# RegCORE Client Alert

**Follow the money! German Federal Finance Minister announces plans for new Federal Financial Crime Authority**

August 2022

# FINANCIAL CRIME

## Follow the money! German Federal Finance Minister announces plans for new Federal Financial Crime Authority


**Dr. Michael Huertas**
Tel.: +49 160 973 757-60
michael.huertas
@pwc.com

**Contact RegCORE Team**
de_regcore@pwc.com


### QuickTake

On 23 August 2022, the German Federal Finance Minister announced plans based around three pillars that aim to improve anti-money laundering, terrorist financing and financial crime prevention efforts in financial services and other non-financial services sectors. The first (and thus chief) pillar in these plans involves the creation of a new anti-money laundering (**AML**) and financial crime prevention authority, under the working title of *Bundesfinanzkriminalamt* i.e., the Federal Financial Crime Office (the **BFkA**).[1] While further details are yet to emerge, the motto driving such reform, "follow the money", is very clear in its aims.

This new authority would have wide-reaching powers in its own right but also with respect to the other pillars. The second pillar would involve the BFkA assuming oversight over the *Zentralstelle für Finanztransaktionsuntersuchungen* (Germany's Financial Intelligence Unit (**FIU**), which is responsible for receiving and then investigating suspicious activity and transaction reports). The FIU, which is part of the German Customs Office (*Zoll*) has been repeatedly criticised, even investigated by State Prosecutors, for doing too little to prevent money laundering and financial crime. The third pillar focuses on the new BFkA having a centralised role to coordinate the more than 300 supervisory bodies scattered across Germany's 16 Federal States (*Bundesländer*) responsible for AML oversight on everything from estate agents through to the gambling industry.

If implemented the new BFkA aims to make it easier to tackle complex and international financial crime in particular money laundering cases – or so the plan. How this might interoperate with the EU's own proposal to create an EU Anti-Money Laundering Authority (again a working title as part of proposals) (**AMLA**) remains to be seen. This Client Alert provides a summary overview of the German Federal

[1] The German language is well known for having a soft spot for long words when compared to other languages. The language's logical, often Lego-like grammatical structure allows the tacking of a number of elements so that it is not unusual at all to be able to describe a very specific concept with a single long word. This is also the case in financial services regulatory reform efforts in Germany.

Finance Minister's proposals (as of the date hereof) and should be read in conjunction with further updates on the topic as well as on AMLA as part of dedicated coverage from PwC Legal's EU RegCORE.

## Germany's AML reform efforts

Germany has long been committed to improving AML, terrorist financing and financial crime prevention efforts on the international stage. This includes the German-led chairmanship between 2020 to 2022 of the international AML- standard setting body, the Financial Action Task Force (**FATF**)[2] as well as Germany's contributions to EU legislative policymaking leading to reforms of the EU's AML Directives. It should be noted that the AML Directives are proposed to be replaced comprehensively by a much more stringent EU Regulation (see detailed coverage on this development from PwC Legal's EU RegCORE).

Closer to home things took a turn for the worse in AML prevention efforts before a flurry of reforms were introduced. Following the Wirecard scandal, German legislators rapidly introduced the Financial Market Integrity Act (**FiSG**), which is intended to help expedite the detection of financial crime, while concurrently reforming financial supervision and accounting control. FiSG aims to further supplement a number of concurrent changes to Germany's Anti-Money Laundering Act (*Geldwäschegesetz* – **GwG**)[3], which introduced new EU-led standards as well as FATF recommendations following its review of Germany's AML framework and those of many other EU jurisdictions.

## A new authority, but why now?

Despite these legislative efforts a more fundamental need for institutional change has been identified by Germany's Federal Finance Minister. Part of this may be a move to pre-empt the findings that a further FATF report focusing on Germany is expected to make before the end of August 2022.

Another argument in favour of creating a new federal-level authority is that the FIU, in its current set-up, continues to report massive spikes of AML, terrorist financing and financial crime cases. This trend has risen steadily since 2019 and even prior to the Wirecard scandal many estimates concluded that multiple hundreds of billion euro are probably laundered in Germany every year. This is also the case despite the finalisation of wider-reaching institutional reforms at the German Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht* – **BaFin**), which now place a greater focus on AML and financial crime identification, investigation and enforcement.

Even with a succession of EU and German legislative reform efforts, including to the EU's Anti-Money Laundering Directives, the EU Wire/Funds Transfer Regulation as well as the domestic law reforms of the GwG and German criminal law concerning AML[4] a number of remaining shortcomings have been recognised by FATF, the EU authorities as well as German legislative policymakers and even in the context of a number of very public court cases.[5] . Such shortcomings are however capable of remediation through further

---

[2] It should be noted that Dr. Marcus Pleyer, Deputy Director General in Germany's Federal Ministry of Finance had served a full term as President of FATF from 1 July 2020 to 30 June 2022. During Dr. Pleyer's term of office, a number of reforms to FATF-standards were successfully implemented and equally a number of institutional improvements were successfully put in place.

[3] While the German legislator did not in 2017 and nor in 2021 fundamentally restructure the GwG – thus leaving its core largely unchanged, it did introduce significant improvements to meet requirements introduced as a matter of EU law. For example, following the implementation of the EU's fifth Money Laundering Directive in January 2020, there were some significant expansions to the GwG detailing who is an "obliged entity" notably in the goods trade and the real estate sector. Similar expansions to the GwG concerned cash limits as well as prohibited dealings with high-risk third countries. In addition, increased reporting obligations were introduced across the real estate sector, notably in August 2020 through the AML Real Estate Reporting Ordinance (*Geldwäschegesetzmeldepflichtverordnung-Immobilien*-GwGMeldV-Immobilien). In August 2021, the legislator followed up with the Transparency and Financial Information Act (**TraFinG**), which has a significant impact on the GwG and the due diligence obligations of obligated parties in connection with the establishment and identification of beneficial owners.

[4] Including the dropping of the previous catalogue of so called "predicate offences" from the German Criminal Code in favour of a so-called "all crimes approach" meaning that the criminal origin of laundered money does not need to come from that catalogue. These changes came into force in March 2021.

[5] One issue that has been topical, has been the impact of AML supervision on those persons that are "obliged entities" for the purposes of the GwG, which is increasingly reflected in case law. In 2020 b landmark decisions by higher regional courts on the GwG, e.g., Higher Regional Court (OLG) Braunschweig case of 18 March 2020 on Commercial Registers (*Handelsregister*) and Transparency Registers (*Transparenzregister*) or the Federal Court of Justice (*BGH*) case of 20 April 2021 on identity verification under the GwG and, last but not least, the Federal constitutional Court (*BVerfG*) case on a constitutional complaint, e.g. Decision of 3 March 2021, 2 BvR 1746/18 have shaped practice further. In addition, the publication of final measures and unappealable decisions on fines under the GwG is increasingly bringing cases of sanctions against obliged entities to the public attention.

legislative as well as concurrently new institutional reforms that will impact the financial sector but more importantly the non-financial sector.

These shortcomings range from legacy exemptions in law that still allow for real estate to be paid cash as opposed to by bank transfer through to the comparably minimal oversight of cashflows at jewellers, art dealers and in the gaming industry. It also extends to an absence of well-trained staff and control processes to identify, mitigate, report and/or manage such risks both at those persons that, for AML legislative purposes, are "obliged entities" in the financial and non-financial sector as well as across the various authorities supervising them. Notably the FIU, which estimated that it receives more than 200,000 suspicious activity reports per year from the banking, financial services and insurance sectors as well as from the non-financial sector, notaries and many others who have a reporting obligation[6], lacks sufficient amounts of staff and IT resources to cope.

In response to the above, the German Federal Finance Minister announced his initial proposal to create a new federal authority, the BFkA. In an interview with the *ARD-Hauptstadtstudio*, which covers German politics for ARD, Germany's federal broadcasting network, Mr. Sebastian Fiedler, a SPD member of parliament since 2021 as well as a former chief inspector of the criminal police (*Kriminalhauptkommissar*) and former chairman of the Association of German Criminal Investigators, was quoted as stating:

> "A more efficient fight against money laundering will address one of the biggest gaps in justice." At present, he said, Germany has to absorb enormous costs, and at the same time there is money laundering in Germany amounting to 100 billion euros a year, of which the state detects far less than one percent. It is important, he said, that there is a central supervisory responsibility for money laundering in the federal government for the non-financial sector. The Federal States are too disparate and poorly staffed. Incidentally, the Bundesrat also called for this back in 2012. And since then, nothing has happened."

## Other linked areas ready for improvement

Other proposals that might also be announced at some point in the context of defining what the BFkA and the respective pillars should do and how, may include revisiting the hotly debated establishment of a centralised Real Estate Registry. Proposals for this were last (re-)introduced in the Bundestag on 29 April 2022 and remain under debate.

Various previous attempts for a similar proposal have however been defeated on privacy grounds and arguments of proportionality of those proposed measures. Opponents to such a central register had argued that the same legislative and regulatory outcomes which could be realised by such a property register could be better achieved by the 2020 reforms to the GwG as well as the 2017 reforms to the German criminal code and procedure along with, ultimately, the introduction of the Transparency Register as required under implementation of the revisions to the EU's AML Directives.

It should also be noted that in response to the Federal Finance Minister's announcements, the German Association of Judges (*Deutscher Richterbund* - **DRB**) was quick to point out that a more effective fight against AML and financial crime can only be achieved if concurrently the criminal justice system is itself strengthened. This makes sense, given that the current (low level of) cases that the FIU is reporting is already, according to the DRB, putting public prosecutor offices and courts under significant pressure.

Consequently, improving the FIU's capabilities will also require targeted efforts to prosecute cases as failure to do so might strain the justice system's existing resources even further. The DRB had also repeatedly, notably ahead of the new German government agreeing its Coalition Agreement, called for more specialised financial crime investigators, several hundred specialised prosecutors and trained judges to be recruited nationwide. This comes at cost. However, in 2022 and the years ahead this remains an increasingly important area for Germany (but also many other EU Member States) to improve on, especially given the rise of new actors joining existing organised criminals, many of which are using new and ever more complex and sophisticated threat techniques (both online and offline) to further money laundering, terrorist financing and financial crime more broadly.

[6] This includes in particular obligations for reporting suspicious activity in the processing of real estate acquisition transactions for lawyers as well as general suspicious activity reporting requirements for patent attorneys as well as (statutory-) auditors, tax advisors and tax agents and, if applicable, income tax assistance associations.

## Outlook and next steps

The initial announcement and the publication of precise plans for reform are only a prelude to the careful navigation of politics that will invariably follow both in Berlin but also in the capitals of the 16 Federal States. Notably, Mr. Lindner may have to secure support from each of the States and might have to review bids from cities competing to house such a new authority and ultimately secure jobs created both at the authority and the ecosystem surrounding it. With this in mind, it remains to be seen whether the EU's AMLA or Mr. Lindner's BFkA will be built first and equally where these two authorities might call home.[7]

In any event what remains certain is that the forthcoming FATF report is expected to communicate further detailed recommendations that the German legislator will need to carefully consider, debate and then implement. Moreover, it is quite possible that BaFin but also other regional or sector-specific authorities that have a financial crime and AML mandate will return to their desks after the summer break seeking to apply a stricter supervisory tone and equipped with an appetite to advance AML, terrorist financing and financial crime investigations.

Regardless of what the German Federal Finance Ministry and legislative policymakers (including at the EU level) decide to do next, those persons that are "obliged entities" for purposes of the GwG and indeed the EU AML Directives will want to closely monitor this policy proposal. They may also want to consider reviewing their own AML and financial crime prevention efforts. This includes updating policies and procedures accordingly as well as re-examining existing relationships more thoroughly in order to be prepared for a number of changes ahead.

# About us

PwC Legal is assisting a number of financial services firms and market participants in forward planning for changes stemming from these proposals.

If you would like to discuss any of the developments mentioned above, or how they may affect your business more generally, please contact any of our key contacts or PwC Legal's RegCORE Team via de_regcore@pwc.com or our website.

**Dr. Michael Huertas**
Tel.: +49 160 973 757-60
michael.huertas@pwc.com



[7] Our own current thinking is that Frankfurt am Main could be a good contender given it already houses other German as well as EU-level financial services regulatory authorities, a vast concentration of highly specialised financial services and financial crime lawyers as well as excellent transportation links and data infrastructure. Moreover, Frankfurt is also home to the German Federal Central Bank, the BaFin as well as the German Federal Office for Economics and Export Control (*Bundesamt für Wirtschaft und Ausfuhrkontrolle*). Furthermore, it should be noted that the Federal Criminal Police Office (*Bundeskriminalamt* - **BKA**) is headquartered in Wiesbaden, which is a short distance from Frankfurt and the state capital of Hessen in which both cities are located. Any future BFkA would have to work closely with all of these authorities as well as engage with the private sector and professional advisors in various capacities.