FATF

3RD FOLLOW-UP REPORT

Mutual Evaluation of Austria

February 2014

FINANCIAL ACTION TASK FORCE

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 (CFT) standard.

For more information about the FATF, please visit the website:

www.fatf-gafi.org

CONTENTS

ACRONYMS

A-FIU	Austrian FIU (*Geldwäschemeldestelle*)
AML/CFT	Anti-money laundering / Countering the financing of terrorism
BiBuG	Accountancy Act (*Bilanzbuchhaltungsgesetz*)
BKA	Criminal Intelligence Service (*Bundeskriminalamt*)
BVT	Federal Agency for State Protection and Counter-Terrorism (*Bundesamt für Verfassungsschutz und Terrorismusbekämpfung*)
CDD	Customer due diligence
DevG	Foreign Exchange Act (*Devisengesetz*)
DNFBP	Designated non-financial business or profession
FIU	Financial intelligence unit
FMA	Financial Market Authority (*Finanzmarktaufsicht*)
GewO	Trade Act (*Gewerbeordnung*)
GSpG	Gambling Act (*Glückspielgesetz*)
LC	Largely compliant
MER	Mutual evaluation report
ML	Money laundering
MLA	Mutual legal assistance
MVTS	Money value transfer services
NC	Non-compliant
NO	Notaries' Act (*Notariatsordnung*)
OeNB	Austrian National Bank (*Österreichische Nationalbank*)
PC	Partially compliant
PEP	Politically exposed person
R	Recommendation
RAO	Lawyer's Act (*Rechtsanwaltsordnung*)
RBA	Risk-based approach
SR	Special Recommendation
StGB	Criminal Code (*Strafgesetzbuch*)
STR	Suspicious transaction report
TCSP	Trust and company service provider
TF	Terrorist financing
UN	United Nations
UNSCR	United Nations Security Council Resolutions
WTBG	Act on the Profession of Chartered Public Accountants and Tax Consultants (*Wirtschaftstreuhänderberufsgesetz*)

THIRD MUTUAL EVALUATION OF AUSTRIA: THIRD FOLLOW-UP REPORT

Application to exit from regular follow-up

Note by the Secretariat

I. INTRODUCTION

The third mutual evaluation report (MER) of Austria was adopted on 26 June 2009. At the same time, Austria was placed in a regular follow-up process[1] and reported back to the FATF in February 2011 (first follow-up report) and 2012 (second follow-up report). Austria indicated that it would report again in February 2013 concerning the additional steps taken to address the deficiencies identified in the report, and apply to move from regular follow-up to biennial updates.

This paper is based on the procedure for removal from the regular follow-up, as agreed by the FATF plenary in October 2008[2]. The paper contains a detailed description and analysis of the actions taken by Austria in respect of the core and key Recommendations rated PC or NC in the mutual evaluation, as well as a description and analysis of the other Recommendations rated PC or NC, and for information a set of laws and other materials (see Annexes). The procedure requires that a country "has taken sufficient action to be considered for removal from the process – to have taken sufficient action in the opinion of the Plenary, it is necessary that the country has an effective AML/CFT system in force, under which the country has implemented the core[3] and key[4] Recommendations at a level essentially equivalent to a C or LC, taking into consideration that there would be no re-rating". Austria was rated partially compliant (PC) or non-compliant (NC) on the following Recommendations:

Core Recommendations rated NC or PC
R.5 (PC), R.13 (PC), SR II (PC)
Key Recommendations rated NC or PC
R.3 (PC), R.4 (PC), R.23 (PC), R.26 (PC), R.36 (PC), SR I (PC), SR III (PC) and SR V (PC),
Other Recommendations rated PC
R.11, R.12, R.15, R.16, R.17, R.21, R.24, R.32, R.33, R.34, R.38, SR VIII and SR IX
Other Recommendations rated NC
None

1 For details regarding the follow-up process, please refer to the FATF mutual evaluation procedures dealing with the follow-up process (§35 and following).

2 Third Round of AML/CFT Evaluations Processes and Procedures, paragraph 39c and 40.

3 The core Recommendations as defined in the FATF procedures are R.1, SR II, R.5, R.10, R.13 and SR IV.

4 The key Recommendations are R.3, R.4, R.26, R.23, R.35, R.36, R.40, SR I, SR III, and SR.V. Such recommendations are carefully reviewed when considering removal from the follow-up process.

As prescribed by the Mutual Evaluation procedures, Austria provided the Secretariat with a full report on its progress. The Secretariat has drafted a detailed analysis of the progress made for R.5, R.13, SR II, R.3, R.4, R.23, R.26, R.36, SR I, SR III and SR V (see rating above), as well as an analysis of all the other Recommendations rated PC or NC. A draft analysis was provided to Austria (with a list of additional questions) for its review, and comments received; comments from Austria have been taken into account in the final draft. During the process, Austria has provided the Secretariat with all information requested.

As a general note on all applications for removal from regular follow-up: the procedure is described as a *paper based desk review*, and by its nature is less detailed and thorough than a mutual evaluation report. The analysis focuses on the Recommendations that were rated PC/NC, which means that only a part of the AML/CFT system is reviewed. Such analysis essentially consists of looking into the main laws, regulations and other material to verify the technical compliance of domestic legislation with the FATF standards. In assessing whether sufficient progress had been made, effectiveness is taken into account to the extent possible in a paper based desk review and primarily through a consideration of data provided by the country. It is also important to note that these conclusions do not prejudge the results of future assessments, as they are based on information which was not verified through an on-site process and was not, in every case, as comprehensive as would exist during a mutual evaluation.

II. MAIN CONCLUSION AND RECOMMENDATIONS TO THE PLENARY

CORE RECOMMENDATIONS

R.5 (CDD): Austria made a number of amendments to the relevant sectoral laws which addressed all of the main deficiencies and therefore compliance with this Recommendation has been brought to a level equivalent to LC.

R.13 (STR): Amendments in the sectoral laws as well as changes in the Criminal Code made it possible to remedy all technical deficiencies, thus bringing the compliance with R.13 to a level equivalent to LC.

SR II (TF offence): By introducing a number of amendments into the relevant Articles of the Criminal Code, Austria addressed the criticisms expressed in the MER. This brings the level of compliance with SR II to a level equivalent to LC.

Overall, Austria has demonstrated sufficient progress with regard to all core Recommendations that were rated as PC in the MER to consider their level of compliance as equivalent to LC.

KEY RECOMMENDATIONS

R.3 (Confiscation): Following the criticisms in the MER, a number of amendments were introduced into the Criminal Procedure Code, as well as into the Criminal Code. An important decision of the Supreme Court clarified the limits of the legal privilege concerning the proceeds of crime. Those measures address all technical issues and bring of compliance for R.3 to a level equivalent to LC.

R.4 (Secrecy laws): Austria made the relevant amendment to the Criminal Procedure Code which removed the restrictions on the access to information. This brings the compliance to a level equivalent to LC.

R23 (Supervision): A number of legislative changes were undertaken, along with the reform of the supervision regime. However, some important technical deficiencies still remain, and the practical results of the supervision reform regime do not reach the level of expectations set out in the MER. Therefore it is not possible to consider the level of compliance with R.23 as equivalent to LC.

R.26 (FIU): Austria addressed the technical deficiencies with regard to R.26, and it also reformed the methods of the FIU operational work. This brings the compliance to a level equivalent to LC.

SR III (Terrorist funds freeze): Austria has taken complementary measures with respect to the freezing regime to cover the gaps originally present in the EU framework. Therefore, the level of technical compliance allows the rating for SR III to be considered equivalent to LC.

R.36 (MLA), R.I (UN instruments) and SR V (International cooperation): Most of the deficiencies in these recommendations were due to cascading effect from other aspects of the AML/CFT regime. As most of those deficiencies were addressed, the compliance has improved accordingly and can be considered to be at a level equivalent to LC.

Overall, Austria has demonstrated sufficient progress with regard to all but one (R.23) key Recommendations. Therefore, analysis with respect to all other Recommendations that were rated NC/PC was undertaken to assess whether the overall level of progress was sufficient to grant the removal from the regular follow-up.

OTHER RECOMMENDATIONS

As far as other Recommendations are concerned, the progress in relation to the following ones can be considered as substantial and achieving a level of compliance equivalent to LC: R.11, R.12, R. 15, R.16, R.17, R. 21, R.33 and R.38. The progress with the remaining 5 Recommendations (R.24, R. 32, R.34, SR VIII and SR IX), however, was not considered to be sufficient.

CONCLUSION

The mutual evaluation follow-up procedures indicate that, for a country to have taken sufficient action to be considered for removal from the process, it must have an effective AML/CFT system in force, under which it has implemented all core and key Recommendations at a level essentially equivalent to C or LC, taking into account that there would be no re-rating. The Plenary does, however, retain some limited flexibility with regard to the key Recommendations if substantial progress has also been made on the overall set of Recommendations that have been rated PC or NC.

Austria has addressed the deficiencies related to all core and all but one key Recommendation, and brought the level of technical compliance with these Recommendations up to a level of LC. Moreover, Austria has made a considerable progress in remedying deficiencies in the most of the remaining (non-core and key) Recommendations, especially in the DNFBPs sector. Overall, the majority of all Recommendations that were rated NC/PC have been brought to a level of compliance

essentially equivalent to LC (18 out of 24), which means, in turn, that Austria has taken sufficient measures to be removed from the regular follow-up process.

III. OVERVIEW OF THE AUSTRIA'S PROGRESS

OVERVIEW OF THE MAIN CHANGES SINCE THE ADOPTION OF THE MER

Since the adoption of its MER, Austria has developed a comprehensive legislative package, which included the amendment of relevant laws and the passing of an entirely new piece of legislation (the Sanctions Act), to address deficiencies identified in the MER. Most of these amendments came into force in 2010, and some of the most recent ones in 2013. Subsequently, a few supplemental legislative measures, such as the restriction of the issuance and use of bearer shares, which came into force in 2011, were taken. Furthermore, secondary legislation (regulations) as well as thematic and sectorial guidelines and explanatory notes have been constantly developed and published over the past four years. To address effectiveness issues, Austria has undertaken reforms of the FIU operational procedures and supervisory framework. Austrian authorities also organised a series of outreach events to increase the level of awareness in the AML/CFT field.

THE LEGAL AND REGULATORY FRAMEWORK

Since the adoption of the MER in 2009, Austria has undertaken a number of key legislative actions:

- Enactment of the new Sanctions Act (in force as of 1 July 2010)
- Amendments to the Criminal Code (in force as of 1 July 2010, with subsequent amendments as of 29 July 2013) and the Criminal Procedure Code (in force as of 1 July 2010, with subsequent amendments as of 1 September 2012)
- Amendments to the Criminal Intelligence Service Act (in force as of 1 July 2010)
- Amendments to the Corporate Tax Act (in force as of 1 July 2010)
- Amendments to the Banking Act, the Insurance Supervision Act, the Securities Supervision Act and the Stock Exchange Act (in force as of 1 July 2010, with subsequent amendments as of 1 April 2012)
- Amendments to the Trade Act, the Act on the Profession of Chartered Public Accountants and Tax Consultants, the Accountancy Act, and the Gambling Act (in force as of 16 June 2010), as well as to the Act on Attorney and the Act on Notaries (in force as of 1 July 2010)
- Amendments to the Act on Private Foundations (in force as of 1 April 2011)
- Amendments to the Stock Corporation Act (in force as of 28 July 2011)

Besides that, a significant number of regulations and guidelines were issued by the competent authorities, such as decrees, circulars, guidance papers for relevant sectors, etc.

IV. REVIEW OF THE MEASURES TAKEN IN RELATION TO THE CORE RECOMMENDATIONS

RECOMMENDATION 5 – RATING PC

R.5 (Deficiency 1): Undue exemption from CDD measures for customers that are credit institutions established in EU member countries.

Article 40a of the BWG (hereinafter the Banking Act) was amended and now provides that when the customer is a credit institution or financial institution located in EU member states "credit and financial institutions may apply simpler measures than those set forth in Article 40 para. 1 nos. 1, 2 and 5 and paras. 2 and 2a, provided that the risk of money laundering and terrorist financing is considered low". The revised paragraph 3 of the same Article which provides indications as to the information to be taken into account when assessing the level of AML/CFT risk presented by a customer specifies that simplified due diligence do not apply if the AML/CFT risk is not low. Furthermore, paragraph 5 specifies that "credit institutions and financial institutions must retain sufficient information in order to demonstrate that the requirements for the application of simplified due diligence are fulfilled". By virtue of a direct reference to the Banking Act in the Articles 6 and 12 para.4 of the WAG (hereinafter Securities Supervision Act), the above said provisions also apply for the investment firms and investment fund management companies.

Similar provisions can also be found in the VAG (hereinafter the Insurance Supervision Act) in the Article 98c para.1, 2 and 3, and in the GewO (hereinafter the Trade Act) in the Article 365r para.1 and 2, thus covering life insurance undertakings and insurance intermediaries.

Overall, this deficiency has been addressed.

R.5 (Deficiency 2): Undue blanket exemption from CDD measures for fiduciary accounts that amount to less than EUR 15 000.

Paragraph 4 of the Article 40a of the Banking Act (former paragraph 5) was also revised and now provides for 'simpler due diligence' instead of an exemption in case of fiduciary accounts held by attorneys or notaries. It should also be noted that this simplified CDD provision with regard to fiduciary accounts applies only in cases of large co-ownership communities subject to a number of conditions set out in the paragraph 4. This deficiency has been addressed.

R.5 (Deficiency 3): No requirement to apply beneficial owner's identification and verification diligence to holders of savings documents for savings deposits accounts which balance is lower than EUR 15 000 and are not registered in the customer's name.

The revised Article 32 paragraph 4 of the Banking Act now provides 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 a customer identified pursuant to Article 40 para. 1, withdrawals may be paid out to the holder identified pursuant to Article 40 para. 1 upon provision of the password. The revised Article 32 also has an overriding provision that the Article 40 para.1 no.4 (which sets the identification threshold of EUR 15 000 for deposits and withdrawals in/from the saving deposits) is not applicable in this case.

Thus, the only operation with a saving deposit that would not be covered by the identification requirements now is a deposit in the amount of less than EUR 15 000 on the saving deposit account with a balance of less than EUR 15 000. However, any withdrawals from such accounts will in any case be subject to identification requirements.

Overall, this deficiency appears to have been largely addressed.

R.5 (Deficiency 4): Current list of suggested high-risk customers omits significant high risk business categories relevant to Austria.

A new paragraph was inserted in Article 40b (1); it empowers the Financial Market Authority (FMA) to issue regulations defining "other cases which by their nature present a higher risk of money laundering or terrorist financing, in particular in relation to countries implicating, according to information obtained from a reliable source, a higher risk of money laundering or terrorist financing, and requir[ing] credit and financial institutions to take, in addition to the duties defined under Art. 40 para. 1, 2, 2a and 2e, other adequate due diligence measures and to conduct enhanced ongoing monitoring of the business relationship". This paragraph is also applicable to investment firms and investment fund management companies by the reference in the Articles 6 and 12 of the Securities Supervision Act. Similar provisions can also be found in the Insurance Supervision Act (Article 98d para.1) and the Trade Act (Article 365s para.1 and 5).

On the basis of these new provisions, the FMA issued a regulation providing a list of countries considered as presenting high risk of money laundering and terrorist financing. This list was last amended in December 2013 and reflects the FATF's public statement issued in October 2013. This Regulation however does not entirely address the deficiency, which refers to business categories rather than to third countries.

However, in addition to the Regulation, the FMA also issued on 23 December 2009 the *Circular on the risk-sensitive approach to the prevention of money laundering and terrorist financing*. It was updated on 1 December 2011. This circular is intended to assist financial institutions in identifying situations in which enhanced due diligence are required. High risk situations relevant to Austria identified in the MER are envisaged by the Circular, which also provides examples of additional measures and controls that can be undertaken in order to mitigate ML/TF risks. Though the circular is not legally binding, it should be noted that it reflects the legal opinion of the FMA with regard to the interpretation of the relevant applicable laws. Thus, institutions not acting in accordance with this circular have to expect to be sanctioned by the FMA due to non-compliance with the relevant AML/CTF provisions. As reported by Austria, since 2011 44 administrative penal proceedings have been initiated on grounds of alleged non-compliance with Article 40 paras 2a and 2b of the Federal Banking Act – dealing with an institution's risk analysis and the consequent application of risk-based and adequate measures – which form the legal basis for the risk-sensitive approach.

Overall, this deficiency appears to have been addressed.

R.5 (Deficiency 5): No guidelines issued by the competent authorities on the extent of the CDD measures on a rick sensitive basis.

As described above, the FMA issued on 23 December 2009 a *Circular on the risk-sensitive approach to the prevention of money laundering and terrorist financing*. It addresses high-risk situations as well as simplified due diligence and enhanced due diligence situations provided for in the legislation. The Austrian authorities advised that an updated version of the Circular reflecting the latest changes to the AML/CFT legislation was issued on 1 December 2011. In addition to that, the FMA also issued *Circulars on Identification and Verification of Identity* for credit institutions and insurance undertakings (both updated on 1 December 2011). The Austrian authorities indicated that the *Circular on the risk-sensitive approach to the prevention of money laundering and terrorist financing* was also distributed to the Trade authorities, which was subsequently published by two regional trade authorities. This deficiency has been addressed.

R.5 (Deficiency 6): Effectiveness was not established for some criteria.

The Austrian authorities advised that the FMA, which has a separate AML/CFT unit since 2011, puts special emphasis on compliance with legal requirements in the on-site visits. As reported by Austria, 34 administrative proceedings to restore legal compliance and 84 administrative penal proceedings (as of 31 July 2013) have been initiated due to violations of the relevant AML/CFT laws. The detailed statistics shown below may serve as an indicator that due attention is given to ensuring compliance with all fundamental elements of CDD requirements (see also Recommendation 23 below).

Table 1: **Administrative penal proceedings in relation to CDD violations**

		2011	2012	2013
Administrative penal proceedings initiated[1] due to the following KYC/CDD violations	**Sections**	35	34	17
Identification and verification of the identity of the customer	40/1 BWG	2	14	5
Identification and verification of the identity of the trustee/trustor	40/2 BWG	10	12	5
Identification and verification of the identity of the beneficial owner	40/2a/1 BWG	2	14	5
Risk-based measures to obtain information on the purpose and nature of the business relationship	40/2a/2 BWG	3	7	6
Risk-based monitoring of the business relationship	40/2a/3 BWG	11	18	4
Risk analysis	40/2b BWG	0	3	2
Enhanced CDD obligations	40b BWG	0	3	7

		2011	2012	2013
Reporting requirements (STRs)	41/1 BWG	22	20	4
Administrative proceedings to restore legal compliance[2]		8	17	9

1. The number of initiated administrative penal proceedings a year is lower than the number of violations in the same year as within the framework of most administrative penal proceedings several violations are prosecuted.
2. Administrative proceedings to restore legal compliance are initiated in cases of current violations.

RECOMMENDATION 5, OVERALL CONCLUSION

As appears from the above, Austria has addressed the main deficiencies identified in the mutual evaluation report which permits to consider its level of technical compliance as essentially equivalent to LC. As is usually the case with a desk-based analysis, a full-fledged judgement on effectiveness is not possible; however, the results of on-site inspections may serve as an indicator of improvement in that area.

RECOMMENDATION 13 – RATING PC

R.13 (Deficiency 1): Reporting requirement not on funds that are the proceeds of a criminal activity, but limited to transactions that serve the purpose of ML.

Article 41 paragraph 1 nos. 1 and 2 of the Banking Act on the reporting obligation was amended; financial institutions are now required to report: (1) any "attempted, upcoming, ongoing or previously conducted transaction […] related to asset components derived from any criminal activity listed in Art. 165 of the Criminal Code (including asset components which stem directly from a criminal act on the part of the perpetrator)" and (2) "any asset component is derived from any criminal activity listed in art. 165 of the Criminal Code (including asset components which stem directly from a criminal act on the part of the perpetrator)". Similar amended were made to the other sectoral laws (*i.e.*, the Insurance Supervision Act, Securities Supervision Act, Stock Exchange Act and Trade Act). This deficiency has been addressed.

R.13 (Deficiency 2): No requirement to make an STR regarding funds that are the proceeds of piracy or counterfeiting. The GewO does not require to report STRs in case of self-laundering.

Article 41 paragraph of the Banking Act providing for the obligation to report suspicious transaction (as well as other articles in the relevant sectoral legislations) refers to the predicate offences listed in Article 165 of the Criminal Code, which was amended. The amended Article 165 of the Criminal Code now explicitly lists piracy and counterfeiting as predicate offences of money laundering and does not specify anymore that predicate offence was committed by another person, and therefore provides for self-laundering.

The revised Article 365u of the GewO (hereinafter the Trade Act) now contains a reporting obligation similar to that in Article 41 paragraph 1 of the Banking Act. With respect to self-

laundering, the sentence "including asset components which stem directly from a criminal act on the part of the perpetrator" was added.

Overall, this deficiency has been addressed.

R.13 (Deficiency 3): Provisions in three of the four different reporting laws raise technical issues that could affect institutions' decision on whether they are obliged to file reports in relation to FT in certain situations.

The provisions of the Banking Act, Insurance Supervision Act, Stock Exchange Act and Trade Act concerning TF-related STRs were criticized in the mutual evaluation report as they were not uniformly worded which could lead to a certain level of confusion for the reporting entities. It was recommended therefore for the supervisory authority to issue guidance to clarify that the reporting obligations extend to situations where persons are suspected of being a terrorist or belonging to a terrorist organization.

Indeed, a Circular on Suspicious Transaction Reports in connection with money laundering, the financing of terrorist activities and violation of the disclosure requirements for trusteeships was issued by the FMA on 20 May 2010, lastly updated on 01 December 2011. A separate section 2.3.4 of the Circular deals with the TF-related STRs which also requires the reporting entities to submit STRs in case of transactions "that are intended to benefit a terrorist or a terrorist association".

The Banking Act was also amended to be more in line with the provisions in other acts and now requires that an STR be filed in the case of "any attempted, upcoming, ongoing or previously conducted transaction or any asset component is linked to any criminal organisation as defined in art. 278 of the Criminal Code, to a terrorist organisation as defined in art. 278b of the Criminal Code, to a terrorist act as defined in art. 278c of the Criminal Code, or to be used for funding terrorism as defined in the article 278d of the Criminal Code". The Article 278d has been recently amended to cover financing of individual terrorist and terrorist organisation without a link to a specific terrorist act.

Overall, this deficiency appears to have been addressed.

R.13 (Deficiency 4): Effectiveness questions raised by the low level of STRs.

With respect to the number of TF-related STRs, Austria has provided the following statistics:

Table 2: **Number of TF-related STRS**

	2008	2009	2010	2011	2012
TF-related STRs filed by financial institutions and DNFBPs	23	42	61	28	82

The amended STR obligation came into force in July 2010. Since that time Austria updated the Circular on STRs and continued to conduct on-site visits to verify the compliance. Austrian authorities reported that they combine zero-tolerance policy reporting entities' obligation to submit an STR with on-going trainings on that issue. It should be noted, however, that it is not always

feasible to analyse STR numbers without putting them into context, which appears to be difficult in a desk-based review.

It should also be noted, that the MER (see para. 605 of the 2009 report) raised that an STR appears to be a criminal complaint (*Anzeige* in German) which means that when the case is closed by the prosecutor or the preliminary proceedings end, the suspect/defendant is informed and authorized to view all the files related to the investigation, including the STR. This, in turn, means that ultimately the customer will be informed of the STR and of its origin, which is a factor of self-limitation for reporting entities. This issue does not seem to have been addressed and therefore may still have an adverse impact on effectiveness.

RECOMMENDATION 13, OVERALL CONCLUSION

As appears from the above, Austria has addressed the main deficiencies identified in the mutual evaluation report which permits to consider its level of technical compliance as essentially equivalent to LC.

SPECIAL RECOMMENDATION II – RATING PC

SR II (Deficiency 1): The offence of TF not fully applicable in all the circumstances envisaged by SR II, because in the case of the financing of a terrorist organisation or an individual terrorist, the provision and collection of funds per se may not constitute an offence if it cannot be established that the provision or collection was with the knowledge that the assets were intended to be used for the commission of terrorist acts in some other circumstances.

The financing of an individual terrorist for any purpose was addressed by the recent amendments of the Criminal code that entered into force on 29.07.2013. A new paragraph (1a) was inserted in the Article 278d (terrorism financing) that provides that "equally should be punished who collects or makes funds available (1) for a person who is known to be committing acts as set out in the para (1); for a member of an organisation whose main purpose is known to be commission of acts as set out in para (1)". This amendment addressed the concerns expressed in the MER with regard to this deficiency.

SR II (Deficiency 2): Penalties too low and possible need for a link to a specific offence for penalty purposes.

According to the amendments to the Criminal Code, the range of prison sentences available for the TF has now been increased by two times – from 1 to 10 years. Also, the link to the underlying offence for the penalty purposes was removed.

Austria reports also that in 2012 there was a conviction of an individual on the basis of Art. 278d of the Criminal Code for providing financing for terrorist acts. In this case, a female suspect was sentenced under Art. 278d to 12 months imprisonment, under probation for a period of 3 years for having provided at least EUR 7000 to representatives of a terrorist association.

This deficiency appears to have been addressed.

SR II (Deficiency 3): Criminalisation of organisation and direction of others not fully in line with the 1999 UN Convention.

The change of the definition of the terrorist association in Art. 278b para. 3 of the Criminal Code (by adding the words "or financing of terrorism (section 278d)") addresses the criticism in the MER by establishing criminal responsibility according to Art. 278b para. 1 and 2 for acts of participation, organization and direction of others in a terrorist association even if that group is established for the sole purpose of FT (as required by Art. 2 para. 5(b) and (c) of the UN TF Convention 1999). The deficiency has been addressed.

SPECIAL RECOMMENDATION II, OVERALL CONCLUSION

Austria seems to have addressed all technical deficiencies identified in the MER, which is also backed by the case example provided. This information makes it possible to come to the conclusion that the level of compliance with SR II is essentially equivalent to LC.

V. REVIEW OF THE MEASURES TAKEN IN RELATION TO THE KEY RECOMMENDATIONS

RECOMMENDATION 3 – RATED PC

R.3 (Deficiency 1): Strict conditions for obtaining/compelling information subject to banking secrecy and scope of legal privilege hinder the possibility for law enforcement authorities to locate and trace property.

With respect to the law enforcement agencies' ability to identify and trace property subject to or that may become subject to confiscation, Article 116 of the Code of Criminal Procedure was amended on two occasions (coming into force on 1 July 2010 and 1 September 2012, respectively). The revised Article provides that information on bank accounts and transactions can 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 (Article 19a Criminal Code), forfeiture (Article 20 Criminal Code), extended forfeiture (Article 20b Criminal Code) or any other offence-related property order should be issued in criminal proceedings".

According to the explanatory notes concerning this new provision, the 'intentionally committed criminal act' entails in practice to exclude acts committed negligently such as negligent manslaughter. Although it may seem to somewhat limit the cases where bank information can be disclosed (as it may be interpreted as requiring the proof that the criminal act was committed intentionally), Austrian authorities argue that the term "intentionally committed" used in this Article only serves to distinguish between various categories of offences. Moreover, the prior proof of intent is not listed per se as a mandatory requirement for the application of the Article, thus one does not need to have the intent already proven to be able to secure the disclosure.

Finally, as reported by Austria, the reference in Article 116 StPO to "if it seems to be necessary" does not relate to any additional requirement of evidence. Its purpose is to make sure that the requested access to banking information is necessary in objective terms (i.e. relevant and not already in the hands of the prosecution) for the investigation. As explained by the Austrian authorities, the judge

might refuse to grant access to banking information if the prosecutor already has the information because a search of the premises of the suspect produced documents that contain all the relevant information or if the suspect pleads guilty without limitations or if the banking information is not pertinent to the investigation. At the same time, insufficient evidence cannot lead to the rejection according to this reference.

The mutual evaluation criticised the provisions of paragraphs 2 and 4 of Article 116, which among other things required that the business relation with the financial institution be connected to a criminal. These provisions have also been revised; they now only require that items, documents and other records may be seized, confiscated or forfeited. According to the Austrian authorities, the consequence of this change in Article 116 is that banking information and documents are now treated as any other information. A third case in which banking information can be disclosed was also added "when a transaction relating to a criminal act is to be conducted through the business relationship", which serves the purposes of account monitoring.

Finally, a few changes were made in paragraph 4, which lists the elements that the order and admission of the disclosure must contain. In particular, the term 'designation' of the items, documents, etc. was replaced by 'description', which does not require the exact designation of banking information and is therefore is less strict requirement. Austria reported that the amendment of Article 116 Criminal Procedure Code enabled access to bank information in additional 350 000 cases per year, however no information was provided as to where this figure came from. It should be noted that all relevant law enforcement agencies, Criminal Intelligence Service (BKA) and Federal Agency for State Protection and Counter-Terrorism (BVT), can use the provisions of this Article to get access to the necessary information.

Concerning the issue of the scope of the legal privilege of lawyers and notaries, Austria made reference to a decision of the Supreme Court of 18 October 2012 (13 Os 66/12y, 13 Os 67/12w, 13 Os 68/12t and 13 Os 69/12i). That case was related to investigations against a former member of the Federal government for tax evasion. The Supreme Court stated in this decision[5] that the legal privilege does not cover instruments used for criminal Sacts, 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. Such items can therefore not be immunized by handing them over to a legal professional and can therefore be the subject of a search of the office of the legal professional or of a seizure or confiscation. This decision points out that property held by legal professionals can be subject to provisional measures.

Given all the facts described above, the deficiency appears to have been addressed.

R.3 (Deficiency 2): Given the level of profit-generating crimes, effective use of the provisional measures and confiscation provisions not demonstrated.

5 www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT_20121018_OGH0002_0130OS00066_12Y0000_000 (available in German only)

In order to respond to the criticisms made by the FATF with respect to confiscation, Austria undertook a number of additional steps. The Ministry of Justice of Austria issued on 11 September 2009 a *Decree on the enhanced application of orders relating to property and practical problems in their handling*. Its objective is to inform the judiciaries of the changes made to Austria's legal framework on confiscation and to describe possible ways to improve its application.

In addition to this decree, which is not legally binding but rather provides the opinion of the Ministry of Justice, the Criminal Code (Strafgesetzbuch, StGB) was also amended with changes entering into force on 1 January 2011. The new provision on confiscation (Art. 19a StGB *Konfiskation*) provides additional possibilities for confiscating instrumentalities and proceeds of crime. New provisions on the forfeiture of proceeds (Art. 20 – 20c StGB *Verfall*) intend to facilitate their implementation by providing for the confiscation of gross profits rather than net profits as previously foreseen in Austrian Law. Accordingly, forfeiture is extended to benefits resulting from proceeds (e.g. interest rates), assets replacing the original proceeds and their equivalent value. Art. 20b StGB provides for extended forfeiture without a link to a specific offense under the rebuttable legal presumption of deriving from an offense.

The main distinction between those two articles is that Article 19a applies to tangible "objects", while Articles 20-20c apply to "assets" meaning any tangible or intangible object with a monetary value. Moreover, Article 19a relates to objects which came into existence in the context of committing the criminal act, whereas Article 20 relates to pre-existing objects.

Austria provided some statistics on the amounts confiscated between 2009 and 2012, which is given below.

Table 3: **Amounts confiscated between 2009 and 2012 (in EUR million)**

	2009	2010	2011	2012	2013[1]
Confiscations of Profits, Forfeiture, Other Confiscations	2.4	7.2	5.73	8.05	8.9

1. From January to November 2013

Austria was also able to provide the breakdown of the figures for 2012 and 2013 as to the specific articles that were used to apply provisional measures.

Table 4: **Articles used to apply provisional measures for amounts confiscated in 2012 and 2013 (in EUR million)**

	2012	2013[1]
Article 20	2.3	5.1
Article 26	0.001	0.001
Article 19a	0.03	0.01

	2012	2013[1]
Other confiscations	5.7	3.7

1. From January to November 2013

In addition to that Austria also provided figures related to the use of the FIU's power to stop transactions between 2009 and 2012. This has remained a useful instrument that the authorities continued to make use of.

Table 5: **Injuctions between 2009 and 2012**

	2009	2010	2011	2012
Injunctions (number)	12	20	17	14
Amount (EUR million)	11.7	23.7	19.1	34.2

However a direct comparison with the statistics provided in the MER is not feasible, as according to the Austrian authorities it was not possible to provide data which could be directly compared to pre-MER periods due to changes in the database, in part reflecting the legislative changes described above. It was also clarified that the amounts mentioned do not relate exclusively to confiscations ordered in the context of money laundering convictions. Austria also stated that the Ministry of Justice has established a working group to improve the electronic documentation of confiscations with a view to improve statistical data and get a better overview for the future. Nevertheless, it can be stated that the figures given above demonstrate some improvement over the past years.

RECOMMENDATION 3, OVERALL CONCLUSION

Austria remedied the main technical deficiency with regard to R.3. Moreover, a number of various steps, including legislative actions, were taken to address the effectiveness issue, which seem to produce some results as demonstrated by the figures above. Overall, it can be concluded that the level of compliance with R.3 is equivalent to LC.

RECOMMENDATION 4 – RATED PC

R.4 (Deficiency 1): Disclosure of banking information under Article 116, paragraph 3, lit. b StPO is subject to restrictive conditions which hamper access to relevant information in practice.

As described under Recommendation 3 (see above), Article 116 of the Criminal Procedure Code was amended to reduce the conditions necessary for the disclosure of the information. This has the effect that the police and the prosecution may get access to the banking information "insofar as this is necessary for the investigation of the criminal act". The revised Article 116 paragraph 1 specifies

that disclosure is admitted when a criminal act was committed intentionally, which may raise some questions as discussed above (see R.3), however, Austria states that the prior proof of intent is not required for the application of the Article. Austria reported that the amendment of Article 116 Criminal Procedure Code enabled access to bank information in additional number of cases per year. This deficiency appears to have been addressed.

RECOMMENDATION 4, OVERALL CONCLUSION

As appears from the above, Austria has addressed the main deficiency identified in the mutual evaluation report which permits to consider its level of technical compliance as essentially equivalent to LC. As is usually the case with a desk-based analysis, a full-fledged judgement on effectiveness is not possible.

RECOMMENDATION 23 – RATED PC

R.23 (Deficiency 1): Assessment of significant and controlling interest in a financial institution undermined by capital hold in form of bearer shares.

A legislation introducing the conversion of bearer shares into registered shares entered into force on 28 July 2011. Pursuant to the provisions of this legislation, stock companies are required to convert bearer shares by the end of December 2013. Moreover, the legislation prohibits bearer shares issuance from the date of its entry into force. However, the prohibition to issue bearer shares does not apply to listed companies, which are permitted to issue bearer shares.

In order to ensure transparency of the owners it is now provided that shares may not be issued separately but only in a global certificate that must be kept by the Central Depository which is the Österreichische Kontrollbank appointed in accordance with the Article 1 para.3 of the Securities Deposit Act (*Depotgesetz*). All share transactions can thus be traced back through the relevant bank account movements. In addition, para.20 of the Banking Act requires credit institutions to inform the Financial Market Authority if a shareholder's share of capital or voting rights held are about to exceed 20, 30 and 50 percent of total capital or voting rights. Similar provisions are included in the Insurance Supervision Law and the Securities Supervision Law.

In addition, it has to be noted that companies listed on the stock exchange are also subject to the provisions of Art. 91 of the Stock Exchange Act, which stipulates, inter alia, an obligation to inform the Financial Market Authority if in the context of a purchase or sale of stock the share of voting rights reaches, exceeds or falls below 4, 5, 10, 15, 20, 25, 30, 35, 40, 45, 50, 75, and 90 percent of total voting rights. Therefore it seems that necessary safeguards are now in place to make sure that bearer shares are not misused to conceal or obfuscate the control in a financial institution.

This deficiency has been addressed.

R.23 (Deficiencies 2 and 3): Insufficient licensing requirements or other legal or regulatory measures which would prevent criminals to control domestic financial institutions, and lack of adequate fit and proper test for their directors and senior managers.

No requirement to carry out fit and proper tests of senior managers and supervisory board members in all types of financial institutions.

Austria has not reported any progress with respect to domestic financial institutions (licensing requirements and "fit and proper" testing).

Concerning the lack of adequate fit and proper test for directors and senior managers, the Austrian authorities advised that fit and proper tests were expanded and are now applicable to all employees, including directors and senior managers. Article 41 paragraph 4 no. 3 of the Banking Act on employees' ongoing training was completed by the obligation for financial institutions to "pay attention to the trustworthiness and reliability concerning their commitment to legal values when choosing employees, likewise it must be paid attention prior to the election of supervisory board members to their commitment to legal values". The wording 'pay attention' is imprecise and seems too loose to achieve the objectives of the criteria. The expression 'legal values' referred to in the Article is interpreted by the Austrian authorities against Austria's background for fit and proper requirements and includes elements such as sound and prudent management or the absence of criminal proceedings. There is however not such reference in the article supporting the interpretation provided.

Similar changes were made to the Insurance Supervision Act and Securities Supervision Act; similar comments are applicable to these provisions.

In the light of the considerations set out above, it can be concluded that these two deficiencies have not been addressed.

R.23 (Deficiency 4): Low number of onsite examinations for AML/CFT compliance.

The revised Banking Act assigned the authority for AML/CFT related inspections of credit institutions to the FMA (before that, on-site inspections were carried out by the Austrian National Bank, OeNB). In this context, the FMA set up a dedicated unit which employs 12 staff. The division is tasked to perform on-site measures, conduct investigation proceedings, administrative proceedings to restore legal compliance as well as processing legal requests. Between 2011 and 2013 it conducted 108 on-site measures (on-site inspections, short inspections and company visits) (as of June 2013).

On-site measures include on-site inspections (duration of 1 to 2 weeks), short inspections (duration of 3 days, they were only performed by the FMA before 2012, when on-site visits were under the responsibility of the OeNB) as well as company visits (approx. ½ day). Company visits serve the purpose to familiarize FMA staff with a company's institutional AML/CFT set-up. To this end institutions are required to provide a description of the general strategies, procedures and individual measures implemented. In the course of on-site inspections the FMA's staff conducts a more comprehensive assessment of an institution's compliance with legal provisions and due diligence obligations regarding AML/CFT. Austria has provided the following statistics in relation to the measures taken since 2011 and planned to be taken in 2014.

Table 6: **Measures of the FMA/OeNB for prevention of money laundering and terrorist financing**

	2011	2012	2013	2014 (as planned)

	2011	2012	2013	2014 (as planned)
On-site inspections, of which	12	17	15	25
on-site inspections at credit institutions	6	6	10	18
on-site inspections at insurance companies	2	2	1	2
on-site inspections at investment firms	4	9	4	5
Short inspections	6	n/a	n/a	n/a
Company visits	18	20	20	30
Investigation proceedings	85	72	n/a	n/a
Administrative proceedings to restore legal compliance	8	17	9	n/a
Administrative penal proceedings	35	34	17	n/a
Administrative penal decisions	7	14	n/a	n/a
Warnings	2	14	n/a	n/a
STRs	n/a	18	n/a	n/a
Information requests	60	42	n/a	n/a

Though it is clear that the FMA has intensified the work in supervision area (e.g., the number of company visits has noticeably increased), the number of the full-fledged on-site examinations basically remained at the same level as at the time of the mutual evaluation. It should be noted that according to the FMA on-site inspection and resources plan for 2014 further increase in staff (to 14 persons in total) and in the number of on-site visits is envisaged. However, compared with the total number of financial institutions in Austria, this still presents concerns as it is only on-site examinations that can provide comprehensive understanding of an institution's compliance with AML/CFT requirements. Moreover, no information was reported concerning the supervisory oversight of standards within branches and subsidiaries located abroad.

No information has been provided with respect to the other types of financial institutions.

R.23 (Deficiency 5): Effectiveness of AML/CFT supervision of domestic financial institutions was not established.

Besides the number of on-site measures taken by the FMA, Austria has not provided any other information demonstrating the increase of the effectiveness of the AML/CFT supervision.

RECOMMENDATION 23, OVERALL CONCLUSION

It should be noted that Austria has made a number of substantial steps to enhance compliance with R.23, including measures in relation to bearer shares and reforms of the supervision regime. At the same time, a number of deficiencies remain unaddressed such as 1) lack of licensing requirements and "fit and proper" testing for domestic financial institutions and 2) insufficient provisions concerning "fit and proper" testing of senior managers and supervisory board members for credit institutions. Moreover, despite the positive signs of the effectiveness side, at the time of this analysis it is difficult to justify a conclusion that the supervision regime fully meets the expectations of the MER. Therefore, the rating remains in the range of PC.

RECOMMENDATION 26 – RATED PC

R.26 (Deficiency 1): A-FIU not a national centre for analysing and disseminating STRs.

Generally speaking, this deficiency encompasses two different aspects: 1) there was confusion as to what agency was supposed to be the central point for receipt of ML and TF-related STRs; 2) the functions of analysis and dissemination did not exist as such at none of the agencies empowered to receive STRs. Concerning the last point, the Mutual Evaluation Report raised that A-FIU had no analytical function as an investigation is open for each information received that meets the requirements of an STR. Subsequent law enforcement investigations were based on the STR itself, not on the analysis conducted by the FIU.

The first aspect was addressed by introducing amendments into all relevant sectoral laws which specified that STRs are to be sent to the A-FIU (*Geldwäschemeldestelle*) in the BKA (entered into force on 1 July 2010). The BKA law (BKA-G) was amended along the same lines to specify that A-FIU is responsible for receiving STRs that are sent pursuant to all relevant sectoral laws.

The second aspect was addressed by the same amendments to the BKA law. According to them, A-FIU is responsible for *i)* combating ML by receiving, analysing and disseminating ML-related STRs, as well as for *ii)* the receipt, analysis and dissemination of TF-related STRs for the purposes of combating TF. The apparent asymmetry in the responsibilities concerning ML and TF seems to be due to the fact that combating TF as such remains in the competency of the BVT, while A-FIU has the complimentary function that consists in the receipt, analysis and dissemination of TF-related STRs to the BVT.

These amendments make it possible to state that A-FIU is now the national central point for the receipt, analysis and dissemination of ML and TF-related STRs. Moreover, the FIU is now authorised to use personal data on customers under investigation and to exchange this data with foreign AML/CFT authorities.

It is important to note that, according to Austrian authorities, those amendments have led to some noticeable changes in the way how the FIU is functioning. It can be described as follows (an internal regulation formalizing the analysis procedure set out below is supposed to be issued in spring 2014).

Once an STR (which is rather an suspicious activity report as it can contain many transactions in one report) is received by the FIU, it is submitted for preliminary analysis to check any matches for previous STRs, criminal complaints, criminal records (general police and security service database),

court records, as well as international requests. Depending on the activity underlying the STR, additional information is sought to understand the economic profile and background of the person involved and to correlate it with transactions in question. For that purpose access to such databases as land register, company register, tax records, social security database is leveraged. In principle, the A-FIU is empowered to obtain any other information held by natural and legal persons that is deemed necessary to exercise its functions. All these powers may be used both at the preliminary analysis stage as well as at any subsequent stages, e.g. when a criminal case is opened. In case there is an international aspect in the case such channels as Egmont Secure Web, FIU.net, or Interpol/Europol are routinely used.

Once all necessary information is collected and the full picture is established, the decision is taken as to whether the suspicions are substantiated. If the suspicions are not proven, then the case is sent to archives, otherwise a formal criminal investigation is initiated and a criminal case is opened. Depending on the subject matter, the case could be investigated either by the A-FIU itself, sent to subordinate units (police units of the *Länder*), to other divisions within Ministry of the Interior (Anti-Drug unit, Economic crime unit, Anti-Corruption unit, BVT – in case of TF suspicions) or to other authorities (Ministry of Finance – in case of fiscal offences). In case the predicate offence has been committed in another country, the A-FIU reports directly to the prosecutor's office. In this context the FIU issued a decree (last updated in November 2013), that regulates the technical aspects of the cooperation with other divisions of the Ministry of the Interior, such as the information flow (especially the feedback) and the scope of the responsibilities.

It is important to underline that the criminal case would be formed on the basis of STRs as well as all other relevant information that was collected during the preliminary analysis stage. If the case is to be handed over to some other agency, that would also include all the results of that analysis.

Austria also reported that the new approach has led to a substantial increase in cases disseminated to other units and authorities (in 2012 a total of 1189 cases as opposed to 88 cases in 2007).

Thus, this deficiency appears to have been addressed.

R.26 (Deficiency 2): A-FIU not a national centre for receiving, analysing and disseminating information concerning suspected FT activities other than STRs.

As describe above, Article 4 paragraph 2 no.1 of the Criminal Intelligence Service Act was amended and now stipulates that the FIU receives, analyses and forwards ML and TF-related information. This has led to the changes in the way how the FIU is operating, including the way how TF-related STRs are handled. Basically, the same process as described above applies equally to TF-related STRs, including the power to obtain all relevant information. The only difference is that the case has always to be sent to the BVT for criminal investigation. Therefore, the deficiency seems to have been addressed as well.

RECOMMENDATION 26, OVERALL CONCLUSION

While Austria addressed the technical deficiencies with regard to R.26 by making a number of substantial clarifications in the relevant laws, it has also largely reformed the methods of the FIU

operational work on that basis. This all taken together allows for making the conclusion that the level of compliance with R.26 is equivalent to LC rating.

RECOMMENDATION 36 – RATED PC

R.36 (Deficiency 1): Practice indicates that MLA may not always be granted in a timely manner.

The Austrian authorities advised that the Ministry of Justice launched an initiative on 'improved documentation of MLA in the electronic registers' and to assess the need for other measures such as amendments of the legislation, trainings, staff and resources increase, etc. The initiative aims at improving documentation of MLA cases - including the requests received or forwarded through direct communication without interference of the Central Authority - so that, inter alia, timeliness of granting MLA requests could be better evaluated and documented. For that purpose, the Ministry of Justice has established a working group to improve the electronic documentation of MLA and confiscations. A concept has been drafted and first improvements in the electronic registers of courts and prosecution authorities are expected in June 2014. Both initiatives are still ongoing. It should be noted, however, that it is not immediately clear how in practice these initiatives will improve or ensure that MLA will be granted in a timely manner.

R.36 (Deficiency 2): Deficiencies noted under Recommendation 1 (absence of criminalisation of self-laundering and incomplete list of predicates) narrow the scope of the MLA that Austria may grant.

As described above under R.13, the revised Article 165 of the Criminal Code now provides for self-laundering and lists piracy and counterfeiting as predicate offences of money laundering. This leads accordingly to the extension of the scope of MLA Austria may render. Therefore, the deficiency has been addressed.

R.36 (Deficiency 3): Strict requirements to lift banking secrecy and extensive scope of legal privilege slow down effective cooperation.

With respect to the banking secrecy, Austria reported on the amendments made to Article 116 of the Code of Criminal Procedure (see Rec. 4 above). These amendments allow for less strict conditions to get access to the banking information. With respect to the legal privilege, Austria made reference to the decision of the Supreme Court which underlines that the 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 (see also Rec.3 above). Accordingly, this deficiency appears to have been addressed.

RECOMMENDATION 36, OVERALL CONCLUSION

Based on the analysis of the technical compliance, it seems that Austria has addressed all of the main issues. Therefore it may be concluded that a level of compliance equivalent to an LC rating has been

achieved. As is usually the case with a desk-based analysis, a full-fledged judgement on effectiveness is not possible.

SPECIAL RECOMMENDATION I – RATED PC

SR I (Deficiency 1): Criminalisation of organisation and direction of others is not fully in line with the 1999 UN Convention, nor is it the contribution to the commission of FT by a group of persons in those instances where the sole purpose/activity of the group of persons is FT.

This deficiency has been addressed by introducing amendments to the Art. 278b para. 3 StGB. See write-up to the SR II above for more details.

SR I (Deficiency 2): Incomplete implementation of UNSCRs 1267 and 1373.

The new Sanction Act provides for the freezing of funds and other assets of EU-internal terrorists. The deficiency has been largely addressed. See below under SR III.

SPECIAL RECOMMENDATION I, OVERALL CONCLUSION

As appears from the above, Austria has addressed the main deficiencies identified in the mutual evaluation report which permits to consider its level of technical compliance as essentially equivalent to LC.

SPECIAL RECOMMENDATION III – RATED PC

SR III (Deficiency 1): Lack of effective procedures to allow/freezing or to freeze without delay in the case of assets other than funds in many instances.

This deficiency actually meant that the implementation of freezing measures presented some difficulties in regard to assets other than funds held by financial institutions, such as real estate, businesses or undertakings, companies and vehicles. More specifically, the criticism was that there was no obligation for the courts that maintain registers of immovable property or company registers to annotate on the register that the immovable good or entity is subject to freezing under the relevant regulations.

A new piece of legislation, the Sanction Act, which came into force on 1 July 2010 (this Act is discussed in more detail below under Deficiency 2) was aimed at addressing this deficiency. The Section 6 of the Sanctions Act now requires courts to annotate freezing actions in the land register as well as in the company register on the request of the Ministry of Interior. Thus, the deficiency has been largely addressed with the only remaining element being so far the lack of implementing provisions concerning movable property, such as vehicles.

SR III (Deficiency 2): The OeNB regulations adopted pursuant to the DevG (for EU-internal terrorists) do not constitute freezing mechanisms in the terms required by UNSCR 1373 and SR III, because they are mainly applicable to non-residents and they do not encompass the full range of economic resources.

The new Sanction Act provides for the freezing of funds and other assets of EU-internal terrorists. Article 1 specifies that the Sanction Act "regulates the implementation of internationally binding sanctions of the United Nations or the European Union, including directly applicable sanctions of the European Union, as far as it is not regulated by another federal law". Article 2 provides for the freezing of funds and assets of "persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts", which includes EU-internal terrorists and is in line with the international standards.

Moreover, funds and assets of "entities owned or controlled directly or indirectly by [such] persons" and "persons and entities acting on behalf of or at the direction of [these] persons and entities" can be frozen. Article 2 empowers the Central Bank to issue regulations or decisions ordering the freezing after approval of the Federal Government. It is also specified that in case of imminent danger the approval of the Federal Chancellor is sufficient. Austria states that in such scenarios, approval can be obtained within a few hours if necessary. Section 8 names the Ministry of the Interior and the OeNB, in the field of their respective competences, as the authorities in charge of monitoring and ensuring compliance with international sanctions and their national implementing provisions.

The Sanction Act does not provide the definition of "funds and assets", however Austria made reference to the explanatory report of the government bill of the Sanctions Act 2010, which is used by Austrian courts and authorities for the interpretation of the Act. The explanation report states that the scope of application of the Sanctions Act allows for the freezing of "funds and other assets" (*Gelder und sonstige Vermögenswerte*) in the widest sense of the term, including any economic resource (also by reference to EC Regulation Nr. 881/2002 of 27 May 2002, which gives definition of "funds" and "economic resources"). This understanding of the term *Vermögenswerte* has additionally been communicated to the Austrian public (especially banks) by several means including the publication of the OeNB's Guidance Paper on Terrorism Financing available on the Website of the OeNB.

The effectiveness of the new legislation concerning EU-internal terrorists is yet to be seen. It also appears that the challenges concerning the freezing of assets discussed in the previous deficiency remains relevant here as well.

Overall, this deficiency appears to have been largely addressed.

SR III (Deficiency 3): Insufficient guidance provided to financial institutions and other persons or entities concerning their obligation under freezing mechanisms.

Austria advised that after the enactment of the Sanction Act, the Central Bank issued a circular on TF. This circular was prepared jointly with the Ministries of Interior, Justice and European and International Affairs. According to the Austrian authorities, it provides background information on the measures in force and guidance to the private sector. It was published on the websites of the Central Bank and of the Foreign Ministry.

However, in fact the Circular only provides three practical examples as to what procedures should be followed by entities that are subject to freezing provisions. And it only concerns cases when funds are with a financial or payment institution. At the same time, the MER noted that guidance is

necessary "especially [for] the non-banking financial industry and DNFBPs", thus this particular deficiency doesn't seem to be fully addressed.

SPECIAL RECOMMENDATION III, OVERALL CONCLUSION

Despite the fact that some small deficiencies remain, overall level of compliance is sufficient to consider it as equivalent to LC.

SPECIAL RECOMMENDATION V – RATED PC

SR V (Deficiency 1): Strict requirements to lift banking secrecy and extensive scope of legal privilege slow down effective cooperation.

With respect to the banking secrecy, Austria reported on the amendments made to Article 116 of the Code of Criminal Procedure (see Rec. 4 above). These amendments allow for less strict conditions to get access to the banking information. With respect to the legal privilege, Austria made reference to the decision of the Supreme Court which underlines that the 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 (see also Rec.3 above). This deficiency has been addressed.

SR V (Deficiency 2): Effectiveness not established[6].

Austria did not report any element with respect to this deficiency.

SR V (Deficiency 3): Effectiveness of the extradition framework not established.

Austria did not report any element with respect to this deficiency.

SR V (Deficiency 4): A-FIU not legally empowered to exchange information on FT.

As described above under R.26 (first deficiency), the Banking Act and other sectoral legislations were amended in order to explicit provide for the FIU ability to exchange ML/TF information with foreign authorities. In addition, Austria advised that two decrees were issued by the Ministry of Interior; they provide further detail on information exchange between agencies under the authority of the Ministry of Interior. The effective implementation of the new provisions has not been demonstrated though. The deficiency has nevertheless been addressed.

SPECIAL RECOMMENDATION V, OVERALL CONCLUSION

As the deficiencies concerning the technical compliance have been addressed, it might be concluded that Austria has made sufficient progress to consider the overall level of compliance at LC.

6 Regarding Mutual Legal Assistance.

VI. REVIEW OF THE MEASURES TAKEN IN RELATION TO OTHER RECOMMENDATIONS RATED NC OR PC

RECOMMENDATION 11 (PC)

R.11 (Deficiency 1): No explicit requirement in laws, regulations or other enforceable means to examine as far as possible the background and purpose of all complex, unusual large transactions, or patterns of transactions, that have no apparent or visible economic or lawful purpose, to set forth findings in writing and to keep such findings for at least five years.

Amendments were introduced into Article 41 paragraph 1 of the Banking Act and Article 98f of the Insurance Supervision Act to address Recommendation 11 (in force as of 01.07.2010). By reference in the Article 6 of the Securities Supervision Act the same amendments apply to the securities market participants. The revised Articles provide that "credit and financial institutions must pay special attention to any activity which they regard as particularly likely, by its nature, to be related to ML/TF, in particular complex or unusually large transactions and all unusual patterns of transactions which have no apparent economic or visible purpose".

In addition to that, all financial institutions covered by the Banking Act, the Insurance Supervision Act and the Securities Supervision Act are now required to "examine as far as possible the background and purpose of such activities and transactions" and "must keep suitable written records about that" for a period of at least five years. It is somewhat unclear whether the requirement to keep records relates to "activities and transactions" only, or to the findings of their examination, though the reference "about that" seems to be related to the preceding phrase as a whole (i.e. "examine as far as possible …") rather than to just "activities and transactions". This is further backed by the FMA Circular on Suspicious Transaction Reports in paragraph 101.

It should be noted, that the relevant requirements as applicable to credit and financial institutions, insurance undertakings and securities market participants form part of the provisions related to the reporting of suspicious transactions. The insertion of the obligation to pay special attention to transactions referred to in R.11 may lead to confusion for financial institutions, which could raise an effectiveness concern. However, additional guidance from the supervisor intends to address this issue.

Similar (however not identical) provision for the insurance intermediaries was introduced by Article 365t of the Trade Act (in force as of 16.06.2010). The Article requires explicitly not only to "examine the background and purpose of such transactions", but also to "record the findings in writing". Moreover, "the records shall be kept [for 5 years] to assist the competent authorities".

This deficiency appears to have been addressed.

R.11 (Deficiency 2): Monitoring of unusual patterns of transactions not required for insurance undertakings.

This deficiency was addressed by the amendment of the Article 98f of the Insurance Supervision Act (see above).

R.11 (Deficiency 3): Concerns about the effectiveness of the provisions which were introduced recently.

No particular progress was reported by Austria on this issue.

RECOMMENDATION 15, OVERALL CONCLUSION

Overall, with all technical deficiencies being addressed, it can be concluded that the compliance with the Recommendation 11 is equivalent to the LC rating.

RECOMMENDATION 12 (PC)

All DNFBPs:

R.12 (Deficiency 1): Some shortcomings in the requirements concerning PEPs.

The Mutual Evaluation Report identified shortcomings in the PEPs obligation in the Trade Act, the Act on the Profession of Chartered Public Accountants and Tax Consultants (WTBG) and in the Accountancy Act (BiBuG).

The Trade Act Applicable to real estate agents, dealers in precious metals and precious stones and TCSPs was amended as follows: Article 365n paragraph 4 now lists members of parliament and important political party officials among PEPs and Article 365s paragraph 3 now specifies that additional measures applicable to PEPs apply to existing customers, when the customer or beneficial owner is subsequently found to be PEP and when the customer or beneficial owner subsequently becomes a PEP. Similar changes were made to Article 98d paragraph 1 N 1 of the WTBG. However, the establishment of the source of wealth and source of funds remains limited to that involved in the business relationship or transaction.

This deficiency seems to have been largely addressed.

Casinos:

R.12 (Deficiency 2): Absence of AML/CFT requirements for all casinos operating in Austria.

Austria advised that the revision of Article 5 of the Gambling Act (Glückspielgesetz, GSpG) extended the scope of the AML/CFT requirements to slot machines and video lottery terminal. However, poker salons don not seem to be concerned by this provision, as they are covered under Article 4 para.6 of the Gambling Act. Thus, the deficiency has been partly addressed.

R.12 (Deficiency 3): No legal framework for CDD requirements concerning internet casinos.

Article 12a was introduced to the Gambling Act; it extends the application of Article 25 paragraphs 6 to 8 and 25a relating to AML/CFT obligations to electronic lotteries, bingo and keno (which is the only legally permitted form of internet gambling). This deficiency appears to have been addressed.

R.12 (Deficiency 4): No rules to determine the basis upon which internet casinos are subject to AML/CFT requirements.

As described above, existing CDD requirements set forth in Article 25 paragraphs 6 to 8 and Article 25a are now applicable to electronic lotteries (which is the only legally permitted form of internet gambling). This deficiency appears to have been addressed.

R.12 (Deficiency 5): No legal obligation for casinos to perform CDD for all customers when they engage in financial transactions equal to or above EUR 3 000.

Austria reported that most recently, by issuing new licenses for casinos for the period from January 1, 2013 through December 31, 2027, new provisions were introduced in the respective licenses. These new provisions oblige casinos to identify on a daily basis all customers engaging in transactions equal to or above EUR 2 000. However, those provisions do not constitute a law or regulation. This deficiency seems to have only partly been addressed.

R.12 (Deficiency 6): No specific review for higher risk categories and no enhanced due diligence for higher risk categories of customers, such as non-resident customers.

R.12 (Deficiency 7): No legal obligation to record keeping of transactions.

R.12 (Deficiency 8): No enforceable requirements for internet casinos in order to address the specific risks related to non-face-to-face transactions.

R.12 (Deficiency 9): No appropriate management systems to determine whether a potential customer, a customer or the beneficial owner is a PEP.

For these four deficiencies, a reference to the provisions of Article 41 paragraphs 1 to 4, 7 and 8 of the Banking Act on 'reporting requirements' was inserted. However, Article 41 of the Banking Act does not address enhanced due diligence, non-face-to-face situations and PEPs; these matters are provided for in Article 40b of the Banking Act. Thus, these deficiencies do not seem to have been addressed.

Real estate agents, dealers and TCSPs:

R.12 (Deficiency 10): Coverage of TCSP activities is not effective.

The definition of TCSPs was modified in Article 365m paragraph 3 of the Trade Act. According to the revised definition, management consultants performed TCSPs activities as defined by the FATF. The new provision also specifies that 'other trade or business persons' can provide registered offices, business addresses, correspondence or administrative address and other related services for a company, a partnership or any other legal person or arrangement, which addresses the concern raised in the Mutual Evaluation Report. This deficiency has been addressed.

R.12 (Deficiency 11):No requirement to verify that any person purporting to act on behalf of the customer is so authorised.

Article 365p paragraph 1 was revised and no. 2a was introduced in the Article. It provides for the verification "that any customer acting on behalf of a third party as defined in no. 2 is so authorised by power of representation". The deficiency has been addressed.

R.12 (Deficiency 12): No guidelines issued to determine the extent of the CDD measures on a risk sensitive basis.

Austria advised that the Circular on the risk-based approach issued by the FMA was distributed to the trade authorities and that two regional trade authorities issued guidance to professions regulated by the Trade Act. This guidance will be used as a basis for a brochure to be prepared by the Ministry of Economy for relevant professionals. In addition, Austria reported that the Ministry of Economy also organises training and works on enhanced statistics. This deficiency has been mostly addressed.

R.12 (Deficiency 13): No specific review for higher risk categories and no enhanced due diligence for higher risk categories of customers, such as non-resident customers.

With respect to higher risk categories, Articles 365t and Article 365s paragraph 5 of the Trade Act were amended. Article 365s empowers the Ministry of Economy to issue "*ordinances to define other cases* [types of customers, business relationships and transactions] *which by their nature present a higher risk of money laundering or terrorist financing*" requiring enhanced due diligence. On 11 December 2012, a Regulation specifying cases where increased risk of money laundering or terrorism financing is present was issued. This Regulation largely mirrors the Regulation published by the Financial Market Authority for the financial sector, and lists cases which present and increased ML/TF risk. Article 365t now provides that professionals regulated by the Trade Act are required to "pay special attention to any transactions which they regard as particularly likely to be related to money laundering or terrorist financing, especially those with persons from or in countries presumed to have, according to information obtained from a reliable source, a higher risk of money laundering or terrorist financing". This deficiency has been addressed.

R.12 (Deficiency 14): Weaknesses of the simplified CDD framework.

The Mutual Evaluation Report criticised the provisions of Article 365r paragraphs 1 and 2 of the Trade Act as they provided for a full exemption of CDD. Both Articles were amended and now authorise professionals regulated by the Trade Act not to apply some of the measures listed in Articles 365p paragraphs 1 and 2 and Article 365q paragraph 1 when the risk of money laundering or terrorist financing is low and where the customer / transaction also presents low ML/TF risks. This deficiency has been addressed.

R.12 (Deficiency 15): No requirement to keep written findings of the examination of complex and unusual transactions.

Article 365t of the Trade Act was amended; it requires professionals under the Trade Act to "pay special attention to any transactions which they regard as particularly likely to be related to money laundering or terrorist financing". It is specified that "this applies particularly to complex or unusually large transactions or all unusual patterns of transactions which have no apparent economic or visible lawful purpose. In such cases trade or business persons shall, as far as possible, examine the background and purpose of such transactions and record the findings in writing. The records shall be kept within the meaning of art. 365y to assist the competent authorities". This deficiency has been addressed.

R.12 (Deficiency 16): Lack of effective implementation of the CDD requirements.

Austria reported that, in the province of Tyrol, 67 companies were inspected in the first half of 2012 in the context of a targeted action to monitor AML/CFT compliance.

Lawyers and Notaries:

R.12 (Deficiency 17): The scope of the CDD requirements is unclear.

Austria reported that Article 8a of the Act on Attorney and Article 36a of the Act on Notaries were amended and the reference to the link with ML/TF activities, which could have been seen as a pre-requirement to the application of CDD measures, was deleted. This deficiency has been addressed.

R.12 (Deficiency 18): The identification and verification of the beneficial owner is not systematic.

Article 8b paragraph 4 of the Act on Attorney and Article 36b paragraph 4 of the Notary Act were amended and now provide the verification of the identity of the beneficial owner. It should be noted that the provision of the new articles may be somewhat confusing as the first provides for the obligation to verify the beneficial owner, while in the next sentence it refers to the identification of the client. This deficiency appears to have been addressed.

R.12 (Deficiency 19): Absence of enhanced due diligence required for higher risk customers.

R.12 (Deficiency 20): No requirement to pay special attention to all complex and unusual transactions.

With respect to these two deficiencies, Austria reported that amendments were made to Article 8b paragraph 6 of the Act on Attorney and Article 36b paragraph 6 of the Notary Act. However, the enhanced due diligence is limited to "the event that the party or beneficial owner has its company address or residence in a [high risk] country". Lawyers and notaries are also required to "pay special attention to particularly complex or those business relations and business operations, which intend the carrying out of particularly complex or due to their construction unusual transactions". However, the obligation is limited to paying special attention to certain transactions, which is too

narrow to address all aspects of Recommendation 11. Both deficiencies seem to have only partly been addressed.

R.12 (Deficiency 21): Extent of the CDD requirements is limited by the wide definition of the legal privilege.

With respect to the legal privilege, Austria made reference to the decision of the Supreme Court which sets the limits of the legal privilege (see also Rec.3 above). This deficiency appears to have been addressed.

R.12 (Deficiency 22): Effective implementation limited by the absence of guidance for lawyers.

Austria advised that a guidance paper was published on 1 July 2011 and that existing guidance for notaries were updated and published in 2011 and 2012. This deficiency has been addressed.

Accountants:

R.12 (Deficiency 23): Scope of the CDD requirements unclear for accountants regulated by the WT-ARL.

R.12 (Deficiency 24): Limitation of the general CDD requirements due to a reference to risk.

R.12 (Deficiency 25): The identification and verification of the beneficial owner is not systematic.

Austria reported with respect to three deficiencies above that the provisions which were criticised in the Mutual Evaluation Report were deleted in the relevant legislation and that the scope of CDD is clearly defined in Articles 98a paragraph 2 and 98b of the Act on the Profession of Chartered Public Accountants and Tax Consultants (WTBG). A comprehensive definition of the term "beneficial owner" is included in Article 98b para 2 WTBG. These deficiencies appear to have been addressed.

R.12 (Deficiency 26): Extent of the CDD requirements is limited by the wide definition of the legal privilege.

With respect to the legal privilege, Austria made reference to the decision of the Supreme Court which sets the limits of the legal privilege (see also Rec.3 above). This deficiency appears to have been addressed.

R.12 (Deficiency 27): Weaknesses of the simplified CDD framework.

The CDD exemptions in Article 98c of the WTBG and Article 79c of the Accountancy Act were abrogated; the Articles now provide for simpler due diligence only in case of a proven low ML/TF risk situation. This deficiency has been addressed.

R.12 (Deficiency 28): No requirement to keep written findings of the examination of complex and unusual transactions.

Article 98b paragraph 1 no. 8 of the WTBG was amended as follows: "paying greater and special attention to any activities and transactions which are particularly likely, by their nature, to be related to money laundering or terrorist financing, in particular complex or unusually large transactions as well as all unusual patterns of transactions which have no apparent economic or visible lawful purpose". In such cases there is the requirement "to examine, as far as possible, the background and purpose of such transactions and record the findings in writing and keep such findings available for competent authorities". This new provisions therefore addresses all elements of Recommendation 11. This deficiency has been addressed.

R.12 (Deficiency 29): Lack of effective implementation of the CDD requirements.

Austria did not report any progress.

RECOMMENDATION 12, OVERALL CONCLUSION

As R.12 is a composite one and covers several different economic sectors, it should be noted that the progress in each of them appears to be uneven. The most notable progress should be pointed out with regard to the sectors of Real estate agents, Dealers and TCSPs where all technical deficiencies were addressed. A similar level of improvements should be noted for the profession of accountants. In the sector of lawyers and notaries, the progress has also been quite noticeable, though not as strong compared with the previous ones. The least amount of progress has been demonstrated in the casinos sector; however, the amendments introduced seem to be going in the right direction. Despite the lack of precise information on the relative size and importance of each of those sectors, and therefore their relative impact on the overall level of compliance with R.12, it can be nevertheless concluded that the progress achieved can be deemed sufficient to consider the compliance at a level equivalent to LC.

RECOMMENDATION 15 (PC)

R.15 (Deficiency 1): No ad hoc provision in law, regulation or other enforceable means giving the compliance office right to access CDD data and information, transaction records and other relevant information.

R.15 (Deficiency 2): Lack of specific provisions establishing that the compliance officer is a management position.

Article 41 paragraph 4 no. 6 of the Banking Act was amended and now provides that the special officer designated to ensure compliance with the AML/CFT obligations reports directly to directors and has "must have unlimited access to all information, data, records and systems in any possible relation to ML/TF as well as adequate competences". The internal organisation of credit and financial institutions must permit the compliance office to fill in his/her duties at any time onsite. The same provisions apply for the securities market participants by virtue of the cross reference in the Article 12 paragraph 4 of the Securities Supervision Act. An identical provision was inserted in

the Insurance Supervision Act (Article 98h paragraph 1 no. 6). Both deficiencies appear to have been addressed.

R.15 (Deficiency 3): No requirement for domestic financial institutions to maintain an internal audit function.

The scope of Article 42 of the Banking Act, providing for the internal audit function within credit institutions was extended to financial institutions. This deficiency has been addressed.

R.15 (Deficiency 4): Insufficient integration of AML/CFT compliance into internal audit work for securities and insurance business.

Article 98h paragraph 1 no. 1 of the Insurance Supervision Act now refers to 'internal auditing' next to the obligations to establish policies and procedures on CDD, reporting, record keeping, compliance management, etc. in relation to ML and TF. Similar provisions were also incorporated into Securities Supervision Act by reference to the relevant applicable Articles in the Banking Act. This deficiency has been addressed.

R.15 (Deficiency 5): Inadequate staff screening requirements and practices.

See Recommendation 23 (second deficiency). No further element was reported with respect to improving the effectiveness of the implementation of the legislative changes. This deficiency seems to remain unaddressed.

RECOMMENDATION 15, OVERALL CONCLUSION

As it appears from the analysis above, Austria has reached a level of technical compliance with the Recommendation 15 equivalent to LC. However, the issue of inadequate staff screening requirements, including the compliance officer, still remains and could have negative impact of the effective implementation of the relevant provisions.

RECOMMENDATION 16 (PC)

All DNFBPs:

R.16 (Deficiency 1): Scope of STRs too narrow.

The respective wordings in the Gambling Law (by cross-reference to the BWG), Trade Act, Act on the Profession of Chartered Public Accountants, Accountancy Act, the Act on Attorneys and the Act on Notaries were amended in response to concerns about the scope of STR reporting (Art 25 para 6 GSpG, Art 365u and 365 n GewO, Art 98g para 1 WTBG, Art. 79g para 1 BiBuG, Art 8b para 6 RAO and Art 36b para 6 NO). See also Recommendation 13 above for additional explanation concerning the general context of reporting requirements (i.e. wordings of ML and TF offences) applicable in the case of DNFBPs. This deficiency appears to have been addressed.

R.16 (Deficiency 2): Effectiveness questions raised by the extremely low level of STRs.

Austria advised that in order to increase effectiveness, the FMA circular on suspicious transactions report was distributed to trade authorities and that guidance were issued for professionals regulated by the Trade Act. The Ministry of Economy also regularly organises trainings and workshops.

Statistics provided by Austria also show an increase of the total number of suspicious transactions reported to the FIU, in particular, by notaries and lawyers. For other businesses and professions, a peak was observed in 2008/2009, but overall the number of STRs reported, in particular by casinos, real estate agents and TCSPs remain very low.

Table 7: **STRs reported to the FIU between 2008-2012**

	2008	2009	2010	2011	2012
Casinos	0	0	0	2	3
Lawyers	6	8	12	8	9
Notaries	3	15	6	1	3
Accountants	1	5	5	1	2
Real Estate Agents	3	0	2	0	0
Dealers	8	5	3	4	14
TCSPs	4	1	0	0	0
DNFBPs (total)	**25**	**34**	**28**	**16**	**31**

R.16 (Deficiency 3): No requirements to give special attention to business relationships and transactions with persons from countries insufficiently applying the FATF Recommendations.

For casinos: Article 25 paragraph 6 of the Gambling Act was amended and now refers to the provisions of the Banking Act. See R.21 below.

For TCSPs: Austria relies on the provisions of Article 365s paragraph 5 of the Trade Act which empowers the Ministry of Economy to issue ordinances on high risk customers, transactions and business relationships and Article 365t which requires professionals to pay special attention to transactions regarded as likely to be related to ML/TF activities. See also R.21 below.

Overall, this deficiency appears to have been addressed.

Casinos:

R.16 (Deficiency 4): No requirements for internet casinos.

As already described above, Article 12a of the Gambling Act extends all requirements provided for casinos to electronic lotteries. This deficiency appears to have been addressed.

Real estate agents, dealers and TCSPs:

R.16 (Deficiency 5): Absence of effective coverage of TCSPs.

This deficiency seems to be addressed. See Recommendation 12 above.

Lawyers and notaries:

R.16 (Deficiency 6): Scope of the legal privilege severely limiting the requirement to report STRs.

This concern seems to have been addressed by explanation provided in R.3 (see above).

Accountants

R.16 (Deficiency 7): Scope of the legal privilege severely limiting the requirement to report STRs.

This concern seems to have been addressed by explanation provided in R.3 (see above).

RECOMMENDATION 16, OVERALL CONCLUSION

As most of the technical deficiencies seem to be addressed, it can be concluded that the level of compliance with R.16 is equivalent to LC.

RECOMMENDATION 17 (PC)

R.17 (Deficiency 1): Sanctions not sufficiently proportionate and dissuasive.

Austria only partly addressed this deficiency by extending the sanctions applicable to senior management under Articles 98 and 99 of the Banking Act (see Deficiency 2 below). However, no information was provided concerning measures applicable under Article 70 of the Banking Act) where sanctions seem to remain low.

R.17 (Deficiency 2): No sanctions for senior management besides sanctions for criminal liability.

A new paragraph was added to Articles 98 and Article 99 of the Banking Act (Article 98 paragraph 5 and Article 99 paragraph 2); they provide for sanctions applicable to persons responsible for credit and financial institutions who fail, by negligence, to comply with the AML/CFT obligation set forth in Articles 40 and 41 of the Banking Act. Sanctions available are up to six weeks of imprisonment or a fine up to EUR 150 000.

Similar provisions were inserted to the Insurance Supervision Act (Article 108a paragraph 3), the Securities Supervision Act (Art. 95 para 10) and Stock Exchange Act (Art. 48 para 6).

Overall, the deficiency appears to have been addressed.

R.17 (Deficiency 3): Limited effectiveness.

Though Austria reported that the FMA conducted 44 administrative penal proceedings in 2011, and 34 in 2012, no information was given as to the nature and extent of sanctions applied as a result.

RECOMMENDATION 17, OVERALL CONCLUSION

Austrian authorities addressed one of the most important aspects regarding technical compliance, namely, by introducing substantial monetary penalties applicable to senior management, which is expected to have positive effect on the overall level of compliance in the financial sector. Therefore, the level of technical compliance with the R.17 could be considered as equivalent to LC. However, applying those measures in practice has yet to be seen as a measure of their effectiveness.

RECOMMENDATION 21 (PC)

R.21 (Deficiency 1): No specific requirement in law, regulation or other enforceable means to pay special attention to business relationships and transactions with persons from countries which do not or insufficiently apply the FATF Recommendations.

R.21 (Deficiency 2): No explicit requirement in laws, regulations or other enforceable means to examine as far as possible the background and purpose of transactions with persons from those countries, which have no apparent economic or visible lawful purpose, to set forth and keep findings.

As described above under Recommendation 11, the provisions of Article 41 paragraph 1 of the Banking Act were modified and now clearly refers to "countries implicating, according to information obtained from a reliable source, a higher risk of money laundering or terrorist financing (Article 40b paragraph 1)". Article 40b paragraph 1 empowers the FMA to issue regulations on situations presenting higher ML/TF risks. On this basis, the FMA issued a regulation listing high risk countries based on the FATF ICRG process.

Similar changes were made to Article 98f paragraph 1 of the Insurance Supervision Act, Art. 6 and Art. 12 paragraph 4 of the Securities Supervision Act and Articles 365s paragraph 5 and 365t of the Trade Act.

Concerning the other aspects of the deficiencies (*i.e.*, examine the background and purpose of the transaction, set forth findings in writing, findings recording and availability for at least five years), see R.11 above.

Overall, both deficiencies appear to have been addressed.

RECOMMENDATION 21, OVERALL CONCLUSION

As it appears from the analysis above, Austria has reached the level of technical compliance equivalent to LC rating in respect of Recommendation 21.

RECOMMENDATION 24 (PC)

R.24 (Deficiency 1): Absence of adequate powers to perform supervision of internet casinos.

The amendment of Art 12a GSpG has expanded the application of AML/CFT provisions to electronic lotteries. Therefore, any licensee is now subject to the same AML/CFT supervision regime as land-based casinos according to Articles 25 paragraphs 6 and 8 as well as Article 25a of the Gambling Act. However, no information has been provided as to the measures taken to implement those provisions. This deficiency seems not to have been addressed.

R.24 (Deficiency 2): Absence of power to control the beneficial owner of a significant or controlling interest in casinos, and to prevent actions by associates of criminals.

Austria reiterated its arguments set out in the 2009 MER; however, no new measures were taken to address this deficiency. Therefore, the Secretariat is not in a position to challenge the conclusions of the MER. This deficiency remains unaddressed.

R.24 (Deficiency 3): Absence of systems for monitoring and ensuring compliance with AML/CFT requirements for accountants and all the companies active in the TCSP sector.

R.24 (Deficiency 4): Lack of effectiveness and resources to implement the measures envisaged in the GewO.

With respect to the two deficiencies above, Austria reported that measures to enhance supervision of TCSPs are ongoing. These measures are the issuance of guidance, the organisation of trainings and the compilation of comprehensive statistics. These measures are certainly useful; however, they do not fully address the deficiencies.

R.24 (Deficiency 5): Inadequate sanctioning powers.

The Mutual Evaluation Report criticised the amount of the fines permissible under the Trade Act. Article 366b of the Trade Act was amended and the amount of the fines for administrative fines was increased to EUR 30 000 for failure to comply with the reporting obligation and to EUR 20 000 for failure to comply with other AML/CFT obligations of the Trade Act. In principle, this deficiency has been addressed.

RECOMMENDATION 24, OVERALL CONCLUSION

Although some steps have been taken to address the deficiencies under R.24, they do not seem to be sufficient to consider the level of compliance as equivalent to LC.

RECOMMENDATION 32 (PC)

R.32 (Deficiency 1): No statistics available on the number of extraditions.

R.32 (Deficiency 2): Insufficient statistics on information exchange between supervisory authorities.

R.32 (Deficiency 3): No data about domestic financial institutions' supervision.

R.32 (Deficiency 4): Lack of data on MLA.

On Recommendation 32, Austria reported that the FMA work plan acknowledged the need to obtain more statistical data. Besides, the Austrian authorities advised that the Ministry of Justice launched an initiative on improved documentation of MLA in the electronic registers (see Recommendation 36 above for details). No other information was provided in that regard. Therefore, the deficiencies remain unaddressed.

RECOMMENDATION 32, OVERALL CONCLUSION

The statistical information appears to be still very limited in the areas identified during the mutual evaluation, though certain steps have been undertaken to address those issues. It is nevertheless difficult to justify a rating other than PC in this case.

RECOMMENDATION 33 (PC)

R.33 (Deficiency 1): Insufficient capacity to ascertain beneficial ownership in the case of companies that issue bearer shares and, in some instance, in the case of private foundations.

R.34 (Deficiency 2): Competent authorities not always able to able or access to adequate, accurate and current information on beneficial ownership and control of legal persons in a timely fashion.

As described under R.23 above, according to the new legislation that entered into force in July 2011, all stock companies were required to convert bearer shares by the end of December 2013. Moreover, the legislation prohibits issuance of bearer shares from the date of its entry into force. An exception from this provision was made with regard to listed companies, which are permitted to issue bearer shares. However, in order to ensure transparency it is now provided that shares may not be issued separately but only in a global certificate that must be kept by the Central Depository which is the Österreichische Kontrollbank. All share transactions can thus be traced back through the relevant bank account movements ("de-materialization of bearer shares").

In addition to that, by virtue of Article 61 paragraph 1 of the Stock Company Act, stock companies are now required to maintain a register of shareholders, which contain the name, address, date of birth, commercial registry number, number of shares and account number opened in the name of a shareholder. According to the number 4 of the said provision, if shares are owned by a different person than that was entered in the share register, the same identification data are also needed for such other person, unless the shareholder is a financial institution.

With respect to private foundations, Article 5 of the Act on Private Foundations was amended and now provides for an obligation to disclose the beneficiaries who are not indicated in the deed or

appendix declaration to the tax authorities by 30 June 2011. Violation of this obligation is punishable of a fine of EUR 20 000. In addition, non-disclosure will also exclude the foundation from the favourable tax regime for foundations, and a report to the FIU will be filed by the local tax authority.

Overall, both deficiencies (at least as far as the technical compliance aspect is concerned) appear to have been addressed.

R.33 (Deficiency 3): No risk assessment undertaken by the authorities to ascertain the risk of ML/TF in the case of joint stock companies which have issued bearer shares, nor in the case of foundations, where the founding deed does not indicate the name of the beneficiaries.

While no formal risk assessment has been undertaken, the limitations introduced on bearer shares as well as the obligation to provide names of beneficiaries not listed in the founding deed are expected to have a risk-reducing effect. This deficiency seems to have been addressed.

RECOMMENDATION 33, OVERALL CONCLUSION

Although no information was provided on the effectiveness of the new measures, overall it can be concluded that Austria has reached the level of technical compliance equivalent to LC.

RECOMMENDATION 34 (PC)

R.34 (Deficiency 1): No transparency where the property held in Treuhand is composed of assets other than funds (regardless of the Treuhänder); where the Treuhänder is someone other than a lawyer, notary or registered TSP; where funds held under Treuhand by lawyers amount to less than the federal state threshold (i.e., between EUR 15 000 and EUR 40 000).

R.34 (Deficiency 2): No transparency over foreign trusts operated from Austria.

R.34 (Deficiency 3): No effective AML/CFT oversight to ensure TSPs properly obtain, verify and record details of the Treuhand and its beneficial ownership.

R.34 (Deficiency 4): No effective means by which bodies charged with the oversight of TSPs for AML/CFT purposes can share information with their national or foreign counterparts.

With respect to R.34, Austria reported that the Ministry of Economy, Family and Youth has undertaken measures/actions such as guidance, training and enhanced statistics and that a guidance for professions regulated by the Trade Act was published in 2011 and related training organised. In Tyrol 67 of these professionals were inspected over the first semester of 2012. Finally, Austria advised that international cooperation is possible at the Ministry level. Nevertheless, the deficiencies identified in the MER do not seem to have been addressed.

RECOMMENDATION 34, OVERALL CONCLUSION

It appears that the measures taken so far with respect to R.34 are quite limited and are not sufficient enough to consider the technical compliance at LC level.

RECOMMENDATION 38 (PC)

R.38 (Deficiency 1): Strict requirements to lift banking secrecy and extensive of legal privilege slow down effective cooperation.

See R.4 and R.3 for measures taken to address the concerns about banking secrecy and legal privilege. In this light, the deficiency appears to have been addressed.

R.38 (Deficiency 2): Deficiencies noted under Recommendation 1 (absence of criminalisation of self-laundering and incomplete list of predicates) narrow the scope of MLA that Austria may grant.

Self-laundering was introduced into Criminal Code (by amendments to Article 165) effective as of 1 July 2010. The range of predicate offences was also expanded (see R.13 above). The deficiency has been addressed.

R.38 (Deficiency 3): No arrangements concluded for seizure and confiscation actions with other countries.

Austria did not report any progress, but advised that existing provisions of the Law on Extradition and Mutual Legal Assistance allow the execution of foreign seizure and confiscation.

R.38 (Deficiency 4): No consideration given to sharing of confiscated assets with countries other than EU members and the United States.

Austria did not report any progress, but advised that no case occurred.

R.38 (Deficiency 5): Effectiveness not established.

Austria did not report any progress.

RECOMMENDATION 38, OVERALL CONCLUSION

Overall, on the technical compliance side, it can be concluded that Austria has reached the level equivalent to LC.

SPECIAL RECOMMENDATION VIII (PC)

SR VIII (Deficiency 1): NPOs operating under the legal form of private foundations are not required to make information on the identity of persons who own, control or direct their activities publicly available.

As described under R.33, the Act on Private Foundations was amended and an obligation to disclose the identity of the beneficiaries introduced. It is however unclear whether all beneficiaries are also the persons who own, control or direct the activities of an NPO. Moreover, the disclosure should be made to the tax authorities, not to the public. This deficiency does not appear to have been addressed.

SR VIII (Deficiency 2): NPOs are not adequately required to maintain and make available to appropriate authorities records of domestic and international transactions that are sufficiently detailed.

Austria did not report any progress.

SR VIII (Deficiency 3): Insufficient outreach exercise.

Austria advised that outreach seminars are organised on a regular basis; however, it seems that the most recent took place in March 2011.

SPECIAL RECOMMENDATION VIII, OVERALL CONCLUSION

Based on the information provided by Austria, it appears that the progress made so far is not sufficient to consider the level of compliance as equivalent to LC.

SPECIAL RECOMMENDATION IX (PC)

SR IX (Deficiency 1): Exception from the declaration/disclosure obligations for the municipalities of Jungholz and Mittelberg not in line with the requirements of SR IX.

SR IX (Deficiency 2): Lack of monitoring and checks of cross border transportation of cash into Jungholz and Mittelberg posing a serious risk of ML.

With respect to these two deficiencies Austria referred to the wording in the MER which recognised the EU as a supranational jurisdiction for the purposes of SR IX. Nevertheless, even in the light of this statement, the Plenary decided that it was not enough to consider the rating at an LC level. Since Austria did not report any progress with respect to these deficiencies, the Secretariat is not in a position to challenge the judgements of the Plenary. Therefore, these two deficiencies remain unaddressed.

SR IX (Deficiency 3): Implementation of the declaration/disclosure requirements not effective.

Austria reported the following measures: (i) a database on cash controls and declarations was established; (ii) an MoU, allowing the communication of personal data obtained in the context of cash controls, as well as additional data of interest to the FIU, such as the nature of concealment used in specific cases, to the FIU, was concluded with the Ministry of Finances; (iii) the Customs Law was amended in order to clarify that those data should be reported to the FIU only; (iv) the Decree on the application of the existing legal provisions was updated; and (v) fines for to disclose cross-border cash transportation were increased to EUR 100 000 in case of intentional non-disclosure and to EUR 10 000 in case of negligence.

Austria also provided updated statistics on cash controls.

Table 8: **Cash controls between 2009 -2012**

	2009	2010	2011	2012
Declarations (number)	2 647	3 606	4 068	4597
Total sum (EUR Mio.)	3 462	3 685	6 845	6 267
Non-declared (number)	83	233	194	132
Sum (non-declared, EUR Mio.)	3,42	10,55	6,41	4,3

SPECIAL RECOMMENDATION IX, OVERALL CONCLUSION

The two main technical deficiencies as identified in the MER do not seem to have been addressed. Austria has provided information that appears to indicate increasing effectiveness. Given the fact that this is a desk-based review, effectiveness cannot be verified or taken into account in looking at progress on reaching equivalence with an LC rating. Therefore, the rating the level of compliance should be judged as remaining at the level noted in the original mutual evaluation report.