



## Newsletter 9 – June 2023

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## Germany – Legal and Regulatory Updates

### BaFin – Annual report 2022

BaFin published its annual report for 2022 on 9 May. Regarding money laundering prevention, BaFin focused on non-financial sectors, non-bank financial service providers and institutions trading crypto assets. The key focus areas of the audits conducted in 2022 were outsourcing, transaction monitoring and crypto asset transactions.

BaFin expanded and restructured its capacities in money laundering prevention in the spring of 2022. Instead of one department, there are now two, with a total of 12 divisions. Both departments perform both policy and supervisory tasks.

#### Stats relevant to investment funds in 2022:

- KVGs founded in Germany: 'registered' KVGs: 523 (+55), with 'Erlaubnis' 144 (+5).
- BaFin collected EUR 33,375,350 in fines; EUR 24,264,350 of these occurred in the bond and asset management sector.
- BaFin performed 134 annual audits and participated in 15 yearly and special audits in KVGs.
- BaFin sent nearly 500 deficiency letters and requests for information.

#### Link:

[Bafin-Jahresbericht](#)

### BaFin increases scrutiny of investment fund sector

Investment funds have come under increased scrutiny by the German regulatory BaFin. Key weaknesses identified by supervisors in the area of KYC and Risk Assessment.

#### Link:

[Auch Registrierungspflichtige Kapitalverwaltungsgesellschaften müssen sich vor Geldwäsche schützen](#)

### Transparency Register and Discrepancy Reporting

The transition period during which investment funds were not obliged to file inconsistency reports with the transparency register has expired. As of 1 April, all companies must register their beneficial owners (UBOs) and file a report whenever UBO information is inconsistent with the data available in the transparency register.

### How to avoid discrepancy reports?

- Correctly register the fund – a typical error is the incorrect calculation of different levels of beneficial ownership.
- When giving out AML letters, make sure to include the same details as those filed with the transparency register.
- Keep the document issued to you after initial registration with the Transparency Registry, as you may only get a redacted version if changes have been made since the first filing (making it difficult to trace the original details that might have caused a discrepancy)
- Monitor and continuously update the ownership structure of your fund

Failure to report can lead to fines and a listing by the authorities, namely on the Bundesverwaltungsamt's website.

#### Links:

[Bundesverwaltungsamt, Bußgeldentscheidungen \(Transparenzregister\)](#)

[Ypog, Unstimmigkeitsmeldung erhalten](#)

[Bundesverwaltungsamt, FAQ Transparenzregister](#)

## A new head for the Financial Intelligence Unit

The Ministry of Finance announced that Daniel Thelesklaf will be the new head of the Financial Intelligence Unit (FIU). He will take up his new role on 1 July. Thelesklaf has an extensive background in fighting financial crime and is currently leading a UN initiative named "Finance Against Slavery and Trafficking". He has previously been head of the FIUs of Switzerland and Liechtenstein.

#### Links:

[Bundesfinanzministerium: Financial Intelligence Unit \(FIU\) bekommt neuen Leiter](#)

[Handelsblatt: Anti-Geldwäsche-Einheit FIU bekommt neuen Leiter](#)

## New Whistleblower Law (HinSchG)

The EU whistleblower directive has been transposed into national law in Germany, after the Bundesrat on 9 May agreed on an amended proposal. The compromise contains changes to the reporting channels for anonymous tip-offs, fines and the scope of the Whistleblower

Protection Act. The most significant point of contention that delayed an agreement was the requirement to provide an anonymous channel for whistleblowers, which has now been removed from the law. Instead, it now states that anonymously received reports *should* be processed, and that whistleblowers should prioritise internal reporting where breaches can be addressed internally.

Even though the law is written for companies with more than 50 employees, investment funds are obliged to implement a whistleblowing channel regardless of their size.

In addition, all companies must set up an internal reporting office to accept and process reports confidentially. Employees can report and disclose information about actions and omissions in the context of a professional activity that may be subject to criminal penalties or fines. Reports can include compliance violations, violations related to employment law, fraud, corruption, violations of safety regulations and environmental protection, among others.

The office that receives these reports must treat the information as confidential and protect those who provide information from discrimination, disadvantage and retaliation. In addition, the person providing the information cannot be held legally responsible for obtaining or accessing information. However, these protections do not apply in the event of intentional or grossly negligent reporting or disclosure of incorrect information.

The law will be effective as of the end of June 2023, and breaches of the whistleblower protections can result in fines of up to EUR 50,000.

**Links:**

[EU Directive](#)

[Bundesrat](#)

## **New financial crime authority in North-Rhine Westphalia**

North Rhine-Westphalia is implementing a state financial criminal investigations office (LFK). The agency will unite the existing special agencies and a third of the state's tax investigators. The aim is to make the LFK a central agency, equipped to handle complex, cross-border cases of money laundering and tax evasion. The LKA will work closely with federal and international agencies. According to State Finance Minister Marcus Optendrenk, this new institutional set up will increase efficiency and improve communication across investigative agencies (Zeit).

Additionally, the LFK investigators will handle cum-ex cases and offences linked to hawala banking.

Their tasks will also include proceedings against Russian citizens and oligarchs residing in Germany who are suspected of money laundering or tax evasion. The state government wants to establish the LFK this year; however, it is not clear yet where the agency will be located.

The fight against money laundering and financial market crime will also be a key issue at this year's annual conference of German finance ministers, hosted by North Rhine-Westphalia. The conference is due to take place from 1 to 2 June in Münster.

**Links:**

[Finanzverwaltung NRW: Länderfinanzminister wollen Kampf gegen Geldwäsche intensivieren](#)

[Spiegel: NRW gründet Landesfinanzkriminalamt](#)

[Zeit: NRW bekommt neue Behörde: ein Landesfinanzkriminalamt](#)

## **Anti-financial Crime Alliance (AFCA) will be continued**

The Anti-Crime Financial Alliance (AFCA), which was initially established as a three-year pilot project in September 2019, is to be continued. AFCA is a public-private partnership for strategic information exchange around AML/CFT among 49 members of the public and private sectors, including the FIU. In 2022, the organisation focused on the financing of human trafficking, crypto-assets, digitalisation and money laundering in the real estate and gambling sectors.

Among others, AFCA has published a whitepaper on shell companies and money laundering structures in three examples of international "laundromats" and concluded: "All schemes exploited certain vulnerabilities on the EU and national level, including the misuse of various types of corporate vehicles and shell companies; the use of third-party professionals and professional money launderers and the close dependency of small regional banks to their non-resident portfolio." (AFCA, p.16)

**Links:**

[FIU, Pressemitteilung zur Fortführung der AFCA \(2023\)](#)

[AFCA, The Laundromats, Whitepaper](#)

## EU – Legal and Regulatory Updates

### Changes to the tracing of transfers regulation for crypto assets

On 20 April, the European Parliament endorsed the EU's first legal framework for tracing crypto-assets. This amendment to the law ensures that crypto assets will be traced the same way as traditional money transfers, so that information about the source and beneficiaries of a transaction will be stored on both sides of the transfer. The law will cover transactions above EUR 1,000 held in self-hosted wallets, when they are interacting with hosted wallets managed by crypto-assets service providers.

The legislation is still to be formally endorsed by the EU Council and will then come into force 20 days after being published by the EU Commission.

**Link:**

[European Parliament News](#)

### EU directive on corruption

On 3 May, the European Commission proposed a legislative package to tackle corruption. The anti-corruption proposal includes new and strengthened rules criminalising corruption and harmonising penalties in a “Common Foreign and Security Policy (CFSP) sanctions regime.” The proposal aims to prevent corruption and equip law enforcement with the appropriate investigative tools to fight it worldwide. The next step is for the proposal to go through negotiation in the European Parliament, before it is agreed by the EU Council. After it is adopted by the council, EU countries will have two years to implement the directive into national law.

**Link:**

[EU Commission: Anti-corruption: Stronger rules to fight corruption in the EU and worldwide](#)

### Revision of the Risk factor guidelines – consultation process

On May 31, the European Banking Authority (EBA) launched a public consultation on amendments to its Guidelines on money laundering and terrorist financing (ML/TF) risk factors. The proposed changes extend the scope of these Guidelines to crypto-asset service providers (CASPs). The consultation runs until 31 August 2023.

**Link:**

[EBA consults on amendments](#)

## Terrorism Reports

### Global Terrorism Index 2023

The tenth edition of the Global Terrorism Index report was published in March 2023. It reported that terrorist activity had broadly plateaued between 2019 and 2022. While attacks had become 26 percent more deadly, deaths linked to terrorism decreased by 9 percent in 2022. According to the report, the Sahel region is now the major epicentre of terrorism worldwide. The region accounted for more deaths in 2022 than South Asia and the MENA region combined. The Islamic State remained the deadliest terrorist group in 2022.

The report noted that terrorist acts in Europe had decreased, a trend it attributed to the decrease in left-wing terrorism. Further, the report noted that politically motivated attacks had overtaken religious attacks, which declined by 82 percent in 2022.

**Link:**

[Global Terrorism Index 2023 \(March 2023\)](#)

### Raid against IS terrorist financing network in Germany

Media reports on 31 May indicated that seven suspected supporters of the jihadist militia Islamic State (IS) had been arrested across ten states in Germany. More than 1,000 members of the federal and state criminal police were deployed during the related operation to search more than 100 properties in Berlin.

Three men and four women are suspected to have been involved in the network as financial intermediaries supporting IS. They played a central role in financing the network by collecting donations amounting to at least EUR 65 000 and forwarding them to the terrorist organisation in Syria. According to the federal prosecutor, the funds were used to help IS inmates held in camps in northern Syria (Al Hol and Roy) to escape and, in some cases, to be smuggled abroad.

**Links:**

[Tagesschau: Sieben mutmaßliche IS-Unterstützer festgenommen](#)

[RBB: Sieben mutmaßliche IS-Unterstützer bei bundesweiter Razzia festgenommen](#)

## AML / CFT – Investigations and Regulatory Action

### Problems at Financial Intelligence Unit

On 16 May, television channel ZDF aired a 45-minute documentary on the problems faced by the Financial Intelligence Unit in handling money laundering suspicious activity reports.

**Links:**

[ZDF: Geldwäsche-Kampf: Lindners Pannen-Behörde](#)

[ZDF Frontal](#)

### Auditor EY sanctioned in the aftermath of Wirecard scandal

The supervisory authority APAS on 3 April announced sanctions against EY for breaches of professional duty related to its role as auditor of Wirecard. The “Big-4” accounting firm was fined EUR 500,000 and banned from auditing public interest companies in Germany for two years. EY employees implicated in the scandal were handed fines of between EUR 23,000 and EUR 300,000.

**Links:**

[CNN, EY banned from auditing public interest companies in Germany over Wirecard](#)

[Manager Magazin: Aufsicht sperrt EY wegen Wirecard Skandal von Aufträgen aus](#)

### US fines British tobacco company for sanctions evasion

In April, the US Ministry of Justice sanctioned the British tobacco company British American Tobacco with a record-breaking USD 636 million fine. The company violated US sanctions against North Korea by selling its products to North Korea through a Singaporean subsidiary, making around USD 428 billion in profit.

**Link:**

[Spiegel: Tabakkonzern BAT muss Hundert Millionen an Strafe zahlen](#)



## AML / CFT – News Review

### Black Steel – Money laundering network in Germany

In May 2023, investigators uncovered a money laundering network operating in Italy and Germany. An individual named Maurizio Rullo has been detained on charges of heading a criminal organisation that bought iron scrap on the black market and resold it for profit. The funds generated from this illegal business were laundered through a complex network of companies in Germany and Hungary. Making use of lax restrictions on cash in Germany, the group is said to have withdrawn some USD 70 million from two banks in Munich; in one day alone, they extracted EUR 900,000 in cash.

#### Links:

[Tagesschau, schwarze Millionen](#)

[Video: ARD Mediathek, Geheimakte Black Steel: Das Geldwäsche-Kartell und die Mafia Spur](#)

### Ndrangheta mafia members arrested across Europe

European investigating authorities on 3 May successfully cracked down on a criminal network, carrying out operations stretching across ten countries over the course of one day. Reports indicate that 132 suspected members of the Ndrangheta mafia were taken into custody, and assets worth EUR 25 million were seized. On 10 May, a further 61 suspected Ndrangheta members were detained.

The mafia-style organisation is responsible for much of Europe's cocaine trade, as well as involvement in systematic money laundering, bribery and violence. The group is believed to have smuggled nearly 25 kilograms of cocaine between October 2019 and January 2022.

#### Links:

[Europol, 132 Ndrangheta mafia members arrested after investigation by Belgium Italy and Germany](#)

[BBC, Italian mafia: Police arrested 61 suspected Ndrangheta in widespread raids](#)

## Sanctions

### New UK sanctions against Russia

The UK announced a new package of sanctions against Russia on 18 May, targeting Russian diamonds, metals (copper, aluminium and nickel) and the military-industrial complex.

Alongside trade measures, the UK government is also preparing new sanctions targeting an additional 86 people and companies from Putin's military-industrial complex and those involved in crucial revenue streams such as energy, metals and shipping.

The UK has already sanctioned 1,500 individuals and entities, freezing more than GBP 18 billion of assets in the UK, and sanctioned over GBP 20 billion of UK-Russia trade.

#### Links:

[Politico, UK moves ban Russian diamonds, with EU under pressure to follow](#)

[UK Government press release, New sanctions demonstrate G7 resolve on Russia](#)

### New US sanctions against Russia

The US Department of the Treasury's Office of Foreign Assets Control (OFAC) announced new sanctions against Russia on 19 May. The agency added individuals and legal entities to OFAC's sanctions list. These new designations focus on critical sectors connected to Russia's military, and include actors in industries such as aerospace, electronics, metals, mining and financial services. Furthermore, a change was announced that will require US persons to report any real estate they possess or control in which certain Russian state entities have an interest.

#### Links:

[OFAC: Russia-related Designations](#)

[The White House: G7 Leaders' Statement on Ukraine](#)

### Outlook: 11<sup>th</sup> package of EU sanctions against Russia

On 9 May, European Commission President Ursula von der Leyen announced a forthcoming new round of sanctions against Russia. This 11<sup>th</sup> round of EU restrictive measures will be focused on strengthening the implementation and effectiveness of, and cracking down on loopholes in existing sanctions.

The package will consist of three elements. Firstly, more products will be added to the transit ban. Secondly, the EU will implement a tool for member states to sanction the export of goods to third countries. Thirdly, they will ban shadow entities from Russia and third countries circumventing sanctions. EU-sanctioned goods have been finding their way to Russia through certain third countries. These countries have not been officially named, but are likely to include China, Turkey and the UAE. Proposed measures would ban exports of goods with dual-use technologies to these third countries suspected of circumventing sanctions.

In addition to the topic of third country sanctions disagreement about a list of private company “war sponsors”, published by Ukraine which also includes European companies persists. Hungary and Greece are currently blocking the package due to issues linked to the “name- and-shame list”.

According to French Foreign Minister Catherine Colonna, the new package needs to be ready by the next Foreign Affairs Council on 26 June. Other diplomats are urging for it to be finalised sooner.

**Links:**

[Politico, New sanctions against Russia stuck in limbo over Greek-Hungarian protest](#)  
[Deutsche Welle, Russia sanctions: EU to name and shame sanction evaders](#)

## Imprint

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