



## Will Finance Minister Lindner 'Catch the Big Fish'?

18th January 2024

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Based on recent estimates, around 100 billion euros are laundered in Germany each year, making it a 'money laundering paradise'. The Financial Action Task Force (FATF), an international anti-money laundering organisation, has given Germany a mediocre rating in its most recent audit report. In particular, Germany was criticised for how it has conducted financial investigations in complex cases. According to the FATF, cooperation between law enforcement authorities and the Financial Intelligence Unit (FIU) did not run smoothly in practice, with prosecutors focusing too much on predicate offences and too little on subsequent financial crime. It found that prosecutors had inadequate resources and there were deficiencies in AML supervision in the non-financial sector. Against this background, a key objective of Germany's three-party governing coalition is stepping up the fight against financial crime.

In September 2023, the Federal Ministry of Finance published a draft bill to combat financial crime (Combating Financial Crimes Act), which the Federal Cabinet has since adopted without any significant changes. The draft law has been recently debated in Federal Parliament (*Bundestag*) and is now under review by its Finance Committee. Federal Minister of Finance Lindner stated that the improved legal framework will allow

Germany to 'catch the big fish' in the future. But will Lindner really achieve the 'big success' that he announced?

The bill, which is intended to step-up the fight against financial crime in Germany, provides for the establishment of the Federal Financial Crime Agency (FFCA) as a new specialised federal authority. Financial flow analyses, criminal and administrative investigations, and supervisory powers are to be bundled under the FFCA's umbrella. At the core of the FFCA will be the new Money Laundering Investigative Centre (MLIC), where the most significant cases of international money laundering with links to Germany will be investigated. This approach involves a shift in focus: applying the 'follow the money' principle, the MLIC will take suspicious financial flows as a starting point to uncover crimes, its 'masterminds' and criminal networks. In 2025, the Central Office for Sanction Enforcement and the Financial Intelligence Unit (FIU), previously part of the German customs authority (*Zoll*), will be integrated into the FFCA creating synergy between sanctions enforcement and combating money laundering. This is also intended to improve co-operation between law enforcement agencies. In addition, the Central Office for AML Supervision will be established under the FFCA's umbrella. Its aim is to strengthen a standardised, strict risk-based approach to AML supervision in the non-financial sector, and to support nationwide coordination and supervisory measures under AML law.

In discussions about the Combating Financial Crimes Act, the focus on money laundering has been criticised. Financial crime includes several criminal offences, including commercial fraud, subsidy fraud, tax evasion and VAT fraud. However, under the current draft bill, investigating tax crimes falls entirely outside the scope of the MLIC. Furthermore, establishing a new agency initially sounds like a reasonable measure to counter the fragmentation of competencies, which has also been criticised by the FATF. However, there are increasing concerns that this will lead to even more red tape and inefficient parallel structures as no real centralisation or effective bundling of competencies is envisaged under the draft law. Subordinate to the FFCA, the MLIC is primarily structured as a separate organisation that must rely on the resources of the Federal Criminal Police Office (BKA) in key areas.

A similar issue arises with the proposed Central Office for AML Supervision. Each of the federal states (forming the Federal Republic of Germany) will in principle remain responsible for AML supervision tasks. The Central Office for AML Supervision will merely have a coordinating role. This approach of the draft law does not sufficiently address the patchwork of supervisory authorities still operating in the individual federal states – something which the FATF has also criticised.

Likewise, the extent to which the bill takes into account specific characteristics of the various entities subject to obligations under AML law remains unclear. By comparison to the financial industry, the non-financial sector is very diverse with many different areas of activity. To perform their supervisory duties properly, it is essential for the

public authorities in charge to be familiar with these specific activities and the associated professional rights and obligations. Accordingly, it would be preferable for the Central Office for AML Supervision to have an organisational structure reflecting individual sectors.

In addition to organisational changes, the bill extends the scope of the existing AML regulations and introduces stricter documentation and reporting obligations. For instance, whenever a criminal complaint or an application for prosecution is filed in addition to a suspicious activity report (SAR), the FIU must be notified. Whether this will increase efficiency is questionable. The Anti-Money Laundering Act is currently pursuing an all-crimes approach and the entities in the relevant industries must also report many minor incidents as suspicious activities. Because of the risk-based approach pursued by the FIU, these SARs are frequently not forwarded to the law enforcement authorities, or at least they are not investigated or eventually do not lead to a prosecution. Therefore, this new approach may entail significant additional work both for the industry and the FIU. It may mean that the objective of increasing efficiency may not be achieved, overall. Instead, it may be preferable to pursue an 'all-serious crimes approach', similar to the approach taken by other European countries. This would also be in line with the FATF recommendations.

To combat financial crime, the draft bill aims to improve the data flows as well. From 2027, data that is recorded in the Transparency Register must also include the beneficial owner's place of birth. Likewise, companies are to be incentivised to voluntarily disclose their ownership and control structures in the Transparency Register. The registrar will be authorised to retrieve the data to be entered in the Transparency Register by requesting the relevant information from other registers, such as the land registry. The establishment of a new real property transaction register is also proposed, enabling digital access to data on real property sales in order to combat money laundering and enforce sanctions. In future, public authorities, notaries and courts will be obliged to transmit data to this register related to real property sales that have a purchase price of more than EUR 100,000.

Combating financial crime in Germany is a goal which all stakeholders can support, and in particular the relevant industries will be happy to work towards this end. After all, it will make Germany more attractive as a business centre. However, the cost-benefit ratio must always be considered. The costs incurred by the relevant industries for complying with the numerous existing obligations are high, even before the bill is passed. Introducing additional obligations is therefore justified only if this actually leads to the 'big fish' being caught. To this end, the bill should be improved significantly in the legislative process.

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