

OVERVIEW

No. RADAR

6433

Responsible level

Germany

Competent authority

Federal Ministry DE

Standard designation

Draft law to improve the fight against financial crime

Title of Standard 

Draft act to improve the fight against financial crime

Abbreviation (standard)

Financial Crimes Act

Short Title 

Financial Crime Prevention Act

Abbreviation (standard)

FKBG

Abbreviation 

FKBG

Implementation status of the standard

in draft / in consultation

Industry relevance

Banking, insurance

category

08. Anti-money laundering and financial sanctions

Document type

Law

Management Summary

This Act contains comprehensive measures to strengthen the fight against money laundering and to comply with the recommendations of the Financial Action Task Force (FATF). Overall, the Act aims to strengthen the fight against money laundering in Germany, to increase the effectiveness of

To increase supervisory measures and improve cooperation between different authorities and organizations in order to comply with the FATF recommendations and sustainably improve the fight against money laundering and terrorist financing.

Among other things, the following measures are being implemented with the aim of strengthening the fight against money laundering and complying with FATF recommendations:

- Establishment of a federal authority for financial crime;
- Creation of the Money Laundering Investigation Centre (EZG) for international money laundering cases;
- Strengthening the Federal Criminal Police Office (BKA) for money laundering investigations;
- Adaptation of the Central Office for Financial Transaction Investigations (ZFI);
- Improving supervision in the non-financial sector;
- Quality assurance of transparency registers;
- Introduction of a real estate transaction register;
- Merger of central offices in the Federal Office for Combating Financial Crime (BBF);
- Creation of a Central Office for Money Laundering Supervision (ZfG) and
- the establishment of a competence center for training and further education.

Management Summary

This act contains comprehensive measures to strengthen the fight against money laundering and to comply with the recommendations of the Financial Action Task Force (FATF). Overall, the Act aims to strengthen the fight against money laundering in Germany, increase the effectiveness of supervisory measures and improve cooperation between various authorities and organizations, thereby complying with the FATF's recommendations and sustainably improving the fight against money laundering and terrorist financing.

Among other things, the following measures, aimed at strengthening the fight against money laundering and meeting the FATF recommendations, will be implemented:

- establishment of a higher federal authority for financial crime;
- creation of the Money Laundering Investigation Center (EZG) for international money laundering cases;
- strengthening of the Federal Criminal Police Office (BKA) for money laundering investigations;
- adjustment of the Financial Transaction Investigation Center (ZFI);
- improvement of supervision in the non-financial sector;
- quality assurance of transparency registers;
- introduction of a real estate transaction register;
- consolidation of central offices in the Federal Office for Combating Financial Crime (BBF);
- creation of a central office for money laundering supervision (ZfG) and

- the establishment of a competence center for education and training.

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B. Essential content

I. Law establishing the Federal Office for Combating Financial Crime (BBF Establishment Law) (Article 1)

1. Establishment of the Federal Office for Combating Financial Crime (Section 1 of the Federal Office for Combating Financial Crime Establishment Act)

The Federal Office for Combating Financial Crime (BBF) will be established as an independent federal authority on January 1, 2024. Pursuant to Section 1, Paragraph 4 of the Act Establishing the Federal Office for Combating Financial Crime (BBF Establishment Act), the BBF will also include the Money Laundering Investigation Center (EZG). The Central Office for Money Laundering Supervision pursuant to Section 50a of the Money Laundering Act (GwG) is also part of the BBF.

2. Tasks (Section 2 of the BBF Establishment Act)

The BBF has the following tasks:

- the tasks under the Money Laundering Investigation Act (GwEG) by the Money Laundering Investigation Centre (EZG);
- Support and coordination of the supervision of obliged entities within the meaning of Section 2 (1) of the GwG by the Central Office for Money Laundering Supervision;

- Coordination and response to requests from other authorities and data subjects;
- Performance of the tasks assigned by federal law.

II. Amendment to the BBF Establishment Act (Article 2)

Establishment, tasks (§§ 1, 2 BBF Establishment Act)

Section 1, paragraph 4 of the Federal Office for Financial Transaction Investigations Establishment Act adds that the Federal Office for Financial Transaction Investigations (BBF) and the Federal Office for Sanctions Enforcement (BBF) will also be established at the BBF. Accordingly, Section 2 of the BBF Establishment Act expands the scope of the BBF's responsibilities (see source for details).

III. Law on the Money Laundering Investigation Center (Money Laundering Investigation Act – GwEG) (Article 3)

1. Criminal prosecution (Section 1 GwEG)

According to Section 1, the EZG performs police duties in the area of prosecuting significant international money laundering cases with a domestic element that require investigation abroad, as well as related criminal offenses and predicate offenses. The EZG also takes action in significant money laundering cases at the request of a competent federal or state authority or the Federal Ministry of Finance (see source for details).

2. Powers in investigations (Section 4 GwEG)

For the purposes of criminal prosecution, the EZG has the same rights and obligations as police authorities under the Code of Criminal Procedure (StPO). The employees of the Money Laundering Investigation Center are investigators of the public prosecutor's office (see source for details).

3. Other powers of the Money Laundering Investigation Centre

The Money Laundering Act lists a number of additional powers of intervention that the Investigation Center may exercise to fulfill its tasks in the area of money laundering under the conditions set out in the Act. These include:

- the use of technical means to take photographs and recordings and to listen to private words spoken for the purpose of personal protection during investigations (Section 5 GwEG);
- the identification (Section 7 GwEG);
- the examination of documents to be carried (Section 8 GwEG);
- Search of persons and objects (Section 9 GwEG);
- Identification measures to establish identity (Section 10 GwEG);
- Seizure (including assets to be protected) (Section 12 GwEG);
- Entering and searching homes (including work, business and commercial premises) (Section 13 GwEG);
- Detention of persons (Section 14 GwEG);

- Questioning and obligation to provide information (Section 18 GwEG);

- Further powers to collect, process, compare and forward personal data (Sections 19, 23, 24, 25, 28, 29, 31, 32, 33, 34, 35, 36, 37 GwEG).

4. Exclusion of suspensive effect (Section 42 GwEG)

Objections and actions for annulment against urgent orders and measures of the Money Laundering Investigation Centre have no suspensive effect.

5. Notification of covert and intrusive measures (Section 47 GwEG)

In the case of intrusive measures pursuant to Section 5 or 19 GwEG, the target person and other significantly affected persons must be informed, unless the interests of a data subject worthy of protection conflict with this (see source for details).

6. Compensation for damages (Section 51 GwEG)

Sections 51 – 56 of the Federal Police Act (BPolG) apply accordingly to the compensation of damages suffered as a result of police measures.

IV. Amendment to the Customs Investigation Service Act (ZFdG) (Article 7)

1. Tasks of the Customs Criminal Investigation Office as a central office (Section 3 of the Customs Criminal Investigation Act)

Pursuant to paragraph 6, the tasks of the Customs Criminal Investigation Office are extended to include support for the Money Laundering Investigation Centre.

2. Requests for information on account information and account movements (Section 39a ZFdG)

The new regulation in Section 39a of the German Customs Investigation Act (ZFdG) authorizes the authorities of the Customs Investigation Service to submit requests for information to BaFin to retrieve account information in accordance with Section 24c Paragraph 3 Sentence 1 No. 5 of the German Banking Act (KWG). Paragraph 2 supplements the existing rights to question and obligations to provide information to the authorities of the Customs Investigation Service by allowing the collection of personal data if there is a concrete threat to the legal interests listed in Section 4 Paragraph 1 of the Foreign Trade and Payments Act (AWG). The new regulation allows for the retrieval of information from third parties who are not public bodies (see source for details).

3. Securing (Section 40 (3) ZFdG)

The new provision in paragraph 3 was introduced to enable the seizure of non-physical assets such as receivables and digital currencies such as bitcoins (other property rights). This adapts the powers of the customs investigation authorities to modern technologies. Seizure is carried out by ordering seizure and follows the provisions of the Code of Civil Procedure (ZPO), whereby those affected are informed of the reasons and scope (see source for details).

4. Return of seized items or the proceeds, costs (Section 43 ZFdG)

Paragraph 2 provides uniform regulations for the safekeeping of the proceeds from a seized property that has been sold, as well as for the safekeeping and receipt of the property if an authorized person cannot be identified. If an authorized person is not available or cannot be identified, the proceeds will now be taken into custody by the seizing authority. Previously, the provisions of the German Civil Code (BGB) applied to the safekeeping (see source for details).

5. Support of other authorities (Section 70 ZFdG)

Paragraph 2 adds that enforcement officers of the customs investigation service may also operate within the jurisdiction of the GwEG (see source for details).

V. Amendment to the Customs Administration Act (ZollVG) (Art. 9)

Fines (Section 31a Customs Act)

The new paragraph 7 allows customs authorities to confiscate undeclared amounts of cash or similar means of payment as a relationship item, even if the person states that the money belongs to another person (see source for details).

VI. Amendment to the Sanctions Enforcement Act (SanktDG) (Article 15)

1. Powers to identify funds and economic resources (Section 2 of the Sanctions Act)

a) Paragraph 2, numbers 1 and 2 are editorially amended. Section 2, paragraph 2 of the Sanctions Enforcement Act (SanktDG) expands the powers of the Central Office for Sanctions Enforcement (ZfS). Paragraph 2, number 3, first clarifies that the ZfS may also take measures to establish the identity of a natural person.

The justification for the request for information is now structured as an alternative, so that it depends on whether relevant information can be obtained to identify funds or economic resources. The wording of No. 4, which states that the ZfS has the authority to enter business or operational premises, has been adjusted accordingly. According to the new provisions of Paragraph 2, Nos. 7 and 8, the ZfS can search all types of property, in addition to homes, business and operational premises, provided that the property is subject to sanctions or there is evidence of its whereabouts. Furthermore, persons carrying such property or corresponding evidence may be searched.

b) The new provision in paragraph 2 no. 9 regulates the ZfS's access rights to the real estate transaction register (see source for details).

c) The new paragraph 2, sentences 2 and 3 introduce a prohibition on providing information to persons to whom the ZfS has addressed a request for information or requested the release of documents within the meaning of paragraph 1. Upon notification by the ZfS, these persons may not inform contractual partners, clients, or other third parties about investigative measures under this law. This does not apply to information provided to authorities or lawyers (see source for details).

d) The new paragraph 7 specifies the measures that the ZfS can take to establish identity (details see source).

2. Modalities for securing funds and economic resources (Section 4 of the Sanctions Act)

a) In paragraph 2, sentence 2, the wording "seizure" is amended from "provisional seizure" for clarification purposes only. The obligation to inform the owner of a seized item about the seizure remains in force (see source for details).

b) The addition to paragraph 7 establishes the customs administration's auction platform as a public auction platform for goods by law; the previous authorization to issue regulations in this regard in paragraph 8 is no longer applicable (see source for details).

3. Special monitoring measures for economic sanctions; commissioning of third parties; authorization to issue regulations (Section 9 of the Sanctions Act)

a) Paragraph 1 expands the monitoring measures of the ZfS to enforce sanctions in the event of suspected violations of a prohibition on provision or disposal. It clarifies that the ZfS may, among other things, participate in all meetings and assemblies of the bodies and other committees of the legal entity or partnership. Furthermore, the ZfS may issue orders to establish and ensure proper business organization, including appropriate risk management, to ensure compliance with the sanctions (see source for details).

b) The standard examples in paragraph 2 for facts that justify the assumption of a violation of a prohibition on provision or disposal have been reworded for the sake of clarification. The distinction between legal entities, corporations, and partnerships has been abandoned in order to cover all types of companies. A distinction is now made between ownership structures and shareholder status (paragraph 2 no. 1) and the possibilities for exercising control. The examples of exercising control over a company listed in paragraph 2 no. 2 a) to d) are not exhaustive; such control exists, among other things, in the case of the authority to issue instructions to the management or supervisory bodies. Furthermore, the new paragraph 2 clarifies that in the case of majority shareholdings, the individual levels of the shareholding chain are examined (see source for details).

c) The new paragraph 7 introduces a compensation provision for third parties commissioned by the ZfS to enforce monitoring measures ordered within the meaning of paragraph 1. These third parties are liable for unlawful, intentional, and negligent acts committed in the course of their duties. In cases of negligence, the liability for damages is limited to five million euros.

4. Asset determination of sanctioned persons and partnerships (personal investigation) (Section 11 of the Sanctions Act)

The amendment to paragraph 2 changes the ZfS's obligation to inform persons affected by sanctions of their sanctioned economic resources or funds about their reporting obligation under Section 10 of the Sanctions Enforcement Act (SanktDG) to a discretionary decision by the authority. This is intended to ensure the success of investigations (see source for details).

5. Suspensive effect (Section 13 of the Sanctions Act)

It is clarified that objections and actions for annulment against administrative acts issued by the ZfS on the basis of the provisions of the Administrative Enforcement Act (VwVG) have no suspensive effect.

6. Fines (Section 17 of the Sanctions Act)

Paragraph 1 extends the scope of the fine to include violations of the prohibition on the disclosure of information pursuant to Section 2 Paragraph 2 Sentence 2 of the Sanctions Enforcement Act. According to Paragraph 2, the fine range for such violations is up to €200,000. The amount of the fine is based on the prohibition on the disclosure of information pursuant to Section 47 of the Money Laundering Act.

VII. Amendment to the Banking Act (KWG) (Article 16)

1. Holders of significant shareholdings (Section 2c KWG)

The new regulation in Section 2c (4) of the German Banking Act (KWG) makes significant investments in a financial holding company or a mixed financial holding company subject to owner control. Owner control is unnecessary in cases where this is already covered by owner control of an institution (see source for details).

2. Automated retrieval of account information (Section 24c KWG)

Parallel to the provisions of Section 39a of the ZfDG, paragraph 3, No. 5 adds the authorities of the Customs Investigation Service as authorized bodies that may request information from BaFin from the automated retrieval of account information. Furthermore, numbers 7 and 8 add the register-maintaining body of the Transparency Register within the meaning of Section 18 of the GwG and the Federal Office of Administration as two additional authorized bodies (see source for details).

3. Internal security measures; anti-money laundering obligations for financial holding companies (Sections 25h and 25l of the German Banking Act)

The anti-money laundering obligations for financial holding companies and mixed financial holding companies under Section 25l of the German Banking Act (KWG) are transferred to the Money Laundering Act by including these companies in the scope of obligations under Section 2 of the GWG and are therefore no longer applicable. Accordingly, the reference in Section 25h of the KWG to the obligations under Section 25l of the KWG is also deleted (see source for details).

4. Submission of annual financial statements, management report and audit reports (Section 26 of the German Banking Act)

The new paragraph 3a requires financial holding companies and mixed financial holding companies that are subject to an audit of their annual financial statements pursuant to Section 316 Paragraph 1 Sentence 1 of the German Commercial Code (HGB) (corporations that are not small within the meaning of Section 267 Paragraph 1 HGB) to submit the prepared and adopted annual financial statements and the management report to BaFin and the Deutsche Bundesbank. Submissions must be monitored promptly. The auditor must also submit the audit report to them after the audit has been completed (see source for details).

5. Appointment of the auditor in special cases (Section 28 KWG)

According to paragraph 4, the three-month submission deadline for the prepared and approved annual financial statements and for the management report to BaFin and Deutsche Bundesbank also applies to financial holding companies and mixed financial holding companies that are subject to the audit obligation pursuant to Section 316 paragraph 1 sentence 1 of the German Commercial Code (HGB).

6. Special duties of the auditor (Section 29 KWG)

The new paragraph 2a introduces audit obligations for the auditor of financial holding companies and mixed financial holding companies that are subject to the audit obligation under Section 316 Paragraph 1 Sentence 1 of the German Commercial Code (HGB). For these companies, the auditor must audit the obligations regarding internal security measures and the due diligence obligations under Sections 25h to 25m of the German Banking Act (KWG) and the German Money Laundering Act (GWG). Furthermore, compliance with the licensing requirements of Section 2f Paragraph 3 of the KWG for financial holding companies and mixed financial holding companies is subject to audit, or, if applicable, compliance with the exemption requirements of Section 2f Paragraph 4 of the KWG, according to which an application for licensing is not required (see source for details).

7. Determination of audit content (Section 30 KWG)

Following the addition to Section 30 of the German Banking Act (KWG), BaFin can also specify the focus of the audit content for financial holding companies and mixed financial holding companies.

8. Special Representative (Section 45c KWG)

The scope of application for the appointment of a special representative by BaFin, who can perform the tasks in a company, is extended to all financial holding companies and mixed financial holding companies.

9. Fines (Section 56 KWG)

The fines provided for in Section 56 (2) of the German Banking Act (KWG) are being extended to cover violations of owner control for financial holding companies and mixed financial holding companies in accordance with the extension of Section 2c of the KWG (see source for details).

VIII. Amendment to the Money Laundering Act (AMLA) (Art. 18)

1. Definitions (Section 1 GwG)

The addition in paragraph 24 clarifies that companies which are not considered financial services institutions due to the use of Section 2 paragraph 6 no. 5 KWG (group privilege for financial services institutions) are not subject to the requirements of the GwG (see source for details).

2. Obligated parties, authorization to issue regulations (Section 2 GwG)

a) The new regulation in Section 2 Paragraph 1 No. 2a GWG will apply to all financial holding companies within the meaning of Article 4 Paragraph 1 No. 20 of the *Regulation (EU) No. 575/2013 (CRR, CRR Part I, dataset 558)* and mixed financial holding companies within the meaning of Article 2 No. 15 of Directive 2002/87/EC on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate (Financial Conglomerates Directive, FICOD) are newly included in the scope of the GwG. A restriction of the obliged entity status to certain financial holding companies, as previously in Section 25l

KWG, no longer exists according to Section 2 Para. 1 No. 2a GwG (details see source).

b) The new numbers 7a to 7c GwG include insurance holding companies within the meaning of Article 212 (2) (f) of Directive 2009/138/EC (Solvency II), holding companies of participations in primary insurance or reinsurance undertakings or pension funds within the meaning of Section 293 (4) of the Insurance Supervision Act (VAG) and companies that can exercise a controlling influence on an insurance undertaking within the meaning of the GwG or a pension fund within the meaning of Section 236 (1) VAG in the group of those obliged under the GwG (see source for details).

3. Money Laundering Officer (Section 7 GwG)

a) In paragraph 1, the obligation to appoint a money laundering officer is extended to the new obligated parties pursuant to Section 2 paragraph 1 numbers 7a to 7c GwG (insurance holding companies, holding companies of participations in primary insurance or reinsurance undertakings) (see source for details).

b) The addition in paragraph 3 clarifies that BaFin can also order the appointment of a deputy money laundering officer for obliged entities under Section 2 paragraph 1 numbers 4, 5, 8, 10 to 16 of the GwG (including payment institutions, insurance intermediaries, auditors, real estate agents) (see source for details).

4. Recording and retention obligation (Section 8 GwG)

In order to fulfil the recording and information obligations pursuant to Section 8 (1) No. 1a GwG and Section 12 (1) Sentence 1 No. 1 GwG, it is sufficient if the issuing state is documented in accordance with Paragraph 2 (see source for details).

5. Verification of information for the purpose of identification, authorization to issue regulations (Section 12 GwG)

The addition in paragraph 3 clarifies that the obligations within the meaning of paragraphs 1 to 4 to verify the information on the contractual partner collected pursuant to Section 11 paragraph 4 GwG also apply to real estate agents obliged pursuant to Section 2 paragraph 1 no. 14 GwG.

6. Establishment of the Transparency Register and Register-Keeping Authority (Section 18 GwG)

With regard to entries in the Transparency Register regarding beneficial owners, the registrar may request appropriate proof of the authority to represent the informing person from the association (legal entities under private law and registered partnerships) or legal entity (trust administrators) subject to notification under Sections 20 and 21 of the GwG. To verify the submitted information, the registrar may obtain information from public registers and directories, retrieve data using the retrieval procedure under Section 24c of the Banking Act (KWG) and the residents' register, and inspect the foundation register. The aforementioned powers to obtain information also apply if the registrar wishes to conduct a risk-based, random review of the entries pursuant to Sections 20 (1) and 21 (1) and (2) of the GwG.

7. Confirmation of authorized representatives (Section 18a GwG)

a) The authority to represent a specific person vis-à-vis the registry office may, in accordance with paragraph 1, be revoked upon application by an association within the meaning of Section 20 GwG or a legal arrangement within the meaning of Section 21 GwG by the

The application must be confirmed by the registrar. Proof of authority to represent and documents identifying the person must be enclosed with the application in electronic form in accordance with the registrar's specifications. If the authority to represent is confirmed by the registrar, notifications pursuant to Sections 20 and 21 of the GwG can only be made by this person.

b) For confirmation pursuant to paragraph 1, prior online registration of the user is required in accordance with paragraph 2.

c) In accordance with paragraph 3, it shall be clearly noted on extracts from the Transparency Register that the notification of the beneficial owners was made by an authorised representative within the meaning of paragraph 1.

d) An authorized representative may always inspect the Transparency Register in accordance with paragraph 4. This person is entitled to the inspection rights of a member of the public (natural and non-natural legal entities under private law) within the meaning of Section 23 paragraph 1 sentence 1 no. 3 of the GwG, without the information restrictions on inspection pursuant to Section 23 paragraph 1 sentence 4 and paragraph 2 of the GwG applying.

e) If an authorized representative has been appointed, communication regarding reports of discrepancies in the information contained in the Transparency Register within the meaning of Section 23a GwG pursuant to paragraph 5 shall take place exclusively with the authorized representative in electronic form in accordance with the specifications of the register-keeping body via the website of the Transparency Register.

8. Information on the beneficial owner (Section 19 GwG)

Paragraph 1 adds that the place of birth of the beneficial owner must also be reported accordingly in the Transparency Register (see source for details).

9. Recording and allocation of real estate (Section 19b GwG)

According to the addition in paragraph 3, the registry office is entitled to inspect the land register for the purpose of completing or correcting real estate data.

10. Transparency obligations with regard to certain associations; transparency obligations with regard to certain legal structures; inspection of the transparency register; authorization to issue regulations (Sections 20; 21; 23 GwG)

According to the additions to Sections 20 (1) and 21 (1) GwG, associations and legal structures can voluntarily provide information on ownership and

Submit control structure overviews. An editorial correction has been made to Section 23 (1) Sentence 1 to clarify that all associations within the meaning of Section 20 (1) GwG are entitled to inspect the register. Following the amendments to Sections 20 (1) and 21 (1) GwG, the provisions of Section 23 (1) Sentence 3 GwG, which stipulates which information is to be transmitted to those entitled to inspect the register, have been adjusted. In addition, Section 23 (1) Sentence 5 GwG adds that the real estate information contained in the transparency register must also be fully accessible to the new obligated parties pursuant to Section 2 (1) Nos. 7a to 7c GwG (including insurance holding companies). These obligated parties are also excluded from the beneficial owner's option of restricting inspection of the transparency register in accordance with Section 23 (2) Sentence 4 GwG (for details see

Source).

11. Reporting of discrepancies to the registry (Section 23a GwG)

a) Paragraph 5, sentence 4, clarifies that the verification of the reporting of discrepancies in the Transparency Register concerns the correct, current data set. Furthermore, paragraph 6 adds that a note will be made on the register extract if those required to cooperate fail to submit documents to clarify the discrepancy within the deadline despite a request, or if this request cannot be served (see source for details).

b) Paragraph 7 introduces a procedure whereby the registry-maintaining body may take action on its own initiative to investigate discrepancies if it receives information about discrepancies from other obliged entities or authorities that have a legitimate interest in clarifying the matter, or if the registry-maintaining body has its own findings on the matter (see source for details).

12. Access by certain authorities (Section 26a GwG)

Paragraph 1 No. 10 adds that the information from the transparency register is transmitted to BaFin (see source for details).

13. Real Estate Transaction Register (Sections 26b to 26e GwG)

a) The new electronic real estate transaction register will be established at the Federal Office for Federal Revenue (Bundesministerium für Bildung und Forschung, BBF) in accordance with Section 26b of the Money Laundering Act (GwG). The data will be used to combat money laundering, for the criminal confiscation of assets for certain crimes (including terrorist financing, crimes against public order, pimping, receiving stolen goods, fraud and computer fraud, tax evasion), and for the enforcement of sanctions (see source for details).

b) Pursuant to Section 26c of the German Money Laundering Act (GwG), the register contains data on legal transactions that must be reported by courts, authorities, and notaries pursuant to Section 18 (1) and (2) of the Real Estate Transfer Tax Act (GrEStG), and for which the purchase price is €20,000 or more. The data to be included in the register is listed in Paragraph 1 (see source for details). The data required for the register is reported by the courts, authorities, and notaries to the registrar. After registering an owner in accordance with Paragraph 3, the land registry transmits the information on the entry from the land register to the registrar (see source for details).

c) The recipients authorized to inspect the register data include exclusively the authorities tasked with monitoring money laundering and sanction enforcement, law enforcement agencies, the Federal Office for the Protection of the Constitution, the Federal Intelligence Service, and the courts (see source for details). The register-maintaining body is authorized to process data in accordance with the provisions of Section 26e of the GwG. Pursuant to Section 26g of the GwG, the maintenance of the register may be delegated to a legal entity under private law (see source for details).

14. Tasks, supervision and cooperation (Section 28 GwG)

a) The addition to Section 28, Paragraph 1, Sentence 2, No. 2 empowers the Central Office for Financial Transaction Investigations to additionally evaluate publicly accessible information, e.g. from the Internet.

The addition to Section 28 Paragraph 1 Sentence 2 No. 3 enables the exchange of information and coordination with the Central Office for Money Laundering Supervision and the coordinating bodies of the federal states (see source for details).

b) The amendment to paragraph 1a clarifies that the Central Office for Financial Transaction Investigations also cooperates in transactions related to the illegal proliferation of weapons of mass destruction and weapons of war.

15. Immediate measures (Section 40 GwG)

Paragraph 1 adds that the Central Office for Financial Transaction Investigations may prohibit transactions even if there are indications of a criminal offense under Section 17 Paragraph 1 of the Foreign Trade and Payments Act (AWG), Section 80 of the Foreign Trade and Payments Ordinance (AWV) or the War Weapons Control Act (KrWaffKontrG), which serves in particular to enforce embargoes (see source for details).

16. Prohibition of information disclosure; authorization to issue regulations (Section 47 GwG)

Following the addition to Section 47 (1) No. 5 GwG, the prohibition on the disclosure of information is now extended to the new group of obligated parties pursuant to Section 2 (1) Nos. 7a, 7b, and 7c (insurance holding companies, companies within the meaning of Section 293 (4) VAG, companies that exercise a controlling influence over an insurance company or a pension fund) GwG (see source for details).

17. Competent supervisory authority (Section 50 GwG)

With the addition in paragraph 1 no. 1 j), the new group of obliged entities of financial holding companies and mixed financial holding companies within the meaning of Section 2 paragraph 1 nos. 7b and 7c (companies within the meaning of Section 293 paragraph 4 VAG, companies that exercise a controlling influence over an insurance company or a pension fund) GwG are placed under the supervisory jurisdiction of BaFin.

18. Central Office for Money Laundering Supervision; supporting supervisory authorities in supervisory measures (Sections 50a and 50b of the Money Laundering Act)

a) The central task of the newly established Central Office for Money Laundering Supervision (ZfG) is, pursuant to Section 50a of the GwG, to coordinate and, in individual cases, also support the activities of the various supervisory authorities established primarily at the state level to ensure a uniform nationwide and cross-sector approach to money laundering, primarily in the non-financial sector. With regard to supervisory activities in the financial sector, paragraph 2, sentence 2, clarifies that the coordination of national cooperation and the exchange of information do not apply in connection with BaFin, insofar as its supervision of individual obliged entities is concerned (see source for details).

b) Pursuant to Section 50b (2), the ZfG is entitled to take all measures within the scope of its support in audits within the meaning of Section 51 (3) of the GwG that are also available to the supervisory authority requesting support. Such measures are deemed to be measures of that supervisory authority. In this respect, the ZfG is subject to the instructions of the requesting supervisory authority (see source for details).

19. Coordinating bodies of the federal and state governments (Section 50c GwG)

In addition, pursuant to Section 50c of the GwG, a central coordinating body will be established in each of the federal states to coordinate the activities of the competent state authorities in the strategic and risk-based orientation of preventing and combating money laundering and terrorist financing.

20. Supervision; authorization to issue regulations (Section 51 GwG)

a) According to the new paragraph 5c, the new obligated entities under Section 2 paragraph 1 numbers 2a, 7a, 7b, and 7c (financial holding companies, mixed financial holding companies, insurance holding companies, etc.) must register their status as obligated entities with the competent supervisory authority. BaFin is authorized to dismiss managing directors of financial holding companies if the requirements of paragraph 2 are met (see source for details).

b) The supervisory authorities may, in accordance with paragraph 11, determine by means of a general decree which notifications, notices, reports, applications and other information are to be submitted electronically and which electronic communication method is to be used for this purpose (see source for details).

21. Obligation to cooperate (Section 52 GwG)

Paragraph 7 stipulates that entities subject to the GwG must regularly report data to BaFin, insofar as BaFin is a supervisory authority, to fulfill its reporting obligations for risk-based supervision to the EBA. BaFin will determine the type of data and the reporting deadline by means of a general administrative order (see source for details).

22. Fines, authorization to issue regulations (Section 56 GwG)

Section 56 adds the new fines for violations of the following regulations (see source for details):

- Registration requirement according to Section 45 Para. 1 Sentence 2 GwG (registration with the Central Office for Financial Transaction Investigations) (Section 56 Para. 1 No. 69a GwG);
- Obligation to transmit data to BaFin according to Section 52 Para. 7 GwG (Section 56 Para. 1 No. 73 GwG);
- Obligation to register financial holding companies and insurance holding companies, companies within the meaning of Section 293 (4) VAG and companies that exercise a controlling influence on an insurance company or a pension fund pursuant to Section 51 (5c) Sentence 1 GwG (Section 56 (2) GwG).

23. Transitional provision (Section 59 GwG)

a) According to the amendment in paragraph 7 sentence 1, the possibility for the Central Office for Financial Transaction Investigations to request the retrieval of certain data from credit institutions under the Fiscal Code (AO) from the Federal Central Tax Office is extended by a further four years until 31 December 2027.

b) Data pursuant to Section 26c Paragraph 1 GwG (legal transactions reported pursuant to Section 18 Paragraphs 1 and 2 of the Real Estate Transfer Tax Act) will be recorded pursuant to Paragraph 15 as soon as their electronic transmission to the tax authorities is possible. Information from the land register extract pursuant to Section 26c Paragraph 3 GwG will be provided pursuant to Paragraph 16 from 1 January 2026. Information pursuant to Section 26d GwG will be provided by the register-keeping authority.

Position available from 1 January 2026.

c) From January 1, 2027, the place of birth of the beneficial owner pursuant to Section 19, Paragraph 1, No. 2 of the GwG must be stated mandatorily in accordance with Paragraph 19. Until this date, the information may be provided voluntarily.

d) Pursuant to paragraph 20, the option to appoint an authorized representative within the meaning of Section 18a of the GwG must be established by the registrar by 31 December 2024. Pursuant to paragraph 21, the option to submit overviews of ownership and control structures must be established by 1 July 2025 at the latest.

IX. Amendment to the Insurance Supervision Act (VAG) (Article 19)

1. Duties of the auditor (Section 35 VAG)

The addition of the new paragraph 6 introduces a new audit obligation for the auditor to verify compliance with the obligations under Section 53 of the Insurance Supervision Act (VAG) and the Money Laundering Act (GwG), analogous to Section 29 of the German Banking Act (KWG), for insurance holding companies, mixed financial holding companies, companies within the meaning of Section 293 paragraph 4, and companies that actually exercise a controlling influence over an insurance company within the meaning of this provision or a pension fund within the meaning of Section 236 paragraph 1. This affects corresponding companies that are subject to an audit obligation for their annual financial statements and management report pursuant to Section 316 paragraph 1 sentence 1 of the German Commercial Code (HGB) (see source for details).

2. Obligated companies (Section 52 VAG)

By adding the new paragraph 2, the companies named in Section 35 paragraph 6 VAG are obliged to comply with the requirements of Section 53 VAG regarding internal security measures and the specific provisions of the Money Laundering Act.

3. Supervision (Section 293 VAG)

With the addition of Section 293, Paragraph 1, Sentence 1 of the Insurance Supervision Act (VAG), insurance holding companies, mixed financial holding companies, companies pursuant to Section 293, Paragraph 4 of the Insurance Supervision Act (VAG), and companies that can exercise a controlling influence over an insurance company or a pension fund are now also required to submit their annual financial statements and the audit report to the supervisory authority. This also applies if companies actually exercise controlling control over an insurance company or a pension fund, which is stipulated in the new Paragraph 5. The obligations under Section 37, Paragraph 1 (submission of prepared and adopted annual financial statements) and Paragraph 5 (submission of the audit report) of the Insurance Supervision Act apply accordingly (see source for details).

4. Transitional provision to the Act to Improve the Fight against Financial Crime (Section 360 VAG)

The new audit requirements of Section 35 (6) shall apply for the first time to audits relating to the financial year beginning after 31 December 2023.

X. Amendment to the Audit Report Ordinance (PrüfbV) (Art. 23)

1. Supplementary provisions for financial holding companies and mixed financial holding companies (Section 50a of the Audit Ordinance)

Section 50a of the Audit Report Regulation (PrüfbV) is being amended analogously to Sections 26 and 29 of the German Banking Act (KWG). Accordingly, when auditing financial holding companies and mixed financial holding companies, the auditor must examine whether the companies have complied with the internal safeguards and due diligence obligations pursuant to Sections 25h to 25m of the German Banking Act (KWG). Furthermore, for (EU) parent financial holding companies and mixed (EU) parent financial holding companies that are at the head of a supervised group, compliance with the licensing requirements pursuant to Section 2f (3) of the German Banking Act (KWG) must be examined, or compliance with the exemption requirements pursuant to Section 2f (4) of the German Banking Act (KWG), according to which licensing is not required (see source for details).

2. First-time application; transitional provision (Section 71 PrüfbV)

The new audit requirements of Section 50a of the Audit Ordinance apply for the first time to audits relating to the financial year beginning after December 31, 2023.

CATEGORIZATION

Keywords

Auditor, general duty of care, suspensive effect, request for information on account information, automated retrieval of account information, BBF, dominant control, dominant influence, prohibition on making available, chain of ownership, business premises, Federal Office for Combating Financial Crime, fine, data comparison, registrar, owner, ownership overview, frozen asset, primary insurance company, money laundering investigation center, EZG, financial services institution, financial holding company, place of birth, money laundering officer, mixed financial holding company, business premises, land register, land register extract, real estate agent, real estate transaction register, control, control structure overview, group privilege, aircraft register, majority shareholding,

Prohibition on the disclosure of information, online registration, proper business organization, pension funds, personal data, attachment, audit, audit report, legal structure, register, reinsurance company, sanction, compensation, ship register, special representative, blocking notice, deputy, transparency register, monitoring measure, report of discrepancies, prohibition on providing information, prohibition on the disclosure of information, association, prohibition on disposal, obligated party, insurance holding company, insurance holding company, insurance company, insurance intermediary, authorized representative, power of representation, objection, auditor, payment institution, Central Office for Financial Transaction Investigations, Central Office for Money Laundering Supervision, Central Office for Sanctions Enforcement, ZfG, ZfS, Customs Criminal Investigation Office, authorization

Legal and information bases

- Regulation (EU) No. 575/2023 (CRR, CRR Part I, dataset 558)
- Directive 2002/87/EC on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate (Financial Conglomerates Directive, FICOD)

- Directive 2009/138/EC (Solvency II)
- Tax Code (AO)
- Foreign Trade Act (AWG)
- Foreign Trade Ordinance (AWV)
- Law establishing the Federal Office for Combating Financial Crime (BFF Establishment Law)
- Federal Police Act (BPolG)
- German Civil Code (BGB)
- Money Laundering Act (GwG)
- Law on the Money Laundering Investigation Center (Money Laundering Investigation Act – GwEG)
- Real Estate Transfer Tax Act (GrEStG)
- Commercial Code (HGB)
- War Weapons Control Act (KrWaffKontrG)
- Banking Act (KWG)
- Audit Report Ordinance (PrüfbV)
- Sanctions Enforcement Act (SanktDG)
- Code of Criminal Procedure (StPO)
- Administrative Enforcement Act (VwVG)
- Insurance Supervision Act (VAG)
- Customs Investigation Services Act (ZFdG)
- Customs Administration Act (ZollVG)
- Code of Civil Procedure (ZPO)

Related Standards 

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

Government draft

Status – Further Details 

government proposal

Date of entry into force/publication

01.04.2024

Entry into force estimated?

No

Date of first application

01.04.2024

Application appreciated?

No

Date Standard repealed

Remark (Entry into force/Publication)

The law comes into force on April 1, 2024.

Deviating from this,

- Article 16 Nos. 6 to 9, Article 18 No. 3 letter a, No. 5 letter a, No. 14 letter a double letter cc, No. 14 letter b, No. 32 letter a, Article 19 Nos. 1, 2 and 4 and Article 23 shall enter into force on 1 July 2024.
- Article 16 Nos. 1, 2, 4, 5 and 11, Article 17, Article 18 No. 34 letter b, Article 18 No. 36, Article 18 No. 39 letters b and c, Article 18 No. 40 letter d, Article 19 No. 3 and Article 24 on 1 January 2025 and
- Article 2, Article 4, Article 6(2), Article 12 and Article 18(27) shall enter into force on 1 June 2025.

Comments 

This act shall enter into force on April 1, 2024.

By way of derogation

- Art. 16 No. 6 to 9, Art. 18 no. 3 lit.a, no. 5 lit. a, no. 14 lit.a double letters cc, no. 14 lit. b, nk. 32 lit. a, Art. 19 no. 1, 2 and 4 and Art. 23 shall enter into force on April 1, 2024.
- Art. 16 no. 1, 2, 4, 5 and 11, Art. 17, Art. 18 no. 34 lit. a, Art. 18 no. 36, Art. 18 no. 39 lit. 3 and Art. 24 shall enter into force on 1 January 2025 and
- Art. 2, Art. 4, Art. 6 No. 2, Art. 12 and Art. 18 No. 27 on 1 June 2025.

Sources

The sources are not shown in this working paper.