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European Commission
President Juncker
Commissioner Jourova

11.02.2019, Strasbourg

Subject: Request to launch an infringement procedure against Germany for not correctly transposing the provisions of the Fourth Anti-money Laundering Directive

Dear President Juncker,
Dear Commissioner Jourova,

On 15 March 2018, we approached the Commission for the first time regarding the deficient transposition and implementation of the 4th Anti-Money Laundering Directive by Germany. In a written question of 15 March 2018, we pointed the Commission to limitations of the German transparency register for beneficial owners of companies. In its answer to our written question, the Commission on 22 May 2018 explained that “the German law transposing the Directive was adopted on 23 June 2017 and notified to the Commission on 3 July 2017. As Germany made a complete notification, the Commission did not launch infringement for non-communication of the transposition measures. The assessment of the conformity of the German law to the Directive is ongoing. On this basis, the Commission will decide on the appropriate next steps.”

On 15 October 2018, we approached the Commission for the second time regarding the deficient transposition and implementation of the 4th Anti-Money Laundering Directive by Germany. In a written question of 15 October 2018, we pointed the Commission to the non-functioning of the Financial Intelligence Unit in Germany. In its answer to our written question, the Commission on 30 January 2019 explained that the Commission was still “examining whether the national implementing measures communicated by the German authorities fully transpose” the 4th Anti-Money Laundering Directive into German law.

On 24 January 2019, the Commission decided to send a letter of formal notice to Germany for failing to completely transpose the 4th Anti-Money Laundering Directive (Directive (EU) 2015/849) into national law. Despite Germany having declared the transposition to be complete, the Commission concluded after assessing the notified measures that some provisions are missing. However, we learnt that the shortcomings on which the Commission based its letter of formal notice to Germany only referred to minor issues and not to the major issues that we had brought to the attention of the Commission before.

Although the Directive (EU) 2015/849 (AMLD4) entered into force on 26 June 2017, we understand that the Commission is still in the first phase of transposition checks, which only evaluates the



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completeness of the law transposed. However, we are convinced that the German law transposing AMLD4 is not only incomplete but also incorrect on substance in at least two respects that we further outline below. Therefore, we are calling on the Commission to urgently check also the correctness of the law transposed and launch infringement for incorrectness of the transposition measures adopted by Germany.

First, the transposition in Germany does not follow the legal requirement of the European Directive when it comes to the obligation to identify and report the beneficial owners of a company. Article 20 (3) of the German law on anti-money laundering (GwG) foresees that in situations of indirect control, the German legal entity has no obligation to identify the beneficial owner. Instead, the obligation is on the beneficial owner to report himself: "If persons subject to disclosure within the meaning of sentences 1 to 3 are under the indirect control of an beneficial owner, the obligation pursuant to sentence 1 shall apply to the economic beneficiary." Thus, the obligation to identify and report the beneficial owner is limited to situations where a company or its shareholders are directly controlled by a beneficial owner, that is a natural person. In contrast, Article 30 of AMLD4 states that it is the obligation of the company to identify its beneficial owners without any exceptions and under all circumstances. Therefore, the above mentioned restriction in the German law is in violation of AMLD4.

The restriction in the German law has consequences in the real world. To this letter, we attach an excerpt of the German beneficial owner register stating that for a specific company named WIWELA BAU Projekt GmbH "There is no registration of a beneficial owner of this company for the requested time or period on the basis of a notification in accordance with § 20 Paragraph 1 or § 21 GwG. We received this letter from investigative journalists of the public broadcaster RBB which tried to inquire potential flows of dirty money into the overheating Berlin property market. This constitutes a confirmation pursuant to § 18 Paragraph 4 first sentence GwG." Consequently, the incorrect transposition of AMLD4 in Germany prevents persons with a legitimate interest from gaining knowledge of the beneficial owners of companies although they have a right to know according to Union law.

The incompleteness of the German transparency register laid out above is confirmed by research undertaken by the press. The Süddeutsche Zeitung on 5 February 2019 reported about the case of the "Hannibal 2" residential complex in Dortmund/Germany. The residents of the building complex had to leave their apartments from one day to the other in 2017 because the city administration had the building cleared due to fire protection deficiencies. 753 residents moved into emergency shelters. It is still unclear who is the beneficial owner of the property and is thus ultimately responsible for its bad condition. In the land register, the owner is a company called "Lütticher 49 Properties GmbH". Consulting the transparency register for this company leads to another company in Cyprus whose beneficial owners are unknown. More than one year after the evacuation of the building on 21 September 2017, the tenants' association Dortmund (Mieterverein Dortmund) still cannot bring its concerns to the attention of the person responsible for the evacuation since the beneficial owner of the building is unknown.

Another shortcoming of the German transparency register is that it does not allow to search for beneficial owners. Given that the search engine allows only searches for company names, a dubious beneficial owner can only be found when knowing the company he or she owns. In addition, persons



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with a legitimate interest are charged with a high fee for every single query. While Article 30 Paragraph 5 of the 4th Anti-Money Laundering Directive (Directive (EU) 2015/849) limits the fees charged for obtaining the information to the administrative costs thereof, the high fees charged in Germany seem to exceed these costs since searches in the register are digital and fully automatic.

Second, on 26 June 2017, Germany transferred the responsibility for its Financial Intelligence Unit (FIU) from the Federal Criminal Police Office to the General Directorate of Customs. Since then, German media repeatedly reported about the non-functioning of the FIU constituting a clear violation of Article 32 of the 4th Anti-Money Laundering Directive (Directive (EU) 2015/849) stating: "1. Each Member State shall establish an FIU in order to prevent, detect and effectively combat money laundering and terrorist financing", "2. (...) Member States shall provide their FIUs with adequate financial, human and technical resources in order to fulfil their tasks" and "4. Member States shall ensure that their FIUs have access, directly or indirectly, in a timely manner, to the financial, administrative and law enforcement information that they require to fulfil their tasks properly."

Since the transfer of responsibility to the General Directorate of Customs end of June 2017, the German FIU has received more than 83,000 suspicious transaction reports filed by obliged entities. As of beginning of October 2018, 22,000 suspicious transaction reports are said to still wait for being processed by the FIU. According to the "Handelsblatt" 22,000 cases are waiting in an internal database without being effectively accessible to other law enforcement bodies. Once processed, an internal report of the Federal Criminal Police Office lists the problems and reveals that the reports forwarded by the FIU to the police or the public prosecutor's office are often incomplete, incorrect, useless, forwarded to the wrong recipient, sometimes heavily delayed or not transmitted at all. Cases were reported where the delayed action of the FIU led to criminal money being transferred by credit institutions despite having reported suspicions of money laundering. According to "BR Recherche" and "Der Spiegel", the FIU forwarded two suspect notifications of 29 and 30 June 2017, respectively, only one year later although they related to suspicions of terrorist financing. The State Offices of Criminal Investigation in Berlin, Lower Saxony, North Rhine-Westphalia and Hamburg confirmed that the two cases reported in the media are not the only ones where suspect notifications were forwarded by the FIU with delay. The State Office of Criminal Investigation in Saxony-Anhalt admitted that by July 2018 it had received 9 out of 12 suspect notifications with delay. In a specific case of summer 2017, also reported by "BR Recherche" and "Der Spiegel", the non-action of the FIU prevented the confiscation of nearly EUR 400.000 of a businessman who had been come to the attention of the police because of money laundering already in 2013.

While the German FIU has 125 permanent employees, it relies on additional 234 temporary staff of which, according to an internal analysis of the FIU, a large proportion have little technical knowledge in the field of combating money laundering. The FIU has no access to the databases of the State Criminal Investigation Office whose working group "Criminal Investigation Department" has recently refused to change this situation in the future. Such an access seems crucial to ensure an effective functioning of the FIU. So far there is no solution for this structural deficiency of the German FIU. The disastrous state of the German FIU is said to pose a significant risk to national and European security.

Given the above mentioned incorrect transposition measures of AMLD by Germany, we urge the Commission to take action swiftly. It is important not only to tackle the lack of enforcement of the



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EU's anti-money laundering laws in small Member States but also in the larger ones. Since nearly one year we have been pointing the Commission to the obvious shortcomings of the transposition measures of the 4th AMLD by Germany through two written questions, an accompanying letter to Commissioner Jourova and several phone calls and meetings. Additionally, European Parliament, media and even the police have made the Commission aware of the obvious violations of the European Directive by Germany's insufficient transposition. Therefore, we would like to ask the Commission to stop procrastinating and to launch infringement against the Federal Republic of Germany for incorrect transposition of the 4th Anti-Money Laundering Directive (Directive (EU) 2015/849).

Kind regards,

Sven Giegold