

FATF



Anti-money laundering and
counter-terrorist financing
measures

Austria

2nd Enhanced Follow-up Report &
Technical Compliance Re-Rating

November 2018





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 report was adopted by the FATF Plenary at its October 2018 meeting.

Citing reference:

FATF (2018), *Anti-money laundering and counter-terrorist financing measures - Austria*,
2nd Enhanced Follow-up Report & Technical Compliance Re-Rating, FATF, Paris
<http://www.fatf-gafi.org/publications/mutualevaluations/documents/fur-austria-2018.html>

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AUSTRIA: 2nd ENHANCED FOLLOW-UP REPORT

1. INTRODUCTION

The mutual evaluation report (MER) of Austria was adopted in September 2016. Austria's 1st Enhanced Follow-up Report (FUR) was adopted in December 2017. This follow-up report analyses Austria's progress in addressing certain technical compliance deficiencies which were identified in Austria's MER. Re-ratings are given where sufficient progress has been made. This report also analyses Austria's progress in implementing new requirements relating to FATF Recommendations which have changed since Austria's 1st FUR: R.7, 18 and 21. This report does not address what progress Austria has made to improve its effectiveness. A later follow-up assessment will analyse progress on improving effectiveness which may result in re-ratings of Immediate Outcomes at that time.

2. FINDINGS OF THE MER AND 1st FUR

The MER and 1st FUR rated Austria as follows for technical compliance:

Table 1. Technical compliance ratings, December 2017

| | | | | | | | | | |
|------|------|------|------|------|------|------|------|------|------|
| R 1 | R 2 | R 3 | R 4 | R 5 | R 6 | R 7 | R 8 | R 9 | R 10 |
| LC | LC | LC | C | C | PC | PC | PC | C | C |
| R 11 | R 12 | R 13 | R 14 | R 15 | R 16 | R 17 | R 18 | R 19 | R 20 |
| C | C | LC | C | C | C | LC | C | C | C |
| R 21 | R 22 | R 23 | R 24 | R 25 | R 26 | R 27 | R 28 | R 29 | R 30 |
| C | LC | LC | PC | PC | C | C | LC | LC | C |
| R 31 | R 32 | R 33 | R 34 | R 35 | R 36 | R 37 | R 38 | R 39 | R 40 |
| LC | LC | PC | LC | C | LC | LC | LC | C | LC |

Note: There are four possible levels of technical compliance: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).

Source: Austria Mutual Evaluation Report, September 2016, <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Austria-2016.pdf>; Austria 1st Follow-up Report, December 2017, <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/FUR-Austria-Dec-2017.pdf>.

Given these results and Austria's level of effectiveness, the FATF placed Austria in enhanced follow-up.¹ The following expert assessed Austria's request for technical compliance re-rating:

¹ Regular follow-up is the default monitoring mechanism for all countries. Enhanced follow-up is based on the FATF's traditional policy that deals with members with significant deficiencies (for technical compliance or effectiveness) in their AML/CFT systems, and involves a more intensive process of follow-up.

- Annemarie Wehmeyer, Coordinating Policy Adviser/Head of Delegation for the Kingdom of the Netherlands to the Financial Action Task Force (FATF), Ministry of Finance of the Netherlands

Section 3 of this report summarises Austria's progress made in improving technical compliance. Section 4 sets out the conclusion and a table showing which Recommendations have been re-rated.

3. OVERVIEW OF PROGRESS TO IMPROVE TECHNICAL COMPLIANCE

This section summarises Austria's progress to improve its technical compliance by:

- a) Addressing certain technical compliance deficiencies identified in the MER, and
- b) Implementing new requirements where the FATF Recommendations have changed since the 1st FUR was adopted (R.7, 18 and 21).

3.1. Progress to address technical compliance deficiencies identified in the MER

Austria has made progress to address the technical compliance deficiencies identified in the MER in relation to both R.24 and 25. As a result of this progress, Austria has been re-rated on both Recommendations.

3.1.1. Recommendation 24 (originally rated PC)

In its 4th MER, Austria was rated PC with R.24. The technical deficiencies related to: the lack of mechanisms to identify and describe the process for obtaining beneficial ownership information on legal persons; no formal risk assessment had been undertaken on the misuse of legal persons for ML/TF; the register for associations did not contain information about their management; there was no requirement for associations to maintain a list of members; there was no requirement for cooperative societies and stock corporations not listed on a stock exchange to keep their share register in Austria; there was no general obligation to obtain and keep up-to-date beneficial ownership information; timely access to beneficial ownership information by competent authorities could not be assured; there was no requirement for companies to co-operate with competent authorities in determining the beneficial owner; there were no sanctions for failure to maintain beneficial ownership information and there were no specific provisions concerning the international exchange of information on shareholders.

The new Beneficial Owners Registry Act addresses some of these deficiencies. Information on the Act is publicly available [online](#).² The Act sets out the mechanisms and process for obtaining beneficial ownership information on legal persons (Beneficial Owners Registry Act, arts.9, 10, 12). Legal persons now have a general obligation to obtain and maintain up-to-date beneficial ownership information, and provide this to the register (Beneficial Owners Registry Act, art.3). This obligation applies to company representatives who are accountable for ensuring compliance. Failure to comply with this obligation is punishable by a fine of up

² Ministry of Finance, "Beneficial Owners Register Act - WiEReG", available at: <https://english.bmf.gv.at/financial-sector/wiereg/WiEReG.html>

to EUR 200 000 (Beneficial Owners Registry Act, art.15). Competent authorities have timely access to this information through immediate access to the register (Beneficial Owners Registry Act, art.12). Company representatives are obliged to ensure cooperation with competent authorities in determining the beneficial owner.

The register for associations contains information on the organ representatives of the association, which Austria confirms covers all Directors and management (Law of Associations, art.16). Shareholder information can now be exchanged by the Financial Markets Authority (FMAML Act, art.25(5)). The lack of requirement for cooperative societies and stock corporations to keep a share register in Austria is no longer a deficiency on the basis that beneficial ownership information is now held in Austria on the beneficial ownership register.³

Austria has not yet comprehensively assessed the ML/TF risks associated with all types of legal person created in Austria. There remains no requirement for associations to maintain a list of members, although other requirements mean that in practice associations are likely to know their members.

Austria has addressed most of the deficiencies identified during its MER and only minor deficiencies remain. Austria has not yet undertaken a comprehensive risk assessment of all types of legal persons in Austria, although Austria's NRA does include some assessment of the risks posed by legal persons and the Beneficial Owners Registry Act provides a legal basis for the registry authority to conduct ML/TF risk assessments of legal persons and arrangements. There remains no legal requirement for associations to maintain a list of their members, although due to other legal requirements, in practice this is likely to be the case and Austrian authorities were not aware of any instances in which an association did not know the identity of its members. **On this basis, Austria is re-rated as largely compliant with R.24.**

3.1.2. Recommendation 25 (originally rated PC)

In its 4th MER, Austria was rated PC with R.25. The technical deficiencies related to: a lack of requirements for trustees (Treuhandler), except lawyers and notaries, to obtain and hold information on parties to a trust or regulated agents, or keep information up accurate and up-to-date; there were 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 law enforcement to escrow registers of lawyers and notaries was not ensured and where the trustee was not a lawyer or notary, it was virtually impossible to obtain the required information; and except for lawyers and notaries, there were 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.

Trustees and Treuhandler must hold accurate and up-to-date information on the parties to a trust, although there remains no requirement for these persons to maintain information on a trusts regulated agents or service providers. While insurance intermediaries and DNFBPs are required to determine beneficial ownership of their customers, including with respect to trusts, there is no requirement for trustees to disclose their status except to a financial

³ The FATF Methodology provides that "In cases in which the company or company registry holds beneficial ownership information within the country, the register of shareholders and members need not be in the country, if the company can provide this information promptly on request." (footnote 55 to c.24.4)

institution or casino (FMAML Act, art.6(3); Gambling Act, art.31(c)(2)). Lawyers and notaries are required to submit beneficial ownership information on their clients, including shareholdings and bank account information. Failure of trustees to comply with these obligations is punishable by a fine of up to EUR 200 000.

Austria has made progress on complying with R.25 and only minor deficiencies remain. There is no legal requirement for trustees (or equivalent persons) to hold information on the regulated agents or services providers of trusts. There remain no requirements for insurance intermediaries or most DNFBPs to determine whether a client is acting on his own behalf or in a capacity of trustee, although the requirement to identify the beneficial owner may lead this to occur in practice. **Austria is therefore re-rated as largely compliant with R.25.**

3.2. Progress on Recommendations which have changed since adoption of the 1st FUR

Since the adoption of Austria's 1st FUR, the FATF has amended Recommendations 7, 18 and 21. This section considers Austria's compliance with the new requirements.

3.2.1. Recommendation 7 (originally rated PC)

In June 2017, the Interpretive Note to R.7 was amended to reflect the changes made to the proliferation financing-related United Nations Security Council Resolutions (UNSCRs) since the FATF standards were issued in February 2012, in particular, the adoption of new UNSCRs. Austria continues to implement targeted financial sanctions under UNSCR 1718 and its successor resolutions through EU legislation. However, there remain issues applying targeted financial sanctions without delay. **As a result, Austria remains partially compliant with R.7.**

3.2.2. Recommendation 18 (re-rated C at 1st FUR)

In November 2017, the Interpretive Note to R.18 was amended to clarify the scope of information-sharing requirements. Austria's FMAML Act includes procedures for information-sharing within a group and permits the sharing of information relating to a STR while maintaining safeguards to prevent tipping-off (AML Act, arts.20, 24). **On this basis, Austria remains compliant with R.18.**

3.2.3. Recommendation 21 (originally rated C)

In November 2017, R.21 was amended to clarify that tipping off provisions are not intended to inhibit information sharing under R.18. There is a clear exemption to Austria's provisions on tipping-off which permits information-sharing on STRs within a group. **Austria therefore remains compliant with R.21.**

3.3. Brief overview of progress on other recommendations rated NC/PC

Austria reported that on R.6 (PC), the EU has overhauled procedures for implementing targeted financial sanctions to reduce the delay between UN designation and EU transposition. For R.8 (PC), the situation remains as it was at the time of Austria's 1st FUR. No progress was reported on R.33 (PC).

4. CONCLUSION

Overall, Austria has made good progress in addressing the technical compliance deficiencies identified in its MER and has been re-rated on two Recommendations. Only four Recommendations remain PC. Austria has addressed most of the technical compliance deficiencies identified on R.24 and 25 such that only minor shortcomings remain and both Recommendations are re-rated as LC. While Austria complies with the revised requirement of R.7, outstanding deficiencies remain, meaning Austria remains PC. Austria complies with the updated requirements of R.18 and R.21, and maintains a C rating for these Recommendations.

In light of Austria's progress since its MER was adopted, its technical compliance with the FATF Recommendations has been re-rated as follows:

Table 2. **Technical compliance with re-ratings, October 2018**

| | | | | | | | | | |
|------|------|------|------|------|------|------|------|------|------|
| R 1 | R 2 | R 3 | R 4 | R 5 | R 6 | R 7 | R 8 | R 9 | R 10 |
| LC | LC | LC | C | C | PC | PC | PC | C | C |
| R 11 | R 12 | R 13 | R 14 | R 15 | R 16 | R 17 | R 18 | R 19 | R 20 |
| C | C | LC | C | C | C | LC | C | C | C |
| R 21 | R 22 | R 23 | R 24 | R 25 | R 26 | R 27 | R 28 | R 29 | R 30 |
| C | LC | LC | LC | LC | C | C | LC | LC | C |
| R 31 | R 32 | R 33 | R 34 | R 35 | R 36 | R 37 | R 38 | R 39 | R 40 |
| LC | LC | PC | LC | C | LC | LC | LC | C | LC |

Note: There are four possible levels of technical compliance: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).

Austria will remain in enhanced follow-up on the basis that it had a low or moderate level of effectiveness for 7 or more (8) of the 11 effectiveness outcomes (FATF Procedures, para. 79(a)(iii)). According to the enhanced follow-up process, Austria will continue to report back to the FATF on progress to strengthen its implementation of AML/CFT measures.

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November 2018

Anti-money laundering and counter-terrorist financing measures in Austria

2nd Enhanced Follow-up Report & Technical Compliance Re-Rating

As a result of Austria's progress in strengthening their measures to fight money laundering and terrorist financing since their 2016 mutual evaluation report and their first follow-up progress report in December 2017, the FATF has re-rated the country on two additional Recommendations.

The report also looks at whether Austria's measures meet the requirements of FATF Recommendations that have changed since their December 2017 progress report.

Follow-up report

