

# Mutual Evaluation Report Executive Summary

Anti-Money Laundering and Combating the  
Financing of Terrorism

## Germany

19 February 2010

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## EXECUTIVE SUMMARY

### Background information

1. This report summarises the anti-money laundering and counter-terrorist financing measures (AML/CFT) that were in place in Germany at the time of the on-site visit (15 May – 5 June 2009) and immediately thereafter. It describes and analyses these measures and offers recommendations on how to strengthen certain aspects of the system. It also assesses Germany's level of compliance with the 40+9 Recommendations of the Financial Action Task Force (FATF). See as well the table of ratings of compliance with the FATF Recommendations, below.

### Key Findings

2. **Germany has introduced a number of measures in recent years to strengthen its anti-money laundering and combating the financing of terrorism (AML/CFT) regime.** Germany has generated a relatively large number of prosecutions for money laundering (ML) and of orders to confiscate assets. These achievements occurred even though Germany has shortcomings identified in this assessment against the Financial Action Task Force (FATF) 40+ 9 Recommendations.

3. **Many indicators suggest that Germany is susceptible to ML and terrorist financing (TF) including because of its large economy and financial centre, as well as its strategic location in Europe and its strong international linkages.** Substantial proceeds of crime are generated in Germany, presently estimated to be EUR 40 to EUR 60 billion (approximately USD 60–80 billion), inclusive of tax evasion, annually. Terrorists have carried out terrorist acts in Germany and in other nations after being based in Germany. Germany is also estimated to have a large informal sector (> EUR 400 billion or > EUR 560 billion) and the use of cash is reportedly high. Germany's currency is the Euro (€), which is used widely across Europe, thus making it attractive to organized criminals and tax evaders. Key factors that may reduce Germany's risk profile for ML include its strong legal tradition, the rule of law, its political environment, and having an effective single financial regulator.

4. **The core elements of Germany's AML/CFT regime are established in the German Criminal Code (CC), which contains the ML and TF offenses; the Money Laundering Act (AML Act); and the sector-specific laws such as the Banking Act.** The AML Act established Germany's financial intelligence unit (FIU) within the Federal Criminal Police Office (BKA), imposes customer due diligence (CDD) obligations on a wide range of financial institutions (FIs), and requires these FIs to submit suspicious transaction reports (STRs) to the competent authorities. The Act was most recently amended in

August 2008, when Germany transposed the third European Union (EU) Money Laundering Directive,<sup>1</sup> and its Implementing Directive,<sup>2</sup> into national law.

5. **The AML/CFT framework is not fully in line with the FATF Recommendations.** There are weaknesses in the legal framework and in sanctioning for non-compliance with AML/CFT requirements. The recommendations to address these include:

- amending the CC to: criminalize (i) ML in a way that covers all serious predicate offenses, and (ii) TF in a way fully consistent with international standards;
- amending the AML Act to: (i) improve preventive measures notably by imposing a reporting obligation based on suspicion rather than knowledge and that relates to the proceeds of criminal activity; and (ii) clearly establish that the FIU should carry out more of the core functions of an FIU as contemplated by the FATF standard;
- fully and effectively implementing the UN Security Council Resolutions (UNSCRs) on TF;
- applying sanctioning powers more effectively for breaches of AML/CFT obligations;
- strengthening the effective implementation of AML/CFT obligations imposed on designated non-financial businesses and professions (DNFBPs); and
- improving the collection of statistics and the provision of guidance and feedback to FIs.

#### Legal Systems and Related Institutional Measures

6. **The principal AML provisions of the CC are largely consistent with the FATF standard but there are some technical deficiencies.** In particular, two of the FATF designated categories of offenses are not predicates for ML, and the ML offense itself cannot be applied to persons convicted of a predicate offense (without the assessors being convinced that this was justified by fundamental principles of German law). In addition, legal persons are not subject to criminal liability due to fundamental principles of German law, although those involved in a ML criminal offense, may be subject to administrative fines imposed by the criminal courts.

7. **Germany's criminal justice system appears to achieve effective outcomes for dealing with profit motivated crimes; however, the ML offense is not the primary tool used for this purpose.** German courts obtain more than 300 ML convictions yearly, but many are for less serious ML conduct. Serious ML conduct (for example, involving organized crime) is usually pursued via predicate offenses that carry more severe sanctions than the ML offense. The high burden of proof required to show that proceeds relate to a predicate crime and the inability to convict for ML, persons convicted of the predicate, are also reasons cited for not pursuing the ML offense.

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<sup>1</sup> Directive 2005/60/EC of the European Parliament and of the Council October 26, 2005 on the prevention of the use of the financial system for the purposes of money laundering and terrorist financing (third EU Directive).

<sup>2</sup> Commission Directive 2006/70/EC of August 1, 2006.

8. **In August 2009, Germany enhanced its CFT requirements by criminalizing the financing of terrorist acts and individual terrorists but technical deficiencies still remain.** The financing of terrorist organizations was already criminalized and all three CTF offenses are predicates for ML. However, they are not fully consistent with the FATF standard, because, *inter alia*, they do not cover all offenses designated under the UN TF Convention; a “terrorist act” does not cover serious bodily injuries; and “funds” must, in some cases, be “not merely insubstantial”. Poor statistics meant that effective implementation of TF offenses could not be established.

9. **German authorities regularly use a broad range of legal procedures to seize, confiscate, and forfeit property but they confiscate and forfeit a lot less property than the Courts issue orders for.** The procedures apply to all criminal offenses, including ML and TF, and to property that is used or intended to be used for carrying out offenses. The way that professional secrecy is interpreted by some professions is a limitation on the ability of law enforcement authorities (LEAs) to locate and trace property.

10. **Terrorist funds or other assets may be frozen, without delay, largely in line with relevant UNSCRs.** However, some requirements to freeze do not apply to all EU-residents, and, some apply, as far as certain EU-residents are concerned, only to funds, not other assets.

11. **The AML Act requires reporting entities to submit STRs to the relevant *Land* police or prosecutorial body with a copy to the FIU, which is the national centre for receiving STRs.** The reporting system has been structured this way because, under the German Constitution, states (*Länder*) are responsible for policing and law enforcement. The FIU’s mandate includes supporting the Federal and *Länder* LEAs in the prevention and prosecution of ML and TF.

12. **In practice, the processing and analysis of STRs is split between the *Länder* LEAs and the FIU, with the FIU carrying out only limited case-specific analysis.** The *Land* recipient of the STR establishes whether there are grounds to undertake a full investigation. The FIU contributes modestly to this process, with *Länder* police and prosecutorial officials valuing mainly its access to information from foreign FIUs. The FIU checks STRs against its own database of all previous STRs and searches other BKA databases. It is solely responsible for requesting or exchanging information with foreign FIUs. Information yielded by these processes is forwarded to the *Land* LEA that received the STR. The FIU does not, as such, disseminate disclosures of STRs concerning suspected ML or FT activities to the investigative bodies.

13. **The FIU focuses its analytic work on the elaboration of patterns and trends, which it disseminates to reporting entities and investigative bodies.** It maintains statistics on a range of ML and TF matters, publishes an annual report and other documents, and informs reporting entities and LEAs of ML and TF typologies and methods. Overall, while the FIU discharges its legal mandate, it does not carry out fully all the FIU functions required under the standard.

14. **LEAs have powers necessary to carry out their ML and TF investigations, and are generally effective.** The authorities that investigate and prosecute ML are mainly the *Länder* police and prosecutors, and for TF also the BKA. For ML, they generally favour pursuing predicate offenses due to the nature of the ML offense.

15. **Germany has two, largely effective, regimes in place to monitor cross-border physical transportation of currency and negotiable instruments of EUR 10 000 or more.** One applies to movements between Germany and non-EU countries and requires travellers to complete a declaration; and

the other applies to movements within the EU and requires travellers to disclose information if asked. The Customs Administration implements both regimes, has broad powers, and operates using a risk-based approach. Data from the regimes are, in practice, accessible by Customs, some *Länder* LEAs, and the BKA, including the FIU; however, much of the data are stored for one year only, considerably diminishing its utility for identifying cash couriers, trends, or typologies. More needs to be done to inform travellers entering the EU through German airports of their declaration obligation.

### **Preventive Measures—Financial Institutions**

16. **The AML Act applies CDD and record-keeping requirements to credit institutions, financial services institutions, financial enterprises, insurance companies, insurance intermediaries and investment companies, as well as a broad range of non-financial sector persons or entities.** The scope of the activities of all these entities covers the vast majority of the financial activities listed under the FATF standard. The amendments of the AML Act in 2008 strengthened the existing requirements and explicitly introduced a risk-based approach to the implementation of CDD measures (although some elements of that approach were already in place). The preventive measures apply equally to all persons and entities subject to the Act. Additional CDD provisions have also been laid out in sector-specific laws.

17. **Notwithstanding the generally adequate framework of preventive measures, the structure of the measures in specific areas is problematic.** These include: the very broad CDD exemptions granted with respect to specified “low risk” customers, which appear to conflict with some basic monitoring and record-keeping obligations; the treatment of all the EU and European Economic Area (EEA) member states and jurisdictions on the EU’s third country equivalence list as a single risk category when determining certain low risk scenarios; the treatment of the EU/EEA as a single domestic market in terms of correspondent banking obligations; and the concept of what constitutes “senior management” in relation to the approvals processes for politically exposed persons (PEPs) and correspondent banking relationships.

18. **One area of particular concern is the verification of beneficial ownership** (including the determination of whether a customer is a PEP). The measures in place do not fully conform to the FATF standard; and there appears to be a wide variety of interpretations amongst individual institutions of what is required. The BaFin issued a circular clarifying some aspects of the expected approach in July 2009, and this may assist for the future.

19. **Institutions generally retain records for ten years pursuant to commercial law requirements, but may have inadequate records on low-risk customers.** Institutions are exempted from several key CDD components in low-risk situations, thereby bringing into question what information they would record and have available for the authorities about low-risk customers.

20. **Institutions implement effectively EU Regulation 1781/2006 on wire transfers which meets the requirements of the FATF standard.**

21. **The statutory provisions relating to the monitoring of transactions, including transactions with persons in countries that do not or insufficiently apply the FATF standard are generally weak,** but specific guidance has been provided to institutions in the form of the BaFin circulars, which highlight weaknesses in the AML/CFT regimes of other countries, typically (but not exclusively) in line with the public statements made by the FATF.

22. **STR reporting is well established, but the reporting obligation fails to meet the FATF standard in several key areas.** The “evidential” basis upon which STRs are to be filed is significantly higher than the FATF concept of “suspects or has reasonable grounds to suspect”. The linkage of the obligation to the ML or TF offenses also sets a more restricted trigger for reporting than is envisaged by FATF with the “proceeds of criminal activity”. Moreover, filing the reports directly with *Länder* LEAs means that STRs are treated as criminal complaints. In addition, certain limitations in the range and definitions of the predicate offenses narrow further the scope of the reporting obligation. Overall, these factors discourage reporting and result in comparatively fewer STRs being filed in Germany than in other countries, thus denying the FIU and LEAs access to a wider intelligence base.

23. **Some internal control requirements are in place, but these need to be improved and implemented more effectively by financial institutions.** These requirements do not apply to the more than 72 000 insurance intermediaries. The legislative requirements for the role of compliance officers need to be broadened and the officers’ oversight responsibilities strengthened. The obligation to train staff is limited and there is no obligation for FIs to put in place screening procedures to ensure high standards when hiring them.

24. **Shell banks are effectively prohibited from operating in Germany.** German banks and insurers operating outside Germany are subject to an obligation to implement AML/CFT measures at least equivalent to German requirements. However, there are no explicit provisions requiring attention to equivalency in EU and EEA states that do not or insufficiently apply the FATF Recommendations. Germany prohibits banking entities from operating in non EU or EEA countries where measures consistent with German requirements cannot be implemented. However, there are no obligations imposed at all regarding investment sector operations outside Germany, and German FIs are not required to pay attention to their operations in countries with weak AML/CFT regimes.

25. **The BaFin is responsible for most FI supervision in Germany, has adequate AML/CFT supervisory powers, and uses a risk-based approach for its supervision.** The AML/CFT supervisory arrangements rely heavily on a statutory regime of annual external audits. At the time of the onsite visit the methodology for these audits had not been updated to reflect the 2008 AML Act, and there were some doubts about the quality of audit reports for some cooperative banks. Although the number of on-site inspections is low, significant risk-based off-site monitoring and analysis enables the auditors and the BaFin to focus on-site work on higher risk entities. Germany is moving to, but has not yet fully implemented, a system of private sector issued AML/CFT guidance approved by the BaFin. The BaFin abrogated most of its previous guidance as a result of the new AML Act, but nonetheless states that it continues to apply supervisory principles set out in the abrogated guidance when those principles are in line with the new laws and the private sector guidance. This has caused confusion in parts of the financial sector. *Länder* authorities seem generally unfamiliar with their AML/CFT supervisory responsibilities for insurance intermediaries and apply insufficient resources to supervise them. Administrative fines are not available to sanction failure to comply with all AML/CFT requirements due to the constitutional principle of specificity. Moreover, the fines that are available are neither proportionate nor dissuasive, and are not applied effectively.

26. **The money or value transfer service (MVTs) sector is subject to AML/CFT requirements under the Banking Act and is supervised by the BaFin.** There are about 40 licensed MVTs operators in Germany.

## Preventive Measures—DNFBPs

27. **The AML Act imposes AML/CFT requirements on lawyers, patent attorneys, notaries, legal advisers, auditors, chartered accountants, tax advisers, tax agents, trust and company service providers (TCSPs), real estate agents, persons trading in goods, and gambling casinos, but implementation by these businesses and professions is uneven.** The requirements are essentially identical to those imposed on FIs. Supervisory arrangements have been established for most of these businesses and professions. There is no systematic implementation of AML/CFT measures by, or supervision of, real estate agents, independent TCSPs, dealers in precious metals and dealers in precious stones. The legal and accounting professions are generally familiar with their obligations but lack awareness of their ML and FT vulnerabilities. They are also subject to strict professional secrecy obligations which contribute to a low level of reporting of suspicious transactions and complicate cooperation with investigative authorities. Overall, the effectiveness of implementation in the DNFBP sector is difficult to ascertain.

## Legal Persons and Arrangements & Non-Profit Organizations

28. **The extent of information available on the ownership and control of German legal persons varies greatly by type of legal entity.** The main information sources are public registers, but they do not always include information on the beneficial ownership and control of the legal entities. The information available is considerably limited in the case of non-listed stock corporations that issue bearer shares, and is close to non-existent in the case of private foundations.

29. **The *Treuhand* is a commonly used legal arrangement in Germany but disclosure obligations in place are insufficient to ensure transparency of the beneficial ownership and control of such arrangements.**

30. **Germany prevents abuse of the non-profit organization (NPO) sector for TF purposes through (a) measures to ensure the transparency of the sector; and (b) targeted, intelligence-driven monitoring, surveillance, investigation and suppression of extremists and terrorist activities.** A formal review of the NPO sector has been undertaken. Legislative and regulatory provisions have been introduced to enhance responsibilities and oversight of NPOs. Enforcement actions have been taken under the new provisions. Outreach activities to promote awareness of TF vulnerabilities among NPOs have also been undertaken.

## National and International Cooperation

31. **The framework in place enables the provision of comprehensive and timely mutual legal assistance (MLA) and extradition.** While no material obstacles were identified in this area, assessors were unable to establish fully whether MLA is being provided in an effective manner due to the absence of statistics. However, Germany has a solid system in place for extradition and grants a high percentage of requests in a timely manner. In addition, the authorities appear to be providing a wide range of international administrative cooperation with their foreign counterparts except in relation to non-financial businesses and professions.

## Other Issues

32. **The BaFin operates an automated account access system, which is an efficient tool that complements AML/CFT efforts.** The system enables the BaFin, upon request, to provide certain authorities (including LEAs) with information about whether a particular person (natural or legal) has a bank or safe custody account with institutions operating in Germany.

**Table 1. Ratings of Compliance with FATF Recommendations**

The rating of compliance vis-à-vis the FATF 40+9 Recommendations is made according to the four levels of compliance mentioned in the AML/CFT assessment Methodology 2004 (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (N/A).

Forty Recommendations	Rating	Summary of factors underlying rating <sup>3</sup>
<b>Legal systems</b>		
1. ML offense	<b>PC</b>	<ul style="list-style-type: none"> <li>• “Counterfeiting and piracy of products”, and “insider trading and market manipulation” are not predicate offenses to ML.</li> <li>• The ML offense cannot be applied to persons who commit and are convicted for the predicate offense. The inability to do this is not supported by principles that amount to fundamental principles under the FATF standards.</li> <li>• Issues of effectiveness: <ul style="list-style-type: none"> <li>○ The comparatively low level of sanctions for the offense and the burden of proof required to establish that proceeds relate to a predicate crime encourage the use of charges other than ML to pursue serious and organized crime or situations of third party ML.</li> <li>○ The restriction on applying the ML offense to persons who are convicted of the predicate offense tends to result in ML investigations being dropped in favour of investigations into the predicate offense.</li> </ul> </li> </ul>
2. ML offense—mental element and corporate liability	<b>LC</b>	<ul style="list-style-type: none"> <li>• Natural and legal persons are not subject to effective, proportionate and dissuasive sanctions for basic ML.</li> <li>• Due to the lack of statistics, assessors could not determine that sanctions are applied effectively to legal persons.</li> </ul>
3. Confiscation and provisional measures	<b>LC</b>	<ul style="list-style-type: none"> <li>• Professional secrecy is interpreted broadly by the liberal professions, and there are strict conditions for obtaining or compelling information subject to it, which hinder the possibility for law enforcement authorities to locate and trace property.</li> <li>• Assets actually forfeited or confiscated are low compared to the total value of assets subjected to orders for forfeiture or confiscation.</li> </ul>
<b>Preventive measures</b>		
4. Secrecy laws consistent with the Recommendations	<b>C</b>	This Recommendation is fully observed.
5. Customer due diligence	<b>PC</b>	<ul style="list-style-type: none"> <li>• Reasonable measures to verify beneficial ownership are not required in all cases.</li> <li>• Definition of beneficial ownership of a trust is incomplete;</li> <li>• Broad exemptions from CDD given for “low risk” customers without apparent risk assessment.</li> <li>• “Low risk” exemptions result in absence, in certain circumstances, of any obligation (i) to undertake ongoing monitoring of transactions and (ii) to undertake CDD when doubts arise about the veracity of existing customer</li> </ul>

<sup>3</sup> These factors are only required to be set out when the rating is less than Compliant.

Forty Recommendations	Rating	Summary of factors underlying rating <sup>3</sup>
		<p>identification.</p> <ul style="list-style-type: none"> <li>No requirement to consider filing STR in case of failure to complete CDD.</li> <li>No clear evidence of the overall level of implementation due to relatively recent enactment of new obligations.</li> </ul>
6. Politically-exposed persons	<b>PC</b>	<ul style="list-style-type: none"> <li>No requirements with respect to PEPs when they are the beneficial owners of the contracting party.</li> <li>Provisions do not apply to foreign PEPs residing in Germany.</li> <li>Approval to commence or continue the business relationship is not specified to be at senior management level.</li> </ul>
7. Correspondent banking	<b>PC</b>	<ul style="list-style-type: none"> <li>Special measures apply only to non-EU correspondent relationships.</li> <li>Approval to commence the business relationship is not specified to be at senior management level.</li> </ul>
8. New technologies & non face-to-face business	<b>LC</b>	<ul style="list-style-type: none"> <li>No specific obligation to take measures to prevent the misuse of technological developments.</li> </ul>
9. Third parties and introducers	<b>LC</b>	<ul style="list-style-type: none"> <li>No national assessment of the suitability of the specified institutions and professions which may act as introducers.</li> </ul>
10. Record keeping	<b>LC</b>	<ul style="list-style-type: none"> <li>Uncertainty about what information would be acquired (and therefore retained) on “low risk” customers.</li> </ul>
11. Unusual transactions	<b>PC</b>	<ul style="list-style-type: none"> <li>Uncertainty about the ability of institutions to monitor statutory “low risk” customers effectively.</li> <li>No obligation to record and retain an analysis of transactions that have no apparent or visible economic or lawful purpose.</li> </ul>
12. DNFBP–R.5, 6, 8–11	<b>NC</b>	<ul style="list-style-type: none"> <li>No arrangements for casinos to link identification-on-entry data to individual transactions within the casino.</li> <li>Low awareness of CDD obligations and ML vulnerability among real estate agents and no oversight of compliance with CDD obligations of real estate agents and dealers in precious metals and precious stones.</li> <li>No arrangements to promote and ensure AML/CFT compliance by TCSPs.</li> <li>Inadequate awareness of ML and TF risk by casino operators, real estate agents, lawyers, notaries and auditors; underdeveloped risk assessment procedures.</li> <li>Registered legal advisers are not subject to professional secrecy, they should not be included in the carve-out for legal and professional privilege.</li> <li>No requirements for procedures to identify PEPs, or to consider filing an STR in cases where CDD cannot be completed, or to establish beneficial ownership in all cases.</li> <li>Professional secrecy provisions are interpreted broadly by the liberal professions, and pose a significant impediment to their ability to provide records as evidence for prosecution of a crime (as called for under c 10.1.1) or keep findings available for competent authorities (as called for under c. 11.3).</li> </ul>
13. Suspicious transaction reporting	<b>PC</b>	<ul style="list-style-type: none"> <li>Scope of reporting relates to ML only and not to proceeds of criminal activity.</li> <li>Threshold for reporting requires a high degree of certainty of an offense, and the report constitutes a criminal complaint.</li> </ul>

Forty Recommendations	Rating	Summary of factors underlying rating <sup>3</sup>
		<ul style="list-style-type: none"> <li>• Reporting obligation does not cover “insider dealing and market manipulation”, nor “counterfeiting and piracy of products” as these are not predicate offenses for ML.</li> <li>• Material deficiencies in the TF offense limit the reporting obligation.</li> <li>• High threshold for reporting creates the need for investigation which in turn makes prompt reporting of suspicions impracticable.</li> <li>• Low level of reporting suggests that not all aspects of the regime are working effectively.</li> </ul>
14. Protection & no tipping-off	<b>LC</b>	<ul style="list-style-type: none"> <li>• Tipping-off prohibition applies only to reports that have already been filed.</li> </ul>
15. Internal controls, compliance & audit	<b>PC</b>	<ul style="list-style-type: none"> <li>• The compliance officer measures do not apply to the insurance intermediaries sector.</li> <li>• No legal obligation to ensure that the compliance officer has timely access to relevant CDD information.</li> <li>• No obligation to provide training to staff other than those involved in dealing with customers or carrying out transactions.</li> <li>• No legal obligations imposed on financial institutions requiring them to put in place screening procedures to ensure high standards when hiring employees.</li> <li>• Application of measures across corporate groups is new and effectiveness could not be assessed.</li> </ul>
16. DNFBP–R.13–15 & 21	<b>NC</b>	<ul style="list-style-type: none"> <li>• No requirement to have compliance management arrangements.</li> <li>• Discretionary exemption of most professions from safeguards based on firm size but not risk of ML or TF.</li> <li>• No risk assessments to justify safeguards exemptions or simplified measures.</li> <li>• In absence of safeguards, no training requirement.</li> <li>• No requirement to screen to insure high standards when hiring.</li> <li>• No audit function for DNFBPs.</li> <li>• No specific requirement for casinos to have AML/CFT internal controls or to have an audit function.</li> <li>• No supervisory framework for real estate agents and dealers in precious metals and stones and, hence, no specific requirements for internal policies and controls and screening and audit.</li> <li>• Inadequate awareness of potential ML vulnerabilities contributing to underreporting.</li> <li>• Inadequate risk assessment procedures among professions, leading to inadequate monitoring and underreporting.</li> <li>• Broad carve-out for legal and professional privilege combined with strict professional secrecy requirements place significant impediments to STR reporting.</li> </ul>
17. Sanctions	<b>PC</b>	<ul style="list-style-type: none"> <li>• Administrative fines in place are not proportionate (very low number of administrative fines available under the AML Act) nor sufficiently dissuasive (more serious violations of the AML Act attract lower levels of administrative fines); and the maximum amounts of fines under the AML Act are low (especially considering the large size of many German financial institutions); and, due to the criminal nature of the penalties,</li> </ul>

Forty Recommendations	Rating	Summary of factors underlying rating <sup>3</sup>
		<p>high penalties can only be applied for gross negligence or deliberate intent).</p> <ul style="list-style-type: none"> <li>• Administrative fines are not applied effectively – the BaFin has only ever applied one administrative fine many years ago.</li> <li>• Due to the constitutional principle of specificity, there are no administrative fines for violations of obligations to establish appropriate internal safeguards under all sector-specific laws; and apply enhanced due diligence in specific additional circumstances listed in the Banking and Investment Acts.</li> <li>• Failure by the supervisory boards to comply with their obligation to supervise management may result in uncertainty as to whether administrative fines apply to individual members of such boards.</li> </ul>
18. Shell banks	<b>C</b>	<ul style="list-style-type: none"> <li>• This Recommendation is fully observed.</li> </ul>
19. Other forms of reporting	<b>C</b>	<ul style="list-style-type: none"> <li>• This Recommendation is fully observed.</li> </ul>
20. Other NFBP & secure transaction techniques	<b>C</b>	<ul style="list-style-type: none"> <li>• This recommendation is fully observed.</li> </ul>
21. Special attention for higher risk countries	<b>PC</b>	<ul style="list-style-type: none"> <li>• No explicit obligation to pay special attention to relationships and transactions involving countries with inadequate AML/CFT standards.</li> <li>• No obligation to record and retain an analysis of transactions that have no apparent or visible economic or lawful purpose.</li> </ul>
22. Foreign branches & subsidiaries	<b>LC</b>	<p>Scope limitations:</p> <ul style="list-style-type: none"> <li>• No measures which explicitly require financial institutions to pay particular attention to their branches and subsidiaries in EU or EEA member states that do not, or insufficiently, apply the FATF Recommendations</li> <li>• Obligation to notify authorities of inability to implement AML/CFT measures does not apply to EU or EEA financial institutions other than insurance undertakings.</li> </ul>
23. Regulation, supervision and monitoring	<b>LC</b>	<ul style="list-style-type: none"> <li>• Uncertainty about the legal basis for the BaFin's ability to apply fit and proper testing for members of supervisory boards of investment companies.</li> <li>• Lack of effectiveness in aspects of supervisory practice: <ul style="list-style-type: none"> <li>◦ Lack of effective sanctions for non-compliance with AML/CFT requirements.</li> <li>◦ Issues about uncertain quality of audit reports for some cooperative banks; AML/CFT auditing standard had not been updated.<sup>4</sup></li> <li>◦ <i>Länder</i> authorities seem unfamiliar with their AML supervisory responsibilities and appear to apply insufficient resources to supervise a large number of insurance intermediaries.</li> <li>◦ Fit and proper requirements for supervisory board members have not been applied to existing board members due to the newness of the requirements.</li> </ul> </li> </ul>
24. DNFBP—regulation, supervision and monitoring	<b>NC</b>	<ul style="list-style-type: none"> <li>• Inadequate supervisory authority and capacity with respect to oversight of real estate agents and persons trading in precious</li> </ul>

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Regulations were issued on November 26, 2009 to address this issue (albeit outside the 2 months timeframe mentioned in the FATF Handbook for countries and evaluators).

Forty Recommendations	Rating	Summary of factors underlying rating <sup>3</sup>
		<p>metals and stones.</p> <ul style="list-style-type: none"> <li>• Insufficient supervisory oversight of AML compliance by casino operators.</li> <li>• No authority for Chambers of Lawyers, Chamber of Patent Attorneys, and Chambers of Tax Advisors to conduct routine compliance monitoring of members.</li> <li>• Compliance monitoring and enforcement generally ineffective, including:</li> <li>• Lack of awareness of ML risks in casinos.</li> <li>• Risk assessments have not been developed by the competent authorities responsible for monitoring and ensuring compliance with AML/CFT requirements.</li> <li>• Insufficient resources and capacity for supervisors of real estate agents and dealers in precious metals and precious stones.</li> </ul>
25. Guidelines & Feedback	<b>PC</b>	<ul style="list-style-type: none"> <li>• Very poor specific feedback on STRs filed with the <i>Länder</i> authorities.</li> <li>• Uncertainty in some parts of the financial sector on the status of abrogated circulars.</li> <li>• New (replacement) private sector guidance (approved by the BaFin and the MoF) is limited in scope.</li> <li>• Lack of comprehensive guidance in place for the insurance intermediaries sector.</li> <li>• Guidelines for lawyers, auditors have not been updated, no guidelines for dealers in precious metals and stones and real estate agents.</li> </ul>
<b>Institutional and other measures</b>		
26. The FIU	<b>LC</b>	<ul style="list-style-type: none"> <li>• FIU is only one of many centres that receives, analyzes, and disseminates STRs and other relevant information concerning suspected ML or FT activities.</li> <li>• The FIU carries out limited case-specific analysis of STRs, and less than ten cases each year where that analysis is directed towards informing a decision about whether to disseminate information to domestic authorities for investigation on the basis that there are grounds to suspect ML or TF.</li> <li>• Overall effectiveness of the FIU function as expected under R.26 is or may be compromised by: <ul style="list-style-type: none"> <li>◦ Guidance to reporting entities on form and manner of reporting is not sufficiently strong and information is received and accepted in a variety of formats and through various channels.</li> <li>◦ Data in STR attachments sent to LEAs are not always available to the FIU for entry into the FIU database and thus not always available for analysis];</li> <li>◦ No information in FIU database about value of transactions in STRs.</li> <li>◦ No ongoing national coordination or management of tactical analysis of STR information.</li> <li>◦ Inability to produce statistics on STRs analyzed or disseminated or linked to a prosecution or conviction of ML and confiscation of proceeds.</li> </ul> </li> </ul>
27. Law enforcement	<b>LC</b>	<ul style="list-style-type: none"> <li>• The offense of ML is not being properly investigated. The focus</li> </ul>

Forty Recommendations	Rating	Summary of factors underlying rating <sup>3</sup>
authorities		<p>is placed on self launderers with few investigations conducted into more complex organized ML structures.</p> <ul style="list-style-type: none"> <li>The lack of complete statistics has prevented assessors from fully evaluating the effectiveness of this recommendation.</li> </ul>
28. Powers of competent authorities	<b>LC</b>	<ul style="list-style-type: none"> <li>The lack of complete statistics has prevented assessors from fully evaluating the effectiveness of this recommendation.</li> </ul>
29. Supervisors	<b>LC</b>	<ul style="list-style-type: none"> <li>Although the BaFin has adequate supervisory powers there are weaknesses in respect of the effective use of such powers in practice.</li> <li>Fit and proper requirements for supervisory board members have not been applied to existing board members due to the newness of the requirements.</li> </ul>
30. Resources, integrity, and training	<b>LC</b>	<ul style="list-style-type: none"> <li>The FIU function is inappropriately structured, with some FIU roles being carried out within the <i>Länder</i>.</li> <li>Assessors were not able to assess the adequacy of resources of <i>Länder</i> police involved in ML and TF.</li> <li>Inadequate resources for supervising insurance intermediaries and DNFBPs.</li> </ul>
31. National cooperation	<b>LC</b>	<ul style="list-style-type: none"> <li>No effective coordination with authorities responsible for DNFBPs.</li> <li>Policy co-ordination focuses primarily on FATF policy matters rather than developing policies and activities to combat ML and TF in Germany.</li> </ul>
32. Statistics	<b>PC</b>	<ul style="list-style-type: none"> <li>No evidence that overall reviews of effectiveness of the German AML/CFT system have been undertaken.</li> <li>Comprehensive annual statistics are not maintained, were not available, or both in relation to: <ul style="list-style-type: none"> <li>sanctions imposed for ML convictions;</li> <li>the number of STRs analysed or disseminated;</li> <li>the value of transactions associated with STRs;</li> <li>provisional measures;</li> <li>ML investigations;</li> <li>reports filed on international wire transfers;</li> <li>the amount of property confiscated broken down in relation to ML, TF, and other criminal proceeds;</li> <li>international co-operation;</li> <li>the structure, activities or both of the financial sector (including in relation to the number of foreign branches of domestic FIs), nor the DNFBP sector; and</li> <li>the exercise of supervisory powers in the DNFBP sector.</li> </ul> </li> </ul>
33. Legal persons–beneficial owners	<b>NC</b>	<ul style="list-style-type: none"> <li>No mechanisms in place to ensure in all cases access in a timely fashion to information on the control and beneficial ownership of legal entities other than publicly listed stock corporations.</li> <li>Complete lack of transparency over stock corporations that issue their shares in bearer form, and over private foundations.</li> <li>No risk assessment undertaken by the authorities to ascertain the risk of ML/FT in the case of joint stock companies which have issued bearer shares.</li> </ul>
34. Legal arrangements –	<b>NC</b>	<ul style="list-style-type: none"> <li>Insufficient measures in place to ensure transparency over</li> </ul>

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beneficial owners		<i>Treuhand.</i>
<b>International Cooperation</b>		
35. Conventions	<b>PC</b>	<p>Germany has not fully implemented the Palermo convention:</p> <ul style="list-style-type: none"> <li>• The ML offense cannot be applied to persons who commit and are convicted for the predicate offense. The inability to do this is not supported by principles that amount to fundamental principles under the FATF standards.</li> <li>• “Insider trading and market manipulation”, and “counterfeiting and piracy of products” are not predicate offenses to ML.</li> <li>• Natural and legal persons are not subject to effective, proportionate and dissuasive sanctions.</li> </ul>
36. Mutual legal assistance (MLA)	<b>LC</b>	<ul style="list-style-type: none"> <li>• Ability to cooperate may be limited by the deficiencies in the ML offense in certain, likely limited, circumstances.</li> <li>• Professional secrecy is interpreted broadly by the liberal professions, and limitations faced by law enforcement agencies and prosecutors in obtaining documents and information from DNFBPs protected by it that may hinder effective cooperation.</li> <li>• Effectiveness could not be assessed (lack of comprehensive statistics).</li> </ul>
37. Dual criminality	<b>LC</b>	<ul style="list-style-type: none"> <li>• Professional secrecy is interpreted broadly by the liberal professions, and limitations faced by law enforcement agencies and prosecutors in obtaining documents and information from DNFBPs protected by it may hinder effective cooperation.</li> <li>• Effectiveness could not be assessed (lack of comprehensive statistics).</li> </ul>
38. MLA on confiscation and freezing	<b>LC</b>	<ul style="list-style-type: none"> <li>• Ability to cooperate limited by the deficiencies in the ML offense under certain, likely limited, circumstances.</li> <li>• Professional secrecy is interpreted broadly by the liberal professions, and limitations faced by law enforcement agencies and prosecutors in obtaining documents and information from DNFBPs protected by it may hinder effective cooperation.</li> <li>• Effectiveness could not be assessed (lack of comprehensive statistics).</li> </ul>
39. Extradition	<b>LC</b>	<ul style="list-style-type: none"> <li>• Ability to grant extradition limited by the deficiencies in the ML offense.</li> </ul>
40. Other forms of co-operation	<b>LC</b>	<ul style="list-style-type: none"> <li>• The way that professional secrecy is interpreted by the liberal professions may limit ability to provide cooperation in all cases.</li> <li>• No statistics available to evaluate overall effectiveness of cooperation other than for the FIU and the BaFin.</li> </ul>
<b>Nine Special Recommendations</b>		
SR.I Implement UN instruments	<b>PC</b>	<p>Germany has not fully implemented the Terrorism Financing Convention and the relevant UNSCR:</p> <ul style="list-style-type: none"> <li>○ The definition of “serious violent act endangering the state” is not fully consistent with the CFT Convention as it does not extend to all acts that constitute offenses within the scope of, and as defined in the treaties annexed to the CFT Convention and it does not cover serious bodily injuries.</li> <li>○ The definition of the term “funds” in connection with the financing of a terrorist act or individual terrorist is not fully in line with the requirements of the CFT Convention, as it imposes a</li> </ul>

Forty Recommendations	Rating	Summary of factors underlying rating <sup>3</sup>
		<p>requirement for the funds to be of a certain minimum value (i.e., not merely insubstantial).</p> <ul style="list-style-type: none"> <li>○ The financing to carry out a terrorist act and the financing of an individual terrorist are not fully consistent with the CFT Convention.</li> <li>○ Natural and legal persons are not subject to effective, proportionate and dissuasive sanctions.</li> <li>○ Except for credit institutions, financial services institutions and investment companies, no other person is subject to directly applicable requirements for the freezing of assets for EU internals under S/RES/1373.</li> <li>○ Lack of effective procedures making it possible to freeze assets other than funds for EU-internals where the Banking Act applies.</li> <li>○ There are no appropriate measures to monitor effectively the compliance with freezing obligations by persons and entities other than financial institutions and “companies”.</li> </ul>
SR.II Criminalize terrorist financing	<b>LC</b>	<ul style="list-style-type: none"> <li>• The definition of “serious violent act endangering the state” is not fully consistent with SR II as it does not extend to all acts that constitute offenses within the scope of, and as defined in the treaties annexed to the Terrorist Financing Convention and it does not cover serious bodily injuries.</li> <li>• The definition of the term “funds” in connection with the financing of a terrorist act or individual terrorist is not fully in line with the requirements of SR.II, as it imposes a requirement for the funds to be of a certain minimum value (i.e. not merely insubstantial).</li> <li>• The minimum level of sanctions raises the possibility that the sanctions imposed may not be effective, proportionate and dissuasive.</li> <li>• Effectiveness not established: lack of specific statistics to establish that natural and legal persons are subject to effective, proportionate and dissuasive sanctions and that the TF offenses are being effectively implemented.</li> </ul>
SR.III Freeze and confiscate terrorist assets	<b>PC</b>	<ul style="list-style-type: none"> <li>• Except for credit institutions, financial services institutions and investment companies, no other person is subject to directly applicable requirements for the freezing of assets for EU internals under S/RES/1373.</li> <li>• Lack of effective procedures to freeze assets other than funds for EU internals where the Banking Act applies.</li> <li>• Professional secrecy is interpreted broadly by the liberal professions, and there are strict conditions for obtaining or compelling information subject to it, which hinder the possibility for law enforcement authorities to locate and trace terrorist funds or other assets.</li> <li>• No appropriate measures to monitor effectively the compliance with obligations under SR.III by persons and entities other than financial institutions and “companies”.</li> </ul>
SR.IV Suspicious transaction reporting	<b>PC</b>	<ul style="list-style-type: none"> <li>• Threshold for reporting requires a high degree of certainty of an offense, and the report constitutes a criminal complaint.</li> <li>• Material deficiencies in the TF offense limit the reporting obligation.</li> <li>• High threshold for reporting makes prompt reporting of suspicions impracticable.</li> </ul>

Forty Recommendations	Rating	Summary of factors underlying rating <sup>3</sup>
SR.V International cooperation	<b>LC</b>	<p>In application of R.36-38:</p> <ul style="list-style-type: none"> <li>Effectiveness could not be assessed (lack of statistics).</li> </ul> <p>In application of R.40:</p> <ul style="list-style-type: none"> <li>Scope of TF offenses may limit ability to provide cooperation in all cases.</li> <li>The way that professional secrecy is interpreted by the liberal professions may limit ability to provide cooperation in all cases.</li> <li>No statistics available to evaluate overall effectiveness of cooperation.</li> </ul>
SR.VI AML/CFT requirements for money/value transfer services	<b>LC</b>	<ul style="list-style-type: none"> <li>Effectiveness: deficiencies in regulations or other measures in the areas of CDD, reporting of suspicious transactions, and sanctions.</li> </ul>
SR.VII Wire transfer rules	<b>C</b>	<ul style="list-style-type: none"> <li>This Recommendation is fully observed.</li> </ul>
SR.VIII Non-profit organizations	<b>LC</b>	<ul style="list-style-type: none"> <li>Review of NPO laws and regulations and on-going reassessments of vulnerabilities not documented.</li> <li>Data on NPOs available from association registration documents or from tax filings for tax benefit status is sparse relative to the financial information they are expected to hold under the Interpretive Note to SR.VIII, Section 6 b, and the financial transparency Section of the 2002 FATF best practices paper and is of limited usefulness for monitoring individual organizations or for sectoral monitoring.</li> <li>Low intensity of outreach to raise awareness of TF risk in NPO sector, even within a strategy of safeguarding and maintaining the practice of charitable giving and the strong and diversified community of institutions through which it operates.</li> </ul>
SR.IX Cross-Border Declaration & Disclosure	<b>LC</b>	<ul style="list-style-type: none"> <li>Weakness in measures for alerting air travellers arriving in Germany from outside of the EU as to their declaration obligations.</li> <li>One-year period of retention of most data in the INZOLL database considerably diminishes the utility of that database for analysis.</li> </ul>