RADAR

Regulatorischer Informationsdienst

OVERVIEW

No. RADAR

6328

Responsible level

Germany

Competent authority

Federal Ministry DE

Standard designation

Law to strengthen the risk-based working methods of the Central Office for Financial Transaction Investigations

Title of Standard

Act strengthening a risk-based approach in the operation of the Central Office for Financial Transaction Investigations

Abbreviation (standard)

Short Title

Abbreviation (standard)

Abbreviation

Implementation status of the standard

published

Industry relevance

Banking, insurance

category

08. Anti-money laundering and financial sanctions

Document type

Law

Management Summary

With the *Law on the implementation of the Fourth EU Money Laundering Directive, the implementation of the EU Funds Transfer Regulation and the reorganization of the Central Office for Financial Transaction Investigations (data set 2273)* The tasks and powers of the Financial Intelligence Unit (FIU) were restructured. This law serves to further specify the risk-based approach of the FIU's working practices with the aim of filtering and processing reports more efficiently. To this end, the provisions of the Money Laundering Act (GwG) are being amended in the following aspects, among others:

- Use of automated procedures at the FIU;

- Sharpening the FIU's core mandate;

- Simplification of administrative cooperation;

- Authorization of the FIU to define so-called negative typologies.

Management Summary

The *Act on the Implementation of the 4th EU Money Laundering Directive, the Implementation of the EU Money Transfer Regulation and the Reorganization of the Central Office for Financial Transaction Investigations (Dataset 2273)* reorganized the tasks and powers of the Central Office for Financial Transaction Investigations (FIU). The present act serves to specify the risk-based approach of the FIU's mode of operation with the aim of being able to filter and process the available reports more efficiently. For this purpose, the provisions of the Anti-Money Laundering Act (GwG) are adapted, inter alia, with regard to the following aspects:

- use of automated procedures at the FIU;

- sharpening of the FIU's core mandate;

- simplification of the cooperation between authorities;

- empowerment of the FIU to define so-called negative typologies.

CONTENTS

Main content

Amendment to the Money Laundering Act (GWG) (Art. 1)

1. Tasks, supervision and cooperation (Section 28 GWG)

In order to eliminate legal uncertainties in the interpretation and application of Section 3a (risk-based approach, national risk analysis), the new sentence 2 in Section 28 (1) clarifies by law that the Central Office's tasks are carried out on a risk-based basis.

2. Informing the German Bundestag (Section 28a GWG)

The newly inserted Section 28a stipulates that the Federal Ministry of Finance (BMF) shall inform a committee of the German Bundestag at intervals of no more than six months about the fulfilment of the tasks of the Central Office for Financial Transaction Investigations (FIU) (see source for details).

3. Processing of personal data by the Central Office for Financial Transaction Investigations (Section 29 GWG)

a) According to the addition in paragraph 1, the authority vested in the Central Office to process personal data for the purposes of fulfilling its tasks extends to data that are transmitted, collected or retrieved in accordance with the GWG.

b) The new paragraph 2a clarifies that when processing personal data pursuant to paragraph 1 and comparing these data with other data pursuant to paragraph 2 for the purposes of risk assessment and for the operational and strategic analysis of reports and information

Analysts may use automated applications for data analysis pursuant to Section 30 (2) Sentence 3 and Section 28 (1) Sentence 3 Nos. 2 and 8 (S. 1). According to S. 2, the processing of personal data in automated applications for data analysis is not permitted in the following cases (see source for details):

- Data originally collected by, among others, the Federal Intelligence Service, the Office for the Protection of the Constitution or the Military Counterintelligence Service;

- Data obtained through one of the measures mentioned in the Code of Criminal Procedure or from similarly serious interference with informational self-determination;

- biometric data.

An automated application for data analysis may, among other things, collect data on name, gender, date of birth, place of birth, country of birth, marital status, nationality, address, Telecommunications connections, electronic addresses and other information on professional accessibility as well as data on the business relationship are processed (see source for details).

c) The newly inserted paragraph 2b allows automated data analysis applications to evaluate and identify reports and other information in the FIU's database to determine whether there are relevant indications of money laundering, terrorist financing, or other criminal offenses (see source for details). Self-learning and automated systems that can independently make statements about the riskiness of individuals are prohibited under paragraph 4.

d) Paragraph 2c stipulates that the Central Office may collect information pursuant to Section 28 Paragraph 1 Sentence 3 No. 2 (so-called open information gathering) to meet its expenses under the Money Laundering Act (GWG) and is also authorized to process this information and compare it with other data. The inclusion of the files is not automated, but rather manual for each analysis and evaluation process.

e) The new paragraph 4 stipulates that the central office may use the personal data (so-called real data) it holds for the efficient use of automated applications for data analysis. In doing so, it ensures, taking into account the requirements of the Federal Constitutional Court (BVerfG) under the new paragraph 5, that the data is processed only in accordance with its legal usability (see source for details).

f) The new paragraph 7 stipulates that the Federal Commissioner for Data Protection and Freedom of Information must conduct data processing audits at least every two years. If the Commissioner identifies violations pursuant to Section 16 paragraph 2 of the Federal Data Protection Act (BDSG), he or she may order appropriate measures pursuant to paragraph 8 if these are necessary to remedy a significant violation (see source for details).

4. Analysis of reports and information (Section 30 GWG)

The regulation receives a new heading and, in paragraph 2 sentence 1, its wording is aligned with Article 32 paragraph 3 sentence 2 of the *Directive (EU) 2015/849 (4th Anti-Money Laundering Directive, Dataset 897)*, which accordingly limits the scope of the analysis mandate with regard to other crimes. Accordingly, the Central Office analyzes "suspicious transactions and other information relevant to money laundering, related predicate offenses, or terrorist financing, with the aim of preventing, detecting, and assisting in the fight against money laundering and terrorist financing."

The Central Office must adapt the nature and extent of its analyses to the risk of money laundering or

terrorist financing and can use automated applications for data analysis pursuant to Section 29 (2a) (so-called risk assessment systems) for the risk-appropriate identification of relevant reports and information. The Central Office for

Financial transaction investigations are carried out jointly with representatives of the law enforcement agencies, the Federal Office for the Protection of the Constitution, the Federal Intelligence Service, and the Military Counterintelligence Service of the Federal Ministry of Defense. In addition to the analysis requirement under sentence 1, the Central Office may consider parameters relevant to other criminal offenses to identify reports and information. Representatives of the law enforcement agencies are appointed by the relevant state ministry or Senate administration for the areas of the interior, justice, and finance, and the Federal Prosecutor General is appointed by the Federal Ministry of Justice. Details of these risk assessment systems may not be published without restriction (see source for details).

5. Obligation to transmit data to domestic public authorities (Section 32 GWG)

The new version of paragraph 2 stipulates that, instead of transmitting the information to the competent law enforcement authorities in accordance with sentence 1, the Central Office may make the information on other criminal offences available for automated data retrieval in accordance with paragraph 4.

6. Establishment order (Section 39 GWG)

Paragraph 1, sentence 1, of the provision continues to regulate the need for an establishment order by the central office, now referring to "any automated procedure for processing personal data pursuant to Section 29, paragraph 2a" instead of, as previously, "any automated file containing personal data." According to the revised paragraph 2, the establishment order must specify, among other things, the name of the responsible body, the legal basis, the purpose of the processing, and other aspects (see source for details).

7. Feedback to obligated parties and authorities (Section 41 GWG)

The newly inserted paragraph 3 stipulates that paragraph 1 and paragraph 2 sentence 1 also apply in the case of Section 44 and Section 31b paragraph 2 of the German Tax Code (AO).

8. Reporting obligation of obligated parties, authorization to issue regulations (Section 43 GWG)

a) In order to enable the Central Office to specifically identify such reports and process them separately, the new paragraph 1, sentence 2 requires an obligated party who, in addition to the report pursuant to paragraph 1, also files a criminal complaint or a criminal application to inform the Central Office of this when submitting the report (including details of the addressed law enforcement authority and the file number there, if known).

b) The new paragraph 5, sentence 2, empowers the Central Office, in consultation with the law enforcement and supervisory authorities and other authorities under this Act, to also determine typified transactions that are not covered by the reporting obligation under paragraph 1. These so-called negative typologies provide the obligated parties with legal certainty in identifying circumstances for which they are not required to report to the Central Office or which only trigger a reporting obligation if further facts justifying a reporting obligation under paragraph 1 arise.

9. Execution of transactions (Section 46 GWG)

The newly added sentences define the responsibilities between the central office and the

The allocation of time limits is more clearly defined for law enforcement authorities. The Central Office can forward certain cases to law enforcement authorities with a simplified analysis before the deadline expires, according to paragraph 1, no. 2, so that they can initiate criminal proceedings to secure assets (see source for details).

10. Transitional provisions (Section 59 GWG)

a) The obligation to register for traders in goods who do not trade in the goods referred to in paragraph 6 shall apply from 1 January 2027 at the latest. Exempt from the registration obligation are acceptance points that broker sports bets in accordance with Section 29 paragraph 6 of the State Treaty on Gambling 2021 (GlüStV).

b) Paragraph 7 lays down the technical implementation of the procedure by 31 December 2027 at the latest.

c) According to paragraph 15, the provision of information for the first time in accordance with Section 32 paragraph 2 sentence 4 for automated data retrieval is possible if the automated data retrieval procedure of the central office provides the possibility of making information available for retrieval by one or more

Law enforcement agencies must be specifically identified. The use of this new procedure will be evaluated by the Federal Ministry of Finance in consultation with the Federal Ministry of the Interior and the Federal Ministry of Justice and will only be continued after a period of two years if the evaluation shows that the procedure for providing data via automated retrieval instead of transmission has proven effective.

CATEGORIZATION

Keywords

Central Office for Financial Transaction Investigations, law enforcement authority, supervisory authority, other cooperating authority, obliged entity, risk-based working method, risk assessment system, automated procedure, money laundering, predicate offense, counterterrorism, analysis, analyst, information, reporting, reporting obligation, negative typology, transaction, decision on the approval of a transaction, establishment order, processing of personal data, data transmission obligation, form of the report, information in the report, deadline, predictive policing

Legal and information bases

- Law on the implementation of the Fourth EU Money Laundering Directive, the implementation of the EU Funds Transfer Regulation and the reorganization of the Central Office for Financial Transaction Investigations (data set 2273)

- Directive (EU) 2015/849 (4th Anti-Money Laundering Directive, Dataset 897)

- Money Laundering Act (GwG)

- Federal Data Protection Act (BDSG)

- Tax Code

- State Treaty on Gambling 2021 (GlüStV)

Related Standards 🇬🇧

- Act on the Implementation of the 4th EU Money Laundering Directive, the Implementation of the EU Money Transfer Regulation and the Reorganization of the Central Office for Financial Transaction Investigations (Dataset 2273)

- Anti-Money Laundering Act (Money Laundering Act, AMLA)

Target group – credit institutions

Yes

Target group – financial services institutions

Yes

Target group – Other companies in the financial sector

Yes

Target group – payment institutions

Yes

Target group – insurance companies

Yes

Target group – supplement

Comments 🇬🇧

Statement by (date)

Implementation status Explanation

Status – Further Details 🇬🇧

Date of entry into force/publication

November 18, 2023

Entry into force estimated?

No

Date of first application

November 18, 2023

Application appreciated?

No

Date Standard repealed

Remark (Entry into force/Publication)

This law shall enter into force on the day following its promulgation (promulgation on 17 November 2023).

Comments 🏴󠁧󠁢󠁥󠁮󠁧󠁿

This act shall enter into force on the day following that of its promulgation (promulgation on 17 November 2023).

Sources

The sources are not shown in this working paper.

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