

2.2.4 Germany

Germany also being a member of the FATF, it implements the FATF recommendations. In Germany, ML is punishable according to § 261 Criminal Code.⁵⁶ The whole text of § 261 Criminal Code is very long, which is not unusual for German legal texts, hence it can be found in Annex C below, both in German and in English (with the reservation that the English version is updated as of October 10, 2013 only).

When implementing FATF recommendation 3, Germany has chosen a combination of approaches when defining the predicate offences to ML, combining the threshold approach with the list approach. The first category of predicate offences consists of all felonies as defined in § 12 Criminal Code (the threshold being illegal acts punishable with imprisonment of at least one year) as stipulated in § 261 para 1 sentence 2 number 1 Criminal Code. The law further defines a list of misdemeanours to be predicate offences to ML, e.g. taking bribes meant as an incentive to violating one's official duties (Bestechlichkeit, § 332 Criminal Code), and giving bribes as an incentive to the recipient's violating his official duties (Bestechung, § 334 Criminal Code) according to § 261 para 1 sentence 2 number 2 lit. a Criminal Code.

Additionally, § 261 para 1 sentence 2 number 3 Criminal Code defines that misdemeanours according to § 373 Fiscal Code⁵⁷ (professional, violent or organised smuggling; gewerbsmässiger, gewaltsamer und bandenmässiger Schmuggel) and § 374 para 2 Fiscal Code (qualified receiving, holding or selling goods obtained by tax evasion; gewerbsmässige oder bandenmässige Steuerhhehlerei) are predicate offences to ML too. These two misdemeanours are also predicate offences to ML if committed in rela-

⁵⁶ Many German laws and ordinances are available for free online from <http://www.gesetze-im-internet.de/index.html>, some of them even translated into English from http://www.gesetze-im-internet.de/Teilliste_translations.html, accessed on April 3, 2016.

The German Criminal Code as a whole is available (and updated to include the amendments as of December 10, 2015) in German from <http://www.gesetze-im-internet.de/bundesrecht/stgb/gesamt.pdf>, accessed on April 3, 2016. The English version of the German Criminal Code (updated to include the amendments as of October 10, 2013) is available from http://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p2142, accessed on April 3, 2016. There have been amendments to § 261 German Criminal Code since October 10, 2013.

⁵⁷ The German Fiscal Code (Abgabenordnung, AO) as a whole is available (and updated to include the amendments as of December 3, 2015) in German from <http://www.gesetze-im-internet.de/bundesrecht/stgb/gesamt.pdf>, accessed on April 3, 2016. The English version of the German Fiscal Code (updated to include the amendments as of December 22, 2014) is available from http://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p2142, accessed on April 3, 2016. There have been amendments to the German Fiscal Code since December 22, 2014.