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Germany's fight against money laundering and terrorist financing – Input to the ongoing FATF evaluation

Dear Mrs. Krishnan,

Thank you for contacting us and giving us herewith the possibility to furnish you with some input to your preparations for the FATF-exam on Germany's fight against money laundering and terrorist financing.

Please see this as an initial analysis of the efficiency of the implementation of the FATF-recommendations in Germany - notwithstanding further contributions based on experiences and observations from a joint perspective with our partners within Transparency International as well as further Civil Society Organisations.

Organized-crime, corruption and tax evasion have a common goal – private profit at the expense of the common good. Criminals build on a global system of secrecy jurisdictions and enablers to help launder and enjoy this profit. Attempts to stop illicit financial flows by sanctioning money laundering too often and too quickly face obstacles and are therefore largely ineffective in the face of professional money launderers using a global system of financial secrecy. As long as money can flow largely unhindered through this system, it undermines the rule of law and the integrity of our society. By providing a safe haven for illicit financial flows from corruption and other crimes Germany damages political integrity, safety, justice and the environment around the world.

As representatives of civil society organizations working to improve anti-money-laundering in Germany, we welcome the efforts of FATF to ensure the adherence to high standards worldwide and in Germany. Recognizing the recent efforts by the German government to strengthen AML we conclude, that Germany does not effectively curb the flow of dirty money yet and needs to make important changes. Wirecard and the repeated money laundering scandals – among others

involving Deutsche Bank – erode the public trust and serve as very recent reminders of a need for change.

In particular, Germany needs to:

- better understand the risks of complex money laundering and illicit financial flows targeting Germany based on the collection of reliable data;
- make comprehensive, high-quality information about beneficial ownership available and searchable for law enforcement, AML bodies, obliged professionals and the public;
- clarify the legal basis and provide the necessary resources and structures for investigating and prosecuting complex money-laundering schemes, ensuring effective and timely sanctions of perpetrators as well as enablers;
- improve and better coordinate supervision in both the non-financial and the financial sector;
- actively support efforts to improve the fight against cross-border money-laundering schemes including through increased international cooperation and by strengthening capacity for cross-border investigations, harmonisation of rules and coordination at EU level.

Transparency International is an international movement with a common vision of fighting corruption wherever it occurs. Together with partners as Netzwerk Steuergerechtigkeit, (Tax Justice Network) the German chapter of Transparency made the fight against money-laundering one of its priorities. Given the transnational nature of shadow finance and illicit flows, which are at centre stage of our concerns, we see the FATF-exam not only as a national (German) challenge, but also as an international one. This is why we work in close collaboration with our colleagues from TI-France (given the simultaneous FATF exam on France in 2021), TI-EU and the International Secretariat of TI as well. Thus, we will also share some common perceptions of distortions in oversight and execution of FATF-recommendations at a later stage.

Finally, we hereby repeat our commitment to contribute constructively to make the necessary improvements happen.

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Recent progress but too early for results

Since the last FATF visit in 2010, Germany has implemented most of the required legal changes necessary for compliance with FATF standards and made further progress thanks to improvements required by the EU. However, most of these improvements were implemented very hesitantly. Thanks in part to increased public awareness and the upcoming evaluation by FATF, reform efforts have recently increased again both at federal level and at the level of some of the Länder. But for many of the measures it is too early to see results and there is little reliable data for evaluating the effectiveness of the reform efforts.

Most notably, Germany reformed civil asset forfeiture (2017), introduced a BO register (2017), later made it public, increased efforts to improve data quality (2020), moved and then started to strengthen its financial intelligence unit (since 2017) and introduced coordination officer in the Länder and a steering committee at federal level (2019). Several Länder increased their staff or improved their structures. Berlin for example hired three people for a money-laundering task force to oversee AML efforts of notaries (2020), Northrhine-Westfalia created a task force of the ministries of finance, interior and justice to fight financing sources of organized crime and terrorism (end of 2018), followed by focus points for organized crime and asset confiscations in the prosecutors' offices and a central office for organized crime (ZeOS NRW, September 2020) with the goal to "follow-the-money"¹. Germany published its [national risk analysis](#) (NRA) with long delay at the end of 2019 and, shortly after, passed an [AML action plan](#) that acknowledges many of the problems described in this open letter and proposes some more or less concrete actions to address them. Most recently, Germany [reformed](#) the criminal prosecution of money-laundering (including the introduction of the all-crimes approach). However, the parliamentary [opposition](#) and various other stakeholders criticized the corresponding law as ineffective window-dressing.

Money-laundering risks not sufficiently understood (E1)

Germany published its first national risk analysis ("NRA") on 19th of October 2019. The respective tender was published on 11th April 2013 but only [awarded on 5th July 2018](#) to Kienbaum Consultants International GmbH. At the beginning of 2018 two further studies on existing investigations and prosecutions of [money-laundering](#) and [terrorism finance](#) for the years 2014 to 2016 were contracted. Understanding the risks and the effectiveness of the current system to address those risks is vital for a targeted and evidence-based fight against money-laundering. But from our perspective the German risk analysis has serious flaws, for example:

1. The NRA provides a good summary of the perception of the problem but has a very weak evidence base for its analysis. Most notably, the NRA provides no estimate of the extent of money-laundering in Germany. Based on the experience of law enforcement, it estimates that about two thirds of predicate offences for money-laundering happened in

¹ Answers to parliamentary inquiries of 2nd December 2020, question XII/7, page 206f. Available under: <https://www.landtag.nrw.de/portal/WWW/dokumentenarchiv/Dokument/MMD17-12015.pdf>

Germany and that cash plays a major role (p.25). We think this underestimates Germany's role as a target country for illicit financial flows and for the integration of pre-laundered money from complex, international money-laundering operations. The NRA recognizes the issue of missing knowledge around concealed non-cash dirty money flows but merely stresses the need to gather empirical evidence (p.26).

2. The NRA concludes that the fight against money-laundering can often be equated with the fight against organized crime (p.27). However, the study analyzing existing investigations and prosecutions of money-laundering effectively excluded organized-crime cases as well as cases related to tax crimes from its analysis because of procedural reasons. The cases analyzed as money-laundering cases were therefore limited mainly to fraud (§263 and 264, 92,5%), had a median volume of 4.700€ and involved on average just one natural person acting as agents providing accounts or addresses. More complex structures were usually not investigated according to the study. In our opinion, this is no adequate basis to understand the risk of money-laundering and the effectiveness of sanctions.²
3. The real estate sector is in the focus of the public debate on money-laundering because anonymous investments here become more visible than for example investments in company shares as well as due to the exploding prices in big cities especially effecting major parts of the population. The NRA concludes that investment funds investing in real estate have a higher risk than other funds (p. 87). The underlying reasoning why – beyond currently being an attractive form of investment – money once laundered into investment funds would prefer real estate investments, is not substantiated any further and seems highly questionable.
4. With respect to the risk of cash-intensive businesses, such as restaurants, which are being used for money-laundering, the NRA simply states that the findings of tax agencies and the control of unregistered employees should be used and exchanged with the FIU as well as law enforcement agencies more often, but provides no further analysis on the size of the risk or more specific recommendations (p.112). Consequently the AML action plan does not contain appropriate risk mitigation measures despite evidence that this continues to be one of the central issues.³
5. The NRA provides risk assessments and trends for 28 countries/regions but an explanation of the methodology for the ranking of importance and the qualification of the risk is missing. The money-laundering risk for the Netherlands and Luxembourg, two countries often used by cross-border real estate investment funds that were identified as a major risk, is classified only as medium. Furthermore, the list contains the low-risk Vanuatu (from the EU's black-list) but doesn't analyze the United Arab Emirates, Japan,

² Individual Länder provide more detailed information – the [Lagebild OK](#) from Northrhine-Westfalia for 2018 for example states that STRs were used in 12 out of 77 organized crime investigations and a money-laundering investigation opened in 18 – mainly around investments of cash - but only 1 out of 35 new investigations was initiated by an STRs. A total of 21,7m€ was seized in 32 out of the 77 cases, mainly related to two cases of tax evasion and fraudulent real estate loans, and the described cases related to mafia and drug crimes didn't seem to result in significant asset seizures.

³ Compare for example: <https://www.mdr.de/thueringen/mafia-geldwaesche100.html> (2016) or <https://www.tagesschau.de/investigativ/ndr-wdr/mafia-prozess-101.html> (2020)

Ireland, Thailand or Hong Kong which according to [TJN's bilateral financial secrecy index](#), combine relatively important economic ties with significant money-laundering risks (see Annex 1 for a comparison of the results from the two approaches).

The main reason for badly understood money-laundering risks is the lack of data. A [recent analysis](#) by the German Council for Social and Economic Data criticizes among others the missing integration of statistics by the police, prosecutors and courts and a lack of structured analysis of the dark field. As the prosecutorial statistics usually record cases according to the predicate offense only, cases involving money-laundering investigations cannot be identified easily. In addition, the annual reports of the FIU do not contain information on the content of the STRs (i.e. value of transactions, kind of transactions) as if this information were not available. With its study of completed money-laundering cases presented in 2019 and the dark field study presented in 2016 the Federal Ministry of Finance tried to gain an initial understanding of the dimensions of money-laundering. Nevertheless both studies present limited evidence and analysis concerning estimates of the sources of funds available for money-laundering or of the prevalence of different money-laundering techniques. Finally, because only a small part of judgements by local and state courts are published and publications are always anonymized, media coverage is often very limited – hindering public attention. A [study](#) commissioned by the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) in 2019 collected allegations of illicit financial flows from developing countries in Germany. It clearly documents the lack of information around such cases and finds that in most cases the allegations were apparently not investigated.

No effective access to beneficial ownership information (L24+25, E5)

As required by the EU, Germany has introduced a BO register in 2017 and made it public in 2020. As one of the first countries in the world Germany also introduced an obligation for companies from outside the EU wanting to buy German real estate to register in the German BO register (together with a prohibition for notaries to approve the sale otherwise) in 2020. However, driven partly by strong resistance against increased transparency by business associations, the register was bound to fail from the beginning. With the goal to reduce the bureaucratic burden, entities that have already registered their beneficial owners in one of the German registers were exempted from registration in the BO register. But because ownership information in the existing registers is not available as structured data for automatic interlinkage and no attempts were made to verify the effective availability of BO information this led to wide-spread non-compliance. As a result only about 120.000 out of 1,9 million entities had registered BO information until mid-2020.⁴ Several parliamentary inquiries, the latest in [mid-2020](#), revealed that oversight-staff was significantly increased since 2017 but was mainly occupied with sanctioning non-compliance with the duty to register. Sanctions generated nearly one third of the late entries in 2018 and 2019 and for more than 10% of the existing entries. But

⁴ Until very recently the government could not even provide an estimate of the number of companies that were supposed to register in the BO register under the applicable rules but in its reform proposal of December 2020 puts that number at 400.000.

despite the increased staff and persistent compliance gap hardly any new cases were opened in 2020 due to work overload. Poor data quality and challenges to access the register are likely affecting its use.

Table 1 – The German BO register – registration, sanctions and access

Year	New entries	Deletions	Sanctions	Inconsistency reported	Access
2017	44.595	445	-/-	na	93
2018	12.207	875	7.281	na	8.046
2019	32.584	1.025	11.530	na	89.209
2020 (to June)	29.037	889	245	2.610	128.050
Total	118.423	3.234	19.056	2.610	225.398

A [non-random sample](#) of entities owning Berlin real estate analyzed in the beginning of 2020 confirmed the compliance gap concerning registration in the BO register. It showed that out of 357 German entities analyzed 82 entities that were required to register in the BO register⁵ but had apparently not fulfilled their duty to register. Only seven had registered a BO, 22 had provided the manager as a substitute and 246 had registered natural persons as shareholders in the existing registers.

Table 2 – Missing registrations in the German BO register, results of a non-random sample

	BO	Manager	No entry
Foreign shareholder	1	16	73
<i>o/w With known BO</i>	1	2	33
<i>o/w With unclear shareholder structure</i>		1	22
<i>o/w Without natural person as BO</i>		13	18
No existing German register	6	6	3
No electronic registration		0	6
Sub-total	7	22	82
(Natural person in existing register)			(246)

Thanks to recent changes, the situation is scheduled to improve and the numbers for the first few months of 2020 show both increased access and increasing reports of data inconsistencies by obliged entities that are required since 1.1.2020. Nevertheless, usage by public AML bodies remains low and there was no inconsistency reported by them until mid-2020. At the end of 2020, the Federal Ministry of Justice published a [draft law](#) that would make the information in existing registers machine readable and free to access. This would significantly improve the

⁵ According to the law, companies need to register in the BO register because they had foreign entities as shareholders or had not made an electronic registration in any existing German register (i.e. last ownership change before 2007 or non-covered entities such as foundations, AGs).

usefulness of this data and make interlinkage with the BO register possible. At the same time, and finally recognizing the problem of interlinkage, the Federal Ministry of Finance published a [draft law](#) that would oblige all entities to record their BO in the BO register until the end of 2022. It further suggests providing AML bodies with automated access and the possibility to search by BO.⁶ Together, these changes could contribute to make BO information more widely available. However several other issues persist:

1. **Data quality:** Various examples show mistakes and insufficiencies in the data actually registered.⁷ German entities are still not required to analyze their complete ownership structure to identify BOs but are instead only obliged to ask known direct shareholders and if unsuccessful can register a “fictional” BO.⁸ In addition, the German government does not apply and apparently doesn’t plan to introduce automatic quality checks or to extend the control by notaries from the company register to the BO register.
2. **Bearer shares:** New bearer shares were forbidden in 2015 but pre-existing bearer shares were not immobilized and several [service providers](#) actively advertised those shares as a last sanctuary for anonymity at the time of the legal change. We are not aware of any estimate of how many companies still use old bearer shares and would welcome any evidence.
3. **Treuhand relationships:** In its 2010 evaluation FATF notes Treuhand relationships to be a “very common feature of the German economy” noting that they are similar to the English trust but with less protection against the actions of the trustee. Treuhand relationships are hardly ever recorded in the company register but, in theory, the BO register should expose those relationships. Judging from [expert discussions](#) and [individual examples](#) registration was slow even though the managers should usually be aware and therefore obliged to register Treuhand relationships because of their duty to declare them towards the tax agency.
4. **Bank account register:** Germany has a bank account register since 2003 but access by competent authorities is mediated by the BaFin, leading to [delays of up to three months in the past](#). But more importantly, recent evidence puts into question the quality of the information and its control. As an example, following the revelations of the Panama Papers [BaFin found](#) that German banks had largely fulfilled their AML obligations in 2018. Nevertheless, as a reaction to [a further investigation](#) in 2019 Deutsche Bank [reportedly](#) had to cancel the relationship with thousands of high risk costumers due to missing KYC information. The register seems to be used mainly by tax agencies and for monitoring social security recipients but there seems to be [no regular reporting](#) about the

⁶ The joint input of Transparency International Deutschland and Netzwerk Steuergerechtigkeit to the consultation process can be found here: <https://www.transparency.de/aktuelles/detail/article/reform-des-transparenzregisters-schritt-in-die-richtige-richtung/>

⁷ For example a [news report](#) uncovered that “a tempo AG” had wrongly registered a company service provider as BO. When [confronted](#), the BO replied that he had simply missed to react on time to the change in law at the beginning of 2020 apparently alluding to some [unclear interpretation](#) of the rules applying to Treuhand arrangements. An [investigation by TI](#) uncovered that the Czech prime minister was wrongly omitted as BO of the German company “SKW Stickstoffwerke Piesteritz GmbH”.

⁸ In the justification of the law, the necessary efforts are defined as: “unter Berücksichtigung der ihr bekannten Eigentums- und Kontrollstruktur relevante und ihr bekannte Anteilseigner in die Pflicht nimmt und von denen Auskunft verlangt“ (GWG, §20 para 3)

number of account requests, [no numbers](#) on requests linked to money laundering investigation and no reporting on measures taken to ensure quality of the available BO information. The NRA puts the annual number of requests related to money-laundering at 140.000 but has no information on the quality of the information (p.63).

5. **Access to real estate ownership information:** Germany still doesn't have a central and fully-digitalized real estate register and a structured link between BO information in the BO register to legal ownership of real estate is still not possible. A recent initiative of Berlin in the Bundesrat aims to change this.

Hardly any investigation and prosecution of complex money laundering schemes (L33, E7) and little confiscation of proceeds (E8)

In 2018 Berlin law enforcement confiscated 77 assets (mainly buildings and land) worth approximately 12 million Euros. One of the related money-laundering cases was closed without result at the end of 2019 but the final confiscation of the two related assets was [confirmed in July 2020](#) based on the new law for non-conviction-based confiscations. This case is often portrayed as a reference for the intensified fight against money-laundering and the new powers to confiscate the proceeds of crime. From our point of view – even being a welcome progress - this case is rather a testimony to the ineffectiveness and scarcity of anti-money laundering efforts so far and doesn't serve as an example of a successful operation against complex money-laundering where following the money leads to previously unknown criminals and crimes. It involves local criminals without any visible source of income buying local (partly publicly owned) real estate for private use with cash or relatively simple bank transfers using local banks. The investigation was apparently based on evidence from existing criminal cases and important actors along the chain didn't file suspicious transaction reports. Apparently none of them was sued for assisting with money-laundering. In 2019 prosecutors from Munich and the federal police [froze assets worth 50m Euros](#) related to the Russian Laundromat and were apparently preparing a money-laundering case against a lawyer involved in the transactions, but the progress of this case is unclear to date. A [study](#) on behalf of the GIZ identified various credible allegations of dirty money from developing countries flowing to Germany but found only very little related investigative efforts. Like in most other countries complex money-laundering cases are usually exposed by investigative journalists, often based on leaks from whistleblowers, rather than law enforcement.⁹

The lack of investigations into complex money-laundering has two main reasons:

1. The legal framework and its interpretation by law enforcement and the courts rely strongly on the identification of the predicate offense as a condition for money-laundering investigations. But in the case of complex money-laundering structures

⁹ With this in mind, Germany needs to strengthen whistleblower protection especially in the private sector, where laws are lacking and protection is dependent on relevant court decisions. The EU Whistleblower Protection Directive requires protection for persons reporting breaches of EU law in a work-related context, but not for breaches of national law. Therefore it is indispensable to include protection for whistleblowers reporting on breaches of German law, when transposing the EU Directive into national law.

developing an understanding of the predicate offense behind a suspicious transaction is usually impossible without an in-depth investigation. Law officials interviewed for the study on money-laundering cases as part of the NRA estimated that around 90% of the cases related to suspicious transaction reports had to be closed without further investigation according to § 152 I und § 170 II StPO because the suspicious transaction report didn't contain sufficient evidence of a predicate offense. In this context, we find especially worrying that the [highest court](#) has recently confirmed this high standard for the opening of investigations and held that a search warrant because of a money-laundering suspicion without sufficient knowledge of the predicate offence was against the law. A [law](#) currently discussed in parliament suggests introducing the all-crimes-approach. [According to experts](#), this removes an important burden of describing the connection to a specific predicate offense for investigations. But it doesn't remove the need to substantiate the suspicion of the existence and knowledge of any criminal offense before the investigation and therefore severely limits the use of non-conviction-based confiscations.

2. Complex money-laundering investigations and confiscation of assets often face obstacles with regard to available, specialized staff and prioritization as well as a lack of problem awareness. It goes far beyond the scope of this letter to speculate on the required structures and personnel necessary to ensure effective implementation of the money-laundering law in Germany. But we think that it is uncontroversial that more specialized law enforcement capacity would be required to tackle complex money-laundering cases. Some Länder (such as NRW) have hired additional staff and are currently introducing special units, but due to the federal nature of law enforcement progress is very sketchy. In the context of the introduction of the all-crimes-approach, the [Deutsche Richterbund](#) estimates the need for an additional 100 prosecutors. But we find the [statements of a prosecutor](#) involved in one of the biggest recent organized crime cases especially telling. He confirms the lack of staff and time allocated to complex investigations and asset tracing but even more importantly stresses the focus on convicting the drug dealers and the repeated disinterest and disregard for possible Mafia connections.

Apart from the Berlin case, publicly accessible judgements around the new non-conviction based confiscation seem to be limited to confiscation of cash seizures and it seems too early to determine the effects of the new law and more recent efforts to fight money-laundering. And even though there is some evidence of increasing confiscations, in comparison to the estimated volume of money-laundering the gap remains huge. Statistics about frozen and/or confiscated assets are collected both by the police and the prosecutors. Since 2017 the prosecutorial statistics are published. The data¹⁰ shows an increase in asset confiscations but there is no detailed information on non-conviction-based confiscations (§76a para 4 Criminal Code) and fines (§30

¹⁰ The latest figures (for 2019) were published in August 2020. They are available under: https://www.destatis.de/DE/Themen/Staat/Justiz-Rechtspflege/Publikationen/Downloads-Gerichte/staatsanwaltschaften-2100260197005.xlsx?__blob=publicationFile (Table 1.2.2.2) for more details see <https://dip21.bundestag.de/dip21/btd/19/211/1921156.pdf>

para 3, §17 para 4 Act on Regulatory Offences) and this information seems not to be collected¹¹. The marked increase in 2018 was partly caused by a fine of 1 billion Euros against Volkswagen in connection to the Diesel scandal (and possibly 800 million Euros against Audi).

Table 3 – Asset freezes and confiscation 2017 to 2019

	Frozen assets	Confiscated assets
2017	646.809.000	198.646.000
2018	369.055.000	1.866.580.000
2019	347.539.000	796.255.000

According to the prosecutorial statistics, the number of concluded cases under §261 StGB increased from 20.387 in 2010 to 45.504 in 2016 and fell again to 40.612 in 2019. Nevertheless due to procedural issues these statistics tell little about the anti-money-laundering efforts.

Designated non-financial businesses and professionals as the main issue? (L28)

In the FATF evaluation of 2010, AML oversight in the non-financial sector was a major issue. Currently problems in the non-financial sector dominate the public debate. According to [news reports](#), a recent report of the Court of Auditors concludes that there is no effective AML-oversight in the non-financial sector in Germany. The report points out that supervisory bodies only checked 0,3% of the obliged entities in 2019, equaling one on-site inspection every 200 years. The share of STRs from the non-financial sector has slightly increased from [0,6% in 2010](#) to [1,3% in 2019](#) but there were still very few STRs from among others lawyers (21), notaries (17), tax consultants (8) trustees (15) and accountants (0). Germany still doesn't have a complete understanding of the number of obliged entities but from 1st of January 2020, they are required to register with the FIU (§45 para 1 GwG). Germany also has only recently made some progress on collecting and publishing comprehensive statistics on oversight of the non-financial sector. According to the [statistical reports](#), the number of full-time equivalents dedicated to AML oversight in the Länder increased to 215,55 from 146,67 in 2017 and 26,92 in 2011¹² which remains very little in comparison to more than 1 million obliged entities. Fines for 1.278 violations totaled only 168.007 Euros. Oversight of more than 17.000 auditors and accountants had only 1,5 dedicated full-time equivalent staff and one fine of 500 Euros¹³ – which is

¹¹ In reply to a parliamentary request at the end of 2020 the government of Northrhine-Westfalia confirms not having any separate statistics of non-conviction based confiscations but reports 9 known cases with confiscations totaling 1,9m€. Prosecutors from Berlin reported various confiscations related to unexplained cash found at customs controls at the airport. According to the [customs statistics](#) preliminary confiscation of cash transported across borders has increased from 9,8m€ in 2018 to 59,9m€ in 2019.

¹² The duty to report was only introduced in 2017. Numbers for earlier years are available from a [parliamentary request](#).

¹³ Further details including the number of obliged entities or the distribution of staff within the Länder – including additional staff in the local chambers of tax consultants - can be found in the answer to a recent parliamentary inquiry: <https://dip21.bundestag.de/dip21/btd/19/236/1923662.pdf>

particularly worrying in light of the serious allegations against the auditors in the Wirecard-case. In [November 2020](#), the state justice ministers discussed the extension of the list of obliged entities to professional sports.

With 335 different oversight bodies (and only 216 full-time equivalents staff) at the federal, state and local level and partly within professional bodies, the German AML oversight remains strongly fractured. This has been criticized repeatedly and the Deutsche Bundestag requested the government to strengthen its work towards a meaningful oversight structure.¹⁴ It remains to be seen whether the stronger coordinating role of the FIU, the “Steuerungskreis zur Bekämpfung der Geldwäsche und Terrorismusfinanzierung” (introduced in 2019, bi-annual meetings) and the “koordinierende Stellen” (introduced in connection to the FATF-evaluation and institutionalized in 2020) will result in better coordination.

As already noted by FATF in 2010, legal professional privilege continues to be interpreted widely by the professional service providers including the accounting professions. These so-called “enablers” of money-laundering play an important role in most international money-laundering scandals, at the same time they – as consultants and experts - exercise a strong influence on their own regulation (legislative capture). Judging from AML guidance by several professional bodies and from our discussions with different groups of professionals we observe increasing awareness but a continuously strong resistance against reporting of suspicious transactions without proof, clearly and conclusively defined circumstances or very clear signs of wrongdoing. Given the long and complex chains of professional money-laundering that are purposefully built to blur the evidence of wrongdoing and to distance the criminal from the money, it is not surprising that few transactions – even if highly suspicious - fulfill these high standards. These standards, therefore, need to be challenged and lowered. An interesting initiative in this direction is the [regulation](#) that defines clear criteria for reporting of suspicious transactions related to real estate that came into force on the 1st of October 2020 (Geldwäschegesetzmeldepflichtverordnung-Immobilien) and applies to lawyers, notaries, accountants and tax consultants. Even though the regulation explicitly states that it doesn’t create any additional reporting obligations it was approved with the clear goal to increase reporting obligations by the targeted professional groups. It remains to be seen if, by codifying these patterns of suspicious activities, the number of STRs by professionals will increase. It also raises the question of why the normal recourse to professional judgement in connection with money-laundering typologies did not work in the first place and whether legal privilege and reporting obligations are rightly implemented in other areas by these groups.

At the level of the Länder, Berlin provides an interesting example for increased supervisory efforts. In 2017 Berlin had only 1,45 full-time staff equivalents. But in 2018 the Senatsverwaltung für Wirtschaft, Energie und Betriebe hired an [additional 5 staff](#) and since the beginning of 2020 Berlin hired [3 staff](#) for monitoring notaries in the so-called money-laundering task force. Until the end of 2020, this task force had audited 60 (out of 663) notaries. According to three news reports in July and [December 2020](#) as well as [January 2021](#) the new task force had:

¹⁴ Compare <https://dip21.bundestag.de/dip21/btd/18/124/1812405.pdf> (page 156)

- Prepared 45 STRs until end of 2020 (compared to 1 prepared by oversight bodies of notaries for the whole of Germany in 2019)
- Increased the number of STRs filed by notaries to 14 until 1st October 2020 (compared to 17 for the whole of Germany in 2019, an increase possibly partly explained by the new reporting regulation)
- Found violations of the new obligation to check registration in the BO register for foreign real estate buyers

Unfortunately, no comprehensive statistics on the work of the task force are available so far and are apparently not collected either. The Länder with the highest number of oversight staff in relation to population in 2017 were Saxonia and Bavaria (3,4 und 3,1 pro 1.000.000). They were also among those with the biggest increases in staff (from 2 to 40,8 in Bavaria and from 0 to 13,8 in Saxonia).

We think it is important to go beyond the numbers of staff, the number of STRs filed and even the volume of sanctions and instead look at how effective and efficient AML oversight bodies are in identifying the really problematic actors – i.e. not those that do not fulfill all bureaucratic requirements but those that enable money-laundering. This will require better cooperation between the oversight bodies, tax agencies and law enforcement. The “konzertierte Aktion” of the FIU seem to be a good step in this direction. The low number of STRs filed by tax agencies is worrying even though according to our experience there seem to be some more informal cooperation in place. We would highly welcome any evidence on the question of how this cooperation has developed and recommendations on how it can be improved.

FIU as a problem or part of the solution? (L29, E3)

The FIU has been in the focus of public debate ever since it was moved from the police to customs in 2017. Since then there were more than 10 inquiries in the federal parliament and many more at Länder-level alleging staff shortages, organizational problems and delays in the processing of STRs. The court of auditors has recently criticized a lack of data access and the prosecutor’s office of Osnabrück has even [initiated an investigation](#) including searches against the FIU for failing to forward STRs with regard to suspicious money transfers from German accounts to unnamed African countries.

The criticism mainly has four elements:

1. **The transition was badly done and insufficiently staffed.** Initially, the FIU did not have sufficient and sufficiently well-qualified staff, experts from the police were not integrated and the first 40.000 STRs [arrived via fax](#), creating a big back-log of cases. Indeed, the new FIU started its work with 100 positions and was scheduled to receive another 65 in 2018 compared to 25 staff in the old FIU and 275 staff working on clearing of STRs in the state police. Considering the back-log the FIU was granted additional staff as well as temporary assistance from other customs employees and the Federal

Minister of Finance even alluded to the need for 1.000 positions at one point.¹⁵ At the end of 2020, the FIU had 348 budgeted positions scheduled to increase to 475 and possibly 800 until 2026. In October 2020 293 positions were filled and 110 temporary assistants employed. Despite the continuing increase of STRs, the quota of STRs per staff was reduced to below 300 and is currently somewhere around 400 – which most likely even understates the improvement because workload most likely doesn't increase linearly with the number of STRs. Due to external hiring diversity of staff has increased significantly. We are not aware of any appraisal of the “quality” of staff.

2. **The FIU doesn't have access to the data it requires.** Indeed data access for the FIU was extended several times. At the moment, problems remain mainly around the access to tax data (for which the legal base is missing), local police data (that is not accessible through a central database yet) as well as some classified central police data. The problem with local police data is partly addressed through contact officials with the Länder-police but, as the Court of Auditors rightly pointed out, the government needs to negotiate data access with the different state-level systems. The extension of access to classified central police data approved at the end of 2019 was highly contested as going too far by the police and is at the same time criticized by the Court of Auditors as not going far enough. We would welcome further evidence on how well the current access procedures work and how important the limitations are in practice. According to the answer to a parliamentary inquiry, the FIU is also still awaiting without a fixed due-date for automatic access and name search in the BO register which was granted with the reform of the AML law at the end of 2019.
3. **The FIU does not provide enough feedback and guidance to obliged entities.** We would welcome any evidence on how the FIU currently addresses this valid concern, as a “learning system” is indispensable for the risk-based approach of obliged entities and professionals. Also, there are reports that a lack of feedback by the FIU leads to a significant number of “follow-up” STRs for customers that entered special monitoring after their first STR led to no reply and would welcome evidence on this issue.
4. **The risk-oriented approach and filtering is a bad idea violating the German constitution.** The low number of STRs that lead to successful prosecution is sometimes interpreted as a sign of low quality of the FIU's work. According to critics, the FIU should instead forward all STRs that might be linked to any sort of crime to law enforcement. We think this criticism is partly misplaced. Considering the high and quickly increasing number of STRs probably going along with their low and possibly decreasing quality and relevance and combined with the existing work-overload of law enforcement we think that some sort of filtering is inevitable. Considering the low number of successful money-laundering investigations in the past, some degree of mistakes and delays seem acceptable. Limiting the use of information processed and

¹⁵ Compare protocol of the budget committee of the federal parliament, 15th session on 26th September 2018, p. 46, quoted in: <https://kleineanfragen.de/bundestag/19/14583-stellenaufwuchs-in-nachgelagerten-behoerden-des-bundesministeriums-der-finanzen>

produced by the FIU to high-value, complex cases might even be necessary to avoid conflict with procedural guarantees and constitutional principles.

5. **The FIU is inefficient and slow, the filters do not work properly and the reports produced by the FIU are of low quality.** A [recent parliamentary inquiry](#) related to the FIU's work concerning Wirecard provides one of the most concrete examples of this criticism. According to the inquiry the FIU has received 31 STRs related to Wirecard before Wirecard published its own ad-hoc warning (and another 112 after that) and forwarded only two of them to the police. Beyond this example, there is repeated and anecdotal evidence of late and bad reporting. Furthermore, substantial doubts regarding the FIU's fulfillment of its obligations - be they based on lack of legal foundations or lack of capacity – continue. We therefore think these issues deserve full scrutiny but are not aware of any structured appraisal of quality or efficiency of the FIU.

Also, the European Commission noted, based on its six-point action plan to step up its efforts in the fight against money laundering and terrorist financing in the EU on 19th February 2021, that Germany and some further Member States need to address fundamental aspects of the anti-money laundering framework, such as the proper exchange of information with FIUs, due diligence in establishing customer identity, adequate cooperation between the FIU or the transparency of the central register of beneficial owners. Germany now has two months to give a satisfactory response to the Commission's arguments.

In the public criticism of the FIU, its coordination role for Länder-level oversight bodies for the non-financial sector is often forgotten. We think that evidence from the FIU's analysis and compilation of STRs could be a helpful input for the work of those bodies. This could for example include special reviews¹⁶ of obliged entities and cases where repeatedly some parties of the transaction (e.g. banks) have filed STRs while others haven't (e.g. notaries, real estate agents). As noted before, we would welcome any evidence on this kind of initiatives. Another area where coordination is weak according to the NRA is the implementation of EU and international sanctions and asset freezes. Even though that is not part of the AML/CFT framework, we would welcome information on the efforts to improve this situation promised in the AML action plan.

All fine with the banks? – Wirecard bank as an example (E4)

The NRA concludes that in the banking sector overall there is an effective, risk-oriented and sufficiently resourced implementation of AML rules (p.61) and that there are appropriate sanctions (p.62). In a recent [position paper](#), the Institute of chartered accountants (IDW) even holds that the “German model” under which accountants certify compliance with anti-money laundering rules together with the annual accounts for banks ensures comprehensive and

¹⁶ At the end of 2019, the FIU led [the first](#) so-called “konzertierte Aktion” reviewing 26 car-dealers in all 16 states.

efficient oversight and suggests extending the model to the non-financial sector. Nevertheless big German banks have been involved – some like Deutsche Bank repeatedly - in many of the big recent money-laundering scandals. Sanctions and fines for these failures issued in Germany seem very low in comparison to those issued in other countries. Furthermore the case of Wirecard-Bank currently puts into question the efficacy of the anti-money laundering framework for fin-techs or companies with an attached bank. Together with a set of other compliance failures, the CFO of Wirecard-Bank has [apparently](#) decided to establish business relationships and open accounts for various customers despite protest by its compliance officer. In light of those scandals, we would highly welcome evidence on the quality and timeliness of suspicious transactions reports by banks¹⁷ as well as information on the measures taken by banks, auditors and BaFin to ensure that all BOs linked to German accounts and foreign accounts of German banks are correctly recorded and vetted. We would also welcome evidence on their effectiveness in avoiding dubious business relationships and how – beyond the preventive efforts – appropriate sanctions for wrong behavior can be ensured.

Cash, Customs-free storage, Crypto and Corona – focusing on new frontiers or old problems?

The automatic exchange of information for financial accounts has the potential to increase scrutiny of financial transactions, making alternatives such as cash and valuables, possibly stored in customs-free storage and crypto assets, more important. At the same time, [Covid-19 has created new sources and increased risks for criminal activity](#) and facilitated some money-laundering techniques especially by creating economic hardship making some actors more prone to accept dirty money.

Table 4 – High value goods in customs-free ports

	Value in €
Precious metals	546.307.852
Art	336.056.143
Antiques	25.556.385
Precious stones	9.681.388
Oldtimer cars	9.562.012
Precious metals	546.307.852

In the answer to a recent [parliamentary inquiry](#), the government estimates valuables stored in customs-free zone in Germany to amount to 1 billion Euros mainly as precious metals and art, and Boris and Arkady Rotenberg, a Russian oligarch, apparently used German free-ports to store art after being sanctioned in the US. Whether and how AML systems failed and could have worked better in this case still needs to be analyzed. Germany is also accused of facilitating the trafficking of cultural goods being imported from conflict zones.

According to a [recent parliamentary inquiry](#), 40 entities declared an interest to be registered as crypto dealers (Krypto-Verwahrstelle) under the new licensing requirement introduced in 2020

¹⁷ In the case of the Troika Laundromat Deutsche Bank has [apparently](#) made STRs only when confronted with the investigation by OCCRP (27.2.2019).

and there were 30 crypto-ATMs in Germany. As of 29 January 2021, the 200 biggest cryptocurrencies world-wide had a market value of approximately 1 trillion US-dollars and a daily trade volume of 446 million US-dollars according to coinmarketcap.com (including both legitimate and illegitimate use). Bitcoin was responsible for more than half of the value and Tether made up nearly half of trade volume trading 7 times its market value in a single day. These numbers underline the importance of regulating crypto-currencies and crypto-markets – even more so because of their connection to crime in the increasingly virtual world. But with estimates ranging somewhere between 7 and 21 trillion US-dollars anonymous and illegal financial assets are by far more important – and so is cash, with about 1,3 trillion Euros in circulation. Regulation and supervision of crypto-currencies in Germany are just emerging and therefore hard to judge but the issue seems to be receiving sufficient attention in political debates. But it is vital to ensure that the necessary efforts to "get ahead of the criminals" in the crypto world do not distract from or weaken the necessary clean-up of the traditional financial markets and cash transactions. Several of the crimes committed there in the past and the criminals and enablers involved will surely lead to those new techniques. With criminals always a step ahead, enforcement and regulation simply need to follow the money.

Annex 1 – NRA vs. bilateral financial secrecy index

Table 5 – comparison of risk-rating from NRA and TJN’s bilateral financial secrecy index

Country	NRA risk	NRA rank	BFSI Rank
China	5	5	
Russia	5	14	
Turkey	5	13	
Channel Islands (Guernsey, Jersey, Isle of Man)	5	18	8
Caribbean Islands (Cayman Islands, British Virgin Islands, Bermuda)	5	17	5
Malta	5	23	
Cyprus	5	22	
UK	4	3	
Italy	4	6	11
Switzerland	4	9	4
Panama	4	20	
Lebanon	4	19	15
Latvia	4	27	
France	3	2	6
Netherlands	3	4	1
Hungary	3	12	
Czech Republic	3	11	
Poland	3	8	
Lithuania	3	25	
Singapore	3	24	
Liechtenstein	3	21	
Denmark	3	16	
Luxembourg	3	15	2
USA	2	1	3
Austria	2	7	10
Estonia	2	26	
Belgium	2	10	
Vanuatu	1	28	
United Arab Emirates	0	na	7
Japan	0	na	9
Ireland	0	na	12
Thailand	0	na	13
Hong Kong	0	na	14