

KEY FINANCIAL SECRECY INDICATORS

Key Financial Secrecy Indicator 15: International Judicial Cooperation

What is being measured?

KFSI-15 measures the degree to which a jurisdiction engages in international judicial cooperation on money laundering and other criminal matters. We use the degree of compliance with the [Financial Action Task Force recommendations](#)¹ 36 through 40 as the appropriate measure.

The Financial Action Task Force (FATF) is the international body dedicated to counter money laundering. In 2003, the FATF established its [49 recommendations](#) concerning the laws, institutional structures, and policies considered necessary to address money laundering and terrorist financing.

Recommendation 36² encourages countries to “provide the widest possible range of mutual legal assistance in relation to money laundering and terrorist financing investigations, prosecutions, and related proceedings”.

Recommendation 37³ requires that countries “to the greatest extent possible, render mutual legal assistance notwithstanding the absence of dual criminality”. Extradition or mutual legal assistance is to take place irrespective of legal technicalities as long as the underlying conduct is treated as a criminal offence (is a predicate offence) in both countries.

Recommendation 38⁴ requires a country to have “authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize and confiscate property laundered, proceeds from money laundering or predicate offences, instrumentalities used in or intended for use in the commission of these offences, or property of corresponding value”. In addition, there should also be arrangements in place for coordinated action and sharing of confiscated assets.

Recommendation 39⁵ asks a country to “recognise money laundering as an extraditable offence”. It further details the grounds on which extradition is to take place, and in what manner.

Recommendation 40⁶ prompts countries to “ensure that their competent authorities provide the widest possible range of international co-operation to their foreign counterparts”. The competent authority denotes “all administrative and law enforcement authorities concerned with combating money laundering and terrorist financing, including the FIU and supervisors”.

Compliance with these recommendations requires that a jurisdiction is not just willing to receive requests for cooperation by foreign authorities, but is able to take effective action to cooperate with such requests.

Since 2003 the FATF, regional analogous bodies or the IMF have assessed the implementation of the FATF recommendations in peer-review studies that are carried out in five-year cycles. The comprehensive reports usually contain a table showing the degree of compliance of a given jurisdiction to each recommendation. The reports have generally been published online and were the main source⁷ for this indicator.

In 2012, following the conclusion of the third round of mutual evaluations, the FATF reviewed and updated its 49 recommendations (hereinafter: the "old recommendations") and consolidated them to a total of 40⁸ (hereinafter: the "new recommendations"). However, the compliance assessment based on the new recommendations has only begun in 2013 and at the cut-off date for this KFSI only four of the FSI-2015 jurisdictions have been assessed accordingly (Australia, Belgium, Norway and Spain). For those four jurisdictions we have adjusted our credit calculation to take into account the 40 new recommendations.

The five 36-40 old recommendations, considered for this indicator, are now the four new recommendations 37-40 with the following changes:

New recommendation 37⁹ (formerly old recommendation 36 combined with old special recommendation 5) exhorts countries to "provide the widest possible range of mutual legal assistance in relation to money laundering and terrorist financing investigations, prosecutions, and related proceedings". In addition, countries must "Maintain the confidentiality of mutual legal assistance requests they receive and the information contained in them [...]". Furthermore, countries should "make best efforts to provide complete factual and legal information that will allow for timely and efficient execution of requests [...]". Finally, they should ensure that their authorities "maintain high professional standards, including standards concerning confidentiality [...]".

New recommendation 38¹⁰ (formerly old recommendation 38) requires a country to have "authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize and confiscate property laundered, proceeds from money laundering or predicate offences, instrumentalities used in or intended for use in the commission of these offences, or property of corresponding value". In addition, countries' authority should be "able to respond to requests made on the basis of non-conviction-based confiscation proceedings and related provisional measures [...]" as well as to "have effective mechanisms for managing such property [...]". Finally, there should also be arrangements in place for coordinated action and sharing of confiscated assets.

New recommendation 39¹¹ (formerly old recommendations 39) requires a country to "ensure money laundering and terrorist financing are extraditable offences". It further details the grounds on which extradition has to take place, and in what manner. It also calls countries to "take all possible measures to ensure that they do not provide safe havens for individuals charged with the financing of terrorism, terrorist acts or terrorist organisations".

New recommendation 40¹²(formerly old recommendations 40) prompts countries to ensure that their competent authorities "provide the widest range of international co-operation in relation to money laundering, associated predicate offences and terrorist financing". The competent authorities "should have clear and efficient processes for the prioritisation and timely execution of requests, and for safeguarding the information received".

FATF's assessment methodology of both the old and the 40 new recommendations rates compliance with every recommendation on a four-tiered scale, from "compliant" to "largely compliant" to "partially compliant" to "non-compliant".

If a jurisdiction fully complies with a recommendation according to the FATF, we award a full fifth (0.2, old recommendations) or quarter (0.25 new recommendations) credit. Where it is largely compliant, it receives two thirds of this credit (2/15 old recommendations versus 1/6 new recommendations). If it is partially compliant, it receives one third of the value for this particular recommendation (1/15 old recommendations versus 1/12 new recommendations). Thus, a jurisdiction receives full credit (1 point) if it fully complies with all five old recommendations or with all four new recommendations.

See KFSI 11 for more details on these reports.

Why is this important?

In a world of unimpeded financial flows money launderers find it easy to establish schemes for moving money across borders to cover their tracks. If judicial cooperation across borders is not as seamless as the criminal money flowing between two companies or bank accounts, law enforcement agencies such as public prosecutors or police inevitably remain one step behind the criminals.

From the stages of investigation and prosecution to extradition of perpetrators and the confiscation and repatriation of criminal assets, at every step law enforcement processes are fragile and require cross-border cooperation. Without established means of cooperation, the only resort a judge may have consists of a letter rogatory, which is a time-consuming, costly and uncertain process

"In terms of efficiency, exchange of information through letters of rogatory may take months or years since some requests may have to be processed through diplomatic channels." (OECD 2001¹³: 66).

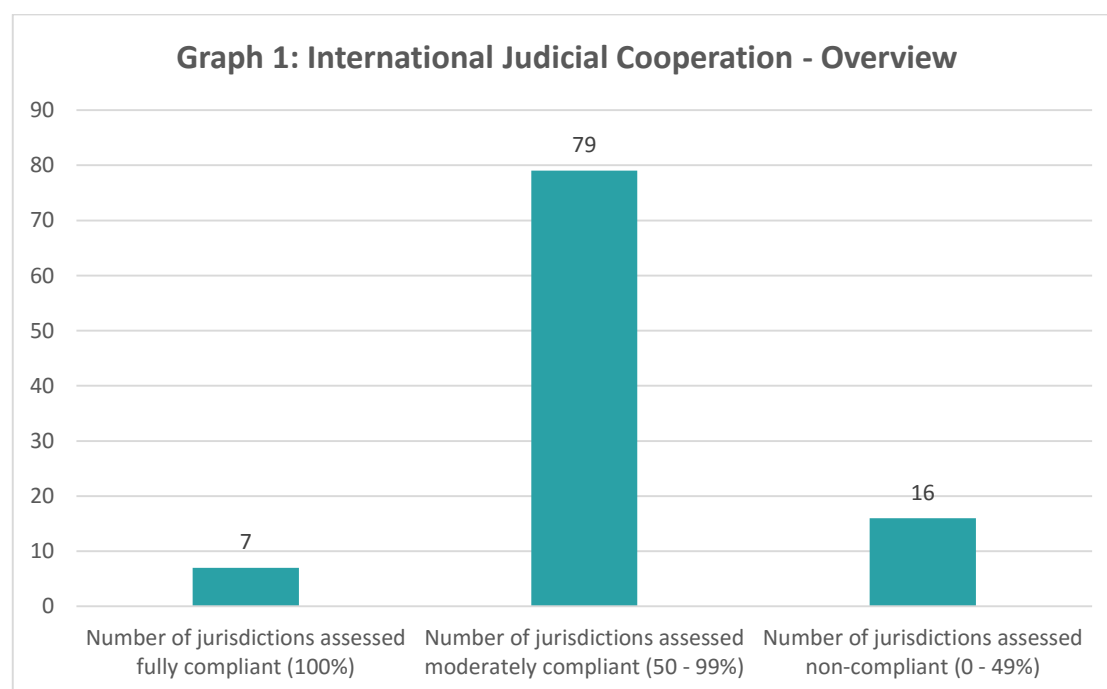
Compliance with old recommendations 36 through 40 / new recommendations 37 through 40 can be seen as the minimum threshold of judicial cooperation required to take part in the international financial system.

What crimes and abuses might be hidden behind deficient international judicial cooperation?

If a country has a poor record in conforming to these recommendations, the crimes left unchallenged, hidden or covered might include bribery, drug trafficking, human trafficking, insider trading, product piracy, terror financing and support for transnational organised crime.

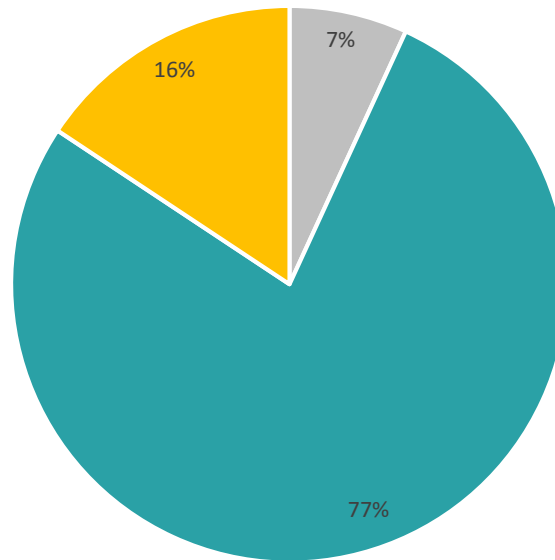
Results Overview

Table 1: International Judicial Cooperation - Overview	
Number of jurisdictions assessed fully compliant (100%)	7
Number of jurisdictions assessed moderately compliant (50 - 99%)	79
Number of jurisdictions assessed non-compliant (0 - 49%)	16



Results Detail

Graph 2: International Judicial Cooperation - Details



- Number of jurisdictions assessed fully compliant (100%): AU, VG, HU, IE, IT, MT, PT
- Number of jurisdictions assessed partially compliant (50 - 99%): All other jurisdictions
- Number of jurisdictions assessed non-compliant (0 - 49%): BZ, DO, GM, GH, JP, LR, MO, MV, MC, NL, PY, WS, SM, SC, LC, TZ

Table 2: International Judicial Cooperation – Transparency Credits							
ID	Country	ISO	Credits	ID	Country	ISO	Credits
1	Andorra	AD	0.60	52	Latvia	LV	0.80
2	Anguilla	AI	0.93	53	Lebanon	LB	0.67
3	Antigua & Barbuda	AG	0.87	54	Liberia	LR	0.27
4	Aruba	AW	0.53	55	Liechtenstein	LI	0.53
5	Australia	AU	1	56	Luxembourg	LU	0.73
6	Austria	AT	0.53	57	Macao	MO	0.33
7	Bahamas	BS	0.87	58	Macedonia	MK	0.60
8	Bahrain	BH	0.80	59	Malaysia (Labuan)	MY	0.60
9	Barbados	BB	0.67	60	Maldives	MV	0.13
10	Belgium	BE	0.67	61	Malta	MT	1
11	Belize	BZ	0.47	62	Marshall Islands	MH	0.53
12	Bermuda	BM	0.80	63	Mauritius	MU	0.67
13	Bolivia	BO	0.53	64	Mexico	MX	0.67
14	Botswana	BW	0.53	65	Monaco	MC	0.47
15	Brazil	BR	0.73	66	Montenegro	ME	0.73
16	British Virgin Islands	VG	1	67	Montserrat	MS	0.67
17	Brunei	BN	0.53	68	Nauru	NR	0.53
18	Canada	CA	0.73	69	Netherlands	NL	0.47
19	Cayman Islands	KY	0.93	70	New Zealand	NZ	0.73
20	Chile	CL	0.67	71	Norway	NO	0.67
21	China	CN	0.87	72	Panama	PA	0.87
22	Cook Islands	CK	0.67	73	Paraguay	PY	0.33
23	Costa Rica	CR	0.53	74	Philippines	PH	0.67
24	Curacao	CW	0.73	75	Poland	PL	0.67
25	Cyprus	CY	0.87	76	Portugal (Madeira)	PT	1
26	Czech Republic	CZ	0.73	77	Russia	RU	0.87
27	Denmark	DK	0.80	78	Samoa	WS	0.27
28	Dominica	DM	0.67	79	San Marino	SM	0.47
29	Dominican Republic	DO	0.47	80	Saudi Arabia	SA	0.53
30	Estonia	EE	0.73	81	Seychelles	SC	0.40
31	Finland	FI	0.73	82	Singapore	SG	0.87
32	France	FR	0.73	83	Slovakia	SK	0.53
33	Gambia	GM	0.33	84	Slovenia	SI	0.87
34	Germany	DE	0.67	85	South Africa	ZA	0.80
35	Ghana	GH	0.33	86	Spain	ES	0.92
36	Gibraltar	GI	0.67	87	St Kitts and Nevis	KN	0.80
37	Greece	GR	0.60	88	St Lucia	LC	0.27
38	Grenada	GD	0.87	89	St Vincent & Grenadines	VC	0.93
39	Guatemala	GT	0.67	90	Sweden	SE	0.87
40	Guernsey	GG	0.87	91	Switzerland	CH	0.80
41	Hong Kong	HK	0.80	92	Taiwan	TW	0.67
42	Hungary	HU	1	93	Tanzania	TZ	0.27
43	Iceland	IS	0.60	94	Turkey	TR	0.60
44	India	IN	0.67	95	Turks & Caicos Islands	TC	0.60
45	Ireland	IE	1	96	United Arab Emirates (Dubai)	AE	0.53
46	Isle of Man	IM	0.80	97	United Kingdom	GB	0.93
47	Israel	IL	0.87	98	Uruguay	UY	0.87
48	Italy	IT	1	99	US Virgin Islands	VI	0.80
49	Japan	JP	0.47	100	USA	US	0.80
50	Jersey	JE	0.80	101	Vanuatu	VU	0.53
51	Korea	KR	0.73	102	Venezuela	VE	0.67

¹ The (old) 2003 recommendations can be viewed at <http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202003.pdf>; 7.6.2015. The 2003 recommendations include 40 recommendations and 9 special recommendations on terrorist financing, and referred to jointly as the FATF Recommendations. For the methodology for assessing compliance with the FATF Recommendations see: <http://www.fatf-gafi.org/topics/fatfrecommendations/documents/methodologyforassessingcompliancewiththefatf40recommendationsandfatf9specialrecommendations.html>; 7.6.2015.

² See page 10 in: www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202003.pdf; 7.6.2015.

³ See page 10 in: www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202003.pdf; 7.6.2015.

⁴ See page 10 in: www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202003.pdf; 7.6.2015.

⁵ See pages 10-11 in: www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202003.pdf; 7.6.2015.

⁶ See page 11 in: www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202003.pdf; 7.6.2015.

⁷ To see the sources we are using for particular jurisdictions please check out the corresponding information in our database, available at www.financialsecrecyindex.com/database/menu.xml.

⁸ The (new) 2012 recommendation can be viewed at: <http://www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology%2022%20Feb%202013.pdf>; 7.6.2015.

⁹ See pages 27-28 in: http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf; 7.6.2015. While old recommendation 37 was officially omitted, most of its content was merged to new recommendation 37.

¹⁰ See page 28 in: http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf; 7.6.2015.

¹¹ See page 29 in: http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf; 7.6.2015.

¹² See pages 29-30 in: http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf; 7.6.2015.

¹³ Organisation for Economic Co-Operation and Development 2001, Behind the Corporate Veil: Using Corporate Entities for Illicit Purposes, Paris.