

**Germany: Report on the Observance of Standards and Codes—
FATF Recommendations for Anti-Money Laundering and
Combating the Financing of Terrorism**

This Report on the Observance of Standards and Codes on the FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism for **Germany** was prepared by the Financial Action Task Force on Money Laundering (FATF), using the comprehensive methodology endorsed by the Financial Action Task Force in October 2002 and by the Executive Board of the IMF in November 2002. The views expressed in this document are those of the FATF team and do not necessarily reflect the views of the government of **Germany** or the Executive Board of the IMF. ROSCs do not rate countries' observance of standards and codes or make pass-fail judgments. Consequently, no overall assessment of the effectiveness of the anti-money laundering and combating the financing of terrorism regime is provided.

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Republic of Germany: Report on Observance of Standards and Codes FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism

Introduction

1. This Report on the Observance of Standards and Codes for the *FATF 40 Recommendations for Anti-Money Laundering and 8 Special Recommendations for Combating the Financing of Terrorism* (FATF 40+8 Recommendations) was prepared by representatives of member jurisdictions of the Financial Action Task Force (FATF) and members of the FATF Secretariat.¹

2. The report provides a summary of the level of observance with the FATF 40+8 Recommendations, and provides recommendations to strengthen observance. The views expressed in this report are those of the assessment team as adopted by the FATF and do not necessarily reflect the view of the government of Germany, the International Monetary Fund (IMF) or the World Bank.

Information and Methodology Used for the Assessment

3. In preparing the detailed assessment, assessors reviewed relevant anti-money laundering (AML) and counter terrorist financing (CTF) laws and regulations; supervisory and regulatory systems in place for banks, foreign exchange, securities, insurance, and money remittance; and criminal law enforcement systems. The evaluation team met with officials from the relevant German government agencies and the private sector in Berlin, Wiesbaden, Düsseldorf and Bonn from 22 to 29 May 2003. Meetings took place with representatives from the Ministry of Finance (BMF), the Ministry of Interior (BMI), the Ministry of Justice (BMJ), the Ministry of Foreign Affairs (AA), the Ministry of Economics and Labour (BMWA), the Central Bank (*Deutsche Bundesbank*), the Federal Criminal Police Office (BKA), the Customs Investigation Office and the Federal Financial Supervisory Authority (BaFin). The team also met with representatives from law enforcement authorities and prosecutors of the *Länder* and from the private sector (German banks, insurance companies and money remittance services providers).

Main Findings

4. Germany has adopted a very comprehensive set of repressive measures with regard to money laundering and terrorist financing. The cornerstone of German AML/CTF measures is Section 261 of the German Criminal Code (“Money Laundering: Concealment of Unlawfully Acquired Assets”), Section 129 (“Formation of Criminal Organisation”), Section 129a (“Formation of Terrorist Organisations”) and Section 129b (“Criminal and Terrorist Organisations Abroad, Extended Forfeiture and Confiscation”). The financial intelligence unit (FIU) for Germany was established within the BKA on 15 August 2002. This new responsibility at the federal level now ensures for the first time that all STRs are gathered in a central location, although this new reporting arrangement was set up too recently to allow a complete review of its effectiveness. The supervision of financial institutions is

¹ The assessment was conducted by Mr. Juan Antonio Aliaga Méndez, financial expert from the Ministry of Economy and Finance, Spain; Ms Elisabeth Florkowski, financial expert from the Financial Market Authority, Austria; Mr. Paolo Guiso, legal expert from the Ufficio Italiano dei Cambi, Italy; Mr. Donald P. Merz, law enforcement expert from the Internal Revenue Service, United States of America and Mr. Vincent Schmoll and Ms. Catherine Marty from the FATF Secretariat.

satisfactory, and the Financial Supervisory Authority (BaFin) has sufficient authority to carry out its functions.

5. German legislation meets the general obligations of the FATF 40 Recommendations; however, there are specific issues which must be addressed to strengthen the whole system. With regard to the financing of terrorism, Germany has taken steps towards meeting the FATF Eight Special Recommendations. Nevertheless, Germany needs to complete the ratification and implementation of the *UN International Convention for the Suppression of the Financing of Terrorism* (1999). With regard to the criminalisation of terrorist financing, the provisions in the German Criminal Code only refer to terrorist organisations. Therefore, the provision of funding to an individual terrorist (who is not part of a terrorist organisation) is not covered by specific legislation. Germany has introduced detailed requirements on wire transfers which are partially in line with the FATF standards. While these new requirements apply to some cross-border wire transfers, they do not currently apply to cross-border transfers to or from countries within the European Union.

Criminal Justice Measures and International Co-operation

(a) Criminalisation of money laundering and financing of terrorism

6. Section 261 was incorporated into the Criminal Code through the “Act on Suppression of Illegal Drug Trafficking and other Manifestations of Organised Crime” which entered into force on 22 September 1992. Since its entry into force, Section 261 has been amended several times and all the amendments were primarily aimed at extending the list of predicate offences concerned with money laundering, particularly to cover criminal offences in the area of organised crime (including all minor crimes). Germany has criminalised money laundering on the basis of the Palermo and Vienna Conventions. The list of predicate offences to money laundering which is contained in Section 261 distinguishes between major and minor crimes. *Major crimes* are unlawful acts which carry a minimum sentence of imprisonment of one year or more. *Minor crimes* are unlawful acts which carry a shorter term of imprisonment or a fine. The ML offence of Section 261 does not give rise to serious difficulties in its application and meets the FATF standards.

7. Germany has not designated terrorist financing as a separate criminal offence, but instead relies upon the crimes “Formation of Terrorist Organisations” (membership²) and “Supporting Terrorist Organisations, recruiting for such organisations” to criminalise terrorist financing. These two provisions cover most of the requirement under Special Recommendation II. However, Section 129a only refers to terrorist organisations. Therefore, the providing of financing to an individual terrorist (who does not belong to a terrorist organisation) is not covered by this provision. The German authorities advised the examiners that in such a case, while difficult to foresee in practice, provisions on conspiracy could be applied. They also argued that the financing of a single terrorist could be a punishable act in accordance with the provisions on aiding and abetting under section 27 of the German Criminal Code. The German authorities can apply Sections 129a(1) and 129a(3) to terrorist financing activities in Germany – within the limitations mentioned above – even when a terrorist organisation is located abroad as well as when a terrorist act occurs in a foreign jurisdiction (Section 129b).

8. Germany has not yet ratified the *UN International Convention for the Suppression of the Financing of Terrorism* (1999) or the Palermo Convention (the appropriate regulatory instruments were in the course of adoption at the time of the on-site visit³). With regard to the UN Resolutions relating to the prevention and suppression of the financing of terrorist acts, their implementation takes

² Section 129a(1) StGB

³ Meantime, the German legislative bodies have adopted a new legislation prior to the ratification of the UN International Convention for the Suppression of the Financing of Terrorism.

place in Germany through the application of the correspondent EU Regulations. With regard to the implementation of S/RES/1373 (2001), since the European regulations do not cover terrorism financing in the case of “domestic” terrorism, there is also a loophole in this area⁴.

9. Germany is reviewing new legislation to re-address the issue of the criminalisation of terrorist financing. Section 129a of the Criminal Code is to be adjusted to the requirements of the EU Council Framework Decision of 13 June 2003 on combating terrorism. Important amendments include extending the list of criminal offences in Section 129a, as well as introducing the concept of intent as related to terrorism. Furthermore, the maximum penalty for supporters of a terrorist organisation is to be increased to ten years. Germany expects that this legislation to be passed by the end of 2003.

(b) Confiscation of Proceeds of Crime or Property used to Finance Terrorism

10. The current provisions on forfeiture and confiscation have been in force since 1 February 1975. Since then, these provisions have undergone certain amendments and additions. Their scope of application is not confined to the criminal offence of money laundering or to predicate offences. They relate generally to property used in criminal offences, or derived from them, and moreover to objects derived from criminal offences committed with intent, or used or intended for their commission or preparation. Since Section 261 came into force in September 1992, forfeiture and confiscation also apply to it.

11. German law provides for comprehensive means of regulating the forfeiture and confiscation of property belonging to criminal organisations. In principle, all “criminal” profits obtained by these organisations, even if individual acts cannot be ascertained, as well as all assets belonging to these organisations and supporting them, may be declared forfeit or may be confiscated. German law contains a series of provisions dealing with confiscation of property of corresponding value. If forfeiture of a particular property is not possible, the court shall order forfeiture of a sum of money equivalent in value to the property in question. The same applies with regard to property which would be subject to confiscation.

12. Germany has two mechanisms that permit the freezing of assets before they are subject to forfeiture. The first mechanism requires financial institutions to suspend a transaction that they suspect is related to ML for up to two business days. This permits the legal authorities to review the STR filed by the financial institution to determine if the legal authorities can request the court to issue a freezing order before the transaction is released. In addition, some provisions permit the issuance of freezing orders before judgement (forfeiture order) is given, when certain conditions are met, in particular if there are reasons for assuming that the conditions have been fulfilled for their forfeiture or for their confiscation. However, within 6 months but no later than 9 months, the property seized must be returned if the reasons for that action have not been substantiated or reinforced (“cogent reasons”).

13. Germany permits the forfeiture and confiscation of property that is proceeds from terrorist financing, or of property that is used or intended to be used for the commission or preparation of terrorist financing. Recent amendments have extended the scope of options available regarding this matter by allowing the extended forfeiture and confiscation provisions to be applied to terrorist financing.

14. With regard to freezing of property of persons who do not appear on the UN lists, the adaptation of a new provision in the *KWG*⁵ is expected to strengthen the German framework in having the regime of domestic terrorism in line with the one applied in the context of international terrorism.

⁴ A new section of the *KWG* which came into force in November 2003 has closed this loophole. The new provision will cover the cases of financial sanctions against terrorists residing within the European Union.

⁵ *KWG* – Kreditwesengesetz – Banking Act as amended on 21 August 2002

15. The value of forfeiture and confiscation measures for all criminal offences was estimated at EUR 330 million in 2001 (EUR 77 million in 1997). The value of forfeiture and confiscation measures related to organised crime was estimated at EUR 102 million in 2001 (32 million in 1997). Nevertheless, the lack of comprehensive statistics on the amounts of property frozen, seized and confiscated relating to ML, the relevant predicate offence and FT remains a weakness of the German implementation of AML and FT policies, and appropriate actions should be taken. With 16 different *Länder* making seizures and completing forfeiture actions, it would be helpful if a uniform system were developed to gather the related statistics to aid in the evaluation of the German property seizure and forfeiture programme.

(c) *The FIU and Processes for Receiving, Analysing, and Disseminating Intelligence: Functions and Authority*

16. The German FIU was only established on 15 August 2002 and joined the Egmont Group in June 2003. It was formed as a distinct entity within the BKA which provides for a specific “police character” of the FIU. To ensure a full range of expertise, the FIU has opted for a multi-disciplinary approach and has recruited consultants from the banking sector and a firm of auditors.

17. The FIU is required to (1) collect and analyse STRs filed, in particular checking against data stored by other offices, and (2) report to the federal and *Land* prosecuting authorities without delay information that concerns them as well as any connections between criminal acts ascertained. Apart from these “standard tasks”, within the FIU there are specialisations in the areas of data processing, operational/strategic analysis and policy-making. The FIU does have access to numerous sources of information, whether financial, administrative, or law enforcement to enable it to adequately undertake its responsibilities.

18. German legislation does not establish a specific sanction for the failure to report suspicions of money laundering. The legislation provides administrative sanctions (a fine up to EUR 50,000) for informing the customer or a party other than a public authority of the filing of a report and for other types of administrative offences. Additional provision provides for an offence of negligent money laundering for which the penalty is up to 2 years of imprisonment or a fine, and an offence of obstruction of punishment, for which the penalty is up to 5 years of imprisonment or a fine. In addition, administrative sanctions are available for serious cases of non-reporting. Nevertheless, Germany should consider amending its legislation to specifically impose a sanction for failure to report suspicious transactions.

19. The *GwG*⁶ permits the FIU to co-operate with its foreign counterparts when a request for assistance is received. The German FIU has started a close co-operation with the other FIUs within the European Union (Germany is participating in the discussions related to the “FIU Net Project” on exchange of information at EU level) and is satisfied with the level of co-operation. A closer partnership is under consideration with US and Russian counterparts. However, the German FIU does not spontaneously, i.e. on its own initiative, disseminate information to other foreign FIUs if intelligence is uncovered about individuals residing in that foreign jurisdiction. This weakness should be taken under consideration by the German authorities and appropriate measures should be taken.

20. The German FIU was set up too recently to allow a complete review of its effectiveness. Nevertheless, it appears adequately structured, funded, staffed and provided with the necessary resources to perform its functions. One point of concern is the efficiency of co-ordination and exchange of information between the *Land* and the federal level, and the sharing of responsibilities and duties which at this stage could only be theoretically evaluated.

⁶ GwG – Geldwäschegesetz - Money Laundering Act as amended on 8 August 2002

21. 8,261 suspicious transactions were reported in 2002 (3,765 in 1999). The plan to standardise the reporting procedure in Germany by developing an STR form that will be valid nationwide should be encouraged. Germany is also planning to switch from paper to electronic STR forms. This will further expedite the flow of information and make it possible to automate part of the processing of STRs.

(d) Law Enforcement and Prosecution Authorities, Powers and Duties

22. The Germans have several law enforcement authorities responsible for investigating ML and FT activities. The primary law enforcement agencies are the 16 *LKAs*⁷. They are responsible for investigating all criminal violations in their individual *Länder*. Germany has also formed federal criminal investigation agencies, the BKA and Customs that are responsible for investigating ML and FT activities. Customs is responsible for cross border ML activities. The BKA is responsible for international ML and FT activities and may get involved when these activities cross the border of more than one German *Land*. However, all investigations are overseen by the prosecutor's office of the *Länder*. This ensures proper coordination of the investigations.

23. The German investigative agencies are permitted to use a wide range of special investigative techniques. Germany has instituted appropriate mechanisms, such as task forces, to coordinate their investigations of ML and TF activities. Germany also has a comprehensive training programme available to law enforcement and prosecution authorities to combat ML and FT.

24. In the past, Germany has kept a number of statistical categories relating to its efforts to combat crime. However, Germany has not focused its statistics to capture all of its work in combating ML and FT. Therefore, the Germans statistics do not reflect a very accurate number of ML investigations that resulted in a successful conviction.

25. Germany has imposed a new obligation on the public prosecutor's offices at *Land* level to report to the FIU the charges filed and prosecution results related to STRs. This requirement should significantly close the gap in identifying the source of money laundering investigations and the success of the STR programme. However, Germany may wish to develop system whereby information on all prosecutions and convictions related to ML violations is collected.

(e) International Co-operation

26. Germany is a party to a broad range of conventions, treaties and other agreements that provide a comprehensive and adequate support for international co-operation, including the European Convention on Extradition of 13 December 1957 and the European Convention on Mutual Legal Assistance in Criminal Matters of 20 April 1959 and their additional Protocols.

27. German laws and procedures provide effective mutual legal assistance in AML/CTF matters. Legal assistance proceedings in criminal matters are becoming increasingly de-formalised, particularly in relation to the EU countries. New forms of co-operation, such as the provision of spontaneous information or the creation of joint investigation teams, are taking the place of the traditional type of request for legal assistance.

28. The absence of reliable official statistics on mutual legal assistance makes it impossible to assess the effective implementation of certain requirements (such as the range of request types or the scope and duration of execution) in Germany.

⁷ LKA – Land Criminal Police Office in charge of police matters

29. With regard to extradition of individuals charged with ML and offences related to FT, Germany has adequate laws and procedures. Germany should render legal mutual assistance notwithstanding the absence of dual criminality in the perspective of implementing the new FATF 40 Recommendations.

B. Preventive Measures for FIs

(a) Financial Institutions

30. The AML/CFT preventive measures apply in Germany to *credit institutions* (which conduct banking business), *financial services institutions* (which provide financial services and which are not credit institutions) and those *insurance companies* (that offer accident insurance policies with premium redemption or life insurance policies, including insurance brokers) and *financial enterprises* (which are enterprises which are not institutions and whose main activities comprise essentially concluding leasing contracts, doing money-broking business, delivering investment advice) specified more closely in the GwG.

31. The relevant supervisory authority in Germany is BaFin. BaFin was established on 1 May 2002 as a result of the integration of the previously independent Federal Banking Supervisory Office (BAKred), the Federal Insurance Supervisory Office and the Federal Securities Supervisory Office (BAWe) into an independent single state regulator governed by public law. The motive for the consolidation of regulatory authorities was to establish a single regulator for integrated financial services supervision and to improve the quality of the supervision. Within BaFin, all responsibilities related to the combating of money laundering, financing of terrorism and fraud have been grouped together since the beginning of 2003 in the Anti-Money Laundering Group. BaFin is responsible for implementing the GwG with regard to all (1) *credit institutions* (with some exceptions such as the *Deutsche Bundesbank*) (2) *financial services institutions including money remittance services, currency exchange and credit card business* and (3) *insurance companies*. Financial enterprises, through very near to the financial sector, are not under BaFin supervision.

32. BaFin has responsibility for supervision of all businesses conducting money remittance services, currency exchange and credit card business. The supervision of these businesses represents a special component of the German anti-money laundering system.

33. The provisions on the prohibition of anonymous accounts or accounts in fictitious names are fully satisfactory. These regulations have existed in Germany since 1932; their implementation has been proven satisfactory. With regard to customer identification requirements, the FATF standards have been fully met in the banking and insurance sectors. Since the regulations have been in use for years in the area of credit and financial services institutions as well as insurance companies, the effectiveness thereof has already been proven in practice over a period of years. With regard the beneficial ownership, the requirements were met after the GwG was amended in 2002. BaFin has issued numerous supplementary comments on administration practice for the banking sector as part of its Guidelines and various position papers. The existing confusion regarding the definition of term economic beneficiary (defined as the person who is not conducting business on his/her own account) and beneficial owner (both are called *wirtschaftlich Berechtigter*) may give rise to problems in the future (with the implementation of the new 40 Recommendations). In the securities sector, the obligations under the FATF Recommendations are fulfilled. Nevertheless, AML/CFT preventative measures would be considerably enhanced if these rules were applied not only to business relationships between German investment firms but also to the establishment of business relationships with foreign counterparts, where the risk of misuse is higher, especially in relation to foreign financial institutions from high risk areas.

34. In relation to Special Recommendation VII, new provisions were introduced in the KWG on 8 August 2002 and entered into force on 1 July 2003. These provisions stipulate particular

organisational duties in handling cross-border wire transfers to or from a state outside the EU. With regard to domestic transfers, as part of its supervisory powers, BaFin can request the ordering financial institution to immediately deliver full originator information. As far as cross-border transfers are concerned, Section 25b KWG requires that the *originating* credit institution executing transfers to countries outside the EU uses only correct and complete data records. The institutions must also take steps to identify and complete any incomplete transaction data. The *intermediary* credit institution must check that the mandatory details in the data record have been furnished and take steps to identify and complete any data records that are incomplete in respect to the name and account number. The credit institution of the *beneficiary* must check that wire transfers from countries outside the EU contain details on the name of the originator and, unless the transaction is a cash remittance, the originator's account number. However, it is obligated to take steps to identify and complete any data records that are incomplete in respect of the name and account number. Similar duties exist for financial services institutions which conduct money transmission services. These provisions are intended to apply only to cross-border wire transfers to or from countries outside the EU. This means that cross-border wire transfers conducted within the EU are not covered by current legislation in accordance with the requirements of Special Recommendation VII.

35. The FATF requirements on continuous monitoring of accounts and transactions are completely met with regard to the credit and financial services institutions and insurance companies, which fall under the supervision of BaFin. In the insurance sector, the provisions on complex, unusual large transactions are satisfactory but do not seem to be positively received by some of practitioners. Regarding business relationships with persons in jurisdictions that do not have adequate systems in place to prevent or deter ML/FT, the German system meets the FATF requirements both in the legal framework and in implementation.

36. In Germany, all institutions are obligated to record all details obtained for the purposes of *identification*. The information obtained is to be recorded in the data files of the institution or a copy of the identity documents may be made and retained. In addition to the recording and retaining of customer identification data, as along with the accompanying contractual and/or account opening documents and relevant correspondence, institutions must also keep a complete record of the information pertaining to *all transactions* effected by the customer within the scope of a business relationship and/or as "one-off transactions". With regard to record keeping, the German system fully meets the FATF requirements in terms of regulation and implementation. This is also the case in the remittance or currency exchange sectors, where BaFin requires that adequate record keeping systems be in place, including at the stage of granting the license. In relation to insurance brokers, the amendment of the GwG requires that the records concerning customer identification are forwarded from the insurance broker to the insurance company where the ultimate responsibility for customer identification and record keeping lies. Adequate measures in this area also exist for the securities sector.

37. Suspicious transactions reports must be made in Germany when facts suggest that a transaction (whether or not it involves cash) serves or – if accomplished – would serve the purpose of money laundering or of financing a terrorist group. According to the requirements of BaFin, the existence of objective facts, which suggest that a transaction is being carried out for money laundering or terrorist financing purposes, is sufficient reason for a suspicion to be reported. With regard to credit and financial services institutions and insurance companies, the suspicious transaction reporting procedure has proven successful. The requirements in relation to the protection from liability of directors, officers and employees of financial institutions when reporting a suspicious transaction and the prohibition for tipping off are also fulfilled.

38. All financial institutions subject to AML/CFT obligations must implement safeguards against money laundering. These safeguards include, among other things, (1) the designation of a compliance officer directly subordinate to management who is to act as contact person for law enforcement authorities and for the BKA as well as for the competent authorities, (2) the development of internal

principles for the prevention of money laundering and the financing of terrorism, (3) the implementation of adequate screening procedures when hiring employees and (4) the conduct of ongoing employee information and training programmes. Apart from the ongoing control by the institution's compliance officer, a retrospective internal audit of an institution is also part of the regular monitoring of compliance with the institution's duties. The FATF requirements related to internal control and screening procedures are fully met in Germany in banking, insurance and securities sectors. There have been very isolated exceptional cases where the trustworthiness of staff has been challenged (essentially related to negligent customer identification or opening of accounts in fictitious names). The strong reliance on external auditors to monitor the internal audit mechanisms and to conduct a large part of the onsite supervision is part of the German system, which seems to be well managed by supervisors. The external auditors as well as the supervisors ensure the application of high standards.

39. Given the high number of financial institutions in Germany, a higher volume of annual audits would be expected. In particular, it would be appropriate to develop a plan of special audits or a more comprehensive plan for on-site inspections covering not only larger credit institutions but also those medium size or small credit institutions where the suspicious transaction reporting is lower than the average.

40. With regard to enforcement powers, the supervisor and other competent authorities are able to apply a broad range of sanctions if financial institutions fail to fulfil their obligations. The German system basically meets the FATF requirements, and the instruments in place have proven effective. Generally, both the GwG (for basic duties) and the KWG (for more structural deficiencies or substantial shortcomings) allow for imposing sanctions on financial institutions. Although there is no specific sanction for non-compliance with the obligation to identify the customer involved in a suspicious transaction, it is possible for BaFin to impose fines for such violations whenever they are related to some other substantial shortcoming by the financial institution. The competent authorities are empowered to impose these fines on the institutions, persons and entities supervised by them. BaFin makes use of this instrument at its discretion. German authorities may want to consider whether a specific sanction for non-compliance with this obligation should be created, as it would make it possible to impose sanctions when this shortcoming is detected in instances unrelated to other compliance violations. The incorporation of such a sanction in the GwG would make enforcement mechanisms more operational in practice. It should be noted however that under existing rules, if there is a suspicion of money laundering, the employee who does not identify the client and executes the transaction despite his suspicion may eventually be charged with negligent money laundering.

(b) Other Sectors

41. The new requirements⁸ detailed in the GwG and in line with the second EC Money Laundering Directive subject additional professions outside financial institutions (in particular, lawyers, estate agents, notaries, tax consultants and accountants) to the identification and reporting requirements. Three reports on suspected ML were sent to the authorities in 2002.

c) Controls and monitoring of cash and cross border transactions

42. There is no requirement for systematic reporting of large cash transactions in Germany. The German Customs authorities does however have the responsibility for monitoring the import, export and transit of cash or equivalent means of payment in order to prevent and prosecute money laundering activities. The relevant provisions stipulate that cash or equivalent means of payment totalling EUR 15,000 or more must be declared on the request of customs officials or the Federal Border Guard. Furthermore, within the framework of this cash control, the parties concerned are obliged to state the source of the money, the person legally entitled to it, and its intended purpose. The

⁸ The last amendment became effective on 15 August 2002

officials have search and seizure authority. In cases where parties fail to declare or incompletely declare money amounts in their possession, irrespective of whether or not they are suspected of money laundering, a fine may be imposed on the violator.

43. Despite the effort made to promote cashless payments, it would perhaps be useful for Germany to analyse further the specific risks of money laundering linked to large cash transactions and to consider the creation of mechanisms to manage these risks.

Summary assessment against the FATF Recommendations

44. The AML/CFT system in Germany is very comprehensive and has proven to be effective and efficiently implemented. However, there are a few deficiencies that must be addressed in the field of terrorist financing where Germany only largely complies with some of the FATF standards. With regard to Special Recommendation I, the *UN International Convention of the Financing of Terrorism (1999)* has not yet been ratified. As far as the criminalisation of terrorist financing is concerned, Germany's current legislation does not cover the provision of financial support to individual terrorists (who are not part of a larger terrorist organisation). With regard to freezing of property, domestic terrorism is not treated in the same way as international terrorism. As far as wire transfers are concerned, the legislation that came into effect on 1 July 2003 effectively covers cross-border wire transfers involving countries outside the EU. Cross-border wire transfers involving other EU members are not adequately covered by this legislation however.

Table 1. Recommended Action Plan to Improve Compliance with the FATF 8 Special Recommendations

Reference FATF Recommendation	Recommended Action
I. Ratification and implementation of relevant United Nations instruments	Ratification and implementation of the UN International Convention of the Financing of Terrorism 1999. Ratification of the Palermo Convention.
II. Criminalisation of terrorist financing	Germany should extend the criminalisation of terrorist financing to include the provision of financial support to individual terrorists.
III. Freezing and confiscation of terrorist assets	Germany should adopt measures to have a regime of domestic terrorism in line with the one applied in the context of international terrorism.
VII. Wire transfers	Germany should modify its legislation to require transmission of complete originator information on all cross-border wire transfers, including those that are to other EU countries.

Table 2. Other Recommended Actions with regard to FATF 40 Recommendations

Reference	Recommended Action
Law enforcement and prosecution authorities, powers and duties	There is no general provision in Germany in relation to feedback, especially between the FIU or the LKA and the institutions filing STRs ⁹ .
International co-operation	Germany should render legal mutual assistance notwithstanding the absence of dual criminality.
Legal and institutional framework for financial institutions	Financial enterprises should fall under BaFin supervision.
Customer identification	The definition of the term beneficial owner may raise some concerns in the future. With regard to cross-border wire transfers, current provisions should be extended to cross-border wire transfers within the EU. Further AML-CFT preventive measures in the securities sector should be extended to business relationships with foreign counterparts.
Suspicious Transactions Reporting	A specific sanction for failure to report suspicious transactions should be adopted. The FIU should establish guidelines with regard to the reporting obligations.
Internal controls, compliance and audit	Audit and on-site inspections should be more systematic and frequent.
Enforcement powers and sanctions	A specific sanctions regime for non compliance with the identification requirements in case of suspicious transaction should be incorporated within the legal framework.
Statistics	More comprehensive statistics should be available with regard to confiscation, STRs, prosecutions and convictions related to ML/FT cases and international co-operation.

⁹ Although the information on the existence of a general system of feedback was not delivered during the on-site visit or during the elaboration of the Mutual Evaluation Report, it was eventually delivered during the finalisation of the ROSC.

Authorities' response

45. As regards the last sentence of paragraph 18 requiring Germany to consider amending its legislation to specifically impose a sanction for failure to report suspicious transactions, German authorities point out that there are no indications for a weakness in the German system in this regard and that therefore this recommended action is not justified. German authorities argue that the existing range of sanctions available for law enforcement and supervisory authorities has proven to be adequate.

46. In relation to paragraph 19, the German FIU can spontaneously send inquiries to foreign FIUs in any such cases. A prerequisite is, however, that there are actually grounds to suspect money laundering or the financing of terrorism.

47. With regard to paragraph 20, there are many very close contacts between the financial intelligence services of the LKAs and the FIU. In addition to talks held in permanent bodies, project groups and working groups, staff of the financial intelligence services of the federal government and of *Länder* are in daily (telephone and written) contact regarding all relevant operational cases. Interaction and sharing of responsibilities between the police forces of the LKAs and the BKA are clearly regulated in the respective police laws. The concern voiced regarding the lack of co-ordination is therefore unfounded.

48. With regard to the recommended action in relation to the legal and institutional framework for financial institutions (paragraph 31), German authorities consider that financial enterprises, as defined under section 1 (3a) *KWG*, should not be covered by BaFin's AML-supervision. It has to be taken into consideration that AML supervision of these enterprises can only be effective with parallel solvency supervision of these enterprises on the basis of the *KWG*. Therefore, for reasons of principle and efficiency, the German legislator has refrained from including financial enterprises in the scope of the *KWG*. Moreover, according to existing EU law, only the inclusion of financial enterprises in supervision on an aggregated basis is stipulated. This is why in Germany – as in some other EU countries – financial enterprises are only supervised by financial supervisors within the framework of consolidated supervision. In Germany, some specific businesses (due to proved associated risks, e.g. credit card business) conducted in the past by financial enterprises are now considered to be financial services within the meaning of Section 1 (1a) *KWG*.

49. With regard to the recommended action in relation to customer identification (paragraph 33), the term “beneficial owner” will be clarified in the revised binding guidelines of BaFin for credit institutions and financial services institutions as well as for insurance companies dealing with AML/CFT measures. This will solve uncertainties which may possibly arise. It should be stressed that, under the administrative practice of BaFin, the true beneficial owner must always be established and, thus, there is no real problem in the current system.

50. With regard to cross-border wire transfers (paragraph 34), German provisions apply only to cross-border wire transfers to or from countries outside the EU. For reasons of principle and efficiency, the German legislator did intentionally not anticipate the necessary EU regulation which is currently under consideration.

51. With regard to the recommended action in relation to law enforcement and prosecution authorities, powers and duties, the new Section 5 paragraph 1 *GwG* provides for the general obligation of the FIU to “regularly inform the persons obliged to report, on types and methods of money laundering”. Section 475 of the Criminal Procedure Act enables a specific feedback between the prosecutor and the person/institution filing an STR. The request of the person/institution filing an STR to get such a feedback is going to become part of the new STR form (see paragraph 21).

52. With regard to the recommended action in relation to internal controls, compliance and audit (paragraph 39), a higher volume of annual audits is planned for the near future. It is also planned to develop a comprehensive plan of special audits and on-site inspections covering both larger financial institutions and insurance companies, and medium or small size financial institutions and insurance companies.

53. With regard to the recommended action in relation to suspicious transactions reports, the recommendation is inadequately strong due to the reasons explained in paragraph 40.