour, financial activity, CDD records and other relevant information (such as other accounts and products used by the customer).

125. Other units in the BKA routinely request and receive STRs from the A-FIU as long as they are connected to a specific predicate offence. In every case when there is an STR in respect of a particular suspect (other police units are able to see that, as mentioned above), the FIU will be requested to provide the information contained in the STR. This information assists them to perform their duties (such as identifying new leads, new targets and connections, and to some extent tracing proceeds). According to the BKA officers, they see much value and relevance in this information.

126. Below is the breakdown of the STRs into the types of suspected underlying activity.[7] As can be seen from the table, the reporting regime is currently too focused on one type of predicate

[7] The figures in the table do not add up, since the same transaction can be associated with more than one offence. The figures on ML STRs reflects the situation where the exact predicate offence was not possible to identify.

offences, namely, fraud, which seems to reflect the law enforcement perception of risks, but does not necessarily represent the ML/TF landscape on the national level.

Table 9. **Breakdown of the STRs into the types of suspected underlying activity**

	2011	2012	2013	2014
ML	1 323	1 234	1 068	937
TF	44	94	76	61
Failure to disclose trustee status	13	14	23	16
Fraud	799	570	554	913
Tax offences	34	58	58	54
Corruption	17	24	23	16
Other	731	311	336	304

Operational needs supported by FIU analysis and dissemination

127. Due to the limitations in the analytical capabilities (both IT and human resources) and legal constraints ("competence checks"), the FIU conducts only very basic operational analysis and does not conduct any strategic analysis to support the operational needs of competent authorities. Currently, the FIU has only one financial analyst (out of 20 staff members in total, which are mostly investigators); however, it may request analytical support from other units in the BKA. The FIU does not have its own database that would permit it to conduct enhanced analysis of suspects, relationships and activities. Analysis of STRs is limited to checking various databases that the FIU has access to by the name of the suspect. The police protocol system only permits the FIU to perform very basic search queries such as on the number of the file, name of the suspect, and name of the victim. There is practically no possibility to perform search on accounts numbers or other financial details, cross-match STRs, or conduct data-mining to find trends and patterns across STRs. The additional information that the A-FIU has the power to request from the reporting entities is not stored in a centralised database either, and as such is not available for future analysis.

128. A-FIU functions well as a predicate offence and associated ML *investigation* unit, rather than as a financial *intelligence* unit. As mentioned above, the approach of the FIU with regard to the analysis of STRs is primarily investigative (as opposed to intelligence approach) as it seeks to identify the predicate offense for the "competence check". If a presumed predicate offence in connection with the STR is related to the sphere of competence of another unit within the Ministry of Interior (corruption, fiscal offences, TF), the file is transferred to the responsible unit after initial competence check by the A-FIU. It appears that the A-FIU only plays auxiliary role for the specialised police units, mainly functioning as a dispatcher for STRs.

129. What is important to underline is that the stage at which the STR is treated as intelligence appears only to take place during the initial "competence check" and this stage has to be completed as soon as possible. Once the "competence check" confirms a firm suspicion of ML or a predicate offence, a formal investigation must be opened, and the STR turns into evidence. This is the stage when the dissemination can take place to other competent units.

130. Since the "intelligence stage" in the FIU analytical process is very limited, the FIU disseminations do not provide much added value that would help to develop new evidence for the law enforcement agencies. A typical FIU dissemination would contain the original STR(s) along with the results of the searches on available databases. It has also description of facts of the case that would help to support the suspicion of the predicate offence. The statistics of the FIU disseminations is given below.

Table 10. **Destination of FIU disseminations**

	2011	2012	2013	2014
Other units within BKA	641	537	480	894
Regional police units	853	521	395	340
Prosecutors	54	61	47	46
MoF (tax office)	9	15	10	23
FMA	13	19	10	31
Anti-corruption unit	2	5	6	7

131. As can be seen, most of the materials are disseminated within the BKA or regional police units. Most STRs disseminated are connected to concrete predicate offences and are primarily used for investigation of those predicate offences. More particularly, according to the estimates of the FIU, around 90% of all STRs disseminated to the BKA deal with transactions related to fraudulent activities (i.e. the transactions *per se* represent the commission of the predicate offence).

132. According to the authorities, there have been ML cases which were initiated on the basis of analysis of STRs, or where information from STRs was used in securing ML convictions or confiscations (see cases in the write-up on IO7). But they seem to be rather an exception as there are no relevant statistics available. This is also supported by the fact that the prosecutors often do not see much value in the information provided by the FIU. The A-FIU and the prosecutors seem to have varying opinions on what constitutes sufficient evidence of predicate offence. As mentioned above, prosecutors consider that STRs and the results of their analysis by the FIU do not give them direct evidence of a predicate offence and/or the origin of funds.

133. As mentioned above, the FIU does not conduct in-depth analysis of TF-related STRs, as this is done by the BVT independently from the FIU.

134. Although the FIU does not perform strategic analysis or typologies studies, there are individual examples of STR information being used for outreach to FMA and reporting entities. The annual reports of the A-FIU are used in the trainings provided for financial investigators in other police units and Tax academy.

135. There is a serious concern with regard to how STRs are treated after dissemination. There have been a number of instances (across different types of reporting entities) where customers became aware that an STR had been filed in their respect and raised complaints against the reporting entity. This seems to be related to the opening of a criminal investigation by the FIU and the STR turning into evidence (see above), since the person in question has to be informed about the

subject of the suspicion against him/her,[8] although pursuant to Article 50 StPO this information may be suspended as long as the purpose of the investigation might be endangered. Also, certain police units (other than FIU) tend to regard an STR as direct evidence of the criminal conduct (rather than intelligence) and have used it to obtain a confession from the person who was the object of the STR (thus tipping off the person and putting at risk the entity that made the STR). Moreover, when the FIU exercises its power to postpone a transaction, it has an obligation[9] to notify the customer of that fact to provide for the possibility to defend oneself in a criminal investigation. This issue puts the whole reporting system at risk and raises serious concerns with regard to its effectiveness. This might be also one of the reasons of the low reporting levels among the obliged entities.

Cooperation and exchange of information/financial intelligence

136. 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 A-FIU (see above).

137. The cooperation between the A-FIU, BVT and other police units is dynamic, as they are part of the same Ministry (BMI). They routinely exchange operative information using secure channels. However, the cooperation with the FMA and other supervisory authorities is more limited. Since the FIU does not conduct strategic analysis, the typologies are not communicated for supervision purposes.

138. The A-FIU normally exchanges all information it possesses (such as that contained in the STRs) with foreign counterparts. However, if the foreign request for banking information does not have a relatively strong link to a specific predicate offence or is not related to an existing criminal investigation, the FIU will not be able to use its power to request reporting entities. This limits the possibilities of cooperation with foreign counterparts for intelligence purposes where the predicate offence is not yet established.

Overall conclusions on Immediate Outcome 6

139. **Austria has a low level of effectiveness for IO6.**

Immediate Outcome 7 (ML investigation and prosecution)

ML identification and investigation

140. Austria has sound legal provisions and a designated institutional framework that has the capacity to investigate and prosecute ML. The Austrian ML offence is a catch-all offence and, in theory, the offence could be a part of all investigations involving predicate offence-generating proceeds. However, some limitations apply to tax crime (as noted in the TC annex).

141. Even though every suspicious activity report transmitted by A-FIU to the public prosecution leads to an investigation only few suspicious activity reports contains sufficient evidence for a predicate offence. If there is such a suspicion, further investigations will be ordered. This has to do

[8] Pursuant to Art.49 stop.

[9] Pursuant to Article 41 para.3 BWG.

with the fact that the A-FIU does not perform a thorough operational analysis due their legal obligation to only do a "competence" check. Thus, the largest number of formal investigations of ML are opened pursuant to an STR. However, if these investigations do not establish a reason of suspicion of a predicate offence and a connection of the predicate offence and the STRs the case will be terminated. The prosecutors met by the evaluation team expressed that they seldom find the reports they receive from the A-FIU to be useful, as a report from A-FIU without an indication of a predicate offense will be dismissed immediately. The high number of ML investigations compared to the low number of prosecutions reflects this view and approach. This approach also makes it virtually impossible to detect, investigate and prosecute more complex ML such as foreign predicates and autonomous ML offenses.

142. The focus on the predicate offence also means that the A-FIU is not in practice able to detect such crimes due to their role as an investigative unit rather than an intelligence unit. Should it nevertheless do so it is likely that their reports should be deemed even less useful. Moreover, as noted above under IO 6, A-FIU lacks both capability and competence to undertake the analysis necessary to detect more complex ML-schemes. Furthermore, as long as there is a focus on the predicate offence there are few incentives for the A-FIU to build up such capabilities.

143. Austria provided the following statistics on ML investigations, prosecutions, and convictions:

Table 11. **Statistics on ML investigations, prosecutions, and convictions**

	2012	2013	2014	2015
ML investigations	1 328	1 189	1 158	1 036
ML prosecutions	65	77	115	125
Number of cases of ML conviction	19	17	44	45
Number of persons with (preliminary) conviction for ML	21	17	55	
Number of persons with final conviction for ML	11	8	27	58

Consistency of ML investigations and prosecutions with threats and risk profile, and national AML policies

144. Austria does not pursue ML as a priority and in line with its profile as an international financial centre. The Austrian authorities have not yet issued any guidelines, statements or similar to prioritize ML investigations and prosecutions at an operational level. This is a concern given the ML risks. As noted in Chapter 1 Austria's banking system plays a "gatekeeper" role to the CESEE-countries. However, according to Art.2 of the StPO, in the framework of their tasks criminal police and office of public prosecution are obliged to clarify any initial suspicion of a criminal act they obtain knowledge of in investigation proceedings. 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 money laundering related to these predicate offences so far. Furthermore, organised crime (Italian, East European) presents high-risk from the ML point of view, but ML cases related to these risks are not pursued. The investigation and prosecution agencies in Austria concentrate on predicate offences rather than on ML offences. In part, this is due to perceived difficulties to prove

ML without, in practice, full proof of a predicate offence beyond a reasonable doubt in order to demonstrate the illegal origin of funds.

145. As noted in Chapter 2, there are no national efforts in place to coordinate the detection, investigation and prosecution of ML offences other than that most suspected ML are reported to A-FIU. This means that resources in these areas are spread among the involved agencies (such as Tax Authorities, Customs and the specialized prosecutors involved in financial crime, etc.) and without there being a national coordination mechanism that should be informed at relevant times about the trends, experiences and resources that exist. There are no courts, judges or prosecutors specialized in ML; however, in many cases courts and prosecution authorities in Austria are not large enough to justify specialised departments for ML or TF. According to the regional situation they may however establish such specialisations. For example, the public prosecutor's office in Innsbruck provides that criminal matters pursuant to Section 165 Criminal Code (inasmuch as they are exclusively dealing with such offences) shall be dealt with by officials of the "economic group"; similarly for Feldkirch, a public prosecutor from the "economic group" has the special responsibility for ML.

146. Two thirds of the predicate offenses which are leading to a conviction for ML are related to various forms of fraud or drug crimes. One third involves a predicate offense for financial offenses, crimes of theft, breach of trust or misappropriation. Theft, drug trafficking, and fraud are the main predicate crimes in Austria according to conviction and investigation statistics.

Types of ML cases pursued

147. While the statistics do show both 3rd party and self-laundering convictions, these were always in conjunction with a predicate offence conviction, and they involved simple money laundering (e.g. money mules). The statistics do not demonstrate that any cases involving complex or stand-alone money laundering, professional money launderers, or foreign predicates were pursued (other than the case mentioned below in relation to a foreign predicate). There was one example of a successful prosecution of a foreign predicate but authorities indicated this was possible only because the suspect confessed and consequently the predicate offense did not have to be proven. To require such a high threshold of proof of a predicate offense raises serious doubts as to the effectiveness of the Austrian AML-regime. This concern is demonstrated in the low numbers of prosecutions compared to the high number of initiated investigations.

148. Apart from the undue focus on the predicate offence there seems to be other factors that contribute to a suboptimal effectiveness. One such factor seems to be related to the fact that courts are very much involved in the preliminary investigations. For example due to Austrian legal provisions, every disclosure of bank accounts to prosecutors must be approved by a court decision. Banks can appeal this in court and often do, resulting in either delays or the lack of obtaining the requested information. The prosecutors and judges the evaluation team met during the on-site seemed to agree upon that the Austrian procedural legislation are not well suited to complex investigations and court proceedings. It was stated that applications for bank disclosure often are denied by regional courts. Several examples of preliminary investigations that took more than five years to conclude were mentioned. The main reason for these long handling times seem to be related to court proceedings and appeals against court decisions or even decisions by prosecutors. It also can result in leaks to the account holder with the result that evidence is hidden or destroyed. In order to obtain a court order to access bank records, it is necessary to provide extensive details about the facts of the case, including information showing that access to bank records is necessary to

solve the alleged crime. For cases where a specific bank holding an account is not known, the prosecutors can request a general order of disclosure which would go to all banks (Fachverbandsabfrage). However, this avenue is not used much since the banking association has the right to appeal against the court order ("remedial action") to produce bank records, which leads to long delays in obtaining information.

149. Furthermore, it is possible to appeal against the actual indictment, i.e. the prosecutor's decision, except when a case is heard by a single judge. However, this possibility may have negligible practical impact. From January to March 2016, 5 735 indictments were made. Of those 5 007 went to single judges and were therefore not subject to this kind of remedy while only 728 went to collegiate courts, meaning that this appeal was possible only against 12.69% of all indictments. Actually raised were 61 such appeals i.e. against 1.06% of all indictments and successful were only 14 such appeals i.e. 0.24% of all indictments.

150. Finally, there seem to be some issues related to the scope of legal privilege of lawyers among other, which, according to practitioners met, hinders law enforcement authorities to get timely access to information needed for the investigation and to locate and trace property. The Austrian legal tradition emphasizes the rights of privacy and to remedial actions but it is necessary to strike a balance between these rights and the interest to combat crime. The evaluation team is not convinced that Austria has succeeded to find the right balance. To effectively combat crime and in particular ML and TF it might be necessary to speed up the process of appealing decisions at the indictment stage. The strict conditions for obtaining/compelling information and the scope of professional privilege were mentioned as deficiencies already in the third mutual evaluation of Austria. The problems faced by prosecutors when pursuing ML investigations due to the factors mentioned above seems to prolong investigations and most probably also contribute to the high rate of dismissed investigations.

Effectiveness, proportionality and dissuasiveness of sanctions

151. Another hampering factor is the low sanctions actually imposed compared to other serious offences in Austria. According to the statistics provided, the penalties actually applied are very low. Probation is a normal penalty for a first time offender. Austria provided the following statistics for convictions and penalties applied:

Table 12. **Convictions and Penalties**

	2012	2013	2014*
All persons convicted for ML	21	17	55
Persons convicted only for ML	5*	3*	**12***
Persons convicted for ML and other crimes*	15	14	43
Penalties actually applied	2 months imprisonment **1x** 3 months imprisonment **1x** 4 months imprisonment **1x** fine 1x desist from an additional punishment 1x	3 months imprisonment **2x** 4 months imprisonment **1x**	2 months imprisonment **2x** 3 months imprisonment **5x** 4 months imprisonment **1x** fine 3x desist from an additional punishment 1x

*While there are statistics on the number of convictions in 2015 (see previous chart), it is not yet known if these are final convictions, or what the sentences were.

152. Austria provided the following case examples involving ML convictions:

Box 1. Case examples involving ML convictions:

Case 1

- Investigations led against perpetrators from northern Africa dealing with cocaine and hashish.
- Information from wiretapping indicated, that money was transferred using a money transmitter to obtain new drugs
- Assistance by FIU revealed 30 transactions performed by 13 persons in a total amount of approx. EUR 17 600,-
- Case is still ongoing
- As of the on-site visit, there were already 2 convictions for money laundering (60 days/4 months)

Case 2

- Investigations led against perpetrators from northern Africa and their accomplices dealing with cocaine and hashish.
- Grounded reasons to believe, that MVTS providers were used to transfer incriminated assets
- Request filed by FIU to an MVTS provider
- Result: seven transactions performed by an Austrian to the US and Morocco.
- One conviction for money laundering (three years) (as this case is from 2015, the sentence was

not final as of the time of the on-site visit)

Case 3

- Investigations led against perpetrators from Turkey because of smuggling of heroin from Turkey via Italy to Austria, Germany and Switzerland.
- Assistance via FIU: 1 request filed to a bank; 46 requests filed to a MVTS provider; 63 requests filed to another money remitter
- Total amount of assets transferred via a money remitter of approx. EUR 124 700
- Twenty-two reports filed to the prosecutor's office because of suspected ML
- One conviction for money laundering in Austria (four years)
- One conviction for money laundering in Italy (2 years 8 months) (as this case is from 2015, the sentence was not final as of the time of the on-site visit)Extend the scope of the national risk assessment to cover remaining areas (e.g., art galleries and ship-based casinos).

153. As some of the cases presumably included other indictments and Austria applies aggregated sentences for several crimes, it is not possible to separate the sentence for the predicate offence from the ML offence or even from other crimes that may be part of the verdict. It is clear that if it is drug trafficking and associated ML then a noticeably heavier sentence is imposed. In other cases the sentences were in the range of 2-4 months imprisonment, which includes the sentence for the predicate offence. There were only several cases for aggravated ML and the sentences ranged from 3-4 years (see above). The sentences for ML may not be significant, even in cases of very serious criminality and it is not clear that they are dissuasive in practice. Given this and the factors mentioned above it is of serious concern that prosecutors often do not prosecute ML offences since it is simply not worth the effort.

154. Investigative techniques like joint or cooperative investigations are used in major proceeds generating offences. Austria provided a number of case examples where Joint Investigation Teams (JITs) have been used with European partners to investigate ML and associated predicate offences. These led to some large seizures of drugs, instrumentalities, and cash; however, it is not clear whether these led to any prosecutions or convictions for ML. According to the Austrian authorities, secret coercive measures are routinely used in ML investigations. In 2015 according to the electronic registers surveillance of communications was granted in ML cases 488 times in domestic investigations and 3 times pursuant to requests for mutual legal assistance. Undercover observations were used once in domestic ML cases and twice following requests for mutual legal assistance.

Alternative criminal justice measures

155. Other than favouring relying on pursuing predicate offences over pursuing money laundering charges, it is not clear to what extent Austria applies other criminal justice measures in cases where a ML investigation has been pursued but where it is not possible, for justifiable reasons, to secure a ML conviction. But there are a few cases where Austria has sequestered assets pursuant

to Article 445 StPO where a conviction cannot yet be achieved (e.g. unknown perpetrator or unknown whereabouts of the accused), as in the case referred to in Immediate Outcome 11.

Overall conclusions on Immediate Outcome 7

156. **Austria has a low level of effectiveness for IO7.**

Immediate Outcome 8 (Confiscation)

Confiscation of proceeds, instrumentalities and property of equivalent value as a policy objective

157. Austria did not demonstrate that confiscation is a key priority in Austria's criminal justice regime or pursued as a policy objective, although Austria has made operational and policy changes to promote asset seizure and confiscation (see below). The assessors felt that the law enforcement authorities and prosecutors do not focus on seizing and confiscating proceeds of crime as a goal in itself, and there are few policies to promote confiscation as an integral mechanism to deprive criminals of their illicit wealth.

158. In Austria's last MER it was concluded that the effective use of the confiscation and provisional measures was not shown due to the low level of profit-generating crimes in Austria. Since then, a number of legal amendments have been introduced. But the deficiencies mentioned in IO7 above (strict conditions for obtaining/compelling information and scope of legal privilege which hindered the possibility for law enforcement authorities to locate and trace property according to 3rd MER) apply here as well.

159. In terms of legal requirements, Austrian law enforcement authorities are obliged to identify, trace, freeze and initiate seizing of property that is, or may become, subject to confiscation, or is suspected of being proceeds of crime. Public prosecutors are ordered to document the reasons for refraining from confiscation in their files and are reminded of the mandatory nature of the provisions on confiscation. In addition, the BMJ has issued a handbook in which the relevant legal provisions, case law and commentaries on confiscation, forfeiture, extended forfeiture and redemption, including the respective investigative measures as well as procedures for securing, managing and disposing of assets, are compiled and explained in detail. Furthermore, the BMJ has issued a decree on offense related property orders to bring the issue to the attention to all public prosecution offices and courts.

160. The project "confiscation of assets" was also launched in April 2011 to enhance the role of asset recovery (and the Asset Recovery Office—ARO). Its main role is to coordinate national and international asset recover activities, provide training and assistance in tracing and seizing of proceeds of crime domestically and abroad using different channels. It is well functioning in these tasks. It works alongside the A-FIU – both structurally and physically – within the BKA. In big cases, ARO works closely with the main investigators, and assists them doing house searches to identify possible assets.

161. There are nine regional police units and five public prosecution offices in Austria that have personnel specialised in asset recovery. As of the time of the on-site visit, the ARO had 7 staff, while the regional units had 25. Austria aims to raise these levels to 11 and 39, respectively, in 2016. The introduction of a provision that 20% of the assets, which are confiscated (pursuant to Arts. 20 and

20b), accrue to the Ministry of Interior works as an incentive to pursue confiscation measures. These funds are used for covering personnel and material costs arising from financial investigations relating to asset recovery.

Confiscations of proceeds from foreign and domestic predicates, and proceeds located abroad

Table 13. **Statistics on seizures by ARO as of 1 October**

Regional ARO office	Number of criminal cases	Total amount (in EUR)
Vienna	1 247	8 062 907
Vorarlberg	84	867 333
Tirol	42	2 923 685
Steiermark	64	173 207
Salzburg	153	593 610
Upper Austria	61	596 682
Lower Austria	91	10 452 572
Kärnten	47	53 408
Burgenland	406	2 710 580
TOTAL	2 195	26 433 985

Table 14. **Statistics on confiscations and forfeitures**

Confiscations and forfeitures	2010	2011	2012	2013	2014
Total number of confiscations (§19a StGB)		66	239	562	747
Total number of ML related confiscations (§19a StGB)					4
Total number of forfeiture of proceeds		623	829	991	1 320
Total number of ML related forfeiture of proceeds	1	1	3	3	11

Table 15. **Total amount of cash, which has been brought into the Federal Treasury (EUR)**

2012	2013	2014
8 053 400.03	9 309 461.92	25 744 761.96

162. While Austria has designated the ARO to assist in pursuing criminal proceeds, the authorities are aware of the need for an increased focus and the personnel involved seem to have required skills and a functional organization, there are concerns that assets are not generally pursued in line with the country's risk profile. The lack of more comprehensive statistics makes it difficult to assess effectiveness. For example, there are no statistics concerning criminal assets that

have left the country or provisional measures employed to secure such assets. Nor are there any statistics on amounts repatriated. Furthermore, in the provided statistic for 2011-2014 it is not possible to compare the total amount subject to provisional measures (seized or sequestered) and the total amount after judgment (confiscated or forfeited). There are no statistics on seized amounts until 2015 and the amount brought into the Austrian Federal Treasury as a result of final decisions on confiscations and forfeitures. It is a positive trend that the numbers of confiscations and forfeitures applied for has increased in the last four years, and that more than EUR 25 million was brought into the Federal Treasury in 2014. However, it is not possible to determine how much of this figure is the direct result of confiscations and forfeitures (although Austria clarified that this figure reflects only related to orders issued in criminal trials, rather than taxes, fees, or other funds). The specialised prosecution units within this field will be subject to detailed evaluation of its effectiveness in 2016. Authorities indicated that these units have been informed to be effective in assisting the police and prosecutors, but no evidence to back up this has yet been presented.

163. From this incomplete statistical information, it can only be deduced that the use of confiscation and forfeiture when dealing with domestic predicates is steadily increasing both in numbers and in the amounts brought in to the Treasury. However, it is difficult to make precise judgments given that there is virtually no information on the risks and the possible value of criminal proceeds in Austria (whether domestic or foreign), and that there is only partial data on the value of property seized, confiscated and recovered. In general, however, analysing the information above indicates that the actions taken and the results achieved regarding the confiscation of criminal proceeds needs to be improved in Austria.

164. Nevertheless, there are two issues that are preventing a more effective success at seizing and confiscating criminal proceeds.

165. Firstly, a key deficiency is in the step ("sequestration") required to freeze bank accounts and real estate to prevent their transfer or use. Sequestration 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 due to court decisions there. As a result of this and the need to focus on proving the predicate offence (as mentioned in IO7 above), prosecutors met by the evaluation team stated that they are reluctant to even to seize such assets.

166. Secondly, Austria has no designated asset management structures in place that are specifically tasked with the management of seized assets and the disposal of confiscated or forfeited assets. In Austria these task lies with the police, the prosecution office or the court depending on the circumstances (s. 114 StPO). This might work out when dealing with small and uncomplicated objects but Austria did not demonstrate that it has done this with complex assets involving companies. There are concerns that this might dissuade both prosecutors and judges from seizing or sequester assets that are more complex to manage. Furthermore, it is doubtful that it is an efficient use of resources to allot asset-managing tasks to police, prosecutors and judges. The judges and prosecutors met during the on-site indicated that the lack of better asset management structures is a point that needed improvement.

167. In the last years the Austrian LE authorities were rather reluctant to seize such objects as paintings, clothes, porcelain figures and others. Given this situation the ARO needed to find a solution. This was achieved by initiating cooperation with a pawnbroker company, which is represented in eight Austrian federal states and abroad. It was agreed, that the auction house will

support the Austrian law enforcement authorities to determine the value of assets and to store and sell sequestered assets (PPC Art. 115). This was done to avoid loss in value of the sequestered assets and avoid high deposit costs. In particular that means that for cases involving the seizure of works of art, jewellery or antiques but also car or industrial equipment the auctioneering house provides not only the sale at public auctions but also before that the logistics, storage and assessment of the values. Even though this cooperation with the pawnbroking company is commendable, it does not amount to a designated asset management structure. Rather, it is a private sub-contractor under contractual obligations to carry out a sale on an ad hoc basis regarding certain objects.

168. While Austria did provide statistics on the numbers of requests made and received by the ARO (see table below), there are no statistics concerning measures to secure and repatriate criminal assets that has left Austria. Cases described by the Austrian authorities show that Austria is at least moderately successful. Austria provided one case where bank accounts with around EUR 17 million had been seized in Liechtenstein in execution of an Austrian request for MLA. After the suspect agreed to transfer the money to the defrauded bank the Austrian prosecutor requested the Fürstliche Landgericht in Liechtenstein to repeal the seizure under the condition that the money is transferred to the account of the victims' lawyer. This resulted in the successful repatriation of around EUR 17 million to the bank which was the victim of a fraud. In another case the Austrian prosecutor succeeded in confiscating a luxury boat in Italy which led to the repatriation after the deduction of significant amounts for the storage and sale of the boat of around EUR 8 000). Given their expertise, it is a concern that the ARO-office is not involved in the freezing and repatriating of these assets.

Table 16. **Requests Made and Received by the ARO**

Year	Requests received from ARO:	Requests sent to ARO:	Requests received from CARIN:	Requests sent to CARIN:
2015 (up to 1 Oct.)	40	38	8	16
2014	57	48	6	25
2013	47	30	4	4
2012	30	2	2	0

169. Austria indicated that it had not received any specific requests for confiscation from third countries with regard to offences related to money-laundering or the financing of terrorism during the last four years.

Confiscation of falsely or undeclared cross-border transaction of currency/BNI

170. In the context of cross-border movements of currency or bearer negotiable instruments (BNI), Austria follows a declaration system on controls of cash entering or leaving the EU, according to the EU cash control regulations, and a disclosure system for the transportations within the Federal Territory and a disclosure system for the transportations within the Federal Territory that also applies for the internal EU cross-border movements States. The Customs Office (Zollamt) is responsible for controls at the airports, the borders with non-EU countries (Switzerland and Liechtenstein) and, additionally, customs supervision may be carried out by mobile units throughout the Austrian customs territory.

171. In cases of non-declaration or false declaration at EU borders or when false disclosures are made upon request within the Austrian customs territory, cash penalties within administrative procedures are imposed directly by the customs officers: up to EUR 100 000 in case of intentional movements and up to EUR 10 000 in case of negligence (Art. 48b Fiscal Penal Code). In ML/FT cases, customs officers may request seizures of cash/BNI that can then only be ordered by the Prosecutor´s Office. Customs officers are empowered to adopt provisional seizures in case of danger in delay. Confiscation can be eventually ordered by the Court in case of conviction for criminal offence.

172. Austria actively controls and receives declarations (mostly written, by form "*Anmeldung von Barmitteln*") for cash movements over EUR 10 000. Most of declarations for cross-border transportation are made by professional couriers, including banks, and not by private individuals. All declarations received are uploaded to the Cash-Control Database of the Customs Office. Updated information is sent to the A-FIU on a monthly basis.

Table 17. **Cross-border declarations of cash/BNI over EUR 10 000**

	2012	2013	2014
Total declarations	4 483	3 979	3 738
Total amounts in EUR	6 353 169 171	6 593 419 678	3 344 911 584
Declarations by private individuals	1 261	1 577	1 451
Amounts in EUR	114 432 920	510 615 747	101 794 330

173. Cash controls carried out by the Customs Offices at Austrian international airports, use risk analysis of profiles associated with currency couriers, based on statistical information providing operational guidance to the airport customs officers.

174. Penalties for the administrative infringements of those obligations are imposed and charged the same day by the Customs Officials, which take into account the facts and circumstances of each case. According to the information provided by Austrian Customs Authorities on the administrative infringements and sanctions applied, the figures were:

Table 18. **Administrative Sanctions for infringements on cross-border cash/BNI movements**

	2012	2013	2014
Nº of Administrative sanctions	133	130	117
Amount of Administrative penalties in EUR	279 195	411 982	199 511
Nº of seizures	1	1	0
Amount seized in EUR	50 800	46 500	0
Nº of confiscations	0	0	0

175. The statistics show that administrative cases of infringements and sanctions imposed are steady, but there is not a single case in which the cash/BNI detained at the borders were finally

confiscated, and in the last two years there were just two cases where an initial seizure was declared by the Prosecutor's Office.

176. This does not appear to demonstrate that the confiscation regime regarding cross-border movements of currency/BNI is sufficiently dissuasive. There are only some administrative sanctions, and no confiscations in this regard. And the level of amounts seized related to illegal cross-border movements of cash is extremely low in comparison with the number of infringements of the obligation to declare cross-border cash movements over EUR 10 000 that are annually detected by the Customs authorities.

177. Regarding cash movements within Austrian customs territory, the authorities report 15 cases of non- or false disclosures in 2015 (37 cases in 2014 and 22 cases in 2013). There have been no seizures or confiscations based on those non or false disclosures.

Consistency of confiscation results with ML/TF risks and national AML/CTF policies and priorities.

178. While confiscation from domestic predicates is increasing, assets are not generally pursued in line with the country's risk profile and strategy., and the authorities face multiple challenges in seizing and confiscating criminal proceeds (e.g. the need to prove a predicate offence, the need to prove that assets will flee in order to freeze bank accounts, the lack of asset management structures). Austria has not shown results in line with Austria's ML/FT risk profile as an international financial centre, with funds transiting through Austria where no predicate offence may have taken place. While the authorities are registering cross-border cash and BNI declarations pursuant to the EU framework, the authorities acknowledge that this framework has not resulted in identification of any concrete ML or TF cases and thus has not achieved its objective.

Overall conclusions on Immediate Outcome 8

179. **Austria has a moderate level of effectiveness for IO8.**

CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

Key Findings and Recommended Actions

Key Findings

IO9

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. 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.

IO10 and IO11

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.

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

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.

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.

Recommended Actions

IO9

Austria should give consideration, where appropriate, to actively prosecuting different types of TF

offences.

Austria should monitor penalties applied to TF convictions and consider whether they are sufficiently proportionate and dissuasive.

IO10 and IO11

Austria should use its Sanctions Act as a basis to temporarily freeze the assets of persons designated under UNSCR 1267 or relating to PF, while waiting for UN decisions to be transposed into decisions of the EU Council.

If necessary, Austria should use its Sanctions Act to designate domestic terrorists.

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 adopt a targeted, coordinated, risk-based approach to oversight of higher-risk NPOs and conduct additional outreach to and awareness raising for NPOs.

180. The relevant Immediate Outcomes considered and assessed in this chapter are IO9-11. The recommendations relevant for the assessment of effectiveness under this section are R.5-8.

Immediate Outcome 9 (TF investigation and prosecution)

Prosecution/conviction of types of TF activity consistent with the country's risk-profile

181. The Austrian authorities demonstrated a good understanding of TF risk. Those risks are influenced mainly 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. Regarding risk of terrorism, as in other European countries, 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.

182. Austria provided statistics which demonstrate the authorities' focus on investigating and prosecuting terrorist and FT activities. Investigations and prosecutions for terrorism activities under the Austrian legislation (Art. 278 StGB) include: b) terrorist association; c) criminal offences; d) terrorist financing; e) formation for terrorist purposes and instructions to commit terrorist activities.

183. The Public Prosecutor´s Office has specialized prosecutors in terrorist and FT cases in the regional Courts of Vienna, Linz, Graz and Innsbruck.

Table 19. **Terrorist investigations, prosecutions and convictions in Austria (including FT activities)**

	2012	2013	2014	2015	TOTAL
Investigations	77	62	123	179	441
Prosecutions	9	4	10	50	73
Convictions	2	2	1	27	33

184. Most of the investigations (63%), of the prosecutions (80%) and convictions (75%) are related to terrorism association offences (278b StGB) which in some cases involve economic TF activities (see case "Assamblek I." below) as one of the elements used to prove participation in a terrorist group. Some penalties imposed for terrorist crimes (278 StGB) in the chart below also include penalties for additional crimes in the same conviction: "Damage to property" (125StGB); Dangerous threat (107 StGB); Forgery of documents" (223 StGB) or Incitement to commit a criminal act and approval of criminal acts (282a StGB).

185. Due to the principle of absorption/consumption (this general principle of criminal law provides that in case of multiple offences the lesser offence is absorbed by the higher) penalties imposed for these cases are aggregated, so it is not possible to determine the penalty for each separate criminal act.

Table 20. **Penalties § 278 b - f StGB related convictions**

	2012	2013	2014	2015
All persons convicted for Art. 278 b -f StGB	2	2	1	27
Persons convicted only for Art. 278 b - f StGB	1	2	1	18
Persons convicted for Art. 278 b -f StGB and other				7
	- 1 year imprisonment (probation) 1x - 6 months imprisonment (probation) 1x	- 4 months imprisonment (probation) 1x - 6 months imprisonment (probation) 1x	- 21 months imprisonment 1x	- 10 months imprisonment (probation) 1x - 1 year imprisonment (probation) 4x - 15 months imprisonment (partly on probation) 1x - 1.5 years imprisonment (probation) 2x - 19 months imprisonment 2x

	2012	2013	2014	2015
				- 21 months imprisonment 4x - 2 years imprisonment 2x - 2 years imprisonment (partly on probation) 1x - 26 months imprisonment 1x - 2.5 years imprisonment 1x - 33 months imprisonment 1x - 34 months imprisonment 1x - 3 years imprisonment 1x - 4 years imprisonment 1x - 4.5 years imprisonment 1x - 5 years imprisonment 2x

Table 21. **FT investigations, prosecutions and convictions in Austria**

	2012	2013	2014	2015	TOTAL
A-FIU referrals to BVT		70	58	111	
TF Investigations	30	22	38	87	177
BVT referrals to the Public Prosecutor's office on TF	10	14	20	41	85
TF Prosecutions	1	2	0	2	5
TF Convictions	1	1	0	1*	3

* This refers to the "Aslamblek I" case in the table below.

186. According to the information provided by Austrian authorities, most of the investigations do not result in criminal prosecutions due to the lack of sufficient evidence for the Public Prosecutor's Office to formally initiate criminal charges on TF crimes, but may result in prosecutions on terrorist association crimes. The large number of TF investigations compared to prosecutions is largely due to the fact that TF-related STRs almost automatically trigger an investigation, although STRs are not the only basis for TF investigations). All FT convictions obtained so far in Austria are linked to the economic support of Islamist extremist terrorist organizations in Chechnya (Dokku U. and Emirate Caucasus).

Box 2. **Example of convictions for TF activity under the terrorist organization offence.**

The Vienna Public Prosecutor´s Office presented charges against Aslamblek I. for a crime of terrorist association (278b StGB). According to the indictment, this person accepted as a member of the Emirate Caucasus sums from persons of Chechen origin in Austria and elsewhere in Europe, collected and submitted via courier cash amounts of EUR 179 600 in 2011 and EUR 352 840 in 2012 to other members of the organization in Chechnya, where this money was received.

Additionally, the Vienna Prosecutor´s office indicted M. S. for a crime of terrorist financing (278d

StGB). According to the indictment, this person in interaction with E.S., separately prosecuted, had collected and kept the amounts of EUR 26 340 and USD 4 903 that were delivered to Aslamblek I.

On October 2015, the Regional Court of Vienna sentenced Aslamblek I. to unconditional imprisonment of four years, but M. S. was acquitted. The sentence was appealed by the Vienna Public Prosecutor´s Office and was pending a definitive verdict as of the time of the on-site visit.

TF identification and investigation

187. Austria is generally identifying and investigating TF consistent with its risk profile. The Federal Agency for State Protection and Counter Terrorism (BVT) is the central police agency in Austria in the field of terrorism and FT, and is the only agency working in the field of these investigations. The central department of the BVT in Vienna has one Group specialized in FT and there are also nine (9) Provincial Agencies for State Protection and Counter –Terrorism (Landesamt Verfassungsschutz), called LV units, that are part of the BVT structure. In addition to its functions as an investigative police agency, BVT also exercises the tasks of a civil intelligence service as source to initiate and develop investigations and possible networks. The evaluation team was informed that a new law on the powers of the BVT and the LVs will be adopted by the Parliament.

188. FT investigations are initiated by BVT based on its own investigations and other sources. STRs are the main factor trigger for FT investigations. BVT and A-FIU are in close and permanent contact. Each STR related to FT received in the A-FIU from the obliged subjects is immediately forwarded to the BVT for further analysis which systematically includes the financial aspect of suspected terrorists' activities. In case of reasonable initial suspicion of FT, the BVT officers start such an investigation. (See above for statistics on TF investigations). If further details or information are needed from the credit and financial institutions the BVT has to request the additional information from the A-FIU, unless there is a criminal investigation already ongoing. After finishing the investigation, the A-FIU is informed of the results by BVT. The several convictions for TF demonstrate that the Austrian authorities have had some success in identifying the individual financier.

189. In 2014 the A-FIU sent 58 reports on FT (70 in 2013): 46 of them were based on STRs received, 11 were result of international cooperation (from other FIUs or Interpol) and 1 case came from local LEA. Those STRs also include transactions or intended transfers to/from designated countries (12 cases). 32 of those cases were eventually reported the Public Prosecutor Office, but 30 of them were dismissed and 2 were still pending in 2015.

TF investigation integrated with -and supportive of- national strategies

190. Austria has a specific national strategy on terrorism ("*Staatsschutzstrategie*", State Protection Strategy) establishing goals and specific measures on prevention, the fight against radicalization and recruiting, training of police officers, use of legal rules on investigations, use of operational and strategic information, and cooperation with EU, Turkey, Balkan states and north African countries. A specific FT strategy does not exist, but TF investigations are part of the counter-terrorism strategy.

Effectiveness, proportionality and dissuasiveness of sanctions

191. Austrian legislation sets out prison terms of one to ten years in case of TF offences (278d STGB). However, sanctions for the two final convictions obtained so far for TF do not seem to be dissuasive. In fact, there is a conviction of one person (the "Darsaeva" case), self-declared as a Chechen freedom and resistance fighter, convicted in June 2012 by a Regional Court for the crime of terrorism financing to one year of imprisonment and whose conviction was suspended for a probationary period of three years. This same person was newly sentenced in October 2013 to an additional period of four months for additional activity involving the same crime (and discovered to have taken place before the facts which led to the first conviction) and, again, the imprisonment was suspended for an additional period of three years. The sentence in the other case involving TF activity ("Aslamblek I", mentioned above) was pending as of the time of the on-site visit.

Alternative measures used where TF conviction is not possible (e.g. disruption)

192. According to the Austrian Criminal Procedure Code (StPO) if, for any reason, it is not possible to get a conviction or deprivation of liberty in a criminal proceeding but the requisites for confiscation are fulfilled, the funds and assets are seized (including bank notes and securities) until the confiscation is definitively adopted by the Court.

193. In some instances, Austrian authorities may deny or withdraw passports and/or identification cards if facts justify the assumption that the internal or external national security could be endangered by the tenant/applicant (including the membership of a criminal or terrorist association). As of the time of the on-site visit, Austria had withdrawn one passport, and was in the process of withdrawing two others.

Overall conclusions on Immediate Outcome 9

194. **Austria has a substantial level of effectiveness for IO9**.

Immediate Outcome 10 (TF preventive measures and financial sanctions)

Implementation of targeted financial sanctions for TF without delay

195. The procedures and implementation of targeted financial sanctions (TFS) in Austria, established by the EU Council Decisions and Regulations and by the Federal Act on the Implementation of International Sanctions (SanktG 2010) are not effective due to the deficiencies within the framework of applicable EU regulations and to Austria´s failure to use either mechanism to propose or make designations.

196. TFS pursuant to UNSCR 1267 and subsequent resolutions are not implemented without delay (as defined by FATF) due to the overly long time taken to transpose UN designations into the EU legal framework. This is a serious impediment to Austria's effectiveness in preventing terrorists from moving funds. The SanktG authorises the OeNB, through the government, to issue regulations quickly that would fill this gap. However, this mechanism has not been used for 1267 and successor resolution designees. The Austrian authorities explained that, in practice, the reporting entities are immediately informed by the Ministry of Foreign Affairs and follow-up communications from the OeNB and the Chamber of Commerce before the lists are transposed into the EU legislation and come

into force. In this case, the competent institutions expect credit institutions to use their discretion to hold back a transaction, should the institution get a match. However, this practice is not necessarily followed by the obliged entities, it is not enforced by authorities, and does not have a legal basis.

197. The OeNB On-Site Supervision Division and the OeNB Legal Division in general select on a year's basis four credit institutions to check, through on-site risk based supervisions, that the financial institutions have implemented appropriate systems and internal procedures to apply the TFS measures and reports inconsistencies to the competent authorities for further investigations. All findings of the inspection are included in a report. Furthermore, OeNB adopts off-site supervision measures, like requests for information, documents, reviews and cross-checks of reported information. No specific sanctions have been imposed for non-compliance with the TFS obligations, although Austria reported that potential breaches of sanctions regimes are being reported by the OeNB to the competent authorities for further investigation.

198. Local district authorities supervise insurance intermediaries and certain DNFBPs (e.g. real estate agents, tradespersons, dealers in high-value goods), but these authorities do not routinely check for compliance with the targeted financial sanctions obligations.

199. Austria has no clear channels or procedures for directly receiving foreign requests to take freezing action pursuant to UNSCR 1373. All such requests are received indirectly through the regular EU channels. The authorities explained that Austria has never directly received a foreign 1373 request (although it receives foreign requests to undertake judicial or other types of international cooperation on matters related to terrorism and TF) and has never designated a person/entity or requested another country to take freezing action pursuant to UNSCR 1373, even though the implementation of TFS is an important issue for all countries. The freezing obligations of UNSCR 1373 do not apply to EU internals, although since the entry into force of the Treaty of Lisbon (2009), Art. 75 of the Treaty on the Functioning of the European Union (TFEU) provides a legal basis to introduce a mechanism to do so. However, the European Commission has not yet put forward a proposal for a regulation as stipulated in Art. 75 para 1 TFEU in this regard. This also negatively impacts effectiveness.

200. The authorities consider that the legal mechanism to address freezing obligations in the case of EU internals for the implementation of UNSCR 1373 in Austria is via Official Announcements of the OeNB setting regulations which can be issued pursuant to Article 3 of the DevG, in order to restrict capital movements under certain conditions, such as for complying with international legal obligations or for the protection of the legal interests of Austria. The OeNB adopted a regulation for instance on 13 March 2009, which does apply to a list of EU internals. The regulation (announcement) of the OeNB DL 2/2002, as amended by regulation (announcement) DL 1/2009 shall apply as a regulation pursuant to § 2 para 1 of SanktG and applies to all assets of the persons named therein (§ 16 SankG).

201. Comprehensive guidance (February 2013) issued by the OeNB informs the private sector about their obligations and procedures regarding UNSCR listed persons: “Practical Information of the Oesterreichische Nationalbank (OeNB) on Financial Sanctions Imposed under UN Security Council Resolutions 1267, 1373, 1988 and 1989”. The information is regularly updated in the OeNB web site and Austrian financial institutions seem to be aware of their obligations related to TFS.

202. For notaries, when UN designations are made, BMJ passes it on to the Notarial chambers. The Chamber of Civil Law Notaries also emails a link to the sanctions list to all its members. The Chamber also keeps an updated link to the UN listings on its website and subsequently checks

compliance of its members when it inspects them for their AML/CFT measures. No matches or violations of the TFS measures were found or reported. See IO3 for more details on the Chamber's inspection process.

203. The process for lawyers is similar. After a notification by the UN, the BMJ forwards to the update to the Austrian Bar, which then notifies the regional Bars, which again inform their members about the amendments of the consolidated UN Sanctions List. Further information on the prevention of and the fight against money laundering and terrorist financing as well as on targeted financial sanctions is provided to these legal professionals and their trainees/candidates by newsletter, in the Lawyer's Gazette and is available online in the members' area of the Austrian Bar. Moreover seminars and training are held on this topic.

204. Austrian authorities as well as the private sector reported that they have not identified and frozen any funds regarding entities designated by UN or by the EU in the context of 1267 or 1373; nor have they had any false positives. Some amounts of funds have been frozen in regard to other EU sanctions (e.g. Iran).

Targeted approach, outreach and oversight of at-risk non-profit organisations

205. Austria's non-profit organizations sector is composed of over 120 000 entities that have a wide range of legal forms, however, it is not possible to break down this figure into different types, purposes or sizes of the associations registered in the country. Austria has not undertaken a domestic sector review or periodic reassessments of its NPO sector to identify which sub-set of NPOs are particularly at risk of being misused for TF. The information on NPOs as required by Austria's Association Act (VerG) is kept in the Central Register on Associations of the BMI, which is updated with the information entered in the different Local Registers of Associations where the registrations and initial control take place. However, it is not possible to search in this database to determine for example the size and types of activities of the NPO.

206. The NRA indicates that the NPO sector represents a moderate TF risk due to the high number of associations in the country. The authorities also stated that there may be a risk for tax evasion due to the more favourable tax regime that some of these entities enjoy.

207. Austria does not have a targeted, interagency coordinated approach to supervising the whole NPO sector on TF risks. Supervision on NPOs accounting in the Austrian legislation includes a legal obligation of auditing all NPOs accounts by independent auditors who must examine the correct association's financial management and the statutory use of assets. If the auditors observe infringements or violations in the accounting duties, the association shall take effective remedial action in due time, otherwise the auditors will demand the managing organ to convene a general meeting. Additionally, the Tax Administration (MoF) is in charge of monitoring financial information for tax purposes and has access to the information on the accounting records of those associations which perform taxable activities (around 14 000 throughout the country). There is no automatic submission of either accounting documents of any audit activity from NPOs to the MoF or to other authorities. Statistics for 2013 to 2015 show the following figures:

Table 22. **NPOs Inspections**

	2013	2014	2015
Tax Audits NPOs			
Small and medium NPOs	99	91	155
Large audit division	10	7	11
Investigation unit	0	0	1
Total amount	**109**	**98**	**167**
VAT audits NPOs			
Total amount	109	95	129
Visit for start-up NPOs inspections			
Small and medium NPOs	143	164	96
Large audit division	1	1	0
Total amount	**144**	**165**	**96**

208. While specific statistics were not available, the authorities reported that several fines were imposed for failure to provide the names of changed representatives within 4 weeks. The fines imposed were small: 218 EUR, which go up to EUR 726.

209. In terms of outreach, the BVT has conducted regular outreach activities with the domestic NPO sector in a program called "*Sicherheitsdialog*" (security dialogue) to promote awareness among certain NPOs of radicalization and the risks of terrorism and about possible use of funds for FT. The number of outreach activities has significantly increased in the last years: 41 (2011); 127 (2012); 136 (2013) and 123 (2014). There is not written guidance or a best practices document with respect to the TF threat. The BVT monitors and investigates activities of certain associations that could be used for TF or terrorism.

210. During the on-site visit, the assessment team was also informed that the BMF and the BMI were preparing an information event for non-profit associations titled "*How to protect NPOs against being misused for terrorism financing"* to be held in the first term of 2016. The last informative event of this nature took place in 2011.

211. In 2013 and 2014, the A-FIU received some STRs from the obliged subjects regarding activities of NPO account holders, which led to terrorist and FT investigations by the BVT affecting six NPOs. But these did not lead to any further investigation.

212. The assessment team did not have the opportunity to discuss with the NPO sector, and it is therefore unclear to what extent NPOs understand TF vulnerabilities and risk-mitigation measures to protect themselves from the threat of terrorist abuse.

Deprivation of TF assets and instrumentalities

213. BVT and other authorities are not using targeted financial sanctions for TF as a tool to deprive terrorists, terrorist organisations and terrorist financiers of assets and instrumentalities

related to TF activities. It is unclear the extent to which criminal or administrative processes are used for this purpose. In the "Darsaeva" case mentioned in IO9 there was no confiscation, while the other ("Aslamblek I") the case was not yet closed as of the time of the on-site visit.

Consistency of measures with overall TF risk profile

214. Austria did not demonstrate that it is implementing targeted financial sanctions, taken a targeted approach to overseeing NPOs of higher risk, or depriving terrorists, terrorist organisations, and terrorist financiers from assets consistent with Austria's risk profile. Austria is targeting its investigation and prosecution efforts on what it deems its areas of highest risks and focusing its outreach on the very highest risk parts of the sector (Islamist terrorists), but broader supervision and outreach to the NPOs sector on the risks of terrorism and its financing are needed. Austria co-sponsored the UN designation of Jemaah Islamiya in 2002, but has not done so since; this overall failure to propose/make designations pursuant to resolutions 1267 and 1373 and delays to transpose UN designations is a relevant gap.

Overall conclusions on Immediate Outcome 10

215. **Austria has a moderate level of effectiveness for IO10.**

Immediate Outcome 11 (PF financial sanctions)

Implementation of targeted financial sanctions related to proliferation financing without delay

216. As a large international financial centre, Austria's economy faces inherent risk of exposure in relation to proliferation financing. Austria rated (inherent) proliferation (although not proliferation finance) risk as high in its NRA.

217. An effective system of financial sanctions regarding proliferation depends on the immediate implementation of the UNSCRs, monitoring compliance with the measures imposed, co-ordinated action by the authorities concerned to prevent the measures being circumvented and preventive action. Austria implements *without delay* (as required under FATF Recommendation 7) the targeted financial sanctions defined in the UNSCRs relating to combatting PF with regard to Iran but does not do so with regard to DPRK. The implementation of targeted financial sanctions for PF in Austria is based on the European legal framework set out in Regulation 329/2007 (for UNSCR 1718 concerning the Democratic People's Republic of Korea – DPRK) and 267/2012 (for UNSCR 1737 concerning the Islamic Republic of Iran). These measures apply freezing measures to a broad range of funds and property.

218. With regard to Iran, these mechanisms do not suffer from technical problems in the length of time for transposition. Since Regulation 267/2012 was issued in March 2012, there were only two occasions where the UN added designations to the list (two entities and one individual on 19 April 2012, and two entities on 20 December 2012). In both cases, these individuals and entities had already been listed in the EU framework (see Regulation 1245/2011 of 1 December 2011, and Regulation 54/2012 of 23 January 2012), and subsequently incorporated into Annex IX of Regulation 267/2012.

219. In fact, the EU applies sanctions to a significant number of entities that are not designated by the UN, as they are designated associates of, or otherwise associated with, other UN and EU-designated individuals and entities. The EU framework also uses a prior-authorisation procedure for transactions with Iranian organisations, so that any transaction initiated can be delayed while European transposition is in progress (see above). These measures may mitigate the risk of UN listed persons and entities evading the sanctions measures.

220. For DPRK, the UN added individuals and entities to the list four times between March 2012 and November 2015. Five (out of 14) of the entities had already been listed in the EU Framework. On three other occasions, the designations by the UN (of 22 January 2013, 7 March 2013, and 28 July 2014) took approximately 4 weeks, 6 weeks, and 10 weeks, respectively, to be incorporated into the EU framework. While these sanctions thus are generally not implemented "without delay", the sanctioning system (similar to the system for Iran) is also mitigated by the significant number of other designations by the EU.

Identification of assets and funds held by designated persons/entities and prohibitions

221. The authorities and financial institutions are identifying assets and funds held by designated persons/entities and prohibitions. In general, restrictive measures regulations set out that funds belonging to, owned, held or controlled by persons, entities and bodies listed shall be frozen. Credit institutions are obliged to freeze and report frozen funds to the OeNB. Frozen funds relating to sanctioned persons are in fact reported to OeNB. For instance, as regards Iran such information on frozen funds are regularly submitted by OeNB to the Commission (via the BMEIA) pursuant to Art 44 of the Regulation 267/2012 (3 monthly intervals). However, details of such amounts were not provided.[10] There were two reported judicial case where banks froze funds related to potential PF due to a seizure order by a court. Besides those cases banks froze assets and funds held by designated persons/entities due to PF-related targeted financial sanctions (also see information provided in footnote 10. In one criminal case, approximately EUR 1 800 000 was frozen, and judicial proceedings were opened. The case was in relation to DPRK sanctions; however, after further investigation it was deemed a "false positive," and the funds were released.

222. In a second criminal case, regarding Iran, judicial proceedings with respect to sanctions violations and money laundering (without a specific predicate offence) were initiated. In this specific case approximately EUR 940 000 was seized by the public prosecutor and is currently upheld. In addition an application for forfeiture (Art. 20 Penal Code) was filed by the prosecutor. Investigations were still ongoing as of the time of the on-site visit.

223. OeNB has also issued several circulars on its website regarding Iran.

FIs and DNFPBs' understanding of and compliance with obligations

224. According to OeNB, in general all financial institutions, including the smaller, rural cooperatives, have adequate IT systems in place to conduct daily transaction and customer on-boarding monitoring to screen for names on the UN and EU sanctions lists. The OeNB through its

[10] Subsequent information provided indicated the following amounts of funds frozen by financial institutions pursuant to PF-related sanctions: 2011: EUR 19 000 000 and USD 280 000; 2012: EUR 29 000 000 and USD 700 000; 2013: EUR 59 000 000, USD 700 000, and GBP 20 000; 2014: EUR 23 000 000, USD 700 000, and GBP 20 000; 2015 (up to September): EUR 23 000 000, USD 700 000 and GBP 20 000.

inspection process has seen that financial institutions are not only keen to comply with the TFS sanction obligations, but that they are also increasingly specifically refusing to accept business in relation to Iran out of reputational risk. OeNB has not found any breach of a PF-TFS obligation. The OeNB, A-FIU and other authorities do not seem to play a coordinating role in outreach to the sector and the risks of sanction evasion.

225. The authorities also indicated that any changes to UN designations, including for Iran and DPRK, are immediately forwarded to the Foreign Ministry at the same time they are forwarded to the EU. On the same or the next day the Foreign Ministry forwards the updates to the relevant authorities, who then send them to the financial sector, or to the Chamber of Commerce for DNFBPs. In the event that the financial institution found a person or entity designated by the UN but not yet transposed into the EU framework, the competent authorities expect that the bank would use its discretion to delay or withhold the transaction, which would help mitigate the risk of the delay in transposition mentioned above.

226. The evaluation team confirmed that the financial institutions met had good knowledge of their TFS obligations and were keen to comply with them, both for regulatory as well as reputational reasons. 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.

Competent authorities ensuring and monitoring compliance

227. The system for monitoring TF related to proliferation financing is the same as for TFS related to TF: The OeNB comprehensively monitors the financial sector in this area through on-site visits, reports, and checking financial institutions' IT systems to monitor for potential TFS-related transactions. See IO10 for more details. There was no information on how the DNFBP sectors (other than notaries) are specifically monitored for ensuring compliance with TFS. the As far as lawyers are concerned, after a notification by the Federal Ministry of Foreign Affairs, the Federal Ministry of Justice informs the Austrian Bar, which then notifies the regional Bars, which again inform their members on the amendment of the consolidated UN Sanctions List. Further information on the prevention of and the fight against money laundering and terrorist financing as well as on targeted financial sanctions is provided to these legal professionals and their trainees/candidates by newsletter, in the Lawyer's Gazette and is available online in the members' area of the Austrian Bar. Moreover seminars and training are held on this topic.

Overall conclusions on Immediate Outcome 11

228. **Austria has a substantial level of effectiveness for IO11.**

CHAPTER 5. PREVENTIVE MEASURES

Preventive measures

229. Austria's laws and regulations are based on the EU 3rd Money Laundering Directive and the FATF recommendations. The AML/CFT requirements are incorporated in several laws, which are dedicated to regulate the different sectors.

Key Findings and Recommended Actions

Key Findings

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

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.

There does not appear to be a sufficient understanding of risks among investment service undertakings and investment firms.

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.

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.

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.

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

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..

Recommended Actions

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 the private sector adequately mitigates the risks emanating from offshore

business relationships at all times.

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 ensure that financial institutions and DNFBPs are required to apply all range of measures with regard to customers that are PEPs (including domestic PEPs) as required by R.12.

Austria should ensure that all DNFBPs are adequately aware of potential ML and FT risks. Austria should ensure that dealers in high-value goods and notaries/lawyers/accountants are adequately aware of, and are applying their AML/CFT obligations.

Austria should address the issues identified above in IO6 and 7 relating to tipping off customers, to increase the willingness of the private sector to file STRs.

230. The relevant Immediate Outcome considered and assessed in this chapter is IO4. The recommendations relevant for the assessment of effectiveness under this section are R9-23.

Immediate Outcome 4 (Preventive Measures)

Understanding of ML/TF risks and AML/CTF obligations

Banks

231. Banks have a good understanding of their ML/TF risks and AML/CFT obligations. The reasons are as follows:

- Comprehensive AML/CFT regulation in the Austrian law. Banks have a general will to comply with regulations and due to their size, have access to sufficient in-house expertise to understand and analyse risks and obligations.
- Increasing international business that demands awareness of the global AML/CFT requirements and obligations.
- Fear of liability and loss of reputation (unwanted public attention due to several high profile ML/TF cases involving large international institutions).
- Consolidation of AML/CFT competences within the FMA and the strengthening of its legal mandate and supervisory capacities have increased awareness within the sector. Improved dialog between the FMA and its supervised institutions is evident in the increasing number of legal requests FMA receives and the organisation of and participation in various information events for the financial sector.

232. Banks assess the ML/TF risks by category, such as customer base, products, distribution channels and geographies. Customer base analysis covered potential high-risk types such as non-resident clients from Eastern Europe, offshore corporate structures and cash intensive businesses. Product/service types would include those with limited transparency, cross-border applications and similar higher risk attributes and functionalities. The banks generally divide their customers in three

or more risk categories (e.g. low/medium/high risk). The nature and application of control measures are defined by banks' assessment of the risks present in their institutions.

Insurance

233. Insurance companies also have a good understanding of their ML/TF risk and AML/CFT obligations. One reason is FMA´s active engagement with the sector and its increased on-site presence.

234. Most insurance business relates to the sale of life insurance. Almost all life insurance contracts sold have terms of more than 15 years for tax planning purposes. In general, long-term contracts lower the risk of the insurance companies being misused for ML/TF reasons. While annuity-linked products are also offered, the business volume is low (11.7% of the total life insurance contracts in 2014).

235. Given the nature of the insurance business in Austria, the ML/FT risks are low in this sector and insurance companies have implemented effective measures to manage these risks. Companies usually assess their risk overall risks based on risks associated with customers, distribution channels, products and transactions.

Securities

236. In Austria, securities business is conducted by both banks and private investment service providers (investment services undertakings and investment firms). The latter may only provide a limited scope of investment related services, in particular; investment advice, portfolio management and reception and transmission of orders. Investment service providers are prohibited from holding client funds. Therefore, the establishment of a custodian banking relationship is mandatory in the provision of investment services by these entities and clients are required to enter into a customer relationship with a bank. AML/CFT expertise and awareness among investment service providers does not appear to be as developed as in banks. Although this may be mitigated by the involvement of a custodian bank and investment service providers KYC (investor) profile requirements, it should be noted that this may vary depending on whether an investment service provider merely transmit orders originated by the client or conducts discretionary portfolio management for the client. The risk awareness in this sector varies.

Money or value transfer services

237. Payment service providers or credit institutions providing payment services that are licensed in Austria are subject to the AML/CFT provisions either in the Banking Act (BWG) or the Payment Service Act (ZaDiG).

238. Western Union, the largest money remitter operating in Austria, is licensed as a credit institution. As a global player this remitter is aware of ML/TF risks and the required obligations.

239. Apart from banks three commercial payment service providers are licensed in Austria. These three payment service providers focus on a limited scope of payment services for merchant clients only.

240. Additionally 281 payment service providers are notified in Austria via the EU´s passporting regime (mostly originating in the UK and Ireland). They operate through 372 agents and sub-agents that are notified to the FMA.

241. Due to gaps in the Austrian legislation, agents of payment service providers notified under the freedom to provide services are not sufficiently covered by the Austrian AML/CFT regime. This reduces the risk awareness of these entities and leads to significant concerns in light of the sector's vulnerabilities (lack of customer identification, no established business relationships, high cash amounts).

242. FMA explained that deficiencies regarding the risk analysis and/or risk scoring for all types of financial institutions mentioned above were mainly caused by an insufficient level of details for the different risk criteria. Some financial institutions have failed to include all relevant factors in their risk analysis. Following the FMA's on-site reports of the last years a decline of failures could be noticed as financial institutions' analysis seems to become more granular.

DNFBP

Lawyers

243. The work as a self-employed lawyer can be exercised as a single lawyer or in form of professional associations like general partnership, limited partnership, limited-liability company or civil-law partnership. There are no in-house lawyers since lawyers in Austria are not entitled to be employed by other persons than lawyers.

244. The lawyers interviewed by the assessment team have good risk awareness and do understand their AML/CFT obligations. They fear they could lose reputation if their business would be associated with criminal offences like ML or TF.

245. The proportion between lawyers and population is approximately 1 to 1 420, which appears balanced when compared to other European countries. However, there is a general concern that lawyers with difficulties in finding customers may offer service to high-risk clients.

246. Nevertheless, lawyers have the knowledge to provide services to clients involved in ML/TF by creating companies, investing in real estate and conducting other legal practices to disguise criminal activity. Additionally, in Austria lawyers have to conduct transaction for their clients via an escrow account, which has to be managed by a bank. There are doubts whether lawyers have the possibility to check the origin of the assets in every case since they have to rely on the information provided by their clients.

247. There seems to be no sufficient overall approach within the profession of lawyers to analyse risks and develop AML/CFT systems to reduce these risks for the whole sector.

Notaries

248. Most notaries run their offices by themselves. There are strict access requirements to the profession in place and they offer a highly standardised business.

249. The notaries play a key role within the economic system in Austria. They are often involved in high risk business like company formations and real estate transfers to document the

corresponding contracts by notarial deed. In most of these cases the notaries facilitate the financial transactions, too.

250. In all cases notaries have to deposit their client's assets as part of a notarial escrow which requires registration with a qualified credit institution (to date only Notartreuhandbank AG is the only authorized institution). If a notarial escrow is linked to a direct or indirect authorisation of the notary to make dispositions over third-party funds or other third party assets of money value, and if the escrow is not for a minor amount (up to EUR 10 000) the notary must register the escrow in the Register of Escrows of the Austrian Notariat at the latest before he makes a first disposition.

251. The notaries interviewed by the assessment team have a good understanding of the risks related to the nature of their business, such as non-residents buying real estate, formation of companies and foundations for non-residents or on behalf of non-resident beneficial owners. They exercise additional due diligence measures in case of legal persons or arrangement from jurisdictions with insufficient disclosure requirements.

252. However, there are concerns that notaries are led by the rigid prescriptive process and therefore might not have a sufficient risk-based approach in every case. There might be lack of awareness in the field of identifying the origin of funds. The standardised process as a standalone measure does not guarantee a satisfactory level of transparency.

253. Notaries receive regular updates on legal developments and risks through the Chamber of Notaries for example about information provided by the Austrian Government or FATF. However, it is unclear whether this information has any impact on the work of the notaries. Notaries could improve their contribution to the national AML/CFT system by more actively assessing their risk and not only relying on primary external information.

Casinos

254. One licensee runs 12 casinos allocated in several parts of Austria. The sector could be considered as very small.

255. Due to the restrictive conditions and the overall control of the licensee a system has been set up that seems to take into account the risks (large cash amounts, lack of customers identification, peaks of fast business with rapid changing customers) sufficiently. The risk mitigating measures include comprehensive access controls, CDDs, record keeping, visitor screenings (regarding number of casino visits and gambling behaviour).

256. Casinos are aware of risks and obligations sufficiently.

Auditors and accountants

257. Auditors and accountants do not normally manage customers' assets and funds. However, the auditors and accountants have access to the books and other important company information that may give hints about suspicious transactions. In addition, accountants sometimes hold shares on behalf of their clients (in a Treuhand arrangement). The auditors and accountants the assessor team interviewed are aware of ML/TF risks and try to implement risk mitigating measures, the most common one is refusal of business. However, a general obstacle is that the liberal professions which are practiced on the basis of professional qualifications in a personal and independent way are

defined by a special law protected relationship to their customers. This might be contradictory to AML/CFT obligations and raises concerns.

Office services

258. Offices services (providing business address and secretariat for companies professionally) are a growing business in Austria and it seems that the authorities do not adequately supervise these businesses for AML/CFT. There are therefore ML/TF vulnerabilities given that low supervisory activities often lead to implementation failures regarding risk mitigating measures like CDD, record keeping, business refusals etc.

Real estate agents

259. Real estate agents are not allowed to fix contracts or to conduct transactions for their customers. Therefore the risks linked to real estate managers could be considered as low. Real estate agents are aware of these general risks.

Dealers in precious metals/stones/antiques etc.

260. Dealers of precious metals/stones/antiques etc. do not recognize the ML/TF risks coming with their business. This is a major concern. It is very common in Austria to pay large amounts of cash when buying luxury goods and therefore the dealers do not feel that it could be suspicious if a customer insists to pay cash, even when it is a very high amount. Concerning the EUR 15 000 threshold there seems to be an awareness that they have to ask for ID information. In contrast the dealers are not interested in getting information about the origin of the money. They fear that they could lose customers if asking too much. This raises serious concerns.

Application of risk mitigating measures

Banks

261. Following their risk assessment banks implement risk mitigating measures in a sufficient way. AML/CFT policies, internal controls and programs differ from bank to bank depending on size and structure (large banking group, decentralized sector and private banks). Large banks run elaborate systems to profile and manage ML/TF risks for their worldwide operations. Austria's decentralized banking sector (saving banks, Volksbanken- and Raiffeisenbanks) adapted AML/CFT requirements by streamlining their risk mitigating measures through the second tier banks. Private Banks improved their ML/TF risks awareness in the last years and tailored the customer acceptance policies accordingly.

262. However reports of FMA show that there are still AML/CFT failures committed by the banks and therefore the sector should strengthen its systems. The most wide spread failures in 2011–2015 were lack of beneficial owner information, failure to submit an STR, deficiencies in on-going monitoring, lack of enhanced CDD with regard to PEPs, and insufficient customer identification (see also statistics in Immediate Outcome 3).

263. A major concern is linked to the systemic role Austrian banks have in Central and South-Eastern European Countries. Austria´s banking system is the main common lender and plays a gate-

keeper role with market shares above one-third in the Czech Republic, Croatia, Romania, Slovakia, and Bosnia and Herzegovina. The large international operating banks interviewed by the assessors understand the risks coming with this business and have implemented group-wide measures and programs although there is no specific requirement for banks to have a business wide compliance function in the law. However it is unclear whether these programs are sufficient and whether all of the Austrian banks are aware of the gaps in the Austrian ALM/CFT regime and willing to comply on a voluntary basis.

264. The interpretation of Austrian bank secrecy provisions by banks seem to be an obstacle to sharing customer information across international banking groups.

Insurance

265. Given the characteristics of the life insurance business, AML/CFT risk-mitigating measures are largely homogenous. Starting with assessing the risk criteria like customer, distribution channels, products and transaction risks insurance companies create their ALM/CFT measures along risk classifications. These include the implementation of procedures regarding the identification/verification process, risk-based ongoing monitoring and implementation of internal controls. The measures in place are adequate.

Securities

266. All investment activities performed by investment service providers for the client are subsequently executed via a bank account. As result of this arrangement, CDD must be carried out both by the investment service provider and the bank, as both are subject to AML/CFT requirements vis-à-vis the client. In practice, CDD policies and procedures conducted by investment service providers are – in the case of smaller firms – directly mandated by the custodian bank through the use of specific CDD/KYC templates; or – in case of larger investment service providers – defined based on regulatory obligations to establish investor profiles that inter alia require scrutiny of a client's source of wealth. The particularities of the securities business, involving both banks and specialized investment service providers, prescribe the application of risk mitigating measures both in the bank and the investment service provider with regard to the same client. Some uncertainties remain as some smaller investment service providers use relevant templates/forms mandated by banks, rather than adjusting the CDD measures themselves. This may be mitigated by the fact that investment service providers establish detailed KYC (investor) profiles and verify the source of wealth.

Money or value transfer services

267. Due to gaps in the AML/CTF regime the FMA is not able to directly assess whether payment service providers offering services via the EU´s passporting regime and their agents have implemented adequate risk mitigating measures.

268. Accordingly the assessor team was not able to interview them to make an independent assessment of their measures.

269. Therefore it is unclear whether the passported payment service providers and their agents understand and fulfil the obligations. This is a significant concern.

DNFBPs

Lawyers/notaries/ auditors and accountants

270. The bar/legal profession is defined as an independent body within the administration of the justice in the Austrian legal framework. Most of the lawyers operate as single lawyers or in very small companies so that some of the possible measures like for example implementing of audit units or creating of trends and typology reports are not appropriate. However, the regional Bars undertake measures to facilitate risk analysis by providing knowledge about recent trends and typologies of money laundering (for example by circulating FATF documents). Big law firms, operating in an international context, do know their obligations and have the resources to implement the necessary measures to mitigate risks like staff training, implementing internal AML/CFT policies, etc.

271. These findings apply to notaries and accountants and auditors accordingly. For single notaries respectively accountants it is not practical to implement all of the risk mitigating measures.

272. As said before, notaries seem to have a general understanding of the risks they face, however, they might not have a sufficient risk based approach in every case. As an additional measure, they rely on support provided by the *Notartreuhandbank AG* concerning the check of clients (natural persons and legal entities).

Casinos

273. Casinos know their obligations and have risk mitigating measures like staff training, internal policies etc. in place. There is some concern that customers are allowed to buy chips with cash at the tables, so that it is possible to circulate money without involvement of the cashier. However, this risk is mitigated by the pit bosses who supervise and note every cash transaction in a ledger in real time.

Real estate agents/Dealers in precious metals/stones/antiques etc.

274. Real estate agents and tradespersons generally do not have risk mitigating measures in place.

Application of enhanced or specific CDD and record keeping requirements

Banks

275. Risk classification of customers at larger banks is based on automated scoring systems. Banks generally divide their customers in three or more different risks categories, for example low/medium/high risk. The risk classifications serve as a basis to define the scope of CDD measures e.g. requesting more detailed KYC information regarding higher risk customers.

276. Some of the Austrian banks maintain business relationships with customers from off-shore financial centres. Most banks classify such customers as high risk customers. Limited beneficial ownership transparency in off-shore jurisdictions continue to pose challenges for banks when accessing beneficial ownership information located in these jurisdictions. Apart from the scrutiny of company documents and conduct of their own research, banks consult accessible business registers

and resort to databases of international providers such as *Dunn & Bradstreet* and *Bureau van Dijk* in line with international practice. In Austria the register of companies (*Firmenbuch*) provides information about the beneficial owner and company formation contracts that may help to identify the beneficial owner. In this context a major risk seems to be, that only a few countries implemented BO registers and therefore the banks are often not in the position to receive sufficient information, even if they ask the customers for additional documents.

277. The interpretation of Austrian bank secrecy provisions by banks seems to be an obstacle to sharing customer information across international banking groups to support effective enterprise-wide risk management.

Insurance

278. In principle insurance companies take the same steps as banks. To minimize risks, insurance companies set different preventive CDD measures, for instance payments in cash are not accepted, refusal of business relationships with customers not domiciled in Austria etc. Additionally, FMA requires insurance companies to implement a risk scoring for each individual customer.

279. There seem to be no significant issues with implementing of CDD and record keeping.

Securities

280. As indicated above, investment service providers have to require the same identification documents and set up similar verification processes as banks. There seems to be an awareness regarding these obligations within the sector.

Money or value transfer services

281. With regard to the customer identification, the institutions distinguish between occasional transactions and business relationships. Occasional transactions are generally either carried out through a network of agents or are performed online via the institutions website. In general, the institutions require that their agents use standardized questionnaires and EDD in case the client wants to transfer larger sums.

282. Online transactions require mandatory online registration before transactions can be processed. Once a customer´s total volume of transaction exceeds a certain threshold, the ID information must be re-submitted. Some PSPs are known to apply a EUR 5 000 transaction ceiling per customer within a time period of three days.

DNFBPs

283. DNFBPs in general do know their obligations and comply with the customer identification requirements for the most part.

284. The biggest challenge for DNFBP is the identification of the beneficial owner, in particular if there is a connection to cross border activities. Especially tradespersons seem to be reluctant to ask the customer for beneficial owner information or the source of funds. In their view it is not polite to ask too many questions given that their possibility to verify the information customers give are limited.

285. Casinos and tradespersons do not have specific measures to detect PEPs. They rely on customer's information if asking at all.

Suspicious transactions reporting

286. There is a serious concern with regard to how STRs are being treated by the law enforcement. There have been numerous instances (across different types of reporting entities) where customers became aware that an STR was filed in their respect and raised complaints against the reporting entity (see also analysis of IO6 for more information).

287. This does not seem to have a significant impact on major international banks where the level of compliance is high, but it may have substantial effect on other reporting entities since almost 83% of credit institutions (mostly local cooperative banks whose STRs are generally submitted by the 2nd tier institutions, and insurance companies) had not reported any STR in the year preceding the evaluation.

288. The DNFBP sector is also very reluctant in forwarding STRs due to the same reason as described above.

289. Tradespersons – in comparison to other DNFBPs - do not have enough knowledge about ML/TF typologies and do not know exactly how to file a STR and which authority is in charge.

Table 23. **Suspicious Transaction Reports**

	2011	2012	2013	2014
Credit institutions, of them	1 858	1 457	1 255	1 507
banks	*856*	*947*	*941*	*1 177*
money remitters (including Western Union)	*1 002*	*510*	*314*	*330*
Tradespersons	4	14	5	4
Insurance	4	10	13	19
Lawyers	8	8	10	12
Casinos	2	3	2	3
Notaries	1	3	7	4
Public accountants and tax advisers	1	2	1	3
Auctioneers	0	0	1	1
Commercial accountants	0	0	1	0
Real estate agents	0	0	1	0
Other public authorities	237	168	194	120
Total	**2 115**	**1 665**	**1 490**	**1 673**

Overall conclusions on Immediate Outcome 4

290. **Austria has a moderate level of effectiveness for IO4.**

CHAPTER 6. SUPERVISION

Key Findings and Recommended Actions

Key Findings

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.

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. 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

In some cases (particularly the local district authorities), authorities lack the necessary expertise to conduct effective inspections.

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.

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.

Recommended Actions

Austrian financial and DNFBP supervisors should increase their efforts to promote a better understanding among supervised entities and individuals of ML/TF risks and their expectations regarding the implementation of the risk-based approach to managing AML/CFT risks within the financial and non-financial sectors.

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.

FMA should strengthen cooperation with home country supervisors of MVTS providers who operate in Austria under an EU passport to ensure that AML/CFT risks associated with such entities are managed effectively. Austria should amend its laws to enable FMA to directly supervise agents used by foreign MVTS providers notified under the EU passporting regime in accordance with the level and nature of risks they present.

FMA should consider taking steps to increase the dissuasiveness of its sanctions to improve effective compliance.
Austria should enhance monitoring of certain DNFBPs such as TCSPs and dealers in high-value goods, including by providing adequate resources and training to the local district authorities.

291. The relevant Immediate Outcome considered and assessed in this chapter is IO3. The recommendations relevant for the assessment of effectiveness under this section are R26-28 & R.34 & 35.

Immediate Outcome 3 (Supervision)

Licensing, registration and controls preventing criminals and associates from entering the market

292. Licensing, registration and other controls effectively prevent criminals and their associates from holding, or being the beneficial owner of a significant or controlling interest, or holding a management function in most financial institutions. The main gap is in "passported" agents, described below. The FMA conducts criminal background checks, which includes obtaining criminal records no older than three months and seeks to understand and analyse proposed ownership and control structures to identify beneficial owners in its review and processing of financial institution licensing applications. While 64 credit institution licenses either lapsed or were revoked between 2010 and 2014, none of these actions were based on the identification of criminals and their associates, but rather to prudential concerns. The FMA's Department I (Banking Supervision) refused four applications between 2010 and 2012, granted nine and extended 29. The reasons for the refusals included: 1) a complex ownership structure, which would have presented supervisory challenges and; 2) a business plan that was non-compliant with BWG requirements, including financial soundness.

293. Between 2012 and 2014, the FMA's Department III (Securities Supervision) approved 99 fit and proper tests of senior managers in the securities sector and denied three. In the insurance sector, 17 such tests were approved during this period, in addition to two refusals. Single Supervisory Mechanism (SSM) of the European Central Bank (ECB) and EU member state supervisors has been in place since 4 November 2014, which means that now overall responsibility for licensing all credit institutions operating in Austria rests with the ECB.

294. The FMA 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 division (Division

IV/4) focused on these activities. In 2014, FMA initiated 230 investigations in this regard, which resulted in 23 on-site inspections. During this period, the FMA also issued 52 statements of fact to the public prosecutor's office. The FMA estimates that 25-50% of these activities relate to boiler-room scams that are most likely to originate from off-shore locations. It identifies these activities through supervisory measures, including on-site inspections and investigations. Division IV/4 conducts its own investigations and relies on different sources of information, which include referrals from law enforcement as well as other sources.

295. Measures to prevent criminals and their associates from owning or controlling DNFBPs are generally sound as well. Criminal background checks and fit and proper tests are conducted for DNFBPs. Lawyers, accountants, tradespeople and notaries are all subject to fit and proper tests as well as criminal background checks. District authorities responsible for licensing trade activities indicated that their licensing process included a review of the candidate's background against criminal records, a requirement of certifications from the authorities in their home countries that they did not have a criminal background. In the absence of such certification, authorities indicated that in principle, they could consider a self-declaration from the individual.

296. Data related to applications and fit and proper testing is maintained by regional and local authorities, so the team used data and information available for Vienna as proxy for the country since the majority of the country's DNFPBs do business in this location where the majority of transactions are conducted. Data provided indicates that between 2012 and 2015, fit and proper tests were conducted for all applications received from dealers in precious goods, gems and metals and jewellers, general tradespeople, real estate agents, business consultants, office services providers and insurance intermediaries. In general, the application rejection rate was low during this period. All of the applications received from jewellers and dealers in precious goods, gems and metals were approved between 2012 and 2015. Only one application was rejected for office services during this period. The rejection rate for business consultants, insurance intermediaries, and real estate agents was less than 1% during this period.

Supervisors' understanding and identification of ML/TF risks

297. In general, Austrian supervisors have a sound understanding of money laundering and terrorist financing risks present in the country's financial sector. However, a similar identification and level of understanding is not present among local district authorities that supervise insurance intermediaries and certain DNFBPs (tradespeople).

298. Division IV/5 of the FMA is responsible for AML/CFT supervision. This division has 13.25 full time employees equivalent staff units – 7.25 FTEs are assigned to implement off-site measures, and 6 to on-site measures. These resources are shared as needed. The Division's responsibility covers credit and payment institutions and insurance companies, while FMA's Division III/2 supervises investment firms and investment service providers for AML purposes.

299. The FMA has a sound understanding of money laundering and terrorist financing risks associated with credit institutions. This is reflected in the supervisory tool developed early in 2015 to risk-score its supervised institutions. The tool scores risk based on four risk categories: customer, geography, product/service and distribution channel. These categories breakdown into sub categories that reflect risks present in the jurisdiction such as those associated with politically exposed persons (PEPs), correspondent banks, private foundations (*Privatstiftungen*), foreign

foundations/trusts, money remitters, as well as schemes such as back-to-back fiduciary business arrangements. This risk model is further detailed in the section below.

300. Even with its sound overall identification and understanding of ML/TF risks, important gaps exist in Austria's risk framework. One of these gaps relates to the activities of foreign e-money companies that are operating in Austria under EU "passporting" regime. Sixty-three foreign e-money and 281 foreign Payment Service Providers (PSPs) and their agents have been notified under this regime.[11] Due to supervisory arrangements under the EU passporting regime, and gaps in Austria's legislation, the Austrian authorities have limited knowledge of these entities' activities and associated risks, which, regardless of where the entities are regulated affect the overall level/nature of risk in the jurisdiction. This limitation is especially relevant with respect to growing inbound remittance corridors – that may be associated with foreign fighters and refugees.

301. The FMA maintains that prior to the development of its supervisory tool in 2015, it had established a process for risk-rating its institutions which formed the basis for its supervisory strategies. This process was formalized with the adoption of the tool whose results are in line with those achieved prior to the application of the tool.

302. A similar understanding exists in the Chamber of Notaries with respect to money laundering risks associated with the real estate sector and involvement in *Treuhandschaften*. While district authorities exhibit an understanding of the types of trade activities conducted in their districts, they have not sufficiently identified and understood the risks associated with these activities.

Risk-based supervision of compliance with AML/CTF requirements

303. Since its creation in 2011, Division IV/5 has applied a risk-based approach to supervision that uses information obtained through the application of the off- and on-site measures described below to rate institutions based on residual risk remaining after control measures are applied to inherent risks associated with institution products, geographies, distribution channels, and customer bases. Institutions identified as higher risk are subject to greater scrutiny, which includes transaction testing as appropriate.

304. In early 2015, the FMA took steps to strengthen and formalize this approach and designed a tool noted earlier to numerically risk-rate its supervised credit institutions. The FMA tool uses information directly collected from credit institutions to identify inherent risk present in the institutions. Point scores are assigned that reflect the effectiveness of an institution's control measures. These include on-going monitoring, identification of beneficial owners and the conduct of CDD and EDD. Assigned low, moderate, elevated and high ratings are based on inherent risks

[11] With respect to the supervision of passported payment institutions under the current EU framework, the home supervisor is responsible for the AML oversight of the authorised payment institution operating under the free provision of services. In that case, should the host supervisor become aware of concerns about the AML/CFT compliance in its territory, it should inform the home supervisor who can take the adequate action to address the shortcomings, including by delegating supervisory powers to the host authority. When a payment institution operates under the freedom of establishment in the host country, AML supervisory competences belong to the host supervisor. At the time of the onsite inspection there was a lack of clarity whether agents should be considered a form of free provision of services or establishment. (The 4th AML Directive will further strengthen the cooperation). The assessors concluded that there was very limited interaction between FMA and the home country supervisor in that respect.

associated with products/services, distribution channels, geographies and customers. Going forward, such collections will be conducted annually.

305. The FMA also utilises on-site inspections, statutory audit reports, information collected during company visits, and other financial intelligence sources to assess the quality of their institutions' preventive measures. It also collects information on the nature and scope of the institutions' businesses, customer bases, products and services, geographies and distribution channels using an online reporting tool to identify inherent risk. Individual institutions are then risk-rated based on residual risk. As of November 2015, the FMA had conducted two on-site inspections using ratings generated by this formalised tool.

306. Using this tool, the FMA identified 54 banks as medium and higher risk based on the level of inherent risk present in the institution and accounting for the effectiveness of their control measures. Of the 54 banks identified, 24 fall into the higher risk levels, seven of which are rated at the highest level.

307. In line with its risk-based scoring system, the FMA conducts its supervision of financial institutions through a combination of on-site and off-site measures. Off-site measures include the review of audit report annexes that identify AML/CFT issues in institutions, legal enquiries from supervised institutions, notifications of changes in AML officers, fit and proper tests, administrative proceedings, on-site inspection reports, and STRs submitted to or referred by the A-FIU. Off-site measures also include investigation proceedings as well as administrative proceedings (to restore legal compliance) initiated as follow-up to on-site measures, as well as referrals made to the FMA from prudential inspections conducted by the OeNB. Compliance with targeted financial sanctions is monitored by the OeNB.

Table 24. **FMA Off-site measures**

	2011	2012	2013	2014	2015 (Q3)
Investigation proceedings	85	72	138	135	95
Administrative proceedings to restore legal compliance	8	17	16	29	29
Annexes to the audit report	824	816	793	780	746

308. In 2011, the FMA initiated 85 investigation proceedings that increased to 138 in 2013, with a slight decrease to 135 in 2014. In 2014, FMA also initiated 29 administrative proceedings to achieve legal compliance. With respect to external audit reports that allow the FMA to establish a baseline knowledge of the institution's compliance program, the supervisor received 824 report annexes in 2011 and 816 in 2012. These numbers decreased in 2013 to 793 and 780 in 2014, but continued to remain significant.

309. In addition to off-site measures, the FMA also applies on-site measures that include company visits and on-site inspections. In considering on-site measures, the FMA *inter alia* takes into account the nature of the institution's inherent risks associated with the market it serves, its business model, quality of preventive measures, media reports, complaints from the general public, information from whistle blowers, and institution size and location.

Table 25. **FMA On-site measures**

	2011	2012	2013	2014	2015 (scheduled)
Total number of on-site measures	30	38	35	54	58
Thereof on-site inspections	12	18	15	24	28
at banks	5	7*	10	18	19*
at insurers	2	2	1	2	2
at PSPs	1	-	-**	-	-
at investment firms & service providers	4	9	4	4	7
Thereof company visits	18	20	20	30	30
at banks	18	19	18	26	25
at insurers	-	-	2	4	4
at PSPs	-	1	-	-	1***

* In addition to the FMA's on-site inspections, 2 ad hoc targeted inspections at credit institutions were conducted by audit firms in 2012 and 2015 respectively.

** One inspection took place at an Austrian subsidiary of a large international PSP, licensed as a credit institution.

*** In addition to one company visit at a PSP, another company visit is scheduled at a credit institution, acting as a central agent of a foreign PSP.

310. In 2011, the FMA applied 30 on-site measures: 12 on-site inspections and 18 company visits. The number of on-site measures increased to 54 in 2014 and consisted of 24 on-site inspections and 30 company visits. Fifty-eight on-site measures took place in 2015, which consisted of 28 on-site inspections and 30 company visits.

311. On-site inspections average 1-2 weeks in terms of duration, while company visits average half a day. Data provided by the FMA indicates that a Division staff member conducts an average of eight on-site inspections and 12 company visits annually. The Division's responsibility covers only banks, payment service providers, and insurance companies, while FMA's Division III/2 supervises investment firms and investment service providers for AML purposes.

312. With regard to the local and community banks and cooperatives, the FMA's initial supervisory focus is on the second tier banks – i.e. the eight regional Raiffeisen Landesbank RLB ("2nd tier") banks which are owned by the 473 local Raiffeisen banks ("1st tier"). This is due in part to the location of centralised functions in these entities and to the risks associated to their customer bases and product/service offerings. Similarly, the objective of off-site reviews is to identify potential regulatory violations and risk management issues, which could lead to opening investigation proceedings and may ultimately result in on-site inspections. Additional reviews of first tier banks are conducted inter alia based on triggering events identified in applying off-site measures, or on any particular higher-risk profile of one of these entities.

313. The FMA indicates that the results of its supervisory approach prior to 2015 is supported by the results of the tool. Since 2011, it has covered 48 (89%) of the 54 banks identified as medium or higher risk through on-site measures, with 41 (76%) subject to on-site inspections.

314. Of the 54 banks identified, 24 fall into the higher risk levels, and 7 of these are rated at the highest level (i.e. having the highest inherent risk and applying the least effective control measures). The measures for these 7, since 2011, were as follows:

Table 26. **Supervisory Measures for the Highest Risk Banks**

	On-site inspections	Company visits	Off-site proceedings
Bank 1	2	-	1
Bank 2	1	1	5
Bank 3	1	1	4
Bank 4	2	-	29
Bank 5	1	1	33
Bank 6	1	1	2
Bank 7	1	-	12

315. While FMA applies a methodology for risk-rating the institutions it supervises, it does not appear to sufficiently apply supervisory actions in line with these ratings. Between 2011 and 2015, four of those seven banks had received only one on-site inspection each. The remaining two banks received two inspections. During this period, all of the banks were also subject to off-site proceedings. Two that were subject to 29 and 33 off-site proceedings are also subject to imposed and pending sanctions.

316. This may be a function of its limited access to resources as the FMA currently employs 6 FTEs as on-site inspectors and 7.25 FTEs in off-site/enforcement. While overall on-site inspections increased between 2011 and 2015, there is a greater reliance on the application of off-site measures, even in the case of the highest-risk institutions. And this is reflected in the number of off-site measures applied during this period to these institutions. The majority of the higher-risk banks received only one on-site inspection in this period even though their risk profiles may indicate a need for more frequent inspection. Only four of the seven banks also received company visits during this period. One of the seven that was subject to 33 off-site proceedings, received one on-site inspection and one company visit and is the subject of sanctions.

317. Resource limitations also affect the FMA's ability, not only to apply supervisor measures that are commensurate with the level of risk, but to act on a timely basis to mitigate further exposure of its institution to risk. Two of the seven banks that are subject to a significant number of off-site proceedings and sanctions, received 1-2 on-site visits over the four-year period. Furthermore, continuing resource constraints increase the risk that the frequency, intensity and combination of supervisory measures applied by the FMA will be defined by resource considerations and not by institution risk profiles as it should be.

318. In addition, supervisory arrangements under the EU passporting rules do not provide adequate control of AML/CFT risks associated with these entities. The Austrian financial sector is home to 281 foreign passported Payment Service Providers (PSPs), including 274 agents and 63 e-money providers including 1 agent. While Austrian law requires all passported entities to fulfil domestic AML/CFT obligations and subjects them to FMA supervision, there is no legal requirement for the Austrian supervisors to exercise their authority over these agents. The FMA follows the EU

rules and refers any issues they identify to the home supervisor. It is difficult to understand the impact of this sector on risk in the jurisdiction since the FMA has only a limited understanding of the volume and nature of the activities of these entities in Austria. However, given the level of ML/TF risk generally associated with these entities and the growing importance of certain remittance corridors, greater exercise of Austrian supervisory control should be considered. Austrian law should be changed to allow FMA to properly supervise these entities.

DNFBPs

319. Available sanctions for some DNFBPs appear to be effective, dissuasive and proportionate although there is limited data and information relative to how they are applied for purposes of achieving AML/CFT compliance. For most DNFPBs, the possibility of losing a license and the ability to earn a living serves as an effective deterrent.

320. DNFPB supervision is based more on statutory requirements rather than risk analysis or ratings. On-site inspections of accountants are conducted every six years for general auditors and every three years for auditors that audit pubic interest companies such as credit institutions and insurance companies when certifications are renewed. There are no checks conducted between certification periods and compliance with AML/CFT obligations is checked during these recertification processes.

321. There are 12 casinos in Austria, which are operated by one company that holds all 12 licenses. Supervision of these casinos is conducted by the BMF, and this supervision is sufficient. The BMF has a staff of ten inspectors who conduct random on-site inspections that include AML controls. Inspectors use a prescribed form to collect information on a monthly basis from the casinos. This information which covers AML compliance is reviewed and used for on-site inspections.

322. The six regional Chambers of Notaries conduct regular inspections of notary files to check for compliance with AML/CFT obligations. Art. 155 NO regulates the elements of a violation of the disciplinary duty (Standespflichtverletzung) and what type of offence the violation constitutes (either a disciplinary offence or a minor offence). Art. 156 NO differentiates between the two proceedings of either a proceeding concerning a disciplinary offence or a proceeding concerning a minor offence. Between 2012 and 2014, the six regional Chambers of Notaries conducted the following on-site inspections, resulting in the following administrative proceedings. Proceedings concerning a minor offence are proceedings concerning administrative offences (Ordnungsstrafverfahren). Art. 155 (2) NO stipulates: "*Violations of disciplinary duties are either major disciplinary offences that will be sanctioned by the superior regional court acting as a disciplinary court after a hearing by the senior public prosecutor, or minor disciplinary offences which will be sanctioned by the chamber of notaries."* Thus, both of these proceedings concern violations of disciplinary duties. Sometimes when a proceeding concerning minor offences (proceeding concerning administrative offences) is introduced the case is transferred to the superior regional court as disciplinary court that introduces a proceeding concerning a "disciplinary offence" (major disciplinary offence).

Table 27. **Inspections and proceedings by the six regional Chambers of Notaries**

	2012	2013	2014	2015
On-site inspections	99	181	89	82
Administrative proceedings	14	22	17	10

323. Most of the inspections and administrative proceedings were carried out by the Vienna, Lower Austria and Burgenland chamber. This chamber initiated 17 proceedings related to administrative offenses against members of the notarial profession in 2013; 12 in 2014 and 5 in 2015. A total of six of these cases were transferred to the higher regional court that introduced disciplinary proceedings. However, none of these related to AML/CFT deficiencies; no proceedings related to AML/CFT violations have been initiated in the profession since 2011.

324. Lawyers are supervised by the boards of the nine regional bar associations. Supervisory reviews of lawyers focus on individual lawyers and are either regular or triggered by an event such as complaints from colleagues, indications of financial problems such as failure to pay expenses, etc. Such complaints could trigger a special review of the lawyer as well as the firm. While regular reviews are conducted, it appears that most reviews are triggered by specific events, rather than risk. In the absence of triggering events associated with individual lawyers in a firm regardless of size, client base, types of services offered, it is unlikely to be reviewed.

325. Lawyers are subject to a rigorous disciplinary process. AML obligations are integrated into the code of conduct and once an event triggers a disciplinary action the lawyer is subject to review by the bar association as well as the disciplinary council under the Lawyer's Act. The latter is an independent body that consists of lawyers elected by the bar to serve as judges for a four-year period. Decisions of the disciplinary authority may be reviewed by the Supreme Court, which consists of two judges and two lawyers elected as judges. The disciplinary council has a range of disciplinary and intermediate measures that it can apply, including prohibition from appearing before certain courts, suspension for a period of time depending on the severity of the infraction and disbarment. Once disbarred, a lawyer may apply for re-admission after a period of 5-10 years but would have to pass the "good character" test and obtain insurance, which may for all practical purposes, prevent re-admission. A similar situation exists with respect to accountants who may also face the loss of certification and required business insurance, in addition to potential fines of up to EUR 14-15,000. Only the higher regional court can impose a suspension from office for a notary.

326. No applications for admission to the bar were rejected out of a total of 305 applications in 2015; one out of a total of 315 applications was rejected in 2014; one out of 270 in 2013 and none out of a total of 300 in 2012. Most of the applications (around 200 annually) were filed for admission to the Vienna bar. Data on sanctions/administrative penal proceedings was only available for Burgenland, which indicated that 16.3% of members were subject to checks by the bar association in 2014; 15.57% in 2013 and 15.14% in 2012. Between 9-16% of the checks resulted in sanctions/administrative penal proceedings.

327. While self-employed tradespeople and businesses are subject to sanctions that could result in the loss of licenses or other employment certifications, it is difficult to determine if the application of sanctions by district authorities are effective and dissuasive in the absence of sufficient data/information. Sanction practices vary by local district and region. And given the shortcomings

noted above with respect to understanding ML/TF risks and training, effective application does not appear to be achieved. A similar situation exists with respect to jewellers, dealers in precious metals and antiquities where appropriate risk mitigating controls are absent. No STRs were filed in 2012, and 2 were filed in 2013.

328. In 2012, the local district authorities conducted on-site inspections in four of the nine regions in 2012 and five of the nine in 2013. While the same four districts were inspected in both years, there were districts for which information was not provided for either year. No information was provided on administrative penal proceedings or fine amounts.

329. In general, supervisory staff is well-qualified for their positions. However, there are exceptions in the DNFPB sectors. FMA staff members have banking, economics, insurance, and audit backgrounds. Staff with less than three years of professional experience must enrol in a joint FMA-OeNB financial markets training program at the Vienna University of Economics for about 1½ years. Secondments to other agencies involved in AML/CFT such as the public prosecutor's office are available to staff to learn more about the country's AML/CFT regime. District authority representatives that regulate self-employed trades and business indicated that the necessary expertise was not always available for conducting supervisory inspections. They noted particularly the lack of accounting/finance expertise among inspectors that was needed to review company financial records to understand cash movements.

Remedial actions and effective, proportionate, and dissuasive sanctions

330. The various DNFBP supervisors and SRBs have never applied any sanction directly in relation to AML/CFT.

331. FMA has a full range of supervisory actions ranging from fines and measures to the revocation of an institution's license that it can apply to achieve compliance and escalates the application of these actions to enforce compliance. However, it appears that while financial penalties imposed by the supervisor may be proportionate, they are not dissuasive. FMA can apply a range of remedial actions to address deficiencies in AML/CFT programs implemented by financial institutions. The objective of these actions is to restore the financial institution to compliance with regulatory requirements or supervisory measures required by the FMA. The legal basis for taking enforcement actions is established in the respective sectoral laws, such as the BWG. The enforcement decision includes determining if the identified deficiency is a single occurrence or is systematic across the institution. Administrative proceedings to restore legal compliance can be initiated, because of either an on-site inspection, or an off-site investigation proceeding, although in the majority of cases, they are triggered by on-site inspections. In the course of administrative proceedings, the FMA informs the credit institution of its findings and clearly communicates the steps required to remedy the deficiency or violation.

332. A remedial action generally begins with the imposition of an order on the institution to remedy the identified deficiency/violation. In practice, institutions generally comply with FMA orders as initially communicated without the need for escalation to public enforcement actions and penalties. However, in the cases where enforcement actions are required, the FMA escalates measures that could range from the imposition of fines to the removal of members of the board of directors or senior management and ultimately the revocation of an institution's license. In a recent example, the FMA removed two directors following on-site inspections and investigations that uncovered serious ML/TF risk management failures at the institution. As a result, the institution

ultimately restructured its business focus and moved out of a significant segment of high-risk customers where adequate risk management was not feasible. In addition, the FMA imposed financial penalties on the directors.

333. The FMA can require the implementation of administrative proceedings to restore legal compliance. These proceedings vary in scope relative to the severity, number of identified deficiencies and level of institutional cooperation. Those initiated as a follow-up to on-site inspections may last several months and involve on-going written and oral communications and meetings. Proceedings are pending until legal compliance is fully achieved by the credit institution and/or deficiencies and recommendations are satisfactorily addressed as determined by the FMA's determination. The supervisor provides both informal and formal guidance to the credit institution throughout the process.

334. From this point on, the case is forwarded to the FMA's "Enforcement and Law" Division, which conducts a subsequent administrative penal proceeding. This can result in a penal decision (fine) or the FMA can escalate sanctions to force the removal of members of the board of the directors or senior management and ultimately, to terminate the credit institution's license.

335. FMA applies criteria established in the BWG, which requires consideration of:

- The severity (e.g. systems vs single case) and duration of the breach;
- The degree of responsibility of the natural or legal person responsible;
- The financial strength of the responsible natural or legal person as indicated, for example, by the total sales of the responsible legal person or the annual income of the responsible person;
- the amount of the gains made or losses avoided by the responsible natural or legal person, insofar as they can be determined;
- losses caused to third parties by the breach, insofar as they can be determined;
- level of cooperation of the responsible natural or legal person with the competent authority;
- previous breaches by the responsible natural or legal person; and
- any potential systemic consequences of the breach.

336. Since 2011, the FMA's inspections have shown the following results, with the following fines imposed following penal decisions:

Table 28. **FMA's on-site inspection results**

Year	Deficiencies	Suspected Violation
2012	99	118 (systemic: 28)
2013	142	77 (systemic: 48)
2014	157	59 (systemic: 54)

Table 29. **Penal decisions imposed**

Year	Number of penal decisions	Total amounts (EUR)	Details
2011	7	21 000	• 1 penal decisions relating to beneficial owner information (EUR 1 000) • 6 penal decisions relating to the failure to (timely) submit STR (5x EUR 3 000, 1x EUR 5 000
2012	14	57 700	• 3 penal decisions relating to the failure to (timely) submit STR (3x EUR 3 000) • 3 penal decisions relating to ongoing monitoring (2x EUR 1 000, 1x EUR 1 500) • 1 penal decision relating to beneficial owner information (EUR 1 000) • 4 penal decisions, each relating to beneficial owner information | ongoing monitoring | failure to terminate business relationship | actuality of information (3x EUR 6 000, 1x EUR 5 100) • 1 penal decision relating to beneficial owner information |failure to (timely) submit STR (EUR 1 100) • 2 penal decisions, each relating to beneficial owner information | ongoing monitoring | failure to (timely) submit STR (2x EUR 10 000)
2013	9	245 200	• 3 penal decisions, each relating to customer ID | beneficial owner ID | ongoing monitoring | failure to terminate business relationship | EDD in relation to non-face to face | EDD in relation to correspondent banking | EDD in relation to PEP | failure to submit STR | AML/CFT systems (2x EUR 82 500, 1x 23 100) • 1 penal decision relating to customer ID | beneficial owner ID | KYC | actuality of information | failure to (timely) submit STR (EUR 3 000) • 1 penal decision relating to customer ID | beneficial owner ID | ongoing monitoring | failure to terminate the business relationship | actuality of information | failure to (timely) submit STR (EUR 39 000) • 2 penal decisions, each relating to customer ID | beneficial owner ID | ongoing monitoring | failure to (timely) submit STR (1x EUR 6 000, 1x 5 600) • 2 penal decisions, each relating to customer ID | beneficial owner ID | • ongoing monitoring | KYC | failure to (timely) submit STR (1x EUR 2 500, 1x EUR 1 000)
2014	6	21 000	• 3 penal decision relating to EDD in relation to PEP (2x EUR 2 500, 1x EUR 2 000) • 2 penal decisions relating to risk analysis (2x EUR 4 000) • 1 penal decision relating to customer ID | KYC (EUR 6 000)
2015 (up to Q3)	12	22 150	• 3 penal decisions, each relating to beneficial owner ID | AML/CFT systems (1x EUR 1 500, 1x EUR 1 000, 1x EUR 650) • 8 penal decisions relating to EDD in relation to PEP (2x EUR 4 000, 1x EUR 3 000, 2x EUR 2 000, 3x EUR 1 000) 1 penal decision relating to beneficial owner ID (EUR 1 000)

337. Based on on-site inspections, the FMA identified 99 deficiencies in 2012; 142 in 2013; and 157 in 2014. In addition, it identified 118 suspected violations in 2012 of which 28 were systemic; 77 in 2013 of which 48 were systemic and 59 in 2014 of which 54 were systemic. In 2012, the supervisor brought 14 penal decisions against credit institutions for a total fine of EUR 57 700. In

2013, the total amount of fines rose to EUR 245 000 for nine penal decisions and dropped in 2014 to EUR 21 000 over six penal decisions. The FMA appears to apply higher sanction amounts in systemic cases and cases where combinations of deficiencies are identified. Such an approach reflects a proportionate response since systemic cases and combinations can have a greater risk impact than single deficiencies. However, in the absence of additional information, these amounts appear low and do not appear to be dissuasive since failures to identify beneficial owners, file timely STRs or conduct on-going monitoring occur consistently over the time period between 2011-2015.

Impact of supervisory actions on compliance

338. In general, the institutions view FMA as the sector's AML supervisor and over the last three years have seen growth in the supervisory expertise as well as an overall improvement in the level and nature of communication with the sector. Credit institutions noted that since its inception, the FMA staff has grown in terms of experience and expertise and that communication between the credit institutions and the supervisor has improved. FMA also believes that both non-public and public supervisory actions it has taken facilitate the communication of its expectations to supervised institutions. Informal communication among compliance officers and the sharing of non-public supervisory actions with the Economic Chamber furthers the dissemination of information among institutions.

339. Data on types of findings provided by the FMA suggests that opportunities exist for further growth and improvement in these areas. Between 2012and Q1 2015, the supervisor identified 118, 77, 59 and 10 suspected violations in the course of its on-site inspections. This overall decrease may be indicative of an improvement in the industry's understanding of AML/CFT requirements. However, the number of systemic violations during this period appears to have increased from 28 in 2012 to 54 in 2014. Most of the suspected violations in 2014 related to PEPs and monitoring, which suggests opportunities for additional dialog. FMA argues that this increase is due to the increase in on-site inspections. This position supports the need for an increase in resources and frequency of on-site inspections, especially with respect to higher risk institutions.

340. A review of penal decisions and related fines indicate continued challenges faced by the industry in certain compliance areas. Information provided by FMA indicates that failures to file timely STRs, identify beneficial owners, conduct on-going monitoring, and identify customers appear every year between 2012 and 2014. While the FMA indicates that there are no cases of repeat offenders in the information provided, this indicates that challenges continue across the credit institution portfolio in achieving compliance in these areas that are not sufficiently addressed by current supervisory strategies.

Promoting a clear understanding of AML/CTF obligations and ML/TF risks

341. The FMA uses a variety of outreach methods to communicate with credit institutions to increase awareness and understanding of AML/CFT obligations. Between 2011 and Q3 of 2015, the FMA organized conferences and seminars to inform credit institutions of their AML/CFT obligations as well as participating in external conferences as speakers. It also uses its on-site as well as off-site measures such as legal enquiries and company visits to raise awareness and communicate supervisory expectations.

342. The anticipated 4th EU AMLD has provided a timely reason for DNFBP supervisors to actively communicate with supervised entities and individuals to increase their understanding of AML/CFT obligations. In addition to its outreach efforts, the Chamber of Notaries maintains a well-organized and extensive website that contains information on AML/CFT obligations as well as links to relevant information resources. The Chamber of Accountants provides information on its website and also conducts outreach to its members through workshops and supervisory guidelines and has established an internal AML working group to focus on potential emerging issues associated with the implementation of the AML Directive. AML training is required in the continuing education requirement established by the Chamber. Regional bar associations also conduct AML training, which is a continuing education requirement established by the Lawyers' Act.

343. Austrian supervisors should increase their efforts to promote a better understanding of ML/TF risks and their expectations regarding the implementation of the risk-based approach to supervision to the financial and non-financial sectors. While both financial institutions and DNFPBs indicated that they were aware of the NRA, the impact of the document appears to have been minimal in promoting a clearer understanding of ML/TF risks, taking into account the only recent dissemination of the NRA. Credit institution representatives indicated that it did not provide additional or new information and other industry representatives stated that they had not been involved nor had the opportunity to review the document. Others expressed confusion regarding the risk-based approach and its application and suggested the need for further clarification.

Overall conclusions on Immediate Outcome 3

344. **Austria has a moderate level of effectiveness for IO3.**

CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS

Key Findings and Recommended Actions

Key Findings

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.

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.

Recommended Actions

Austria should make publicly available more information about the creation and operation of legal arrangements (such as *Treuhand*).

Austria should introduce measures that would increase the transparency of the Treuhand arrangements.

Austria should make sure that beneficial ownership information both on legal persons and arrangements is available without delay to the competent authorities.

345. The relevant Immediate Outcome considered and assessed in this chapter is IO5. The recommendations relevant for the assessment of effectiveness under this section are R24 & 25.

Immediate Outcome 5 (Legal Persons and Arrangements)

Public availability of information on the creation and types of legal persons and arrangements

346. Most information on the creation and types of legal persons is available publicly. The types and features of the legal persons that can be created in Austria are set out in the Austrian legislation which is kept up-to-date and is accessible on-line at the Legal information system of the federal government (in German).[12]

[12] *Rechtsinformationssystem des Bundes* (RIS) (, www.ris.bka.gv.at.

347. In addition, the business portal of the federal government[13] describes the processes to be followed to create a legal person and the prerequisites that have to be met for that purpose (mostly in German, however, some information is available in English as well). Further information is also available at the website of the Austrian Chamber of Commerce,[14] the Founder's Service of the Chamber[15] and the HELP-service of the Federal Government.[16]

348. There is no information available and issued by the public authorities relating to the legal arrangements (*Treuhand*) that may be set up in Austria.

Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal entities

7

349. The NRA did not deal specifically with the risks or vulnerabilities of legal entities, and there was no separate formal risk assessment in that area. However, the competent authorities demonstrated their awareness of the vulnerabilities of the misuse of legal persons for ML/TF purposes.

350. According to the authorities, the most widespread type of legal persons involved in ML schemes domestically is limited liability company (*GmbH*) which is mainly due to the ease and cost of its creation. The risks will be higher if there is a professional intermediary (such as a lawyer or tax advisor) involved in the establishment and management of such legal person acting in the capacity of a trustee (*Treuhänder*).

351. In the cross-border context, the main risks are connected with those legal persons that have complex ownership structure with multiple layers of legal persons established in jurisdictions where the information on legal and/or beneficial ownership is not publicly available and reliable.

352. In addition to that, there is still evidence that bearer shares are misused for criminal purposes, although they are prohibited since 2011, and should have been converted to nominative ones. It is possible to register as a shareholder even after the conversion period had expired. However, it is not sufficient to simply present the invalid bearer share certificates: the person claiming to be a shareholder will either have to show that he/she already was in possession of the bearer share certificates when they became invalid (for example by showing that he/she had already participated in general meetings in the past) or must show how he/she acquired the shares. In practice, this means that the acquirer has to present a document proving his/her entitlement (for example a purchase agreement with the former shareholder or a document showing his/her position as the legal successor). In any case, this problem does not appear to be a systemic issue.

353. The identified TF typologies do not involve use of legal persons at all. There has been no evidence so far of possible misuse of non-profit organisations for TF purposes.

[13] *Unternehmensserviceportal* (USP), (www.usp.gv.at.

[14] *Wirtshaftskammer Österreich* (WKO), www.wko.at.

[15] *Wirtshaftskammer Österreich Gründerservice* , www.gruenderservice.at.

[16] HELP, www.help.gv.at.

Mitigating measures to prevent the misuse of legal persons and arrangements

354. The authorities took substantial measures to prevent the misuse of legal persons. All legal persons have to be registered in a central company registry maintained by the regional courts. In order for the company to be registered, all the documents (for example, the articles of association, ID papers, etc.) that are required by the legal provisions have to be submitted to a local court. Before that, the documents must be certified by a notary in the physical presence of the persons that are establishing the legal person. If the person establishing the legal person is acting on behalf of someone else, then the notary has to identify and verify the identity of the ultimate beneficiary and the power of representation of the actual client. The court examines the documents for their consistency and conformity with the legislation and takes the decision to enter the company into the register. This decision comes into force within two-three working days (i.e. when the entry appears in the registry). In cases where there are doubts about the documents submitted the court may request additional information from the notary. This does happen in practice when there is a complex ownership structure involving foreign jurisdictions and the power of representation of the client is not apparent from the documents presented.

355. If a company has not been registered (i.e. there is no entry in the company registry), it will not come into existence and as such will not be able to enter into business relationships with any entities (including financial institutions) in Austria. Similarly, if there are any changes with regard to the company such as the change of the ownership, the address or the management which have not been notified to a court through the same notarial process as described above, these changes will be deemed null and void. For example, a shareholder only acquires his/her rights, when his/her name appears in the public register.

356. On the other hand, the measures taken to prevent the misuse of *Treuhand* arrangements are limited. There is no registry of *Treuhand* arrangements (neither public, nor restricted). Such arrangement may be concluded between any two persons, however in overwhelming majority of cases, it will be a lawyer or a notary who would act as a trustee (due to level of trust to the profession and the possibility to enforce the terms of the arrangement). In this case he/she will be subject to AML/CFT requirements, including the identification of the relevant parties (the settlor and the eventual beneficial owners).

357. In addition to that, the financial institutions, lawyers and notaries (but not other DNFBPs) have the obligation to inquire whether the customer is acting as a trustee in the arrangement (including in a foreign-established trust), and the customer has the obligation to disclose this information as well as the identity of the settlor. If the FI suspects that a customer has not complied with this obligation it is required to file an STR. The statistics on STRs submitted with respect to suspected violation of the disclosure obligation is given below.

Table 30. **STRs submitted with respect to suspected violation**

	2011	2012	2013	2014
Number of STRs	13	14	23	16

358. In order to put these figures into context, it should be noted that, according to the Austrian authorities, lawyers and notaries are very reluctant to assume trustee functions in managing their clients' money or holding shares on their behalf due to the perceived high-risk profile of such

activity, and if they do engage in it, the level of compliance with the disclosure obligation is high. Therefore, these cases of non-compliance may be primarily attributed to non-professional trustees, which, as noted above, is not very common.

Timely access to adequate, accurate and current basic and beneficial ownership information on legal persons and legal arrangements

359. The company registry is publicly available and all competent authorities can and do access it without delay. In principle, a fee has to be paid for excerpts from the company register. However, all federal, regional and municipal authorities can obtain excerpts from the company register for free. The register contains reliable basic information on the legal ownership of the legal persons including the respective percentage of shares belonging to each shareholder. The registry is kept up-to-date and the companies are obliged to notify the courts of any changes without delay. As mentioned above, the changes that have not been notified to the registry are not legally effective. In practice, a delay of 2 weeks is tolerated before imposing a fine for non-compliance (this mostly concerns the cases of the change of address). The history of all changes is recorded and is available on request as well. Both private sector and competent authorities consider the information contained in the registry accurate and reliable and routinely make use of it in order to perform their duties.

360. There is no register of beneficial owners in Austria. The data on beneficial owners held by financial institutions and DNFBPs (mainly, lawyers, notaries and tax advisors) constitutes the main source of information for the Austrian authorities. In other words, the BO information would only be available when a legal entity/arrangement is a client to an obligated institution. This information is obtained in the course of their CDD process (see also IO4) and generally considered to be reliable by the authorities. However, the powers of law enforcement authorities to get timely access to this information are limited, as this can be done only in the context of a criminal investigation. Moreover, financial institutions and professional intermediaries may use the right of appeal against such requests for information, and, in fact, routinely do so. In practice that means that competent authorities do not have timely access to the BO information.

361. There is no registry of *Treuhand* arrangements in Austria. This leads to a practical problem for the competent authorities to establish the fact that the arrangement exists in the first place, since the trustee will appear as the legal owner of assets (as a shareholder in the company registry or as an account holder on the bank records). In case the trustee is a professional intermediary (and therefore subject to CDD requirements), he/she will hold the BO information obtained in the course of the CDD process from the settlor. In addition, when the trustee enters into relationship with a reporting entity he/she will be obliged to disclose his status and provide relevant BO information to the reporting entity. To summarise, the BO information appears to be obtained and kept by the financial institutions and professional intermediaries in most cases. However, timely access to this information by the competent authorities is limited due to the same restrictions as described in the paragraph above.

362. Moreover, there is an additional hurdle to timely access to information in case of professional intermediaries (such as lawyers and tax advisers). They have a special right to "seal" documents, i.e. to protect the contents of the documents with their legal privilege. In order to "unseal" them, competent authorities would have to obtain a separate authorisation from a judge for

every single document. In each instance, an officer would have to provide sufficient ground for such action. In that case the delays in getting the information have been as long as several years.

363. Holding shares or assets on someone's behalf can be used for legitimate reasons. The competent authorities, however, believe that lawyers and notaries are very reluctant to assume trustee functions in managing their clients' money or holding shares on their behalf due to the perceived high-risk profile of such activity. The general perception shared by law enforcement agencies is that the more complicated a criminal case is, the more the chance of a lawyer's (or another professional intermediary) involvement will be. In these cases, the effectiveness of law enforcement efforts to obtain BO information in a timely manner remains limited. This has negative consequences on the ability of competent authorities to provide BO information on the legal persons and arrangements established in Austria in the context of cross-border requests that are made outside of the MLA or a criminal investigation.

Effectiveness, proportionality and dissuasiveness of sanctions

364. Monetary penalties are often used by the courts against persons who do not comply with the requirements to provide information to the company registry, and they appear to be generally effective. The most widespread type of violation is a failure to notify the change of business address. That type of violation may come to the knowledge of courts in two ways: 1) through the notification of the tax administration in case of a failure to reach the company at the registered address, or 2) through the company itself in case of the late notification. This violation is sanctioned with EUR 700 fines for each instance, with the maximum amount reaching EUR 3 600. However, if the person responsible still does not file the application, another fine with a higher amount can be imposed after two months. In 2015, the number of cases where fines were imposed was 435 which compared with the total number of applications to the Company Register Courts (about 118 000) constitutes less than 0.4%. This appears to imply that there is generally a high level of compliance with the obligation to timely notify the Company Register.

365. It should be noted that other types of violation such as the failure to notify the change in the ownership do not seem to be relevant since the change does not take legal effect until the change in the registry.

366. There are also sanctions foreseen for the violation of the obligation to disclose the trustee status to a financial institution. So far the FMA used them against customers of financial institutions 3 times in 2011, 2012 and 2015, respectively. In each case the amount of fine was EUR 1 000. Overall, this measure appears to be an effective instrument to ensure the compliance by the customers of the financial institutions. However, since it is not clear what amount of money was handled by the customer in each case it is difficult to judge whether these sanctions are proportionate, and since the number of these violations does not decrease over time (see statistics on STRs above), it is difficult to conclude that they are dissuasive.

Overall conclusions on Immediate Outcome 5

367. **Austria has a moderate level of effectiveness for IO5.**

CHAPTER 8. INTERNATIONAL COOPERATION

Key Findings and Recommended Actions

Key Findings

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.

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.

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. Finally, the Austrian procedural rules and practices concerning extradition with one non-EU country raise some concerns with regards to its effectiveness.

Recommended Actions

Austria should enable the A-FIU to improve its capability to exchange financial information with foreign counterparts.

Austria should continue enhancing its measures on statistics, particularly on the crime types and time required to respond, to be able to assess the effectiveness of its framework for providing international cooperation.

Austria should ensure more effective measures for extradition.

368. The relevant Immediate Outcome considered and assessed in this chapter is IO2. The recommendations relevant for the assessment of effectiveness under this section are R.36-40.

Immediate Outcome 2 (International Cooperation)

Providing constructive and timely MLA and extradition

369. The BMJ's Department IV is the Central Authority designated pursuant to a number of EU and UN Conventions to provide assistance relating to all mutual legal assistance requests. Austria has an open and constructive approach in providing mutual legal assistance which enhances its effectiveness. This was confirmed by the feedback received from 43 countries. The vast majority of the countries which responded did not present any information which stated that they have encountered problems with co-operation with Austria.

370. To facilitate procedures for those handling incoming (and outgoing) requests Austria has issued a Statement of good practice in mutual legal assistance in criminal matters.

371. Furthermore the Public Prosecution Service at the Regional Criminal Court in Vienna has produced a manual for newly arrived prosecutors covering the area of MLA and containing all ordnances and legal bases. Experiences are passed on to prosecutors by circular letters, by way of seminars, in regular meetings, by intra- and internet information and by updating an accompanying commentary on the application of the ARHG. Department IV is equipped with a computer system allowing to trace all MLA and extradition proceedings and the status of all domestic proceedings pending at courts or prosecution services. If necessary, reminders are being sent to the competent executing authorities. See c.37.2 in the TC annex for further details.

372. Neighbouring and EU-countries are Austria's most important partners in international co-operation, especially in relation to mutual legal assistance and extradition. Mutual legal assistance requests between Austria and EU/Schengen-countries are mostly sent directly between the judicial authorities in accordance with the EU 2000-Convention. This provides for simplified and less time consuming procedures with requests and responses sent directly from prosecutor to prosecutor. However, most measures have to be authorised by a court decision, which takes a couple of days according to the authorities. It is also necessary to attach a court order or prosecutorial order or indicate in the request that the prerequisites for the measures sought are met under the law of the requesting state.

373. Request **within the EU** are centrally registered as from January 2015. However, Austria does not keep statistics on the crime type of MLA and extradition matters and therefore the number of matters relating to ML/TF cannot be determined. The ability to gather central statistics about MLA activities in Austria was set up in January 2015. However, feedback received from other EU-countries indicates that, in general, this direct exchange of information works well. Statistics were provided regarding total of MLA requests received and sent, both overall and specifically for ML and FT, **for EU and non-EU countries**. There are no specific statistics on the types of predicate offences underlying MLA requests in ML cases but the two major ones are fraud (including misappropriation of funds and abuse of powers) and drug trafficking as confirmed by the prosecutors in Austria during the on-site visit.

Table 31. **All incoming MLA requests**

	2012	2013	2014	2015 (up to 31 Oct.)
International MLA/incoming requests	3 115	3 421	3 652	3 055

*this data comes from the register of the prosecutors and judges (VJ)
For 2015, the median duration of the 3 055 mutual legal assistance in 2015 was 1.7 months.

Table 32. **Overview of all MLA and extradition requests received in 2015**

Requesting Country	Incoming MLA requests	Extradition requests received	EAWs received
Andorra	1		
Albania	2		

Requesting Country	Incoming MLA requests	Extradition requests received	EAWs received
Belgium	9		2
Bosnia and Herzegovina	7		
Brazil	1		
Bulgaria	1		1
Costa Rica	1		
Czech Republic	139		1
Cyprus	1		
Denmark	5		
Finland	1		
France	5		
Germany	579		33
Great Britain	4		
Greece	12		
Hungary	291		8
Iran	2		
Italy	31		1
Kazakhstan	1		
Latvia	2		
Liechtenstein	110	1	
Lithuania	7		
Luxembourg	2		
FYROM	1		
Moldavia	1	1	
Monaco	1		
Netherlands	15		1
Niger	1		
Norway	1		
Portugal	12		1
Poland	64		1
Romania	43		1

Requesting Country	Incoming MLA requests	Extradition requests received	EAWs received
Serbia and Montenegro	9		
Sierra Leone	14		
Slovenia	154		5
Slovakia	109		2
Spain	14		
Sweden	6		
Switzerland	73	3	
Turkey	40		
Ukraine	5		
United States	2		

Table 33. **All incoming MLA requests related to ML**

International MLA (only ML related)	2012	2013	2014	2015 (up to 31 Oct.)
all (directly & BMJ)*	not available	not available	not available	89
only BMJ**	13	15	22	29
AT is requested state**	9	11	14	17

374. While no official statistics are available with regard to the time it has taken Austria to respond to MLA requests on ML/TF, the authorities indicated the median duration of all MLA requests was 1.7 months (see above), and that most other requests were fully satisfied within four months. The feedback received from other countries did not contradict this as an average time however quite a few request took longer. Between 2012 and 2015, Austria received requests on MLA for ML from: Australia (1), Bosnia and Herzegovina (2), Brazil (1), Canada (2), Ghana (1), Israel (2), Jordan (1), Kosovo (2), Monaco (2), Peru (1), Russia (4), San Marino (2), Ukraine (3), and United States (27). Austria indicated that it has not received any MLA requests since 2012 relating to TF.

375. Austria's procedures to deal with urgent requests are included in the statement mentioned above. Within the EU these would normally be submitted to the Austrian National Member of Eurojust. In order to support and strengthen coordination in serious cross-border crime, Austria has a rather substantial presence at Eurojust compromising of: 1 national member, 1 deputy to the national member, 1 assistant to the national member, 1 seconded national expert, and 1.5 administrative assistant.

376. Eurojust has proved to be a valuable counterpart and facilitator when dealing with mutual legal assistance and other forms of cooperation. In this context, joint investigation teams (JITs) appear to help and have had a positive impact on the effectiveness of Austria's international cooperation. To date Austria has participated in at least 10 JITs.

377. According to the respective tasks and mandates of Eurojust and the EJN these institutions are regularly involved in cases of serious crime and ad hoc in cases where their assistance is sought. Another efficient means to discuss and solve (recurrent) problems in international cooperation are bilateral, regional or international meetings.

378. A common request is for banking information. In these cases, the procedures as mentioned above apply. Austria has ratified the Protocol to the EU-MLA Convention 2001 – hence all types of information foreseen there can be obtained from Austria. However, the jurisprudence of the Courts of Appeal has strengthened its view on granting access to bank information in relation to accounts which are not owned by the suspected person him/herself – especially in cases of unknown perpetrators and bank account information about third persons, the request must clearly state why and under which factual grounds it is to be believed that the account has a relation to the alleged criminal behaviour underlying the request. This presumed relation has to be shown in the request. Otherwise, the request might be refused. In the absence of a centralised bank account register (but this will implemented in 2016), these requests might take some time. The prosecutor has to send a letter asking for the required information to the association of the Austrian banks which is distributing this letter to all its members. Banks are obliged to respond within a given timeframe (usually 14 days) in case they have a positive reply ("hit").

379. BMJ indicated that out of the 3 055 MLA requests in 2015 (up to 31 October), banking information had been granted pursuant in 383 cases, and rejected in 11 cases.

380. For extradition, a number of multilateral and bilateral treaties and agreements apply. See c.39.1 in the TC annex for further details. For extradition requests from countries not a party to a multilateral convention or that have concluded a bilateral treaty, the ARHG applies which establishes certain principles that must be considered when a state requests extradition. Most importantly, the person may not be an Austrian national and it must be ensured that he or she receives a fair trial (and punishment, in the case of conviction).

381. Even in the absence of a bilateral treaty, this has not been an impediment to co-operation in this area. As with MLA, the quality and assistance provided by Austria in the context of extradition appears in general to be good. However, one country has raised serious concerns regarding Austria's handling of its extradition requests. In this case, presumption in favour of bail led to release of the two defendants after being found extraditable from Austria, who subsequently fled. The defendants had taken the step of petitioning to the Austrian constitutional court to overturn their surrender. Their argument was based upon the disparity between the country and Austria's prison sentences associated with the charges. Ultimately, Austria's constitutional court found the appeal frivolous, but the defendants had absconded. The country also had difficulty obtaining judicial materials, in particular the court pleadings detailing the accused's arguments. Nevertheless the experience with this country seems isolated, as all other countries who provided feedback on MLA indicated positive results.

382. There are no statistics available as to the average time to process an extradition outside the EU and there is no case management system to clearly stipulate process for timely execution of extradition. The same applies to the European Arrest Warrants (EAWs) but due to the strict time limits for decisions that applies under this regime it can be assumed that it not a problem. Furthermore, the Council of the European Union evaluated Austria's practical application of the EAW and the corresponding surrender procedure in 2008 (7024/1/08) without finding reason to criticize Austria except in a few specific formalities of relevance to the EU legislation.

383. ML and TF are extraditable offences. Austria does not extradite its nationals to non-EU countries. However, when extradition is refused on this basis, the case can be dealt with in Austria. There are no statistics available as to how often Austrian nationals have been prosecuted in Austria for offences committed abroad because of the lack of possibility to extradite and the timeliness of this. Usually the requesting state has to ask the Austrian authorities to prosecute the matter.

384. As concluded under IO8 Austria has a generally comprehensive framework for police powers and provisional and confiscation measures (including provisions on in-rem confiscation). Furthermore, the Austrian organisation concerning asset recovery seems to be both logical and sound. Austria's ARO-office is well functioning in tracing assets abroad using different channels. The same applies to its role to trace assets in Austria on behalf of EU states and within CARIN with regard to non-EU states. However, the lack of statistics, other than the numbers of request sent and received makes it impossible to evaluate if these efforts leads to a results, i.e. are effective.

8

Seeking timely legal assistance to pursue domestic ML, associated predicate and TF cases with transnational elements

Table 34. **All outgoing MLA requests related to ML and TF**

International MLA (only ML or TF related)	2012	2013	2014	2015 (up to 31 Oct.)
Austria is requesting State (ML)	4	4	8	12
Austria is requesting State (TF)	1	0	0	1

385. Austria has also shown that it is actively engaged in seeking mutual legal assistance, and the number of requests since 2012 related to ML is increasing. An increasing number of larger and more complex cases have international ramifications and proceeds and/or evidence are often not present in Austria. Austria has provided some examples of economic crimes where assistance has been sought and overall numbers of cases. Between 2012 and 2015, these requests were sent to: Albania (1), Australia (1), Azerbaijan (1), Brazil (1), Japan (1), Lebanon (1), Monaco (2), Russia (3), Serbia (1), Turkey (1), Ukraine (6), Uruguay (1), and the United States (8). However, there are no other details in terms of the number or types of cases, or their outcomes.

386. Austria indicated that it has made two requests for MLA on TF – one to Russia (in 2012) concerning a suspicion of financing a Chechen terrorist group through collecting money from Chechen people who fled to Austria. However the investigation was terminated due to insufficient evidence for conviction; and one to the United States (in 2015) concerning a suspicion of financing an ISIL terrorist group in Syria through Facebook; the case was still in trial phase as of April 2016.

Providing other forms international cooperation for AML/CTF purposes

387. Most of Austria's competent authorities are well engaged in international co-operation with foreign counterparts. The A-FIU is actively involved in direct and indirect information exchange, not only using the regular FIU channels such as Egmont Secure Web (ESW) and FIU.Net, but also any existing LE co-operation channels such as INTERPOL, EUROPOL and the liaison officers, established in Austria and abroad.

388. However, Austria's competent authorities in general provide very little feedback to their international counterparts regarding the usefulness of the information provided and that the value the information received has added to the domestic processes.

389. In general, the A-FIU follows a practical approach and choses the channels for information exchange on a case-related basis. Beyond that the A-FIU participates every year in exchange meetings with German speaking FIUs as well as FIUs that have a common border with Austria. The meetings are held on a regular basis and are designed to discuss common cases from face to face.

390. The A-FIU is well engaged in information exchange with its foreign counterparts as part of its investigative process. Collecting information from foreign counterparts is one of many sources of information the A-FIU uses (see R.29 and IO.6 above). The A-FIU also responds to requests from foreign FIUs and it uses all of the information sources available to it. In general, positive feedback was received from the A-FIU's foreign counterparts regarding the nature and level of co-operation provided. However, several countries raised concerns over the fact that the A-FIU cannot request additional information from a bank and thus share it with a foreign FIU without first initiate a domestic investigation, i.e. the same as applies for MLA requests. This is due to the fact that the A-FIU can only use its power to request reporting entities to submit relevant bank information if the foreign request has a relatively strong link to a specific predicate offence or is not related to an existing criminal investigation. This limits to some extent the possibilities of co-operation with foreign counterparts for intelligence purposes where the predicate offence is not yet established. This particular limitation may also in turn affect the requesting countries to detect, investigate and prevent ML/TF from their perspective.

391. While the A-FIU is also engaged in spontaneous information exchange, the majority of requests sent and received are categorised as upon request. The A-FIU keeps statistics regarding its information exchange, but not including the timeliness of responses, which makes it difficult to assess its effectiveness. Moreover, the A-FIU was not able to present the assessment team with any successful case examples. This raises concerns as to whether the A-FIU has been and is successful in requesting and providing information from/to foreign counterparts.

Table 35. **Incoming requests to the A-FIU**

Incoming requests	2011	2012	2013	2014	Total
Germany	9	79	84	75	238
Russia	10	27	35	26	88
Switzerland		20	24	24	68
Liechtenstein		16	35	18	69
Luxembourg	27	19	21	17	57
Slovenia			26	15	41
Hungary	7	10	24	15	49
Slovakia	35	25	21	15	61
Croatia	14	19	25	12	56
Belgium	7			11	11

Incoming requests	2011	2012	2013	2014	Total
United Kingdom		13	19		32
Ukraine	6	9			9
Cyprus	8				0
Montenegro	8				0
Total	**131**	**237**	**314**	**228**	**779**

392. The A-FIU plays an important role in facilitating indirect information exchange between competent authorities. It reaches out on behalf of LEAs, especially other teams within the BKA and BVT. The A-FIU did not provide the team with the necessary assurances that foreign counterparts are always aware when a request is formulated on behalf of a LEA. The A-FIU was not able to provide any case examples to show how indirect information exchange is used as an important source of information for LEAs. Egmont co-operation was said to be a very useful tool for receiving information from other countries in a swift, safe and efficient way. The A-FIU provided one case example to show how indirect information exchange has been (successfully) used as an important source of information for foreign LEAs.

393. The A-FIU does not require an MOU in order to co-operate with foreign FIUs. Therefore, the A-FIU does not actively seek to sign MOUs. It does, however, recognise that other FIUs may need to have an MOU in place for the exchange of information and tries to comply with the needs of other FIUs in this regard.

394. The BVT is engaged in international information exchange on terrorism and TF. It co-operates both bilaterally and multilaterally with police and security authorities in a number of countries. Co-operation with other intelligence services is based on regular meetings with BVT's main counterparts, and also on more thematic and case based meetings with other counterparts in different countries.

Tax and customs (BMF)

395. The statistical information and case studies provided by the Austrian Tax Authorities (and Customs) and BMF indicates a relatively lively international co-operation with neighbouring countries such as Italy and the Czech Republic within the fields of taxation, customs and related criminality such as VAT fraud. Some co-operation involves criminal cases. Information in the official mutual assistance, which can be used as evidence in administrative and judicial procedures, are both given and received on request or spontaneously. Requests are handled centrally by an electronic case management system. The statistics are not detailed or comprehensive. It was told that there is no follow up how the information received or sent is being used. Given this scarce information, it is not possible to ascertain if this information leads to any effects. There are no statistics on the results, if information received by mutual assistance has led to any revenue effects.

FMA

396. The FMA regularly engages in co-operation and information exchange in AML/CFT matters with foreign counterparts, both on a multilateral and bilateral basis. This cooperation is timely and

constructive. All feedback received from delegations was positive, and indicated that the information provided was both useful and prompt.

397. As AML/CFT forms part of the FMA's larger integrated supervisory framework, co-operation for AML/CFT purposes is covered by the broader (prudential) information exchange policy of the FMA. The FMA is signatory to a large number of bilateral and multilateral Memoranda of Understanding regarding the whole range of its competencies in the supervision of the financial market (banking, insurance and securities markets supervision). For an overview, i.e. of the MoUs concluded, please refer to c.40.3.

398. Multilateral Co-Operation: The FMA is an active member in the European Supervisory Authorities' Joint Committee Sub-Committee on Anti-Money Laundering (AMLC), which convenes up to 3 times per year. The AMLC serves as a forum of formal and informal exchange between EU member states' supervisors. Since 2012 approximately 10 requests for information/surveys on AML/CFT issues from individual AMLC members were answered by the FMA.

399. Bilateral Co-operation: On a bilateral basis the FMA receives various AML/CFT related information requests from foreign supervisors. Requests generally take one of two forms: information requests relating to specific supervised entities or more general requests e.g. pertaining to supervisory policy or national AML/CFT frameworks.

400. AML/CFT related requests by foreign counterparts are internally forwarded to the AML/CFT division (Division IV/5), which answers the requests as swiftly as possible or within the timeframe stated in the request. Since 2012 the FMA's AML/CFT division has processed and answered five spontaneous requests for information from foreign supervisors, including counterparts from the United States, Dubai and Serbia. Moreover, after an initial FMA on-site inspection (2011) and a subsequent targeted inspection commissioned to an external audit firm (2012) at a private bank in Austria, the findings and inspection reports were forwarded to the A-FIU and to supervisors in Liechtenstein and Switzerland by the FMA.

401. In addition, the FMA's AML/CFT division more regularly co-operates with its counterparts at BaFin (GER) and FMA-LI (LIE). In 2014 FMA exchanged AML/CFT information with BaFin in the course of an owner control procedure relating to the acquisition of a significant share of an Austrian insurance undertaking. Furthermore, a joint FMA and FMA-LI on-site inspection was conducted at a subsidiary of an Austrian bank in Liechtenstein in Q2 2015.

Box 3. **Case examples: FMA using the IOSCO MMoU**

In 2011 the Dubai Financial Services Authority (DFSA) sent a request for assistance and information to FMA pursuant to the IOSCO MMoU. The request was made in relation to pending investigations of the DFSA regarding the violation of Dubai's AML/CFT provisions. The DFSA requested banking information of an Austrian bank that maintained a joint venture with another entity in Dubai. The information requested included information on a particular customer who maintained business relationships with both entities – in particular information on loan agreements, CDD and customer history held at the Austrian institution. FMA obtained the relevant customer information held by the Austrian institution and subsequently sent the relevant information as requested by the DFSA pursuant to the IOSCO MMoU.

In 2013 the Securities and Exchange Commission (SEC) requested information relating to three bank accounts held at Austrian financial institutions. The request was made pursuant to the IOSCO MMoU and involved investigations conducted by the SEC in connection with alleged bribery involving a corporation listed on NASDAQ. Following the SECs request the FMA, in its capacity as Austrian supervisor, obtained the relevant customer information held by the Austrian institution and subsequently sent the relevant information as requested by the SEC pursuant to the IOSCO MMoU.

Seeking other forms of international cooperation for AML/CTF purposes

402. The A-FIU is very active in seeking information from its foreign counterparts and its largest partners in this area are Germany, Russia, Hungary, and Switzerland. This adequately reflects Austria's understanding of its risks, the investigations carried out by the authorities, and connections with its neighbours. According to the A-FIU, the outgoing requests vary greatly in terms of case nature and the quality of feedback received afterwards. The A-FIU did not provide further breakdown as to the categories of cases involved and which competent authorities within the BKA made the outgoing requests.

Table 36. **Outgoing requests from the A-FIU**

Outgoing requests	2011	2012	2013	2014	Total
Germany	20	92	70	60	222
Russia	5	39	40	41	120
Hungary	4	33	36	31	100
Switzerland	10	22	33	21	76
Slovenia			26	16	42
Italy		22	21	15	58
Turkey				14	14
Ukraine		14		13	27
Slovakia	7			11	11
United Kingdom	7	16	27	10	53
Croatia		16	23		39
Liechtenstein	7		23		23
Cyprus		19	19		38
BVI		13			13
Taiwan	3				0
Netherlands	3				0
Malta	3				0
Total	**69**	**286**	**318**	**232**	**836**

FMA

403. FMA made requests involving specific supervised entities in three instances. Furthermore, the FMA's AML/CFT division has actively sought co-operation and direct exchange of information with supervisory authorities in Liechtenstein, Hungary, Romania, Slovenia and Slovakia in the course of its on-site measures at foreign branches and subsidiaries of Austrian financial institutions. To this end, the FMA has closely liaised with its foreign counterparts. The on-site measures are usually jointly conducted and relevant supervisory information on the individual institutions is subsequently exchanged with the foreign supervisors.

International exchange of basic and beneficial ownership information of legal persons and arrangements

404. There are no statistics available specifically on how many of the requests received and sought involved information on beneficial ownership of legal persons and arrangements. However, the A-FIU, BVT, and other police units within the BKA regularly check the company registry when they receive foreign requests. As indicated in IO5, this includes basic information as well as shareholder information. While this may be limited to legal ownership rather than beneficial ownership, all authorities as well as the private sector indicated that the company register is a very useful tool in tracing information on beneficial ownership. In addition, beneficial ownership information will be held by reporting parties, including notaries that finalise all incorporation documents. So this information would only be available if there is a criminal investigation in Austria. See IO5 for further details.

Overall conclusions on Immediate Outcome 2

405. **Austria has a substantial level of effectiveness for IO2.**

TECHNICAL COMPLIANCE ANNEX

This annex provides detailed analysis of the level of compliance with the FATF 40 Recommendations in their numerical order. It does not include descriptive text on the country situation or risks, and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report.

Recommendation 1 - Assessing Risks and applying a Risk-Based Approach

Criterion 1.1 – Austria finalised its first National Risk Assessment (NRA) in April 2015. It includes both ML and TF elements. The NRA exercise was based on the FATF Guidance on National Money Laundering and Terrorist Financing Risk Assessment published in February 2013. More specifically, the Austrian NRA report is a compilation of analyses of individual risk factors listed in the Annexes I and II of the FATF Guidance with a rating (low, medium, or high) assigned to each. However, technically speaking, the factors listed in the Annexes to the FATF Guidance are not risks per se, but rather contextual elements that have influence on the nature and extent of the actual risks (which were not articulated in the NRA document). The NRA did include some country-specific risks, such as criminal use of Internet (Darknet) and virtual currencies, but that did not provide a complete picture of country's ML/TF risks.

Apart from the NRA, competent authorities did not conduct formal risk assessments in their respective field of responsibility. The only exception is the Chamber of Notaries which conducted its own sector assessment using the same model as the NRA (therefore, the same criticism as above applies).

Criterion 1.2 – The BMF being the national coordinator for AML/CFT issues was tasked to act as a co-ordinating authority with respect to the NRA. The work was conducted in the framework of a designated working group (WG NRA) which included representatives of all ministries and authorities responsible for combating ML and TF.

Criterion 1.3 – The assessment was concluded in April 2015 and it can be considered as up-to-date for the period of the on-site visit (November 2015). There is no legal requirement to keep it current; however, Austria indicated that an annual review was agreed upon by the WG NRA.

Criterion 1.4 – All relevant competent authorities and SRBs participated in the WG NRA. Financial Institutions (via the WKÖ) and DNFBPs (via the respective SRBs) were informed about the results of the NRA to the extent that was relevant for them and invited to submit their contributions to the findings of the authorities.

Criterion 1.5 – Austria implements elements of a risk-based approach to AML/CFT measures which are embedded in the legislation covering financial institutions and DNFBPs (except casinos) (please see R.10-19, 22-23). In addition to that, Austria, jointly with Germany, initiated a project to mitigate and prevent a specific ML/TF risk of the misuse of Bitcoin (law enforcement operations targeting crimes committed through Darknet). However, other specific measures to prevent or mitigate ML/TF risks (such as based on the findings of the NRA) have not yet been put in place, due to the recent institutionalisation of the risk assessment mechanism and the absence of an established process to act upon its results.

Since there is no overall strategy to address ML/TF risks, there is no national approach to allocating resources. Recognising that the financial sector, due to the nature and size of the industry, potentially faces significant exposure to ML/FT risks (which was the case even before the formal NRA was conducted), the FMA consolidated the responsibilities for supervising AML/CFT compliance in a specialised division (established in 2011) with an increased number of staff. No specific information was provided concerning the allocation of resources on a risk basis in law enforcement and judicial authorities.

Criterion 1.6 – Austrian AML/CFT provisions covering financial institutions and DNFBPs do not provide for blanket exemptions from the application of certain FATF Recommendations.

Criterion 1.7 – All financial institutions and DNFBPs (except casinos) are required to take enhanced measures in case of higher risks (see R.10, 12, 13, 15, 18, 19, 22, 23). In addition to the specific high-risk circumstances identified by the FATF Recommendations (PEPs, correspondent relationships, and non-cooperative countries), financial institutions and DNFBPs are required to apply additional due diligence measures in cases where the customer or the authorised representative is not physically present for identification purposes. No specific measures to manage or mitigate risks identified through the NRA process have yet been put in place. There is no requirement for financial institutions and DNFBPs to ensure that the risk information is incorporated into their risk assessments.

Criterion 1.8 – Financial institutions and DNFBPs (with the exception of casinos, lawyers and notaries) are permitted to apply simpler due diligence measures only in specific circumstances and subject to prior risk assessment (see R.10, 22). There is no formal mechanism, however, to ensure that this will be consistent with the country's assessment of its ML/TF risks. Credit institutions are permitted to apply simplified measures with regards to the identification of members of savings associations subject to certain conditions. This provision was based on a formal risk analysis with respect to the savings associations conducted by the FMA. There is a blanket exemption from CDD requirements for lawyers and notaries in case of a number of designated types of customers (Art.8e RAO, Art.36e NO) without proper risk analysis of those customers.

Criterion 1.9 – While financial institutions and DNFBPs are being supervised for compliance with AML/CFT obligations, including those that deal with risk-based approach, there are limitations in the actual requirements for financial institutions and DNFBPs (see criteria 1.10, 1.11).

Criterion 1.10 – Financial institutions and insurance undertakings must subject their business to risk analysis using suitable criteria (in particular products, customers, the complexity of transactions, customer business and geography) with regard to the risk of abuse for the purpose of ML/TF (Art.40

para.2b BWG, Art.98b para.4 VAG). Financial institutions are required to document this risk analysis and update it at least once a year (Art.39 para.2 and para.2b no.11 BWG), however there is no such requirement for other types of institutions and DNFBPs. Financial institutions and insurance undertakings must enable the FMA to review the effectiveness of their AML/CFT systems including their risk analysis (Art.41 para.4 no.5 BWG, Art.98h para.1 no.5 VAG).

Criterion 1.11 – All financial institutions and DNFPBs are subject to a general obligation to have adequate and appropriate policies and procedures for conducing risk assessments and managing identified risks; however, not all of these entities are required to monitor the implementation of those controls or take enhanced measures if necessary (see R.18, 23). There is no requirement that these be approved by senior management. Besides that, all financial institutions and DNFBPs (except casinos) are required to take enhanced measures in case of higher risks (see criterion 1.7).

Criterion 1.12 – Financial institutions and DNFBPs are not permitted to take simplified measures to manage and mitigate risks (with the exception of simplified CDD only in specific circumstances and subject to prior risk assessment, see criterion 1.8). There is a blanket exemption from CDD requirements for lawyers and notaries in case of a number of designated types of customers (Art.8e RAO, Art.36e NO) without proper risk analysis of those customers.

Weighting and Conclusion

Partially compliant (especially because of criterion 1.1)

Recommendation 2 - National Cooperation and Coordination

Criterion 2.1 – Austria did not provide sufficient information concerning its AML/CFT policies (whether formal or not) which are informed by the risks identified. During the on-site, Austria mentioned that there is a National Strategy on Terrorism (*Staatsschutzstrategie*) which is informed by TF risks, but this document has not been made available due to its confidential nature.

Criterion 2.2 – There is no formally designated authority to act as a coordination organ in terms of national policy making. In practice, the BMF performs this function and provides for a co-ordination mechanism. Informal AML/CFT coordination meetings under the aegis of the BMF are held on a quarterly basis. These meetings are attended by the most relevant AML/CFT stakeholders (i.e. BMF, BMJ, A-FIU, BVT, FMA) and serve the purpose of discussing the ongoing work and future tasks with respect to general policy issues on a national, European or international level, legislative proposals, current AML/CFT domestic, European and international jurisprudence. Since the mechanism is of informal nature, there is no element of responsibility for the results it is delivering which falls short of the standard.

Criterion 2.3 – As mentioned above (see criterion 2.2), AML/CFT coordination meetings are held on a quarterly basis. Besides policy issues, these meetings also provide for a forum for relevant authorities (BMF, BMJ, A-FIU, BVT, FMA) to discuss operational matters such as supervisory actions, investigative work, as well as issues related to international co-operation. In addition to that, a number of additional bi- and multilateral cooperation mechanisms exist among Austrian authorities such as between LEAs (A-FIU and BVT) and between supervisors (FMA and OeNB). However, some

important players of the AML/CFT system do not seem to be included in the regular cooperation and coordination mechanisms, such as local district authorities responsible for DNFBPs supervision.

Criterion 2.4 – AML/CFT coordination meetings held on a quarterly basis (see criteria 2.2 and 2.3) also serve the purpose of exchanging experiences in the field of counter-proliferation. On operational level, the BVT cooperates with a number of ministries and authorities such as BMEIA, BMWFW, BMJ, BMF (Customs), BMLVS, and OeNB. This is also done on a regular basis (every three months).

Weighting and Conclusion

Partially Compliant (because of criteria 2.1 and 2.2 that constitute the core of the requirements under R.2)

Recommendation 3 - Money laundering offence

Austria was rated LC for R.1 and 2 (the predecessors to R.3) in its 3rd MER. The main deficiencies included the absence of criminalisation of self-laundering, as well as the low convictions and indictments rates for ML as compared to the number of criminal investigations on ML and convictions for other serious offences which generated proceeds in Austria. Counterfeiting and piracy of products were also not listed as predicate offences for ML in Austria. On sanctions for ML, penalties against natural persons and minimum penalties established in the case of legal persons were deemed too lenient, ineffective, and neither proportionate nor dissuasive. In July 2010, the StGB was amended to incorporate self-laundering and available sanctions were increased.

Criterion 3.1 – ML is criminalised on the basis of the Vienna and Palermo Conventions (Art.165 StGB). Art.165 covers whoever knowingly converts, transfers, acquires, possesses, or uses property that derives from a crime, and who knowingly and acting on behalf or in the interest of a criminal organisation or terrorist group, conducts the same activities.

Criterion 3.2 & 3.3 – ML includes most predicate offences required by the FATF.[17] It involves concealing or disguising property deriving from four categories of predicate offences: 1) a "crime" (i.e. all offences punishable by more than three years imprisonment); 2) an act against property punishable by more than one year imprisonment (which involves any property valued at least EUR 3 000); 3) a list specified misdemeanours; or 4) offences of counterfeiting or piracy or products and other intellectual property offences, a tax offence of smuggling or evasion of import/export taxes. Certain tax offences are punishable by more than three years of imprisonment, making them ML predicates (Arts.1(3), 38 and 39 FinStrG). Examples of tax predicates are: committing tax evasion as part of a gang, committing tax or VAT fraud using false documents/evidence/transactions and evaded amounts exceed EUR 100 000, and deliberately failing to declare goods for import or export duties and the amount exceed EUR 50 000. This is not a sufficiently broad range of offences within this designated category of offence.

[17] See the table in paragraph 141 of the 3rd round MER for the details of predicate offences covered at that time.

Criterion 3.4 – In accordance with Art.165 para.5 StGB, the offence of ML extends to any type of property that directly or indirectly represents the proceeds of crime, including property of corresponding value.

Criterion 3.5 – When proving that property is the proceeds of crime, the legislation does not require that a person be convicted of a predicate offence, or that the predicate offence was the subject of prior judicial proceedings. In the case of ML, "in the interest of a criminal organisation or of a terrorist group" (Art. 165 para.3 StGB), it is sufficient to prove that the property laundered belongs to a criminal organisation or a terrorist group.

Criterion 3.6 – Austrian criminal law does not require predicate offence be committed domestically, provided that the offence would constitute a criminal offense under Austrian law. In addition, Art.65 StGB ("Criminal offenses committed abroad which are subject to prosecution only if they are liable to prosecution according to the laws which are valid for the scene of the crime"), states the general principle (Paragraph 3) that it is sufficient that the offense is liable to prosecution according to Austrian law if there is no penal power at the place where the criminal act was committed. Where the predicate offence is committed in Austria and the ML takes place abroad, this is explicitly covered by Art. 64(1)8 StGB.

Criterion 3.7 – ML is criminalised on the basis of the Vienna/Palermo conventions with the following three elements: (i) conversion or transfer; (ii) concealment or disguise; and (iii) acquisition, possession and use. Element (ii) is covered by Art.165 para.1 StGB and it has no limitations as to the perpetrator of the offence, but elements (i) and (iii) are covered by Art.165 para.2 StGB containing the phrase "of another person", which means that this is only applicable to third party ML (and not self-laundering). Austria has amended Art.165 StGB to cover self-laundering (by removing the clause "that derive from the crime of another person" with regard to concealing and disguising but not the other elements. In addition to not covering the laundering of the possession or use of one's own criminal proceeds, the important elements such as "conversion" or "transfer" are distinct from the predicate crime, and self-laundering in these cases is not covered.

Criterion 3.8 – The Austrian authorities consider unnecessary for the offender to act knowingly in cases of concealing and disguising property in relation to ML offences. The intentional element of ML offence may be inferred from objective factual circumstances which will very often be important factors affecting the judge's assessment of evidence.

Criterion 3.9 – Natural persons convicted of ML offences are subject to imprisonment of a term not exceeding three years. This maximum of three years was raised from two with the amendments to Art.165 StGB. There are no applicable fines. If the ML involves proceeds exceeding EUR 50 000 or is committed by a member of criminal group associated for the purpose of continuous ML, the penalty may be elevated to ten years depending on the circumstances. This category was added with the amendments to Art.165. The three-year penalty for basic ML is equivalent to other proceeds-generating offences such as receiving of stolen goods, fraud, and theft. It can therefore be considered proportionate but it is not clear if this is sufficiently dissuasive.

Criterion 3.10 – Regarding legal persons, Art.3 VbVG provides for general criminal liability of corporations, registered partnerships for all criminal offences in addition to and independent from the liability of the natural persons prosecuted for the same act. Penalties for legal persons are fines

that are calculated based on the gravity of the offence, the revenue of the legal person or entity, and a scale of daily rates. This results in a minimum fine of €50 and a maximum fine of EUR 1 300 000 (Art. 4 VbVG). This does not preclude parallel civil or administrative liability. Furthermore, Art.10 VbVG stipulates that the legal consequences shall also apply to a legal successor, if the rights and obligations of the legal person or entity have been transferred to another association by way of universal succession.

Criterion 3.11 – Austria has appropriate ancillary offences to the offence of ML as stipulated in Art.12 StGB. This includes attempt (as well as participation in any attempt), abetting another person to commit the offence or contributing to its perpetration in any other way.

Weighting and conclusion

While Austria's ML offence is generally comprehensive, self-laundering does not apply to certain elements such as conversion and transfer of criminal proceeds. In addition, it is not clear if available penalties are sufficiently dissuasive. It is not clear if a sufficient range of offences within tax crimes are ML predicates, which is particularly relevant given Austria's risk and context as an international financial centre.

Recommendation 3 is rated largely compliant.

Recommendation 4 - Confiscation and provisional measures

Austria was rated PC for R.3 (the predecessors to R.4) in its 3rd MER. The main deficiencies included the strict conditions for obtaining/compelling information subject to banking secrecy and scope of legal privilege which hindered the possibility for law enforcement authorities to locate and trace property. It was also not possible to demonstrate the effective use of the confiscation and provisional measures due to the low level of profit-generating crimes in Austria. Since then, a number of amendments were introduced into the StPO, as well as into the StGB.

Criterion 4.1 – According to Arts.19a, 20, 20b and 26 StGB, Austria has measures to provide for the confiscation of all proceeds, laundered property, instrumentalities of crime, property related to any criminal activities committed within the context of a criminal or terrorist organisation and property of equivalent value, regardless of whether the property is held by criminal defendants of third parties. They apply as follows –

- Art.19a "Confiscation" covers instrumentalities, i.e. tangible "objects" that the perpetrator used, intended to use in a criminal act or which were produced by a criminal act.
- Art.20 "Forfeiture": covers assets obtained for or by the commission of any act punishable by law. This therefore includes ML, predicate offences, and TF. It also includes gross profits, benefits resulting from proceeds (e.g. interest gained), assets replacing the original proceeds and assets of equivalent value.
- Art.20b "Extended forfeiture" covers assets at the disposal of a criminal organisation, terrorist association, or are appropriated or collected as a means of

for financing terrorism. In this case there is a rebuttable legal presumption that the assets derive from an offence.

- Art. 26 "Redemption" allows confiscation of instrumentalities if "special conditions" are met, e.g. if the perpetrator is unfit to plead or acted without negligence, or if the instrumentalities do not belong to the perpetrator.

Criterion 4.2 – Austria has implemented the following measures to enable competent authorities to take provisional measures –

(a) Law enforcement authorities in Austria are obliged to take appropriate investigative measures to identify, trace, freeze and initiate seizing of property subject to confiscation. The public prosecution office or the court can appoint an expert to carry out an evaluation of the property if needed. Law enforcement authorities also have unlimited access to the Austrian Companies and Land Registers. Following the last MER, Art.116 StPO was amended so that information on bank accounts and transactions can now be disclosed "if it seems to be necessary (1) to clarify an intentionally committed criminal act or a misdemeanour or (2) to determine whether an order to secure confiscation, forfeiture, extended forfeiture or any other offence-related property order should be issued in criminal proceedings".

(b) Pursuant to Art.119 para.1 StPO, places and objects can be searched if it can be assumed due to certain facts that there are objects that have to be seized pursuant to Art.110. A ***seizure*** (Art.110 para.1 StPO) applies if it is considered necessary to secure confiscation, forfeiture, extended forfeiture, or redemption or any other offence-related property order. Seizure is executed by the criminal police upon an order of the public prosecution office. These provisions are mainly used to seize instrumentalities and cash during a crime scene. In order to extend a normal seizure, or to freeze bank accounts or prohibit real estate property transfers, ***sequestration*** (Art.115 StPO) is used. In these cases, the prosecutor applies to the court to issue an order prohibiting the current holder of the object/asset from passing on the object/asset, to sell it or pledge it. The court has to decide immediately about the sequestration. The sequestration is admitted if the objects seized presumably are required as evidence in a subsequent proceeding, are subject to civil law claims or will be needed to ensure a judicial decision on confiscation or forfeiture.

(c) Concerning the possibility of voiding contracts that aim to frustrate seizure, confiscation or forfeiture orders, the authorities pointed to Art.879 ABGB, which states as a general rule that contracts which violate existing (statutory) laws or which are contra bonos mores are null and void. This applies, for example, if the conclusion of the contract itself constitutes a criminal offense or if the contract was concluded with the intention to hinder the State's ability to recover legitimate financial claims. In addition to and irrespective of any such nullity, any act (like the conclusion of contracts or the transfer of assets) of a debtor that prevents any of his/her creditors from satisfying their legitimate claims may be contested under insolvency law and creditor's avoidance of transfers law.

Criterion 4.3 – The rights of bona fide third parties are protected under Arts.20a and 26 StGB.

Criterion 4.4 – Austria has mechanisms to manage and disposing of property frozen, seized or confiscated. Pursuant to Art.114 StPO, the police must ensure that the objects are adequately stored, be it with the police, the court or third parties, until it reports the seizure to the public prosecution

office. Once there is a decision from the court, objects or assets which have been seized or sequestrated will become property of the state. If the objects or assets have not been seized or sequestrated, the court will issue an order that the objects or assets be handed over within 14 days. If no decision can be reached during the trial, upon application of the public prosecution office, the court can publish a public edict in which the assets to be disposed of are described precisely and in which it is announced that the assets will be disposed of, if there is no application for cancellation of the seizure or sequestration within one year. If no circumstances hinder a disposing of the assets and the assets have been seized or sequestrated for at least two years, the court has to render a resolution on the disposal.

Weighting and conclusion

Austrian legislation covers all the required elements of R.4. The only obstacle is the high burden needed to prove that there is a risk the assets will flee in order to obtain a sequestration order to freeze or seize bank accounts. However, this is an element of effectiveness and is discussed under IO.8.

Recommendation 4 is rated compliant.

Recommendation 5 - Terrorist financing offence

Austria was rated PC for these requirements in its 3rd MER. Since that time, Austria enacted amendments to the StGB in July 2013 to strengthen TF criminalisation.

Criterion 5.1 – Austria criminalises TF broadly in line with the TF Convention through Art. 278d and other parts of the StGB. Art.278d indicates that "Who makes available or collects assets with the intention that they be used, even only partially, for [a series of listed offences, with cross-references to these offences elsewhere in the StGB] shall be sentenced to serve a prison term of one to ten years." While this covers most of the mental elements of Art.2 TF Convention, it does not specifically refer to making funds available "directly or indirectly." However, case law (not related to TF) confirmed that "indirectly" was covered even if it is not specifically stated so in the law.

Criterion 5.2 – The list offences included as terrorist acts include: air piracy or a deliberate threat to aviation safety; kidnapping for ransom or threat thereof; violence against internationally protected persons; unlawful handling of nuclear material or creating danger by nuclear energy; violence against civil aviation; offences against a ship or fixed platform; or use of explosives against the public. "Committing a punishable act intended to cause death of, or grievous bodily harm to a civilian or any other person not actively participating in the hostilities during an armed conflict, if such act by its very nature or due to the circumstances is aimed at intimidating a section of the population or coercing the government or an international organisation to act in a certain way or to refrain from such action." These provisions cover the requirements of Arts.2(1)(a) and 2(1)(b) TF Convention.

The same penalties apply for someone who collects or makes available assets for: any other person who to his knowledge commits terrorist acts; or a member of a terrorist association which to his knowledge is aimed at committing terrorist acts. "Terrorist association" is defined in Art.278b as a

union planned for a time longer time of more than two persons aimed at committing one or more terrorist criminal offences or TF offences.

Criterion 5.3 – "Assets", is not defined in Art.278d. However, the explanatory remarks of the legal materials (EBRV StRÄG 2002, 1166 BlgNR 21. GP 42) – which are used to interpret the law – clarify that the term "assets" refers to the definition in Art.1 TF Convention and thus extends to any funds whether from a legitimate or illegitimate source.

Criterion 5.4 – The TF provisions do not require that the funds (a) were actually used to carry out or attempt a terrorist act or (b) be linked to a specific terrorist act.

Criterion 5.5 – It is possible for intent and knowledge to be inferred from objective, factual circumstances. Austria relies on the principle of free evaluation of evidence by the judiciary, codified by Art.14 StPO. This enables the judge to make this inference.

Criteria 5.6 and 5.7 – Since the 3rd MER, the available penalties for natural persons have been doubled, to one year to ten years of imprisonment. Regarding legal persons, the VbVG provides for general liability of corporations, registered partnerships for all criminal offences in addition to and independent from the liability of the natural persons prosecuted for the same act. Penalties for legal persons include fines that are calculated based the gravity of the offence, the revenue of the legal person or entity, and a scale of daily rates. This results in a minimum fine of EUR 50 and a maximum fine of EUR 1 300 000. This does not preclude parallel civil or administrative liability.

Criterion 5.8 – Attempt and participating as an accomplice are covered by Arts.12 and 15 StGB, respectively. Organising or directing others to commit a TF offence, and contributing to the commission of one or more TF offence by a group of persons acting with a common purpose are covered through Art.278(b) on terrorist associations. A person participates as a member of a terrorist association if he/she makes property available or in any other way promotes the organisation or its punishable acts (Art.278 para.3 on criminal association).

Criterion 5.9 – TF offences are predicate offences for ML.

Criterion 5.10 – Under Arts.64, 65, and 67 StGB, TF offences apply, regardless of whether the person alleged to have committed the offence(s) is in the same country or a different country from the one in which the terrorist(s)/terrorist organisation(s) is located or the terrorist act(s) occurred/will occur.

Weighting and conclusion

The Austrian legal framework covers almost all the required elements of R.5. However, the legislation does not specifically cover "indirectly" providing or collection funds to be used for a terrorist act or by a terrorist organisation or individual terrorist.

Recommendation 5 is rated compliant.

Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing

In its 3rd MER, Austria was rated PC with terrorist asset-freezing requirements. Since then, Austria has adopted the SanktG in 2010.

Criterion 6.1 in relation to designations pursuant to UNSCR 1267 (1988 and 1989).

a) The Austrian legal framework does not designate any specific authority for designations or delisting/unfreezing under UN Resolutions. Rather, the BMEIA and the Austrian Permanent Mission in New York collectively have responsibility for proposing persons or entities to the 1267/1989 Committee for designation; and for proposing persons or entities to the 1988 Committee for designation. While according to Section 5 of BMG (the Federal Ministries Act), the BMEIA is competent for communications with other States and international organisations, according to section 5 BMG. The Ministries shall proceed jointly in matters of shared competence (e.g. through an inter-agency coordination mechanism).

b) An inter-agency coordination network consisting of all relevant authorities, in particular the BMEIA, BMI including the competent law enforcement agencies, BMF, OeNB, and BMJ, exists for the implementation of international sanctions. This network would also deal with the identification of targets for designation, if there are indications that a person or entity meets the designation criteria set out in the relevant UNSCRs.

c) Austria indicates that the evidentiary standard of proof of "reasonable grounds" would be applied when deciding whether or not to make a proposal for designation. The existence of criminal proceedings, and in particular the underlying evidence, would be an important factor in the assessment, but not a condition. Under the current EU framework, Art.75 TFEU would allow designations of EU "internals", either upon reasonable grounds/basis or otherwise. However, the European Commission has not yet put forward a proposal for a regulation as stipulated in Art.75 para 1 TFEU in this regard.

d) In the case of an Austrian proposal for designation, the procedures and standard forms for listing as adopted by the relevant UNSC committee would be followed. this has nbeen used in practice (Austria made a proposal for designation of Jemaah Islamiya).

e) Any proposal for designation by Austria would, as a matter of principle, include all relevant information and adequate identifiers, although this has not been tested in practice. Whether or not Austria would want its status as a designating state be made known, depends on the circumstances and would be decided on a case-by-case basis.

Criterion 6.2 in relation to designations pursuant to UNSCR 1373 (measures at the European level and at the national level are applicable).

a) At the European level, the EU Council is responsible for deciding on the designation of persons or entities (Regulation 2580/2001 and Common Position 2001/931/CFSP). Within the context of Common Position 2001/931/CFSP and Regulation 2580/2001, EU listing decisions would be taken on the basis of precise information from a competent authority,

meaning a judicial authority or equivalent of an EU Member State or third state. While at the national level, the OeNB has the authority to designate persons or entities falling under national freezing measures, Austria has not formally designated a competent authority for making proposals for designations at national level.

b) The mechanisms described in conjunction with Criterion 6.1(b) also apply to designations relating to UNSCR 1373.

c) Concerning requests received, the verification of their reasonable basis is handled at the European level by the 'Common Position 2001/931/CFSP on the application of specific measures to combat terrorism' Group (CP 931 Working Party) at the EU Council which examines and evaluates the information to determine whether it meets the criteria set forth in UNSCR 1373.[18] There is no equivalent at the national level.

d) At the EU level, the CP 931 Working Party examines and evaluates information with a view to listing and de-listing of persons, groups and entities, and to assessing whether the information meets the criteria set out in Common Position 2001/931/CFSP. It will then make recommendations which will be adopted by the Council on the basis of precise information or material in the relevant file which indicates that a decision has been taken by a competent authority, without it being conditional on the existence of an investigation or conviction (therefore based on 'reasonable grounds'). At the national level, no rule addresses the standard of proof in this specific matter; however, general principles of law apply.

e) At the European level, there is an alignment procedure that allows for asking non-EU member countries to give effect to the EU list. In practice, some countries (notably candidate and potential candidate countries, countries of the SAP, EFTA and EEA as well as most East European countries. At the national level, there is no formalised procedure under which Austria could ask another country, including the EU countries, to give effect to freezing measures undertaken in Austria. This is only generally covered by the legal responsibilities of the BMEIA to communicate with other States.

Criterion 6.3 –

a) The competent authorities have some powers and mechanisms enabling them to identify persons or entities that might meet the criteria for designation. At the national level, information on persons and entities suspected to meet the designation criteria may be collected on the basis of and to the extent provided for in the SPG. This data includes name, sex, previous name, nationality, date and place of birth, address, name of parents, and alias data. At the European level, all the EU Member States are required to share with one another all the pertinent information in their possession in application of the European regulation on the freezing of assets. They must work together to achieve the most extensive level of assistance possible to prevent and combat terrorist acts.[19]

[18] All the Council CP working parties are comprised of representatives of the governments of Member Countries. The criteria set forth in Common Position 2001/931/CFSP are compliant with those stipulated in UNSCR 1373.

[19] Reg.1286/2009 Para. 5 of the Preamble and Art. 7a(1).

b) The designations must take place 'without prior notice' (*ex parte*) being given to the person or entity identified.[20] The Court of Justice of the EU confirmed the exception to the general rule of prior notice of decisions so as to avoid compromising the effectiveness of the freezing measures.

Criterion 6.4 – At the EU level, targeted financial sanctions are not implemented '*without delay*', which is not compliant with UNSCRs 1988 and 1989. A significant delay between the date of designation by the UN and the date of its transposition into European law[21] arises systematically because of the time needed for consultation between the various competent agencies at the European level and for the translation of the designation into all the EU languages.[22] In 2015 (up to 20 November), these delays in transposition of new designees from the 1267/1989 (Al Qaida) Committee were 4 days (for one designee), 7 days (for six designees), 7 days (for one designee) 8 days (for 5 designees), 9 days (5 designees), 10 days, (9 designees), 11 days (10 designees) and 12 days (1 designee). The two designations by the 1988 (Taliban) Committee took 127 days (over 4 months), and 15 days. A new designation is considered urgent and will therefore be processed faster, while other changes (e.g. de-listing) are considered less urgent and can thus be transposed less quickly. The national freezing measures do not contain any explicit obligation to implement the freeze '*without delay*' and have never been used to compensate for delays incurred at the European level. However, they have been used in cases where the EU had not yet adopted a EU regulation (e.g. national listings by SanktG 1/2011 of 1 March 2011 (regarding Libya) in order to implement SC-Resolution 1970 (2011) prior to entry into force of EU-Regulation No. 204/2011 of 3 March 2011.Targeted financial sanctions, in application of UNSCR 1373, are implemented by Council regulations (taken in application of Regulation 2580/2001) that are implemented immediately and directly in Austrian law. As a result, these sanctions are implemented '*without delay*'.

As a national measure, Austria adopted the SanktG to provide the competent national authorities with the additional competence to implement restrictive measures. Art.2 authorises the OENB to order by regulation or decision the freezing of assets of persons who: (a) commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts, and of other persons or entities that are subject to sanctions of the UN or the EU; (b) entities owned or controlled directly or indirectly by persons or entities according to (a); and persons and entities acting on behalf of, or at the direction of persons according to lit. a and or entities according to (a) or (b), including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities. The measures could also prohibit making assets directly or indirectly available for the benefit of person under (a) or (b). The enactment and repeal of regulations pursuant to this paragraph requires the approval of the Federal Government. While this mechanism has been used to designate certain persons or individuals (e.g. Libya, it has not yet been

[20] Reg.1286/2009 Para. 5 of the Preamble and Art. 7a(1).

[21] Regulations 881/2002 for designation pursuant to UNSCR 1988 and 753/2011 pursuant to UNSCR 1989.

[22] At EU level listing procedures have recently been overhauled and considerably accelerated. See the recent listings pursuant to SC Resolution 2270 (2016) of 2nd March 2016 that have been implemented by Council Decision 2016/319 and Commission Implementing Regulation 2016/315, both of 4th March 2016.

used to fill in the time gap related to UNSCR 1267/1989; therefore the only enforceable requirements for R.6 pertain to the EU framework.

Criterion 6.5 – Austria has the following powers and mechanisms to ensure the implementation of targeted financial sanctions –

a) Pursuant to UNSCR 1988 and 1989, European regulations establish the obligation to freeze all the funds and economic resources belonging to a person or entity designated on the European list.[23] It is apparent, however, that because of significant delays in the transposition of UN designations (see crtierion 6.4), freezes are not implemented '*without delay*', and this delay can result in de facto prior notice to the persons or entities in question. For designations under UNSCR 1373, it should be noted that the regulations are self-executing in all Member States and that no prior notice is to be given to the designated persons or entities.[24] EU nationals are not subject to the freezing measures set forth in Regulation 2580/2001. Since the entry into force of the Treaty of Lisbon (2009) Art.75 TFEU allows the freezing of assets of designated EU nationals, but the European Commission has not yet put forward a proposal for a regulation as stipulated in Art.75 para.1 TFEU in this regard. Thus, currently no EU internals can be added to the existing list. Persons who do not abide by the freezing measures set forth in the European regulations are subject to sanctions at the Austrian level.

b) Pursuant to UNSCR 1988 and 1989, the freezing obligation extends to all the funds or other assets defined in R.6, namely funds owned by designated persons (natural or legal) as well as funds controlled by them or by persons acting on their behalf or on their orders. These aspects are covered by the notion of 'control' in Art.(2) Regulations 881/2002, and 753/2011 Art.3. With regard to UNSCR 1373, the freezing obligation under Art.2(1)(b) Regulation 2580/200, and under the RD of 28 December 2006 is not extensive enough.

c) At the European level and in compliance with the UNSCR, the regulations prohibit EU nationals and all other persons or entities present in the EU from making funds or other economic resources available to designated persons or entities.[25] At the national level, Art.2 SanktG enables the same prohibition; however, no regulation or other obligation in regard to UNSCRs 1988 and 1267/1989 has been issued.

d) Designations decided at the European level are published in the Official Journal of the EU. Designations made pursuant to national Austrian regulations would be published in the Official Gazette. Such publication constitutes a notification to all addresses of the legal act. No other communication mechanism of a more proactive nature is in place (such as sending automatic notifications to financial institutions and non-financial professions). It is the duty of the addressees of the law to be on constant alert regarding the publication of new designations in the Official Gazette (e.g. in practice usually conducted by compliance officers of Austrian Banks). The EU Council does provide guidance by means of the EU Best

[23] Regulations 881/2002 Art. 2 (1), 1286/2009, Art. 1 (2), 753/2011, Art. 3, and 754/2011, Art. 1.

[24] Reg.2580/2001, Art. 2 (1) (a).

[25] Regulations 881/2002 Art. 2(2), 753/2011 Art. 4, and 2580 Art. 2(1).

Practices for the effective implementation of restrictive measures; Austrian authorities can also provide additional guidance on a case-by-case basis (by telephone or in writing) or generally due to recent developments of high importance.

e) The natural and legal persons targeted by the European regulations must immediately provide all information to the competent authorities of the Member States in which they reside or are present, as well as to the Commission, either directly or through these competent authorities.[26]

f) The rights of bona fide third parties are protected at the European and Austrian levels.[27]

Criterion 6.6 – There are mechanisms for de-listing and unfreezing the funds/other assets of persons/entities which do not, or no longer, meet the criteria for designation.

a) Any de-listing request would be communicated by the BMEIA through the Austrian Permanent Mission in New York to the UN Security Council Committee.

b) Pursuant to UNSCR 1373, the Council revises the list at regular intervals (CFSP Art.6); modifications to the list under Regulation 2580/2001 are immediately effective in all EU Member States. At the national level, regulations under the SanktG may be repealed by the respective authorities, and shall be repealed once the respective sanctions of the United Nations or the EU are repealed. The SanktG does not define specific authorities, mechanisms, and procedures to implement unfreezing decisions, other than repealing these regulations.

c) Designated persons or entities individually affected may institute proceedings according to Art. 263 para 4 and Art. 275 para 2 TFEU before the Court of Justice of the European Union in order to challenge the relevant EU measures (decisions and regulations), whether they are autonomously adopted by the EU, autonomously adopted by the EU in line with UNSCR 1373 (2001), or based on listings pursuant to UNSCR 1267 (1999). In cases where an individual has been designated by regulation of the OeNB, the general principles of Austrian administrative law are applicable.

d) & e)For designations pursuant to UNSCR 1988 and 1989, designated persons and entities are notified of their designation and the reasons, as well as its legal consequences; they have the right to request a review of the designation in court. At the European level, there are procedures that provide for de-listing names, unfreezing funds and reviews of designation decisions by the Council of the EU. At the UN level, the review can be brought before the Ombudsperson (established pursuant to UNSCR 1904 (2009)) for the examination of de-listing requests, in compliance with UNSCR 1989 and 2255, or, where applicable, before the UN Focal Point Mechanism (established pursuant to UNSCR 1730 (2006)) for UNSCR 1988.

[26] Regulations 881/2002, Art. 5.1 and 2580/2001, Art. 4.

[27] Regulations 881/2002 Art. 6; 753/2011 Art. 7; 2580/2001 Art. 4.

f) There are publicly known procedures for obtaining assistance in verifying whether persons or entities having the same or similar name as designated persons or entities (i.e. a false positive) are inadvertently affected by a freezing mechanism.[28] The procedures are published on the OeNB website. Whenever e.g. a financial institution needs to verify whether a specific person or entity is or is not a designated person, this financial institution can contact the competent authority (for the financial sector, the OeNB) for further information and assistance. The contacts with Council of the EU, the EC or the UN Sanctions Committee itself are usually held by the BMEIA. Upon verification that the person or entity affected is not the person designated, the funds or assets will be unfrozen. The procedures described in sub-criteria (a) to (e) above also apply to the unfreezing of funds or other assets of persons or entities inadvertently affected by a freeze mechanism.

g) De-listing and unfreezing decisions taken in accordance with European regulations are published in the Official Journal of the EU, and guidance is available, pursuant to criterion 6.5 above.

Criterion 6.7 – At both the European and national levels, there are procedures in place to authorise access to frozen funds or other assets which have been determined to be necessary for basic expenses, for the payment of certain types of expenses, or for extraordinary expenses.[29]

Weighting and conclusion

The ability to ensure asset freezing "without delay" is the fundamental difference that distinguishes targeted financial sanctions from seizure measures arising from an ordinary criminal proceeding. Consequently, the shortcomings described for criteria 6.2(e), 6.4 and 6.5a are especially important.

Recommendation 6 is rated partially compliant

Recommendation 7 – Targeted financial sanctions related to proliferation

The obligations pertaining to R.7 were introduced when the FATF standards were revised in 2012 and therefore were not included in the 2005 evaluation of Austria. Austria primarily relies on European legislation for the implementation of R.7. UNSCR 1718 concerning the DPRK is transposed into European law by Regulation 329/2007, and Council decisions 2013/183/CFSP and 2010/413. UNSCR 1737 concerning the Islamic Republic of Iran is transposed into European law by Regulation 267/2012. The SanktG authorises the authorities to issue additional regulations if/as necessary; however these have not been used with respect to Iran or DPRK.

Criterion 7.1 – R.7 requires the implementation of targeted financial sanctions "*without delay*", meaning in this context, "ideally, within a few hours". Although European regulations are implemented immediately in all EU Member States upon the publication of decisions in the EU Official Journal, there are delays in the transposition into European law of UN decisions on DPRK. For

[28] Website OeNB, e.g. Praxisinformation "*Bekämpfung von Terrorismusfinanzierung*"; EU Best Practices for the effective implementation of restrictive measures.

[29] Regulations 881/2001, Art. 2a, 753/2011, 2580/2001, Art. 5-6, Austrian Sanctions Law art. 3.

DPRK, the UN added individuals and entities to the list four times between March 2012 and November 2015. Five (out of 14) of the entities had already been listed in the EU Framework. On three other occasions, the designations by the UN (of 22 January 2013, 7 March 2013, and 28 July 2014) took approximately 4 weeks, 6 weeks, and 10 weeks, respectively, to be incorporated into the EU framework. While these sanctions thus are generally not implemented "without delay", the sanctioning system (similar to the system for Iran) is also mitigated by the significant number of other designations by the EU. With regard to Iran, these mechanisms do not suffer from technical problems in the length of time for transposition. Since Regulation 267/2012 was issued in March 2012, there were only two occasions where the UN added designations to the list (two entities and one individual on 19 April 2012, and two entities on 20 December 2012). In both cases, these individuals and entities had already been listed in the EU framework (see Regulation 1245/2011 of 1 December 2011, and Regulation 54/2012 of 23 January 2012), and subsequently incorporated into Annex IX of Regulation 267/2012.

The practical impact of any deficiency may be mitigated in part by the separate and wider EU sanctions regimes applied to entities from Iran and DPRK. In fact, the EU applies sanctions to a significant number of entities that are not designated by the UN, as they are designated associates of, or otherwise associated with, other UN and EU-designated individuals and entities. The EU framework also uses an authorisation process imposing comprehensive controls on transfers of funds between the EU and Iran, including prior authorisation (in Art.30 of Regulation 267/2012, implementing the financial vigilance provisions of UNSCR 1929). All these measures further mitigate the risk of UN listed persons and entities evading the sanctions measures.

Criterion 7.2 – The BMI has overall authority to monitor the compliance with legal acts pursuant to Art.2 SanktG (any national measures imposed) and with directly applicable sanctions of the EU. However for credit and financial institutions the OeNB has this specific authority.

a) EU regulations are applicable within the territory of the Union, to any national of a Member State, to any legal person, entity or body, incorporated or constituted under the law of a Member State, and to any legal person, entity or body in respect of any business done in whole or in part within the Union (Art.49 Regulation 267/2012 and Art.16 Regulation 329/2007). The freezing obligation is activated upon publication of the regulations in the Official Journal of the EU. The delays in transposition described above raise the question of compliance with the obligation to execute freezing measures 'without prior notice', which deprives the European regulations of any surprise effect.

b) The freezing obligation applies to all types of funds.

c) The regulations prohibit making available, directly or indirectly, funds or economic resources to designated persons or entities or for their benefit, unless otherwise authorised or notified in compliance with the relevant UN resolutions (Art.6.4 Regulation 329/2007 and Art.23.3 Regulation 267/2012).

d) The lists of designated persons and entities are communicated to financial institutions and DNFBPs through the publication of a consolidated list on the EU site is available and can be downloaded at: http://eeas.europa.eu/cfsp/sanctions/consol-list/index_en.htm. Any

designations made pursuant to national Austrian regulations are published in the Official Gazette. Such publication constitutes a notification to all addresses of the requirements. Guidance to financial institutions and DNFBPs and others who may be holding targeted funds or other assets is publicly available.[30]

e) Financial institutions and DNFBPs must immediately provide to the competent authorities all information that will facilitate observance of the EU regulations, including information about the frozen accounts and amounts (Art.10 Regulation 329/2007 and Art.40 Regulation 267/2012).

f) The rights of bona fide third parties are protected by the relevant EU Regulations (Art.11 Regulation 329/2007 and Art.42 Regulation 267/2012).

Criterion 7.3 – EU Member States are required to take all necessary measures to ensure that the EU regulations on this matter are implemented and to determine a system of effective, proportionate and dissuasive sanctions (Art.14 Regulation 329/2007 and Art.47 Regulation 267/2012). Pursuant to Art. 8 SanktG, the OeNB monitors credit and financial institutions and payment institutions for compliance with targeted financial sanctions. In exercising their respective functions, the BMI and OeNB can request necessary information from natural and legal persons to identify and process data; this right also includes also the power to consult on-site books, documents and computer data.

Performing a financial or other legal transaction, or providing other services contrary to the EU regulations or to national sanctions is an administrative offence punishable with a fine of up to EUR 50 000 (Art.12 SanktG). Performing a financial or other legal transaction exceeding EUR 100 000 is punishable with imprisonment of up to one year or a fine of up to 360 daily rates (Art.11 SanktG); providing other services exceeding EUR 100 000 is punishable with up to two years imprisonment or a maximum fine of 360 daily rates.

Criterion 7.4 – The European regulations establish measures and procedures for submitting de-listing requests in cases where the designated persons or entities do not meet or no longer meet the designation criteria.

a) The EU Council communicates its designation decisions, including the grounds for inclusion, to the designated persons or entities which have the right to comment on them. If this is the case or if new substantial proof is presented, the Council must reconsider its decision. Individual de-listing requests must be processed upon receipt, in compliance with the applicable legal instrument and EU Best Practices for the effective implementation of restrictive measures. Designated persons or entities are notified of the Council decision. Delisting requests may be directly filed with the Council of the EU or with the competent UN authority (Focal Point established pursuant to UNSCR 1730 (2006)). When the UN decides to de-list a person, the EC modifies the lists in the annexes of the European regulations without the person in question having to request it (Arts.13.1(d) and (e) Regulation 329/2007, and Art. 46 Regulation 267/2012). The persons and entities affected by

[30] See for instance www.oenb.at/Ueber-Uns/Rechtliche-Grundlagen/Finanzsanktionen.html; EU Best Practices for the effective implementation of restrictive measures.

restrictive measures may file a petition for delisting with the competent national authorities that will channel such request to the respective institutions. Designated persons or entities individually affected may also institute proceedings before the European Court of Justice in order to challenge the relevant (EU) Sanctions Regulations.

b) Publicly known procedures are available for obtaining assistance in verifying whether persons or entities are inadvertently affected by a freezing mechanism having the same or similar name as designated persons or entities (i.e. a false positive). Whenever a financial institution needs to verify whether a specific person or entity is or is not a designated person, this financial institution can contact the competent authority (in the financial sector the OeNB) for further information and assistance.

Criterion 7.5–

a) The European regulations permit the payment to the frozen accounts of interests or other sums due on those accounts or payments due under contracts, agreements or obligations that arose prior to the date on which those accounts became subject to the provisions of this resolution, provided that these amounts are also subject to freezing measures (Art.9 Regulation 329/2007 and Art.29 Regulation 267/2012).

b) Provisions authorise the payment of sums due under a contract entered into prior to the designation of such person or entity, provided that this payment does not contribute to an activity prohibited by the regulation, and after prior notice is given to the UN Sanctions Committee (Arts.24-25 Regulation 267/2012).

Weighting and conclusion

As with R.6, the ability to ensure asset freezing without delay is the element that distinguishes targeted financial sanctions from other measures relating to criminal proceedings. While the EU measures for Iran are implemented without delay for Iran, they are not done so for DPRK. Therefore criteria 7.1 and 7.2 are fundamental components of R.7.

Recommendation 7 is rated partially compliant.

Recommendation 8 – Non-profit organisations

In its 3rd MER, Austria was rated PC for requirements pertaining to NPOs. Since then, Austria updated its Associations Act (VerG) in 2011.

Criterion 8.1 – Austria has not reviewed the adequacy of laws and regulations that relate to entities that con be abused for TF, including NPOs. Nor has Austria undertaken a domestic sector review of its NPO sector, or periodic reassessments, in order to identify the features and types of sub-set of NPOs that are particularly at risk of being misused for TF. Relevant ministries and units (i.e. BMF, BMJ, FMA, BVT, and FIU) do meet on a quarterly basis in order to discuss current topics on the basis of actual cases, investigation results and investigative approaches.

Criterion 8.2 – Relevant Austrian authorities do conduct periodic outreach to the NPO sector concerning TF issues. At the micro level, the BVT has been organising "Sicherheitsdialog" (security dialogue) with some NPOs since 2011 with a view to raising their awareness of radicalisation of believers as well as possible TF abuse. At macro level, the BMF, BMI and the EC organised an outreach event to NPOs in March 2011 on "How to protect non-profit organisations against being misused for terrorist financing". The next event is under planning and scheduled to be organised in 2016.

Criterion 8.3 – There are no clear policies to promote transparency, integrity and public confidence in the administration and management of all NPOs. However, the VerG provides for some measures in these areas and sets out the prerequisites for the foundation, the organisation, financial management, and the dissolution of an association. An association is established upon agreement on statutes (Art.2). Within one year the association must appoint board representatives. The statutes must provide for a general meeting and management for the association's business and representation in public. If the statutes provide for a supervisory board, this must consist of at least three natural persons who are independent. Every association has to appoint at least two auditors. A general meeting must be convened at least every five years.

Criterion 8.4 – The VerG applies to most NPOs; however, Austria has not assessed the NPO sector to determine which NPOs account for a significant portion of the sector's financial resources or a substantial share of the sector's international activities. The VerG requires the following –

a) The associations' statutes must contain the name of the association, its location, a clear and comprehensive description of the association's purpose, the activities intended for fulfilling the purpose and the way of raising funds, provisions on acquisition and termination of membership, the rights and obligations of members, the association's board and their tasks (who conducts the affairs of the association and who represents the association in public), how the association's members are appointed and their terms of office (Art.3). There are no clear requirements to maintain the identities of those who own, control, or direct their activities, including senior officers, board members, and trustees. Information that is kept publicly available – it is entered in the Local Register of Associations then forwarded to the BMI's Central Register of Associations.

b) to e) All associations intending to act as NPOs must register with the Local Register of Associations. The VerG contains some controls to ensure that funds are accounted for. The managing board must establish an appropriate accounting system in accordance with the requirements of the association and must ensure that the receipts and expenses are recorded continuously. Annual statements of income and expenditures must also be compiled; however, these are neither published nor required to be presented to the association authority. Larger associations have additional accounting requirements: those whose receipts and expenses exceeded EUR 1 000 000 within two years must compile annual financial statements (balance, profit and loss account, notes to the account); and associations whose receipts and expenses exceeded EUR 3 000 000 within two years or which collected donations of more than EUR 1 000 000 must compile extended annual financial statements including further notes with concrete figures. These must comply with provisions of the UGB (e.g. pertaining to detailed requirements for financial statements, balance sheets, deposits

and contributions, valuation of assets, and profits and losses). The audit of annual accounts has to be performed by an auditor of annual accounts (certified accountants, auditing companies, and auditors (Art. 21-22). There is no clear requirement to ensure that funds are spent in a manner that is consistent with the purpose and objectives of the NPO's stated activities or for NPOs to follow a "know your beneficiaries and associated NPOs" rule.

f) According to Art.132 BAO, books and accounting records, as well as the receipts pertinent to the books and accounting records must be retained for seven years. This applies to both domestic and international transactions.

Criterion 8.5 – Competent authorities do not generally monitor the financial and accounting requirements in the Associations act, as these are done by the association itself (through its management board or auditor), unless the NPOs have taxable activities which will then be subject to tax authorities' monitoring and audit on a regular basis. Upon registration, the local registration authority is required to check basic registration requirements. The authority can refuse to register or de-register entities if these requirements are not met. The association authority can also impose administrative sanctions if a prohibited or dissolved association is continued, if it is not notified of amendments to the statutes, or if it is not informed of who are the association's representatives. The fine is up to EUR 218 (or EUR 726 in case of recurrence), which do not amount to proportionate or dissuasive sanctions. Art.51 para.1(c) FinStrG provides monetary sanctions up to EUR 5 000 for violating mandatory accounting rules. This provision is only applicable if no tax evasion was committed by the violation of the accounting rules. An association can only be dissolved if any kind of criminal law were violated.

Criterion 8.6 – Austria relies on its powers to access the public registers of associations for the information it contains, as well as general police and investigative powers to gather more specific information on particular NPOs. This includes powers to search premises, objects, and persons (e.g. the StPO). There is also institutionalised cooperation between the BVT and the nine Provincial police directorates.

Criterion 8.7 – Austria does not have a co-ordinated approach or procedure respond to international requests for information regarding particular NPOs suspected of TF or other forms of terrorist support. Instead Austria relies on its functional areas of international cooperation: the A-FIU is the contact point for foreign FIU requests, while other requests would be channelled through existing bilateral and multilateral police and intelligence agreements.

Weighting and conclusion

Austria has in place some measures to address R.8, such as accounting rules for NPOs, some measures to promote transparency, and outreach to the sector concerning TF issues. However, Austria has not reviewed the adequacy of laws and regulations that relate to entities that can be abused for TF, including NPOs. Nor has Austria undertaken a domestic sector review of its NPO sector, or periodic reassessments, in order to identify the features and types of sub-set of NPOs that are particularly at risk of being misused for TF.

Recommendation 8 is rated partially compliant.

Recommendation 9 – Financial institution secrecy laws

Criterion 9.1-

The banking secrecy requirement is set out in Art.38 para.1 BWG as follows: credit institutions, their members, members of their governing bodies, their employees as well as any other persons acting on behalf of credit institutions are prohibited from divulging or exploiting secrets which are revealed or made accessible to them exclusively on the basis of business relations with customers. There are instances where the obligation to maintain banking secrecy does not apply, in particular, when disclosing information –

- to public prosecutors and criminal courts in connection with criminal court proceedings on the basis of a court approval (pursuant to Art.116 StPO, see also criteria 4.2 and 31.3), and to the fiscal authorities in connection with initiated criminal proceedings, except in the case of financial misdemeanours (Art.38 para.2 no.1 BWG);
- to the central Money-Laundering Reporting Office (the A-FIU) pursuant to its requests in the framework of its AML/CFT responsibilities, regardless whether a STR has been filed or not (Art.38 para.2 no.2 BWG);
- to the FMA in the framework of its supervision function pursuant to Art.70 para.1 BWG. In this case the banking secrecy is extended to FMA staff in the framework of the performance of their duties (banking supervision);
- to the central bank account registry (Art. 38 para 2 no. 12 BWG);
- to public prosecutors and criminal courts for purposes of criminal investigations and proceedings through a request of information to the central bank account registry (Art. 38 para 2 no. 12 BWG).

While law enforcement has the authority to request records from financial institutions, these financial institutions have the possiblity to appeal this request before the court (see Criterion 31.1(a)), which causes delays in and impediments to the production of records.

There are separate provisions concerning professional secrecy in case of investment firms and investment services undertakings (Art.7 para.1 WAG), payment services providers (PSPs) (Art.19 para.4 ZaDiG), e-money issuers (Art.13 para.2 E-GeldG), and insurance undertakings (Art.108a VAG). However, in each case, there are limitations to the secrecy in case when the disclosure or use is justified as to content and form by a public or a legitimate private interest, or when it runs contrary to a statutory disclosure obligation.

There are no provisions concerning professional secrecy with regard to undertakings for collective investment in transferable securities (UCITSs), alternative investment fund managers (AIFMs) and insurance intermediaries.

The cross-border exchange of information between supervisory authorities is permitted to the extent it does not violate professional secrecy (Art.77 paras.1 and 5 BWG).

Weighting and conclusion

Overall, financial institution secrecy laws do not impede the application of the FATF Recommendations. However, while law enforcement has the authority to request records from financial institutions, these financial institutions have the possiblity to appeal this request before the court.

Recommendation 9 is rated largely compliant.

Recommendation 10 – Customer due diligence

Criterion 10.1–

General requirements

Financial institutions are prohibited from maintaining anonymous accounts and from accepting anonymous saving deposits[31] (Art.40d para.2 BWG[32]). Alternative investment fund managers are not allowed to maintain accounts for their customers (Art.19 AIFMG). There is no requirement to prohibit anonymous accounts (or similar business relationships) that would apply to insurance undertakings and intermediaries, although the general identification requirements may be interpreted as precluding anonymous contracts and contracts under fictitious names.

Criterion 10.2 –

General requirements

Financial institutions, insurance undertakings and intermediaries are required to identify and verify the identity of their customer in the following circumstances –

1) before establishing business relationship (Art.40 para.1 no.1 BWG,[33] Art.98b para.1 no.1 VAG, Art.365o no.1 GewO);

[31] Before 31 October 2000 it was possible to open an anonymous savings deposit account (passbook). Since then opening of new accounts of this type was prohibited, although those that had been opened before that date have been retained as anonymous. All these accounts are now subject to some restrictions concerning transactions that can be performed on them. Art.40 para.1 no.4 BWG provides that a customer should be identified and verified in case of deposits and withdrawals in/from the saving deposits above EUR 15 000. In addition to that, in case of savings deposits which amount to less than EUR 15 000 or an equivalent value and which are not registered in the name of an identified customer, withdrawals may be paid out only to the holder after identification (Art.32 para.4 no.1 BWG).

[32] Also referenced in the Art.6 para.1 WAG, Art.19 para.5 ZaDiG, Art.13 para.1 E-GeldG, and Art.10 para.6 InvFG.

[33] Also referenced in the Art.6 para.1 WAG, Art.19 para.5 ZaDiG, Art.13 para.1 E-GeldG, Art.10 para.6 InvFG and Art.10 para.3 AIFMG.

2) before carrying out occasional transactions above the threshold of EUR 15 000, including when there are several transactions under the threshold that appear to be linked (Art.40 para.1 no.2 BWG,[34] Art.98b para.1 no.2 VAG, Art.365o no.2 GewO);
3) when there is a suspicion of that the customer participates in ML/TF or is a member of terrorist organisation (Art.40 para.1 no.3 BWG,[35] Art.98b para.1 no.3 VAG, Art.365o no.3 GewO);
4) when there are doubts as to the veracity and adequacy or previously obtained information (Art.40 para.1 no.5 BWG,[36] Art.98b para.1 no.4 VAG, Art.365o no.4 GewO).

Wire transfers above applicable threshold

EU Regulation (EC) No. 1781/2006, which is directly applicable in Austria, requires that the financial institution identify and verify the identity of the originator (i.e. customer) of transactions above EUR 1 000, and in cases where there are several transactions of lower amounts that appear to be linked and together exceed EUR 1 000. However this requirement does not include the full range of CDD measures such as verifying whether a customer is acting on behalf of another person, identifying and verifying the beneficial owner, etc.

Criterion 10.3 – Financial institutions, insurance undertakings and intermediaries are obliged to identify and verify the identity of a customer. In case of a natural person, the identity is to be ascertained by the personal presentation of an official photo identification document. For the purposes of this provision, documents which are issued by a government authority and which bear a non-replaceable, recognisable photograph of the head of the person in question and include the name, date of birth and signature of the person as well as the authority which issued the document are deemed to meet this condition. In the case of natural persons who are not legally competent and legal persons, the identity of the natural person authorised to represent the former is to be verified by presentation of the latter's official photo identification document and the power of representation is to be verified by means of suitable documents. The identity of the legal person must be ascertained on the basis of meaningful supporting documentation which is available under the usual legal standards of the country in which the legal person is incorporated (Art.40 para.1 BWG,[37] Art.98b para.1 VAG, Art.365p para.1 no.1 GewO).

The documents mentioned in this provision (such as "issued by a government authority" or "available under the usual legal standards of the country in which the legal person is incorporated") can be considered as reliable and independent sources for the purposes of R.10.

Criterion 10.4 – Financial institutions and insurance undertakings are required to verify that any person purporting to act on behalf of legal persons and natural persons who are not legally competent is so authorised, and identify and verify the identity of that person (Art.40 para.1 BWG,[38]

[34] Ibid.

[35] Ibid.

[36] Ibid.

[37] Also referenced in the Art.6 para.1 WAG, Art.19 para.5 ZaDiG, Art.13 para.1 E-GeldG, Art.10 para.6 InvFG and Art.10 para.3 AIFMG.

[38] Ibid.

Art.98b para.1 VAG). It should be noted that in the situation when one natural person is acting on behalf of another legally competent natural person there is no requirement to verify that the former is so authorised.

The provisions concerning the insurance intermediaries (Art.365p para.1 no.2a GewO) are comprehensive and cover all types of representation.

Criterion 10.5 – Financial institutions and insurance undertakings must call upon the customer to reveal the identity of the customer's beneficial owner and the customer is under obligation to comply with this request (Art.40 para.2a no.1 BWG,[39] Art.98b para.3 no.1 VAG). They must take risk-based and appropriate measures to verify the beneficial owner's identity so that the credit institution or financial institution is satisfied that it knows who the beneficial owner is. Insurance intermediaries have to identify the beneficial owner and take risk-based and appropriate measures to verify his/her identity (Art.365p para.1 no.2 GewO). The definition of the beneficial owner is set out in Art.2 para.75 BWG, Art.98a para.2 no. 3 VAG and Art.365n no.3 GewO and is in line with the definition provided in the FATF Glossary.

Criterion 10.6 – Financial institutions and insurance undertakings and intermediaries must take risk-based and appropriate measures to obtain information on the purpose and nature of the intended business relationship (Art.40 para.2a no.2 BWG,[40] Art.98b para.3 no.2 VAG, Art.365p para.1 no.3 GewO).

Criterion 10.7 – Financial institutions, insurance undertakings and intermediaries must take risk-based and appropriate measures to conduct ongoing monitoring of the business relationship, including scrutiny of transactions undertaken throughout the course of that relationship, to ensure that the transactions conducted are consistent with the institution's knowledge of the customer, the customer's business and risk profile. This includes, where necessary, the source of funds, and ensuring that the documents, data or information held are kept up to date (Art.40 para.2a no.3 BWG,[41] Art.98b para.3 no.3 VAG, Art.365p para.1 no.4 GewO).

Criterion 10.8 – In case the client is a legal person or a trust, financial institutions, insurance undertakings and intermediaries must take risk-based and appropriate measures in order to understand the ownership and control structure of the customer (Art.40 para.2a no.1 BWG,[42] Art.98b para.3 no.1 VAG, Art.365p para.1 no.2 GewO).

Criterion 10.9 – Financial institutions and insurance undertakings must ascertain the identity of the legal person and legal arrangements on the basis of meaningful supporting documentation, which is available under the usual legal standards of the country in which the legal person is incorporated (Art.40 para.1 BWG,[43] Art.98b para.1 VAG). The term "meaningful supporting documentation" is

[39] Ibid.

[40] Also referenced in the Art.6 para.1 WAG, Art.19 para.5 ZaDiG, Art.13 para.1 E-GeldG, Art.10 para.6 InvFG and Art.10 para.3 AIFMG.

[41] Ibid.

[42] Ibid.

[43] Ibid.

explained in the explanatory materials to the law, and further clarification is provided in the FMA Circular on Identification that describes the type of documents financial institutions are obliged to resort to when identifying legal persons or legal arrangements (which meet the requirements of criterion 10.9).The Circular does not have a binding status. Some of its provisions (concerning the proof of existence of the legal person) are indirectly supported by a ruling of the Administrative Court (Ro 2014/02/0020 of 10 October 2014), which referred, however, to the explanatory materials to the draft law (amending the BWG) rather than the Circular itself. In any case, the requirements pursuant to Criterion 10.9 (b) are not covered in law or other enforceable means.

There are no specific requirements concerning the minimum set of information that should be collected for the purpose of identification of customers that are legal persons or legal arrangements applicable to insurance intermediaries.

Criterion 10.10 – Financial institutions, insurance undertakings and intermediaries must identify and take risk-based and appropriate measures to verify the beneficial owner's identity (see c.10.5 above). The definition of the "beneficial owner" (Art.2 no.75 BWG, Art.98a para.2 no.3 VAG, Art.365n no.3 GewO) includes the elements of the controlling ownership interest (as set out in the sub-criterion 10.10.a) and the control through other means (as set out in the sub-criterion 10.10.b). The definition does not include the element of the senior managing official (sub-criterion 10.10.c), which is even stricter than the FATF Recommendations permit.

Criterion 10.11 – Financial institutions, insurance undertakings and intermediaries must identify and take risk-based and appropriate measures to verify the beneficial owner of a customer. In the case of trusts and foundations, Art.2 no.75 BWG, Art.98a para.2 no.3 VAG and Art.365n no.3 GewO define beneficial owners where future beneficiaries have been identified, as the natural persons who are beneficiaries of 25% of the property of the trust, in cases where the future beneficiaries have not been identified, the class of persons in whose main interest the trust was set up, or natural persons who exercise control over 25% of the property of a trust. The settlor of the trust has to be identified pursuant to Art.40 para.2 BWG[44] and Art.98b para.2 VAG. There is no specific requirement to identify and verify the protector(s) of the trust, especially if they don't exercise any control over the trust.

Criteria 10.12 and 10.13 – All CDD measures described above applicable to the policy holder apply equally to the beneficiary of the insurance policy (Art. 98a para.2 no.4 VAG).

Criterion 10.14 – As a general rule, financial institutions and insurance undertakings and intermediaries must ascertain and verify the identity of the customer and the beneficial owner before initiating a permanent business relationship or before executing any occasional transactions above EUR 15 000 (Art.40 para.1 no.1 and 2 BWG,[45] Art.98b para.1 no.1 and 2 VAG, Art.365q para.1 GewO).

[44] Also referenced in the Art.6 para.1 WAG, Art.19 para.5 ZaDiG, Art.13 para.1 E-GeldG, Art.10 para.6 InvFG and Art.10 para.3 AIFMG.

[45] Also referenced in the Art.6 para.1 WAG, Art.19 para.5 ZaDiG, Art.13 para.1 E-GeldG, Art.10 para.6 InvFG and Art.10 para.3 AIFMG.

There are two exemptions to this general rule: (1) financial institutions are permitted to open a bank account for a customer provided that there are adequate safeguards in place to ensure that transactions are not carried out by the customer or on the customer's behalf until full CDD measures have been undertaken (Art.40 para.2c BWG); and (2) insurance undertakings and intermediaries may also allow the verification of the identity of the beneficiary under the insurance contract to take place only before the time of pay-out or when the beneficiary exercises his/her rights vested under the insurance contract (Art.98b para.5 VAG, Art.365q para.3 GewO).

Criterion 10.15 – Criterion 10.15 is not applicable, because in Austria it is not permitted to utilise the business relationship prior to verification. It is permitted to enter into a business relationship prior to verification (see above c. 10.14); however, Art.40 para.2c BWG prohibits the business relationship from being utilised prior to verification.

Criterion 10.16 – Financial institutions and insurance undertakings and intermediaries must apply the due diligence obligations regarding the ascertainment and verification of the customer's identity not only to all new customers, but also to existing customers on a risk-sensitive basis at the appropriate times (Art.40 para.2e BWG,[46] Art.98b para.7 VAG, Art.365p para.3 GewO).

Criterion 10.17 – In situations which by their nature can present a higher risk of ML or TF financial institutions and insurance undertakings and intermediaries must apply additional due diligence measures in addition to the regular CDD obligations on a risk-sensitive basis, and conduct enhanced ongoing monitoring of the business relationship (Art.40b BWG,[47] Art.98d VAG, Art.365s GewO).

Criterion 10.18 – Financial institutions and insurance undertakings and intermediaries may apply less strict CDD measures for certain types of customers, products or transactions (their exhaustive list is set out in the law) provided that the risk of ML/TF with respect to them is considered low. In assessing the risk, the obliged entities must pay special attention to the activities of such customers and to the types of products and transactions which may be regarded as particularly likely, by nature, to be used or abused for ML or TF purposes. If there is information available to suggest that the risk of ML or TF may not be low, the simplified CDD shall not apply (Art.40a BWG,[48] Art.98c VAG, Art.365r GewO).

Criterion 10.19 – In cases where financial institutions or insurance intermediaries are not in a position to comply with CDD measures they must not carry out any transaction or establish a business relationship or they must terminate the business relationship, and in addition they must consider reporting the customer to the A-FIU (Art.40 para.2d BWG,[49] Art.365p para.4 GewO).

In case insurance undertakings are not in a position to comply with CDD measures they must not carry out any transaction or establish a business relationship, and in addition they must consider reporting the customer to the A-FIU (Art.98b para.6 VAG).

[46] Ibid.

[47] Ibid.

[48] Ibid.

[49] Also referenced in the Art.6 para.1 WAG, Art.19 para.5 ZaDiG, Art.13 para.1 E-GeldG, Art.10 para.6 InvFG and Art.10 para.3 AIFMG.

Criterion 10.20 – There is no specific provision that would permit financial institutions, insurance undertakings or intermediaries not to identify customers when they suspect that a transaction relates to ML or TF and have a reason to believe that they would alert the customer by exercising their CDD process.

Weighting and conclusion

Recommendation 10 is rated largely compliant (most important criteria are 10.1 – 10.11 most of which are met or mostly met).

Recommendation 11 – Record-keeping

Criterion 11.1 – Financial institutions and insurance undertakings and intermediaries must keep documentation and records of all transactions for a period of at least five years (Art.40 para.3 no.2 BWG,[50] Art.98g no.2 VAG, Art.365y para.1 no.2 GewO).

Criterion 11.2 – Financial institutions must keep all documents serving the purpose of identification pursuant to Art.40 para.1, 2, 2a and 2e BWG (i.e. regular CDD) for at least five years after the termination of the business relationship with that customer (Art.40 para.3 BWG[51]). Financial institutions must keep results of the analysis undertaken in connection with complex and unusual transactions for 5 years (Art.41 para.1 BWG[52]). Similar requirements apply to insurance undertakings (Art.98g, Art.98f para.1 VAG) and insurance intermediaries (Art.365y para.1 no.2 GewO).

Art.212 para.1 UGB requires all enterprises (which includes financial institutions and DNFBPs) to keep commercial documents including incoming business correspondence and copies of outgoing business correspondence for seven years.

Criterion 11.3 – Although there is no explicit obligation for financial institutions that transaction records should be sufficient to permit reconstruction of individual transactions, the requirements described above (in criterion 11.1) appear to be adequate for this purpose. In case of insurance undertakings and intermediaries the general record keeping requirement stipulates that documents and information should be kept for use in any investigation into, or analysis of, possible ML or TF by the competent authorities (Art.98g VAG, Art.365y para.1 GewO).

Criterion 11.4 – Although there is no requirement per se to ensure the availability of information to competent authorities, financial institutions, insurance undertakings and intermediaries are required to provide the A-FIU without delay with all information the A-FIU deems necessary to prevent or pursue cases of ML or TF (Art.41 para.2 BWG, Art.98f para.2 VAG, Art.365u para.1 no.2 GewO). This requirement is broad enough to encompass CDD and transaction records.

[50] Ibid.

[51] Ibid.

[52] Also referenced in the Art.6 para.1 WAG, Art.19 para.5 ZaDiG, Art.13 para.1 E-GeldG, Art.10 para.6 InvFG and Art.10 para.3 AIFMG.

Weighting and conclusion

Recommendation 11 is rated compliant.

Recommendation 12 – Politically exposed persons

Criterion 12.1 – With regard to transactions or business relationships relating to PEPs "from" another Member State or third country, financial institutions, insurance undertakings and intermediaries are required to (Art.40b para.1 no.3 BWG,[53] Art.98d para.1 no.2 VAG, Art.365s para.3 GewO) –

- have appropriate risk-based procedures to determine whether the customer is a PEP;
- obtain senior management approval before establishing business relationships with such customers;
- take adequate measures to establish the source of wealth and source of funds that are involved in the business relationship or transaction; and
- conduct enhanced ongoing monitoring of the business relationship.

The requirement for insurance intermediaries (Art 365s para 3 GewO) is slightly different in that it applies in respect of transactions or business relationships with politically exposed persons "residing in" another Member State or in a third country which would thus not apply to a foreign PEP residing in Austria.

The same measures apply in the case when the beneficial owner of the customer is PEP.

Although the legal provisions stipulate that persons who become politically exposed in the course of the existing business relationship shall be treated in the same manner, there is no specific requirement to obtain senior management approval to continue business relationships with them.

Criterion 12.2 – Since the definition of the PEP in the BWG and VAG also includes persons who have been entrusted with a prominent function by an international organisation, financial institutions and insurance undertakings are required to take the same measures as for the foreign PEPs (see criterion 12.1 above). However, there is no such a requirement for insurance intermediaries.

There are no requirements for financial institutions, insurance undertakings to identify domestic PEPs. As mentioned above, regarding insurance intermediaries, a requirement to apply enhanced CDD applies "in respect of transactions or business relationships with politically exposed persons residing in another Member State or in a third country."

Criterion 12.3 – The definition of PEP is set out in the Art.2 no.72 BWG, Art.98a para.2 no.1 VAG and Art.365n no.4 GewO and is consistent with the definition of the "PEP" in the FATF Glossary. PEP status ceases to apply one year after the PEP ceases his or her relevant functions.

[53] Also referenced in the Art.6 para.1 WAG, Art.19 para.5 ZaDiG, Art.13 para.1 E-GeldG, Art.10 para.6 InvFG and Art.10 para.3 AIFMG.

All definitions of PEPs include the family members and close associates of politically exposed persons; therefore, all requirements apply equally for them.

Criterion 12.4 – All CDD measures with regard to PEPs described above applicable to the policy holder apply equally to the beneficiary of the insurance policy (Art. 98a para.2 no.4 VAG). However, there is no requirement to inform senior management before the payout of the policy proceeds.

Weighting and conclusion

Recommendation 12 is rated partially compliant (the most important criteria are 12.1 and 12.2).

Recommendation 13 – Correspondent banking

Criterion 13.1 – With regard to cross-border correspondent banking relationships, financial institutions are required to (Art.40b para.1 no.2 a) – d) BWG) –

- gather sufficient information about a correspondent bank to understand fully the nature of its business and be able to ascertain the reputation of the institution and the quality of supervision on the basis of publicly available information;
- satisfy themselves of the correspondent bank's AML/CFT controls;
- obtain approval from senior management before establishing new correspondent banking relationships;
- document the respective responsibilities of each institution.

However, these measures apply to the correspondent banks in the EEA area only subject to their assessment as high risk, which is more restrictive than the FATF Standard.

Criterion 13.2 – With respect to payable-through accounts, financial institutions must be satisfied that (Art.40b para.1 no.2 e) BWG) –

- the correspondent bank has verified the identity of and performed ongoing due diligence on the customers having direct access to accounts of the correspondent, and
- it is able to provide relevant CDD data to the correspondent bank upon request.

Criterion 13.3 – Credit institutions (i.e. only those that are subject to the BWG) are not allowed to enter into or continue a correspondent banking relationship with a shell bank as defined in the Art.2 no.74 BWG, and they are required to take appropriate measures to ensure that they do not engage in or continue correspondent banking relationships with a credit institution which is known to permit its accounts to be used by a shell bank (Art.40d para.1 BWG). The definition of a "shell bank" is in line with the FATF definition.

Weighting and conclusion

Austria has put in place most of the requirements for R.13. However, some measures apply to the correspondent banks in the EEA area only subject to their assessment as high risk, which is more restrictive than the FATF Standard.

Recommendation 13 is rated largely compliant.

Recommendation 14 – Money or value transfer services

Criterion 14.1 – Persons that provide MVTS in Austria are covered either by the provisions of Art.1 para.1 no.2 BWG (in case of non-cash payment transactions via current account) or Art.1 para.2 ZaDiG (in case of payment transactions with or without setting up a payment account, this also includes e-money institutions by reference in Art.3 para.3 no.1 E-GeldG). In both cases, these persons are required to obtain a license from the FMA to be able to carry out the relevant activities (Art.4 para.1 BWG, Art.5 para.1 ZaDiG, Art.3 para.1 E-GeldG). Some entities authorised in other EU member states operate in Austria under the EU passporting system.

Criterion 14.2 – The unauthorised provision of either payment services (Art.1 para.2 ZaDiG), or banking services outside of lending/deposit business (Art.1 para.1a BWG) constitutes an administrative offense, punishable with a fine of up to EUR 50 000 (Art.66 para.1 ZaDiG), or EUR 100 000 (Art.98 para.1a BWG).

The FMA operates a specialised division focused exclusively on combating unauthorised business. Art.22b para.1 FMABG grants the FMA the right to obtain the necessary information from natural and legal persons for that purpose. The unauthorised institutions are identified through: information, enquiries or complaints from market participants; information acquired by the FMA as part of its continued supervision of licensed companies; active observation of the market; or notifications from other authorities. In the case such an illegal service is identified, the FMA institutes administrative proceedings to terminate the service and to punish those persons responsible. In 2014 the FMA initiated a total of 230 such investigations. Furthermore, 23 cases were examined on site.

The FMA may inform the public that a person is not authorised to carry out certain transactions that require a license (Art.4 para.7 BWG, Art.64 para.9 ZaDiG). The FMA is also authorised to publish details of any penal decisions and administrative decisions prohibiting the business, and to disclose the details of these (Art.22c FMABG).

Criterion 14.3 – The FMA has the responsibility to monitor for compliance all persons who are operating under its license subject to the provisions of the BWG and ZaDiG (Art.69 BWG, Art.59 ZaDiG), including those who provide MVTS (see criterion 14.1 above). The requirement is general and also covers AML/CFT compliance (Art.40-41 BWG, and Art.19 para.5 ZaDiG). It also includes monitoring compliance of those PSPs that operate under the EU passport (Art.59 para.1 ZaDiG).

Criterion 14.4 – If a payment institution intends to provide payment services through an agent, it shall communicate the detailed information about its name, address, management and the intended activities to the FMA (Art.22 ZaDiG).

Criterion 14.5 – Although there is no explicit requirement for MVTS providers to include the agents in their AML/CFT programmes, the general requirements for organisation and internal AML/CFT controls to which payment institutions are subject cover all the activities that these institutions carry out, regardless of whether they use their own personnel or agents to do so. Agents are contractually required to comply with the rules applicable to their principal including the AML/CFT programmes. The payment institutions are required to monitor them in order to ensure compliance, as they themselves would be held liable for any misconduct by the agent (Art. 23 para.1 and 2 ZaDiG).

Weighting and conclusion

Recommendation 14 is rated compliant.

Recommendation 15 – New technologies

Criterion 15.1 – Austria has not conducted a specific assessment of ML/TF risks related to new products or technologies, but this was part of the NRA exercise (see R.1). In the result, Austria has not identified any higher ML/TF risk posed by new products.

Some new developments concerning remote CDD through video/VOIP systems have come to the attention of the Austrian authorities after the conclusion of the NRA. Currently, there are discussions ongoing among the authorities and the private sector in order to identify and assess the ML/TF risk on a holistic basis.

Financial institutions and insurance undertakings are required to establish adequate and appropriate policies and procedures to assess ML/TF risk and to develop appropriate strategies to prevent the abuse of new technologies for the ML/TF purposes (Art.41 para.4 no.1 BWG,[54] Art.98h para.1 no.1 VAG). This does not apply to insurance intermediaries.

Criterion 15.2 – There is no requirement for financial institutions to undertake risk assessments prior to launch of new products, practices or technologies. However, there is a requirement for financial institutions and insurance undertakings to develop appropriate strategies to prevent the abuse of new technologies for ML/TF purposes (Art.41 para.4 no.1 BWG,[55] Art.98h para.1 no.1 VAG) which may presume some form of a prior risk assessment. This does not apply to insurance intermediaries.

Weighting and conclusion

Recommendation 15 is rated partially compliant (due to the criterion 15.2 which constitutes the core requirement).

[54] Also referenced in the Art.6 para.1 WAG, Art.19 para.5 ZaDiG, Art.13 para.1 E-GeldG, Art.10 para.6 InvFG and Art.10 para.3 AIFMG.

[55] Ibid.

Recommendation 16 – Wire transfers

Austria implements the requirements on wire transfers through the EU Regulation on Wire Transfers (1781/2006/EC),[56] which has direct applicability in the country. Some supporting elements (such as supervision arrangements and sanctions for non-compliance) are set out in Austrian legislation – notably in the Art.3 para.9 and Art.99 para.1 no.19 BWG. Transfers taking place entirely within the EU and European Economic Area (EEA) are considered domestic transfers for the purposes of R.16, which is consistent with the Recommendation.

EU Regulation 1781/2006 does not include all the requirements of the revised R.16. Most significantly, it does not include requirements regarding information on the beneficiary of a wire transfer, which were added to the FATF Standards in 2012. Therefore the criteria below describe only the measures that are in force regarding originator information. The analysis ("met, "partly met" etc.), even when not explicitly stated, takes into account that corresponding requirements for beneficiary information do not apply.

Criterion 16.1 – Financial institutions are required to ensure that all cross-border wire transfers of EUR 1 000 or more are accompanied by the required and accurate originator information (Art.4 and 5 EU Regulation 1781/2006).

Criterion 16.2 – The requirements of Regulation 1781/2006 regarding batch files are consistent with the FATF requirements regarding originator information (Art.7.2 EU Regulation 1781/2006).

Criterion 16.3 – Regulation 1781/2006 requires collection (but not verification) of payer information in case of transactions below EUR 1 000.

Criterion 16.4 – Financial institutions are required to identify their customers and to verify their identity where there is any suspicion of ML or TF (Art.40 para.1 no.3 BWG[57]). Art.5.4 EU Regulation 1781/2006 also states that the exemption from verifying the originator's identity does not apply if there is any suspicion of ML/TF.

Criterion 16.5 – For domestic transfers (within the EEA),[58] the Regulation contains an exemption from the requirement to provide complete originator information (Art.6.1 EU Regulation 1781/2006). However, the exemption may only apply where complete information about the originator can be made available to the beneficiary's financial institution by other means: at the request of the beneficiary's payment service provider, the originator's payment service provider

[56] It should be noted that a new EU Regulation on information accompanying transfers of funds (Regulation 2015/847) was passed on 20 May 2015 which repeals the current one. Apparently, it has addressed most of the deficiencies under the old Regulation. However, it will only apply starting from 26 June 2017 and therefore cannot be taken into consideration for the purposes of this analysis.

[57] Also referenced in Art.19 para.5 ZaDiG, Art.13 para.1 E-GeldG.

[58] The definition of a domestic transfer within the EEA-area in the Regulation (Art. 6.1) is wider than that in R.16, which refers to "a chain of wire transfers that takes place entirely within the EU". The Regulation refers to the situation where the payment service provider (PSP) of the payer and the PSP of the payee are situated in the EEA-area. Hypothetically, this means that according to the Regulation, a domestic transfer could be routed via an intermediary institution situated outside the EEA-area.

must be able to furnish complete information about the originator (Art.6.2 EU Regulation 1781/2006).

Criterion 16.6 – Under the exemption, the transfer may be accompanied solely by the originator's account number or unique identifier allowing the transaction to be traced back to the originator (Art.6.1 EU Regulation 1781/2006). It must nonetheless be possible for full information about the originator to be sent to the beneficiary's institution within three working days of receiving any request (Art.6.2 EU Regulation 1781/2006). Financial institutions are required to provide the A-FIU without delay with all information it deems necessary to prevent or pursue cases of ML or TF, which would include the information on the originator as well (Art.41 para.2 BWG).

Criterion 16.7 – The originator's financial institution is required to keep the complete originator information which accompanies transfers for five years (Art. 5.5 EU Regulation 1781/2006). In addition, there is a general requirement that financial institutions must keep all documents serving the purpose of identification for at least five years after the termination of the business relationship with that customer (Art.40 para.3 BWG[59]).

Criterion 16.8 – Failure to comply with Art.5-14 EU Regulation 1781/2006 (i.e. the provisions concerning the accuracy of the originator information), or carrying out or accepting funds transfers in violation of record-keeping or notification obligations is an administrative offence (Art.99 para.1 no.19 BWG).

Criterion 16.9 – Intermediary financial institutions are required to ensure that all originator information received and accompanying a wire transfer, is kept with the transfer (Art.12 EU Regulation 1781/2006).

Criterion 16.10 – Where the intermediary financial institution uses a payment system with technical limitations, it must make all information on the originator available to the beneficiary financial institution upon request, within three working days, and must keep records of all information received for five years (Art.13 EU Regulation 1781/2006).

Criterion 16.11 – Intermediary financial institutions are not required to take reasonable measures to identify cross-border wire transfers that lack originator information or required beneficiary information.

Criterion 16.12 – Intermediary financial institutions are not required to have risk-based policies and procedures for determining when to execute, reject, or suspend a wire transfer lacking originator or beneficiary information, and when to take the appropriate action.

Criterion 16.13 – Beneficiary financial instituions are required to detect whether the fields containing required information on the originator have been completed, and to have effective procedures to detect whether the required originator information is missing (Art.8 EU Regulation 1781/2006).

Criterion 16.14 – There is no requirement for beneficiary financial institutions to verify the identity of the beneficiary.

[59] Also referenced in Art.19 para.5 ZaDiG, Art.13 para.1 E-GeldG.

Criterion 16.15 – Where the required originator information is missing or incomplete, beneficiary financial institutions are required to either reject the transfer or ask for complete information, and take appropriate follow-up action in cases where this is repeated (Art.9 EU Regulation 1781/2006).

Criterion 16.16 – In Austria, MVTS are provided by credit, payment or electronic money institutions, authorised to offer this kind of service (see Recommendation 14). The EU Regulation 1781/2006 applies to all of these institutions by virtue of the Art.2 para.5 of the Regulation. Therefore, the Regulation and the relevant AML/CFT provisions apply to payment service providers established in Austria, regardless of their form, including when they act through intermediate agents, and whatever the service provider's original country.

Criterion 16.17 –

a) The Regulation does not contain any specific requirement relating to measures to be taken when the payment service provider acts both as the originating entity and beneficiary of the transfer. Where a payment service provider holds information concerning both the originator and the beneficiary, it must take all of this information into account as part of its due diligence in respect of the transaction with a view to determining whether the transaction should be considered 'unusual' and suspicious, and therefore reported to the A-FIU.

b) There is no direct requirement to file a STR in any other country. However, given the principle of territoriality of AML/CFT Laws, when a payment service provider is established in several countries, performs a money transfer between two of its entities, and the transaction proves to be suspicious, it may be required to submit a STR to the A-FIU in each of these countries pursuant to their respective domestic laws.

Criterion 16.18 – Financial institutions conducting wire transfers are subject to the requirements of the EU regulations as well as any domestic provisions which give effect to UN Resolutions 1267, 1373, and successor resolutions. Although such a requirement exists, there are nonetheless some gaps that could adversely affect the ability of financial institutions to meet their requirements in terms of implementation of targeted financial sanctions (see conclusions with regard to R.6).

Weighting and conclusion

Recommendation 16 is rated partially compliant (due to the most individual criteria being partly met or not met since the corresponding requirements for beneficiary information do not apply throughout).

Recommendation 17 – Reliance on third parties

Criterion 17.1–

a) In case financial institutions and insurance undertakings rely on third parties to perform CDD measures, they must ensure that the third parties make the information required to

fulfil the CDD obligations available to them without delay (Art.40 para.8 BWG,[60] Art.98e para.4 VAG).

b) Financial institutions and insurance undertakings must ensure that the relevant copies of identification and verification data and other relevant documentation on the identity of the customer or the beneficial owner is forwarded by the third party immediately at the financial institution's request (Art.40 para.8 BWG,[61] Art.98e para. 4 VAG).

c) Financial institutions and insurance undertakings may rely only on those types of third parties that are listed in Art.40 para.8 BWG. This list includes all types of financial institutions covered by the 3rd EU AML Directive 2005/60/EC, domestic financial institutions and financial institutions from equivalent 3rd countries under the presumption that they all are subject to regulations, AML/CFT supervision and have measures in place for compliance with CDD and record-keeping requirements. Also, 3rd party reliance is only permitted provided there are no indications that make it seem unlikely that the obligations mentioned will be fulfilled equally well (Art.40 para.8 BWG,[62] Art.98e para.1 VAG).

Insurance intermediaries are not allowed to rely on intermediaries or other third parties to perform the CDD requirements.

Criterion 17.2 – Reliance is permitted only on third parties covered by the AML/CFT legislation of other EU Member States or equivalent third countries (Art.40 para.8 BWG,[63] Art.98e para.1 VAG). Reliance on members of the EU is not based on the level of country ML/TF risks, but reflects the presumption that all EEA Member States implement harmonised AML/CFT provisions. Inclusion on the list of equivalent third countries takes into account the compliance of local legislation with the principal FATF Recommendations, and the degree of risk related to the scale of criminality to which the country is exposed. Account is therefore taken of risk-related factors, without focussing the analysis on ML/TF risks.

Criterion 17.3 – The Austrian framework does not contain any specific measure that changes the way in which a financial institution must meet its requirements when the third party introducer is part of the same financial group.

Weighting and conclusion

Recommendation 17 is rated largely compliant (since the criterion 17.1 is met and this is the most important criterion).

[60] Also referenced in the Art.6 para.1 WAG, Art.19 para.5 ZaDiG, Art.13 para.1 E-GeldG, Art.10 para.6 InvFG and Art.10 para.3 AIFMG.

[61] Ibid.

[62] Ibid.

[63] Ibid.

Recommendation 18 – Internal controls and foreign branches and subsidiaries

Criterion 18.1 – Financial institutions, insurance undertakings and intermediaries are required to establish adequate and appropriate policies and procedures to prevent ML/TF (Art.41 BWG,[64] Art.98h VAG, Art.365z GewO), as well as –

a) establish compliance management arrangements (Art.41 para.4 no.1 BWG, Art.98h para.1 no.1 VAG, Art.365z para.1 GewO) and appoint a special officer to ensure compliance with AML/CFT obligations (Art.41 para.4 no.6 BWG, Art.98h para.1 no.6 VAG), who should report directly and exclusively to their managers. The officer shall be granted free access to all information, data, records and systems that may in any possible way be connected to ML/TF, as well as sufficient powers. However, there is no requirement to appoint a compliance officer for the insurance intermediaries.

b) pay attention to reliability and attachment to legal values when selecting staff members (only financial institutions and insurance undertakings) (Art.41 para.4 no.3 BWG, Art.98h para.1 no.3 VAG). This provision falls short of the requirements of Criterion 18.1(b) as there is no element of a formal arrangement ("procedure"), or the final responsibility for ensuring the high standards when hiring employees.

c) take suitable measures to familiarise the staff responsible for the execution of transactions with the AML/CFT provisions (Art.41 para.4 no.3 BWG, Art.98h para.1 no.3 VAG, Art.365z para.3 GewO). These measures must also include the participation of the responsible employees in special on-going training programmes ("*Fortbildungsprogramm*") in order to train the employees to recognise ML/TF transactions. This provision falls short of the Standard as it does not cover all concerned employees (only those who are responsible for the execution of transactions).

d) establish internal audit unit (Art.42 para.1 BWG, Art.20 WAG, Art.19 para.1 ZaDiG, Art.13 para.1 E-GeldG, Art.16 para. 4 InvFG, Art.17b and Art. 98h para.1 no.1 VAG, Art.62 EU Regulation 231/2013). There is no such provision for insurance intermediaries.

Criterion 18.2 – There is no general requirement for financial institutions, insurance undertakings and intermediaries to implement group-wide programmes against ML/TF. However, the institutions in the group of credit institutions must provide each other with all information which appears necessary in order to ensure the adequate identification, assessment, mitigation, management and monitoring of risks (including ML/TF risks) (Art. 30 para. 7 BWG). There is also an additional provision permitting the institutions belonging to the same group to share information on STRs submitted with regard to specific customers and an obligation to communicate relevant policies and procedures to their branches and subsidiaries in third countries (which is insufficient since mere communication does not entail their practical implementation) (Art.41 para.3b and para.4 no.2 BWG,[65] Art.98h para.1 no.2 and 98f para.5 no.2 VAG, Art.365z para.2 GewO).

Criterion 18.3 – Financial institutions and insurance undertakings are required to ensure that the measures applied at their branches and subsidiaries located in third countries are at least equivalent

[64] Also referenced in the Art.6 para.1 WAG, Art.19 para.5 ZaDiG, Art.13 para.1 E-GeldG, Art.10 para.6 InvFG and Art.10 para.3 AIFMG.

[65] Ibid.

to those set forth in the relevant AML/CFT provisions applicable in Austria (Art.40 para.4 no.1 BWG,[66] Art.98b para.8 no.1 VAG).

When the legislation of the third country does not permit application of the measures required the relevant AML/CFT provisions applicable in Austria, they have to inform the FMA, and take additional measures to handle the risk of ML/TF effectively (Art.40 para.4 no.2 BWG, Art.98b para.8 no.1 VAG).

There are no relevant provisions applicable to insurance intermediaries.

Weighting and conclusion

Recommendation 18 is rated partially compliant (criterion 18.2 has the central importance due to the particular country context).

Recommendation 19 – Higher-risk countries

Criterion 19.1 – The FMA may impose an obligation on the financial institutions and insurance undertakings, to apply additional appropriate diligence in connection with states in which, according to reliable sources, there is an increased ML/TF risk (Art.40b para.1 BWG,[67] Art.98d para.1 VAG). The Regulation obliges financial institutions to apply enhanced CDD in respect of transactions which involve jurisdictions with an increased risk of ML/TF. This regulation was first issued on 22 November 2011, and has been amended regularly since then (i.e. each time the FATF changes its Public Statement, thus usually three times a year).

The BMWFW has an equivalent authority with regard to insurance intermediares (Art.365s para.5 GewO). The most recent regulation was issued on 8 May 2015.

Criterion 19.2 – The Austrian federal government, in cooperation with the Main Committee of the National Council, is obliged to issue regulations designating as non-cooperative those countries and territories which do not take AML/CFT measures in accordance with the international standards. In particular, non-compliance with the international standards is to be assumed in cases where the Council of the European Union or the FATF have adopted resolutions to this effect (Art.78 para.8 BWG). The regulation mentioned under criterion 19.1 also indicates that it is issued pursuant to Art.40b para.1 BWG, as well as Art 78 para 8. Therefore the regulation covers both enhanced due diligence as well as countermeasures.

The countermeasures that must be applied include a prohibition to grant a licence for a credit institution; prohibition of acquiring a qualifying holding in a credit institution; and enhanced customer identification measures, and mandatory reporting of transactions above a certain threshold.

Criterion 19.3 – The regulations described above include but are not limited to, countries identified by the FATF in its Public Statement as having strategic deficiencies. The regulation, along with

[66] Ibid.

[67] Also referenced in the Art.6 para.1 WAG, Art.19 para.5 ZaDiG, Art.13 para.1 E-GeldG, Art.10 para.6 InvFG and Art.10 para.3 AIFMG.

statements of FSRBs, is regularly updated and published on the FMA's website. There are similar measures for insurance intermediaries (see criterion 19.1 above).

Weighting and conclusion

Recommendation 19 is rated compliant.

Recommendation 20 – Reporting of suspicious transaction

Criterion 20.1 – Financial institutions, insurance undertakings and intermediaries are obliged to immediately file a STR, where they suspect or have reasonable grounds to believe (Art.41 para.1 BWG,[68] Art.98f para.1 VAG, Art.365u para.1 no.1 GewO) –

- that an attempted, upcoming, ongoing or previously conducted transaction is related to asset components originating from a predicate offence to ML (including asset components which stem directly from a criminal act on the part of the perpetrator); or
- that an asset component originates from a predicate offence to ML (including asset components which stem directly from a criminal act on the part of the perpetrator -i.e. "self-laundering"); or
- that the attempted, upcoming, ongoing or previously conducted transaction or the assets component is related to a criminal association, a terrorist association, a terrorist crime or terrorist financing.

Criterion 20.2 – As set out in the criterion 20.1 above, attempted transactions are equally covered by the STR provisions. The requirements apply regardless of any thresholds or amounts of the transaction.

Weighting and conclusion

Recommendation 20 is rated compliant.

Recommendation 21 – Tipping-off and confidentiality

Criterion 21.1 – Financial institutions, as well as their employees, are protected from liability when reporting their suspicions in good faith (Art.38 para.2 no.2 and Art.41 para.7 BWG,[69] Art.98f para.8 and Art.108a para.1 VAG, Art.365u para.2 GewO).

Criterion 21.2 – Financial institutions, insurance undertakings and intermediaries, as well as their employees, are prohibited from disclosing to their clients or third parties the fact that a STR or any

[68] Also referenced in the Art.6 para.1 WAG, Art.19 para.5 ZaDiG, Art.13 para.1 E-GeldG, Art.10 para.6 InvFG and Art.10 para.3 AIFMG.

[69] Also referenced in the Art.6 para.1 WAG, Art.19 para.5 ZaDiG, Art.13 para.1 E-GeldG, Art.10 para.6 InvFG and Art.10 para.3 AIFMG.

related information such as requests for additional information have been reported or provided to the A-FIU or the police (Art.41 para.3b BWG,[70] Art.98f para. 5 VAG, Art.365x para.1 GewO). This prohibition extends to third parties.

Weighting and conclusion

Recommendation 21 is rated compliant.

Recommendation 22 – DNFBPs: Customer due diligence

Criterion 22.1 –

Land-based Casinos

Casinos are required to identify all customers at the entry and verify their identity on the basis of the documents set out in the relevant provisions of the BWG (Art.25 para.1 GSpG). Provisions of casino license impose obligations to maintain records regarding each single customer on a daily basis. Such records have to include the type of identity document, the age of the customer, the frequency of the customer's visits to the casino and the intensity of the customer's participation in gaming activities as well as stakes made in cash exceeding the amount of EUR 2 000 per gaming day and/or exchanges into gaming tokens. There is an ongoing monitoring of the business relationship mostly based on the rules related to the promotion of responsible gambling that are foreseen in Art.25 para.3 GSpG, however they only apply to EU/EEA citizens. There is no direct obligation to identify the beneficial owner, except in cases when the casino suspects or has reasonable grounds to believe that the customer is not acting on his own behalf. In this case the beneficial owner has to be identified and verified (Art.25 para.7 GSpG). There is no requirement to verify that a person purporting to act on behalf on the customer is so authorised. There is no requirement to perform enhanced CDD where ML/TF risks are higher. If the casino is unable to identify the customer, it is not permitted to grant access to the customer to its premises (Art.25 para.1 and 7 GSpG). If there is a suspicion that a customer acts on someone else's behalf, and the customer fails to identify that person, the casino is obliged to send a STR (Art.25 para.7 GSpG).

Internet Casinos

As far as internet casinos are concerned, there is no direct legal requirement to conduct CDD of their customers. The AML/CFT provisions that are applicable to internet casinos (Art.12a para.1 GSpG) include developing adequate and appropriate policies and procedures to prevent ML/TF (by reference to Art.25a GSpG) which in turn should include CDD measures, but this is not sufficient to comply with the standard, as these measures are not specified. When the casino suspects or has reasonable grounds to believe that the customer is not acting on his/her own behalf, there is a requirement to identify and verify the beneficial owner (by reference to Art.25 para.7 GSpG); however, it is not clear how this can be done in the absence of the basic CDD requirements in the first place.

[70] Ibid.

Real estate agents, dealers in precious metal and stones and business consultants

For real estate agents, dealers in precious metal and stones and business consultants (collectively referred to as "tradespersons"), there is a requirement to conduct the full range of CDD measures in each of the four instances as set out in criterion 10.2 (Art.365o GewO). This includes prior identification and verification of the identity of the customer (Art.365p para. 1 no.1 GewO), verification of the power of representation of any person acting on behalf of the customer (Art.365p para.1 no.2a GewO), identification and verification of the beneficial owner (Art.365p para.1 no.2 GewO), obtaining information on the purpose and nature of the intended business relationship (Art.365p para.1 no.3 GewO), ongoing monitoring of the business relationship and keeping information up-to-date (Art.365p para.1 no.4 GewO), understanding the ownership and control structure of the customer (Art.365p para.1 no.2 GewO). In high-risk situations tradespersons must apply additional due diligence measures in addition to the regular CDD obligations on a risk-sensitive basis, and conduct enhanced ongoing monitoring of the business relationship (Art.365s GewO). Also, the simplified CDD shall not apply in case of higher risk (Art.365r GewO). When tradespersons are not in a position to comply with CDD measures they must not carry out any transaction or establish a business relationship or they must terminate the business relationship, and in addition they must consider reporting the customer to the A-FIU (Art.365p para.4 GewO).

There are no specific provisions to: require the identification of customers that are legal persons or legal arrangements (as set out in criterion 10.9), to identify and verify the settlor, the trustee(s) or the protector(s) of the trust (criterion 10.11), or to permit tradespersons not to identify customers when they suspect that a transaction relates to ML or TF and have a reason to believe that they would alert the customer by exercising their CDD process (criterion 10.20).

Lawyers and notaries

Lawyers and notaries are required to conduct all CDD measures described below in each of the four instances as set out in Criterion 10.2 (Art.8b para.1 RAO, Art.36b para.1 NO). This includes prior identification and verification of the identity of the customer (Art.8b para.1 and 2 RAO, Art.36b para.1 and 2 NO), verification of the power of representation of any person acting on behalf of the customer (Art.8b para.2 RAO, Art.36b para.2 NO), identification and verification of the beneficial owner (Art.8b para.4 RAO, Art.36b para.4 NO), obtaining information on the purpose and nature of the intended business relationship, ongoing monitoring of the business relationship and keeping information up-to-date (Art.8b para.6 RAO, Art.36b para.6 NO). In addition to specific high-risk circumstances (non-cooperative states, PEPs and particularly complex or unusual transactions), lawyers and notaries are required to implement CDD measures following a general risk-based approach. When lawyers and notaries are not in a position to comply with CDD measures they must not carry out any transaction or establish a business relationship or they must terminate the business relationship, and in addition they must consider reporting the customer to the A-FIU (Art.8b para.7 RAO, Art.36b para.7 NO).

There are no requirements with regard to understanding the ownership and control structure of the customer (criterion 10.8), nor to identifying customers that are legal persons or arrangement (in accordance with criterion 10.9). There is no specific requirement to identify and verify the

protector(s) of a trust, especially if they do not exercise control over the trust (criterion 10.11). There are no requirements to apply CDD to the customers that existed before the entry into force of AML/CFT regulations (criterion 10.16). There is no concept of simplified CDD, but rather blanket exemption from CDD requirements for a number of designated types of customers (Art.8e RAO, Art.36e NO) (criterion 10.18). There is no provision that would permit lawyers not to identify customers when they suspect that a transaction relates to ML or TF and have a reason to believe that they would alert the customer by exercising their CDD process (criterion 10.20).

Accountants

For chartered public accountants, tax consultants and accountancy professionals (collectively referred to as "accountants") there is a requirement to conduct full range of CDD measures in each of the four instances as set out in criterion 10.2 (Art.98a para.3 WTBG, Art.43 para.3 BiBuG). This includes prior identification and verification of the identity of the customer (Art.98b para.1 no.1 and 3 WTBG, Art.44 para.1 no.1 and 3 BiBuG), verification of the power of representation of any person acting on behalf of the customer (Art.98b para.1 no.1a WTBG, Art.44 para.1 no.1a BiBuG), identification and verification of the beneficial owner (Art.98b para.1 no.2 and 4 WTBG, Art.44 para.2 no.4 BiBuG), obtaining information on the purpose and nature of the intended business relationship (Art.98b para.1 no.5 WTBG, Art.44 para.1 no.5 BiBuG), ongoing monitoring of the business relationship and keeping information up-to-date (Art.98b para.1 no.6 WTBG, Art.44 para.1 no.6 BiBuG), understanding the ownership and control structure of the customer (Art.98b para.1 no.4 WTBG, Art.44 para.1 no.4 BiBuG). In high-risk situations accountants must apply additional due diligence measures in addition to the regular CDD obligations on a risk-sensitive basis, and conduct enhanced ongoing monitoring of the business relationship (Art.98d para.1 WTBG, Art.46 para.1 BiBuG). Also, the simplified CDD shall not apply in case of higher risk (Art.98c WTBG, Art.45 BiBuG). When accountants are not in a position to comply with CDD measures they must not carry out any transaction or establish a business relationship or they must terminate the business relationship, and in addition they must report the customer to the A-FIU (Art.98b para.5 WTBG, Art.44 para.5 BiBuG).

There are no requirements with regard to identification of customers that are legal persons or legal arrangements (as set out in criterion 10.9). There is no specific requirement to identify and verify the settlor, the trustee(s) or the protector(s) of the trust (criterion 10.11). There is no provision that would permit accountants not to identify customers when they suspect that a transaction relates to ML or TF and have a reason to believe that they would alert the customer by exercising their CDD process (criterion 10.20).

Criterion 22.2 –

Land-based Casinos

Casinos must keep records obtained through identification measures for at least five years (Art.25 para.1 GSpG). However, this does not seem to include the business correspondence and results of analysis undertaken in the course of CDD. Casinos are required to keep records of transactions regarding each customer on a daily basis. Such records have to include the type of identity

document, the age of the customer, the frequency of the customer's visits to the casino and the intensity of the customer's participation in gaming activities as well as stakes made in cash exceeding the amount of EUR 2 000 per gaming day and/or exchanges into gaming tokens (as per casino license provisions). It is not clear for how long the transaction records have to be kept. There is no requirement to ensure the availability of information to competent authorities.

Internet casinos

There are no specific record-keeping requirements for internet casinos on AML/CFT; however the licences issued to the (one) internet casino provider requires it to keep all data on internet gaming, including records of all transactions.

Real estate agents, dealers in precious metal and stones and business consultants

Tradespersons must keep documentation and records of all transactions for a period of at least five years, as well as all CDD documents and records concerning business relationships (Art.365y para.1 GewO). The record keeping requirement also stipulates that documents and information should be kept for use in any investigation into, or analysis of, possible ML or TF by the competent authorities (Art.365y para.1 GewO). Although there is no requirement per se to ensure the availability of information to competent authorities, tradespersons are required to provide the A-FIU without delay all information it deems necessary to prevent or pursue cases of ML or TF (Art.365u para.1 no.2 GewO). This requirement is broad enough to encompass CDD and transaction records.

Lawyers and notaries

Lawyers and notaries must keep documentation and records of all transactions for a period of at least five years, as well as all identification documents and records concerning clients and beneficial owners and all information that they obtain in the course of their AML/CFT obligations (Art.12 para.3 RAO, Art.49 para.3 NO). There is no requirement that transaction records should be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity. Although there is no requirement per se to ensure the availability of information to competent authorities, lawyers and notaries are required to provide the A-FIU without delay all information it deems necessary to prevent or pursue cases of ML or TF (Art.9 para.4 RAO, Art.37 para.4 NO). This requirement is broad enough to encompass CDD and transaction records.

Accountants

Accountants must keep documentation and records of all transactions for a period of at least five years, as well as all CDD documents and records concerning business relationships (Art.98i WTBG, Art.51 BiBuG). There are also additional record-keeping requirements concerning transactions with non-cooperative states and suspicious or unusual transactions (Arts.98e para.2 and 98g para.2 WTBG, Arts.47 para.2 and 49 para.2 BiBuG). There is no requirement that transaction records should be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity. Although there is no requirement per se to ensure the availability of information to competent authorities, accountants are required to provide the A-FIU

without delay with all information it deems necessary to prevent or pursue cases of ML or TF (Art.98g para.5 WTBG, Art.49 para.5 BiBuG). This requirement is broad enough to encompass CDD and transaction records.

Criterion 22.3 –

Casinos

There are no requirements concerning PEPs applicable to casinos (including internet casinos).

Real estate agents, dealers in precious metal and stones, and business consultants

See criterion 12.1 above (since the same legal provision covers insurance intermediaries and these DNFBPs). Tradespersons are required to have appropriate risk-based procedures to determine whether the customer or its beneficial owner is a PEP, obtain senior management approval before establishing business relationships with such customers, take adequate measures to establish the source of wealth and source of funds that are involved in the business relationship or transaction, and conduct enhanced ongoing monitoring of the business relationship (Art.365s para.3 GewO). The definition of PEP is set out in the Art.365n no.4 GewO and is consistent with the definition of the "foreign PEP" in the FATF Glossary and also includes family members and close associates. PEP status ceases to apply one year after the PEP ceases his or her PEP functions. However, the requirement applies "in respect of transactions or business relationships with politically exposed persons residing in another Member State or in a third country" which would thus not apply to a foreign PEP residing in Austria. There are no requirements concerning domestic PEPs, or persons who have been entrusted with a prominent function by an international organisation.

Lawyers and notaries

Lawyers and notaries are required to have appropriate risk-based procedures to determine whether the customer or its beneficial owner is a PEP, obtain senior management approval before establishing business relationships with such customers, take adequate measures to establish the source of wealth and source of funds that are involved in the business relationship or transaction, and conduct enhanced ongoing monitoring of the business relationship (Art.8f RAO, Art.36f NO). The definition of PEP is set out in the Arts.8f para.2 RAO and 36f para.2 NO and is consistent with the definition of the "foreign PEP" in the FATF Glossary and also includes family members and close associates. There are no requirements concerning domestic PEPs, or persons who have been entrusted with a prominent function by an international organisation.

Accountants

Accountants are required to have appropriate risk-based procedures to determine whether the customer is a PEP, obtain senior management approval before establishing business relationships with such customers, take adequate measures to establish the source of wealth and source of funds that are involved in the business relationship or transaction, and conduct enhanced ongoing monitoring of the business relationship (Arts.98b para.1 no.7 and 98d para.1 no.2 WTBG, Arts.44 para.1 no.7 and 46 para.1 no.2 BiBuG). The definition of PEP is set out in the Art.98d para.1 no.3

WTBG and Art.46 para.1 no.3 BiBuG and is consistent with the definition of the "foreign PEP" in the FATF Glossary and also includes family members and close associates. The definition, however, includes a one-year limitation after which a PEP who has ceased his functions does not have to be considered as a PEP. There is no requirement to determine whether the beneficial owner of the customer is a PEP. There are no requirements concerning domestic PEPs, or persons who have been entrusted with a prominent function by an international organisation.

Criterion 22.4 – There are no requirements applicable to any of the DNFPBs with regard to ML/TF risks which may arise from the use of new technologies. However, accountants do have the duty to pay special attention and take measures in relation to services that might favour anonymity (Art.98d para.2 WTBG, Art.46 para.2 BiBuG).

Criterion 22.5 – Casinos (including internet casinos), real estate agents, dealers in precious metal and stones and business consultants, lawyers and notaries are not allowed to rely on intermediaries or other third parties to perform any elements of the CDD process.

Accountants, however, are permitted to rely on third parties to perform part of the CDD which relates to the identification and verification of the customer's and beneficial owner's identity (Art.98f para.1 WTBG, Art.48 para.1 BiBuG). The ultimate responsibility for meeting those requirements remains with the accountant. The accountant must receive from the third party the necessary information, at least in the form of copies of the underlying documents, required for the fulfilment of CDD. Third parties have to meet the requirements set out in the Directive 2005/60/EC (Art.98f para.2 WTBG, Art.48 para.2 BiBuG). This broad obligation includes Art. 14 to 19 of the Directive that cover performance of CDD by third parties.

Weighting and conclusion

Recommendation 22 is rated partially compliant (due to importance of the criterion 22.3 in the Austrian context).

Recommendation 23 – DNFBPs: Other measures

Criterion 23.1 – Real estate agents, dealers in precious metal and stones, business consultants, as well as accountants are obliged to immediately file a STR, where they suspect or have reasonable grounds to believe (Art.365u para.1 no.1 GewO, Art.98g para.1 WTBG, Art.49 para.1 BiBuG) –

- that an attempted, upcoming, ongoing or previously conducted transaction is related to asset components originating from a predicate offence to ML (including asset components which stem directly from a criminal act on the part of the perpetrator); or
- that an asset component originates from a predicate offence to ML (including asset components which stem directly from a criminal act on the part of the perpetrator, i.e. "self-laundering"); or

- that the attempted, upcoming, ongoing or previously conducted transaction or the assets component is related to a criminal association, a terrorist association, a terrorist crime or terrorist financing.

In case of casinos, internet casinos, lawyers and notaries, the reporting requirement is somewhat narrower as it only covers transactions serving the purpose of ML and TF, i.e. it does not cover funds that are proceeds of criminal activity (Art.25 para.6 GSpG, Art.8c para.1 RAO, Art.36c para.1 NO). However, given that the ML offence covers all categories of predicate offences, as well as self-laundering, technically this does not constitute a deficiency. The reporting requirement for casinos does not cover attempted transactions.

The requirements for all DNFBPs apply regardless of any thresholds or amounts of the transaction.

Legal professional privilege: lawyers and notaries are not obliged to report suspicions with regard to information they receive from their clients in the course of providing legal advice or when representing the client before court or before a preceding authority or public prosecution office, unless the client has evidently made use of the legal advice for the purpose of ML or TF. The scope of legal privilege of lawyers and notaries was clarified in a decision of the Supreme Court of 18 October 2012 (13 Os 66/12y). That case was related to investigations against a former member of the Federal government for tax evasion. The Supreme Court stated in its decision that legal privilege does not cover instruments used for criminal acts, having facilitated criminal acts or having been produced by criminal acts (*instrumenta aut producta sceleris*) nor other pieces of evidence, in particular written documents which are not a communication between the professional and his client.

Criterion 23.2–

Casinos

Casinos are required to establish adequate and appropriate policies and procedures to prevent ML/TF (Art.25a GSpG, by reference to the Art.41 para.4 BWG), which also includes the appointment of a compliance officer at the management level. This applies equally to internet casinos (Art.12a para.1, by reference to Art.25a GSpG). Similarly to the situation with regard to the banking sector (described above in R.18), there are identical deficiencies concerning the requirements of employees screening and training. There is no requirement to have an independent audit function to test the system.

Real estate agents, dealers in precious metal and stones and business consultants

Tradespersons are required to establish adequate and appropriate policies and procedures to prevent ML/TF (Art.365z GewO), as well as establish compliance management arrangements (Art.365z para.1 GewO). However, there are no requirements to appoint a compliance officer, to have screening procedures and training programme for employees, or to establish an independent audit function.

Lawyers and notaries

Lawyers and notaries are required to establish adequate and appropriate policies and procedures to prevent ML/TF, as well as compliance management arrangements (Art.8a para.2 RAO, Art.36a para.2 NO). Lawyers and notaries are obliged to participate in the special AML/CFT training programmes and the bar has the duty to organise them (Art.21b para.2, Art.28 para.2 RAO, Art.117 para.1, Art.134 para.2 no.15 NO). There are no requirements for law firms to appoint a compliance officer, to have screening procedures, or to establish an independent audit function.

Accountants

Accountants are required to establish adequate and appropriate policies and procedures to prevent ML/TF, as well as compliance management arrangements including the appointment of a compliance officer (Art.98j WTBG, Art.52 BiBuG). There is no requirement that the compliance officer should be at the management level. Accountants are obliged to familiarise their staff with the AML/CFT provisions and to train them in the special AML/CFT training programmes (Art.98j para.1 no.2 WTBG, Art.52 para.1 no.2 BiBuG). There is also a requirement to "subject their personnel to screening with regard to ML and TF upon employment" (Art.98j para.3 WTBG, Art.52 para.3 BiBuG), however the meaning of this provision is not entirely clear. There is no requirement to establish an independent audit function.

Criterion 23.3 – There are no requirements for casinos (including internet casinos) to apply enhanced due diligence in case of high-risk countries. As far as real estate agents, dealers in precious metal and stones, business consultants and accountants are concerned, the BMWFW has the authority to issue regulations imposing an obligation to apply additional appropriate diligence in connection with states in which, according to reliable sources, there is an increased ML/TF risk (Art.365s para.5 GewO, Art.98e WTBG, Art.47 BiBuG). The most recent regulation, which represents a directly applicable and enforceable act, was issued on 8 May 2015. This regulation includes, but is not limited to, countries identified by the FATF in its Public Statement as having strategic deficiencies.

Lawyers and notaries are required to apply enhanced due diligence measures if the customer or the beneficial owner is registered or resident in a high-risk country designated by the FMA pursuant to the Art.40 para.1 BWG (Art.8b para.6 RAO, Art.36b para.6 NO) (see also R.19).

Criterion 23.4 – All DNFBPs and their employees are protected from a breach of the professional secrecy when reporting their suspicions (Art.51 para.2 no.5 GSpG, Art.365u para.2 GewO, Art.9 para.5 RAO, Art.37 para.5 NO, Art.98g para.8 WTBG, Art.49 para.6 BiBuG). They are also prohibited from disclosing the fact that a STR has been filed (Art.25 para.6 GSpG by reference to the Art.41 para.3b BWG, Art.365x para.1 GewO, Art.8c para.1a RAO, Art.36c para.1a NO, Art.98h para.1 WTBG, Art.50 para.1 BiBuG).

Weighting and conclusion

Recommendation 23 is rated largely compliant (The most important criterion is 23.1 which is largely met; other deficiencies are of relatively minor importance).

Recommendation 24 – Transparency and beneficial ownership of legal persons

Criterion 24.1 – The different types, forms and basic features of legal persons are defined by law in Austria. There are the following main types of legal persons: (1) general partnerships ("*offene Gesellschaft*"), (2) limited partnership ("*Kommanditgesellschaft*"), which are both regulated by the UGB; (3) limited liability company ("*Gesellschaft mit beschränkter Haftung – GmbH*") regulated by the GmbHG; (4) stock corporation ("*Aktiengesellschaft – AG*") regulated by the AktG; (5) cooperative societies ("*Genossenschaft*") regulated by the GenG; (6) private foundations ("*Privatstiftung*") regulated by the PSG; and (7) associations ("*Verein*") regulated by the VerG.

There are some other specific forms of legal persons provided in the legislation, such as European companies ("*Europäische Gesellschaften*"), European economic interest groupings ("*Europäische wirtschaftliche Interessensvereinigungen*"), and European Cooperative Societies ("*Europäische Genossenschaften*"), however they are not considered for the purposes of the evaluation as they play no significant role in Austrian business reality.[71]

The processes of their creation and obtaining information on the basic ownership information are described on the websites of the Austrian Economic Chamber, business portal of the Federal Government and the HELP-service of the Federal Government.[72]

There are no mechanisms in place that identify and describe the processes for obtaining beneficial ownership information.

Criterion 24.2 – There has been no formal risk assessment concerning the possible misuse of legal persons for ML/TF.

Criterion 24.3 – All legal persons (with the exception of associations) become fully existent if and when they are registered in the Austrian company register ("*Firmenbuch*") (Art.34 para.1 AktG, Art.2 para.1 GmbHG, Art.8 GenG, Art.123 para.1 and Art.161 para.2 UGB, Art.7 para.1 PSG). This register is an electronic database administered by 16 Austrian regional courts ("*Landesgerichte*") in accordance with the FBG as well as the relevant laws for the different forms of legal persons. The company register contains the name of a legal person, its legal form, its status (active or dissolved), its seat and business address, and its directors as well as other persons with general commercial power of representation (Art.3 FBG). The basic regulating powers largely derive from the legal provisions applicable to the legal person in question, but may be modified to a certain extent by the articles of association. The entire content of the company register, including all important documents filed by the legal persons (e.g. articles of association), is open to the public (for a fee), either for inspection at court or online (Art.34 para.1 FBG).

Associations have to be registered in the local register of associations (Art.16 para.1 VerG). The BMI keeps a central register of all associations (Art.18 para.1 VerG). The association register contains the name of the entity, date of establishment, its seat and business address, and names, dates and places

[71] 31 European companies, 30 European economic interest groupings, and not a single European cooperative society were registered as of the end of 2014.

[72] Wirtshaftskammer Österreich (WKO), www.wko.at; Wirtshaftskammer Österreich Gründerservice, www.gruenderservice.at; Unternehmensserviceportal (USP), www.usp.gv.at; HELP, www.help.gv.at.

of birth of the persons with statutory power of representation (Art.16 para.1 VerG). This register does not contain information about the management of the association.

Criterion 24.4 – Limited liability companies and (general or limited) partnerships are required to submit the names and dates of birth of their shareholders (as well as the proportion of their share capital) to the company register (Art.3 para.1 no.8, Art.4 no.5 and 6, Art.5 para.6 FBG). This obligation is broader than a requirement to maintain a register of shareholders within the company.

Cooperative societies and stock corporations that are not listed on a stock exchange are required to maintain a register of their shareholders or members. In case of cooperative societies the register must contain the name, profession, duration of membership, and the number of shares held (Art.14 GenG). In case of stock corporations not listed on a stock exchange the share register should contain the name, birth date or the company register number, and the address of the shareholder, the amount of shares held, and the shareholder's banking account where dividends can be transferred to (Art.61 AktG). If the shares do not belong to the person that is registered as the shareholder, all this information is also recorded for the owner of the shares (Art.61 para.1 no.4 AktG). There is no requirement that the share register be kept in Austria.

Private foundations do not have shareholders, but beneficiaries. There is an obligation in Art.5 PSG to disclose the names of the beneficiaries to the competent tax authorities (see criterion 24.6 below).

There is no requirement for associations to maintain a list of their members.

Criterion 24.5 – All legal persons mentioned above are required to communicate any relevant changes either to the company register (i.e. the competent court), or to the respective registers without delay (Art.10 para.1 FBG, Art. 89 GenG, Art.61 para.3 AktG). There are sanctions foreseen for the failure to comply with this requirement (Art.24 FBG, Art.89 GenG, Art.258 para.1 AktG). The changes that have not been notified to the relevant registry are not legally effective.

Criterion 24.6 – There is no general obligation for all companies to obtain and hold beneficial ownership information under Austrian law. However, in some cases, there are certain requirements that may help to obtain the information on the beneficial owner. If shares of a stock corporation do not belong to the person that is registered as the shareholder, the law requires that the data of the owner of the shares is recorded as well (Art.61 para.1 no.4 AktG). Private foundations are obliged to provide the most recent version of their founding deed (and their supplementary founding deed, if it has been established) as well as the names of beneficiaries who are not indicated in these documents, but designated by the foundation, to the competent tax authorities (Art.13 para.6 KStG, Art.5 PSG). Competent authorities may also rely on the existing information held by financial institutions and DNFBPs (see R.10 and 22), but timely access to this information is not ensured (see also criterion 24.10 below).

Criterion 24.7 – As mentioned above (see criterion 24.6) there is no general obligation to obtain beneficial ownership information, accordingly there is no obligation to keep it up-to-date. However, there is a requirement to update the information when there is a transfer of shares in case of stock corporations (Art.61 para.3 AktG). This requirement also covers the instances where the shares do not belong to the person that is registered as the shareholder (i.e. when the real owner changes while the nominal owner remains the same).

Criterion 24.8 – There are no requirements for companies to co-operate with the competent authorities in determining the beneficial owner.

Criterion 24.9 – Information that was once recorded in the company register should remain permanently available (i.e. no time limit set) even after its deletion ("deleted entries") (Art. 31 FBG). All legal persons have to retain all their business documents for seven years at least after the end of the accounting year in which they were created (Art.212 UGB). This obligation also covers share registers. For dissolved companies and partnerships there are special provisions (see Art.93 para.3 GmbHG, Art.214 para.2 AktG, Art. 51 GenG, Art.157 para.2 UGB) that require a retention of all documents for a period of seven years after the dissolution of the company. The information is only kept to the extent that the legal persons are required to collect it (see Criteria 24.3 and 24.6 above).

As far as keeping records by financial institutions and DNFBPs is concerned, please refer to R.11 and R.22.

Criterion 24.10 – In addition to the information available from the company registers or other public sources, law enforcement agencies (which includes the A-FIU, as well) can use measures provided for in criminal procedural law for the purpose of obtaining access to basic and beneficial ownership information, e.g. search premises according to Art.119 StPO and seize evidence according to Art.110 para 1 no. 1 StPO. These provisions also extend to the records held by financial institutions and DNFBPs. However, they do not ensure timely access to beneficial ownership information by the competent authorities since it is essentially a criminal law procedure.

Criterion 24.11 – Bearer shares are forbidden in non-listed stock corporations, which had to convert their bearer shares into registered shares by the end of 2013 (Art.9 and 262 para.27,28 AktG). All former bearer share certificates were deemed invalid by 1 October 2014 at the latest (Art.262 para.33 AktG). Bearer shares are only admissible in listed stock corporations. In this case, they must not be issued as individual certificates, but in the form of a global certificate, which has to be deposited with a central securities depository (Art.10 para.2 AktG).

Criterion 24.12 – Although nominee shares are not explicitly provided for under Austrian law, it is possible that a person who is registered as shareholder in the share register of a stock corporation is different from the owner of the shares. In this case, this person has to disclose to the company the identity of the owner as well (Art. 61 AktG; see also above Criteria 24.4 and 24.6). Nominee directors are not admissible in Austria.

Criterion 24.13 – If a director of a company fails to submit a mandatory application to the company register, he is subject to a compulsory fine of up to EUR 3 600 (Art.24 para.1 FBG). This fine can be imposed repeatedly, namely, every next fine may be imposed two months after the order imposing the previous fine has entered into force (Art.24 para.2 FBG). Fines were also introduced for the members of the executive board of a stock corporation (up to EUR 3 600, Art.258 para.1 AktG) and members of executive and supervisory boards of cooperative societies (up to EUR 1 800 000, Art.89 GenG) who fail to keep the company's share register according to the legal provisions. Given that the fines may be applied repeatedly in case of continued non-compliance, their total amount may be considered as dissuasive. The relative small number of cases of non-compliance (435 in 2015 which constitutes 0.4% of total number of applications to the Company register) seems to speak in favour of this. Since there are no general requirements for all types of legal persons to maintain beneficial

owner information (as set out in criterion 24.6), there are no sanctions foreseen in case of their violation.

Criterion 24.14 – Insofar as basic information is available in the public commercial register (see criterion 24.3), it can also be accessed by foreign competent authorities (by virtue of its public nature). Measures provided for in criminal procedural law can also be used to provide basic and beneficial ownership information in the context of international cooperation subject to requests for mutual legal assistance e.g. to hear witnesses, to search premises according to Art.119 StPO and to seize evidence according to Art.110 para.1 no.1 StPO. There are no specific provisions concerning the exchange of information on shareholders.

Criterion 24.15 – The monitoring of responses to requests for mutual legal assistance is conducted by the Department for International Criminal Cases under the BMJ or by the competent authorities themselves (in case of direct co-operation). The lack of quality of the response received can be brought to the attention of the BMJ either by reports in the individual case or in the yearly reports to the BMJ on the observations of the prosecution services. The monitoring by either the BMJ or other competent authorities has not led to any specific observations so far.

Weighting and conclusion

Recommendation 24 is rated partially compliant (the most important criteria are 24.6 – 24.10, most of which are partly met or not met).

Recommendation 25 – Transparency and beneficial ownership of legal arrangements

General information

Common law trusts cannot be set up under Austrian law. However, trustees can act from within Austria with respect to trusts established under other countries' laws. A foreign trust may therefore have all or part of its administration in Austria – for example records, banking arrangements, assets. No information was provided as to the number of foreign trusts administered in Austria and the amounts that they represent.

Austria has its own type of legal arrangements, namely the *Treuhand*. The *Treuhand* is a civil contract which is not regulated in law, but is based on the general principle of the autonomy of the contracting parties and delimited by jurisprudence and doctrine. It is created when a person, the *Treuhänder* (or trustee), is authorised to exercise rights over property in his or her own name, on the basis of and in accordance with a binding agreement with another person, the *Treugeber* (or settlor). There are two main types of *Treuhand*, the *Fiducia* and the *Ermächtigungstreuhand*. With the *Fiducia* most of the rights are transferred to the *Treuhänder*, whereas the *Ermächtigungstreuhand* only entails a transfer of certain rights such as the right to manage the assets. The *Treuhand* can exist without any written record. It can be concluded between any two persons capable of being party to a contract. The *Treugeber* and the *Treuhänder* may choose to inform third parties of the legal arrangement between them (*offene Treuhand* or open *Treuhand*) or not (*verdeckte Treuhand* or hidden *Treuhand*). Although no precise figures exist on the subject, the Austrian *Treuhand* is a very common feature of the Austrian economy.

Although any member of the general public who can be party to a contract can act as a *Treuhänder*, it is often lawyers and notaries that act in this capacity. In this case, they have to apply all AML/CFT measures set out in R.22-23 above. In addition to that, lawyers have to register each *Treuhandschaft* of more than EUR 40 000 at the register of escrows of the competent Bar Association ("*Treuhandeinrichtung der Rechtsanwaltskammer*") (Art.10a para.2, Art.27 para.1 (g) RAO). There is an exception to this obligation, however, whereby the settlor may explicitly (in written form) demand the lawyer not to notify the arrangement to the escrow register (Art.10a para.3 RAO). Notaries must register every escrow arrangement of more than EUR 10 000 in the digital register of escrows maintained by the Austrian Chamber of Civil-Law Notaries (Art.109a para.2 NO, THR 1999).

Criterion 25.1 – With the exception of lawyers and notaries, who are obliged entities for AML/CFT and need to carry out CDD, there are no requirements for trustees (*Treuhänder*) to obtain and hold information on parties to a trust, or regulated agents.

Criterion 25.2 – With the exception of lawyers and notaries, who are obliged entities for AML/CFT and need to carry out CDD, there are no requirements for the information to be kept accurate and up-to-date.

Criterion 25.3 – Financial institutions, insurance undertakings, lawyers and notaries are required to ascertain whether a client is acting on his own behalf or in the trustee's capacity (Art. 40 para.2 BWG, Art.98b para.2 VAG, Art8b para.4 RAO, Art.36b para.4 NO). In the latter case, both trustee and the settlor have to be identified and verified. There are no similar requirements for insurance intermediaries, casinos, real estate agents, dealers in precious metal and stones, business consultants, and accountants.

Criterion 25.4 – There are no legal provisions in the Austrian law that would prevent the trustees to disclose any information relating to the trust.

Criterion 25.5 – The law enforcement can have access to the escrow registers of lawyers and notaries, although not necessarily in a timely manner (see also criterion 24.10). In case a trustee is not a lawyer or a notary, it is virtually impossible to obtain the required information (as there is no way how the police can learn about the existence of the trustee).

Criterion 25.6 – For the reasons set out above (see criterion 25.5), Austria is able to provide international cooperation with regard to *Treuhand* arrangements, but only to the extent that this information is kept and the law enforcement is able to obtain timely access to it (see also criterion 24.10).

Criterion 25.7 – With the exception of lawyers and notaries (see R.35), there are no provisions concerning the liability of trustees in case of failure to comply with the obligations.

Criterion 25.8 – With the exception of lawyers and notaries (see R.35), there are no sanctions foreseen for failing to grant competent authorities timely access to information on trusts.

Weighting and conclusion

Recommendation 25 is rated partially compliant (all criteria are equally important).

Recommendation 26 – Regulation and supervision of financial institutions

In its 3rd MER, Austria was rated PC for R.23, which contained the previous requirements for R.26. The main deficiencies related to bearer shares undermining the assessment of significant or controlling interest in a financial institution; insufficient licensing requirements to prevent criminals to control domestic financial institutions, and lack of adequate fit and proper test for directors and senior managers, and supervisory board members; and effectiveness issues. Since the evaluation, Austria enacted legislation in July 2011 requiring the conversion of bearer shares into registered shares.

Criterion 26.1 – The FMA regulates and supervised all persons and entities that conduct the financial activities listed under the FATF definition of financial institutions, with the exception of insurance intermediaries (i.e. agents and brokers). See chart on financial institutions at the beginning of Chapter 5. Art. 2 paras 1 to 4 FMABG listing the relevant sector laws subject to prudential supervision and enforcement by the FMA. These include the BWG, ZaDiG, E-GeldG (all Art. 2 para 1), VAG (Art. 2 para 2), WAG, BörseG, BMSVG, ImmoInvFG, InvFG and AIFMG (all Art. 2 para 3). As the AML/CFT provisions are incorporated in the aforementioned laws, the FMA is responsible for the supervision, regulation and enforcement of financial institutions' compliance with these provisions.

Criterion 26.2 – Core Principles institutions, and MVTS and money/currency changes services are required to be licensed. Most of these institutions require a license from the FMA, under the conditions of the BWG or other relevant financial sector laws, and the GewO for insurance intermediaries. The relevant provisions are Art.4 BWG; Art. 5 ZaDiG; Art. 3 E-Money Act; Art. 1 para 3 BörseG; Art. 2 no 1 Regulation (EU) No 648/2012 EMIR Regulation; Art. 3 para 2 no. 1 InvFG 2011; Art. 2 para 1 ImmoInvFG; Art. 2 para 1 no. 2 AIFMG; Art. 1 para. 1 no. 21 BWG in conjunction with Art. 18 para. 1 BMSVG; Art. 3 WAG; Art. 4 WAG. Art. 4 para 1 VAG; and Arts. 1 and 16 GewO.

The BWG defines a shell bank as a credit institution incorporated in a jurisdiction in which it has no physical presence, that is, meaningful mind and management (Art. 2 no. 74 BWG). Art. 5 requires credit institutions to have their place of establishment and head office located in Austria (para 1 no. 14), and to have the "vital interests" (borrowed from tax law, meaning actual physical, rather than formal, presence) of one director who is resident in Austria (para 1 no. 10). While the legal framework does not explicitly prohibit the establishment of shell banks, the requirements for issuing and maintaining a license for operating a banking business in practice preclude the establishment or the continued operation of a shell bank. Art. 40d BWG prohibits credit institutions from entering into or continuing a correspondent banking relationship with a shell bank and requires them to take appropriate measures to ensure its banking correspondents, in turn, do not enter into arrangements with shell banks.

Criterion 26.3–

Credit institutions (includes currency exchange services)

The relevant material provisions to comply with c.26.3 are stipulated mainly in Art. 5 para 1, Art. 20 and Art. 28a para 3 BWG. The following provisions in particular are targeted at preventing criminals from holding (or being the beneficial owner of) a *significant or controlling interest* in a credit institution.

Art. 5 para 1 no. 3 BWG requires the "personal reliability" which through explanatory notes and court decisions include not having: repeated violations of the BWG; offences indicating harmful tendencies (tax offenses, misdemeanour property offences); and having the criteria in Art. 20 para 1 BWG of persons who hold a qualifying holding; Art. 4.3.5 and 5a requires collection of identification of owners of qualifying holdings and in the absence of that structure, the identification of the 20 largest shareholders. Art. 20a-20b set out the assessment procedure and criteria for a qualified holding in a credit institution: 20b requires the suitability of proposed acquirers, including reliability (cross-referencing provisions in Art. 13 Trade Act excluding persons who have been convicted of certain criminal acts to a sentence of more than three months or a fine of more than 180 day fines from being authorised to conduct a business, absence of financial soundness, and whether there are reasonable grounds to suspect that the proposed acquisition may, inter alia, increase the risk of ML or FT). Art.9 para.1 no.1 of the FMA's Regulation on Owner Control requires the submission of details as to whether criminal proceedings are being conducted or were previously conducted against that party on account of a criminal offence or misdemeanour. Suitable evidence is to be provided, which in practice requires the submission of the applicants criminal record ("*Strafregisterauszug*").

Regarding preventing criminals from holding a *management function* in a credit institution, the BWG requires the personal reliability, honesty, and impartiality of directors (Art. 5 para 1 no. 7), the chairperson of the supervisory board of a credit institution (Art 28a para 3 no. 2), and members of the supervisory board (Art.28a para 5). Regarding directors (Art. 5 para 1 no. 6) and the chairperson of the supervisory board (Art 28 para 3 no 1 BWG), Art. 13 GewO applies, which excludes persons who have been convicted for certain criminal acts to a sentence of more than 3 months or a fine of more than 180 day fines. The FMA has also issued a circular in November 2014 regarding fit and proper requirements for members of the management board and the supervisory board as well as "key function holders," which include AML/CFT and compliance officers of credit institutions.

Securities sector

The supervisory laws are also comprehensive for market entry in the securities sector. A number of special provisions apply to any party who intends to *hold a qualifying participation* in a supervised company directly or indirectly: Art. 10 paras 1 and 6 InvFG; Art. 2 para 1 ImmoInvFG; Art. 6 para 1 no 4 and Art. 8 para 1 AIFMG; Art. 18 BMSVG; Art. 11b WAG; Art 6 para 1 BörseG; Art. 31 para 2 of Regulation (EU) No 648/2012 (EMIR Regulation), Art. 1 seqq. of Central Counterparties Ownership Control Regulation.

Applicants/acquirers of a qualified holding must notify the FMA thereof in writing, specifying the size of the planned participation and providing the information required under the supervisory laws. The FMA examines whether the natural or legal persons who hold qualifying participations in the supervised companies meet the requirements stipulated in the interest of sound and prudent management of these companies, and whether no facts are known which would raise doubts as to the personal reliability of those persons. The companies have to inform the FMA at least once a year of the names of shareholders and members possessing qualifying holdings and the respective sizes of such holdings.

The following provisions set out the personal and professional requirements to be met by personnel effectively managing the business of the company (i.e. the managing directors) and members of the supervisory board of securities firms. These requirements include the personal reliability and the professional competence, which is checked against submitted documents and/or through a personal interview or a fit and proper test: Art. 6 para 2 nos. 8 to 10 InvFG; Art. 2 para 1 ImmoInvFG; Art. 6 para 1 no 3 AIFMG; Art. 3 para 1 nos. 7 to 14 BörseG; Art. 27 Regulation (EU) No 648/2012 (EMIR Regulation); Art. 18 BMSVG; Art. 3 para 5 no 3 and Art. 10WAG; Art. 6 para 2 WAG.

Fit and proper tests are used to check the personal and professional suitability of persons holding a management function in a financial institution. The FMA conducts a fit and proper test concerning the proposed directors and members of the supervisory board.

Insurance undertakings

In particular the following measures in the VAG apply to prevent criminals or their associates from holding (or being the beneficial owner of) *a significant or controlling interest* in an insurance undertaking. Art. 11d para 1 determines the criteria that have to be evaluated in order to assess sound and prudent management of the insurance undertaking. The FMA checks whether the persons who hold direct or indirect participating interests of at least 10% of the share capital or of the voting rights or can exert a decisive influence on the management in any other way, meet the requirements stipulated in the interest of sound and prudent management of the insurance undertakings, and whether no facts are known which would raise doubts as to the personal reliability of those persons. Requirements for integrity and expertise, as well as the lack of a criminal background are covered Art.11b and Art.11d VAG. Additionally, the FMA may refuse or withdraw the license in case that the interests of the insured are impaired or that the FMA is hindered from the proper performance of its supervisory obligation due to the lacking transparency of the group structure (Art.4 para.6 no.7 VAG).

The following measures have been implemented to prevent criminals or their associates from *holding a management function*, in an insurance undertaking. Art.4 para.6 no.1 VAG refers to the personal reliability and professional qualification of members of the management board or the administrative board or the managing directors. Grounds for exclusion cross-reference to Art.13 GewO (referred to above); the chairperson of a supervisory board of an insurer with a gross written premium volume over EUR 5 000 000 is subject to a fit and proper test, which covers both probity and professional experience, including relevant sectoral expertise (Art.11a para.3 VAG).

Insurance intermediaries and MVTS providers

Art.137b para.1 GeWO requires any single tradeperson or employee directly being involved in insurance mediation activities to possess the knowledge and ability necessary for the performance of their duties. This can either be demonstrated by the evidence for professional qualification for the trades insurance mediation or financial counsellor or according to Art.19 GewO by means of adequate professional qualification courses or by means of adequate times of practical experience. Art.13 GewO further prohibits certain persons from carrying on any trade or business. This includes persons with a conviction for any criminal act subject to a sentence of more than three months or a fine of more than 180 daily rates (calculated from the income). MVTS providers are authorised as

financial institutions under the ZaDig, with requirements for management and qualified holdings in Art.7.

Criterion 26.4 – Banking, securities, and insurance institutions are regulated and supervised in line with Core Principles, where relevant for AML/CFT, including the application of consolidated group supervision for AML/CFT purposes. These include provisions for licensing (including fit and proper requirements), ownership and approval procedures, consolidated group supervision, risk management, general due diligence obligations, AML/CFT, on-going supervision and supervisory measures, and international cooperation pursuant, as described in this section and throughout this report.

Other financial institutions in Austria are generally regulated and supervised according to their risk, similarly to Core Principles institutions. The provision of currency exchange services falls under banking activity, and MVTS providers supervised as domestic financial institutions under the ZaDiG. This contains detailed provisions dealing with licensing (Arts.5 to 11), risk management and monitoring systems for AML/CFT purposes (Art.19 para.3 no.4 and 6), internal audit (Art.19 para.1), AML/CFT (Art.19 refers to the AML/CFT provisions contained in Arts.40 to 41 BWG), ongoing supervision (Arts.59, 63 and 64), international cooperation (Art.71 to 74).

Criterion 26.5 – Based on an entity's risk-profile and taking into account any other additionally relevant information, the FMA determines the frequency and intensity of its on-site and off-site AML/CFT measures. In order to determine credit institution inherent risk the FMA requires the supervised entities to answer certain questions regarding nature and scope of their business, products and services, customer structure, geography and delivery channels and to submit relevant data. Assessing the quality of an institution' preventive measures is primarily based on information gathered in the course of the FMA's AML/CFT supervision (on-site reports, administrative proceedings and the external auditor's audit report on the annual financial statement etc.).

With respect to the determination of the frequency and intensity of its on-site and off-site supervision of *insurance undertakings*, the FMA takes into account the overall size, structure and inherent risk of the insurance sector on the one hand and, relevant information on the entities' preventive measures available from previous supervisory measures on the other. Through the initial broad coverage of the insurance sector, the FMA is able to obtain a thorough overview and comparison of insurance undertakings' AML/CFT controls and procedures and subsequently their risk profile.

With regards to the AML/CFT supervision of *investment service providers*, the FMA's division III/2 "Investment firms" applies a risk-based approach to supervision on the basis of information submitted to the FMA by the institutions and other information resulting from its supervisory practice. Investment service providers are subject to two annual reporting requirements. First, assessment of AML/CFT controls and procedures forms part of the annex to the external auditor's audit report on the annual financial statement, which is submitted to the FMA. Second, institutions are required to report certain information i.e. on their customer structure including, geography, type of customer (private or institutional) and securities invested in, via an online reporting tool[73] on an

[73] Accessible via the FMA Website at https://www.fma.gv.at/finanzdienstleister/wertpapierdienstleister/wpdl-portal/

annual basis. The information provided to the FMA informs the type, intensity and frequency of its prudential and AML/CFT supervision of investment service providers.

Criterion 26.6 – The assessment of a financial institution's ML/TF risk profile itself is an on-going process and entails the evaluation of all relevant and available information on the financial institution. This includes: any and all perceived instances of non-compliance by the financial institution, the external auditors audit report on the annual financial statements, STRs, media reports, reports submitted on the FMA's whistleblowing facility, information forwarded by other supervisors or any other submissions to the FMA. Where major events or developments in the management of the financial institution potentially have an impact on the financial institution's ML/TF risk profile, they are evaluated accordingly and the FMA's supervisory approach towards the financial institution (e.g. increase in frequency and intensity of regular on-site inspections or conduct of an ad hoc inspection) is modified where necessary in order to adequately reflect and mitigate the ML/TF risk.

Weighting and conclusion

Recommendation 26 is rated compliant.

Recommendation 27 – Powers of supervisors

In its 3rd MER, Austria was rated LC for R.29, which contained the previous requirements in this area. The deficiencies related to the lack of supervisory powers of sanction against a domestic financial institution, and effectiveness (low level of AML/CFT supervision of domestic financial institutions).

Criterion 27.1 – The FMA has a broad range of powers to supervise and monitor to ensure compliance by financial institutions with AML/CFT requirements. Art.1 para.1 and Art.2 paras.1 to 3 FMABG establish the FMA as competent authority for the purpose of (prudential) supervision and enforcement of financial institutions with the various sectoral laws (BWG, ZaDiG, E-GeldG, VAG, WAG) containing AML/CFT provisions as set out in Arts.40 to 41 BWG and Arts.98a to 98f VAG.

Criterion 27.2 – The FMA's powers to perform on-site inspections of all types of financial institutions are comprehensive and are laid down in the following provisions: Art.3 para.9 in conjunction with Art.70 para.1 no.3 BWG; Art.22b para.1 FMABG in conjunction with Art.99 para.2 BWG; Art.101 para.1 VAG; Art.91 para.3 no.3 WAG; Art.100 para.3 VAG and Art.338 GewO; Art.63 para.4 ZaDiG; Art.2 para.4 in conjunction with Art.25 para.2 no.4 E-GeldG; and Art.56 para.2 no.3 AIFMG.

Criterion 27.3 – The FMA has the power to request information and to inspect relevant documents and data is stipulated in the following provisions Art.70 para.1 no.1 BWG; Art.22b para.1 FMABG in conjunction with Art.99 para.2 BWG; insurance undertakings: Art.100 para.1 VAG; Art.91 para.3 nos.1, 2 and 4 WAG; Art.63 para.2 nos.1 and 2 ZaDiG; Art.25 para.2 nos.1 and 2 E-GeldG; and Art.56 para.2 nos.1, 2 and 4 AIFMG.

Criterion 27.4 – Where a financial institution violates the relevant laws, regulations or an administrative ruling, including AML/CFT provisions, the FMA can apply the following range of sanctions:

- instruct the financial institution on pain of penalties to restore legal compliance (Art.70 para.4 no.1 BWG Act, Art.104 in conjunction with Art.115a VAG, Art.57 para.1 AIFMG, cross references to Art.70 para.4 no.1 BWG are contained in Art.92 para.8 WAG, Art.64 para.7 ZaDiG and Art.26 para.7 E-GeldG);
- impose administrative sanctions on natural and legal persons that fail to comply with the AML/CFT requirements (please refer to criterion 35.1);
- In cases of repeated or continued violations, completely or partly prohibit the directors from managing the financial institution where deemed fit (Art.70 para.4 no.2 BWG, Art.56 para.2 no.11 AIFMG, cross references to Art.70 para.4 no.2 BWG are contained in Art.92 para.8 WAG, Art.64 para.7 ZaDiG and Art.26 para.7 E-GeldG).
- In cases where other measures cannot ensure the functioning of the financial institution the FMA has the power to revoke the license (Art.70 para.4 no.3 BWG, Art.9 para.1 no.4 AiFMG, cross references to Art.70 para.4 no.3 BWG are contained in Art.92 para.8 WAG, Art.64 para.7 ZaDiG and Art.26 para.7 E-GeldG).

Weighting and conclusion

Recommendation 27 is rated compliant.

Recommendation 28 – Regulation and supervision of DNFBPs

Criterion 28.1 –

a) Games of chance are subject to state monopoly (Art.3 GSpG). It is prohibited to operate games of chance without a federal license (Art.2 para.4 GSpG).
b) The management staff of casinos should meet the criteria as set out in the Art.13 GewO (Art.5 para.2 no.5 GSpG). This includes absence of convictions for offences that involve a sentence of more than three months; however this does not cover associates of criminals. In addition, shareholders who are able to exercise a "dominating influence" should meet requirements of "solid and diligent management of casino and reliability with regard to public order" (Art.14 para.2 no.4 and Art.21 para.2 no.4 GSpG). The latter requirement falls short of the standard as it does not cover beneficial owners of a significant or controlling interest. It is not clear which regulatory measures are taken to prevent the associates of criminals from owing or operating casinos.
c) Casinos are supervised for compliance by the Ministry of Finance (Arts.19 para.1 and 31 para.1 GSpG).

Criterion 28.2 – For real estate agents, dealers in precious metals and stones and business consultants, the local district authorities are in charge of monitoring and ensuring the compliance of with AML/CFT requirements (Art.365m para.4 by reference to Art.333 GewO).

The Boards of the Regional Bars (*Ausschuss der Rechtsanwaltskammer*) is the responsible authority within its territory for monitoring lawyers' compliance with the professional regulations including AML/CFT requirements and measures (Art.23 para.2 RAO, Art.1 para.3 DSt).

The competent regional Chamber of Civil Law Notaries (*Notariatskammer*) is obliged to examine whether notaries within its territory comply with the AML/CFT provisions (Art.154 para.1 NO).

The Chamber of Chartered Public Accountants and Tax Consultants (*Kammer der Wirtschaftstreuhänder*) is in charge of monitoring compliance with the legal professional requirements (which includes AML/CFT provisions) of the public accountants and tax consultants (Art.146 para.2 no.4 WTBG).

The WKÖ (*Wirtschaftskammer*) is in charge of monitoring the accountancy professionals (Art.63 para.1 BiBuG).

Criterion 28.3 – All categories of DNFBPs are subject to supervision by different authorities (see above).

Criterion 28.4 –

Local district authorities have powers to monitor tradespersons' compliance with the AML/CFT requirements, which includes requesting information from the supervised entities, conducting on-site examinations and inspecting their books, as well as imposing sanctions for non-compliance (Art.365m para.4 by reference to Arts.333 and 338 GewO).

The regional Austrian Bars have a general authority to monitor their members' compliance with all professional duties (Art.23(2) RAO), which includes AML/CFT. The disciplinary council of the regional Austrian Bars may impose sanctions for non-compliance (Art.16 para.1 DSt). And according to Art.23 of RL-BA 1977 ("Guidelines for carrying on the profession of a lawyer and for monitoring fulfilment of the lawyer's and candidate lawyer's duties"), a lawyer must comply with the orders given to him/her by the Bar Association and fulfil the duties s/he has vis-à-vis the same.

The competent regional Chamber of Civil Law Notaries is obliged to examine the files of notaries within its remit to review their business activities from time to time. This includes verifying whether notaries comply with the AML/CFT provisions (Art.154 para.1 NO). If a notary violates a statutory obligation in the context of AML/CFT, he/she is in breach of a professional duty that will be sanctioned as a major disciplinary offense by the higher regional court as the disciplinary court after a hearing by the senior public prosecutor, or as a minor disciplinary offense by the competent regional Chamber of Civil Law Notaries (Art.155 NO).

The Chamber of Chartered Public Accountants and Tax Consultants has the specific task of supervising their members concerning their compliance with its professional obligations (Art.146 para.2 no.4 WTBG).

Natural persons are prohibited from engaging in professions of real estate agents, dealers in precious metals and stones and business consultants if they have been convicted for offences that involve a sentence of more than 3 months or a fine of more than 180 daily rates, different types of fraud, or narcotics trafficking (Art.13 paras.1 and 7 GewO). While these adequately prevent criminals

from holding (or being the beneficial owner of) a significant or controlling interest in a business entity engaged in such a profession, this does not extend to the *associates* of criminals.

The Disciplinary council may take "interim" measures against a lawyer when criminal proceedings are initiated against him/her, or the lawyer has been found guilty of a criminal act by court. These measures include temporary interdiction of the exercise of the lawyer's profession (Art.19 para.3 DSt). A lawyer who negligently violates the obligations of his profession or damages the honour or the image of the profession with his behaviour in or outside of the profession commits a disciplinary offence. Possible disciplinary sanctions include deletion from the list of lawyers. (Art.16 para.1 DSt). Involvement in, and also the knowledge about criminal activities of an associate are possible reasons for such disciplinary sanctions.

For notaries, the disciplinary court can order a (temporary) suspension from office (Art.180 NO) as an interim measure. A disciplinary proceeding can also end with the sanction of debarring from office (Art.158 NO). It also has to be mentioned that according to Art.19(1) NO, the office of a notary automatically ends in case of certain convictions by a criminal court. For chartered public accountants, tax consultants and accountancy professionals, a person commits an administrative offence which is punishable with a fine of EUR 400 up to EUR 20 000, if he or she violates the AML/CFT requirements of Arts.98a to 98f and Arts.98h to 98j as well as the guideline on the practice of the profession pursuant to Art.83 WTBG.

Real estate agents, dealers in precious metals and stones and business consultants can be punished by a fine of up to EUR 20 000 in case of infringements of the AML/CFT provisions (Art.366b GewO). Monetary fines (without specifying their amount) can also be imposed on legal persons or registered companies for AML/CFT infringements which are committed for their benefit by any person, acting either individually or as part of an organ of the legal person or registered company, who has a leading position within the legal person (Art.370 paras.1a and 1b GewO). Finally, the permission to engage in a trade can be withdrawn in case of grave violations of the legal requirements imposed on the profession (Art.87 para.1 no.3 GewO).

The disciplinary council of the regional bar may impose sanctions for non-compliance ranging from a written reprimand, a fine up to EUR 45 000, the debarring from the lawyers' profession up to one year, up to the deletion from the list of lawyers, which means that this lawyer cannot work as a lawyer anymore (Art.16 para.1 DSt).

If a notary violates a statutory obligation in the context of AML/CFT, the scale of sanctions for major offences ranges from a written reprimand, a fine of up to EUR 50 000, suspension from office for up to one year, to debarring from office (Art.158 para.1 NO). Sanctions for minor offences include cautioning on the professional duties, admonition in writing or admonition in writing in combination with a fine of up to EUR 10 000 (Art.158 para.5 NO).

Criterion 28.5 –

Art.365m para.4 GewO explicitly provides that the supervision of the tradespersons (which includes real estate agents, dealers in precious metals and stones and business consultants) shall be performed on a risk-sensitive basis.

The regional Bars conduct oversight on both a regular and random basis. Austria indicates that the supervision is exercised by the respective boards of the Bar association on a risk-sensitive basis, however, without giving any more specific information in this regard.

Civil law notaries: The reviews (audits) in notarial offices carried out by the competent regional notarial chamber according to Art.154 NO take place in an intensity that each notary is at least reviewed once in a period of approximately five years. On special occasions (e.g. because of certain complaints) extraordinary revisions audits in notarial offices are carried out.

No information concerning risk-based supervision of and its applications to the other categories of DNFBPs was provided.

Weighting and conclusion

Austria fulfils most of the requirements of R.28. Local district authorities have proper authority to supervise real estate agents and dealers in precious metals and stones, and business consultants; however, there are not sufficient controls to prevent the associates of criminals from holding (or being the beneficial owner of) a significant or controlling interest in a business entity engaged in such a profession. For all DNFBPs, supervision is not performed on a risk-sensitive basis.

Recommendation 28 is rated largely compliant.

Recommendation 29 - Financial intelligence units

Austria was rated PC for R.26 (the predecessor to R.29) in its 3rd MER. The main deficiencies included that the A-FIU was not a national centre for analysing and disseminating STRs. The A-FIU was also not a national centre for receiving, analysing and disseminating information concerning suspected TF activities other than STRs. Since then, a number of amendments were introduced into the BKA-G and relevant sectoral legislation.

Criterion 29.1 – Under Art.4 para.2 BKA-G, the A-FIU is established to combat ML as required by relevant sectoral legislations as well as receiving, analysing and disseminating information and by conducting pertinent international correspondence. While reporting parties are required to file all STRs with the A-FIU, the A-FIU does not analyse FT-related STRs beyond the initial "competence check". Rather, it forwards them all to the BVT for analyis and investigation.

Criterion 29.2 – Relevant reporting entities are obliged to immediately file a STR with the A-FIU. The subject of the STR can be a transaction, a business activity and other financial activities, which also includes wire transfers, cash transactions, and other declarations/disclosures.

Criterion 29.3 – According to respective sectoral legislation, reporting entities must immediately provide all information which deems necessary to prevent or pursue cases of ML or TF upon request to the A-FIU and irrespective of previously filed STRs. The A-FIU can also request information including customer and transaction information even when no STR has been filed for analysis purposes as well as providing assistance on investigations. The A-FIU is authorised to establish and process the data required for AML/CFT purposes from natural and legal persons as well as from other legal entities. It is also authorised to use personal data on customers under investigation and

has access to a wide range of financial, administrative and law enforcement information to properly undertake its functions. For instance, the A-FIU has direct online access to the files of the CIS, register of residents, company and business registers, land register as well as the criminal police information system (which includes information on on-going criminal investigations, convictions, arrest warrants, car registrations and other personal information such as weapon prohibitions etc.). The A-FIU also has indirect access to data held by tax and customs authorities, which can be retrieved on demand. The customs authorities also provide detailed information on cash transactions to the A-FIU on a monthly basis.

Criterion 29.4 – The A-FIU conducts very basic operational analysis on STRs provided by reporting entities or other national or international counterparts, basically by performing checks in its database, other law enforcement agencies' databases and other registers which are accessible to the A-FIU. As a general rule, the A-FIU is entitled to collect any data of natural or legal persons it deems necessary. Additional information is collected on a case-by-case basis in order to establish the economic background and transaction pattern of the case. Nonetheless, the role of the A-FIU is largely remained at investigative level in identifying predicate offences. The A-FIU conducts only very basic operational analysis and does not conduct any strategic analysis. The police force uses the information from the A-FIU occasionally in the context of investigations of predicate offences or to some extent trace criminal proceeds. The A-FIU has one trained analyst for cases of complex nature. If needed, the CID analysis unit provides support to the A-FIU. With regard to TF, the BVT directly receives all TF-related STRs from the A-FIU and conducts its own analysis.

Criterion 29.5 – The A-FIU is authorised to disseminate information and the results of its analysis to relevant competent authorities and international counterparts for intelligence and investigation purposes through protected e-mail channels.

Criterion 29.6 – The CIS has a decree in place to regulate its IT Security, which also covers the A-FIU. Only staff members of the A-FIU have access to the A-FIU data which is securely stored in the BMI server and cannot be inspected by other CIS units. The A-FIU controls who can or cannot have access to the files and data. The A-FIU has written regulations in place to deal with the information confidentiality within the A-FIU. Staff members of the A-FIU who deal with secret or classified information must pass a security clearance every three years.

Criterion 29.7 – The A-FIU is an independent and autonomous body as it is the only authority that receives, analyses, and disseminates STRs from reporting entities. The A-FIU decides independently where to disseminate and how to cooperate with domestic competent authorities and foreign counterparts. The internal regulation (Geschäftsordnung) of the BKA also stipulates that the A-FIU has a delegated competence for its tasks. The Head of the A-FIU is able to obtain and deploy additional manpower and resources to carry out its functions on certain occasions.

Criterion 29.8 – Austria was one of the founding members of the Egmont Group in 1994.

Weighting and conclusion

While the A-FIU has broad access to information, and functions well in conducting and supporting predicate offence investigations, the A-FIU conducts only basic operational analysis and does not

conduct any strategic analysis (crtierion 29.4). Furthermore, the A-FIU is not in charge of analysing FT-related STRs beyond the initial "competence check". Given the importance of these criteria.

Recommendation 29 is rated partially compliant.

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

Austria was rated C for R.27 (the predecessor to R.30) in its 3rd MER.

Criterion 30.1 – In Austria, ML and TF are prosecuted and penalised in accordance with the general criminal statutes, i.e. the StGB and the StPO. Under the StPO, public prosecution offices and criminal police authorities are responsible for criminal investigations. Furthermore, if there is a suspicion that a criminal offence (including ML and TF) occurred, law enforcement authorities are obliged to conduct an investigation. The A-FIU is an autonomous, law enforcement FIU within the BMI and is primarily responsible for ML investigations, while the BVT investigates cases related to TF. The A-FIU and the BVT may utilise their specific expertise and conduct joint investigations on TF cases if necessary. The Tax and Customs Administration also investigates all fiscal offences if they are over a certain threshold (EUR 100 000 for taxes and EUR 50 000 for customs duties) according to Arts.53 and 196 FinStrG.

Criterion 30.2 – Law enforcement authorities are authorised to investigate ML/TF offences during a parallel financial investigation regardless of where the predicate offences occurred. The ARO, which exists in each of the nine CIS (one for each Bundesland), is competent, upon request, to assist other criminal police units to conduct financial investigations and to co-ordinate between police units in complex cases.

Criterion 30.3 – The Austrian law enforcement authorities are obliged to identify, trace, freeze and initiate seizing of property that is, or may become, subject to confiscation, or is suspected of being proceeds of crime. In addition, the BMJ issued a handbook and brought to the attention of all public prosecution offices and courts by way of a decree (decree no. BMJ-S90.021/0004-IV3/2014) in February 2014 on offence-related property orders in which the relevant legal provisions, case law and commentaries on confiscation, forfeiture, extended forfeiture and redemption, including the respective investigative measures as well as procedures for securing, managing and disposing of assets, are compiled and explained in detail. Specialised departments for asset recovery, which were established at five public prosecution offices in Austria as a pilot project, may become a permanent establishment subject to detailed evaluation of its effectiveness in 2016.

The public prosecutor competent for a particular case remains responsible for asset recovery measures, unless the specialised department, at its discretion, decides to take over all further asset recovery measures.

Criterion 30.4 – If tax fraud and other fiscal offences qualify as predicate offences for ML, the relevant financial, tax or customs authorities can pursue investigations and have the same competence as the law enforcement authorities have in criminal proceedings. The StPO provisions are also applicable in proceedings concerning tax offences if there are no special rules stipulated elsewhere in the FinStrG.

Criterion 30.5 – As stipulated in Art.20 StPO, the WKStA is the competent authority for the majority of corruption offences and related ML offences. It has to cooperate with the BKA, which is an institution of the BMI and has nationwide jurisdiction in, inter alia, the prevention of and the fight against corruption. Both WKStA and BKA have the same powers to identify, trace and initiate freezing and seizing of assets as with other Austrian law enforcement authorities.

Weighting and conclusion

Austria meets all the criteria. It has a comprehensive institutional framework to ensure that ML, TF, and predicate offenses are properly investigated and prosecuted.

Recommendation 30 is rated compliant.

Recommendation 31 - Powers of law enforcement and investigative authorities

Austria was rated LC for R.28 (the predecessor to R.31) in its 3rd MER. The main deficiencies included strict conditions for obtaining/compelling information subject to banking secrecy and scope of legal privilege which hindered the possibility for law enforcement authorities to locate and trace property.

Criterion 31.1 – Competent authorities investigating ML, associated predicate offences and TF are able to obtain access to all necessary documents and information for use in those investigations, prosecutions and related actions.

a) *The production of records held by financial institutions, DNFBPs and other natural or legal persons*: LEAs can obtain access to documents of credit institutions and financial institutions if there is reason to assume that objects, records or other documents can be obtained that are necessary for the investigation in accordance with Arts.109 and 116 StPO. Such banking information is obtained through an order of the public prosecution office approved by the court. However, the bank has the possibility to appeal before the court the request for records (Art. 116 para 6). Regarding DNFBPs, it is generally admissible to execute house searches and seizures at the premises of lawyers, notaries and chartered accountants. Casinos, real estate agents, and dealers in precious metals and stones are not subject to professional secrecy under the StPO and hence house searches and other intrusive measures may be conducted at their premises. In case documents of a lawyer, notary or chartered accountant are seized, Art.112 StPO provides for a special procedure (documents are sealed and reviewed by a judge).
b) *Search of persons and premises*: Arts.117 and 119 StPO provide for the power to search accused persons and their premises. In the case of imminent danger, a search warrant is not necessary. According to Art.93 StPO the police may use certain coercive measures (i.e. physical force), but also certain forms of seizure or searches without application. Other forms of coercive measures (e.g. fines or coercive detention against uncooperative persons, other searches and seizures) need an application to the prosecution or the courts.
c) *Taking witness statements*: According to Art.153 StPO, everyone, including witnesses, is obliged to follow the summoning of the criminal police, the public prosecution office or the court. Witnesses are also obliged to give full and truthful testimony. Certain DNFBPs such as lawyers, notaries and chartered accountants are exempted from testifying or have legally

granted rights to refuse to testify pursuant to the provisions set forth in Arts.155 to 158 StPO. These exemptions are particularly relevant with certain DNFBPs such as lawyers, notaries and chartered accountants. Unless they do not explicitly waive their rights to refuse to testify, a testimony that is nevertheless given is legally void and must not be used during further proceedings. The right to refuse to testify must not be circumvented by seizure of documents.

d) *Seizing and obtaining evidence*: According to Arts.109 and 110 StPO, objects can be seized for evidentiary purposes. In general, a seizure is executed by the criminal police upon order of a public prosecutor.

Criterion 31.2 – Competent authorities are able to use a wide range of investigative techniques for the investigation of ML, associated predicate offences, and TF.

a) *Undercover operations*: Arts.129 and 131 StPO stipulate that criminal police officers or other persons, upon instruction of criminal police officers, are authorised to conduct undercover operations. In general, undercover operations are permissible whenever deemed necessary to investigate criminal acts. Undercover operations conducted during a longer time period and in a systematic manner require an order from the public prosecution office.
b) *Intercepting communications and*
c) *Accessing computer systems*: These are permissible pursuant to Arts.134, 135, 137, 138 and 139 StPO. Such measures require an order of the public prosecution office, approved by the court.
d) *Controlled delivery*: It is permissible pursuant to Art.99 StPO in connection with Arts.71 and 72 EU-JZG. The criminal police have to notify the public prosecution office of any such controlled deliveries.

Criterion 31.3.

a) According to Arts.109(3)(a) and 116(1) StPO, LEAs can obtain information and all related documents on the identity of an account holder, its address and whether a suspect has a business relationship with a bank or is the beneficiary of such a business relationship. In Austria, there are five associations of banks, and every bank is member to one association. In order to enable law enforcement authorities to receive information whether a person has a business relationship with a bank in Austria and if so how many, the following handling procedure was agreed upon between the WKÖ (Department for banks and insurances) and the BMJ in 2013: the court-approved order will be sent to the five associations via fax. The associations will then forward a form containing the requested information to their members; however, for data protection reasons, the court-approved order (which also contains a summary of the facts of the case) is not forwarded to the banks. Upon receipt of the form, each bank has to notify the public prosecution office if it is in possession of the required information. While this procedure is comprehensive, it is not timely. But the procedure will be changed as the law establishing a central bank account register has already been enacted. The register shall be in operation by fall 2016.
b) According to Art.116(5) StPO, if LEAs need to obtain relevant banking information for investigation, the public prosecutors can order the financial institutions to keep the order and all facts and operations in connection with it confidential against their clients and third parties.

Criterion 31.4 – Competent authorities conducting investigations of ML, associated predicate offences and TF are able to ask for all relevant information held by the A-FIU (Art.4.2 BKA-G).

Weighting and conclusion

While overall Austrian law enforcement and investigative authorities have broad powers, there are still some steps that impede their ability to identify, in a timely manner, whether natural or legal persons hold or control accounts (criterion 31.3). Banks also have the possibility to appeal before the court the request for records.

Recommendation 31 is rated largely compliant.

Recommendation 32 – Cash Couriers

Austria was rated PC for SR.IX (the predecessor to R.32) in its 3rd MER. The main included a lack of monitoring and checks of cross-border transportation of cash into Jungholz and Mittelberg as well as the ineffectiveness of implementation of the declaration/disclosure requirements. However, since both towns are only accessible via Germany and do not have borders with non-EU countries, there are no legal obligations for cross-border controls of cash/BNI movements.

Criterion 32.1 – Austria applies the EC Regulation No. 1889/2005 on controls of cash entering or leaving the European community to cross-border transportation of currency and BNIs at its borders with non-EU countries (Switzerland, Liechtenstein, and at airports). For EU-internal borders, Austria applies the ZollR-DG. There is also a customs declaration system for banknotes, cheque forms, stock, share or bond certificates and similar documents transported by cargo and mail entering or leaving EU borders, which is set out by the Community Customs Code.

Criterion 32.2 – According to Art.3 of the EC Regulation No. 1889/2005, all persons making a physical cross border transportation of currency or BNIs are requested to provide a written or oral declaration above a threshold of EUR 10 000. For mail or cargo, they do not fall under the EU regulation and have to be declared under the ZollR-DG.

Criterion 32.3 – The disclosure system is applicable for the intra-community cross-border transportation of cash and other BNIs at the EU-borders. Under Art.17b ZollR-DG, persons have to indicate the origin, the beneficiary and the intended use of the money or BNIs with an oral declaration upon request. Luggage, vehicles and persons may be examined to verify the accuracy of the disclosure. Mail, courier, and cargo shipments, both incoming and outgoing, are also subject to inspection for transport of currency and BNIs. Cargo shipments are subject to a risk-based inspection system. All postal consignments entering or sent from the European Community are subject to customs supervision.

Criterion 32.4 – Under Art.17b ZollR-DG, customs officers have the power to investigate and to interrogate carriers and other persons about the origin, the owner and the intended use of the money or BNIs.

Criterion 32.5 – Sanctions for infringements of the duty to disclose information or making a false declaration are stipulated in Art.48b FinStrG. The sanctions also apply to false declarations pursuant to the EU regulation and absence/false declaration for movements of cash entering/leaving the EU.

The penalty is up to EUR 100 000 (strong intent) or up to EUR 10 000 (negligence). This does not seem proportionate or dissuasive. This is a criminal sanction to be applied to natural persons within an administrative penal procedure. Legal persons face the same sanctions as natural persons, if: the duty to disclose information refers to the legal person or the infringement of this duty was done in favour to the legal person; and either the directors or other persons of the management fail to declare or disclose the relevant information or they did not take care to ensure, that this duty would be fulfilled by the employees of the legal person.

Criterion 32.6 – According to Art.17c para.2 ZollR-DG, all information obtained through the declaration system and by false disclosures are provided to the A-FIU on a monthly basis, and, in urgent cases, immediately.

Criterion 32.7 – There are meetings held on case-related basis among relevant divisions in the BMF and the BKA, including the A-FIU to discuss and co-ordinate matters of common interests or linked with tax or customs fraud as well as organised crime. Urgent cases will be communicated through e-mails and phone calls. Art.17c(2) ZollR-DG also obliges the customs authorities to inform the A-FIU about any unusual transaction (especially undeclared cash transactions). By agreement of 17 September 2009, the customs authorities are exchanging information about any kind of declared transactions on a monthly basis.

Criterion 32.8 – According to Art.17c para.1 ZollR-DG, if certain facts give rise to the assumption that cash or equivalent means of payment are introduced for the purpose of ML or TF, the Austrian customs authorities are authorised, in case of danger in delay, to provisionally seize the cash or means of payment. They must immediately report this preliminary seizure to the competent public prosecutor's office for a decision. There is not a specific provision enabling the authorities to seize cash and BNI if there is a suspicion of a predicate offence, or if there is a false declaration or disclosure but, according to Art. 26 ZollR-DG, in exigent circumstances customs officers are empowered to seize objects.

Criterion 32.9 – Arts.6 and 7 of EC Regulation No. 1889/2005 set the basis for the exchange of information with third countries. In the case of illegal activities associated with the movement of cash and in the case of ML the information gathered through the declaration process may be transmitted to competent authorities in other EU member states. Art.7 deals with exchange of information with non-EU member States upon certain conditions. As a member of the EU, Austria also applies EC Regulation No. 515/97 on mutual assistance in customs matters.

Criterion 32.10 – According to Art.17c para.2 ZollR-DG, the Austrian customs authorities have to report relevant data, which is stored in a special cash-control database and implemented in a secured network approved through the national data protection agency, to the A-FIU for performing its statutory tasks. Information exchange usually takes place through secure e-mail channels.

Criterion 32.11 – See criterion 32.5 above. Persons who are carrying out a physical cross-border transportation of currency or BNIs that are related to ML or TF can be held responsible under Arts. 165 and 278d StGB respectively. Measures consistent with R.4 which would enable the confiscation of currency or BNIs will also apply.

Weighting and conclusion

Austria meets most of the criteria for R.32; however, available sanctions for non or false declarations/disclosures do not seem dissuasive, and there is not a specific provision enabling the authorities to seize cash and BNI if there is a suspicion of a predicate offence, or if there is a false declaration or disclosure .

Recommendation 32 is rated largely compliant.

Recommendation 33 – Statistics

Criterion 33.1 – Relevant statistics are kept by various authorities.

(a) The A-FIU keeps statistics on STRs, received and disseminated, as well as possible predicate offences, results of analysis/investigation, and international information exchange.
(b) The numbers of investigations, prosecutions and convictions on ML/TF are statistically recorded in the electronic register of the courts and public prosecutors ("*Verfahrensautomation Justiz*"). Final convictions are also statistically processed by "Statistics Austria" and published in the judicial criminal statistics.[74] Statistics on TF investigations, prosecutions and convictions are also kept
(c) Seizure and confiscation measures are documented in the electronically maintained records of prosecutors and courts, as well as by the Asset recovery office of the police. However there are no statistics on propety frozen, seized and confiscated.
(d) The ability to gather central statistics about MLA activities and extradition in Austria was set up in January 2015 but only initial (and incomplete) statistics were available at the time of the on-site visit. Measures put in place since 1 January 2015 have begun to enabled Austria to maintain statistics on mutual legal assistance with non-EU countries; however, there are only more limited statistics for MLA within the EU. Requests within the EU are centrally registered since January 2015 but no these are not comprehensive. Only statistics for 2015 have been finally provided. The A-FIU and FMA maintains comprehensive statistics for their international cooperation.

Weighting and conclusion

Austria maintains comprehensive statistics on STRs received and disseminated, and ML/TF investigations, prosecutions, and convictions. However, gathering central statistics on mutual legal assistance began in 2015. Statistics on MLA and other international cooperation are more comprehensive for non-EU cooperation but more limited within the EU. Statistics on property and asset seizures and confiscations are not maintained.

Recommendation 33 is rated partially compliant.

[74] Statistik Austria, www.statistik.at.

Recommendation 34 – Guidance and feedback

Austria was rated LC in its 3rd MER due to the insufficient guidance available to the financial institutions industry on the new legal requirements and an absence of up-to-date guidance on reporting for credit and domestic financial institutions, insurance undertakings and securities institutions. There was also an absence of guidance for notaries and casinos among the DBFBPs sector, as well as limited general feedback tailored to the specific needs of each DNFBP and an absence of systematic case by case feedback on STRs.

Criterion 34.1 –

Financial institutions

The FMA has so far issued a total of six circulars relating to AML/CFT matters to financial institutions, which are available on its public website –

- Circular on Identification and Verification of Identity for Credit Institutions and Financial Institutions;
- Circular on Identification and Verification of Identity for Insurance Undertakings;
- Circular on Suspicious Transaction Reports;
- Circular on the Risk Sensitive Approach;
- Circular on the Transmission of Payer Information; and
- Circular on AML Officer.

These circulars assist financial institutions in the interpretation of the legal text as well as examples of good practice. While they are not legally binding and not enforceable as such, non-compliance with these circulars found during on-and off-site inspections could entail a level of non-compliance with the legal provisions which would be sanctioned on the basis of the law. The FMA's Circulars will be updated in the course of the national transposition of the 4th EU Anti-Money Laundering Directive, which is to be implemented by 26 June 2017 latest. The FMA also hosts periodic AML/CFT workshops, conferences and seminars for financial institutions regularly to provide practical guidance with regard to the implementation of AML/CFT requirements.

The FMA also provides guidance to individual financial institutions by either answering legal enquiries from financial institutions or through continuous guidance and feedback during the on- and off-site inspections. In particular, detailed guidance is provided to a given financial institution during the conduct of administrative proceedings to restore legal compliance with a view to ensuring the adequate implementation and level of risk mitigating measures as required by respective legislations. Where deficiencies are identified, the FMA assists the financial institutions with respect to the calibration of existing parameters and/or the definition of new parameters for detecting suspicious transactions, the circular on the Risk Sensitive Approach provides an exemplary

list of risk indicators to be considered when monitoring the business relationship for suspicious transactions.

FMA provides feedback to financial institutions throughout the full range of supervisory tools including company visits and on-site inspections. Furthermore, the FMA actively and regularly engages with the financial sector via various channels such as workshops and answering of legal enquiries. Concrete feedback with regards to remedying regulatory deficiencies and violations will be provided in the course of the FMA's administrative proceedings to restore legal compliance.

The FMA also regularly organises ad hoc meetings with the private sector with the support of the Federal Economic Chamber (WKÖ), which serves as a centralised point of contact and ensures the dissemination of information to all banking and insurance associations and individual institutions. Meetings are most often held at the FMA's or at the WKÖ. These meetings regularly feature representatives of all banking association and/or the Austrian Insurance Association as well as of individual financial institutions (mostly AML officers) and are used to discuss current regulatory issues/topics and trends.

According to Art.41 para.4 BWG, the A-FIU has to inform the financial institutions about methods and indications of ML and TF, and provide feedback concerning the contents and quality of STRs received during trainings and within the scope of the A-FIU's annual reports. Specific feedback is only given upon request of the reporting entity. The A-FIU and FMA organise ad-hoc meetings on typologies if necessary. For example, strategic bilateral meetings were held in 2014 and 2015 with regard to bitcoin and suspicious cross-border cash movements.

DNFBPs

Casinos

According to Art.25a GSpG, the A-FIU shall make current information on methods of ML and TF and indicators by which suspicious transactions can be identified accessible to casinos licensees, as well as ensure that timely feedback regarding the efficacy of suspicious activity reports is provided to the extent practicable. In this context sensitization meetings took place in the past. Moreover there are regular phone conversations between the A-FIU and the CASAG compliance. On demand spontaneous meetings can be held to exchange informationThe internal guideline by CASAG (i.e. the "Code of Conduct") was also drafted with the consent of the BMF Unit IV/2.

Lawyers and notaries

The Austrian Bar issued a guidance manual on how to prevent ML and TF for lawyers and brought it to the attention of lawyers via the Austrian Bar's internal website in August 2014. It includes guidance on overall AML/CFT requirements, CDD measures (including PEPS), STRs, and organisational measures for law firms. Furthermore, the Austrian Bar disseminates to all lawyers the A-FIU's annual report, which includes information on current ML and FT techniques, methods and trends (typologies), statistics on the number of disclosures and actual ML cases. Specific or case by case feedback is available via the A-FIU or other authorities competent for combating ML and FT. This includes for example spontaneous feedback in the case of a conviction or suspension of the file,

but also feedback upon request about the status of the investigation. The Austrian Bars and Lawyers' Academy organise training seminars for lawyers and trainee lawyers on the prevention of ML and TF four times a year. Lawyers and trainee lawyers are also regularly informed via the Austrian Lawyer's Journal, newsletter of the Austrian Bar as well as media of the Bars on recent changes and developments in the area of AML/CFT. Finally, the regional Bars organise lectures and seminars on the prevention of ML and TF: from 2011 to 2014 they organised 14 such seminars.

The Austrian Chamber of Civil Law Notaries has issued a guidance manual entitled "Recommendations for Use" for Austrian notaries to prevent ML and TF risks. It includes guidance on CDD measures (including PEPs), STRs, as well as potential red flag indicators. Notaries and candidate notaries are given an opportunity to attend seminars as well as further education and training events on ML and TF within the framework of the Notarial Academy of the Austrian Chamber of Civil Law Notaries, which are stipulated under Art.117 NC. From 2011 to 2015, a total of 16 events with 518 participants were hosted. Concrete feedback to notaries is provided by the regional notarial chambers as supervising authorities through the reviews of the notarial offices, which takes place at least once every five years.

Real estate agents, dealers in precious metal and stones and business consultants

The WKÖ working together with the A-FIU, has issued guidance to the local district authorities for their supervision of real estate agents, dealers in precious metal and stones and business consultants sector. WKÖ communicates to the local district authorities approximately once a year providing their sectors guidance and feedback on AML/CFT issues. The last meeting has held on 8-9 September 2015.

Accountants

There is no information regarding guidance for accountants. Nonetheless, Austria indicates that the A-FIU provides specific or case by case feedback on ML/TF to all reporting entities.

Weighting and conclusion

The FMA, the Austrian Bar and the Austrian Chamber of Civil Law Notaries have issued AML/CFT adequate guidance for their supervised sectors. There was an internal guideline drafted by guideline by CASAG for casinos. In terms of feedback, FMA and the A-FIU provide good overall feedback, but no methodical feedback is provided on STRs.

Recommendation 34 is rated largely compliant.

Recommendation 35 – Sanctions

In its last MER, Austria was rated PC for R.17, which contained the previous requirements in this area. The deficiencies related to insufficiently proportionate and dissuasive sanction, the lack of sanctions for senior management besides criminal liability, and limited effectiveness. Since then Austria has extended available sanctions to senior management under Arts.98 and 99 BWG.

Criterion 35.1 – The FMA has the power to impose administrative sanctions on legal (financial institutions) and natural (executive directors of financial institutions or special responsible representatives of financial institutions according to Art.9 para.2 VStG) persons (intentionally or negligently) failing to comply with the relevant AML/CFT requirements laid down in the laws and regulations implementing the requirements set forth in R.10-21. The following provisions provide the legal bases for the imposition of measures or sanctions –

Financial institutions

- credit institutions (Art.70 para.4, Art.99d paras.1 and 2 and Art.98 para.5a no.3) and financial institutions (Art.99 para.2) governed by BWG; with imprisonment of up to six weeks or a fine of up to EUR 150 000.
- insurance undertakings (Art.108a para.3 VAG);
- investment firms and investment service providers (Art.95 para.10 WAG);
- payment service providers (Art.67 para.11 ZaDiG);
- E-money institutions (Art.29 para.3 E-GeldG);
- alternative investment fund managers (Art.60 para.3 AIFMG).

According to Art.70 para.4 BWG, when a credit institution violates the provisions of the BWG or other relevant laws, including the AML/CFT preventive measures, the FMA may –

- instruct the credit institution under the threat of coercive penalties (per Art.5 para.3 VVG) in conjunction with Art.96 BWG), a fine up to EUR 30 000 per violation) to restore legal compliance within a certain period of time;
- in case of repeated or continued violations, enforce the coercive penalty and reiterate the instructions above-mentioned on a higher coercive penalty, or completely or partly prohibit the directors from managing the credit institutions;
- revoke the license when other measures under the BWG cannot ensure the functioning of the credit institution.

Licenses are granted with respect to each of the activities listed in Art.1 para.1 BWG. Therefore a (partial) revocation of a license may only affect the exercise of a particular line of business, e.g. current account business (para.1 no.2) or custody business (para.1 no.5). This therefore allows the FMA to restrict a financial institution's business.

According to Art.99d paras.1-3, legal persons can also be punished with fines up to 10% of the total annual net turnover according to Art.99d para.3 BWG or up to twice the economic benefit resulting from the infringement.

Insurance intermediaries

According to Art.366b GewO, the local district authorities can apply and administrative fine of up to EUR 20 000 for failure to comply with AML/CFT provisions.

Failure to comply with targeted financial sanctions (R.6)

Arts.12- 15 SanktG envisage both judicial and administrative penalties, including for violations of the relevant directly applicable EU Regulations. In case of judicial penalties the perpetrator faces imprisonment of up to two years or a fine of up to 360 daily rates. In case of administrative penalties the perpetrator shall be punished by imprisonment of up to six weeks or a fine of up to EUR 50 000. Whether a violation is punished by a court or an administrative authority is determined by the value of the transaction. If a transaction exceeds the threshold of EUR 100 000 judicial sanctions shall apply.

Failure to comply with NPO requirements (R.8)

Austria indicates that Arts.29 and 31 VereinsG determine administrative sanctions. The competent authority (BMI) scrutinises the formalities of the incorporation procedure with respect to associations. According to Art. 31 violations shall be punished by administrative penalties from EUR 218 up to EUR 726, unless the offence committed constitutes a criminal offence as well. Further, according to Art.29 the competent authority may issue an order of dissolution/liquidation of the association [See criterion 8.5].

DNFBPs (i.e. failure to comply with R.22 – R.23)

Casinos

The relevant provisions are Art.14 para.7, Art.23 and Art.52 para.1 Z.8 GSpG. An administrative offence carrying a fine of up to EUR 22 000 is committed by whoever fails, contrary to the provisions of Art.25 paras.6 and 7 or Art.25a GSpG. The BMF can also issue an order to the casino, forbid the managers of the license from continuing to manage the license, and withdraw the license. This measure legally applies to both land-based and internet casinos.

Lawyers

The identification, record-keeping and due diligence requirements implemented by the professional regulations for Austrian lawyers apply to lawyers as well as to law firms; moreover, every lawyer belonging to a law firm also has to observe the laws and regulations personally. This responsibility may neither be constrained nor suspended by a company agreement, by any decision of the company's members or measures by the management (Art.21b RAO). The disciplinary council of the Austrian Bar may impose sanctions for non-compliance ranging from a written reprimand, a fine up to EUR 45 000, the debarring from the lawyers' profession up to one year, up to the deletion from the list of lawyers, which means that this lawyer cannot work as a lawyer anymore (Art.16 para.1 DSt).

Notaries

As far as civil law notaries are concerned the comprehensive identification, record-keeping and due diligence requirements mentioned here apply to notaries as well as to notarial partnerships (on notarial partnerships see Arts.22 to 25 NO). If a notary violates a statutory obligation in the context of AML/CFT, the scale of sanctions for major offences ranges from a written reprimand, a fine of up to EUR 50 000, suspension from office for up to one year, to debarring from office (Art.158 para.1 NO). Sanctions for minor offences include cautioning on the professional duties, admonition in writing or admonition in writing in combination with a fine of up to EUR 10 000 (Art.158 para.5 NO).

Accountants

For chartered public accountants, tax consultants and accountancy professionals, a person commits an administrative offence which is punishable with a fine of EUR 400 up to EUR 20 000, if he or she violates the AML/CFT requirements of Arts.98a to 98f and Arts.98h to 98j as well as the guideline on the practice of the profession pursuant to Art.83 WTBG.

Real estate agents, dealers in precious metals and stones and business consultants (i.e. company service providers)

These DNFBPs can be punished by a fine of up to EUR 20 000 in case of infringements of the AML/CFT provisions (Art.366b GewO). Monetary fines (without specifying their amount) can also be imposed on legal persons or registered companies for AML/CFT infringements which are committed for their benefit by any person, acting either individually or as part of an organ of the legal person or registered company, who has a leading position within the legal person (Art.370 paras.1a and 1b GewO). An administrative offence carrying a fine of up to EUR 30 000 can be applied for failure to report a STR to the A-FIU. Finally, the permission to engage in a trade can be withdrawn in case of grave violations of the legal requirements imposed on the profession (Art.87 para.1 no.3 GewO).

Criterion 35.2 – Sanctions apply to directors and senior managers of financial institutions and DNFBPs.

Credit institutions

Under Art.99 para 2 BWG, if a "responsible person" violates specific AML/CFT preventive measures (Arts.40, 40a and 40 (CDD), 40d (correspondent banking), and 41 para.1 through 4 (STR requirements)), even through negligence, commits and administrative offence and can be punished with imprisonment up to six weeks or a fine of up to EUR 150 000, unless the act constitutes a criminal offence falling under the jurisdiction of the courts. Failure to fulfil wire transfer obligations (R.16) can be fined up to EUR 60 000 (Art.99 para.1 no.19 BWG).

Furthermore, the FMA may completely or partly prohibit directors of credit institutions from managing the institutions pursuant to Art. 70 para 4 no. 2 BWG.

Insurance undertakings

Art. 108a para 3 VAG provides that whoever, even negligently violates provisions of Arts.98a – 98h (the AML/CFT provisions) commits and administrative offence and shall be sentenced to up to six weeks imprisonment or a fine up to EUR 150 000.

Investment firms and investment service providers/ Payment service providers/ E-money institutions/ Alternative investment fund managers

Any person who as manager or responsible person violates the AML/CFT provisions of the BWG (i.e. Arts.40, 40a, 40b, 40d and 41 paras.1-4) can be punished with up to six weeks in prison and a fine of EUR 150 000 According to Art.95 para.10WAG; Art.67 para.11 ZaDiG; Art.29 para.3 E-GeldG; Art.60 para.3 AIFMG).

Furthermore, the FMA may completely or partly prohibit directors of such institutions from managing the institution pursuant to Art. 92 para 8 WAG, Art. 64 para 7 ZaDiG, and Art. 26 para 7 E-GeldG which all contain cross references to Art. 70 para 4 no. 2 BWG as well as Art. 56 para 2 no. 11 AIFMG.

DNFBPs

The measures described in criterion 35.1 above can be applied to directors and senior management insofar as the sanction is concerning a natural person. However, as noted above, there are no sanctions available for failures to comply with AML/CFT obligations in case of chartered public accountants, tax consultants and accountancy professionals.

Weighting and conclusion

Austrian financial and DNFBP supervisors have a broad range of proportionate and dissuasive sanctions to deal with natural and legal persons that fail to comply with AML/CFT requirements of R.6, 8-23. These sanctions can also be applied to directors and senior management.

Recommendation 35 is rated compliant.

Recommendation 36 – International instruments

Austria was rated LC and PC for R.35 and SR.I (the predecessors to R.36) in its 3rd MER. Since then, Austria has made progress to strengthen ML and TF criminalisation in line with the international standards.

Criterion 36.1 – Austria has signed and ratified the following international instruments –

Table 37. **International instruments signed and ratified by Austria**

Title	Signature Date	Ratification Date
Vienna Convention	25 September 1989	11 July 1997
Palermo Convention	12 December 2000	23 September 2004
Terrorist Financing Convention	24 September 2001	15 April 2002
Mérida Convention	10 December 2003	11 January 2006

Criterion 36.2 – Austria has reinforced its compliance with the provisions of the Vienna and Palermo Conventions, in particular that self-laundering is now criminalised under Art.165 StGB (see R.3). However, there are some deficiencies with regard to self-laundering. TF criminalisation is broadly in line with the TF Convention under Art. 278d and other parts of the StGB (see R.5). Austria indicates that upon ratification of that instrument, its content is considered to be part of Austrian national law and therefore directly applicable to national authorities.

Weighting and conclusion

Recommendation 36 is rated largely compliant.

Recommendation 37 - Mutual legal assistance

Austria was rated PC for R.36 and SR.V (the predecessors to R.37) in its 3rd MER. The main deficiencies included the absence of criminalisation of self-laundering which narrowed the scope of the MLA that Austria could grant, as well as the strict requirements to lift banking secrecy and extensive scope of legal privilege which slowed down effective co-operation. Practices also indicated that MLA may not always be granted in a timely manner in Austria.

Criterion 37.1 – Austria has a legal basis that allows rapid provision of the widest possible range of MLA in relation to investigations, prosecutions and related proceedings involving ML/TF and associated predicate offences. The legal framework is comprised of a network of international treaties and Conventions, the ARHG and the EU-JZG. According to Art.9(1) StPO, all the proceedings have to be conducted expeditiously and without undue delay.

Criterion 37.2 – The BMJ's Department IV is the Central Authority in Austria for both MLA and extradition requests.[75] Incoming MLA requests can be sent directly to the competent prosecution offices for processing if an agreement is established for direct communication. If an MLA request is sent via the Department or diplomatic channel, it will be forwarded to the competent prosecution offices for processing immediately. The general order to conduct criminal proceedings with expedition (Art. 9 StPO) is also valid for the area of international cooperation in criminal matters. A request that has been marked as urgent will be forwarded immediately to the competent domestic authority (public prosecutor's office or court) indicating the urgency. The BMJ monitors the execution of the request by setting time-limits for its execution. If a request is not executed within

[75] Ministerial decree on the internal rules of procedure and distribution of competences of the Federal Ministry of Justice.

the defined time-frame the BMJ will send the competent domestic authority a reminder asking for the reasons of possible hindrances for the swift execution of the request. Urgent cases are monitored within shorter delays according to information provided in the request. By accessing the electronic case register the BMJ can also monitor which and when steps have already been taken by the competent domestic authority. If necessary, reminders will be sent to the competent executing authorities. The BMJ has launched an initiative on 'improved documentation of MLA in the electronic registers' which aims at improving documentation of MLA cases so that timeliness of granting MLA requests could be better evaluated and documented. A working group had also been established to improve the electronic documentation of MLA and confiscations.

Criterion 37.3 – According to Art.51 ARHG, MLA may not be granted in the following circumstances –

- The act underlying the request is either not subject to punishment by a court under Austrian law or does not qualify for extradition (military, political, or tax offences, or if there is reason to expect that the person concerned runs the risk, due to ethnic origins, religion, membership to a particular social group or political views, of prosecution or would have to expect other serious disadvantages for these reasons), provided that there are no applicable multilateral or bilateral treaties; or
- If the conditions for conducting specific investigative measures under Chapter 8 of the StPO were not met or if granting assistance would result into violating an obligation to secrecy principles which also exist in relation to the criminal courts. It has to be noted that these secrecy principles do not include banking secrecy as the Austrian authority has amended Art.116 StPO which removes the previous restrictions on the access to banking information.

Criterion 37.4 – In Austria, MLA has to be granted with regard to fiscal offences in relation to other contracting parties under the Additional Protocol to the European Convention on MLA in Criminal Matters ETS No.99. The provision of MLA is not admissible when the punishable acts underlying the request are exclusively of a fiscal nature; however, if there are concurring offences (i.e. ML and tax offences), MLA can be provided (Arts.15(2) and 51(1) para. 1 ARHG). Regarding secrecy or confidentiality, Austria has amended Art. 116 of the StPO which removes the previous restrictions on the access to information.

Criterion 37.5 – The international Conventions, bilateral and multilateral agreements signed by Austria generally include specific clauses requiring the confidentiality of MLA requests to be maintained.

Criterion 37.6 and 37.7 – The requirement for dual criminality depends upon whether a bilateral or multilateral treat is used, or whether the ARHG is used. On the basis of several bilateral MLA-treaties (e.g. the treaties with Germany, Liechtenstein, China, the United States of America, the United Arab Emirates, and Switzerland), and Art.49a of the Convention Implementing the Schengen Agreement (CISA), and the Convention on Mutual Assistance in Criminal Matters between the Member States of the EU of 2000 (applicable between the Member States of the EU). MLA has to be rendered in the absence of dual criminality. In the absence of a bilateral or multilateral agreement above, the ARHG

is used, and dual criminality generally applies (as noted above in Art.51 ARHG). However, in these cases the service of documents can be provided if the recipient is prepared to accept them. Where dual criminality is required, it is sufficient that the conduct underlying the offence is criminalised in both Austria and the requesting country. This principle is also explicitly stated in several multilateral MLA-treaties to which Austria is a Party.

Criterion 37.8 – According to Art. 9(1) ARHG, unless the provisions of this federal law stipulate otherwise, the provisions of the StPO apply. Therefore, the range of domestic measures required under R.31 can be applied for international co-operation. Austria has also ratified the Protocol to the EU-MLA Convention 2001 – hence all types of information foreseen there can be obtained from Austria.

Weighting and conclusion

Austria meets nearly all the criteria for R.37; however, there are some issues with the scope of coverage of self-laundering (see Recommendation 3).

Recommendation 37 is rated largely compliant.

Recommendation 38 – Mutual legal assistance: freezing and confiscation

Austria was rated PC for R.38 in its 3rd MER. The main deficiencies included the absence of criminalisation of self-laundering which narrowed the scope of the MLA that Austria may grant, as well as the strict requirements to lift banking secrecy and extensive scope of legal privilege which slowed down effective cooperation. There was also no arrangement in place in Austria for co-ordinating seizure and confiscation actions with other countries.

Criteria 38.1 and 38.2 – Austria has the authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize or confiscate the laundered property, proceeds from and instrumentalities used (or intended for use) in ML, TF and predicate offences, or property of corresponding value. Art.64 ARHG provides the legal basis for the execution of foreign criminal court decisions, including foreign confiscation orders and provisional measures insofar as they would have been possible under Austrian law and have not yet been pronounced by the Austrian courts.

Regarding EU Member States, Arts.45 to 51 EU-JZG provide for the execution of orders freezing property or seizing evidence following the rules of the Council Framework Decision (FD) 2003/577/JHA of 22 July 2003 on the execution in the EU of orders freezing property or evidence, OJ L 196 of 2 August 2003. Art.52 EU-JZG provides for the execution of confiscation orders by Member States in accordance with the rules set out in the FD 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders, OJ L 328 of 24 November 2006. These instruments allow a speedy procedure using a certificate to forward the request. Austria can also proceed in rem and issue a non-conviction based forfeiture order under Art.445 StPO. The proceedings must comply with criminal standards of evidence and follow the provisions of a trial. There is Austrian jurisdiction over property present in its territory under Art.65a StGB, even if the acts have been committed abroad.

Criterion 38.3 – There are measures for coordinating investigations and freezing actions with other EU Member States. To implement this, Austria established a number of JITs with other EU and European countries. Similarly, Austria can co-ordinate with non-European countries (Art. 50(3) ARHG and Art. 4 EU Convention on mutual assistance in criminal matters). The ARO also assists in tracing assets abroad using different channels as well as trace assets in Austria on behalf of EU states, and within CARIN with regard to non-EU states. There are no comprehensive mechanisms for managing, and when necessary disposing of, property frozen. Arts.115a to 115e, and 377 StPO provide some measures for dealing with seized or sequestrated property before a final judgement. Art.408 StPO provides that confiscated objects are disposed of by public sale, use for certain public interests or destruction. But these measures assign these tasks to the courts to deal with individually in each case. So there is no systemic way of managing and disposing of such assets.

Criterion 38.4 – According to Art.64 ARHG, assets confiscated upon MLA requests fall under the federal budget of Austria. No asset forfeiture fund has been established so far. Nonetheless, Art.52g EU-JZG applies and provides for an asset sharing by 50% whenever the value of the confiscated asset is higher than EUR 10 000; values below this limit are not subject to asset sharing. Art.57 Mérida Convention, to which Austria is a Party, also provides for the handing over of confiscated property to the requesting State.

Weighting and conclusion

While Austria fulfils most of the obligations for R.38, there is no systemic way of managing and disposing of seized or confiscated assets.

Recommendation 38 is rated largely compliant.

Recommendation 39 – Extradition

Austria was rated LC for R.39 in its 3rd MER due to the lack of evidence of the overall effectiveness of the extradition framework.

Criterion 39.1 – Both ML and TF are extraditable offences under Austrian law. Austria can also extradite a person even in the absence of a treaty on the basis of reciprocity. The general provisions on extradition are stipulated in relevant Articles under the ARHG and the EU-JZG. The existing bilateral and multilateral extradition treaties, as well as other international Conventions to which Austria is a party will also apply. Within EU, the EU-JZG implements the EAW. Under the EAW there are strict time limits (60 days) for decisions regarding extradition and few grounds for refusal. If the requesting state is a member to the Council of Europe (e.g. Russia), the extradition regime between Austria and the requesting state is governed by the European Convention of Extradition from 13 December 1957 and its second Additional Protocols of 1978. For non-EU member states there are also processes for the timely execution of extradition requests – according to Art. 29 para 6 ARHG, preventive detention prior to an extradition may only last for six months in most cases, so extradition cases need to be finalised prior to that. The electronic case register of the courts and prosecution authorities (VJ) allows the BMJ, courts, and prosecutors to search a case and monitor which and when steps have been taken by the competent authority. It also allows to produce

statistics and to find open cases and via an automatic query once a new case is opened to find connected cases with a view to coordinating connected cases and to avoid conflicting decisions.

The legal provisions do not place unreasonable or unduly restrictive conditions on the execution of requests.

Criterion 39.2 – According to Art.5 EU-JZG, Austria can extradite its own nationals to other EU member states. For non-EU countries, the ARHG does not allow Austria to extradite its nationals, but the case must be submitted without undue delay to the Prosecutor's Offices[76] for the purpose of prosecution of the offences set forth in the extradition request. The competent authorities have to conduct proceedings in the same manner as in the case of any other offence under Austrian national law.

Criterion 39.3 – Where dual criminality is requirement for extradition, the requirement is deemed to be satisfied regardless of whether both countries place the offence within the same category of offence, or denominate the offence by the same terminology, provided that both countries criminalise the conduct underlying the offence. This principle is explicitly stated in several multilateral Extradition treaties to which Austria is a Party as well as the EU-JZG.

Criterion 39.4 – A simplified procedure is possible under Art.32 ARHG when a person consents to the extradition and to being transferred without the need for the requesting State to conduct a formal extradition proceeding. In the absence of any contradictory provisions, the simplified procedure may also apply when the crime for which a person is being extradited is ML or TF. The EAW allows a simplified procedure as stipulated under Art.30 para.1 EU-JZG.

Weighting and conclusion

Austria meets all the criteria.

Recommendation 39 is rated compliant

Recommendation 40 – Other forms of international cooperation

Austria was rated LC for Recommendation 40 in its 3rd MER. The main deficiencies included a lack of resources for the A-FIU which may delay the response to some requests depending on the circumstances, as well as a lack of provisions as regards to conducting inquiries on behalf of securities supervisors from third parties.

Criterion 40.1 – Austrian competent authorities including the BMJ, BMF (tax and customs authorities), A-FIU, BVT and FMA can provide a range of information to their foreign counterpart authorities in relation to ML, predicate offences and TF. Information can be shared both simultaneously and upon request. No information is provided on the roles of DNFBPS and their supervisors in the context of international cooperation.

Criterion 40.2 – The following framework facilitates other forms of international co-operation –

[76] Art. 2(1) of the StPO.

a) Competent authorities have a lawful basis for providing international co-operation. For the purposes of law enforcement and criminal investigations, it is regulated by Arts.1, 3, 8 and 9 PolKG, which particularly focuses on the information exchange in the context of international police-co-operation bodies such as Europol, Interpol and other comparable organisations. There are also institutionalised international co-operation and meetings among counter-terrorism police units. The FMA can cooperate with other competent supervisory authorities without concluding any form of MOU as there are already relevant legal provisions in place for co-operation.[77] For tax and customs, the Central Liaison Office mainly relies on a number of EU regulations and tax agreements to exchange information with other countries.[78] According to Art. 6 and 7 Reg. No. 1889/2005 the customs authorities exchange information with other competent authorities of member states. Reg 515/97 applies mutatis mutandis. There is no information on DNFBPs and their supervisors.

b) Nothing prevents the competent authorities from using the most efficient means to co-operate. Customs authorities use AFIS /MAB (Mutual Assistance Broker) as secure channel and regular post.

c) Competent authorities use clear and secure gateways, or have mechanism or channels in place with respect to sensitive data. For instance, apart from Interpol and Europol, the A-FIU uses specialised FIU information channels such as ESW, FIU.Net. The A-FIU can exchange information via the secured channels of BMI within every unit of the Government. For the BVT, enciphered data will be transmitted through an established cross-border system. The FMA also exchanges information with their international counterparts through secure e-mails. Austrian tax authority uses a secure email system (CCNmail) for the exchange of information within the EU; while with third countries, regular post is used. There is no information on DNFBPs and their supervisors.

d) Competent authorities have processes for prioritising and executing requests. Some of them have internal guidelines, procedures or instructions in relation the handling and prioritisation of requests. For the A-FIU and BVT, all incoming requests are prioritised and processed without any unreasonable delay. This is not regulated specifically by law, but the efficiency and practicability of the public administration is one of the principles granted by the Austrian constitution. For the FMA as well as the tax and custom authorities, requests are immediately forwarded to the relevant division/team for action. As most requests include specific timeframes or deadlines, no particular prioritisation is needed as requests are generally answered within the foreseen time period. There is no information DNFBPs and their supervisors.

e) Competent authorities have clear processes for safeguarding the information received. For the A-FIU, the information received is stored on the secured server of the BMI. A decree (BMI-OA1000/0242-I/2/b/2013) is in place to ensure the integrity of the systems. An internal guideline has also been developed for the A-FIU staff to harmonise/standardise the handling of STRs received via the ESW and FIU.Net channels. For the BVT, incoming information is classified as “limited”, “confidential” “secret” and “top secret”. The InfoSiG

[77] ECB: Art 3 and 6 SSM-Regulation (Regulation (EU) Nr 1024/2013) and Art 20 et seq. SSM Framework Regulation (Regulation (EU) Nr 468/2014), EU Supervisors: Art. 21a FMABG, third countries: Art. 77 BWG, Art. 118 and 118a VAG, Art. 91 WAG.

[78] EU Reg 904/2010; EU DIR 2011/16; double taxation agreements and tax information exchange agreements entered with foreign counterparts, OECD/Council of Europe Multilateral Convention.

determines the transposition of international law with respect to the secure use of classified information, regardless of data format and data medium. The FMA has implemented various internal measures such as the Electronic File System, "clean desk policy" and "clean screen policy" to safeguard the secrecy of supervisory information within the institution which includes information received from foreign supervisors. Although there is no formal manual on office procedures, staff from the tax and customs authorities follow a "clean desk policy" and receive training regularly to safeguard the confidentiality of information exchanged with foreign authorities. There is no information on DNFBPs and their supervisors.

Criterion 40.3 – Competent authorities have comprehensive networks of bilateral and multilateral agreements, MOUs and protocols to facilitate international co-operation with a wide range of foreign counterparts. For the A-FIU, bilateral or multilateral agreements or arrangements to co-operate among FIUs can be negotiated and signed by the BMI. Agreements at expert level are also possible. There is currently no similar arrangement for TF at the BVT level though. The FMA is signatory to bilateral and multilateral MOUs regarding the whole range of its competencies in the supervision of the financial market (including credit institutions, insurance undertakings, securities and AIFMD entities). Such agreements are negotiated when necessary for the effective supervision of the financial market. As a precondition for the exchange of information and for the co-operation as well as for the conclusion of MOUs with third country supervisory authorities, the professional secrecy regime of the third country must be equivalent with the relevant European/Austrian professional secrecy rules. There is no information on tax and customs authorities as well as DNFBPs and their supervisors.

Criterion 40.4 – The A-FIU, BVT, FMA, and Tax/customs authorities can provide feedback in a timely manner if requested by foreign counterparts from whom they have received assistance. There is no information on DNFBPs and their supervisors.

Criterion 40.5 – Competent authorities normally do not prohibit or place unreasonable or unduly restrictive conditions on information exchange or assistance with foreign counterparts on any of the four grounds listed in this criterion. Except in the circumstance of a request concerning fiscal matters that the A-FIU can only provide relevant information if the fiscal matter is an associated predicate offence for ML or the subject requested is involved in TF activities. This inevitably limits the possibilities of co-operation with foreign counterparts for intelligence purposes where the predicate offence is not yet established and may be of special concern in the context of TF-related requests where a predicate offence does not exist at all. On the other hand, the FMA will only refuse information/assistance requests made by supervisory authorities located in a country whose legislation does not provide an equivalent level of confidentiality/professional secrecy.[79] The tax authorities exchange information with foreign authorities in accordance with the restrictions provided by Art.26 of the OECD model tax convention and its commentary; while within the EU there is less restrictive exchange of information following the EU Regulation 904/2010 and EU Directive 2011/16. The customs authorities can exchange all information connected in the framework of Reg. No, 1889/2005 under the conditions of Art. 6 and 7 of this Regulation There is no information on DNFBPs and their supervisors.

[79] Art. 77 BWG, Art. 91 WAG, Art. 108 and 108a VAG.

Criterion 40.6 – Competent authorities in Austria have the necessary confidentiality safeguards in place to ensure that information received is used only for the intended purpose, and by the authorities for whom the information was sought. If the information received is to be used for other purposes, prior authorisation from the requested authorities will be sought. For instance, the A-FIU may disseminate information to the competent authorities for the purpose of fighting ML or TF, especially to provide the judicial authorities the information to prepare a letter rogatory. Beyond these ends, information may be used for intelligence purposes only and must not be used as evidence in judicial procedures. Any information disseminated by the A-FIU is accompanied by data protection clause. For the BVT, information is protected pursuant to Arts.8 and 9 PolKG, and Arts.1 and 11 EU-PolKG. For the FMA, Art.21a FMABG provides for co-operation and information exchange with all competent supervisory authorities of EU Member States and with the European Supervisory Authorities. Art.21a(2) FMABG stipulates that information may only be provided for supervisory purposes. For co-operation and information exchange with competent supervisory authorities outside Austria, information may only be provided for supervisory purposes.[80] For Tax/Customs, information is protected pursuant to Art.48a BAO. There is no information on DNFBPs and their supervisors.

Criterion 40.7 – Competent authorities are required to maintain appropriate confidentiality for any request for co-operation and the information exchanged, consistent with data protection obligations. For the A-FIU/BVT, they protect internationally exchanged information in the same manner as domestic information. There are decrees in place to regulate the confidentiality of any information, no matter where it comes from. They will also refuse to provide information if the requesting authority cannot protect the information effectively anywhere before. For the FMA, as a general rule, any supervisory information is confidential (Art.14 FMABG) and may not be revealed to any third party. Accordingly, supervisory information received from foreign competent authorities is under the same legal protection. As a prerequisite for information exchange, a third country has to observe the same level of professional secrecy as provided for in Austrian and European legislation.[81] In case of an information request of a third country, with which a MoU has not been concluded, an evaluation of the legal rules of co-operation and professional secrecy will take place first. If the third country has equivalent professional secrecy protections of supervisory information, the information may be disclosed to that country. There is no information on tax and customs authorities as well as DNFBPs and their supervisors.

Criterion 40.8 – Competent authorities including the A-FIU, BVT and FMA can conduct inquiries on behalf of their foreign counterparts, and exchange all information that would be obtainable by them if such inquiries were being carried out domestically. For Tax/Customs, they mentioned that this criterion is not implemented by any Article of the BAO but could be implemented by articles of the international law according to Art.2(1) ADG. There is no information on DNFBPs and their supervisors.

[80] Art. 77 BWG, Art. 118 VAG, Art. 91 WAG.

[81] Art. 53 et seq. CRD, Art. 77 BWG, Art. 54 MIFID, Art. 91 WAG, Art. 108 and 108a VAG.

Exchange of information between FIUs

Criterion 40.9 – The A-FIU has a legal basis for providing co-operation on ML, associated predicate offences and TF (Arts.1, 3, 8 and 9 PolKG). However, in practice the BVT leads international requests on TF.

Criterion 40.10 – Albeit in the absence of a legal basis or internal guideline, the A-FIU will, upon request, provide feedback to their foreign counterparts on the use of the information provided, as well as on the outcome of the analysis conducted, based on the information provided.

Criterion 40.11 – In principle, the A-FIU can communicate, directly or indirectly, all information (accessible or obtainable) with its foreign counterparts (for example Art.41 BWG and PolKG. However, in order to access and share additional information from reporting parties, the A-FIU requires a level of suspicion that is sufficient to open a domestic ML investigation.

Exchange of information between financial supervisors

Criterion 40.12 – The FMA has a legal basis for providing co-operation with European and foreign competent supervisory authorities.[82]

Criterion 40.13 – The FMA is able to exchange supervisory information domestically available with foreign counterparts provided that their legal provisions are of an equivalent level of confidentiality and that the information is needed for supervisory purposes.

Criterion 40.14 – The FMA can exchange regulatory information and prudential information,[83] including AML/CFT information such as internal AML/CFT procedures and policies of financial institutions, CDD information, customer files, samples of accounts and transaction information.

Criterion 40.15 – According to the European and Austrian legislation, a competent ESFS banking/ insurance/ securities supervisor, where a credit institution/ insurer/ investment institution has its seat (home country supervisor) may conduct on-site inspections at subsidiaries of the institution in Austria.[84] According to Arts.70 and 77 para.6 BWG, the FMA can conduct inquiries regarding financial institutions or to enable the requesting competent supervisory authority of an EU member state, or a the third country to conduct such inquiries provided that the legal provisions of the foreign counterpart provide for an equivalent level of confidentiality and that the information is needed for supervisory purposes. MoUs signed with other competent banking supervisors can allow the FMA to conduct on-site inspections of the foreign competent supervisor in subsidiaries of credit institutions located in Austria.

Criterion 40.16 – The FMA may only pass on confidential information that it has received with the express permission of the competent authority which communicated the express permission in

[82] ECB: Art 3 and 6 SSM-Regulation (Regulation (EU) Nr 1024/2013) and Art 20 et seq. SSM Framework Regulation (Regulation (EU) Nr 468/2014), EU Supervisors: Art. 21a FMABG, third countries: Art. 77 BWG, Art. 118 and 118a VAG, Art. 91 WAG.

[83] Art. 14 FMABG, Art. 77 BWG, Art. 91 WAG and Articles 118 and 118a VAG.

[84] Art. 15 BWG, Art. 102a VAG, Art. 98 WAG.

question.[85] A legal obligation to disclose information is only relevant in the case of criminal proceedings. According to the MOUs and MMOUs to which the FMA is a signatory, the FMA will inform the counterpart who provided the information in the case of disclosure in criminal proceedings.

Exchange of information between law enforcement authorities

Criterion 40.17 – The A-FIU, BVT, and ARO are able to exchange domestically available information with foreign counterparts for intelligence or investigate purposes relating to ML, associated predicate offences or TF, including the identification and tracing of the proceeds and instrumentalities of crime.

Criterion 40.18 – Simple information exchange can be conducted on the basis of police co-operation on behalf of foreign counterparts. If special investigations are needed, there are two possibilities the LEAs in Austria can conduct enquiries on behalf on a foreign counterpart, namely if an offence has been committed not only abroad but also in Austria and if a MLA takes place.

Criterion 40.19 – The A-FIU participated in several JITs, for example the PATRIA case. Bilateral and multilateral JITs were also formed with Belgium, Croatia, Finland, France, Germany, Netherlands, Slovenia, Spain, United Kingdom, and the former Yugoslav Republic of Macedonia. These investigations involved or involve (as some are still ongoing) organised crime, cybercrime, corporate corruption, bribery, fraud, and illegal gambling. The formation of a JIT lies within the responsibility of the BMJ. However, the initiative can also come from the BKA.

Exchange of information between non-counterparts

Criterion 40.20 – The A-FIU is able to exchange information indirectly with non-counterparts – see criterion 4.5 above. According to Art.22 B-VG, the FMA can also exchange information indirectly with non-counterparts via the A-FIU or Austrian prosecutors so long as the information requested falls under its AML/CFT remit. It is also not clear to us whether other authorities such as tax/customs and DNFBPs supervisors can do the same.

Weighting and conclusion

Austria fulfils most of the requirements for this Recommendation. But due to a lack of information from DNFBPs and their supervisors.

Recommendation 40 is rated largely compliant.

[85] Art. 77 para 5 BWG, Art. 91 WAG, Art. 118 and 118a VAG, IAIS-MMoU, IOSCO-MMoU.

Summary of Technical Compliance – Key Deficiencies

Compliance with FATF Recommendations		
Recommendation	**Rating**	**Factor(s) underlying the rating**
1. Assessing risks & applying a risk-based approach	PC	• Austria did not properly identify all of its ML/TF risks. • There is no risk-based approach to allocating resources. • Specific measures to manage or mitigate risks identified through the risk assessment process have not yet been fully implemented. • There is no requirement for financial institutions and DNFBPs to ensure that the information on risks is incorporated into their risk assessments. • There is a blanket exemption from CDD requirements for lawyers and notaries in case of a number of designated types of customers without proper risk analysis of those customers (see R.22). • No requirements for certain financial institutions or any DNFBPs to document their risk analyses. • Not all financial institutions and DNFBPs are required to monitor implementation of their risk management systems and take enhanced measures if necessary (see R.18 and R.23).
2. National cooperation and coordination	PC	• There is insufficient information concerning AML/CFT policies that are informed by the risks identified. • There is no designated authority or mechanism that is responsible for national AML/CTF policies. • Local district authorities responsible for DNFBPs supervision are not included in the regular cooperation and coordination mechanisms
3. Money laundering offence	LC	• Self-laundering does not apply to certain elements such as conversion and transfer of criminal proceeds. • Available penalties for ML offences are not sufficiently dissuasive. • It is not clear if a sufficient range of offences within tax crimes are ML predicates, which is particularly relevant given Austria's risk and context as an international financial centre.
4. Confiscation and provisional measures	C	• The Recommendation is fully met.
5. Terrorist financing offence	C	• The Recommendation is fully met.
6. Targeted financial sanctions related to terrorism & TF	PC	• Austria is not yet able to apply the targeted financial sanctions of UNSCRs 1988 and 1989 without delay, which also compromises the application of sanctions without notice (de facto) to the entities concerned. • The EU framework currently does not apply to "EU internals".
7. Targeted financial sanctions related to proliferation	PC	• Austria is not able to apply the targeted financial sanctions of UNSCRs 1718 without delay, which also compromises the application of sanctions without notice (de facto) to the entities concerned.
8. Non-profit organisations	PC	• Austria has not reviewed the adequacy of laws and regulations that relate to entities that can be abused for TF, including NPOs. • There are no clear policies to promote transparency, integrity, and public confidence in the administration and management of all NPOs. • Austria has not undertaken a domestic sector review of its NPO sector or periodic reassessments in order to identify the features and types of subset of NPOs that are particularly at risk of being misused for TF. • Competent authorities do not generally monitor the financial and

Compliance with FATF Recommendations		
Recommendation	**Rating**	**Factor(s) underlying the rating**
		accounting requirements in the Associations Act, unless the NPO has taxable activities.
9. Financial institution secrecy laws	LC	• FIs have the possibility to appeal law enforcement requests before the court, which inhibits the implementation of R.31 (c.31.1(a)) by causing delays in and impediments to the production of records.
10. Customer due diligence	LC	• There is no explicit requirement to prohibit anonymous accounts (or similar business relationships) applicable to insurance undertakings and intermediaries • CDD requirements for wire transfers above the applicable threshold do not cover the full range of measures such as verifying whether a customer is acting on behalf of another person, or identifying and verifying the beneficial owner. • In the situation when one natural person is acting on behalf of another legally competent natural person, there is no requirement to verify that the former is so authorised • For customers that are legal persons or arrangements, there is no enforceable requirement covering the powers that regulate and bind the legal person or arrangement, as well as the names of the relevant person having a senior management position. • There are no specific requirements concerning the minimum set of information that should be collected for the purpose of identification of customers that are legal persons or legal arrangements applicable to insurance intermediaries. • There is no specific requirement to identify and verify the protector(s) of the trust, especially if they don't exercise any control over the trust. • There is no specific provision that would permit financial institutions, insurance undertakings or intermediaries not to identify customers when they suspect that a transaction relates to ML or TF and have a reason to believe that they would alert the customer by exercising their CDD process.
11. Record keeping	C	• The Recommendation is fully met.
12. Politically exposed persons	PC	• For insurance intermediaries, the requirements do not cover a foreign PEP residing in Austria. • There is no specific requirement to obtain senior management approval to continue business relationships with persons who become politically exposed in the course of the existing business relationship. • There are no requirements for financial institutions and insurance undertakings to identify domestic PEPs. • There is no requirement to inform senior management before the pay-out of the policy proceeds.
13. Correspondent banking	LC	• The measures set out in R.13 apply to the correspondent banks in the EEA area only subject to their assessment as high risk, which is more restrictive than the FATF Standard.
14. Money or value transfer services	C	• The Recommendation is fully met.
15. New technologies	PC	• There is no requirement for financial institutions to undertake risk assessments prior to launch of new products, practices or

Compliance with FATF Recommendations		
Recommendation	**Rating**	**Factor(s) underlying the rating**
		technologies. • The requirement to establish adequate and appropriate policies and procedures to assess ML/TF risk and to develop appropriate strategies to prevent the abuse of new technologies for ML/TF does not apply to insurance intermediaries.
16. Wire transfers	PC	• The EU regulation in force does not yet cover beneficiary information and contains limited requirements for intermediate financial institutions, which affects almost all the criteria in this Recommendation.
17. Reliance on third parties	LC	• Reliance on members of the EU is not based on the level of country ML/TF risks but rather the presumption that all EEA Members states implement harmonized AML/CFT provisions.
18. Internal controls and foreign branches and subsidiaries	PC	• There is no requirement to ensure high standards when hiring employees. • No general requirements for financial institutions, insurance undertakings and intermediaries to implement group-wide programmes against ML/FT. • For insurance intermediaries, there is no requirement to appoint a compliance officer or establish internal audits, or apply the higher standard when the requirements of Austria and another country differ.
19. Higher-risk countries	C	• The Recommendation is fully met.
20. Reporting of suspicious transaction	C	• The Recommendation is fully met.
21. Tipping-off and confidentiality	C	• The Recommendation is fully met.
22. DNFBPs: Customer due diligence	PC	• The requirement of the ongoing monitoring of the business relationship for casinos only applies to EU/EEA citizens. • There is no direct obligation to identify the beneficial owner for casinos, except for certain specific cases. • There is no requirement for casinos to verify that a person purporting to act on behalf on the customer is so authorised. • There is no requirement for casinos to perform enhanced CDD where ML/TF risks are higher. • No direct requirement for internet casinos to conduct CDD on their customers. • For accountants, real estate agents, dealers in precious metals and stones, and business consultants, there are no specific provisions to: o require the identification of customers that are legal persons or arrangements, o identify and verify the settlor, trustee(s), or the protector of the trust, or o permit them not to identify customers when they suspect that a transaction related to ML/FT and have reason to believe that they would alert the customer by exercising

Compliance with FATF Recommendations		
Recommendation	**Rating**	**Factor(s) underlying the rating**
		their CDD process. • For lawyers and notaries, there are no requirements to o understand the ownership and control structure of the customer, o identify customers that are legal person or arrangements, o identify and verify the protector(s) of a trust, o apply CDD to the customers that existed before the entry into force of AML/CFT regulations o permit them not to identify customers when they suspect that a transaction related to ML/FT and have reason to believe that they would alert the customer by exercising their CDD process, • For lawyers and notaries, there is a blanket exemption from CDD requirements for a number of designated types of customers. • For accountants, there are no requirements to o identify customers that are legal person or arrangements, o identify and verify the protector(s) of a trust, o permit them not to identify customers when they suspect that a transaction related to ML/FT and have reason to believe that they would alert the customer by exercising their CDD process • Record-keeping requirements for casinos do not include the business correspondence and results of analysis undertaken in the course of CDD • There is no requirement for casinos to ensure the availability of information to competent authorities. • There are no specific record-keeping requirements for internet casinos. • For lawyers, notaries and accountants there is no requirement that transaction records should be sufficient to permit reconstruction of individual transactions • No requirements concerning PEPs applicable to casinos (including internet casinos). • For real estate agents, dealers in precious metals and stones, and business consultants, the PEPs requirements do not cover foreign PEPs residing in Austria, domestic PEPs, or persons who have been entrusted with a prominent function by an international organisation. • For lawyers, notaries and accountants, there are no requirements for domestic PEPs, or persons who have been entrusted with a prominent function by an international organisation. • No requirements for any DNFBP with regard to ML/TF risk arising from new technologies.
23. DNFBPs: Other measures	LC	• The reporting requirement for casinos does not cover attempted transactions. • For casinos, there are some deficiencies concerning the requirements for screening and training of employees; there is no requirement to have an independent audit function to test the system. • For lawyers, notaries, real estate agents, dealers in precious metals

Compliance with FATF Recommendations		
Recommendation	**Rating**	**Factor(s) underlying the rating**
		and stones, and business consultants, there are no requirements to appoint a compliance officer, have screening procedures for employees, or establish an independent audit function. • For accountants, there are no requirements that the compliance officer should be at the management level and to establish an independent audit function. • No requirements for casinos (including internet casinos) to apply enhanced due diligence in case of high-risk countries.
24. Transparency and beneficial ownership of legal persons	PC	• There are no mechanisms in place that identify and describe the process for obtaining beneficial ownership information on legal persons. • There has been no formal risk assessment concerning the possible misuse of legal persons for ML/TF. • The register for associations does not contain information about their management. • There is no requirement for associations to maintain a list of their members. • There is no requirement for the cooperative societies and stock corporations that are not listed on a stock exchange that the share register be kept in Austria. • There is no general obligation to obtain and keep up-to-date beneficial ownership information. • Timely access by the competent authorities to the existing BO information held by FIs is not assured. • No requirement for companies to co-operate with competent authorities in determining the beneficial owner. • There are no specific provisions concerning the international exchange of information on shareholders.
25. Transparency and beneficial ownership of legal arrangements	PC	• With the exception of lawyers and notaries, there are no requirements for trustees (Treuhänder) to obtain and hold information on parties to a trust, or keep information up accurate and up-to-date. • There are no requirements for insurance intermediaries, or DNFBPs (other than lawyers and notaries) to ascertain whether a client is acting on his own behalf or in a capacity of trustee. • Timely access by the LE to escrow registers of lawyers and notaries is not ensured; in case the trustee is not a lawyer or notary, it is virtually impossible to obtain the required information. • Except for lawyers and notaries, there are no provisions concerning the liability of trustees in case of failure to comply with the obligations or sanctions for failing to grant competent authorities timely access to information on trusts.
26. Regulation and supervision of financial institutions	C	• The Recommendation is fully met.

Compliance with FATF Recommendations		
Recommendation	**Rating**	**Factor(s) underlying the rating**
27. Powers of supervisors	C	• The Recommendation is fully met.
28. Regulation and supervision of DNFBPs	LC	• The requirements do not cover beneficial owners of a significant or controlling interest in a casino; it is not clear which regulatory measures are taken to prevent the associates of criminals from owning or operating casinos.
29. Financial intelligence units	PC	• The A-FIU conducts only basic operational analysis and does not conduct any strategic analysis. • The A-FIU is not in charge of analysing FT-related STRs.
30. Responsibilities of law enforcement and investigative authorities	C	• The Recommendation is fully met.
31. Powers of law enforcement and investigative authorities	LC	• There are still some steps that impede LE's ability to identify, in a timely manner, whether natural or legal persons hold or control accounts.
32. Cash couriers	LC	• Available sanctions for non or false declarations/disclosures do not seem dissuasive. • There is not a specific provision enabling the authorities to seize cash and BNI if there is a suspicion of a predicate offence, or if there is a false declaration or disclosure.
33. Statistics	PC	• Collection of statistics on MLA began only in 2015. • Statistics on property and asset seizures and confiscations are not maintained.
34. Guidance and feedback	LC	• It is unclear if guidance has been issued to other DNFBP sectors apart from casinos, lawyers and notaries. • The FMA and the A-FIU provide good overall feedback but no methodical feedback is provided on STRs.
35. Sanctions	C	• The Recommendation is fully met.
36. International instruments	LC	• Austria has reinforced its compliance with the provisions of the Vienna and Palermo Conventions but there are some deficiencies with regard to self-laundering (c.f. Recommendation 3).
37. Mutual legal assistance	LC	• There are some issues with the scope of coverage of self-laundering which affects the scope of MLA that Austria can grant (c.f. Recommendation 3).
38. Mutual legal assistance: freezing and confiscation	LC	• There is a lack of systemic way to manage and dispose seized or confiscated assets.
39. Extradition	C	• The Recommendation is fully met.
40. Other forms of international cooperation	LC	• There is a lack of information on DNFBPs and their supervisors.

TABLE OF ACRONYMS

ABGB	Civil Code (*Allgemeines Bürgerliches Gesetzbuch*)
ADG	Administrative Assistance Implementation Act (*Amtshilfe-Durchführungsgesetz*)
A-FIU	Austrian Financial Intelligence Unit
AHG	Public Liability Act (*Amtshaftungsgesetz*)
AIFMG	Alternative Investment Fund Managers Act (*Alternative Investmentfonds Manager-Gesetz*)
AktG	Stock Corporation Act (*Aktiengesetz*)
ARHG	Law on Extradition and Mutual Assistance (*Auslieferungs- und Rechtshilfegesetz*)
AVG	General Administrative Procedure Act (*Allgemeines Verwaltungsverfahrensgesetz*)
BKA	Criminal Intelligence Service (*Bundeskriminalamt*)
BKA-G	Criminal Intelligence Service Act (*Bundeskriminalamtgesetz*)
BiBu-ARL	Directive on the Practice of the Accountancy Professions (*Bilanzbuchhaltungs-(Berufs) Ausübungsrichtlinie*)
BiBuG	Accountancy Act (*Bilanzbuchhaltungsgesetz*)
BMEIA	Federal Ministry of Europe, Integration and Foreign Affairs (*Bundesministerium für Europa, Integration und Äußeres*)
BMF	Federal Ministry of Finance (*Bundesministerium für Finanzen*)
BMG	Federal Ministries Act (*Bundesministeriengesetz*)
BMI	Federal Ministry of Interior (*Bundesministerium für Inneres*)
BMJ	Federal Ministry of Justice (*Bundesministerium für Justiz*)
BMLVS	Federal Ministry of National Defence and Sport (*Bundesministerium für Landesverteidigung und Sport*)
BMSVG	Corporate Staff and Self-Employment Provision Act (*Betriebliches Mitarbeiter- und Selbständigenvorsorgegesetz*)
BMWFW	Federal Ministry of Science, Research and the Economy (*Bundesministerium für Wirtschaft, Forschung und Wissenschaft*)
BörseG	Stock Exchange Law (*Börsegesetz*)
B-VG	Federal Constitutional Law (*Bundes-Verfassungsgesetz*)
BVT	Federal Agency for State Protection and Counter-Terrorism (*Bundesamt für Verfassungsschutz und Terrorismusbekämpfung*)
BWG	Banking Act (*Bankwesengesetz*)
CASAG	Casinos Austria Aktiengesellschaft
DevG	Foreign Exchange Act (*Devisengesetz*)
DSt	Disciplinary Statute for lawyers and lawyer-candidates (*Disziplinarstatut*)

E-GeldG	E-Money Act (*Bundesgesetz über die Ausgabe von E-Geld und die Aufnahme, Ausübung und Beaufsichtigung der Tätigkeit von E-Geld-Instituten*)
EU-JZG	Federal Law on Judicial Cooperation in Criminal Matters with EU Member States (*Bundesgesetz über die justizielle Zusammenarbeit in Strafsachen mit den Mitgliedstaaten der Europäischen Union*)
FBG	Commercial Register Act (*Firmenbuchgesetz*)
FinStrG	Fiscal Penal Code (*Finanzstrafgesetz*)
FMA	Financial Market Authority (*Finanzmarktaufsichtsbehörde*)
FMABG	Financial Market Authority Act (*Finanzmarktaufsichtsbehördengesetz*)
GewO	Trade Act (*Gewerbeordnung*)
GenG	Cooperative Societies Act (*Genossenschaftsgesetz*)
GmbHG	Limited Liability Company Act (*Gesetz über Gesellschaften mit beschränkter Haftung*)
GSpG	Gambling Law (*Glücksspielgesetz*)
ImmoInvFG	Real Estate Investment Funds Act (*Immobilien-Investmentfondsgesetz*)
InfoSiG	Information Security Act (*Informationssicherheitsgesetz*)
InvFG	Investment Funds Act (*Investmentfondsgesetz*)
KStG	Corporate Tax Act (*Körperschaftsteuergesetz*)
MIFID	EU's Markets In Financial Instruments Directive
NO	Notarial Code (*Notariatsordnung*)
OeNB	Austrian National Bank (*Oesterreichische Nationalbank*)
PolKG	Police Cooperation Act (*Polizeikooperationsgesetz*)
PSG	Act on Private Foundations (*Privatstiftungsgesetz*)
RAO	Lawyer's Act (*Rechtsanwaltsordnung*)
SanktG	Sanctions Act (*Sanktionengesetz 2010*)
SPG	Security Police Act (*Sicherheitspolizeigesetz*)
StGB	Criminal Code (*Strafgesetzbuch*)
StPO	Code of Criminal Procedure (*Strafprozessordnung*)
UGB	Commercial Code (*Unternehmensgesetzbuch*)
VAG	Insurance Supervision Act (*Versicherungsaufsischtsgesetz*)
VerG	Associations Act (*Vereinsgesetz*)
WAG	Securities Supervision Act (*Wertpapieraufsichtsgesetz*)
WKÖ	The Austrian Economic Chamber (*Wirtschaftskammer Österreich*)
VbVG	Statute on the Responsibility of Entities for Criminal Offenses (*Verbandsverantwortlichkeitsgesetz*)
VerG	Law of Associations (*Vereinsgesetz*)

VStG	Administrative Penal Act (*Verwaltungsstrafverfahrensgesetz*)
VVG	Administrative Enforcement Act (*Verwaltungsvollstreckungsgesetz*)
VwGG	Administrative Court Act (*Verwaltungsgerichtshofgesetz*)
VwGH	Administrative Court (*Verwaltungsgerichtshof*)
WTBG	Act on the Profession of Chartered Public Accountants and Tax Consultants (*Wirtschaftstreuhänderberufsgesetz*)
ZaDiG	Payments Services Act (*Zahlungsdienstegesetz*)
ZollR-DG	Customs Law (*Zollrechts-Durchführungsgesetz*)
ZDG	Civil Servants Law (*Zivildienstgesetz*)

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September 2016

Anti-money laundering and counter-terrorist financing measures - Austria
Fourth Round Mutual Evaluation Report

In this report: a summary of the anti-money laundering (AML) / counter-terrorist financing (CTF) measures in place in Austria as at the date of the on-site visit on 9-20 November 2015. The report analyses the level of effectiveness of Austria's AML/CTF system, the level of compliance with the FATF 40 Recommendations and provides recommendations on how their AML/CFT system could be strengthened.