ALL AML

Newsletter 10 – October 2023

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AML / CFT – Germany – Legal and Regulatory Updates

Legal measures under way to establish an integrated Federal Financial Crime Agency

On 11 October 2023, the German federal government approved the draft "Financial Crime Prevention Act" (Finanzkriminalitätsbekämpfungsgesetz – FKBG). A separate law is due to be drafted in relation to criminal assets.

The key points include the following:

Federal Financial Crime Agency – Bundling of key competencies

Integration of Financial Intelligence Unit, criminal investigations, the Central Office for Sanctions Enforcement (ZfS) and supervision activities under the roof the Federal Financial Crime Agency (Bundesamt zur Bekämpfung von Finanzkriminalität – BBF). The goal is to establish a holistic and networked approach to combating money laundering in Germany, improve cooperation and overcome fragmentation.

Money Laundering Investigation Center – Follow-the-money approach

A central element of the new agency will be the Money Laundering Investigation Center (Ermittlungszentrum Geldwäsche – EZG) which aims to move away from investigating predicate offences to focusing on the more complex networks and structures attached to illicit financial flows. The ultimate aim is to get to the underlying crimes and the respective individuals operating within these criminal networks. This is why it is also referred to as the "follow the money" approach.

Asset Concealment Investigation Center – confiscation of criminal assets

The Federal Government is still working on a new (separate) law to empower an Asset Concealment Investigation Center (ACIC) within the BBF to conduct administrative AML investigations. This is comparable to the UK suspicious wealth order.

Further points outlined in the draft include the following:

- Establishment of a training a competence center within the BBF
- Deployment of technology including AI to improve investigation capability
- Improvement of data quality within the Transparency register
- Implementation of a real estate register
- Integration of supervision of the non-financial sector under the BBF

Links:

Bundesfinanzministerium: Voller Einsatz gegen Finanzkriminalität, 11/10/2023

Bundesfinanzministerium: Gesetz zur Verbesserung der Bekämpfung von Finanzkriminalität (Finanzkriminalitätsbekämpfungsgesetz – FKBG), 11/10/2023

FIU issues guidance to minimise unnecessary suspicious activity reports

In June, Germany's Financial Intelligence Unit (FIU) published a paper ("FIU Eckpunktpapier") outlining scenarios in which financial institutions should not file suspicious activity reports (SARs). The FIU has been overwhelmed with SARs (more than 300,000 in 2021) and the paper aims to reduce the number filed that are irrelevant to money laundering and terror financing. Most of the scenarios defined as not requiring a report are aimed at financial institutions such as banks, which are known to file a large number of reports.

According to the paper, two different constellations of facts generally do not require an SAR. The first includes scenarios that do not involve assets or transactions. Examples of these are the loss of a credit card or a bank's refusal to open an account for a customer (which are anyway not relevant to investment funds).

Secondly, institutions do not have to report matters in which no (new) facts indicate that an asset originates from a criminal offence. Examples of such cases include the mere use of cryptocurrency, a request for information from a law enforcement agency or the fact that another obligated entity has filed a report about a client. In these cases, the obliged entity does not have to file a report if they have no additional information to provide to the investigative authority.

Reference:

FIU: Eckpunktepapier zur Bestimmung solcher Sachverhalte, die grundsätzlich nicht die Meldepflicht des §43 Absatz 1 GwG auslösen

Amendment to Money Laundering Act strengthens FIU's risk-based approach

In July, the Ministry of Finance put forward draft changes to the Money Laundering Act to clarify its legal mandate and strengthen the Financial Intelligence Unit's (FIU's) risk-based approach. The changes are intended to create legal certainty for the FIU and its employees, which have recently been exposed to criminal liability due to the structural difficulties within the unit.

The proposed changes follow a joint evaluation project by the FIU and law enforcement agencies, which concluded that the FIU was "structurally overwhelmed" and unable to fulfil its legal mandate. The proposed draft of amendment to the Money Laundering Act:

- Allows the FIU to use self-learning systems to pre-sort SARs and assess their risk;
- Changes §30 of the MLA (GwG), which defines which offences shall be reported: currently these are defined as having to be related to money laundering, terrorist financing or "other offences"; the proposed amendment strikes "other offences" to allow the FIU to focus on its core mandate;
- Requires an obliged entity to inform the FIU if it files a criminal report in addition to an SAR;
- Allows the FIU to define reports of a specific nature that can be transferred to responsible law enforcement agencies without further analysis;
- Allows the FIU to define transactions or cases not subject to the reporting obligation (as they did in the "FIU Eckpunktepapier", see section above).

The proposed reform has, however, been criticised by opposition parties, who have called it a "declaration of bankruptcy in terms of criminal policy". Critics have mostly highlighted the fact that certain criteria that decide if a report is passed on or processed do not have to be disclosed, which they claim may result in suspicious facts not being appropriately processed.

Links:

Bundesministeriums der Finanzen: Referentenentwurf: Gesetz zur Stärkung der risikobasierten Arbeitsweise der Zentralstelle für Finanztransaktionsuntersuchungen 04/07/2023

ZDF: Kritik an Lindners Anti-Geldwäsche Plänen, 26/07/2023

Zeit Online: Lindner will Spezialeinheit für Geldwäsche stärken, 03/07/2023

AML / CFT – EU – Legal and Regulatory Updates

FATF adds EU member Croatia to list of jurisdictions under increased monitoring

In June, the Financial Action Task Force (FATF), international standard-setting organisation in the area of AML/CFT, added Cameroon, Croatia and Vietnam to its "grey list" of jurisdictions under increased monitoring. The list contains countries where the FATF has identified deficiencies in their regimes to counter money laundering and the financing of terrorism. With the addition of Croatia, the list now includes an EU country. Since 18 August, Cameroon and Vietnam have also been included in the EU's list of "high-risk third countries".

This means that companies obliged under the Money Laundering Act are now required to automatically apply enhanced due diligence measures when dealing with business partners from these jurisdictions.

Links:

BaFin: Rundschreiben 07/2023 (GW), 09/08/2023

FATF: Jurisdictions under Increased Monitoring, 23/06/2023

EU: High risk third countries and the international context content of anti-money laundering and countering the financing of terrorism, 18/08/2023

Several European cities competing to host new EU money laundering supervisory authority

The proposal for a new EU anti-money laundering and countering the financing of terrorism (AML/CFT) legislative package, as announced in July 2021, remains in trilogue negotiations between the European Parliament, Council of the EU and European Commission. Despite this, several European cities have announced bids to host the new supranational Anti-Money Laundering Authority (AMLA), which will be established as part of the EU AML/CFT package. Frankfurt, Paris, Vienna, Rome, Luxembourg and Madrid are the leading contenders to host the authority.

AMLA will be the supervisory authority for big financial institutions working across EU borders. Other institutions, likely including investment funds, will remain under the supervision of national authorities, such as Germany's BaFin.

Links:

Börsen Zeitung: Gedultsprobe zum Vorteil Frankfurts, 28/09/2023

FAZ: So stehen Frankfurts Chancen auf die EU-Anti-Geldwäschebehörde, 30/06/2023

European Banking Authority assesses AML / CFT risks for fund managers as moderately significant to less significant

On 13 July, the European Banking Authority (EBA) published an opinion on ML/TF risks in the EU financial sector, including a chapter on risks specific to managers of investment funds. The paper assessed that risks have increased across the board in the financial sector, largely due to new risks related to Russia's invasion of Ukraine and the resulting surge in human trafficking and sanction evasion risks. Other emergent risks include the laundering of money arising from environmental and cybercrimes.

For the first time, the EBA assessed the risks for fund managers separately from collective investment undertakings. Most national authorities estimated fund managers' overall residual risk profile to be either "moderately significant" or "less significant". The medium-to-long-term nature of the investment strategy of fund managers was noted as decreasing the risk of being used for ML / TF purposes.

Factors considered risk-enhancing were the distribution of fund units through intermediaries, as well as customer risk, the prevalence of high-net-worth individuals, complex ownership structures and high-risk jurisdictions. Identifying PEPs and establishing beneficial ownership of customers and their sources of funds were reported among ongoing difficulties. Few breaches by investment funds of AML legislation were recorded, which may, as noted in the report, be due to limited supervisory activity in the sector. Most commonly, violations were related to customer identification and verification, ongoing monitoring and internal controls. New emerging risks for investment funds are the use of new FinTech and RegTech, especially in relation to identifying and verifying beneficial owners as well as offering high-risk assets such as crypto.

Link:

Opinion of the European Banking Authority on money laundering and terrorist financing risks affecting the EU's financial sector, 13/07/2023

Heated debates in Brussels: will investment funds be obliged entities under the new corporate sustainability due diligence directive?

In June, the EU Parliament adopted a common position on an EU corporate sustainability due diligence directive (ESDDD) to prevent, identify and mitigate adverse human rights and environmental impacts in EU companies' supply chains. However, there is still no agreement between the parliament and EU member states, as the parliament pursues a much stricter approach to the legislation than desired by member states. One of the controversial issues under discussion is whether or not financial service providers will be subject to the new law. The parliament is pushing to include investment funds and asset managers to urge their portfolio companies to mitigate negative effects along their supply chains. The member states in the European Council are opposed to this and are warning against too much bureaucracy for companies.

In the most recent meeting of the trilogue on 7 September, due diligence measures around climate issues and sanctions in cases of non-compliance were discussed. The next meeting of the trilogue is scheduled for November, with the aim of coming to an agreement before the end of the year.

Links:

Background Tagesspiegel: Heiße Themen im EU-Trilog zur Lieferkette, 05/10/2023

Euractive: EU Parliament agrees common position on corporate due diligence law, 02/06/2023

Euractive: EU-Lieferkettengesetz: Uneinigkeit zwischen EU-Staaten und Parlament, 11/09/2023

AML / CFT – Investigations and Regulatory Action

Report alleges that Estonia's lax crypto-licencing enabled money laundering and funding of Russian mercenaries

Media organisation ZDF in October reported that criminals had been abusing Estonia's crypto exchanges to launder money. Estonia has a comparatively liberal licensing system for companies that exchange cryptocurrency or process cryptocurrency payments. The report noted that two-thirds of the licences the country had issued since 2017 had since been revoked due to suspicions of criminal activity.

A prominent example was the crypto exchange "Garantex", which was first established and licensed in Estonia but moved to Moscow and St Petersburg in 2019. Garantex has been sanctioned by the United States since April 2022, due to claims that it was used to facilitate hacker attacks for ransomware and the financing of the Russian mercenary group "Russitsch", which has been active in the Ukraine conflict.

Links:

ZDF: Estlands Krypto-Gangster im Goldrausch, 04/10/2023

VSquare: Tales from the crypto: How the Baltic States became the hub of money laundering and fraud, 04/10/2023

Leaked documents reveal apparent due diligence failures at Swiss asset management firm

The Organised Crime and Corruption Reporting Project (OCCRP) in September reported that a group of Russian hackers had leaked documents revealing breaches of due diligence obligations by Swiss investment firm Finaport. The documents – posted in the darknet after Finaport was targeted in a ransomware attack in February – showed that the company had been conducting business with several clients found to be involved with illegal or suspect activities; these included embezzlement, insurance fraud and business with individuals linked to Russian state-owned firms supporting the war effort in Ukraine.

The documents revealed that Finaport has systematically neglected its due diligence obligations and overlooked red flags, such as clients using multiple identities and failing to identify their PEP status, as well as media reports of suspected corruption and links to Russian state-owned firms.

Link:
OCCRP: Missed Red Flags: Leak Exposes Swiss Asset Management Firm's Work for Clients Accused of Fraud and Corruption, 14/09/2023

Bank slapped with fine for making a transaction despite filing a suspicious activity report

BaFin in July announced that it had earlier in March handed Kreissparkasse Groß-Gerau a EUR 10,000 fine for violating the Money Laundering Act. Entities obliged under the Money Laundering Act are prohibited from conducting specific transactions for three working days after filing suspicious activity reports (SAR) to the FIU.

At the beginning of the year, Kreissparkasse Groß-Gerau filed an SAR related to a potential transaction, but then carried out the transaction before three days had expired and without the explicit consent of the FIU.

Link:
Kreissparkasse Groß-Gerau: BaFin setzt Geldbuße wegen Verstoß gegen Geldwäschegesetz fest, 24/07/2023

BaFin extends measures for the prevention of money laundering at N26 Bank

BaFin on 17 July announced that it had extended measures intended for the prevention of money laundering and terrorism financing at N26 Bank.

Despite making progress, N26 Bank was found to have continued deficiencies in its AML/CFT framework, primarily with regard to its system for filing SARs. As such, BaFin extended a growth restriction - limiting the bank to 50,000 new customers monthly - which has been in place since November 2021, as well as the mandate of a special representative to monitor the implementation of AML/CFT measures, first appointed in May 2021.

Link:
BaFin: N26 Bank AG: BaFin verlängert Maßnahmen zur Prävention von Geldwäsche und Terrorismusfinanzierung, 17/07/2023

BaFin prohibits certain transactions at Varengold Bank due to deficits in money laundering risk prevention

During a special audit, the BaFin conducted at Varengold Bank EG, the authority has found systematic deficits in complying with the Money Laundering Act. The Bank has not fulfilled enhanced due diligence obligations and its monitoring in relation to business with links to Iran, a high-risk jurisdiction as defined by the FATF and EU. The BaFin has prohibited to carry out transactions with payment agents and transactions involving counterparties that are natural or legal persons based in Iran. Additionally, the BaFin appointed a special commissioner on 27 June 2023 to monitor the order and to ensure no laws or sanctions are violated.

Link:

BaFin: Varengold Bank AG: BaFin untersagt Transaktionen wegen hoher Geldwäscherisiken und gravierender Defizite in der Geldwäscheprävention, 03/08/2023

Neglecting customer due diligence obligations earn SOFORT GmbH large fine

The online payment company SOFORT GmbH, a subsidiary of Klarna, was in September fined EUR 150,000 by BaFin for neglecting to fulfil its customer due diligence and continuous monitoring obligations. Customer due diligence is a core obligation under the Money Laundering Act; this includes the identification of customers and other business partners and ongoing risk-based monitoring.

Link:

BaFin: Geldwäscheprävention: BaFin setzt Geldbuße gegen SOFORT GmbH fest, 28/09/2023

Sanctions – Legal and Regulatory Updates

Latest package of EU sanctions focuses on enforcement and stuffing loopholes

The EU in June published its 11th sanctions package in response to Russia's war in Ukraine, imposing restrictive measures on an additional 71 individuals and 33 entities. The sanctioned individuals and entities include Russian military personnel, political decision-makers, individuals involved in the forced deportations of Ukrainian children to Russia, as well as Russian IT companies providing technical infrastructure and software to Russian intelligence services.

Additional new measures primarily focused on the issue of sanctions circumvention and "stuffing loopholes" in the previous sanction packages. For example, the package enables the EU to restrict the sale of sensitive and dual-use goods and technology to third countries that are suspected of selling these on to Russia; however, the measures stop short of the sort of secondary sanctions used by the US.

Links:

Euractive: EU greenlights 11th Russia sanctions package, mostly targeted at stuffing loopholes, 21/06/2023

European Council: 11th package of sanctions on Russia's war of aggression against Ukraine, 23/06/2023

Integrity Insights Podcast: Conducting sanctions due diligence, 14/08/2023 (Spotify / Apple Podcasts)

US announces large Russia sanctions package targeting several companies in third countries

The US on 14 September announced a large new package of sanctions, affecting more than 150 individuals and entities, in response to Russia's war in Ukraine. It included not only Russian targets, but also companies from Belgium, the United Arab Emirates, Central African Republic, Slovenia, Finland and Turkey.

The Department of State designated 37 companies involved in developing key energy projects and infrastructure, as well as entities involved in procuring materials and advanced technology, for Russia. The non-Russian entities were included as they have been accused of repairing sanctioned Russian vessels or transporting so-called "dual-use goods", which can be used to support the Russian military.

Links:

OFAC: Russia-related Designations, Designations Updates, and Designations Removals; Issuance of Russia-related General Licenses, 09/14/2023

US Department of State: Imposing Further Sanctions in Response to Russia's Illegal War Against Ukraine, 09/14/2023

Sanctions – Enforcement and Regulatory Action

Investigations reveal how Russian oligarchs park their assets in South Dakota

Media reports in September indicated that the US' Internal Revenue Service (IRS) was investigating allegations that sanctioned Russian individuals were using trusts in South Dakota to anonymously hold their wealth.

South Dakota has, following revelations in the 2021 Pandora Papers data leak, earned a reputation as an international tax haven, where privacy protections and the regulation of trusts work in favour of entities that want to keep beneficial ownership hidden. Recent reports have highlighted that wealthy individuals from countries such as Russia and China have been using such intransparent trust structures to store their wealth. In a radio interview in September, an IRS representative admitted that agents tasked with uncovering assets belonging to sanctioned individuals had traced wealth to South Dakota.

Links:

SDPB Radio: IRS investigating cases of sanctioned Russian assets in SD Trusts, 08/09/2023

OCIJ: IRS investigating sanctioned Russian oligarchs' use of South Dakota trusts, agent says, 13/09/2023

ICIJ: Suspect foreign money flows into booming American tax havens on promise of eternal secrecy, 14/10/2021

Sanctioned oligarch and friend of Putin disguises his EU assets

In June, a joint investigation by Spiegel and the OCCRP revealed methods used by brothers Boris and Arkady Rotenberg - sanctioned individuals known to be close friends with Russian President Vladimir Putin - to circumvent sanctions by hiding ownership of their European assets. Notably, the reports identified Arkady Rotenberg as the ultimate beneficial owner of a chalet in the Austrian Ski resort Kitzbühel, known to have been used by Putin's daughter Maria Woronzowka.

The house is owned by a Cyprus company with an opaque ownership structure, and the Austrian authorities were reportedly not able to identify the actual owner of the property. In the aftermath of the Spiegel and OCCRP investigation, the Tirol administrative court banned use of the property, due to the house being misused as a recreational residence.

Links:

Spiegel 'Rotenberg files': So tarnt Oligarch und Putin-Freund Akadij Rotenberg offenbar sein Vermögen in der EU, 20/06/2023

Der Standard: Eine Oligarchenvila in Kitzbühel für Putins Tochter, 20/06/2023

Puls24: Kitzbühel:Von Oligarchen finanzierte Villa darf nicht mehr benützt werden, 30/06/2023

FAZ Podcast: "die Jagd auf das Geld der Oligarchen" (Spotify / Apple Podcasts)

Imprint

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