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Overview of asset recovery in Germany

Query

Please provide information on the recovery of stolen assets from Germany? In particular, we are looking for information on: legal framework, volumes of assets frozen and returned, estimates of stolen assets hidden in Germany, emblematic cases of asset recovery in Germany, best practices and known challenges regarding asset recovery from Germany (e.g. in the areas of mutual legal assistance and financial investigations) and possible solutions.

Content

Summary

As one of the world's largest economies, Germany plays an important role in supporting developing countries to recover stolen assets hidden by corrupt officials abroad. While estimates about stolen assets stored in German bank accounts are not publicly available, anecdotal evidence shows that the country has been attractive to corrupt individuals due to the secrecy of its financial system. An assessment of Germany's asset recovery efforts is made difficult because of the lack of data on frozen and recovered assets.

However, the German government has shown growing commitment to improving its assistance in asset recovery processes and became a key player in promoting asset recovery cooperation over the past five years, including the co-hosting of the last Arab Forum for Asset Recovery in 2015. The ratification of the UN Convention against Corruption in 2014 and adoption of dedicated domestic legislation showed serious commitment by the German government to react to criticism on the weaknesses of Germany's anti-corruption framework and in anti-money laundering. The country has complied with European and international asset freeze orders against individuals suspected of stealing and hiding public assets abroad. However, there is a lack of transparency in the data covering the size of assets frozen and recovered in Germany and significant weaknesses in regulating beneficial ownership.

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1. International and domestic legal framework

Transparency International defines asset recovery as “the legal process through which a country, government and/or its citizens recover from another jurisdiction the resources and other assets that were stolen through corruption”.

Over the last two decades, governments have dedicated growing attention to preventing the theft of public assets and their concealment abroad, as well as to enhancing cooperation on asset recovery processes. Notwithstanding these efforts, however, the amount of assets identified and repatriated globally is extremely low. According to the World Bank Stolen Asset Recovery (StAR) Initiative, “only US$147.2 million was returned by OECD members between 2010 and June 2012, and US$276.3 million between 2006 and 2009, a fraction of the $20-40 billion estimated to have been stolen each year” (StAR 2014).

Asset recovery is considered a highly complex and challenging process, and individual cases can take up to 5-10 years to resolve. Involving multiple jurisdictions including tax havens, asset recovery cases heavily depend on volatile political will and are often burdened by lack of capacity and resources.

As one of the largest world exporters and financial hubs, Germany plays an important role in the recovery of assets illegally obtained from foreign jurisdictions stored on its territory. Both international law and domestic law regulate the different phases of the asset recovery process, including: the identification of stolen assets, freezing, prosecution, confiscation and repatriation. As asset recovery is deeply linked to money laundering, anti-money laundering regulations and prevention also play a key role in this context.

International instruments

Germany has agreed to the most relevant international treaties regulating asset recovery, the most important of which being the UN Convention against Corruption (UNCAC).

Germany is also committed to other relevant laws at the EU level. Finally, Germany committed to improve international asset recovery cooperation through joining international soft law tools and intergovernmental bodies, including at the G8 and G20 negotiations and the Financial Action Task Force (FATF).

UN Convention against Corruption

With significant delay, Germany ratified UNCAC in 2014, 11 years after its accession. UNCAC is the fundamental instrument of international law on asset recovery and the push for the convention itself was initiated by putting attention on asset recovery.

The convention dedicates an entire chapter to asset recovery and requires that “States Parties shall afford one another the widest measure of cooperation and assistance in this regard” (Art. 51). Chapter V – the chapter specifically dealing with asset recovery – includes provisions for states to take measures in accordance with their national laws on prevention and detection of transfers (Art. 52) and on empowering states to bring civil action in courts, both to establish ownership of “property” acquired through corruption and to order compensation or restitution of damages (Art. 53). Mechanisms for cooperation on confiscation, return and disposal of assets are also included (Articles 54 to 59).

UNCAC does not define the national competent authority focusing on asset recovery, although recommends a financial intelligence unit (Art. 58), which some commentators have considered an implicit necessity (CEART 2009). Along with other treaties, UNCAC further stresses the importance of mutual legal assistance, in Article 46.

Other international treaties

Other conventions of which Germany is party complement the broad legal framework provided by UNCAC. The UN Convention on Transnational Organised Crime (UNTC) is particularly relevant for asset recovery as, among other stipulations, it requires state parties to criminalise money laundering (Art. 6) and to adopt measures to identify, trace, freeze or seize the proceeds of crime (Art. 12). Along with the Convention against Narcotic Drugs and Psychotropic Substances,

UNTC also complements UNCAC's requirement to enhance mutual legal cooperation.

In the context of OECD, the Convention Combating the Bribery of Foreign Public Officials requires that parties must apply effective, proportionate and dissuasive criminal penalties for the bribery of foreign public officials (Art. 3). Furthermore, countries must facilitate mutual legal assistance and cannot invoke "bank secrecy" to deny mutual legal assistance (Art. 9). Also relevant to Germany is the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime and on the Financing of Terrorism.

EU legal tools

At the EU level, the most important instruments on asset recovery include a Decision of the EU Council of 2007 requiring the establishment of national asset recovery offices and enhancing inter-agency cooperation. Besides promoting effective and rapid inter-agency communication, members are required to nominate a maximum of two offices per country (Decision 2007/845/JHA). Consequent to these efforts, the EU facilitated the creation of a platform of asset recovery offices. The platform complements the Camden Asset Recovery Inter-Agency Network (CARIN), an expert and practitioners network of which Germany was one of the founders in 2004.

Other relevant EU tools include a Framework Decision of 2003 on the Execution in the European Union of Orders Freezing Property or Evidence (2003/577/JHA) and another in 2006 on the Application of the Principle of Mutual Recognition to Confiscation Orders (2006/783/JHA).

Finally, the EU issued in 2004 a directive on asset freezing and confiscation. The directive includes in Art. 11 an important requirement to regularly collect and maintain comprehensive statistics in order to review the effectiveness of confiscation systems. The statistics collected shall include data for all criminal offences: the number of freezing orders executed, the number of confiscation orders executed, the value of property frozen and the value of property recovered. These statistics should be sent annually to the commission (Directive 2014/42/EU).

Domestic law

German criminal law provides a comprehensive legal framework to respond to requests of tracing, confiscating and returning proceeds of cross-border corruption held in its territory. The German law foresees the possibility of both the recovery of assets stolen abroad through a lawsuit under its own civil law and through an execution of a foreign court judgement. Another possibility of initiating asset recovery cases is through the implementation of sanctions against individuals from international institutions such as the UN or from the EU.

A necessary precondition to grant mutual legal assistance to foreign jurisdictions is that German authorities receive a formal request, that it is granted and the consequent measure is foreseen by the relevant law, namely the 1994 Act on International Legal Assistance in Criminal Matters (BGBl. I S. 1537 *Gesetz über die internationale Rechtshilfe in Strafsachen*). Multilateral and bilateral agreements on mutual legal assistance also apply. In an effort to facilitate asset recovery requests, the German government published the document Asset Recovery under German Law. Pointers for Practitioners in 2015, which was used as reference for the next section.

Regulations on the phases of the asset recovery process

Asset tracing

The German law regulating mutual legal assistance on criminal matters establishes that courts may issue search orders when "dual criminality" exists, i.e. when the crime in question is recognised by both jurisdictions involved. Importantly, the prosecutor can issue these orders without court involvement in limited specific cases.

General criminal law may also apply to mutual legal assistance, allowing measures on tracing assets to be initiated on a mere suspicion, if there are sufficient indications that the offence has been committed. Some measures require a judicial order, when they are compulsory or intrude on the rights of the individuals affected.

Criminal proceedings can also be initiated domestically if criminal law is applicable, including if there is suspicion of money laundering to or through Germany. The law also allows individuals to pursue remedies for damages of criminal offences, including corruption under the civil code. However, the person is responsible for substantiating the case before the court. Notably, German law does not criminalise illicit enrichment.

Asset seizure

Asset seizure is conducted as a provisional measure to secure the assets suspected of theft before confiscation. Consistent with international conventions, Germany allows for asset seizure of criminal proceedings abroad under its act regulating mutual legal assistance. Seizure measures may apply only in the case of dual criminality or when a crime is committed in Germany or by a German citizen.

Confiscation

Under the same act, Germany can enforce foreign confiscation orders. These orders are implemented as a domestic order according to the criminal code and only apply when the judicial decision from abroad is binding, communicated through the foreign state request. A number of other conditions also apply.

Importantly, the same act allows for so-called non-conviction based confiscation orders (German government/StAR 2013). This procedure does not require conviction of an individual for crimes but only sufficient proof that the asset itself is the proceeds of crime, making it easier for foreign governments to require mutual legal assistance from Germany. However, In the case of the death of the individual suspected of the offence, non-conviction based confiscation is excluded, as, according to fundamental principles of domestic law, the possibility to prosecute expires upon death.

Importantly, once frozen, assets remain frozen until an independent court discharges (cancels) the freezing order.

Repatriation

German criminal law establishes that assets confiscated under the law become the property of the German state. Hence, decisions on how foreign assets are returned are a matter of bilateral or multilateral negotiation. With the ratification of UNCAC, Germany agreed to the asset repatriation stipulations of the convention. However, the distribution of confiscated assets is also possible without bilateral agreements on a non-treaty basis through mutual agreement between both states.

Competent authorities

The Federal Office of Justice and the Financial Intelligence Unit within the Federal Criminal Police Office (*Bundeskriminalamt*) are the two institutions in charge of cooperating with domestic and foreign authorities on asset recovery. The Federal Criminal Police Office is specifically responsible for collecting and analysing criminal intelligence, investigating cases of financial crimes and cooperation with other national authorities. On asset recovery, the office handles foreign requests and coordinates the different phases in cooperation with the Office of Justice. Notably, the two offices are resourced by a dedicated asset recovery fund. Both offices are represented at the asset recovery agency networks at the EU and international levels.

2. Tracking and repatriating assets hidden in Germany

Identifying stolen assets

The theft of public assets involves not just stealing the assets but also laundering the ill-gotten gains to disguise their illegal origins and make them appear to be legitimate (StAR 2007). To avoid detection and separate the proceeds from their criminal origins, the global financial system allows for complex moves such as offshore accounts in banks that provide secrecy banking, shell companies and trusts, or structuring deposits, also known as smurfing (UNODC 2011).

Due to the illicit nature of the activity, money laundering is not captured by economic and financial statistics. Therefore, narrowing the focus to stolen public assets makes it even more difficult to derive an accurate figure, both globally and at the country level.

Estimates of illegal assets held in Germany

A few institutions have attempted to estimate the sums of money being laundered worldwide. The StAR Initiative estimates that the proceeds of crime, corruption and tax evasion represent between US$1 trillion and US$1.6 trillion annually, with half coming from developing countries.

The FATF Mutual Evaluation on Germany (2010) states that Germany hosted over US$1.8 trillion in deposits by non-residents. Additionally, in his 2015 book *Steueroase Deutschland* (Tax haven Germany), Markus Meinzer calculated that the amount of tax-exempt interest bearing assets by non-residents in the German financial system ranged between €2.5 to over €3 trillion as of August 2013. While these numbers do not indicate proceeds of corruption, they show how large and open Germany's financial system is.

A recent study commissioned by the German Finance Ministry estimated that over €100 billion are laundered in Germany every year. According to Meinzer in an interview to Deutsche Welle, "not even 1% of the sums of money laundered in Germany is frozen or leads to prosecutions" (Deutsche Welle 2016).

In his book, Meinzer reports a number of significant cases of illegal assets stored in German accounts linked to politically exposed persons from developing countries who could benefit from the secrecy of the German financial system. Besides the estimates of assets stolen from Libya, Egypt and Tunisia, which will be referred to in the next section, Meinzer reports the case of Paul Biya, current president of Cameroon, who was reported to own a castle in Baden-Baden region as of 1997, although it is not clear if the castle is still his property.

Nigeria's former dictator Abacha reportedly owned accounts with three German banks stored in the UK and Luxembourg, which were eventually frozen by the two countries. A Nigerian state attorney report further confirmed that Abacha was able to take advantage of the German financial system. However, the German Federal Bank stated that no accounts were frozen from the Abacha clan.

Reportedly, rulers as important as Milosevic, Saddam Hussein, Suharto and others also held German bank accounts and stored their savings there. Finally, Meinzer reports that following US investigations into the illegal holdings of former Chilean dictator Pinochet, US$250,000 were suspiciously transferred to the former ruler from a German account owned by a company unknown to the German company registry. Questions in the report about where the money came from and why it was transferred to Pinochet remain unanswered.

A large case involved Deutsche Bank regarding the management of state funds linked to former Turkmenistan president Niyazov. Global Witness issued a report in 2009 accusing Deutsche Bank of holding accounts of the Turkmen Central Bank since the 1990s, with an indication that these accounts were under the effective control of Niyazov. According to Global Witness, up to US$3 billion in state gas revenues were funnelled by the former dictator through Deutsche Bank (Global Witness 2009). No settlement was requested and Global Witness's requests to the German authorities to investigate the case and freeze the assets after Niyazov's death in 2006 remained largely unanswered, with the bank denying any involvement.

Volume of assets frozen and recovered in Germany

According to Germany's responses in the G20 Anti-Corruption Working Group data gathering questionnaire (2012), the German Federal Criminal Police Office collects all data regarding assets frozen and/or seized by all federal and federal state police forces and customs authorities. However, data regarding assets ultimately recovered or returned is not collected completely since the competence for judicial authorities lies within the federal states and the collection of data is not organised centrally.

Reportedly, the Criminal Police Office publishes an Annual Report for Asset Recovery, which provides details of amounts frozen, seized, recovered and returned. Unfortunately, this report has a restricted access and is not publicly available. According to the Financial Intelligence

Unit's annual report (2014), around €28.3 million were seized in the context of financial investigations independent of specific proceedings. The FATF Mutual Evaluation on Germany (2010) states that in 2004 €7.3 million in assets from the proceeds of corruption were seized or confiscated in Germany. In 2005, the amount frozen increased to €13 million, decreasing to €3 million in 2007. No statistics have been released since then.

Additionally, StAR and the OECD recorded that between 2010 and 2012 only US$147 million and between 2006 and 2009 only US$276 million in stolen assets were returned from OECD countries to foreign jurisdictions, representing a minimal part of the estimated US$20-40 billion stolen largely from developing countries each year. On the other hand, a total of approximately US$2.6 billion of corruption-related assets were frozen in OECD countries between 2006 and 2012 (StAR/OECD 2014), showing a large gap between frozen and recovered assets. Remarkably, in these statistics, StAR and the OECD included Germany among the countries with "no reported" asset recovery cases between 2010 and 2012, hence no assets were frozen or returned during that period.

The StAR Initiative, which collects all known asset recovery cases worldwide, lists only one small case of successfully concluded recovery with Germany as an asset receiving country – Brazil. Other cases related to Germany in the process of resolution involving former heads of state include Arab spring countries Libya, Egypt and Tunisia. Details of these cases are provided below.

Most significant cases of asset recovery in Germany

While statistics about the number of assets frozen and recovered from Germany related to foreign corruption crimes are not available, there is anecdotal evidence from asset recovery cases involving Germany as a receiving country.

Deutsche Bank – former mayor of São Paolo settlement

In 2014, Deutsche Bank received a request from Brazilian authorities to pay US$20 million to settle allegations that the bank helped manage funds embezzled by the former mayor of São Paulo city, Paulo Maluf, during his time as a mayor there. The legal basis for the request were indictments from New York and Brazilian courts regarding Maluf's role in embezzling and concealing public funds and administrative corruption. Deutsche Bank reacted promptly by agreeing to the settlement. According to StAR's information, most of the returned money will be given to the city of São Paulo for social projects and the rest to the state of São Paulo and the government for other purposes. More information about the Maluf case can be found on StAR's database.

Asset freezing related to Arab spring countries

- Libya

During the Libyan revolts against former dictator Gaddafi in 2011, several media outlets reported that millions of euro were stored in accounts in Germany linked to Gaddafi, his family and cronies. According to government statistics Gaddafi had a balance of €1.96 billion in German financial institutions in 2011. Given the unclear separation of the former ruler's private ownings and the public assets of the Libyan Central Bank and the Libyan Foreign Bank, the large assets linked to these banks also needs to be taken into account. It is estimated that Germany holds around US$10.5 billion in Libyan assets, distributed among the above mentioned banks and the Gaddafi family (Wall Street Journal 2011). Global Witness further reported that the state fund of the Libyan Investment Authority owned stocks to a value of €340 million among various corporations.

Following UN Security Council Resolution 1970 and a subsequent EU Council Decision in early 2011, Germany froze around 190 Libyan accounts in 14 banks and financial institutions with a total value of around €7.3 billion, making it the third biggest freezing of Libyan assets after the USA and UK (Tagesspiegel 2011). With the overthrow of Gaddafi later in 2011, world powers, including Germany, agreed to unfreeze the Libyan assets in other UN and EU decisions with the promise to make the assets available to the newly formed Libyan transitional government to rebuild the Libyan state. However, as of April 2016, the new prime minister of Libya based in Tripoli was still claiming that "Libya should be given access to its frozen assets abroad, to alleviate the suffering of

the people and boost the Libyan economy" (Libya Business News 2016).

In line with the UN 1970 resolution, the EU Council also issued sanctions directly affecting Gaddafi, his family and cronies: the assets of around 27 individuals along with another 48 among state-owned enterprises linked to Gaddafi have been frozen in EU countries since 2011 and the sanctions were renewed in 2015. According to a G8 monitoring report on asset recovery efforts from 2013, Germany "complied with EU and UN sanctions to freeze assets belonging to persons associated with deposed regimes that have fled from Egypt, Libya, and Tunisia" (G8 Research Group 2013). However, it is unclear exactly how many of the frozen assets linked to the EU sanctions on Gaddafi are based in Germany. In this regard, Tax Justice Network reports that "Germany froze billions of dollars' worth of assets from the Arab spring countries such as Libya, Tunisia or Egypt" (Tax Justice Network 2015).

- Tunisia

Similar to the situation in Libya, Germany acted upon EU sanctions against former regime members in Tunisia following the overthrow of Ben Ali in early 2011. In particular, the EU Council decided to freeze assets stored in EU countries of 48 members of the Ben Ali family and cronies.

The estimated value of assets of former president Ben Ali and his family stored in Germany is unknown. Overall, it is estimated that US$3-5 billion were looted by the dictator from Tunisia (The Economist 2013). The German Federal Bank reports that the amount of assets of Tunisian origin held in Germany as of 2013 was €344 million. Reacting promptly to the EU sanctions, Germany is reported to have frozen several bank accounts of two members of the Ben Ali family as well as a property in Frankfurt (Bloomberg 2011).

- Egypt

With a similar decision, the EU Council froze assets of 19 members of the Mubarak circle shortly after the fall of Mubarak in March 2011 and recently extended the freezing until the end of 2016.

Rough estimates of assets stolen by Mubarak range between US$40-70 billion, with US$800 million frozen worldwide (The Economist 2013). It is likely that a part of the vast property was also stored in Germany. Algerian newspaper El Khabar reported that part of the US$17 billion owned by Hosni Mubarak's brother Gamal were held in Germany (Die Welt 2011), while Meinzer reports that Gamal held bank accounts in Germany. A month after the overthrow of the dictator, the EU Council issued the first decision on freezing the Mubarak assets, and Germany claims to have complied with the decision.

While there is no public information about whether any of the assets stored in Germany were returned to Tunisia and Egypt, an effective return process is hindered by the fact that the governments of the two countries lack either capacity or political will to conduct proper investigations certifying that the frozen assets were looted through corruption.

3. Best practices and challenges

In the past five years Germany has worked on improving its financial transparency and on engaging more strongly in international efforts to assist developing nations in recovering stolen assets. The 2014 G7 Summit Final Compliance Report on asset recovery states that Germany is in full compliance with its commitments to the recovery and repatriation of stolen assets to countries in transition. Germany not only ratified UNCAC in November 2014, but the German government also announced its intention to implement new standards to the automatic exchange of tax information by 2017.

Additionally, in December 2015 the fourth Arab Forum for Asset Recovery (AFAR) took place in Tunisia and was co-chaired by Tunisia, Germany and Qatar. The AFAR works as a platform bringing together the G7, the Deauville Partnership with Arab Countries in Transition, key global and regional financial centres, as well as countries in the Arab world, to foster international cooperation for the return of stolen assets.

In 2010, the FATF Mutual Evaluation on Germany highlighted loopholes and implementation deficits when assessing Germany's anti-money

laundering and combating the financing terrorism regime, which put the country in a regular follow-up process. Nevertheless, in 2014 the FATF Plenary recognised that the efforts made by Germany to address those deficiencies were considered sufficient to be removed from the regular follow-up process.

Technical and legal assistant to transition countries

The government strategy, Anti-Corruption and Integrity in German Development Policy (2012), states, "Germany will move asset recovery higher up on its development cooperation agenda, and support partner countries in recovering illegally acquired assets". Germany supports anti-corruption and transparency projects in more than 60 countries. These projects cooperate with ministries, the judiciary, anti-corruption and supreme audit institutions.

On a bilateral level, Germany provides technical assistance to transition countries aimed at helping the recovery and return of proceeds of corruption. For instance, Germany has had bilateral meetings with representatives of Egypt and Tunisia. Additionally, it has provided training to both countries on mutual legal assistance, asset recovery and financial investigation techniques. Cooperation in individual cases has been discussed with representatives of the German Foreign Office, Ministry of Justice and the Federal Office of Justice. Germany offered comprehensive advice on the requirements in Germany to facilitate legal assistance. As stated in Germany's asset recovery action plan implementation road map (2013), there had been contacts with a lawyer representing one of the transition countries to foster a better understanding of legal requirements in Germany.

Progress in the legal framework for asset recovery

Anti-bribery law and UNCAC ratification

In 2014, Germany adopted legislation amending the offence of bribery of domestic, foreign and international parliamentarians, which was the last major obstacle to Germany's ratification of UNCAC. Among the reasons for Germany's strengthening of bribery laws is the pressure of more than 30 CEOs of German companies who argued that previous failures led to the country's bad reputation overseas. According to Christian Humborg, former managing director at Transparency International Germany (2014) the law still has a very narrow definition of bribery, but it is enough to be in line with UNCAC requirements.

Draft law on asset recovery

In early 2016, the Ministry of Justice published a draft law to reform asset recovery linked to criminal activity in Germany. The draft law aims to simplify the complex procedures through which individuals may request confiscation of assets linked to a crime. In particular, the draft prioritises victim compensation, extends confiscation to illegal acts leading to economic advantage, including all cases of bribery, corruption and money laundering and allows confiscation in cases of assets of unclear origin. Thus, authorities would be able to seize cash, cars or real estate if the court assumes that they were obtained unlawfully, even if there is no proof of an illegal act.

With this new law, persons under investigation are forced to prove the legal origins of the assets, while previously it was the duty of the authorities to prove that the assets were obtained illegally. Hence, assets could only be seized when there was a major discrepancy between the value of the asset and the income of the concerned person.

Should this law be adopted by the German parliament, and subsequently be linked to crimes committed abroad and to requests for assistance on asset recovery, it could represent an important step forward in facilitating the process of returning stolen assets to individuals from abroad.

Anti-money laundering act

Preventing countries from becoming safe havens for corrupt money from abroad entails adopting a law against money laundering and regulating beneficial ownership. Reacting to criticism from FATF and the EU, Germany adopted a comprehensive Money Laundering Act between 2011 and 2012. Besides criminalising money laundering from embezzlement, fraud and other crimes, the law demands more due diligence and reporting requirements for banks; as for beneficial ownership, the law requires financial institutions to obtain customer identification for transactions in cash exceeding €15,000. It also demands

stronger background checks for owners of financial institutions.

Law on the Automatic Exchange of Financial Account Information

On 18 December 2015, the German parliament approved the Law on the Automatic Exchange of Financial Account Information (*Finanzkonten-Informationsaustauschgesetz*). This new legislation requires financial institutions to provide the German Federal Central Tax Office with financial account information of reportable persons in order to strengthen the tax authorities' capabilities in their fight against tax evasion. This law implements the OECD Common Reporting Standard agreement, which aims to avoid tax evasion and improve tax compliance, into German law. The first automatic exchange of financial account information has to be carried out by 31 July 2017 and will concern financial account information for the year 2016.

Challenges and solutions

Germany is a key financial centre in the world. Many indicators suggest Germany is susceptible to money laundering and terrorist financing because of its large economy, advanced financial institutions, and strong international connections. Total banking sector assets exceeded €8.1 trillion in 2010, and deposits by non-residents in German financial institutions exceeded €1.3 trillion (FATF 2010), which makes Germany the fifth largest holder of private non-resident deposits in the world (Hollingshead 2010).

In addition, Germany also scores relatively poorly on the Basel Anti-Money Laundering Index (2015), which indicates a country's risk level in anti-money laundering/terrorist financing and other related factors, such as corruption and political risk. Germany ranks 89 out of 144 countries, with a score of 5.48, on a scale from 0 (low risk) to 10 (high risk).

Germany ranked number eight in the last Tax Justice Network's Financial Secrecy Index (2015) out of 92 jurisdictions, with 56 secrecy points (out of 100, with a higher number meaning higher secrecy). The FATF Mutual Evaluation on Germany (2010) states that Germany´s economic conditions and infrastructure can provide a stable investment for money launderers intent on layering and integrating criminal proceeds. While Germany addressed most of FATF's recommendations, FATF stated in its 2014 follow-up report that some concerns remain, including the compliance of beneficial ownership transparency.

Weaknesses in the compliance of beneficial ownership

Although Germany does not practise banking secrecy like neighbouring Switzerland, the use of entities such as trusts, foundations and *Treuhand* (a German speciality that can provide strong secrecy) raises important concerns (Tax Justice Network 2015). Professional secrecy is interpreted broadly by the auditors, chartered accountants and tax advisors, who seem to interpret "legal privilege" in a way that goes beyond FATF standards. There are strict restrictions on obtaining customer due diligence information from the relevant professions (a court order is required in each instance), which prevents transactions records and information from being available on a timely basis to domestic competent authorities.

In November 2015, Transparency International assessed G20 members for compliance with the High-Level Principles on Beneficial Ownership Transparency and found that Germany was "average" in its current beneficial ownership transparency legal framework. Germany has weaknesses in relation to the use of bearer shares and nominees.

Current laws and regulations do not require legal entities, other than those with anti-money laundering obligations, to maintain information on beneficial ownership. There is no guarantee that the information currently available to competent authorities is adequate for anti-money laundering purposes, or that it is accurate and current (Transparency International 2015). Nevertheless, the implementation of the Fourth EU Anti-Money Laundering (AML) Directive is likely to improve Germany's beneficial ownership transparency legal framework.

Efforts in improving the AML legal framework

According to Transparency International's 2015 report Just for Show? Reviewing G20 Promises on Beneficial Ownership, Germany is fully compliant with just one of the ten G20 principles:

beneficial ownership definition. For this reason, Transparency International recommended that Germany should tackle some of its major weaknesses with regard to beneficial ownership transparency and follow the recommendations highlighted in the assessment:

- Germany has not released an assessment of the money laundering risks related to legal entities and arrangements in the country in the past three years.
- Even if the government is committed in its action plan to conduct a national risk assessment on money laundering, no any information about the assessment or the assessment itself have been made public.
- The issuance of bearer shares is allowed in Germany. The country could and should apply one or more of the FATF mechanisms to prevent the misuse of bearer shares, such as prohibit them, immobilise them or convert them into registered shares or share warrants.
- As there is no beneficial ownership registry and legal entities are not required to maintain beneficial ownership information, authorities have to rely on the information collected by persons obligated by the Money Laundering Act. Thus, Germany should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities.

Lack of transparency on frozen stolen assets

Reports from the Financial Intelligence Unit do not contain significant information related to suspicious transactions. For instance, the Financial Intelligence Unit Annual Report of 2010 states that 13 cases of politically exposed persons out of 194 cases were selected for further monitoring, without further details. In 2009, six out of 114 cases involving politically exposed persons were monitored, and only three monitored cases in 2008 (Transparency International 2011).

As mentioned previously, the data regarding assets ultimately recovered or returned is not collected completely since the competence for judicial authorities lies within the federal states and the collection of data is not organised centrally. In addition to this, the Annual Report for Asset Recovery, which provides details of amount frozen, seized, recovered and returned, has a restricted access and is not publicly available.

Recommendations to enhance transparency on asset recovery

In 2011, the G20 Anti-Corruption Working Group adopted nine key principles of effective asset recovery. To make progress in enhancing transparency and to improve the implementation of its commitment, the following recommendations by the StAR Initiative could be considered (StAR 2014):

- Germany should maintain comprehensive statistics on asset recovery cases, including assets frozen and confiscated, reparations or restitution ordered, and assets returned. Gaps in the data should be identified and their collection addressed. Where possible, countries should gather data on the various means to return assets, including criminal and non-conviction based confiscation, administrative confiscation, private civil actions, and other forms of direct recovery.
- Statistics on cases and information on laws and results should be publicly available and accessible in a central location, such as a website.
- Germany should share information on the impact and results to ensure the momentum for action is maintained. It is very important to step up the tracking of measures and that operational actions being taken.

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