



Bundeskriminalamt

2002 ANNUAL REPORT
of the Financial Intelligence Unit
(FIU) Germany

2002 ANNUAL REPORT OF THE FIU GERMANY

Imprint Publisher
BUNDESKRIMINALAMT
Zentralstelle für Verdachtsanzeigen
FIU Deutschland
65173 Wiesbaden



**Foreword of the Federal Minister of the Interior,
Mr. Otto Schily**

Effectively Combating the Financing of Terrorism and Money Laundering

The financial assets of organised crime have reached the dimensions of a national economy. Their annual profits are estimated at up to hundreds of billions of US dollars. The concealment of the illegal source of this money and putting it back into the legal financial cycle are of vital importance to the groups, who operate mostly transnationally. The fight against money laundering is therefore an effective assault on the structures of organised crime.

International terrorism is equally dependent on considerable means of finance. The threat from Islamist-extremist terrorist groups has rather increased since 11 September 2001. The Al-Qaeda network still has large financial resources at its disposal for the build-up and maintenance of its worldwide logistics. The fight against international terrorism can only be successful in the long term if these sources of finance are eradicated worldwide.

For the Federal Government, the consistent fight against money laundering and the financing of terrorism constitute an important contribution to our domestic security. With the coming into force of the Money Laundering Act on 15 August 2002, the Federal Republic of Germany, as the first of the European Union member states, implemented both the EU Money Laundering Directive and the eight special recommendations of the "Financial Action Task Force on Money Laundering" (FATF) on the financing of terrorism. Comprehensive combat measures have been initiated, so that Germany is at present the leader in Europe in the fight against money laundering and the financing of terrorism.

With the adoption of Section 5 in the German Money Laundering Act, a "Financial Intelligence Unit" (FIU) has been created at the Bundeskriminalamt. The FIU took up its work

at the same time as the Act came into force. Thus, the demand for the creation of national central offices for the receipt and analysis of suspicious transaction reports, as recommended by the FATF, has been implemented internally. That is great progress in the fight against money laundering. The collation of all suspicious transaction reports facilitates improved analysis, for which information from foreign services can also be applied. The requirement to educate those obliged to report about the typologies and methods of money laundering, as stipulated in the Act, will noticeably improve the exchange of information. One of the foremost duties of the FIU is to specify those typologies which are still imprecisely defined and insufficiently proven by data.

The FIU should also promote the dialogue between all parties involved - those obliged to report in accordance with the Money Laundering Act and the authorities responsible for the suppression of money laundering -, so that the specialised knowledge available can be used comprehensively and transparently. For an effective fight against money laundering, the new rules must be applied consistently and uniformly. The FIU makes an important contribution to this and will play an increasing and successful role in the fight against money laundering and the financing of terrorism.

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Foreword of the President of the Bundeskriminalamt, Dr. Ulrich Kersten

The suspicious transaction report constitutes an instrument without which the fight against organised crime and - since the grave terrorist attacks of 11 September 2001 - the fight against the funding of terrorist organisations would now be unimaginable. With the creation of the German Financial Intelligence Unit (FIU) at the Bundeskriminalamt, there is for the first time a central office to which all suspicious transaction reports are sent and stored in a database specially created for that purpose.

The FIU conforms perfectly with the federal structure; the competencies of the federal states (Länder) are not encroached upon. The financial inquiry services of the state criminal police offices continue to have original responsibility for the clearing procedure.

In close and trustful co-operation with the Länder, the FIU will set points of emphasis in the field of situation reporting, in recognising typologies and methods of money laundering and in the field of operational and strategic analysis.

With the creation of the FIU, Germany will do justice to international standards and will thus meet international demands. This will also be reflected by our accession to the Egmont Group, an international community of currently 69 FIU's, scheduled for mid-2003. In addition to the previously known channels, such as Interpol, Europol, the Schengen network and the liaison officers, the exchange of information between the FIU's will open up a new dimension in international co-operation.

Nationally, the FIU will intensify and expand the already started inter-agency co-operation. An example of this is the

Working Party of Banks and Chambers, in which dialogue has begun between the FIU and those obliged by the Money Laundering Act to report suspicious transactions and which will be carried on in an institutionalised manner in the future. Not least, the FIU will be involved in a particular form of inter-agency co-operation, the Financial Inquiries Working Party, which grew out of the Financial Inquiries Information Board.

I am aware that the decision to place the FIU organisationally within the Bundeskriminalamt means that a great responsibility is being transferred to our agency. The results achieved so far reinforce my belief that we will do justice to this responsibility and the expectations placed on us.

JAHRESBERICHT 2002

FIU - DEUTSCHLAND

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1. Preliminary Remarks

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Germany's amended Money Laundering Act (Geldwäschegesetz)¹ came into force on 15 August 2002. While the German name "Zentralstelle für Verdachtsanzeigen" is used in Section 5 (1) of the Money Laundering Act, the English designation "Financial Intelligence Unit" (abbreviated FIU) has now prevailed at both national and international level. Therefore this designation was also used in the present report.

The annual FIU report is directed above all at all parties obliged to file reports under the Money Laundering Act, the criminal justice authorities in Germany, and the FIUs in other countries. It is difficult to tailor the material presented in the report to such a large target group - some will think it is not detailed enough, while others will feel it covers too much material. This report attempts to find an appropriate compromise.

Because the FIU only began its work in August 2002, the data that form the basis for such work are still incomplete. For this reason and due to the time required to set up the FIU Germany, it has not yet been possible to carry out analyses of money laundering typologies. Thus it is inevitable that the contents of the 2002 report will be different from what is reported during the following years. The FIU is taking this opportunity to report on the organisational work done thus far and to provide information on general aspects of money laundering suppression in Germany, on the legal foundations and working methods of the FIU, and on issues of national and international co-operation.

¹ Act on the Detection of Proceeds from Serious Crimes (Money Laundering Act) in the version of the Act to Improve the Suppression of Money Laundering and the Fight against Funding for Terrorism of 8. August 2002 (German Federal Law Gazette I (BGBl.) of 14 August 2002, p. 3105 ff.)

2. Development and Present State of Money Laundering Suppression Efforts in Germany

2.1 Legal developments and international standards

Developments in the suppression of money laundering in Germany during the last ten years and in the financing of terrorism must be considered in the context of international guidelines and standards. To a considerable extent, international standards have been set by the Financial Action Task Force on Money Laundering (FATF)², and binding legal provisions have been established by the EU as well. The first and second EU Money Laundering Directives of 1991 and 2001 should be mentioned in this connection, because they are of decisive significance in the following areas: penalisation of money laundering, identification rules and suspicious transaction reports, inclusion of new occupational groups among those obliged to file reports, "know your customer principles", international forms of co-operation, etc. The EU Council Decision of 17 October 2000 concerning arrangements for co-operation between financial intelligence units is of fundamental significance for co-operation between the FIUs at international level³.

When money laundering was introduced as a criminal offence (in Section 261 of the German Penal Code) in 1992 and the Act on the Detection of Proceeds from Serious Crimes (Money Laundering Act) entered into force in 1993, international standards were taken into account in Germany for the first time.

² Cf. Annex 1

³ Cf. Annex 4

During the past ten years, there have been eight legally effective revisions of Section 261 of the German Penal Code; in particular, the catalogue of predicate offences has been expanded to include all relevant serious offences as possible predicate offences for money laundering. In 2001, the Act on Suppression of Tax Underpayment introduced gang-type tax evasion and tax evasion on a repetitive and gainful basis (Section 370 a of the German Tax Code) as constituting criminal offences, which led to their inclusion in the catalogue of basic offences. In 2002, Section 129 b of the German Penal Code was also altered to include the provision of support to a criminal and terrorist organisation based in another country.

The Money Laundering Act has been amended seven times since it entered into force on 29 November 1993. The most recent revision of 15 August 2002 included the following important changes:

- Suspicious transaction reports no longer have the sole function of assisting in the fight against money laundering and other serious criminal offences but are also intended to help suppress the financing of terrorism.
- New occupational groups have been included among those obliged by the Money Laundering Act.
- Electronic money is now treated the same as cash.
- Among other things, banks and financial services institutions are required to set up security systems to protect business transactions and customers.
- The Financial Intelligence Unit (FIU) for Germany is established at Germany's Federal Criminal Police Office, the Bundeskriminalamt.

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Besides this, with a view to prevention, in 2002 the Fourth Financial Markets Promotion Act⁴ included provisions aimed at improved transparency and identifiability of payment flows with a terrorist or money laundering background. In this connection, reference should be made to the creation of an automated system for retrieving master account data (Section 24 c of the Act Regulating Banking and Credit Business⁵). A further measure is the requirement for financial services institutions and credit institutions to make random checks on their business transactions with a view to identifying high-risk groups and unusual transactions (Section 25 a (1) No. 4 of the Act Regulating Banking and Credit Business). This correlates with the change made in Section 14 (2) No. 2 of the Money Laundering Act.

2.2 Practical implementation at police level

Practical implementation at police level must be viewed in the context of the relevant legislative measures, which have been developed to a large extent in the form of joint Federation-State concepts and strategies aimed at the suppression of money laundering and the financing of terrorism.

Already in the mid-1980s, the Bundeskriminalamt had identified the problem presented by money laundering and created an "illegal assets" sub-section in its Drugs Division. Although initially limited to the fight against drug crime, the instruments used to combat money laundering were soon also employed against organised crime as well, because the need to deprive perpetrators of their assets for the longest possible time, and the effectiveness of taking such steps, had been recognised.

Only after legislative measures had been taken at national level and activities initiated at international level in the early 1990s sufficient emphasis was placed on the subject of money laundering in the context of organised crime suppression at the criminal justice authorities.

It has been established by law that suspicious transaction reports, as a significant instrument for the prevention and repression of money laundering, must be filed directly with the competent criminal justice authorities (analogous to the filing of criminal complaints) and not with a central administrative office, which is often the case in other countries. Among other things, this enables direct comparison of the STR with police information already on file about offenders and groups of offenders.

⁴ Act for Further Development of Germany as a Financial Centre (Fourth Financial Markets Promotion Act) of 21 June 2002 (German Federal Law Gazette I, entered into force as of 1 July 2002 (although the provisions of Section 24 c of the Act Regulating Banking and Credit Business did not enter into force until 1 April 2003).

⁵ Act Regulating Banking and Credit Business (Kreditwesengesetz - KWG), most recently amended by the Fourth Financial Markets Promotion Act)

In 1992 a joint police "financial investigations concept" for implementation of the new legal provisions at police level was developed and adopted by Working Party II⁶. On the basis of this joint concept, specialised departments were set up at the Bundeskriminalamt and at the 16 State Criminal Police Offices - in some cases with corresponding provisions made at the respective public prosecutor's offices as well. Customs and the police work together as Joint Financial Inquiry Groups in these specialised departments for financial investigations, which are generally known as "clearing offices"⁷. The objective is to ensure a more thorough collection of information and more effective checks on the suspicious transaction reports in connection with the various areas of responsibility and channels of information. Another aim is to ensure that cross-border criminal activities for the purpose of money laundering are recognised more quickly by customs authorities when checks are made on cash at Germany's external borders and that, if there are grounds for suspicion, possible links with police information can be established.

The clearing offices of the Joint Financial Inquiry Groups of the Federation and the German states currently comprise about 300 staff members and, when more extensive inquiries are necessary, additional support can be provided by specially qualified auditors. This staffing is required to ensure adequate processing of suspicious transactions reports, whose numbers increase each year.

For the time being, the establishment of the FIU Germany at the Bundeskriminalamt represents the last of the new measures introduced to combat money laundering. This integrates well with the Federal structure of prosecution,

because on the one hand the jurisdiction of the state offices and public prosecutor's offices over the clearing of suspicious transaction reports in individual cases and subsequent investigations by the states is maintained, while on the other hand the Bundeskriminalamt is assigned the classic role of serving as a central agency and dealing with other countries. Specifically, this means carrying out the following core duties:

- intensifying analysis and evaluation of suspicious transaction reports
- improving the development of typologies and providing appropriate feedback to the obligated parties
- providing support to state criminal justice authorities in carrying out their duties
- serving as a central point of contact/information and co-ordination centre for the criminal justice and security authorities in Germany and abroad, including foreign FIUs, and also serving as a partner for the parties obligated under the Money Laundering Act.

⁶ The "Concept on implementation of the provisions for property fines, extended forfeiture and money laundering as well as an act on detection of proceeds" was approved at the meeting of Working Party II (Regular Meeting of the Ministers of the Interior of the Länder; BKA takes the chair) in Magdeburg on 8/9 October 1992.

⁷ The State Criminal Police Offices in Bremen and Rheinland-Pfalz are exceptions.

3. The FIU Germany

3.1 Tasks and main objectives of the FIU

The statutory basis of the FIU is the amended Money Laundering Act in the version of 8 August 2002, which came into force on 15 August 2002⁸.

This act brings together legal measures for prosecution and public supervision of banking and takes into account both the second EU Money Laundering Directive and the 40 FATF Recommendations, which have been expanded by eight special recommendations on suppression of the financing of terrorism⁹. In addition to combating money laundering, the fight against the financing of terrorism is now also a top priority.

When it was founded at the Bundeskriminalamt, a "police" FIU¹⁰ was created. This ensures the smooth integration of information relevant to criminal prosecution, which is indispensable for combating money laundering, and the financing of terrorism in particular. At international level, in accordance with the international standards, Germany now has a central point of contact for partner services in other countries.

The following tasks are assigned to the FIU in Section 5 (1) of the Money Laundering Act:

- collection and analysis of the suspicious transaction reports transmitted pursuant to Section 11 of the Money Laundering Act and comparison with the data stored by other national agencies
- provision of relevant information to the Federation and state prosecution authorities
- collection of suspicious transaction report data for statistical purposes
- publication of an annual report
- provision of information about the typologies and methods of money laundering identified to the persons obliged by law to file reports
- co-operation with the central offices of other countries that are responsible for preventing and prosecuting money laundering and the financing of terrorism

The FIU began its work as soon as the Act entered into force.

In addition to the approximately 300 persons working in clearing offices at Federation and state level, 14 new positions were created at the Bundeskriminalamt.

⁸ Act on the Detection of Proceeds from Serious Crimes (Money Laundering Act) in the version of the Act to Improve the Suppression of Money Laundering and the Fight against the Funding of Terrorism (Money Laundering Suppression Act) of 8 August 2002 (Federal Law Gazette I of 14 August 2002, pp. 3105 ff.)

⁹ Cf. 3.7 and Annex 1

¹⁰ In addition to "police" FIUs, there are "administrative" and "judicial" FIUs as well as mixed forms.

In order to carry out these tasks, in 2002 activity focussed on setting up the FIU. In addition to staff recruitment and logistics, emphasis was placed on achieving the following:

- preparatory work with regard to collection and statistical analysis of suspicious transaction reports - in particular creation of a database that will meet the demands placed on a police information system in the future
- development and implementation of an advisory concept
- consultations with the state police forces on implementation of the new Money Laundering Act
- establishment of working parties for those obliged by the Money Laundering Act
- development and expansion of international contacts, focussing on the European FIUs

3.2 Collection and analysis of suspicious transaction reports

One important task of the FIU is the collection, analysis and statistical evaluation of the suspicious transaction reports.

To make this possible, when the parties obliged to file reports become aware of information that indicates a financial transaction might serve the purpose of money laundering or the financing of terrorism, they must report this without delay to the competent criminal justice authorities and, at the same time, to the FIU as well.

The clearing procedure (i.e. clarification of the facts of a case to determine if initial suspicion is justified or not) and the investigation itself continue to be subject to the original jurisdiction of the financial investigation offices of the German states. In the case of individual suspicious transaction reports, this clearing process is organised to a decisive extent by the joint clearing offices of the state police and customs and supported by the Joint Financial Inquiry Group at the Bundeskriminalamt (in particular with regard to checks in other countries).

Due to the new requirement to send a copy of the suspicious transaction report to the FIU at the same time, it has become possible for the first time to maintain, in a central place, an up-to-date overview of the reports filed at national level. This means that the FIU is now in a position to inform the competent criminal justice authorities that, for example, a certain person or company is the subject of suspicious transaction reports in several German states. In the past, this was only possible to a limited extent¹¹.

¹¹ The information in the money laundering data network has been available to all clearing offices in the Federation and the German states thus far. This application is used to store the data obtained from suspicious transaction reports during the clearing process. However, only 60% - 65% of all suspicious transaction reports are on file. This is due both to legal restrictions and to lack of staff to enter the data into the system.

3.3 Setting up a database at the BKA

To carry out the analysis and evaluation tasks of the FIU, the FIU database was created at the Bundeskriminalamt. This was necessary because, according to Section 5 (2) of the Money Laundering Act, the FIU is also the central reporting office in the sense of the Council Decision concerning arrangements for co-operation between FIUs¹². Among other things, the Decision obligates the respective financial intelligence units to take all necessary measures, including security measures, in order to ensure that the information sent on the basis of this Decision is not accessible to other authorities, offices or departments¹³.

In order to integrate the FIU database into current developments at the technical level as well, it is being developed as a pilot application in connection with creating the case-related component "INPOL-Fall" in the new "INPOL-neu" computerized information system of the German police. An initial pilot version has been available since 9 August 2002. The database will be optimised in connection with further development of the "INPOL-Fall" component.

This application makes it possible to identify relevant events, persons, companies, organisations, addresses, accounts and transactions as well as the connections between them. This database serves as a basis for preparing situation and statistical reports. The FIU database includes all the suspicious transaction reports filed in Germany and all information that results from exchanges of information with FIUs in other countries.

¹² Cf. Annex 1

¹³ Article 5 (4) of the Council Decision

Efforts in 2002 were focussed on developing a concept for content and setting up the database as a definitive working basis. The FIU will continue working on the substantive and technical aspects of this process in 2003 as well.

3.4 Money laundering methods and typologies

The task of the FIU is not only evaluation of suspicious transaction reports, but above all analysis of money laundering typologies and methods (Section 5 (1) of the Money Laundering Act). This is one of the areas on which the German FIU will concentrate in the future and is also one of the core areas of responsibility of the Bundeskriminalamt¹⁴.

By obtaining a comprehensive overview and comparing the STRs collected at national level, combining this with information from foreign FIUs or criminal justice authorities, it is possible to identify connections or unusual features without delay.

Reasons to analyse connected complexes of cases could be aspects that attract attention, unusual features that recur, information from other countries about suspected money laundering, etc. In this case as well, efforts are made to achieve close co-operation with the Joint Financial Inquiry Groups in the state criminal police offices.

¹⁴ Section 2 of the Law on the Bundeskriminalamt

During the analysis, the information obtained from the respective investigations is evaluated and the results are compared. Information from other authorities such as the customs office or foreign police forces is obtained as a supplement. Further information is added to that already compiled, and then it is reassessed. After this, the results are made available to the investigating offices. Besides this, the information obtained about special forms of money laundering is sent to the parties obliged to file reports. This is intended to ensure the successive upgrading of the strategic instruments for establishing suspicion and easier identification of suspicious cases by the obligated parties.

By taking this approach, it is possible to link the individual suspicious transaction report with the money laundering case and to extend this link to the money laundering typology. Only after this link has been identified is it possible to make statements about the diverse forms taken by money laundering.

In order to obtain a meaningful picture of the money laundering phenomenon, in the future it will also be necessary to devote more attention to information that is integrated into proceedings involving other fields of criminal activity. For example, information about money laundering is also obtained during investigations in the areas of alien smuggling, drug crime or other forms of organised crime without a suspicious transaction report being on hand. This information obtained in connection with other fields of criminal activity needs to be evaluated with regard to typologies and methods of money laundering as well.

Another source of information will be the reports that public prosecutor's offices are required to file pursuant to Section 11 (9) of the Money Laundering Act. If a suspicious transaction report is filed in connection with criminal proceedings, they must inform the FIU about the bringing of the public action and the outcome of the proceedings. If this is done by the judicial authorities, it would create an opportunity to obtain for the first time information about money laundering with a sound forensic basis.

3.5 Advisory concept

To provide support for the aforementioned tasks, the FIU developed and implemented an “advisory concept” during the year under review.

This concept is based on the realisation that money laundering and the financing of terrorist organisations are extremely complex phenomena involving a wide variety of aspects. The diverse possibilities for covering up the illegal origin of money require specialised knowledge on the part of the criminal justice authorities that is well-developed and comprehensive, a reserve of knowledge that can quickly be exhausted when highly specific and extremely complex financial and economic issues are involved.

To compensate for this, the FIU has taken a new approach with its two-track advisory concept: An agreement was concluded with an expert responsible for money laundering questions at a large German bank. In addition, a general agreement was concluded with a German auditing company.

While the money laundering expert can provide assistance due to his extensive knowledge of internal banking procedures and his varied contacts with relevant bodies and associations, the auditing company can clarify specific questions in the fields of finance and economics. An auditing company examines the plausibility of transactions - albeit from a different point of view. In this respect, it acts in a manner similar to the criminal justice authorities. On the other hand, its staff includes a significant number of

experts on specific financial and economic issues. This expert knowledge is multiplied when the auditing company is active at international level, which is true of the company providing this assistance to the FIU Germany.

By making use of advisers, the assessments employed to prepare typologies, situation reports and analyses include expertise that would be difficult to obtain elsewhere.

If needed, this external advisory expertise is made available to the police forces of the German states to assist with their investigations.

By employing this advisory concept, the FIU ensures that money laundering is examined from an interdisciplinary point of view. It is thus possible for the FIU to have solutions to different problems, such as problems in the fields of finance and economics, developed flexibly and quickly.

3.6 Co-operation at national level

During more than 10 years of efforts to combat money laundering, the police in Germany have developed effective structures and forms of co-operation, for example the Conference of the Heads of Financial Investigations (Leitertagung Finanzermittlungen - LFE) founded in 1993¹⁵. Its objective is to co-ordinate, and ensure consistency in, the suppression of money laundering at national level. At these meetings, the heads of the central financial investigation offices and a representative of the Zollkriminalamt (central office of the German customs investigation service) conduct an exchange of experience and discuss current issues and problems associated with the suppression of money laundering. The main topics at the 13th Conference of the Heads of Financial Investigations in October 2002 were the amendments to the Money Laundering Act as well as the tasks of the new FIU and possibilities for co-operation.

While established structures for co-operation and exchange of information already exist for the criminal justice authorities, in connection with the FIU these first had to be created for the obligated parties.

¹⁵ Working conference of the heads of the central specialised departments for financial investigations (money laundering/clearing) at Germany's State Criminal Police Offices and the Bundeskriminalamt.

Parties obligated by the Money Laundering Act

When the Money Laundering Act was amended, the target group and circle of parties obligated by the Act were enlarged. In addition to the traditional institutions in the field of banking and financial services, now certain occupational groups are also subject to the general identification and reporting obligations imposed by the Money Laundering Act.

Within the meaning of the law, the relevant institutions are banking and financial services institutions as well as businesses engaged in the provision of finance and insurance companies¹⁶ that offer accident insurance policies with “no claim” bonuses and life insurance policies.

The general identification and reporting obligations for suspicious cases required by law were extended to include the following types of businesses, persons and functions:

- lawyers, persons authorised to practise law without being attorneys, patent agents and notaries
- auditors, sworn auditors, tax advisers and tax agents
- real estate agents
- gambling casinos (for guests who buy or sell chips worth 1,000 Euros or more)
- other persons engaged in trade or business as well as persons who manage the assets of other parties, in each case on the assumption that cash amounting to at least 15,000 Euros is involved (in connection with carrying out the tasks of their trade or business)¹⁷.

¹⁶ Insurance brokers who arrange for corresponding contracts are also considered to be insurance companies.

¹⁷ The obligation to report suspicious cases applies regardless of the respective threshold amounts.

One core task of the FIU is to raise the awareness of this target group regarding the provisions of the Money Laundering Act in general and the reporting of suspected cases in particular.

The FIU is working to establish close and trusting co-operation with the obliged parties, because the extent to which they report suspicious cases has a decisive influence on the work of the FIU. For this purpose, in 2002 the FIU set up two discussion groups with those obliged to make reports - one for the field of banking on 28 November 2002 and one for Chambers/professional associations on 10 December 2002. These meetings served to open a constructive dialogue on the impact of amending the Money Laundering Act with the parties obliged to file reports. All participants would welcome continuation of such useful discussions. This dialogue will be continued in the future by institutionalising such discussion groups as well as by conducting workshops on specific subjects as occasion demands.

Multi-agency structures for co-operation

In order to suppress money laundering and the financing of terrorism effectively, it is necessary for the various agencies involved to proceed in a co-ordinated manner for the purpose of optimising work in their various jurisdictions and their access to information.

As a supplement to previous forms of bilateral information exchange on a case-by-case basis and against the background of the terrorist attacks in the United States on 11 September 2001, in connection with a decision involving a number of ministries made on 28 September 2001 by various Federal ministries and the office of the Federal chancellor, an Information Board was established at the Bundeskriminalamt for the purpose of fighting money laundering more effectively and making the money flows of terrorist associations more transparent¹⁸.

An Information Board is an open, but structured, form of co-operation between various security and supervisory authorities that is not limited to individual cases or persons but rather aims at achieving continuity and institutionalisation.

Direct co-operation in an Information Board is intended to improve co-operation between various national authorities within the relevant legal framework by establishing links between the information collection and processing resources of the participating authorities and thus creating synergies.

¹⁸ Cf. 3.8

Eight agencies (besides the Bundeskriminalamt, the Zollkriminalamt (central office of the German customs investigation service), the Federal Intelligence Service, the Federal Office for the Protection of the Constitution, the State Criminal Police Offices of Hesse and North Rhine-Westphalia, the Federal Office for Supervision of Financial Transactions, and the Federal Office for Supervision of Securities Trading¹⁹) participated in this project, which was initially limited to six months.

Based on the positive experience gained, it has been decided to continue co-operation within the framework of an established working party. In the future, this form of co-operation will serve as an information and communications forum for the FIU as well.

3.7 International co-operation

As a central agency at national level, the Bundeskriminalamt acts as an intermediary between criminal justice authorities at the national and the international level. Thus far four "classic" channels of communication have been available for this purpose - Interpol, Europol, Schengen and the network of liaison officers. Exchange of information with other FIUs as a fifth possibility represents a new channel of communication that makes institutionalised access to their data possible.

¹⁹ Both supervisory offices, along with the Federal Office for Supervision of the Insurance Sector, have now been combined to form the Federal Agency for Supervision of the Financial Services Sector (called BaFin - Bundesanstalt für Finanzdienstleistungsaufsicht).

Bilateral exchange of Information

Since the EU Council Decision of 17 October 2000, the Bundeskriminalamt has acted in Germany as the central reporting office for countering money laundering²⁰. The FIU at the Bundeskriminalamt took on this role when the new Money Laundering Act was enacted and has since been responsible for the exchange of information with²¹ FIUs. It has responded to a total of 98 inquiries, the majority of which came from Belgium, Switzerland, Luxembourg and France²¹. The FIU has set itself the goal of providing an initial reply to an inquiry within two working days utilising intelligence available at the Bundeskriminalamt.

With regard to inquiries from local services addressed to other FIUs, the figure is, unfortunately, not quite so favourable. During the period covered by the report, only two requests for information were directed to foreign FIUs, which indicates that this new method of exchanging information is not sufficiently well known. The FIU will rectify this deficit by educating the respective authorities.

Bilateral co-operation has shown that, via the FIU, relevant information on existing investigation proceedings has indeed been gained which would, had the information gone through "traditional" channels, not have become known. A case in point was a suspicious transaction report from a foreign FIU. This report was linked to an active Italian mafia clan which had financed itself for many years through nar-

²⁰ The Joint Financial Inquiry Group (Bundeskriminalamt and the Central office of the German Customs Investigation Service) was designated as the central reporting office.

²¹ Inquiries received from the following countries (in brackets the number of inquiries): Belgium (24), Switzerland (17), Luxembourg (14), France (7), Guernsey (4), Jersey (4), Liechtenstein (4), Bulgaria (3), Spain (3), Croatia (2), The Slovak Republic (2), the Czech Republic (2), Turkey (2), Gibraltar (1), Lebanon (1), The Netherlands (1), Austria (1), Poland (1), Russia (1), Slovenia (1) and El Salvador (1).

cotics, extortion and other serious offences. Investigations have not yet been concluded.

In many cases, information received from foreign FIUs is, in itself, comparable to individual "pieces of a puzzle". In combination with other information received, however, the information contributes significantly towards a convincing overall picture.

Contact with foreign FIUs is by no means limited merely to the exchange of information. Bilateral visits are valuable for developing personal contacts, gaining insights into characteristics specific to a particular country and providing an opportunity to profit from "best practice" at FIUs in other countries. For this reason, in 2002 emphasis was given to intensifying co-operation with "established" European FIUs, in particular with the FIUs in France, the United Kingdom, Belgium, the Netherlands, Luxembourg, Liechtenstein and Switzerland.

Memorandum of Understanding (MoU)

A Memorandum of Understanding (MoU) in the context used here is an agreement between authorities at an international level regulating, inter alia, the procedure for exchanging information²².

The BKA does not necessarily require a MoU in order to exchange information with other FIUs. Procedures within the EU are sufficiently described in the above mentioned Council Decision dated 17 October 2000. With regard to countries outside the EU, the new Money Laundering Act, in combination with the Law on the Bundeskriminalamt, provide the legal basis for an exchange of information.

Other states regularly use a MoU. Due to legal restrictions, such states are in part dependent on the conclusion of a MoU.

During the period covered by the 2002 report, the German FIU received seven requests to conclude a MoU. These requests are still in the process of being examined and agreed upon.

²² Section 14, Section 7 Law on the Bundeskriminalamt

International committee work - FATF and the Egmont Group

The German FIU is also involved in international committee work.

Particular mention should be given to the FATF which, since 1989, has been instrumental in the development of and compliance with international standards to combat money laundering and henceforth also terrorist financing²³.

In November 2002 the FIU attended the annual Typologies Meeting in Rome. Information gained there is passed on in Germany to both expert groups within authorities as well as to those obliged to file a report pursuant to the Money Laundering Act .

Another important forum for international co-operation with foreign FIUs is the Egmont Group²⁴. The objective of this forum, presently made up of 69 central offices, is to further the exchange of information between foreign FIUs. The German FIU attended the plenary meeting, held in Monaco in June 2002.

Germany currently has observer status. Germany has applied for membership and the application is being examined. At the current stage of membership negotiations, Germany could become a member at the next plenary session in Sidney in July 2003.

²³ Cf. Annex 1

²⁴ Cf. Annex 1

3.8 Effects of the terrorist attacks on 11.09.2001 / Analysing and combating the financing of terrorism

The attacks on 11 September 2001 have demonstrated that for the preparation and execution of such crimes, economic aspects play a very significant role. It has become increasingly important on a world-wide scale that not only the actual assassins, but also the terrorist organisations' financial networks, those funding terrorism and the channels used for conducting financial transactions, are identified. The police are, both from a preventative and repressive point of view, thereby challenged by new and important police investigation methods and measures.

Special task force USA

Immediately after the attacks, a special task force at the Bundeskriminalamt began extensive investigations and analysis of the background to the attacks. Particular attention was given to financial investigations and the search for the "paper trail" left by terrorists in the global financial system. Significant parts of the network of relationships were brought to light, i.e. by uncovering transfers made between the persons involved. Information which had come exclusively from the media was, thanks to these financial investigations, confirmed and in part expanded upon. By conducting financial investigations in the fight against international terrorism, new search methods were developed.



In addition to identifying the offenders and analysing the respective transfers, another essential aspect was uncovering the mechanisms and structures of what is known as the unregulated sector of alternative transfer systems (i.e. Hawala), and the question of what role Islamic organisations play in collecting money.

Effect of the attacks on organisation within the Bundeskriminalamt

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The possibility of making increased use of financial investigations in combating the financing of terrorist organisations also had direct organisational consequences within the Bundeskriminalamt. In addition to the newly formed unit “Politically motivated crimes committed by foreign nationals – Islamic terrorism”, within the division State Security, an independent section called, “Financial Investigations”, was set up. This is the first office of its kind in Germany within State Security dedicated solely to this special task. The areas of suppression of money laundering and recovery of criminal assets have been combined into a single organisational structure. In line with the classic definition of financial investigations²⁵, both “integrated” and “independent” financial investigation proceedings are carried out.

Whilst the objective of financial investigations independent of the proceedings is to identify a specific predicate offence pursuant to Section 261 StGB (German Penal Code), financial investigations integrated into proceedings are aimed specifically at uncovering assets and, following this, measures to recover criminal assets with the object of dest-

²⁵ The term financial investigations was defined as a standard term throughout Germany in 1992. It defines all investigations relating specifically to the financial aspects of a crime, from preparation and execution of the offence to the disposal of the proceeds and money laundering. In connection with the different crime-fighting approaches, a distinction is made between financial investigations that are “integrated” and those that are “independent”.

roying the logistics of the offenders. By amending the German Penal Code and introducing Section 129b there is now the possibility, in the case of offences committed by organisations with a connection overseas, to carry out measures to confiscate criminal assets. Additionally, financial investigations integrated into the proceedings serve to uncover structures.

Investigators will, in future, be supported in this area by an auditing service.

New statutory provisions

Experience gained after the attacks on 11 September 2001 and investigations which followed these events were reflected in numerous amendments to the law.

Amendments to the Money Laundering Act also had an effect on the work of the national state security. In addition to assessing suspicion of “financing a terrorist organisation”, the obligation was extended to include such suspicious cases as well.

At an international level, the United Nations and the European Union passed resolutions allowing the financial resources of persons and organisations suspected of supporting, or sympathising with, international terrorism to be frozen. The resolutions passed, at least in part, apply directly to German law as well. The FATF also integrated the phenomenon of international terrorism into the subject of international suppression of money laundering²⁶.

²⁶ In October 2001 the FATF issued the eight “Special Recommendations” for combating terrorist financing. This was followed in April 2002 by the “Guidance for Financial Institutions in Detecting Terrorist Financing Activities”. For further details please see www.fatf-gafi.org.

Financing terrorism and money laundering

Intelligence regarding the possible methods used to finance terrorism remains unsatisfactory and is still based more on suppositions and less on facts and verifiable information of use to the police. To date the following three main sources of income have been identified:

1. It is thought that a certain amount of the money stems from donations collected by “charities” and Islamic associations and those close to such associations. Indeed, extremely large sums of money are collected and sent to Arab countries by such charities. From a law enforcement point of view, it is extremely difficult to prove that these funds were used for a different purpose in these countries. While relevant information is often received, as a general rule such information cannot conclusively demonstrate a direct connection to terrorist financing.
2. A further source of income is funding through “state sponsored” terrorism. Here again, however, there is no evidence which would be admissible in court.
3. Terrorist activities are also financed through criminal offences. This third form of terrorist financing usually involves credit card fraud, forging identity documents and migrant and drug smuggling.

When looking at the ways terrorist activities may be financed, it becomes clear that with regard to the suppression of terrorist financing – in contrast to organised crime – the problem is less one of incriminated assets but rather one of legal assets, as only a part of “terrorist assets” stem

from illegal offences. Accordingly, the problem of introducing incriminated monies into the legal financial system is minor, as is the need to launder the money.

However, cases are known where reports of suspicious transactions have provided valuable information on terrorist financing. It is therefore essential that all reports of suspicious transactions relating to money laundering be examined with regard to their relevance to state security. This was also recognised by the commission on state security at its 54th conference²⁷. At this conference it was agreed to examine all reports of suspicious transactions relating to money laundering with a view to their relevance to state security.

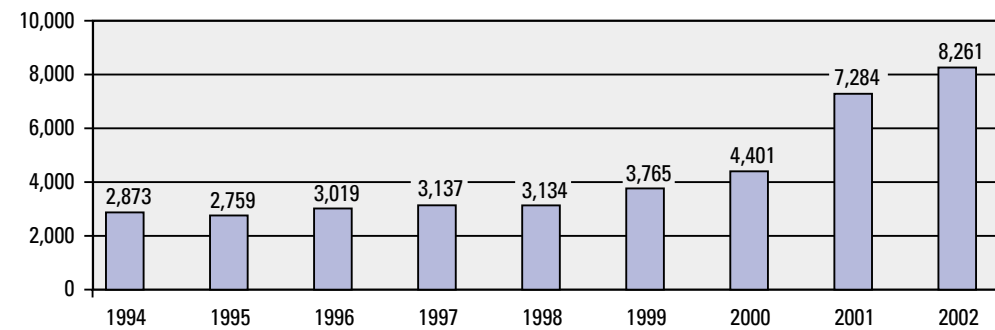
²⁷ 54th State Security Commission Conference, held in Bremen on 04/05 February 03

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4. Statistics

4.1 Number of cases throughout Germany 1994 - 2002

The following diagram shows the development in the number of suspicious transactions reported up to and including 2002. Later reports on suspicious transactions already reported are not listed separately.



The significant increase in 2001, amongst other factors, can be attributed to the terrorist attacks on 11 September 2001 and a heightened awareness on the part of banks and financial services institutions. Improved monitoring and research systems in banks and the run-up to the introduction of the Euro also played a role.

4.2 Number of FIU cases

Preliminary remarks

Due to the obligation to report suspected money laundering transactions and the intelligence obtained through the international exchange of information, the German FIU has an extensive database on suspicious transactions on hand. Due to the short reporting period of four and a half months covered by the report, only a limited assessment for 2002 can be made.

The fact that not everyone was aware of the new regulations immediately after the introduction of the Money Laundering Act must also be taken into consideration. The Federal Ministry of Interior, the Federal Agency for Supervision of the Financial Services Sector, the professional associations and the FIU had to launch a publicity campaign in order to make the new procedures known, such as the obligation to now also send the FIU a copy of the suspicious transaction report.

4.2.1 National reports on suspicious transactions

In the period covered by the report, the German FIU received 2,271 reports of suspicious transactions and 126 supplementary reports on suspicious transactions which had already been reported.

29 cases were identified as being connected with earlier cases which had already been entered into the FIU database. The relevant State Criminal Police Office was informed accordingly. In these cases, in which at least two State Criminal Police Offices were involved, it was not possible to establish from the money laundering data network²⁸ if the competent authorities had already had the relevant intelligence.

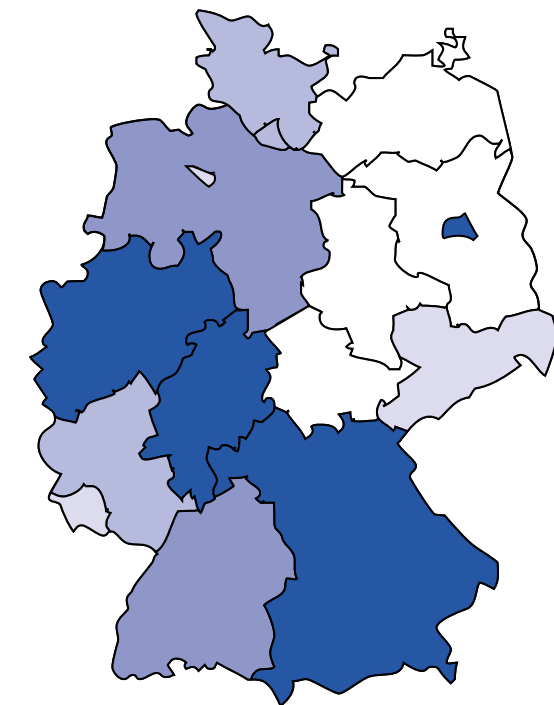
Suspicious transaction reports (listed according to federal state)

The following table lists the number of suspicious transactions reported (supplementary reports on cases which had already been reported are not listed) according to the

individual German states. 141 reported suspicious transactions could not be traced due to the fact that there were no details on which law enforcement authority the suspicious transactions had been reported to.

The majority of reported suspicious transactions were within the jurisdiction of the states Baden-Württemberg, Bavaria, Hesse, North-Rhine/Westphalia and Lower Saxony.

Suspicious transaction reports (listed according to federal state)



■ NW (462)	□ RP (77)
■ BY (422)	□ SN (76)
■ HE (263)	□ SL (23)
■ BW (221)	□ HB (21)
■ NI (202)	□ BB (20)
■ BR (117)	□ ST (17)
■ HH (101)	□ MV (16)
■ SH (78)	□ TH (14)

²⁸ See footnote 11

**Reports on suspicious transactions
(listed according to institutions obliged to report)**

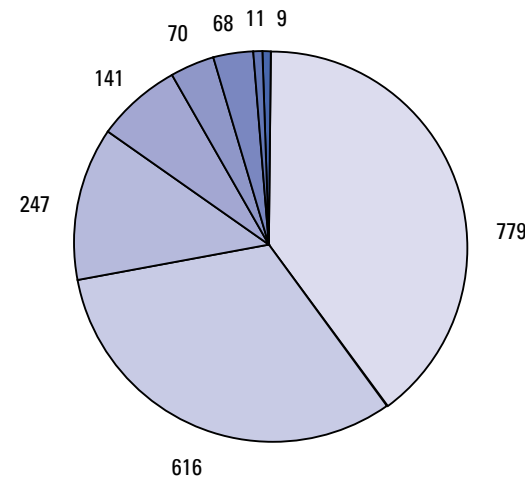
The majority of suspicious transaction reports are received from banks. Suspicious transaction reports made by financial services institutions come almost exclusively from businesses operating in the financial transfer sector. Those professions which now also fall under the obligation to report suspicious transactions in accordance with the new Money Laundering Act (obliged in accordance with Section 3 (1) of the Money Laundering Act), including lawyers, tax advisors and notary publics, reported only three suspicious transactions during the period covered by the report.

**Reports on suspicious transactions
(listed according to institutions obliged to report)**

Institutions reporting	Number	Per cent
Banks	1,940	85.42 %
Financial Services Institutions	310	13.65 %
Insurance Companies	17	0.75 %
Obligation in accordance with Section 3 (1) Money Laundering Act	3	0.13 %
Business providing finance	1	0.04 %
Gambling casino	0	0.00 %
Summe	2,271	100.00 %

When one looks at the suspicious transactions reported by banks, one sees that 80% of the reports come from savings banks/giro centres, private commercial banks and cooperative banks/central institutes of credit co-operation. Details are shown in the following diagram.

**Reports on suspicious transactions
(listed according to institutions obliged to report)**

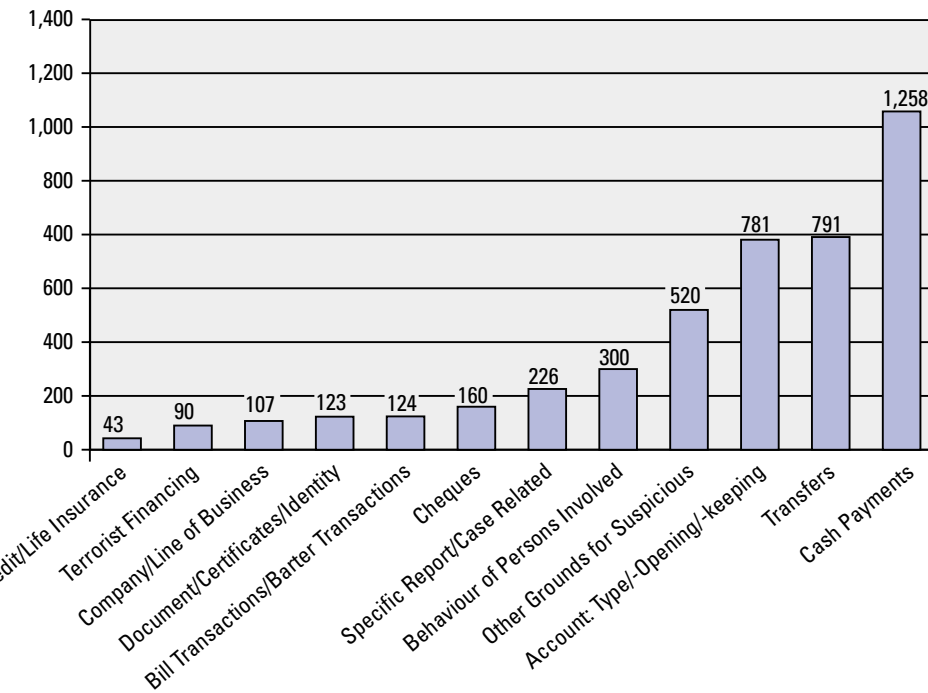


- Saving Banks, Giro Centres (779)
- Private Commercial Banks (616)
- Cooperative Banks, Central Institutes of Credit Cooperation (247)
- Credit Institutions (generic term, no specialisation) (141)
- Deutsche Postbank AG (70)
- Federal Central Bank, State Central Banks (68)
- Direct Banks (11)
- Other Credit Institutions (9)

**Report of suspicious transactions
(listed according to grounds for suspicion)**

Cash payments are given as the most frequent reason for making a suspicious transaction report. However, an analysis of the suspicious transaction reports shows that, in fact, reports are often based on non-cash transactions. In particular, the combination of receipt of a transfer from a state or territory on the FATF's "Black List"²⁹ followed by an immediate cash withdrawal frequently leads to a reported suspicious transaction in which, while "cash payment" is given as a reason, it is in fact the non-cash transaction from a NCCT state which aroused suspicion. Below is an overview:

**Report of suspicious transactions
(listed according to grounds for suspicion)**



- On 15 occasions the reason given for suspecting a transaction was "transfer to/from an offshore area(s)"
- On 22 occasions the reason given for suspecting a transaction was "the opening of an account exclusively for the purpose of depositing cheques."
- On 90 occasions a suspicious transaction was reported with reference to terrorist financing (of these, 49 were so called list cases)
- On 99 occasions the report referred to investigations already known
- On 152 occasions the reason given for reporting a suspicious transaction was "Smurfing", i.e. the splitting of a transaction into several amounts each of which was under the reportable amount of 15,000 Euro.
- On 270 occasions the reason given for reporting a suspicious transaction was "the use of an interim account, assembly account".

²⁹ Cf. Annex 1

Persons (listed according to nationality)

The reports of suspicious transactions listed the nationalities of 2,030 persons. Over 50% of those reported were German. The number of persons from Arab countries was conspicuously high. Iran, Lebanon, Afghanistan and Pakistan were among the "Top Ten" nationalities represented. This can be attributed to the addition of "terrorist financing" in the Money Laundering Act as a reason for suspicion. This is reflected in the heightened awareness of those obliged to report with regard to combating the financing of international terrorism.

Persons (listed according to nationality)

Nationality	Number	Per cent
Germany	1,047	51.53 %
Turkey	90	4.43 %
Russian Federation	85	4.18 %
Yugoslavia	74	3.64 %
Italy	48	2.36 %
Iran	47	2.31 %
Lebanon	40	1.97 %
China	27	1.33 %
Afghanistan	26	1.28 %
Pakistan	25	1.23 %
The Netherlands	21	1.03 %
Croatia	21	1.03 %
Ukraine	21	1.03 %
Austria	19	0.94 %
Egypt	18	0.89 %
Iraq	17	0.84 %
Nigeria	17	0.84 %
Syria	17	0.84 %
Belgium	16	0.79 %
Israel	15	0.74 %
Libya	14	0.69 %
Tunisia	14	0.69 %
India	14	0.69 %
Greece	12	0.59 %
Jordan	12	0.59 %
United Kingdom	12	0.59 %
France	11	0.54 %
USA	11	0.54 %
Hungary	11	0.54 %
Poland	11	0.54 %
Morocco	10	0.49 %
Brazil	10	0.49 %
Vietnam	10	0.49 %
Switzerland	9	0.44 %
Other states	180	8.86 %
Total	2,032	100.00 %

Companies (listed according to country)

A total of 1,135 companies were listed under the national suspicious transaction reports. The addresses of 524 of these companies were provided. These are the addresses of businesses and headquarters of companies. The following table shows the distribution of the business addresses/headquarters, listed according to the country.

Companies (listed according to country)

Business address/Headquarters	Number	Per cent
Germany	383	73.09 %
Switzerland	20	3.82 %
USA	16	3.05 %
Austria	9	1.72 %
Russian Federation	8	1.53 %
Italy	7	1.34 %
England	6	1.15 %
The Netherlands	6	1.15 %
United Arab Emirates	5	0.95 %
Spain	5	0.95 %
France	4	0.76 %
Luxembourg	4	0.76 %
Israel	3	0.57 %
British Virgin Islands	3	0.57 %
Turkey	3	0.57 %
Latvia	3	0.57 %
Rumania	2	0.38 %
Czech Republic	2	0.38 %
Ukraine	2	0.38 %
Other countries	33	6.30 %
Total	524	100.00 %

Bank accounts (listed according to country)

During the period covered by the report, 2,639 accounts were reported. Below is the distribution of the accounts listed according to the country in which the accounts are held.

Bank accounts (listed according to country)

Account - Country	Number	Per cent
Germany	2,583	97.88 %
Pakistan	21	0.80 %
Switzerland	4	0.15 %
Lebanon	3	0.11 %
USA	3	0.11 %
Belgium	2	0.08 %
China	2	0.08 %
Canada	2	0.08 %
Austria	2	0.08 %
Czech Republic	2	0.08 %
United Arab Emirates	2	0.08 %
Egypt	1	0.04 %
Bosnia and Herzegovina	1	0.04 %
England	1	0.04 %
France	1	0.04 %
Greece	1	0.04 %
Hong Kong	1	0.04 %
Jordan	1	0.04 %
Latvia	1	0.04 %
Liechtenstein	1	0.04 %
Philippines	1	0.04 %
Saudi Arabia	1	0.04 %
Sweden	1	0.04 %
Turkey	1	0.04 %
Total	2,639	100.00 %

**Transactions
(listed according to country of origin)**

In 788 transactions, details were provided on one or more countries of origin. The distribution of the countries of origin is listed in the table below.

**Transactions
(listed according to country of origin)**

Country of origin	Number	Per cent
Germany	461	58.50 %
USA	34	4.31 %
Switzerland	22	2.79 %
France	18	2.28 %
England	16	2.03 %
Russian Federation	17	2.16 %
Spain	12	1.52 %
Italy	12	1.52 %
The Netherlands	11	1.40 %
Nigeria	10	1.27 %
Austria	8	1.02 %
Cameroon	7	0.89 %
Brazil	7	0.89 %
Turkey	7	0.89 %
Belgium	7	0.89 %
Yugoslavia	6	0.76 %
China	5	0.63 %
Poland	5	0.63 %
Canada	4	0.51 %
Others	119	15.10 %
Total	788	100.00 %

**Transactions
(listed according to country of destination)**

In 1,101 transactions, details were proved on one or more countries of destination. The distribution of the countries of destination is listed in the table below.

**Transactions
(listed according to country of destination)**

Country of destination	Number	Per cent
Germany	388	35.24 %
Turkey	56	5.09 %
Spain	43	3.91 %
Nigeria	39	3.54 %
Pakistan	39	3.54 %
USA	32	2.91 %
Italy	27	2.45 %
France	26	2.36 %
Russian Federation	24	2.18 %
The Netherlands	23	2.09 %
Switzerland	22	2.00 %
China	20	1.82 %
England	20	1.82 %
Lebanon	15	1.36 %
Ukraine	13	1.18 %
Austria	13	1.18 %
Bulgaria	12	1.09 %
Dominican Republic	11	1.00 %
Thailand	11	1.00 %
Rumania	10	0.91 %
Czech Republic	9	0.82 %
Morocco	9	0.82 %
Jordan	9	0.82 %
Croatia	9	0.82 %
Yugoslavia	8	0.73 %
Belgium	8	0.73 %
Argentina	8	0.73 %
Poland	8	0.73 %
India	8	0.73 %
Belarus	7	0.64 %
Other countries	174	15.80 %
Total	1,101	100.00 %

4.2.2 International exchange of information

Since 15 August 2002 the German FIU has exchanged information on 98 occasions with 21 foreign FIUs.

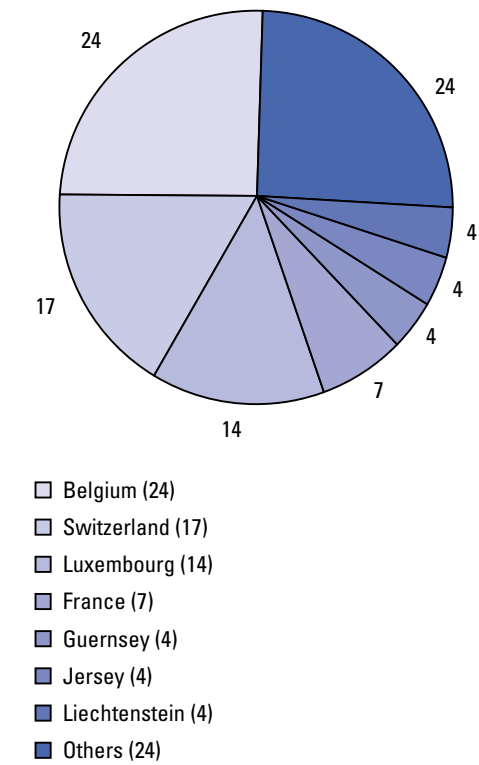
Co-operation was, in the main, with the European central agencies in Belgium, Switzerland and Luxembourg.

The "other countries" are: Bulgaria, Spain, Croatia, Slovakia, Czech Republic, Turkey, Gibraltar, Lebanon, the Netherlands, Austria, Poland, Russian Federation, Slovenia and El Salvador.

Contact with partner agencies from "Offshore Centres" has also proven positive. Furthermore, a third of all suspicious transaction reports related to persons or companies on whom crime-related information was already available.

The following diagram shows the distribution of cases according to the countries involved.

Exchange of information with foreign FIUs



5. Summary and Outlook on 2003

In 2002 focus was on the setting up of the FIU: structures and procedures had to be established, personnel recruited, invitations for external consultants sent, external discussion groups had to be set up and a new database needed to be created.

Even though the statistics may not as yet allow a reliable interpretation, they do indicate that the integration of the new professional groups into the obligations in accordance with the Money Laundering Act needs to be intensified. International co-operation developed positively during 2002.

During 2003 the setting up of the FIU will continue, although more emphasis will be given to evaluation and analysis. The FIU will firmly establish itself as a driving force, interfacing between the law enforcement authorities and the international central agencies.

Initial evaluation projects will, in co-operation with the police forces of the German states, be conducted at a national level. By using intelligence gained from financial investigations integrated into the proceedings and by evaluating suspicious transaction reports, the FIU will be able to identify and deal in greater detail with topologies of money laundering and provide feedback to those obliged to file reports.

A further central theme will be the creation of standardised suspicious transaction reports which can be used to make reports online and forward them by email. This will result in considerable savings both for those obliged to report and the law enforcement authorities. Discussion groups already in progress will continue and be expanded upon, training visits to national authorities and banks will have a positive effect on how each side accepts the other. Last but not least, the introduction of the "INPOL-neu" police information system and consequently the networking of the FIU database will open up a whole new range of investigative possibilities.

At an international level, 2003 will be dominated by Germany's planned admission to the Egmont Group.

Bilateral contact with the most important partner agencies will be intensified.

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Annex 1

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The international framework for the fight against money laundering

Money laundering is a cross-border crime phenomenon, the fight against which would be doomed to failure from the start if it were not embedded in an international context. For that reason, there have been international efforts from the very beginning to fight money laundering with strategies co-ordinated beyond the national borders.

The First EU Money Laundering Directive¹

The first EU money laundering Directive was originally in connection with the suppression of drugs crime and the resulting money laundering activities. Of the 40 recommendations of the FATF, the Directive mainly incorporates into Community law those which deal with preventive measures. Examples to be mentioned are: the identification rule or "know-your-customer principles", record-keeping rule (documents on identifications and transactions are to be kept for at least five years), general diligence rule (where there are signs of money laundering, transactions are to be checked particularly carefully), reporting and information rule (in circumstances which could be a sign of money laundering), prohibition of informing customers that a report has been made on them.

In order to do justice to the particular confidentiality and sensitivity of the data, the EU member states have each set up reporting centres (meanwhile the term Financial Intelligence Unit - FIU has established itself). Their task is to collect and analyse the information received in accordance

¹ Council Directive 91/308/EEC of 10.06.1991

with this Directive, in order then to be able to establish links between suspicious financial transactions and underlying criminal activities.

Due to the differing legal status of the reporting centres (administrative, police or judicial), there were initially difficulties in the exchange of information. The Council of Ministers of Justice and Home Affairs countered these with its Council Decision of 17.10.2000.

EU Council Decision of 17.10.2000²

The core element is the direct exchange of information between the reporting centres, referring mainly to the specimen agreements of the Egmont Group (see below). The Joint Financial Inquiry Group (Bundeskriminalamt/Zollkriminalamt = Customs) at the Bundeskriminalamt was designated as the reporting centre for Germany. The international correspondence in the field of money laundering was channelled through this office, but the group did not fulfil all of the duties of an FIU.

The Second EU Money Laundering Directive³

At the end of 2001, after more than two years of discussions, the second EU Money Laundering Directive supplemented the first Money Laundering Directive of 1991. The core elements of the new Directive are, on the one hand, the extension to other professional groups and companies - while the first Directive was aimed mainly at banks and financial institutions, now accountants, tax consultants,

² Council Decision of 17.10.2000 on agreements for co-operation between the central reporting centres of the Member States in the exchange of information

³ Directive 2001/97/EG of the European Parliament and of the Council of 04.12.2001 amending Directive 91/308/EEC of the Council on the prevention of the use of the finance system for money laundering

notaries and other self-employed members of legal professions, and casinos and persons dealing in valuable goods are also included - and, on the other hand, the enlargement of the catalogue of predicate offences, that is to say the list of crimes from which financial assets to be "laundered" originate. Whereas the first Directive concerned mainly profits from drugs offences, now any form of criminal involvement in the commission of a serious crime is included. Since the law-making process had already advanced too far to be able to include the events of 11 September 2001 in the Directive, the Member States declared in an addendum to the Directive⁴ "how important the Directive is in the fight against the financing of terrorism" and agreed "that all punishable acts in connection with the financing of terrorism constituted a serious crime in the sense of the said Directive".

When the Suppression of Money Laundering Act⁵ came into force on 15 August 2002, Germany became the first EU state to adopt the Directive comprehensively in national legislation.

Financial Action Task Force on Money Laundering - FATF

During the World Economic Summit in Paris in 1989, the Heads of State and Government of the seven strongest industrial nations (G 7) resolved to convene a working group for "financial action" (Financial Action Task Force on Money Laundering - FATF).

⁴ Addendum to the draft of a protocol dated 13.12.2001 14237/01 ADD 1

⁵ Act on the Detection of Proceeds from Serious Crimes (Money Laundering Act - GwG) in the version of the Act to Improve the Suppression of Money Laundering and the Fight against the Funding of Terrorism of 08.08.2002 (Federal Law Gazette I of 14.08.2002, p. 3105 et seq.)

The tasks of this working group comprise the fight against money laundering and the promotion of appropriate suppression strategies and prevention measures at international level. The regular meetings of the FATF and supplementary typology sessions enable a close international exchange of experience between politically responsible people at ministerial level and experts from supervisory authorities and from the field of law enforcement.

The FATF currently consists of 29 Member States and two organisations (European Commission and the Cooperation Council of the Gulf States). The management is at the General Secretariat of the OECD (Organization for Economic Cooperation and Development) in Paris. At present it is Germany's turn to hold the Presidency for one year (until July 2003). The national leadership is the responsibility of the Federal Ministry of Finances (BMF).

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The 29 Member States of the FATF are as follows:

Member States		
Argentina	Great Britain	Norway
Australia	Hong Kong	Austria
Belgium	Iceland	Portugal
Brazil	Italy	Sweden
China	Japan	Switzerland
Denmark	Canada	Singapore
Germany	Luxembourg	Spain
Finland	Mexico	Turkey
France	New Zealand	United States of
Greece	Netherlands	America

As already mentioned, the European Commission and the Cooperation Council of the Gulf States are also members. South Africa and Russia have observer status.

The "40 Recommendations" are to be regarded as the major result of the previous work of the FATF, the implementation of which is recommended to all states. The recommendations take into consideration penal law, the banking industry, the enforcement of law and rules for international cooperation. After the attacks of 11 September 2001, the recommendations were supplemented by eight special recommendations on the fight against the financing of terrorism. They lay down the most important legal and regulatory rules which the countries must have introduced, if they are to counter the financing of terrorism effectively. The implementation of the recommendations is evaluated in all of the Member States. When the FATF identifies coun-

tries or territories which are regarded as non-cooperative in the fight against money laundering, they are put on the so-called "Black List" (Non-Cooperative Countries or Territories - NCCT), after close examination, and are to be supported in the development of their counter-money-laundering measures and/or they must reckon with sanctions if they refuse. In Germany, the "Black List" is made available to the banks and financial services institutes. The current list contains 10 NCCT's⁶.

Egmont Group

The Egmont Group is an unofficial international body of national FIU's. It supports the exchange of information between the national central services and, at the international level, coordinates their efforts to fight money laundering.

The Egmont Group is named after the Egmont-Arenberg Palace in Brussels, Belgium, where the first meeting took place on 9 June 1995 on the initiative of the Belgian and American FIU's. This meeting was attended by representatives of 25 nations and eight international organisations to discuss the fight against money laundering with FIU's.

The Egmont Group defines an FIU - primarily to distinguish between operational units who are members of the Egmont Group and other authorities - as follows:

⁶ The current list can be seen on the Internet at: http://www1.oecd.org/fatf/NCCT_en.htm

A central, national agency responsible for receiving (and, as permitted, requesting), analysing and disseminating to the competent authorities, disclosures of financial information: (i) concerning suspected proceeds of crime, or (ii) required by national legislation or regulation, in order to counter money laundering.

At present, the Egmont Group comprises 69 FIU's from the following countries:

The Egmont Group Member States		
Andorra	Estonia	Netherlands Antilles
Aruba	Finland	New Zealand
Australia	France	Norway
Austria	Great Britain	Panama
Bahamas	Greece	Paraguay
Barbados	Guernsey	Poland
Belgium	Hong Kong	Portugal
Bermuda	Hungary	Rumania
Bolivia	Iceland	Russia
Brasilia	Ireland	Singapore
British Virgin Islands	Isle of Man	Slovak Republic
Bulgaria	Israel	Slovenia
Canada	Italy	South Korea
Cayman Islands	Japan	Spain
Chile	Jersey	Sweden
Columbia	Latvia	Switzerland
Costa Rica	Liechtenstein	Taiwan
Croatia	Lithuania	Thailand
Cyprus	Luxembourg	Turkey
Czech Republic	Marshall Islands	United Arab Emirates
Denmark	Mexico	USA
Dominican Republic	Monaco	Vanuatu
El Salvador	Netherlands	Venezuela

The German FIU has only observer status at present. Membership has been applied for and the test procedure is ongoing. As the acceptance procedure stands at the moment, Germany could be accepted as a member at the plenary session in Sydney in July 2003.

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Annex 2

The Money Laundering Act in the version of the Act on the Improvement of the Suppression of Money Laundering and Combating the Financing of Terrorism (Money Laundering Act) of 8 August 2002 (Federal Law Gazette I of 14 August 2002, p. 3105 ff)

Section 1 – Definitions

- (1) Credit institutions are enterprises as defined by Section 1 para 1 of the German Banking Act, with the exception of the enterprises specified in Section 2 para 1 no 4, 7 and 8 of the German Banking Act. The German Financial Supervisory Authority may, from case to case, determine that the provisions of this Act shall not be applied to an enterprise for the purposes of this provision owing to the nature of its business transactions.
- (2) Financial services institutions are enterprises for the purposes of Section 1 para 1a of the German Banking Act, with the exception of the enterprises specified in Section 2 para 6 sentence 1 no 3 and 5 to 12 of the German Banking Act. Financial enterprises are enterprises for the purpose of Section 1 para 3 of the German Banking Act. Para 1 sentence 2 shall apply mutatis mutandis.
- (3) A branch in Germany of a credit institution, financial services institution or financial enterprise domiciled abroad is deemed to be a credit institution, financial services institution or financial enterprise for the purposes of this Act.
- (4) Institutions for the purposes of this Act are a credit institution, a financial services institution, a financial enterprise, and an insurance company that offers accident insurance policies with premium redemption or life insurance policies. Except for the cases specified in Section 9 para 3 and Section 14, insurance brokers placing such policies are also deemed to be insurance companies.

(5) For the purposes of this Act, identification shall be the establishment of a person's name by means of a valid identity card or passport as well as of the date of birth, the place of birth, the nationality and the address in so far as they are contained therein, and the determination of the type, number and issuing authority of the official identity document. Identification may also be carried out by means of a qualified electronic signature within the meaning of Section 2 no 3 of the Digital Signature Act.

(6) For the purposes of this Act, a financial transaction shall be any act aimed at or resulting in a transfer of money or a similar movement of assets.

(7) Electronic cash within the meaning of Section 1 para 14 of the German Banking Act shall be a means of payment equivalent to cash.

Section 2 – General obligation for institutions to identify customers

- (1) When a contract establishing a business relationship intended to operate on a lasting basis is concluded, the institution shall establish the identity of the other contracting party. A business relationship intended to operate on a lasting basis shall in particular exist if an account is kept and if other transactions referred to in Section 154 para 2 sentence 1 of the German Fiscal Code are executed. An insurance company's obligation to identify customers, when concluding contracts, is specified in para 4.
- (2) Before accepting cash, securities within the meaning of Section 1 para 1 of the Securities Deposit Act or precious metals worth Euro 15,000 or more, an institution shall identify the person presenting himself/herself to the institution.
- (3) Para 2 shall also apply where the institution executes several financial transactions within the meaning of para 2, which together amount to Euro 15,000 or more in so far as there are factual indications that there is a connection between these transactions.

- (4) Paras 1 and 2 shall not apply to the relationship of institutions among one another. In order to combat money laundering or the funding of terrorist organisations, the Federal Ministry of the Interior and the Federal Ministry of Finance may, by ordinance having the force of law not requiring the consent of the Bundesrat, provide exceptions to sentence 1 in respect of institutions in such third countries which do not impose requirements on institutions equivalent to the requirements of this Act.
- (5) Para 2 shall not apply if the owner or staff members of an enterprise regularly pay in or draw cash from the account of this enterprise or if cash is deposited in the institution's night safe deposit box. If an institution which is subject to the identification obligation pursuant to para 1 has a night safe deposit box, an obligation shall be placed on the users to pay in cash only for their own account.

Section 3 – General obligation of identification for other enterprises and persons

- (1) In performing their vocational activities, the following persons and enterprises shall also be subject to the general obligation of identification of Section 2 paras 1 and 2, also in conjunction with para 3:
1. Lawyers, legal advisers who are members of a chamber of lawyers, patent lawyers and notaries if they work towards the planning or execution of the following transactions for their clients:
 - a) purchase and sale of real estate or business establishments,
 - b) administration of money, securities or other assets of their clients,

- c) opening or administration of bank, savings or securities accounts,
 - d) procurement of funds required for the founding, operation or administration of companies,
 - e) founding, operation or administration of trust companies, companies or similar structures, or if they execute financial or real estate transactions on behalf and for the account of their clients.
2. qualified auditors, certified accountants, tax consultants and agents in tax matters,
 3. real estate brokers, and
 4. gambling casinos in respect of customers buying or selling chips worth Euro 1,000 or more; the obligation of identification may also already be fulfilled by identifying customers when they enter the gambling casino.

Other business persons, in so far as they act in carrying out their trade or business and are not subject to the obligation of identification pursuant to Section 2, as well as persons who administer another person's assets against payment in execution of their administrative duties, and who are not subject to the obligation of identification pursuant to sentence 1, in conjunction with Section 2 above, before accepting cash worth Euro 15,000 or more shall first identify the person intending to pay such amount. This shall also apply to persons accepting cash on behalf of these enterprises and persons in so far as they act in performance of their professional duties.

- (2) Para 1 sentences 2 and 3 shall not apply to commercial money transportation companies

Section 4 – Identification of persons taking out a life insurance policy

- (1) If an insurance company referred to under Section 1 para 4 concludes a life insurance contract or an accident insurance with contract premium redemption, it shall first identify the contracting party if the amount of the premiums to be paid over one year exceeds Euro 1,000, if in the event of a single premium this premium is higher than Euro 2,500 or if more than Euro 2,500 are paid into a premium deposit account. This shall also apply where the amount of the periodical premiums to be paid over one year is increased to Euro 1,000 or more.
- (2) Para 1 shall not apply to insurance policies taken out for voluntary employee pension schemes on the basis of an employment contract or the vocational activity of the insured person unless a cash surrender value has to be paid in the event of premature termination, or if these policies may serve as a security for loans.
- (3) If in the cases referred to in para 1 the contract comes off through an insurance agent or is administered by an insurance agent, the identification can also be carried out by the agent. If the contract comes off through an insurance broker or is administered by an insurance broker, the broker shall be obliged to identify the contracting party. The insurance broker shall forward the records on the customer's identification to the insurance company.
- (4) The obligation of identification pursuant to para 1 is deemed to be fulfilled if the company, when entering into the contract, establishes that the contracting party has authorised it to collect the agreed premium by debit transfer from an account the opening of which is subject to the obligation to establish the identity pursuant to

Article 3 para 1 of Directive 91/308/EEC, or from an account specified in an ordinance having the force of law pursuant to para 5. If the collection of the premium is not possible from the account specified by the policy holder, the company shall establish the identity pursuant to para 1. If, in an insurance policy which is concluded for an employee pension scheme on the basis of an employment contract or a vocational activity on the part of the insured person, it is agreed that the premium payment is to be settled through an account of the contracting party as specified in the contract, the obligation of identification pursuant to para 1 is deemed to be fulfilled if the company determines that the premium payment is actually settled through the agreed account.

- (5) The Federal Minister of the Interior shall be authorised to specify, by ordinance having the force of law and in concertation with the Federal Minister of Finance, other accounts to which para 4 shall be applicable in so far as these accounts, too, are used for the payment of premiums, provided that the opening of these accounts is subject to the obligation to establish the identity of the person entitled to dispose of these accounts.

Section 5 – Financial Intelligence Unit

- (1) As central agency within the meaning of Section 2 para 1 of the Federal Criminal Police Office Act, the Federal Criminal Police Office - Financial Intelligence Unit - shall support the Federal and State (Länder) police forces in the prevention and prosecution of money laundering and the funding of terrorist organisations. The Federal Criminal Police Office - Financial Intelligence Unit - shall
1. collect and analyse suspicious transaction reports transmitted pursuant to Section 11, in particular arrange for the cross-validation of data stored by other agencies,

2. inform the Federal and Länder prosecution authorities of information concerning them and on the facts of the crimes ascertained,
 3. collect suspicious transaction reports in respect of money laundering in statistics, in particular containing depersonalized data on the number of reports, individual predicate offences and on the manner of their processing by the Financial Intelligence Unit.
 4. publish an annual report, and
 5. regularly inform the persons obliged to report, on types and methods of money laundering.
- (2) The Federal Criminal Police Office - Financial Intelligence Unit - shall co-operate with the financial intelligence units of other states responsible for the prevention and prosecution of money laundering and the funding of terrorist organisations. It is the financial intelligence unit within the meaning of Article 2 paragraph 3 of the Council Decision (2000/642/JHA) of 17 October 2000 concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information (OJ EC L 271, p. 4).
- (3) In so far as is necessary for the performance of its duties pursuant to paras 1 and 2 above, the Federal Criminal Police Office - Financial Intelligence Unit - may collect, process and use personal data in accordance with Sections 7 to 14 and Sections 27 to 37 of the Federal Criminal Police Act. Section 7 para 2 sentence 3 of the Federal Criminal Police Act shall apply to data collection mutatis mutandis. The duties as central agency as defined in Section 2 para 2 no 1 of the Federal Criminal Police Act shall be replaced in Section 7 para 2 of the Federal Criminal Police Act by the duties as defined in paras 1 and 2. Section 14 para 1 of the Federal Criminal Police Act shall be applicable with the proviso that transmission of data to financial intelligence units of other states (para 2 sentence 1) is admissible. The

Federal Criminal Police Office - Financial Intelligence Unit - can request information from the German Financial Supervisory Authority pursuant to Section 24 c para 3 sentence 1 no 2 of the German Banking Act as far as is necessary for the performance of its duties in accordance with paras 1 and 2.

- (4) The Federal Criminal Police Office - Financial Intelligence Unit - may use the data by the financial intelligence unit of another state solely in line with the conditions imposed by the transmitting financial intelligence unit. It can itself impose restrictions and conditions on the use of information transmitted to the financial intelligence unit of another state.

Section 6 – Identification in case of suspicion

If an institution or an enterprise or a person establishes facts, as defined in Section 3 para 1, suggesting that the agreed financial transaction serves the purpose of money laundering pursuant to Section 261 of the German Penal Code (StGB) or the funding of a terrorist organisation pursuant to Section 129a, also in conjunction with Section 129b of the Penal Code, or would serve this purpose if accomplished, they are obliged to identify the person in question pursuant to Section 2 para 2, also in conjunction with para 3, Section 3 para 1 sentence 1 no 4, sentences 2 and 3, Section 4 paras 1 and 3, even if the amounts in question fall short of the amounts referred to in these provisions. If there is reason to assume that the business activities also of other businessmen are increasingly misused for the purpose of money laundering, the Federal Minister of the Interior, in concertation with the Federal Minister of Economics, can impose upon them the obligation to observe sentence 1 by virtue of an ordinance having the force of law.

Section 7 – Exemption from identification

An exemption from the obligation of identification pursuant to Section 2 paras 1 and 2, also in conjunction with para 3, Section 3 para 1, Section 4 paras 1 and 3, as well as Section 6 sentence 1, may be made if the person whose identity has to be established is personally known to the enterprise, institution or person obliged to identify him, and if the person has given proof of his/her identity on a former occasion, or if the person to be identified represents a commercial money transportation company.

Section 8 – Establishment of the economic beneficiary

- (1) An enterprise, institution or person which is under the obligation to identify business partners pursuant to Section 2 para 1, Section 3 para 1, Section 4 paras 1 and 3 and Section 6 sentence 1, shall seek information from the person to be identified as to whether or not he/she is conducting business for his/her own account. If the person to be identified declares that he/she is not conducting business on his/her own account, the enterprise, institution or person under the obligation to identify the business partner shall establish, on the basis of the information supplied by him/her, the name and address of the person in question who is conducting business. If in the framework of an existing business relationship or the execution of a business transaction within the meaning of Section 2 para 2, also in conjunction with para 3, an institution has reason to doubt, given the surrounding circumstances, that the customer is conducting business on his/her own account, it shall take appropriate measures to establish the identity of the economic beneficiary. If the person to be identified acts on behalf of a body with no legal capacity, the name of the body and the name and address of one of its members shall be established.

- (2) Para 1 shall not apply to the relations of institutions among one another. In order to combat money laundering or the financing of terrorist organisations, the Federal Ministry of the Interior and the Federal Ministry of Finance may, by ordinance having the force of law not requiring the consent of the Bundesrat, provide exceptions to sentence 1 in respect of institutions in such third countries which do not impose requirements on institutions equivalent to the requirements of this Act.

Section 9 – Obligation of recording and retention

- (1) The facts found pursuant to Section 2 paras 1 and 2, also in conjunction with para 3, Section 3 para 1, Section 4 paras 1 and 3, Section 6 sentence 1, and Section 8 para 1 sentences 2 to 4 shall be recorded. The facts ascertained pursuant to Section 1 para 5 shall be recorded in the form of records of the data referred to therein or in the form of a copy of the pages of the presented identification documents containing these data. If an institution/enterprise or person refrains from identification pursuant to Section 7, the name of the person to be identified and the fact that he/she is personally known to the enterprise/institution/person under the obligation to identify him/her or the fact that the person to be identified represents a commercial money transportation company shall be recorded. If there is no obligation of identification pursuant to Section 2 para 5 sentence 1, first or second alternative, the institution shall record the name of the person paying in, or drawing, money on the paying-in slip or the paying-out slip. The company shall in advance notify the institution of the name of the person paying in, or drawing, money on its behalf, together with the announcement that this person will in the future repeatedly pay money into, or draw money from, the company's account. The identity of the person paying in, or drawing, money shall be established when

paying in, or drawing, money for the first time.

- (2) The records may also be stored on an image recording or other data medium. It shall be ensured that the data stored
1. are identical with the data established,
 2. are available during the retention period and can at any time be made available for reading within a reasonable period of time.
- (3) The records shall be retained for six years. In the case of Section 4 para 1, the retention period shall begin at the end of the calendar year in which the business relations with the contracting party were terminated. In all other cases, it shall begin at the end of the calendar year in which the information was obtained.

Section 10 – Reference to and use of records

- (1) The records made pursuant to Section 9 para 1 may only be referred to and used for prosecuting a criminal offence pursuant to Section 261 para 1 sentence 2 nos. 1 to 5 of the Penal Code for the purposes of criminal proceedings.
- (2) Where criminal proceedings are instituted on the grounds of a criminal offence specified in para 1, the Tax Office shall be notified of this fact, together with the underlying facts, as soon as a financial transaction within the meaning of Section 1 para 6 has been established which could be important for the initiation or execution of taxation or tax-related criminal proceedings. If the prosecution authority uses records pursuant to Section 9 para 1 in the criminal proceedings, these records may also be transmitted to the Tax Office. Notifications and records may be used for taxation proceedings and for tax-related criminal proceedings.

Section 11 – Suspicious transaction reports

- (1) An institution, an enterprise or a person in the cases referred to in Section 3 para 1, where it detects facts suggesting that a financial transaction serves the purpose of money laundering pursuant to Section 261 of the Penal Code, or would serve this purpose if accomplished, shall report to the competent prosecution authorities and, by way of copy to the Federal Criminal Police Office - Financial Intelligence Unit - either orally, by phone, by telex, or by electronic data communication without delay, even if the amounts in question fall short of the amounts referred to in Section 6 sentence 1. An institution shall also be obliged to a report within the meaning of sentence 1, if facts suggest that a financial transaction serves the purpose of financing a terrorist organisation pursuant to Section 129a, also in conjunction with Section 129b of the Penal Code (StGB), or would serve this purpose if accomplished. A requested financial transaction shall not be executed before the public prosecutor's office informs the institution, the enterprise or the person within the meaning of Section 3 para 1 sentence 1 nos 3 and 4, sentences 2 and 3 of its consent, or before the second working day following the transmission of such report has lapsed without this transaction having been prohibited under the Code of Criminal Procedure (StPO); a Saturday shall not be considered a working day in this respect. If it is not possible to postpone the financial transaction, it may be executed; the report shall be submitted without delay.
- (2) A report pursuant to para 1 shall be repeated in writing if it has not already been transmitted by telex or electronic data transmission.
- (3) Notwithstanding para 1 sentence 1, the persons referred to in Section 3 para 1 nos 1 and 2, are not obliged

to make a report if the suspicion of money laundering is based on information by or on the client which they have obtained in the course of legal advice provided for, or in the course of legal representation in court, for this client. The obligation to report shall remain in effect if the persons referred to in sentence 1 know that their client deliberately uses their legal advice for the purpose of money laundering.

- (4) Notwithstanding para 1 sentence 1, the persons referred to in Section 3 para 1 sentence 1 nos 1 and 2 shall transmit the report to the competent federal professional chamber. Such chamber may comment on the report. It shall transmit the report, alongside its comments, in accordance with para 1 sentence 1 to the parties referred to therein. For notaries who are not members of a chamber of notaries, the highest Land authority responsible for the regulation of their profession shall take the place of the Federal Chamber of Notaries.
- (5) An institution, an enterprise or a person within the meaning of Section 3 para 1 shall not inform the party ordering the financial transaction or a party other than a public authority of the fact that a report pursuant to para 1 or para 2 has been made and that an investigation has been initiated.
- (6) The obligation to report pursuant to paras 1 and 2 does not rule out the voluntary character of the notification within the meaning of Section 261 para 9 of the Penal Code.
- (7) The contents of a report pursuant to para 1 may be used for the criminal proceedings specified in Section 10 para 1 and 2 sentence 3, and for criminal proceedings

related to a criminal offence liable to maximum punishment of more than three years of imprisonment, as well as for taxation proceedings and for the supervisory tasks of competent authorities pursuant to Section 16 nos 1 to 4.

- (8) In order to combat money laundering or the funding of terrorist organisations, the Federal Ministry of the Interior and the Federal Ministry of Finance can, by ordinance having the force of law requiring the consent of the Bundesrat, define individual typified financial transactions deemed to be suspicious within the meaning of para 1 sentence 1 and which the institutions pursuant to paras 1, 2 and 5 shall report. The ordinance having the force of law is to be limited in time.
- (9) In criminal proceedings where a report has been made pursuant to para 1, the competent public prosecutor's office shall inform the Federal Criminal Police Office - Financial Intelligence Unit - of the commencement of public legal action and the outcome of proceedings in accordance with Section 482 para 2 of the German Code of Criminal Procedure.

Section 12 – Release from responsibility

A person who reports to the prosecution authorities facts suggesting a criminal offence pursuant to Section 261 of the Penal Code or the funding of a terrorist organisation pursuant to Section 129a, also in conjunction with Section 129b of the Penal Code, cannot be held responsible for such report unless the report has been made in a deliberately or grossly negligently false manner.

Section 13 – Suspicious transaction report by the competent authority

The competent authority (Section 16), where it detects facts suggesting a criminal offence pursuant to Section 261 of the Penal Code or the funding of a terrorist organisation pursuant to Section 129a, also in conjunction with Section 129b of the Penal Code, shall report these to the competent prosecution authorities without delay.

Section 14 – Internal safeguards

(1) The following enterprises and persons shall take safeguards against their being misused for purposes of money laundering:

1. Credit institutions,
2. insurance companies within the meaning of Section 1 para 4,
3. auctioneers,
4. financial services institutions,
5. financial institutions within the meaning of Section 1 para 3 sentence 1, nos 2-5 of the Federal Banking Act,
6. bullion dealers,
7. gambling casinos,
8. enterprises and persons in the cases of Section 3 para 1 sentence 1 nos 2 and 3, and if they regularly conduct business referred to therein, in the cases of Section 3 para 1 sentence 1 no 1 and sentences 2 and 3.

(2) For the purposes of para 1, safeguards shall mean

1. the designation of a compliance officer (money laundering) directly subordinate to the management who is to act as contact for the prosecution authorities and for the Federal Criminal Police Office - Financial Intelligence Unit – as well as for competent authorities pursuant to Section 16,

2. the development of internal principles, appropriate business and customer-related safeguarding systems and controls for the prevention of money laundering and the funding of terrorist organisations,
3. ensuring that the employees who are authorized to execute cash and non-cash financial transactions are trustworthy, and
4. providing regular information to the employees about the methods of money laundering and the obligations pursuant to this Act.

(3) If a person within the meaning of para 1 sentence 1 nos 3, 6 or 8 performs his/her professional duties in an enterprise, the enterprise shall be responsible to comply with the obligation pursuant to para 1. The enterprises and persons obliged pursuant to para 1 may have other enterprises or persons take the safeguards pursuant to para 2 upon prior consent by the competent authorities pursuant to Section 16. Consent may only be given if the other enterprises or persons guarantee that the safeguards will be taken in due manner.

(4) The competent authority pursuant to Section 16 may, from case to case, give instructions that are appropriate and necessary to take the safeguards within the meaning of Section 14 para 2 no 2. It may determine that the provisions of paras 1 and 2 do not have to be applied, wholly or partly, to all or some of the enterprises and persons referred to in para 1 nos 3 to 6 owing to the nature of their business transactions and the size of their business. For persons and enterprises referred to in Section 3 para 1 sentence 1 nos 1 and 2, also in conjunction with para 3 sentence 1 of this provision, these instructions shall be given by the competent federal professional chamber or the highest competent Land authority pursuant to Section 11 para 4 sentence 4.

Section 15 – Branch offices and enterprises abroad

An enterprise within the meaning of Section 14 para 1 nos 1 to 6 shall take care that the obligations arising from Sections 2 to 4, 6, 8, 9 and 14 are also fulfilled by its branch offices abroad; the same shall apply to enterprises abroad dependent from it which are unified under the same central management (Section 18 of the German Stock Corporation Act - Aktiengesetz). Where this is not admissible under the national law of the other state, the competent authority shall be informed within a period of six months after the entry into force of this Act. If the branch office is set up or the enterprises are unified under central management after the entry into force of this Act, the competent authority shall be informed within a period of three months after the opening or unification under central management.

Section 16 – Competent authority

The competent authority for the implementation of this Act shall be

1. for the Development Loan Corporation (Kreditanstalt für Wiederaufbau): the Federal Minister of Finance,
2. for the other credit institutions with the exception of Deutsche Bundesbank, and financial services institutions: the German Financial Supervisory Office,
3. for insurance companies: the competent supervisory authority for the insurance industry, for insurance brokers: the German Insurance Supervisory Office
4. for the rest: the authority responsible under federal or Land law.

Section 17 – Provisions regarding fines

(1) A person who intentionally or recklessly

1.
 - a) fails to identify a person contrary to Section 2 para 1 sentence 1 or para 2, also in conjunction with para 3, each also in conjunction with Section 3 para 1 sentence 1, or
 - b) fails to identify a person contrary to Section 3 para 1 sentence 2 or Section 4 para 1
2. does not, not correctly or not completely record a finding contrary to Section 9 para 1 sentence 1, 3 and 4 or,
3. fails to retain records contrary to Section 9 para 3 sentence 1, shall be deemed to have committed an administrative offence.

(2) A person who

1. fails to make inquiries contrary Section 8 para 1 sentence 1 or fails to establish the name and address contrary to Section 8 para 1 sentences 2 or 4,
2. informs the party ordering the financial transaction or a party other than a public authority contrary to Section 11 para 5, or
3. fails to report, or to report in due time, to the competent authority contrary to Section 15 sentence 2 or 3 shall be deemed to have committed an administrative offence.

(3) In cases pursuant to para 1, the administrative offence may be punished by a fine of up to Euro 100,000, in cases pursuant to para 2 by a fine of up to Euro 50,000.

(4) The authority designated in Section 16 nos 2 and 3 shall also be the administrative authority within the meaning of Section 36 para 1 no 1 of the Act on Administrative Offences (Gesetz über Ordnungswidrigkeiten). For tax consultants and tax agents, the Tax Office (Finanzamt) shall be the administrative authority within the meaning of Section 36 para 1 no 1 of the Act on Administrative Offences. As far as a federal or Land authority is responsible pursuant to Section 16 no 4, this authority shall also be deemed to be the administrative authority within the meaning of Section 36 para 1 no 1 of the Act on Administrative Offences; this shall not apply to persons referred to in Section 3 para 1 sentence 1 no 1.

(5) Where the Tax Office is the administrative authority pursuant to para 4 sentence 2, Section 387 para 2, Section 410 para 1 nos 1, 2, 6 to 11, para 2 and Section 412 of the Fiscal Code shall apply mutatis mutandis.

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Annex 3

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Section 261

Criminal Code Money Laundering; Disguising of Illegal Acquired Assets (since 30 August 2002)

(1) From 3 month up to five years imprisonment shall be imposed on any person who conceals or disguises the origin of an item which derives from an illegal act named in the second sentence, or who prevents or places in jeopardy the detection of its origin, location, forfeiture, confiscation or seizure. Illegal acts in the meaning of the first sentence shall be:

1. major crimes,
2. less serious crimes under
 - a) section 332 subs.1 (corruptibility), also in conjunction with subs.3 and section 334 (corruption),
 - b) section 29 subs. 1 first sentence No. 1 of the Narcotics Act (Betäubungsmittelgesetz), or section 29 subs 1 No. 1 of the Commodities Control Act (Grundstoffüberwachungsgesetz),
3. less serious crimes under section 373 and, committed on a commercial basis, under section 374 of the tax code , both respective in conjunction with section 12 subs. 1 to the realization act of common trade organization. (Gesetz zur Durchführung der Gemeinsamen Marktorganisationen),
4. less serious crimes
 - a) pursuant to sections 180b (trade in human beings), 181a (procuring), 242 (theft) 246 (embezzlement), 253 (extortion), 259 (receiving stolen goods), 263 (fraud, computer fraud, economic subsidy fraud) to 264, 266 (breach of trust), 267 (forgery of document), 269,284 (organized illegal gambling), 326

- subs. 1,2,and 4 and 328 subs 1,2 and 4 (offences involving environmental damage),
- b) under section 92a of the foreigners act and section 84 of the asylum act committed on a commercial basis or by a member of a gang formed for recurrent commission of such offences, as well as
5. less serious crimes pursuant to sections 129 and 129a subs. 3 also in connection with section 129b subs. 1 as well as less serious crimes committed by a member of a criminal or terrorist association (sections 129, 129a also in connection with section 129b sentence 1).

Sentence 1 also applies in cases of criminal tax evasion committed on a commercial basis or by a member of a gang according to section 370a of the German Fiscal Code to expenditures saved by criminal tax evasion and illegal acquired tax-refunds/-reimbursements as well as in cases of sentence 2 N° 3 to an item, on which taxes were embezzled.

- (2) The same punishment shall be imposed on any person who, in respect of the property referred to in subs. 1,
 1. acquires such item for himself or herself or for a third person, or
 2. possesses or uses such item for himself or herself or for a third person, knowing at the time of receipt the origin of such item.
- (3) The attempt shall be punishable.
- (4) In particularly serious cases the punishment shall be imprisonment from six months to ten years. A particularly serious case shall be generally one in which the offender acts on a commercial basis or as a member of a gang formed for recurrent commission of money laundering.

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- (5) Whoever in the cases contemplated in subs. 1 or 2 recklessly fails to realize that the item derives from the unlawful act referred to in subs. 1, shall be punished by imprisonment of up to two years or a fine.
- (6) The offence shall not be punishable under subs. 2 if a third person has previously acquired the item without committing a criminal offence in doing so.
- (7) Items to which the criminal offence relates may be confiscated. Section 74 a shall be applicable. Sections 43 a and 73 d shall be applied if the offender acts as a member of a gang formed for recurrent commission of money laundering. Section 73 d shall also be applied if the offender acts on a commercial basis.
- (8) The items referred to in subs. 1, 2 and 5 shall be on an equal footing with items deriving from offences, contemplated in subs.1, committed outside the area of application of this Code, provided the offences are punishable at the place of commission as well.
- (9) Punishment under the subs. 1 to 5 shall not be imposed on any person who
 1. voluntarily reports the offence to the competent authority, or arranges voluntarily for such a report to be made, provided that the laundering has not yet been discovered at this time, wholly or in part, and the offender knew this or on reasonable consideration of the facts must have anticipated this, and
 2. in the cases contemplated in subs. 1 or 2 under the conditions referred to in No. 1 causes the item to which the criminal offence relates to be seized.
- (10) The court may at its discretion mitigate punishment (section 49 subs. 2) in the cases contemplated in subs. 1 to 5 or dispense with punishment under these provisions if the offender by voluntarily disclosing his knowledge has substantially helped to make it possible for the offence, going beyond his or her own contribution thereto, or an unlawful act of another, referred to in subs. 1, to be detected.

Punishment under the subs. 1 to 5 shall not be imposed to any person who is punished because of the predicate offence.

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Annex 4

Council Decision of 17 October 2000

concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information

Official Journal L 271 , 24/10/2000 p. 0004 - 0006 (2000/642/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 34(2)(c) thereof,

Having regard to the initiative of the Republic of Finland,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) The action plan to combat organised crime was approved by the Amsterdam European Council on 16 to 17 June 1997¹. The action plan recommended, in particular in recommendation 26(e), that there should be an improvement in cooperation between contact points competent to receive suspicious transaction reports pursuant to Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering².
- (2) All Member States have set up financial intelligence units (FIUs) to collect and analyse information received under the provisions of Directive 91/308/EEC with the aim of establishing links between suspicious financial transactions and underlying criminal activity in order to prevent and to combat money laundering.
- (3) Improvement of the mechanisms for exchanging information between the FIUs is one of the objectives recognised by the Money Laundering Experts' Group set up

within the Multidisciplinary Group on Organised Crime, along with an improvement in the exchange of information between FIUs and the investigating authorities in Member States and in the multidisciplinary organisation of FIUs, to incorporate knowledge of the financial, law enforcement and judicial sectors.

- (4) The Council conclusions of March 1995 highlighted the fact that the strengthening of systems for combating money laundering depends on closer cooperation between the different authorities involved in fighting it.
- (5) The second Commission report to the European Parliament and the Council on the implementation of Directive 91/308/EEC identifies the difficulties which still appear to prevent the communication and exchange of information between certain units having a different legal status.
- (6) It is necessary that close cooperation take place between the relevant authorities of the Member States involved in the fight against money laundering and that provision be made for direct communication between those authorities.
- (7) Arrangements have already been successfully adopted by Member States in relation to this matter based mainly on the principles laid down in the model memorandum of understanding proposed by the informal worldwide network of FIUs referred to as "the Egmont Group"
- (8) Member States must organise the FIUs in such a way as to ensure that information and documents are submitted within a reasonable space of time.
- (9) This Decision does not affect any Convention or arrangement regarding mutual assistance in criminal matters between judicial authorities,

HAS ADOPTED THIS DECISION:

¹ Oj C 251, 15.8.1997, p. 1.

² Oj L 166, 28.6.1991, p. 77.

Article 1

1. Member States shall ensure that FIUs, set up or designated to receive disclosures of financial information for the purpose of combating money laundering shall cooperate to assemble, analyse and investigate relevant information within the FIU on any fact which might be an indication of money laundering in accordance with their national powers.
2. For the purposes of paragraph 1, Member States shall ensure that FIUs exchange, spontaneously or on request and either in accordance with this Decision or in accordance with existing or future memoranda of understanding, any available information that may be relevant to the processing or analysis of information or to investigation by the FIU regarding financial transactions related to money laundering and the natural or legal persons involved.
3. Where a Member State has designated a police authority as its FIU, it may supply information held by that FIU to be exchanged pursuant to this Decision to an authority of the receiving Member State designated for that purpose and being competent in the areas mentioned in paragraph 1.

Article 2

1. Member States shall ensure that, for the purposes of this Decision, FIUs shall be a single unit for each Member State and shall correspond to the following definition: "A central, national unit which, in order to combat money laundering, is responsible for receiving (and to the extent permitted, requesting), analysing and disse-

minating to the competent authorities, disclosures of financial information which concern suspected proceeds of crime or are required by national legislation or regulation".

2. In the context of paragraph 1, a Member State may establish a central unit for the purpose of receiving or transmitting information to or from decentralised agencies.
3. Member States shall indicate the unit which is an FIU within the meaning of this Article. They shall notify this information to the General Secretariat of the Council in writing. This notification does not affect the current relations concerning cooperation between the FIUs.

Article 3

Member States shall ensure that the performance of the functions of the FIUs under this Decision shall not be affected by their internal status, regardless of whether they are administrative, law enforcement or judicial authorities.

Article 4

1. Each request made under this Decision shall be accompanied by a brief statement of the relevant facts known to the requesting FIU. The FIU shall specify in the request how the information sought will be used.
2. When a request is made in accordance with this Decision, the requested FIU shall provide all relevant information, including available financial information and requested law enforcement data, sought in the request,

without the need for a formal letter of request under applicable conventions or agreements between Member States.

3. An FIU may refuse to divulge information which could lead to impairment of a criminal investigation being conducted in the requested Member State or, in exceptional circumstances, where divulgence of the information would be clearly disproportionate to the legitimate interests of a natural or legal person or the Member State concerned or would otherwise not be in accordance with fundamental principles of national law. Any such refusal shall be appropriately explained to the FIU requesting the information.

Article 5

1. Information or documents obtained under this Decision are intended to be used for the purposes laid down in Article 1(1).
2. When transmitting information or documents pursuant to this Decision, the transmitting FIU may impose restrictions and conditions on the use of information for purposes other than those stipulated in paragraph 1. The receiving FIU shall comply with any such restrictions and conditions.
3. Where a Member State wishes to use transmitted information or documents for criminal investigations or prosecutions for the purposes laid down in Article 1(1), the transmitting Member State may not refuse its consent to such use unless it does so on the basis of restrictions under its national law or conditions referred to in Article 4(3). Any refusal to grant consent shall be appropriately explained.

4. FIUs shall undertake all necessary measures, including security measures, to ensure that information submitted under this Decision is not accessible by any other authorities, agencies or departments.
5. The information submitted will be protected, in conformity with the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data and taking account of Recommendation No R(87)15 of 15 September 1987 of the Council of Europe Regulating the Use of Personal Data in the Police Sector, by at least the same rules of confidentiality and protection of personal data as those that apply under the national legislation applicable to the requesting FIU.

Article 6

1. FIUs may, within the limits of the applicable national law and without a request to that effect, exchange relevant information.
2. Article 5 shall apply in relation to information forwarded under this Article.

Article 7

Member States shall provide for, and agree on, appropriate and protected channels of communication between FIUs.

Article 8

This Decision shall be implemented without prejudice to the Member States' obligations towards Europol, as they have been laid down in the Europol Convention.

Article 9

1. To the extent that the level of cooperation between FIUs, as expressed in memoranda of understanding concluded or to be concluded between authorities of the Member States, is compatible with this Decision or goes further than the provisions thereof, it shall remain unaffected by this Decision. Where the provisions of this Decision go further than the provisions of any memorandum of understanding concluded between the authorities of Member States, this Decision shall supersede such memoranda of understanding two years after this Decision takes effect.
2. The Member States shall ensure that they are able to cooperate fully in accordance with the provisions of this Decision at the latest three years after this Decision takes effect.
3. The Council will assess Member States' compliance with this Decision within four years of the date on which it takes effect, and may decide to continue such assessments on a regular basis.

Article 10

This Decision shall apply to Gibraltar. To this effect, notwithstanding Article 2, the United Kingdom may notify to the General Secretariat of the Council an FIU in Gibraltar.

Article 11

This Decision shall take effect on 17 October 2000.

Done at Luxembourg, 17 October 2000.

For the Council
The President
É. Guigou

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Annex 5

Internet homepages

with references to the fight against money laundering

1. <http://www.bka.de>
(Bundeskriminalamt)
2. <http://www.bund.de>
(service portal of the German Federation)
3. <http://www.bmi.bund.de>
(Federal Ministry of the Interior)
4. <http://www.bundesfinanzministerium.de>
(Federal Ministry of Finance)
5. <http://www.europol.eu.int>
(Europol)
6. <http://www.interpol.int>
(Interpol)
7. <http://www.bafin.de>
(Federal Office for the Supervision of Financial Services)
8. <http://www.fatf-gafi.org>
(FATF)
9. <http://www.undcp.org>
(United Nations Drugs and Crime Prevention)
10. <http://www.imolin.org>
(UN International Money Laundering Information Network)
11. <http://www.unojust.org/heuni>
(The European Institute for Crime Prevention and Control)
12. <http://www.coe.fr/engl/legaltxt/treaties.htm>
(Council of Europe Treaties)
13. <http://www.register.consilium.eu.int>
(Council of the European Union)





Bundeskriminalamt

BUNDESKRIMINALAMT

Zentralstelle für Verdachtsanzeigen

FIU Deutschland

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