

Bill

presented by the Federal Government

Draft Act Transposing the Fourth EU Money Laundering Directive, Implementing the EU Fund Transfer Regulation and Reorganising the Financial Intelligence Unit

A. Problem and objective

Directive (EU) 2015/849 of the European Parliament and of the Council¹ (the “Fourth Money Laundering Directive”) is to be transposed by the Member States by 26 June 2017. By 26 June 2017, the Member States must also introduce provisions implementing Regulation (EU) 2015/847² (the “Fund Transfer Regulation”).

The Fourth Money Laundering Directive repeals the Third Money Laundering Directive (Directive 2005/60/EC) and adapts the European regulations to reflect the 2012 revised Recommendations of the Financial Action Task Force (FATF). The requirements for national legislation to prevent money laundering and terrorist financing have been adapted and expanded. The new regulations provide for, among other things:

- a strengthening of the risk-based approach: in future, obliged entities covered by anti-money laundering legislation must have risk management systems in place which are appropriate for their business. This includes the requirement for obliged entities to assess their individual risk of money laundering and terrorist financing, especially in light of the customer structure and the products and services offered, and to design their risk mitigation measures accordingly;
- the establishment of an electronic transparency register on beneficial owners: legal entities under private law, registered business partnerships, trusts and legal arrangements having a structure or functions similar to trusts must submit information on their beneficial owners to a central register;
- harmonisation of the administrative fines imposed for non-compliance with obligations under anti-money laundering legislation.

The new rules of the Fund Transfer Regulation, which replaces Regulation (EC) No 1781/2006, require national provisions for their implementation, including adjustments to sanctions.

¹ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Official Journal L 141 of 5 June 2015, p. 73).

² Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 (Official Journal L 141 of 5 June 2015, p. 1).

B. Solution

The Act is intended to transpose the Fourth Money Laundering Directive. To this end, the existing Money Laundering Act³ is revised and other laws are adapted. In addition, the Financial Intelligence Unit is to be established at the Central Customs Authority. It will receive and analyse reports filed under anti-money laundering legislation and, when there is a suspicion of money laundering or terrorist financing, disseminate these reports to the competent public authorities. It thus has an important filtering function.

In addition, this Act includes provisions relating to the Fund Transfer Regulation; among other things, it adjusts the administrative sanctions and measures, regulates their notification, and designates the competent authorities for monitoring and compliance with the requirements of the Fund Transfer Regulation.

for information purposes only

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Geldwäschegesetz

Federal Government Bill

Draft Act Transposing the Fourth EU Money Laundering Directive, Implementing the EU Fund Transfer Regulation and Reorganising the Financial Intelligence Unit^{4 5}

Of ...

The Bundestag has adopted the following Act with the consent of the Bundesrat:

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- Article 1 Act on the Detection of Proceeds from Serious Crimes
- Article 2 Amendment of the Ordinance establishing Security Vetting Requirements for Vital and Defence Establishments
- Article 3 Amendment of the Act on the Central Register of Foreigners
- Article 4 Amendment of the Ordinance Implementing the Act on the Central Register of Foreigners
- Article 5 Amendment of the Federal Central Criminal Register Act
- Article 6 Amendment of the Act to Combat Undeclared Work and Illegal Work
- Article 7 Amendment of the Fiscal Administration Act
- Article 8 Amendment of the Customs Investigations Service Act
- Article 9 Amendment of the Fiscal Code
- Article 10 Amendment of the Customs Administration Act
- Article 11 Amendment of the Tenth Book of the Social Code – Social Administration Procedures and Social Security Data Protection
- Article 12 Amendment of the Civil Servants' Remuneration Act
- Article 13 Amendment of the Securities Trading Reporting and Insider List Regulation
- Article 14 Amendment of the Private Limited Companies Act
- Article 15 Amendment of the Introductory Act to the Private Limited Companies Act
- Article 16 Amendment of the Trade Regulation Code

⁴ This working translation of the *Entwurf eines Gesetzes zur Umsetzung der Vierten EU-Geldwäscherichtlinie, zur Ausführung der EU-Geldtransferverordnung und zur Neuorganisation der Zentralstelle für Finanztransaktionsuntersuchungen* is provided by the Language Service of the Federal Ministry of Finance. Only the German text of this Bill is authentic.

⁵ This Act serves to transpose Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Official Journal L 141 of 5 June 2015, p. 73).

- Article 17 Amendment of the Banking Act
- Article 18 Amendment of the Payment Services Supervision Act
- Article 19 Amendment of the Investment Code
- Article 20 Amendment of the Act on the Supervision of Insurance Enterprises
- Article 21 Amendment of the Road Traffic Act
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Article 1

Act on the Detection of Proceeds from Serious Crimes (Money Laundering Act)⁶

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Financial Intelligence Unit

Section 27

Financial Intelligence Unit

(1) The central national unit for preventing, detecting and supporting the combating of money laundering and terrorist financing under Article 32 paragraph (1) of Directive (EU) 2015/849 shall be the Financial Intelligence Unit.

(2) The Financial Intelligence Unit shall be organisationally autonomous and shall operate with professional independence in the framework of its tasks and powers.

Section 28

Tasks, supervision and cooperation

(1) The Financial Intelligence Unit shall have the task of collecting and analysing information related to money laundering or terrorist financing and disseminating this information to the competent domestic public authorities for the purpose of the investigation, prevention or prosecution of such offences. It shall be responsible in this context for:

1. receiving and collecting reports under this Act,
2. conducting operational analyses, including the assessment of reports and other information,
3. exchanging information and coordinating with domestic supervisory authorities,
4. cooperating and exchanging information with financial intelligence units of other states,
5. prohibiting transactions and ordering other urgent measures,
6. transmitting to the competent domestic public authorities the results of the operational analyses referred to in number 2 above which are relevant to them and additional relevant information,
7. providing feedback to the obliged entity which has filed a report under section 43 subsection (1),
8. conducting strategic analyses and producing reports on the basis of these analyses,
9. engaging in dialogue with the obliged entities and with the domestic supervisory authorities and competent domestic public authorities for the investigation, prevention or prosecution of money laundering and terrorist financing, in particular about relevant typologies and methods,
10. keeping statistics on the numbers and information referred to in Article 44 paragraph (2) of Directive (EU) 2015/849,

11. publishing an annual report on the operational analyses conducted,
12. attending meetings of national and international working groups, and
13. performing tasks which have additionally been assigned to it by other provisions.

(2) The Financial Intelligence Unit shall be subject to the supervision of the Federal Ministry of Finance, which shall be limited to legal supervision in the cases set out in subsection (1) numbers 1, 2, 5 and 6.

(3) The Financial Intelligence Unit and the other competent domestic public authorities for the investigation, prevention and prosecution of money laundering, terrorist financing and other criminal offences and for the prevention of threats and the domestic supervisory authorities shall work together to implement this Act and provide mutual support.

(4) The Financial Intelligence Unit shall, where necessary, inform the competent authorities for the taxation procedure or the protection of the social security systems of matters which come to its knowledge in the performance of its tasks and which it has not transmitted to another competent government agency.

Section 29

Data processing and further use

(1) The Financial Intelligence Unit may process personal data insofar as this is necessary for the performance of its tasks.

(2) The Financial Intelligence Unit may compare personal data it has stored for the performance of its tasks with other data, if this is permissible under this Act or another Act.

(3) The Financial Intelligence Unit may, for training or statistical purposes, process personal data held by it insofar as the processing of anonymised data for these purposes is not possible.

Section 30

Receipt and analysis of reports

(1) The Financial Intelligence Unit shall receive and process the following reports and information for the performance of its tasks:

1. reports by obliged entities under section 43 and reports by supervisory authorities under section 44,
2. notifications by revenue authorities under section 31b of the Fiscal Code⁷,
3. information transmitted to it
 - a) under Article 5 paragraph (1) of Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community (Official Journal L 309, 25 November 2005, p. 9), and

⁷ Abgabenordnung

b) under section 12a of the Customs Administration Act⁸, and

4. other information from public and non-public sources within the framework of its tasks.

(2) The Financial Intelligence Unit shall analyse the reports filed under sections 43 and 44 and the notifications made under section 31b of the Fiscal Code in order to verify whether the reported matter is related to money laundering, terrorist financing or another criminal offence.

(3) The Financial Intelligence Unit may, irrespective of the existence of a report, obtain information from obliged entities insofar as this is necessary for the performance of its tasks. It shall set a suitable time limit for the obliged entity to respond to its demand for information. Obligated entities under section 2 subsection (1) numbers 10 and 12 may refuse to provide information insofar as the demand relates to information they obtained in the context of providing legal advice or the legal representation of the contracting party. The obligation to provide information shall continue to exist, however, if the obliged entity knows that the contracting party has used or is using its legal advice for the purpose of money laundering or terrorist financing.

Section 31

Right to obtain information from domestic public authorities, right of access to data

(1) The Financial Intelligence Unit may, insofar as this is necessary for the performance of its tasks, collect data from domestic public authorities. The domestic public authorities shall provide information to the Financial Intelligence Unit at its request for the performance of its tasks insofar as no transmission restrictions preclude the provision of information.

(2) The enquiries shall be answered by the domestic public authority without delay. Data related to the enquiry shall be made available.

(3) The Financial Intelligence Unit should establish an automated process for the transmission, by means of retrieval, of personal data which are stored by other domestic public authorities and which the Financial Intelligence Unit is entitled by law to receive, unless otherwise stipulated by law and insofar as this form of data transmission is appropriate, with due regard for the legitimate interests of the data subjects, because of the large number of transmissions or because of its particular urgency. For the purpose of monitoring of the permissibility of the automated retrieval process, the Financial Intelligence Unit shall state in writing:

1. the reason for and purpose of the comparison or retrieval process,
2. the third parties to whom information is transmitted,
3. the type of data to be transmitted, and
4. the technical and organisational measures to ensure data protection.

(4) The Financial Intelligence Unit shall be entitled, insofar as this is necessary for the performance of its tasks under section 28 subsection (1), second sentence, number 2, to compare, by automated means, the personal data stored in its information system with the personal data contained in the police information system under section 11 subsections (1) and (2) in conjunction with section 13 subsections (1) and (3) of the Act on

⁸ Zollverwaltungsgesetz

the Bundeskriminalamt⁹. If the comparison under the first sentence above results in a match between transmitted data and data stored in the police information system, the Financial Intelligence Unit shall receive, by automated means, the information that a match exists and shall be entitled to retrieve, by automated means, the data which exist on this in the police information system. If the participants in the police information system have categorised data as being especially sensitive and have for this reason prevented data retrieval by the Financial Intelligence Unit under the second sentence above, the participant in the police information system holding the data shall receive, by automated means, the information that a match exists. In this case, it shall be the responsibility of the individual participant in the police information system holding the data to contact the Financial Intelligence Unit without delay and transmit the data to it, insofar as no transmission restrictions preclude this. The first to fourth sentences above shall take precedence over the provision set out in section 11 subsection (5) of the Act on the Bundeskriminalamt. The establishment of a more far-reaching automated retrieval process for the Financial Intelligence Unit shall be permissible with the consent of the Federal Ministry of the Interior, the Federal Ministry of Finance and the interior ministries and senate departments for the interior of the *Länder*, insofar as this form of data transmission is appropriate, with due regard for the legitimate interests of the data subjects, because of the large number of transmissions or because of its particular urgency.

(5) Revenue authorities shall provide information to the Financial Intelligence Unit in accordance with section 31b subsection (1) number 5 of the Fiscal Code and shall, under section 31b subsection (2) of the Fiscal Code, notify it of the information referred to in that subsection. As preparation for requesting information from tax offices, the Financial Intelligence Unit may, by providing the first name, surname and the address or date of birth of a natural person, retrieve, by automated means, the details of the relevant tax office and tax number for this natural person from the database referred to in section 139b of the Fiscal Code. Automated retrieval by the Financial Intelligence Unit of other data which are stored by the revenue authorities and subject to the tax secrecy requirement under section 30 of the Fiscal Code shall only be possible insofar as this is permitted by the Fiscal Code or the tax laws. By way of derogation from the third sentence above, subsection (3) above shall apply to the automated retrieval of data which are stored by the revenue authorities of the Customs Administration and which the Financial Intelligence Unit is legally entitled to receive.

(6) The Financial Intelligence Unit may, for the performance of its tasks, retrieve data, by automated means, from the files which the credit institutions under section 2 subsection (1) number 1 and the institutions under section 2 subsection (1) number 3 are required to maintain under section 24c subsection (1) of the Banking Act¹⁰. Section 24c subsections (4) to (8) of the Banking Act shall apply to the data transmission, *mutatis mutandis*.

(7) Insofar as is necessary to verify the particulars of the person concerned, the Financial Intelligence Unit may retrieve the following data, using the automated process under section 38 of the Federal Act on Registration¹¹, in addition to the data referred to in section 38 subsection (1) of the Federal Act on Registration:

1. current nationalities,
2. previous addresses, labelled as primary and secondary residences, and

⁹ *Bundeskriminalamtgesetz*

¹⁰ *Kreditwesengesetz*

¹¹ *Bundesmeldegesetz*

3. issuing authority, date of issue, duration of validity, serial number of the identity card, provisional identity card or replacement identity card, the recognised and valid passport, or the passport substitute.

Section 32

Obligation to transmit data to domestic public authorities

(1) Reports under section 43 subsection (1), section 44 shall be transmitted by the Financial Intelligence Unit without delay to the Federal Office for the Protection of the Constitution insofar as there are factual indications that the transmission of this information is necessary for the Federal Office for the Protection of the Constitution to perform its tasks.

(2) If the Financial Intelligence Unit finds in the operational analysis that property is related to money laundering, terrorist financing or another criminal offence, it shall transmit the result of its analysis and all relevant information to the competent law enforcement agencies without delay. The information referred to in the first sentence above shall also be transmitted to the Federal Intelligence Service insofar as there are factual indications that this transmission is necessary for the Federal Intelligence Service to perform its tasks. In the case referred to in subsection (1) above, the Financial Intelligence Unit shall also transmit to the Federal Office for the Protection of the Constitution the result of its operational analysis and all relevant information relating to the previously transmitted report.

(3) The Financial Intelligence Unit shall transmit personal data, upon request, to the law enforcement agencies, the Federal Office for the Protection of the Constitution, the Federal Intelligence Service or the military counterintelligence office of the Federal Ministry of Defence insofar as this is necessary for

1. the investigation of money laundering and terrorist financing or the conduct of criminal proceedings related to these, or
2. the investigation of other threats and the conduct of other criminal proceedings not covered by number 1 above.

The Financial Intelligence Unit shall transmit personal data, ex officio or upon request, to competent domestic public authorities other than those referred to in the first sentence above insofar as this is necessary for

1. taxation procedures,
2. procedures to protect the social security systems, or
3. the performance of tasks by the supervisory authorities.

(4) In the cases referred to in subsection 3, first sentence, numbers 1 and 2, the law enforcement agencies and the Federal Office for the Protection of the Constitution shall be entitled to retrieve, by automated means, the data for the performance of their tasks from the Financial Intelligence Unit, insofar as no transmission restrictions preclude this. For the purpose of monitoring of the permissibility of the automated retrieval process, the law enforcement agencies in question and the Federal Office for the Protection of the Constitution shall state in writing:

1. the reason for and purpose of the retrieval process,

2. the third parties to whom information is transmitted,
3. the type of data to be transmitted, and
4. the technical and organisational measures to ensure data protection.

(5) Personal data shall not be transmitted under subsection (3) above

1. insofar as the provision of the data could have a negative impact on the success of ongoing investigations by the competent domestic public authorities, or
2. insofar as the dissemination of the data would be disproportionate.

Insofar as a retrieval under subsection (4) above relates to data which, in principle, may not be retrieved by automated means because of transmission restrictions, the Financial Intelligence Unit shall be notified of the query by automated means via the transmission of all query data. In this case, it shall be responsible for contacting the authority which performed the query without delay, in order to clarify in the individual case whether information under subsection (3) above may be transmitted.

(6) If the law enforcement agency has initiated criminal proceedings on the basis of a matter transmitted under subsection (2) above, it shall notify the competent revenue authority of the matter together with the underlying facts if a transaction is identified which could be of relevance for the revenue administration for the initiation or conduct of taxation procedures or criminal tax proceedings. If the law enforcement agency considers records under section 11 subsection (1) in the criminal proceedings, these records may also be transmitted to the revenue authority. The notifications and records may be used for taxation procedures and for criminal proceedings in relation to tax crimes.

(7) The recipient may only use the personal data transmitted for the purpose for which they have been transmitted. Their use for other purposes shall be permissible to the extent that it would also have been permissible for the data to have been transmitted for those purposes.

Section 33

Exchange of data with Member States of the European Union

(1) The exchange of data with the financial intelligence units of other Member States of the European Union responsible for the prevention, detection and combating of money laundering and terrorist financing shall be ensured irrespective of the type of predicate offence for money laundering and also if the type of predicate offence has not been established. In particular, a divergent definition in an individual case of the tax crimes which, under national law, can qualify as a predicate offence for money laundering shall not preclude an exchange of information with financial intelligence units of other Member States of the European Union. If the Financial Intelligence Unit receives a report under section 43 subsection (1) which concerns the responsibility of another Member State, it shall promptly forward the report to the financial intelligence unit of that Member State.

(2) The provisions on international data transmission under section 35 subsections (2) to (6) shall apply, mutatis mutandis, to the transmission of the data. The Financial Intelligence Unit shall be responsible for the permissibility of the data transmission.

(3) If additional information is required about an obliged entity which is active in Germany and which is entered in a public register in another Member State of the

European Union, the Financial Intelligence Unit shall send its request to the financial intelligence unit of that Member State of the European Union.

(4) The Financial Intelligence Unit may only reject a request for the transmission of information which it has been sent by a financial intelligence unit of a Member State of the European Union in the framework of the performance of its tasks if

1. the transmission of information could jeopardise the internal or external security or other essential interests of the Federal Republic of Germany,
2. in the individual case, even with due regard for the public interest in the transmission of the data, the legitimate interests of the data subject are overriding because of essential fundamental principles of German law,
3. the transmission of information could hinder or jeopardise criminal investigations or the conduct of judicial proceedings, or
4. the transmission is precluded by conditions under the law on mutual legal assistance imposed by foreign authorities with which the competent authorities must comply.

The Financial Intelligence Unit shall set out appropriately in writing to the requesting financial intelligence unit the reasons for rejecting the request for information, except if the operational analysis is not yet complete or insofar as this could jeopardise the investigations.

(5) If the Financial Intelligence Unit transmits information to a financial intelligence unit of a Member State of the European Union at that unit's request, it should normally express its consent promptly for the dissemination of this information to other authorities of that Member State. It may refuse to give consent if the matter set out in the request would not constitute the criminal offence of money laundering or terrorist financing under German law. The Financial Intelligence Unit shall set out appropriately the reasons for its refusal to give consent. Use of the information for other purposes shall require the prior consent of the Financial Intelligence Unit.

Section 34

Information requests in the framework of international cooperation

(1) The Financial Intelligence Unit may request that the financial intelligence units of other states which deal with the prevention, detection and combating of money laundering, predicate offences for money laundering and terrorist financing provide information, including personal data or the transmission of documents, if this information and these documents are necessary for the performance of its tasks.

(2) The Financial Intelligence Unit may, for a request, transmit personal data insofar as this is necessary to substantiate a legitimate interest in the information sought and if overriding justified interests of the person concerned do not preclude this.

(3) In the request, the Financial Intelligence Unit must disclose the purpose of the data collection and provide notification of its intended dissemination of the data to other domestic public authorities. The Financial Intelligence Unit may only use the data transmitted by a financial intelligence unit of another state

1. for the purposes for which the data were requested, and
2. in compliance with the conditions under which the data were made available.

If the data transmitted are subsequently to be disseminated to another public authority or used for a purpose beyond the original purposes, the prior consent of the transmitting financial intelligence unit shall be obtained.

Section 35

Data transmission in the framework of international cooperation

(1) If the Financial Intelligence Unit receives a report under section 43 subsection (1) which concerns the responsibility of another state, it may forward this report promptly to the financial intelligence unit of that state. It shall notify the financial intelligence unit of the state concerned that the personal data may only be used for the purpose for which they have been transmitted.

(2) The Financial Intelligence Unit may transmit personal data to the financial intelligence unit of another state at its request

1. for an operational analysis to be conducted by the financial intelligence unit of the other state,
2. in the framework of a planned urgent measure under section 40, insofar as facts indicate that the property
 - a) is located in Germany, and
 - b) is connected with a matter which is before the financial intelligence unit of the other state, or
3. for the performance of the tasks of another foreign public authority which serves to prevent, detect and combat money laundering or predicate offences for money laundering or terrorist financing.

It may use information held by it to respond to the request. If this information also includes data collected or transmitted by other domestic or foreign authorities, the dissemination of these data shall only be permissible with the consent of these authorities, unless the information comes from publicly accessible sources. In responding to the request, the Financial Intelligence Unit may request information from other domestic public authorities in accordance with sections 28, 30 and 31 or demand information from obliged entities. Requests for information and demands for information shall be answered in a timely manner.

(3) The transmission of personal data to a financial intelligence unit of another state shall only be permissible if the request contains at least the following information:

1. the name, address and other contact details of the requesting authority,
2. the reasons for the request and designation of the purpose for which the data are to be used under subsection (2) above,
3. necessary details about the identity of the person concerned insofar as the request relates to a known person,
4. a description of the matter on which the request is based, and the authority to which the data are to be disseminated, where applicable, and

5. an indication of whether the matter concerns money laundering or terrorist financing and an indication of the predicate offence which has allegedly been committed.

(4) The Financial Intelligence Unit may also transmit personal data to a financial intelligence unit of another state without request if facts indicate that natural or legal persons in the territory of that state have committed money laundering or terrorist financing offences.

(5) The Financial Intelligence Unit shall be responsible for the permissibility of the data transmission. When transmitting data to a foreign financial intelligence unit, it may impose restrictions and conditions on the use of the data transmitted.

(6) The recipient of personal data shall be notified that the personal data may only be used for the purpose for which they have been transmitted. If the data are to be disseminated by the requesting foreign financial intelligence unit to another authority in that state, the prior consent of the Financial Intelligence Unit shall be required, with due regard for the purpose and the legitimate interests of the data subject regarding the data. Insofar as the information is to be used as evidence in criminal proceedings, the rules of cross-border cooperation in criminal matters shall apply.

(7) Personal data shall not be transmitted to a foreign financial intelligence unit insofar as

1. the transmission could harm the internal or external security or other essential interests of the Federal Republic of Germany,
2. special transmission provisions in federal law preclude transmission, or
3. in the individual case, even with due regard for the special public interest in the transmission of the data, the legitimate interests of the data subject are overriding.

The legitimate interests of the data subject shall also include the existence of an appropriate level of data protection in the receiving state. The legitimate interests of the data subject may also be safeguarded by appropriate protection of the data transmitted being guaranteed in the individual case by the receiving state or the receiving international or supranational authority.

(8) Personal data should not be transmitted if

1. the transmission could hinder or jeopardise criminal investigations or the conduct of judicial proceedings, or
2. it is not ensured that the requesting foreign financial intelligence unit would respond to a German request of the same kind.

(9) The reasons for rejecting a request for information should be set out appropriately to the requesting financial intelligence unit.

(10) The Financial Intelligence Unit shall record the date, the data transmitted and the receiving financial intelligence unit. If data are not transmitted, this shall be recorded, mutatis mutandis. It shall retain this information for three years and then erase it.

Section 36

Automated data comparison in a European network

The Financial Intelligence Unit may, in a network with financial intelligence units of other Member States of the European Union, establish and operate a system for the encrypted, automated comparison of suitable data collected by the national financial intelligence units in the performance of their tasks. The purpose of this system shall be to gain knowledge of whether financial intelligence units of other Member States of the European Union have already conducted an analysis under section 30 in relation to a data subject or have other information relating to this person.

Section 37

Rectification, restriction of processing and erasure of personal data in the case of automated processing and in the case of storage in automated files

(1) The Financial Intelligence Unit shall rectify stored personal data which are inaccurate and which it processes by automated means.

(2) The Financial Intelligence Unit shall erase stored personal data if the storage of these data is impermissible or knowledge of these data is no longer necessary for the performance of its tasks.

(3) Instead of erasure, the processing of the stored personal data shall be restricted if

1. there are indications that erasure would adversely affect legitimate interests of a data subject,
2. the data are required for ongoing research work, or
3. erasure is only possible with disproportionate effort because of the special nature of the storage.

Data which are subject to a restriction of processing may only be processed for the purpose which prevented their erasure. They may also be processed if this is essential for the conduct of ongoing criminal proceedings or the data subject consents to the processing.

(4) The Financial Intelligence Unit shall review, when dealing with individual cases and within defined time limits, whether stored personal data must be rectified or erased or their processing must be restricted.

(5) The time limits shall begin on the day when the Financial Intelligence Unit completed the operational analysis under section 30.

(6) The Financial Intelligence Unit shall take reasonable steps to ensure that personal data which are inaccurate, incomplete or subject to restriction of processing are not transmitted. For this purpose it shall verify, where feasible, the quality of the data prior to transmission. As far as possible, in all transmissions of personal data, it shall add information enabling the recipient to assess the accuracy, completeness and reliability of the personal data.

(7) If the Financial Intelligence Unit determines that it has transmitted personal data which are inaccurate, to be erased or to be subject to restriction of processing, it shall

notify the data recipient of the rectification, erasure or restriction of processing if notification is necessary to protect legitimate interests of the data subject.

Section 38

Rectification, restriction of processing and destruction of personal data which are neither processed by automated means nor stored in an automated file

(1) The Financial Intelligence Unit shall record, in a suitable manner, if

1. it determines that personal data which are neither processed by automated means nor stored in an automated file are inaccurate, or
2. the accuracy of personal data which are neither processed by automated means nor stored in an automated file is contested by the data subject.

(2) The Financial Intelligence Unit shall restrict the processing of personal data which are neither processed by automated means nor stored in an automated file if it determines in an individual case that

1. without the restriction of processing, legitimate interests of the data subject would be adversely affected, and
2. the data are no longer necessary for the performance of tasks.

The processing of the personal data shall also be restricted if an obligation to erase them exists under section 37 subsection (2).

(3) The Financial Intelligence Unit shall destroy the documents containing personal data in accordance with the provisions on the retention of files if these documents as a whole are no longer necessary for the Financial Intelligence Unit to perform its tasks.

(4) Destruction shall not take place if

1. there are indications that legitimate interests of the data subject would otherwise be adversely affected, or
2. the data are needed for ongoing research work.

In these cases, the Financial Intelligence Unit shall restrict the processing of the data and attach a note of the restriction to the documents. Section 37 subsection (3), second and third sentences, shall apply to the restriction, mutatis mutandis.

(5) Instead of being destroyed under subsection (3), first sentence, the documents shall be delivered to the competent archives, provided that these documents have a lasting value under section 3 of the Federal Archives Act¹² in the version promulgated on 6 January 1988 (Federal Law Gazette I, p. 62), most recently amended by the Act of 13 March 1992 (Federal Law Gazette I, p. 506), in the respective applicable version.

(6) In the case that data have been transmitted which are inaccurate, to be erased or to be subject to restriction of processing, section 37 subsection (7) shall apply, mutatis mutandis.

¹² Bundesarchivgesetz

Section 39

Order opening a file

(1) The Financial Intelligence Unit shall issue, for every automated file containing personal data it operates for the performance of its tasks, an order opening the file. The opening order shall require the consent of the Federal Ministry of Finance. Prior to an opening order being issued, the Federal Commissioner for Data Protection and Freedom of Information shall be heard.

(2) The order opening the file shall set out:

1. the name of the file,
2. the legal basis and the processing purpose,
3. the group of persons about whom data are stored,
4. the type of personal data to be stored,
5. the types of personal data serving to render the file accessible,
6. the supply or input of the data to be stored,
7. the conditions under which personal data stored in the file may be transmitted, the recipients to whom they may be transmitted and the procedure to be followed,
8. the time limits for review of the stored data and the period for which they are stored,
9. the logging system.

The time limits for the review of the stored data may not exceed five years. They shall be based on the purpose of the storage and the type and importance of the matter, whereby distinctions shall be made based on the purpose of the storage and the type and importance of the matter.

(3) If, in view of the urgency with which the Financial Intelligence Unit must perform its tasks, it is not possible for the authorities referred to in subsection (1) above to be consulted, the Central Customs Authority may issue an urgent order. At the same time, the Central Customs Authority shall notify the Federal Ministry of Finance and submit the urgent order to it. The procedure under subsection (1) above shall subsequently take place without delay.

(4) The necessity of further maintaining or amending the order opening the file shall be reviewed at suitable intervals.

Section 40

Urgent measures

(1) If the Financial Intelligence Unit has indications that a transaction is related to money laundering or terrorist financing, it may prohibit the execution of the transaction in order to confirm the indications and analyse the transaction. It may also, subject to the conditions set out in the first sentence above,

1. prohibit an obliged entity under section 2 subsection (1) numbers 1 to 3 from

- a) executing dispositions in relation to an account or securities account it holds, and
 - b) executing other financial transactions,
2. instruct an obliged entity under section 2 subsection (1) number 1 to deny access to a safety deposit box to the contracting party and all other persons with a right of disposal, or
 3. issue other orders to an obliged entity in relation to a transaction.

(2) Measures under subsection (1) above may be taken by the Financial Intelligence Unit on the basis of a request from a financial intelligence unit of another state. A request must contain the information specified in section 35 subsection (3). The Financial Intelligence Unit should set out appropriately the reasons for rejecting a request.

(3) Measures under subsection (1) above shall be rescinded by the Financial Intelligence Unit as soon as or insofar as the conditions for the measures are no longer met.

(4) Measures under subsection (1) above shall end

1. no later than when one month has elapsed since the ordering of the measures by the Financial Intelligence Unit,
2. when the fifth working day has elapsed since the matter was passed on to the competent law enforcement agency, whereby Saturday shall not be treated as a working day, or
3. at an earlier date if such has been determined by the Financial Intelligence Unit.

(5) The Financial Intelligence Unit may release property which is subject to a measure under subsection (1), second sentence, at the request of the person concerned or an association without legal capacity, insofar as this property serves one of the following purposes:

1. the covering of the basic needs of the person or the person's family members,
2. the payment of pensions or maintenance, or
3. comparable purposes.

(6) The obliged entity or another adversely affected party may lodge an objection to measures under subsection (1) above. The objection shall not have suspensory effect.

Section 41

Feedback to reporting obliged entities

(1) The Financial Intelligence Unit shall confirm without delay to the obliged entity which has filed a report under section 43 subsection (1) by means of electronic data transmission that its report has been received.

(2) The Financial Intelligence Unit shall send the obliged entity feedback on the relevance of its report within an appropriate period. The obliged entity may only use personal data obtained in this way to improve its risk management, its fulfilment of its due

diligence requirements and its reporting behaviour. It shall erase these data when they are no longer required for the purpose in question, and after one year at the latest.

Section 42

Notification by domestic public authorities to the Financial Intelligence Unit

(1) In criminal proceedings in which the Financial Intelligence Unit has disseminated information, the competent public prosecution office shall notify the Financial Intelligence Unit of the commencement of public prosecution and the outcome of the proceedings, including all decisions to terminate proceedings. Such notification shall be effected by sending a copy of the indictment, the reasoned decision to terminate proceedings, or the verdict.

(2) If the Financial Intelligence Unit disseminates information to other domestic public authorities, the receiving authority shall notify the Financial Intelligence Unit of the final use made of the information provided and of the outcome of the measures taken on the basis of the information provided, insofar as other legal provisions do not preclude notification.

Division 6

Obligations concerning the reporting of matters

Section 43

Reporting obligation of obliged entities

(1) If facts exist which indicate that

1. property related to a business relationship, brokerage or transaction is derived from a criminal offence which could constitute a predicate offence for money laundering,
2. a business transaction, a transaction or property is related to terrorist financing, or
3. the contracting party has not fulfilled its obligation under section 11 subsection (6), third sentence, to disclose to the obliged entity whether it intends to establish, continue or execute the business relationship or transaction on behalf of a beneficial owner,

the obliged entity shall report this matter, irrespective of the amount involved, to the Financial Intelligence Unit without delay.

(2) By way of derogation from subsection (1) above, obliged entities under section 2 subsection (1) numbers 10 and 12 shall be exempt from the reporting obligation if the reportable matter relates to information they obtained in the context of providing legal advice or the legal representation of the contracting party. However, the reporting obligation shall continue to exist if the obliged entity knows that the contracting party has used or is using its legal advice for the purpose of money laundering or terrorist financing or another criminal offence.

(3) A member of the senior management of an obliged entity shall file a report under subsection (1) above with the Financial Intelligence Unit if

1. the obliged entity operates an establishment in Germany, and
2. the reportable matter is related to an activity of the German establishment.

(4) The reporting obligation under subsection (1) above shall not preclude the report from being voluntary under section 261 subsection (9) of the Criminal Code¹³.

(5) The Financial Intelligence Unit may, in consultation with the supervisory authorities, define types of transactions which must always be reported under subsection (1) above.

Section 44

Reporting obligation of supervisory authorities

(1) If facts exist which indicate that property is related to money laundering or terrorist financing, the supervisory authority shall report these facts to the Financial Intelligence Unit without delay.

(2) Subsection (1) above shall apply, mutatis mutandis, to authorities responsible for supervision of the stock, foreign exchange and financial derivatives markets.

Section 45

Form of reporting, authorisation to issue ordinances

(1) The report under section 43 subsection (1) or section 44 shall be filed electronically. If electronic data transmission is disrupted, transmission by post shall be permissible. Due to the special need for a uniform data transmission procedure, reports under section 44 shall also be binding for the supervisory *Land* authorities.

(2) To avoid undue hardship, the Financial Intelligence Unit may, upon request, dispense with the electronic transmission of a report by an obliged entity and authorise transmission by post. The exemption may be granted for a limited period.

(3) The official form shall be used for transmission by post.

(4) The Federal Ministry of Finance may, by means of an ordinance not requiring the consent of the Bundesrat, enact more detailed provisions concerning the form of reporting under section 43 subsection (1) or section 44. No derogations from subsection (1) above and the provisions of any ordinance under the first sentence above shall be permissible by means of *Land* law.

¹³ *Strafgesetzbuch*

Section 46

Execution of transactions

(1) A transaction about which a report has been filed under section 43 subsection (1) may be executed at the earliest when

1. the Financial Intelligence Unit or the public prosecution office has informed the obliged entity that it consents to the execution, or
2. the third working day has elapsed after the day on which the report was sent without the execution of the transaction having been prohibited by the Financial Intelligence Unit or the public prosecution office.

Saturday shall not be treated as a working day in the calculation of the time limit.

(2) If it is impossible to postpone the transaction where facts exist which indicate a matter under section 43 subsection (1), or if postponement could frustrate proceedings in relation to a suspected criminal offence, the execution of the transaction shall be permitted. The report under section 43 subsection (1) shall be filed subsequently by the obliged entity without delay.

Section 47

Prohibition of disclosure, authorisation to issue ordinances

(1) An obliged entity shall be prohibited from disclosing to the contracting party, the instructing party of the transaction or other third parties

1. the intended filing or filing of a report under section 43 subsection (1),
2. an investigation launched on the basis of a report under section 43 subsection (1), and
3. a demand for information under section 30 subsection (3), first sentence.

(2) The prohibition shall not apply to disclosure

1. to government agencies,
2. between obliged entities which are part of the same group,
3. between obliged entities under section 2 subsection (1) numbers 1 to 3 and 6 to 8 and their subsidiary group undertakings in third countries, provided that the group is subject to a group programme under section 9,
4. between obliged entities under section 2 subsection (1) numbers 10 to 12 from Member States of the European Union or from third countries which impose requirements regarding a system to prevent money laundering and terrorist financing equivalent to those laid down in Directive (EU) 2015/849, provided that the persons concerned perform their professional activities
 - a) by means of self-employment,
 - b) as employees within the same legal person, or

- c) as employees within a structure which shares common ownership, management or compliance control in relation to requirements to prevent money laundering or terrorist financing,
5. between obliged entities under section 2 subsection (1) numbers 1 to 3, 6, 7, 9, 10 and 12 in cases which relate to the same contracting party and the same transaction involving two or more obliged entities, if
 - a) the obliged entities are domiciled in a Member State of the European Union or in a third country which imposes requirements regarding a system to prevent money laundering and terrorist financing equivalent to those laid down in Directive (EU) 2015/849,
 - b) the obliged entities are from the same professional category, and
 - c) the obliged entities are subject to comparable obligations as regards professional secrecy and personal data protection.

Information disclosed under the first sentence, numbers 2 to 5, may be used solely for the purpose of preventing money laundering or terrorist financing.

(3) Unless otherwise regulated in this Act or other laws, government agencies other than the Financial Intelligence Unit which have gained knowledge of a report filed under section 43 subsection (1) shall be prohibited from disclosing this information to

1. the contracting party of the obliged entity,
2. the instructing party of the transaction,
3. the beneficial owner,
4. a person used as a representative or messenger by one of the persons referred to in numbers 1 to 3 above, and
5. the legal adviser engaged by one of the persons referred to in numbers 1 to 4 above.

Disclosure of this information to these persons shall only be permissible with the prior consent of the Financial Intelligence Unit.

(4) Where obliged entities under section 2 subsection (1) numbers 10 to 12 seek to dissuade a client from engaging in illegal activity, this shall not constitute disclosure.

(5) Obligated entities under section 2 subsection (1) numbers 1 to 9 may provide each other with information other than that referred to in subsection (1), first sentence, about specific matters which involve abnormalities or unusual circumstances indicating money laundering, one of its predicate offences or terrorist financing, if they can assume that other obliged entities require this information for

1. the risk assessment of a corresponding or similar transaction or business relationship, or
2. the assessment of whether a report under section 43 subsection (1) or a criminal complaint under section 158 of the Code of Criminal Procedure¹⁴ should be filed.

¹⁴ *Strafprozeßordnung*

The information may also be provided using databases, irrespective of whether these databases are operated by the obliged entities under section 2 subsection (1) numbers 1 to 9 themselves or by third parties. The information provided may be used solely for the purpose of preventing money laundering, its predicate offences or terrorist financing and only subject to the conditions imposed by obliged entity providing the information.

(6) The Federal Ministry of Finance may, in agreement with the Federal Ministry of the Interior, the Federal Ministry of Justice and Consumer Protection and the Federal Ministry for Economic Affairs and Energy, by means of an ordinance not requiring the consent of the Bundesrat, enact further provisions prohibiting the disclosure of information with regard to obliged entities from high-risk third countries under Article 9 of Directive (EU) 2015/849.

Section 48

Exemption from liability

(1) Whosoever files a report under section 43 subsection (1) or a criminal complaint under section 158 of the Code of Criminal Procedure may not be held liable for this report or criminal complaint unless a false report or criminal complaint has been filed as a result of wilful intent or gross negligence.

(2) Subsection (1) above shall also apply if

1. an employee reports a matter under section 43 subsection (1) to his superior or to an in-house body for the receipt of such a report, and
2. an obliged entity or one of its employees complies with a demand for information from the Financial Intelligence Unit under section 30 subsection (3), first sentence.

Section 49

Access to information and protection of reporting employees

(1) If the analysis of a matter reported under section 43 is not yet complete, the Financial Intelligence Unit may, upon request, provide the person concerned with details of the available information concerning him if this will not interfere with the purpose of the analysis. If it provides details to the person concerned, it shall redact the personal data of the individual who filed the report under section 43 subsection (1).

(2) If the analysis of a matter reported under section 43 is complete but has not been transmitted to the law enforcement agency, the Financial Intelligence Unit may, at the request of the person concerned, provide details of the available information concerning him. It shall refuse to provide such details if this information becoming known would have negative effects on

1. international relations,
2. matters concerning the internal or external security of the Federal Republic of Germany,
3. the conduct of another criminal investigation, or
4. the conduct of ongoing judicial proceedings.

When providing details, it shall redact the personal data of the individual who has filed a report under section 43 subsection (1) or complied with a demand for information from the Financial Intelligence Unit. At the request of the person concerned, it may permit exceptions to the third sentence above, if legitimate interests of the person concerned are overriding.

(3) The Financial Intelligence Unit shall no longer be authorised to provide details to the person concerned once it has transmitted the matter in question to the law enforcement agency. Once proceedings by the public prosecution office or the court have been completed, the Financial Intelligence Unit shall again be authorised to provide details to the person concerned. In this case, subsection (2) above shall apply, *mutatis mutandis*.

(4) If the person who has filed a report under section 43 subsection (1) or reported such a matter internally to the obliged entity is employed by the obliged entity, he may not suffer any discrimination in his employment relationship as a result of the report.

Article 2

Amendment of the Ordinance establishing Security Vetting Requirements for Vital and Defence Establishments¹⁵

In section 1 of the Ordinance establishing Security Vetting Requirements for Vital and Defence Establishments in the version promulgated on 12 September 2007 (Federal Law Gazette I, p. 2294), most recently amended by Article 1 of the Ordinance of 3 December 2015 (Federal Law Gazette I, p. 2186), the full stop in number 5 shall be replaced by a comma and the following number 6 shall be added after number 5:

- “6. the Financial Intelligence Unit, insofar as it, in its task of preventing, detecting and supporting the combating of money laundering and terrorist financing, detects forms of organised crime or terrorism and long-term cooperation takes place with the federal intelligence services.”

Article 3

Amendment of the Act on the Central Register of Foreigners¹⁶

The Act on the Central Register of Foreigners of 2 September 1994 (Federal Law Gazette I, p. 2265), most recently amended by Article 3 paragraph (4) of the Act of 23 December 2016 (Federal Law Gazette I, p. 3346), shall be amended as follows:

1. In the table of contents, the following section 17a shall be inserted after section 17:

“Section 17a Transmission of data to the Financial Intelligence Unit”

2. The following new section 17a shall be inserted after section 17:

¹⁵ *Sicherheitsüberprüfungsfeststellungsverordnung*

¹⁶ *Gesetz über das Ausländerzentralregister*

“Section 17a

Transmission of data to the Financial Intelligence Unit

The basic data and the following data on foreign nationals who are not EU citizens entitled to free movement shall be transmitted upon request to the Financial Intelligence Unit for the performance of its tasks under section 28 subsection (1), second sentence, number 2 of the Money Laundering Act¹⁷:

1. alternative spellings of names,
 2. other names,
 3. previous names,
 4. aliases,
 5. information about their identity document,
 6. the serial number of their registration certificate for asylum seekers in accordance with section 63a of the Asylum Act¹⁸ (arrival certificate number) as well as the date of issue and the duration of validity,
 7. data under section 3 subsection (1) number 7 in conjunction with section 2 subsection (1a) and subsection (2) numbers 1, 3, 7, 7a and 12.”
3. The following number 7a shall be added after section 22 subsection (1), first sentence, number 7:
- “7a. the Financial Intelligence Unit,”.
4. Section 32 subsection (1), first sentence, shall be amended as follows:
- a) in number 11, the full stop at the end shall be replaced by a comma,
 - b) the following number 12 shall be added after number 11:
“12. the Financial Intelligence Unit.”

Article 4

Amendment of the Ordinance Implementing the Act on the Central Register of Foreigners¹⁹

The Ordinance Implementing the Act on the Central Register of Foreigners of 17 May 1995 (Federal Law Gazette I, p. 695), most recently amended by Article 4a of the Act of 22 December 2016 (Federal Law Gazette I, p. 3155), shall be amended as follows:

1. Section 8 subsection (3) shall be amended as follows:
 - a) In number 29, the full stop at the end shall be replaced by a comma.

¹⁷ *Geldwäschegesetz*

¹⁸ *Asylgesetz*

¹⁹ *Verordnung zur Durchführung des Gesetzes über das Ausländerzentralregister*

b) The following number 30 shall be added:

“30. tasks under section 28 subsection (1), second sentence, number 2 of the Money Laundering Act.”

2. The annex shall be amended as follows:

- a) In numbers 1, 2, 3, 4 and 8, the list item “- Financial Intelligence Unit for the performance of its tasks under section 28 subsection (1), second sentence, number 2 of the Money Laundering Act” shall be added in column D number I and number II in each case.
- b) In numbers 9, 10, 11, 12, 13, 14a, 16, 17, 18 and 23, the list item “- Financial Intelligence Unit for the performance of its tasks under section 28 subsection (1), second sentence, number 2 of the Money Laundering Act” shall be added in column D number I in each case.
- c) In numbers 3a, 5, 5a, 7, 8a, 8b, 9a, 14, 15, 19, 20, 24, 24a, 29 and 35, the list item “- Financial Intelligence Unit for the performance of its tasks under section 28 subsection (1), second sentence, number 2 of the Money Laundering Act” shall be added in column D in each case.
- d) In number 3a, the words “sections 15a, 18a to 18e, 24a of the Act on the Central Register of Foreigners” shall be replaced in each case by the words “sections 15, 17a, 18a to 18e, 24a of the Act on the Central Register of Foreigners”.
- e) In numbers 5a and 8b, the words “sections 15, 21 of the Act on the Central Register of Foreigners” shall be replaced in each case by the words “sections 15, 17a, 21 of the Act on the Central Register of Foreigners”.
- f) In numbers 7, 9, 19 and 20, the words “sections 15, 16, 18, 18a, 18b, 18d, 21, 23, 24a of the Act on the Central Register of Foreigners” shall be replaced in each case by the words “sections 15, 16, 17a, 18, 18a, 18b, 18d, 21, 23, 24a of the Act on the Central Register of Foreigners”.
- g) In numbers 8, 10, 11, 12, 13, 14, 15 and 17, the words “sections 15, 16, 18, 18a, 18b, 18d, 21, 23 of the Act on the Central Register of Foreigners” shall be replaced in each case by the words “sections 15, 16, 17a, 18, 18a, 18b, 18d, 21, 23 of the Act on the Central Register of Foreigners”.
- h) In number 8a, the words “sections 15, 18a to 18e of the Act on the Central Register of Foreigners” shall be replaced in each case by the words “sections 15, 17a, 18a to 18e of the Act on the Central Register of Foreigners”.
- i) In number 9a, the words “sections 15, 18a, 18b, 24a of the Act on the Central Register of Foreigners” shall be replaced in each case by the words “sections 15, 17a, 18a, 18b, 24a of the Act on the Central Register of Foreigners”.
- j) In number 14a, the words “sections 15, 16, 18, 18a, 18b, 21, 23 of the Act on the Central Register of Foreigners” shall be replaced in each case by the words “sections 15, 16, 17a, 18, 18a, 18b, 21, 23 of the Act on the Central Register of Foreigners”.
- k) In numbers 16 and 18, the words “sections 15, 16, 18, 18a, 18b, 18d, 21 of the Act on the Central Register of Foreigners” shall be replaced in each case by the words “sections 15, 16, 17a, 18, 18a, 18b, 18d, 21 of the Act on the Central Register of Foreigners”.

- l) In numbers 24, 24a and 29, the words “sections 15, 16, 21, 24a of the Act on the Central Register of Foreigners” shall be replaced in each case by the words “sections 15, 16, 17a, 21, 24a of the Act on the Central Register of Foreigners”.

Article 5

Amendment of the Federal Central Criminal Register Act²⁰

Section 41 subsection (1), first sentence, of the Federal Central Criminal Register Act in the version promulgated on 21 September 1984 (Federal Law Gazette I, p. 1229, 1985 I, p. 195), most recently amended by Article 2 paragraph (6) of the Act of 4 November 2016 (Federal Law Gazette I, p. 2460), shall be amended as follows:

1. In number 13, the full stop at the end shall be replaced by a comma.
2. The following number 14 shall be added:

“14. the Financial Intelligence Unit for the performance of its tasks under the Money Laundering Act.”

Article 6

Amendment of the Act to Combat Undeclared Work and Illegal Work²¹

Section 17 subsection (1), first sentence, of the Act to Combat Undeclared Work and Illegal Work of 23 July 2004 (Federal Law Gazette I, p. 1842), most recently amended by the Act to Reinforce the Combating of Undeclared Work and Illegal Work²² (Federal Government bill of 12 October 2016 (Bundestag printed paper 18/9958)), shall be amended as follows:

1. In number 4, the full stop at the end shall be replaced by the word “or”.
2. The following number 5 shall be added:

“5. the Financial Intelligence Unit for the performance of its tasks under section 28 subsection (1), second sentence, number 2 of the Money Laundering Act.”

²⁰ Gesetz über das Zentralregister und das Erziehungsregister

²¹ Gesetz zur Bekämpfung der Schwarzarbeit und illegalen Beschäftigung

²² Gesetz zur Stärkung der Bekämpfung der Schwarzarbeit und illegalen Beschäftigung

Article 7

Amendment of the Fiscal Administration Act²³

Section 5a of the Fiscal Administration Act in the version promulgated on 4 April 2006 (Federal Law Gazette I, p. 846, p. 1202), most recently amended by Article 5 of the Act of 20 December 2016 (Federal Law Gazette I, p. 3000), shall be amended as follows:

1. Subsection (2) shall be amended as follows:
 - a) The following new third sentence shall be inserted after the second sentence:

“The Financial Intelligence Unit shall be established within the Customs Criminological Office.”
 - b) The previous third sentence shall become the fourth sentence.
2. In subsection (3), second sentence, the full stop at the end shall be replaced by a semicolon, and the words “this shall not apply to the Financial Intelligence Unit, which solely performs tasks under the Act on the Detection of Proceeds from Serious Crimes (Money Laundering Act).” shall be inserted.

Article 8

Amendment of the Customs Investigations Service Act²⁴

The Customs Investigations Service Act of 16 August 2002 (Federal Law Gazette I, p. 3202), most recently amended by Article 2 paragraph (5) of the Act of 22 December 2016 (Federal Law Gazette I, p. 3150), shall be amended as follows:

1. In section 11 subsection (2), first sentence, a comma and the words “the Financial Intelligence Unit” shall be inserted after “Customs Administration”.
2. Section 33 subsection (1), second sentence, shall be amended as follows:
 - a) In number 3, the word “or” shall be replaced by a comma.
 - b) In number 4, the word “or” shall be inserted after the word “individuals”.
 - c) The following number 5 shall be added:

“5. for the performance of the tasks of the Financial Intelligence Unit under the Money Laundering Act”
3. Section 33 subsection (4) shall be amended as follows:
 - a) The following sentence shall be inserted after the first sentence:

“The first sentence above shall apply to the Financial Intelligence Unit, provided that it is permitted to also use retrieved data for its own purposes.”

²³ Gesetz über die Finanzverwaltung

²⁴ Gesetz über das Zollkriminalamt und die Zollfahndungsämter

- b) The previous second sentence shall become the third sentence; the previous third sentence shall become the fourth sentence.

Article 9

Amendment of the Fiscal Code²⁵

The Fiscal Code in the version promulgated on 1 October 2002 (Federal Law Gazette I, p. 3866; 2003 I, p. 61), most recently amended by Article 3 paragraph (13) of the Act of 26 July 2016 (Federal Law Gazette I, p. 1824), shall be amended as follows:

1. Section 31b shall be worded as follows:

“Section 31b

Disclosure for the purpose of countering money laundering and terrorist financing

(1) The disclosure to the competent authority in the individual case of the circumstances of the person concerned which are protected under section 30 shall be permissible even without request insofar as such disclosure serves one of the following purposes:

1. the conduct of criminal proceedings for money laundering or terrorist financing under section 1 subsections (1) and (2) of the Money Laundering Act,
2. the prevention, detection and combating of money laundering or terrorist financing under section 1 subsections (1) and (2) of the Money Laundering Act,
3. the conduct of administrative fine proceedings under section 56 of the Money Laundering Act against obliged entities under section 2 subsection (1) numbers 13 to 16 of the Money Laundering Act,
4. the taking of measures or issuing of orders under section 51 subsection (2) of the Money Laundering Act against obliged entities under section 2 subsection (1) numbers 13 to 16 of the Money Laundering Act, or
5. the performance of tasks under section 28 subsection (1) of the Money Laundering Act by the Financial Intelligence Unit.

(2) The revenue authorities shall notify the Financial Intelligence Unit of matters without delay, irrespective of the amount involved, if there are facts which indicate that

1. the property related to the notifiable matter is the object of a criminal offence under section 261 of the Criminal Code, or
2. the property is related to terrorist financing.

Notifications to the Financial Intelligence Unit shall be made by means of electronic data transmission; a secure method shall be used for this which guarantees the confidentiality and integrity of the data set. If the data transmission is disrupted,

²⁵ Abgabenordnung

notification by post shall exceptionally be possible. Section 45 subsections (3) and (4) of the Money Laundering Act shall apply, mutatis mutandis.

(3) The revenue authorities shall notify the competent administrative authority, without delay, of facts indicating that

1. an obliged entity under section 2 subsection (1) numbers 13 to 16 of the Money Laundering Act has committed or is committing an administrative offence under section 56 of the Money Laundering Act, or
2. the conditions have been met for measures to be taken or orders to be issued under section 51 subsection (2) of the Money Laundering Act against obliged entities under section 2 subsection (1) numbers 13 to 16 of the Money Laundering Act.

(4) Section 43 subsection (2) of the Money Laundering Act shall apply, mutatis mutandis.”

2. Section 93 shall be amended as follows:

a) Subsection 8, first sentence, shall be worded as follows:

“The Federal Central Tax Office shall, upon request, provide information about the data referred to in section 93b subsection (1)

1. to the authorities responsible for administering
 - a) basic income support for jobseekers under the Second Book of the Social Code²⁶,
 - b) social assistance under the Twelfth Book of the Social Code,
 - c) training assistance under the Federal Training Assistance Act²⁷,
 - d) upgrading training assistance under the Upgrading Training Assistance Act²⁸, and
 - e) housing benefit under the Housing Benefits Act²⁹

insofar as this is necessary to verify that eligibility conditions are met and a previous request for information addressed to the person concerned did not or is not likely to produce any results;

2. to the police services of the Federation and of the *Länder*, insofar as this is necessary to avert a significant threat to public security, and
3. to the authorities of the *Länder* for the protection of the constitution, insofar as this is necessary for the performance of their tasks and expressly permitted by *Land* law.”

b) In subsection (9), the following fourth sentence shall be added:

²⁶ Sozialgesetzbuch

²⁷ Bundesausbildungsförderungsgesetz

²⁸ Aufstiegsfortbildungsförderungsgesetz

²⁹ Wohngeldgesetz

“The first and second sentences shall not be applied in the cases referred to in subsection 8, first sentence, numbers 2 or 3, or insofar as is expressly determined by federal law.”

3. In section 154 subsection (2), second sentence, the words “section 4 subsection (3) number 1 of the Money Laundering Act” shall be replaced by the words “section 11 subsection (4) number 1 of the Money Laundering Act”.

Article 10

Amendment of the Customs Administration Act³⁰

Section 12a of the Customs Administration Act of 21 December 1992 (Federal Law Gazette I, p. 2125), most recently amended by the Act Amending the Customs Administration Act³¹ (Federal Government bill of 17 October 2016 (Bundesrat printed paper 18/9987)), shall be amended as follows:

1. In subsection (2), first sentence, the word “orally” shall be deleted.
2. In subsection (3), first sentence, the words “section 2 subsection (1) numbers 1 to 6 of the Money Laundering Act” shall be replaced by the words “section 2 subsection (1) numbers 1 to 9 of the Money Laundering Act”.
3. In subsection (8), third sentence, a comma and the words “the Financial Intelligence Unit” shall be inserted after “social benefit agencies”.

Article 11

Amendment of the Tenth Book of the Social Code – Social Administration Procedures and Social Security Data Protection

The following subsection (4) shall be added after section 71 subsection (3) of the Tenth Book of the Social Code – Social Administration Procedures and Social Security Data Protection – in the version promulgated on 18 January 2001 (Federal Law Gazette I, p. 130), most recently amended by Article 20 paragraph (8) of the Act of 23 December 2016 (Federal Law Gazette I, p. 3234):

“(4) Transmission of social security data shall also be permissible insofar as this is necessary in the individual case for the lawful performance of tasks within the remit of the Financial Intelligence Unit under section 28 subsection (1), second sentence, number 2 of the Money Laundering Act. The transmission shall be limited to information about the last name and first name as well as previous names, date of birth, place of birth, current and previous addresses of the data subject and the names and addresses of his current and past employers.”

³⁰ Zollverwaltungsgesetz

³¹ Gesetz zur Änderung des Zollverwaltungsgesetzes

Article 16

Amendment of the Trade Regulation Code³²

In section 150a subsection (2) of the Trade Regulation Code in the version promulgated on 22 February 1999 (Federal Law Gazette I, p. 202), most recently amended by Article 16 of the Act of 11 November 2016 (Federal Law Gazette I, p. 2500), the following number 5 shall be added after number 4:

- “5. to the Financial Intelligence Unit for the performance of its tasks under the Money Laundering Act.”.

Article 21

Amendment of the Road Traffic Act³³

Section 36 subsection (2), first sentence, of the Road Traffic Act in the version promulgated on 5 March 2003 (Federal Law Gazette I, p. 310, 919), most recently amended by Article 1 of the Act of 28 November 2016 (Federal Law Gazette I, p. 2722), shall be amended as follows:

1. In number 2, the word “and” at the end of the sentence shall be replaced by a comma.
2. In number 3, the full stop at the end shall be replaced by the word “and”.
3. The following number 4 shall be added:

“4. to the Financial Intelligence Unit for the performance of its tasks under the Money Laundering Act.”

Article 23

Entry into force, repeal

This Act shall enter into force on 26 June 2017. At the same time, the Act on the Detection of Proceeds from Serious Crimes of 13 August 2008 (Federal Law Gazette I, p. 1690), most recently amended by Article 7 of the Act of 11 April 2016 (Federal Law Gazette I, p. 720), shall cease to be in force.

³² *Gewerbeordnung*

³³ *Straßenverkehrsgesetz*

Statement of reasons

A. General part

I. Objectives of and necessity for the regulations

This Act transposes the Fourth Money Laundering Directive. In addition, the Financial Intelligence Unit is being transferred from the Federal Criminal Police Office to the Central Customs Authority and realigned.

The Fourth Money Laundering Directive repeals the Third Money Laundering Directive (Directive 2005/60/EC) and adapts the European regulations to reflect the 2012 revised Recommendations of the Financial Action Task Force (FATF). The bases for national legislation to combat money laundering and terrorist financing have been adapted and expanded. Due to changes to EU legal requirements and the comprehensive adjustments in relation to the Financial Intelligence Unit, the bill envisages the replacement of the current Money Laundering Act (*Geldwäschegesetz*) with a revised act.

II. Essential content of the draft

Revised version of the Money Laundering Act

The Fourth Money Laundering Directive continues the risk-based approach of the Third Money Laundering Directive and strengthens and defines it more precisely. The scope of the due diligence requirements is determined by the investigation into and assessment of the risks in relation to money laundering and terrorist financing which are performed for each customer, business relationship and transaction. In future therefore, as a basic principle, obliged entities subject to anti-money laundering legislation must examine every business relationship and transaction individually for the relevant risk in relation to money laundering and terrorist financing and if applicable take additional measures to mitigate the risk of money laundering. In doing so scenarios that have hitherto resulted in a low risk classification subject to an assessment of the specific case are only taken into account as factors within the context of the overall assessment to be performed. Conversely, there are still scenarios that automatically result in a higher risk classification. The minimum requirements relating to the relevant risk factors are listed in Annexes 1 and 2 to the Money Laundering Act. The supervisory authorities, too, must take a risk-based approach in future.

The risk-based approach pursued by the Fourth Money Laundering Directive is not only implemented at the level of obliged entities. The European Commission and the Member States of the European Union perform their own risk analyses in each case for the supranational or respective national level. European supervisory authorities, too, are required to issue an opinion on the risks of money laundering and terrorist financing affecting the financial sector every two years. In accordance with the directive the findings resulting from the European Commission's risk analysis are to be incorporated in the risk assessment of the EU Member States. The Federal Ministry of Finance will issue a risk analysis for Germany.

The group of obliged entities is expanded by virtue of the Fourth Money Laundering Directive. Not only gaming houses, organisers and brokers of online gambling, but all organisers and brokers of gambling are now, as a basic principle, obliged entities. In order to mitigate the risks related to money laundering and terrorist financing posed by large cash payments, persons trading in goods are to be covered by the Money Laundering Act when they make or receive cash payments of €10,000 or more.

The previous so-called third country equivalence list is being replaced by a European Commission negative list containing countries generally assumed to have a high risk of money laundering and terrorist financing due to their structural shortcomings. In cases where

the contracting parties are located in such high-risk states, a higher risk must be assumed. Furthermore, as a basic principle, obliged entities may not use third parties located in high-risk states to fulfil due diligence requirements.

Internal safeguards that hitherto only applied to credit and financial services institutions and organisers and brokers of online gambling shall be required for all obliged entities under the Fourth Money Laundering Directive. Accordingly Division 2a of the previous Money Laundering Act is being deleted and transferred to the general provisions of the Money Laundering Act. The standard of internal safeguards now being stipulated, which was already contained in section 9a of the previous version of the Money Laundering Act, is being applied to the entire group of obliged entities, insofar as no statutory exceptions are in effect.

The differentiation that has been made up to now in the case of politically exposed persons according to whether they exercise their public function at home or abroad or whether they are Members of the European Parliament elected domestically is being abandoned. The wording of the directive no longer leaves any scope for this.

The conditions for a central transparency register for recording information on beneficial owners are being created. Certain information relating to beneficial owners of legal entities under private law, registered business partnerships, trusts and legal arrangements having a structure or function similar to trusts is made available through the transparency register. This increase in transparency is intended to help prevent abuse of the aforementioned associations and legal arrangements for the purpose of money laundering and terrorist financing. Under the Fourth Money Laundering Directive access to this register is staggered (authorities and the Financial Intelligence Unit within the scope of their tasks, obliged entities in order to perform their due diligence requirements and if applicable where there is a justified interest also other persons and organisations such as non-governmental organisations and specialised journalists).

With respect to cross-border correspondent relationships the obliged entities must comply with enhanced due diligence requirements. These include the obtaining of approval to enter into such business relationships from senior management and information about the correspondent's anti-money laundering system. In this respect, the regulation applicable hitherto to credit institutions and financial services institutions was transferred from the Banking Act (*Kreditwesengesetz*) to the revised Money Laundering Act and expanded in the implementation of the Fourth Money Laundering Directive.

Obliged entities that are parent undertakings of a group must set up group-wide safeguards and procedures and ensure they are implemented. In addition, there are specific requirements for group undertakings in EU Member States and third countries. The parent undertakings must ensure that group undertakings in EU Member States comply with the legal provisions valid there for implementing the Fourth Money Laundering Directive. If the implementation of groupwide policies and procedures is not possible under the law of a third country in which a group undertaking is located and in which requirements under anti-money laundering law are less strict and if additional measures are not sufficient to adequately mitigate the risks of money laundering and terrorist financing, the business relationship or transaction must be terminated.

In implementing the sanction requirements of the Fourth Money Laundering Directive, the administrative fine provisions of the previous section 17 of the Money Laundering Act are being restructured, the elements of administrative offences adjusted or reintroduced and the level of fines increased. Increasing the level of fines emphasises the importance attached to combating money laundering and terrorist financing. The maximum amount of the fixed level of fines is one million euro for breaches that are serious, repeated or systematic, and five million euro for credit and financial institutions with the possibility of a turnover-based fine. In addition, a fine of up to twice the economic benefit derived from the breach is possible. The previous upper level of fines of €100,000 shall remain for other cases. The supervisory authorities must announce all measures and fine decisions against which there is now no appeal on their website and if applicable report them to the European supervisory authorities.

In addition, the supervisory authorities and the obliged entities must set up a whistleblower procedure that enables potential and actual breaches to be reported.

The Act creates the legal framework for the tasks and responsibilities of the Financial Intelligence Unit. Up to now the Financial Intelligence Unit has been organised along police lines and located at the Federal Criminal Police Office in the area of operations of the Federal Ministry of the Interior. It is to be transferred to the Federal Ministry of Finance's area of operations and located there at the Central Customs Authority as an "authority in the authority". In future the Financial Intelligence Unit is to perform a greater filtering function, analysing reports received after they have been enhanced by other data and forwarding the matter to the competent authorities. In addition, it is to have greater communication with the various obliged entities' groups and make them aware in particular of new trends and practices in money laundering and terrorist financing.

for information purposes only

B. Specific part

Concerning Artikel 1 (Act on the Detection of Proceeds from Serious Crimes)

As part of the implementation of the Fourth Money Laundering Directive and the reorganisation of the Financial Intelligence Unit, the previous Money Laundering Act is being replaced by a revised Money Laundering Act.

for information purposes only

Concerning Abschnitt 5 (Financial Intelligence Unit)

Concerning § 27 (Financial Intelligence Unit)

As part of the implementation of the Fourth Money Laundering Directive, the central authority for reporting under anti-money laundering legislation is getting a new name and will be moved from the area of operations of the Federal Ministry of the Interior to that of the Federal Ministry of Finance. Formerly located with the Federal Criminal Police Office and known as the “Zentralstelle für Verdachtsmeldungen” (Central Authority for Reporting), it is being re-established within the Central Customs Authority and will now go under the name of the “Financial Intelligence Unit”. At the same time the central authority, which up to now has been organised along police lines, is being re-established as a preventative authority with an administrative role. Accordingly, for the first time its responsibilities are now being regulated by detailed provisions in the Money Laundering Act. The focus of its activity in future will be the receipt and analysis of suspicious matters in relation to money laundering and terrorist financing, communicating with obliged entities, and national and international cooperation.

Concerning Absatz 1

Subsection 1 refers specifically to the requirements of Article 32 paragraphs 1 and 3 of the Fourth Money Laundering Directive. The Financial Intelligence Unit shall perform the tasks of the central national unit within the meaning of the Fourth Money Laundering Directive.

At the same time subsection (1) defines the purpose of the Financial Intelligence Unit. Whereas the specific function has previously been the “prevention and prosecution of money laundering and terrorist financing”, the revised wording largely corresponds to the wording of Article 32 paragraph 1 of the Fourth Money Laundering Directive. Accordingly in future it shall be involved in “preventing, detecting and supporting the combating of money laundering and terrorist financing”. A change in substance is thus not intended.

Concerning Absatz 2

Subsection (2) emphasises the requirements from Article 32 paragraph 3, first sentence, of the Fourth Money Laundering Directive that the Financial Intelligence Unit shall be organisationally autonomous and operate with professional independence. For this reason it shall only be subject to legal supervision by the Federal Ministry of Finance in accordance with section 28 subsection (2) in regard to the essential areas of responsibility, namely the receipt of reports, their analysis and dissemination of the result of this analysis to the competent domestic public authorities and the initiating of any urgent measures under section 40.

Concerning § 28 (Tasks, supervision and cooperation)

Section 28 describes the tasks of the Financial Intelligence Unit and defines the scope of supervision by the Federal Ministry for Finance. The authority’s powers and obligations relating to the tasks are not defined until sections 29 to 42.

Concerning Absatz 1

In order to satisfy the authority’s purpose stipulated in section 27 subsection (1), the first sentence compactly summarises once again the essential tasks of the Financial Intelligence Unit by way of an introduction. Thus, the essential task is the receipt and analysis of reports and other information that obliged entities subject to money laundering law and the authorities are required to transmit to the Financial Intelligence Unit, and the dissemination of this information to the law enforcement agencies and other competent domestic public authorities, insofar as these are involved in the investigation, prevention or combating of money laundering, terrorist financing or other criminal offences as part of the performance of their tasks.

The second sentence then breaks down in detail the various tasks of the Financial Intelligence Unit in the form of a numbered list.

Concerning Nummer 1

Number 1 describes the first step in the Financial Intelligence Unit's activity, which is also the basis for all the authority's other activities: the receiving, collecting and storing of reports and information, as authorised under section 30 subsection (1) of the Act. The activity is already listed in section 10 subsection (1), second sentence, number 1 of the previous version of the Money Laundering Act.

Concerning Nummer 2

Number 2 describes the operational analysis and assessment of reports that the Financial Intelligence Unit has received under number 1 above, and of other information that it has been sent ex officio by other domestic or foreign authorities. For the operational analysis, supplementary information is first obtained on the respective matter from other authorities or the obliged entities. An assessment is then made as to whether a connection can actually be established to money laundering, terrorist financing or another criminal offence. Operational analysis is described in Article 32 paragraph 8 sub-paragraph a of the Fourth Money Laundering Directive as one of the two analysis functions of the Financial Intelligence Unit and is intended to assist in considering reports received relating to individual cases.

Concerning Nummer 3

Number 3 establishes national cooperation with the supervisory authorities. Accordingly, in implementation of Article 32 paragraph 4, second sentence, of the Fourth Money Laundering Directive the Financial Intelligence Unit has to transmit, ex officio, information to the domestic supervisory authorities which the latter require to better implement the risk-based approach to supervision and to identify new trends in and methods used in the committing of money laundering and terrorist financing. At the same time the Financial Intelligence Unit must provide information to the competent domestic supervisory authorities on request. In order to strengthen the prevention of money laundering and terrorist financing, the Financial Intelligence Unit will also take on a coordinating role and use its information to support the work of the supervisory authorities of the Länder in particular.

Concerning Nummer 4

International cooperation with financial intelligence units of other states, which correspond in purpose to the German Financial Intelligence Unit, is reflected in number 7 below. International cooperation is already provided for in section 10 subsection (2), first sentence, of the previous version of the Money Laundering Act. Article 52 of the Fourth Money Laundering Directive in particular establishes that Member States must ensure "that FIUs cooperate with each other to the greatest extent possible, regardless of their organisational status". Specific rules for intra-European exchange of data are given in sections 33 and 36 and in sections 34 and 35 for international exchange of data.

Concerning Nummer 5

The prohibiting of proposed transactions covered by number 5 is a potential urgent measure the Financial Intelligence Unit can take. Where there is a suspicion that the transaction is related to money laundering or terrorist financing, the authority should under Article 32 paragraph 7, first sentence, of the Fourth Money Laundering Directive be able to withhold consent to the transaction or prohibit it definitively. This shall prevent the incriminated money being removed from the state's sphere of influence through cash withdrawals or transfers abroad. Prohibiting the transaction allows the Financial Intelligence Unit to complete the operational analysis and disseminate its results including the property concerned to the law enforcement agencies to deal with further. The conditions and scope of the prohibition are described in more detail in section 40 below. The issuing of a prohibition on disposals of an account or custody account for example is provided for as a further urgent measure.

Concerning Nummer 6

Section 10 subsection (1), second sentence, number 2 of the previous version of the Money Laundering Act cites the duty of the Central Authority for Reporting to notify the law

enforcement agencies of any information concerning them and of any connections identified between criminal offences. Number 6 incorporates this task, and extends it in places: to be able to make better use overall of the analysis results of the Financial Intelligence Unit, the results of the operational analysis are now to be transmitted not only to the competent law enforcement agencies but also to other domestic public authorities within the context of their respective competency. For example, the information relevant to revenue authorities for the conduct of taxation procedures or criminal tax proceedings should be considered here. The transmission of relevant information mentioned in number 6 serves to implement Article 32 paragraph 3, third sentence, of the Fourth Money Laundering Directive, according to which it is to disseminate “[...] the results of its analyses and any additional relevant information to the competent authorities where there are grounds to suspect money laundering, associated predicate offences or terrorist financing”.

Concerning Nummer 7

The obligation under number 7 to provide feedback will serve to provide reporting obliged entities with an impression of the relevance and applicability of their reports so that internal measures for identifying suspicious facts relating to money laundering or terrorist financing can be adapted and improved if applicable. The specific scope of the feedback obligation to obliged entities is detailed in section 41.

Concerning Nummer 8

Under number 8 the Financial Intelligence Unit must conduct strategic analyses and produce reports on the basis of these. The strategic analysis cited in Article 32 paragraph 8 subparagraph b of the Fourth Money Laundering Directive is used to establish money laundering and terrorist financing trends and new patterns. Relevant reports may deal with money laundering or terrorist financing in general or focus on specific products, economic sectors or geographic risks. Recipients of such reports can be the Federal Ministry of Finance, federations, individual groups of obliged entities as well as supervisory authorities. As part of its functional supervision the Federal Ministry of Finance may also request reports on certain subjects from the Financial Intelligence Unit. The reports are also in line with the dissemination of information in accordance with section 10 subsection (1), second sentence, number 5 of the previous version of the Money Laundering Act.

Concerning Nummer 9

The engaging in dialogue with obliged entities and with domestic supervisory authorities and law enforcement agencies cited in number 9 is an extension of number 3 above and is intended to improve communication between all the parties involved. In addition, the law enforcement agencies are to be informed by the Financial Intelligence Unit of typologies and methods of money laundering and terrorist financing. Typologies show the actual forms of money laundering and terrorist financing according to common characteristics and in a readily comprehensible way.

Concerning Nummer 10 and 11

The keeping of statistics under number 10 and the publishing of an annual report under number 11 are already in section 10 subsection (1), second sentence, numbers 3 and 4 of the previous version of the Money Laundering Act relating to the tasks of the Financial Intelligence Unit. The statistics provide information on the data referred to in Article 44 paragraph (2) of the Fourth Money Laundering Directive in particular. They serve to inform parliament as and when necessary and can also be used in relation to international organisations (e.g. the Financial Action Task Force) for documenting the activity of the Financial Intelligence Unit.

Concerning Nummer 12

Participating in national and international working groups such as the EGMONT Group and the Financial Action Task Force (FATF) in accordance with number 12 promotes national

and international dialogue on money laundering and terrorist financing between the participating authorities.

Concerning Nummer 13

Number 13 has a catch-all function. It means that the Financial Intelligence Unit can perform other tasks that arise during its existence, including in view of further developments. These can be for instance courses and training both internally and with obliged entities or supervisory authorities, participation in scientific studies or assisting with the implementation of requirements under European law. Additional tasks must be undertaken in consultation with the Federal Ministry of Finance.

Concerning Absatz 2

Subsection (2) regulates the type of supervision the Federal Ministry of Finance shall conduct in relation to the Financial Intelligence Unit. In view of the professional independence and organisational autonomy that the FATF and the Fourth Money Laundering Directive require of the Financial Intelligence Unit, a distinction is made within the tasks under subsection (1) above: in the authority's core tasks, i.e. in the receiving of reports, their analysis, the initiating of urgent measures and the dissemination of analysis results to the competent domestic public authorities, the Financial Intelligence Unit is only subject to legal supervision; for all other tasks described in subsection (1) above it is subject to legal and functional supervision by the Federal Ministry of Finance.

Concerning Absatz 3

Subsection (3) emphasises the cooperation between the Financial Intelligence Unit, the supervisory authorities and other domestic public authorities. Based on Article 49 of the Fourth Money Laundering Directive, these government agencies must develop effective mechanisms to facilitate a smooth exchange of information and effective cooperation.

Concerning Absatz 4

The Financial Intelligence Unit may inform the competent authorities for the taxation procedure or the protection of the social security systems of matters which come to its knowledge in the performance of its activities, but which are not connected with money laundering or terrorist financing tasks, so that these authorities can follow the matter up, unless another government agency is doing so. Such authorities include in particular tax offices, when any matters connected with taxes come to the knowledge of the Financial Intelligence Unit.

Concerning § 29 (Data processing and further use)

Personal data that is processed in the data comparison or the analysis in particular shall come to the knowledge of the Financial Intelligence Unit in connection with the performance of its activities.

Concerning Absatz 1

Subsection (10) describes the purpose for processing personal data. In doing so, the requirements of Articles 41 and 43 of the Fourth Money Laundering Directive in particular are complied with.

In accordance with section 3 subsection (1) of the Federal Data Protection Act (*Bundesdatenschutzgesetz*) personal data means "any information concerning the personal or material circumstances of an identified or identifiable individual". This corresponds to the scope of Article 3 number 1 of Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016, which came into force on 28 May 2016, on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, which defines personal data as any information relating to an identified or identifiable natural person. The Federal Data Protection Act is

being comprehensively revised on the basis of Regulation (EU) 2016/679 and Directive (EU) 2016/680. Notwithstanding this, the definition of “personal data” will remain the same.

The definition of “processing” is defined in section 3 subsection (4) of the Federal Data Protection Act. According to this, processing means “the storage, modification, transfer, blocking and erasure of personal data”. These individual terms are defined separately in section 3 subsection (4), second sentence, numbers 1 to 5 of the Federal Data Protection Act. The terms “collection” and “use” are defined separately and unconnected from processing in section 3 subsection (3) and subsection (5) respectively of the Federal Data Protection Act. The definition of “processing” is being broadened for the purposes of implementing Directive (EU) 2016/680. According to Article 3 number 2 of Directive (EU) 2016/680 processing means “any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.” Directive (EU) 2016/680 still only recognises the definition of “processing”. When implemented this will take in the trio of “collection, processing and use” currently recognised under the Federal Data Protection Act.

Processing within the meaning of subsection (1) is to be interpreted within the meaning of Directive (EU) 2016/680 and covers all activities connected with personal data.

Concerning Absatz 2

Subsection (2) again stipulates declaratively that the Financial Intelligence Unit may compare its own, stored personal data with data from other authorities, insofar as it has been granted authorisation to do so elsewhere (in the Money Laundering Act or in another statutory regulation).

Concerning Absatz 3

Personal data may be processed without restriction within the scope of the performance of tasks by the Financial Intelligence Unit. The right to informational self-determination under Article 2 paragraph 1 in conjunction with Article 1 paragraph 1 of the Basic Law (*Grundgesetz*) must be observed. As part of training measures and statistics the Financial Intelligence Unit must as a rule anonymise personal data to protect the person affected by the data processing.

Concerning § 30 (Receipt and analysis of reports)

Concerning Absatz 1

A fundamental task of the Financial Intelligence Unit is the receipt and processing of matters reported by obliged entities under section 43 and by domestic public authorities under section 44. In addition, it also receives notifications from revenue authorities under section 31b of the Fiscal Code (*Abgabenordnung*) and reports on cash as described in subsection 1 number 3. Finally, under number 4 it must process other information that comes to its knowledge.

Concerning Absatz 2

The Financial Intelligence Unit is required under subsection (2) to investigate the reports filed under sections 43 and 44 below and the notifications made under section 31b of the Fiscal Code in order to ascertain whether the property concerned is related to money laundering, terrorist financing or another criminal offence. Article 32 paragraph 8 sub-paragraph a in conjunction with paragraph 3, second and third sentences, of the Fourth Money Laundering Directive is taken into account here. However, operational analysis of the information listed in subsection 1 numbers 3 and 4 is at the discretion of the authority. It can in any case be used as additional information when assessing the reports under sections 43 and 44 below and the notifications made under section 31b of the Fiscal Code.

Concerning Absatz 3

The Financial Intelligence Unit may obtain further information from both reporting and non-reporting obliged entities for the performance of its own tasks. The obliged entities' associated obligation to provide information, which has sanctions attached to it, is used to implement Article 32 paragraph 3, fourth sentence, of the Fourth Money Laundering Directive. With its demand for information, the Financial Intelligence Unit shall set a suitable time limit in which the obliged entity must provide the information requested.

To protect the bond of trust between certain persons bound by professional secrecy and persons who make use of their help and expertise, lawyers, notaries, auditors, tax advisors and other obliged entities under section 2 subsection (1) numbers 10 and 12 are released from the obligation to transmit information to the Financial Intelligence Unit under the first sentence above. This complies with the requirements of Article 34 paragraph 2 in conjunction with Article 33 paragraph 1 sub-paragraph b of the Fourth Money Laundering Directive. The right to refuse to provide information is limited in scope to facts given in trust or made known when carrying out their professional activity, insofar as the abovementioned obliged entities obtained these facts in the context of providing legal advice or the legal representation of the contracting party. The obligation to provide information under the first sentence above shall, however, re-apply – as also in section 43 subsection (2) – if the obliged entity knows that the contracting party has used or is using its legal advice for the purpose of money laundering, terrorist financing or another criminal offence.

Concerning § 31 (Right to obtain information from domestic public authorities, right of access to data)

The Financial Intelligence Unit's right of access to data and to obtain information from other domestic public authorities is stipulated to implement Article 32 paragraph 4, first sentence, of the Fourth Money Laundering Directive.

Concerning Absatz 1

Under subsection (1) the Financial Intelligence Unit may collect and process data from domestic public authorities in order to perform its tasks. The processing of data by the Financial Intelligence Unit is a matter of public interest in accordance with Article 43 of the Fourth Money Laundering Directive in conjunction with Directive 95/46/EC. The obligation of the domestic public authorities to provide information implements Article 32 paragraph 4, first sentence, of the Fourth Money Laundering Directive.

The right to obtain information under the first sentence corresponds to the obligation, stipulated in the second sentence, of the requested domestic public authorities to provide information. Accordingly, domestic public authorities must provide information to the Financial Intelligence Unit insofar as no special transmission restrictions preclude the fulfilment of the obligation. Transmission restrictions can be found, for instance, in section 23 of the Federal Constitution Protection Act (*Bundesverfassungsschutzgesetz*) or section 27 of the Act on the Bundeskriminalamt (*Bundeskriminalamtgesetz*).

Concerning Absatz 2

Subsection (2) specifies the time frame for complying with a request for information. The authorities requested must answer the Financial Intelligence Unit and make relevant data available immediately, i.e. without undue delay.

Concerning subsection (3)

Subsection (3) determines the principle of establishing an automated retrieval process, in the interest of the Financial Intelligence Unit, at the authorities involved, if the Financial Intelligence Unit is entitled by law to receive the personal data provided to it by retrieval as such, i.e. irrespective of the procedure, and the law does not stipulate otherwise in reference to automated data retrieval. At the same time the limiting nature of the frequency of transmission or of the particular urgency of the transmission as well as the legitimate interests of the data subjects must be taken into account.

The automated retrieval process gives the Financial Intelligence Unit the right to independently have at its disposal the data available at the respective domestic public authority.

The regulation stipulates the retrieval process, the first step of which always includes a data comparison and in an individual case where data retrieval is not possible, this can also be valid on its own. Data comparison means the automatic transmission of reference data by the Financial Intelligence Unit to an authority holding data, for the purpose of checking for a match with the data which exists there, in which case the Financial Intelligence Unit is informed by automated means. In the event of a positive result the corresponding data retrieval takes place directly, in other words transmission of the information stored by the authority holding the data is triggered by the Financial Intelligence Unit independently and by automated means. Data comparison and data retrieval overlap in this respect.

The automated retrieval process minimises the time and personnel required by the Financial Intelligence Unit and the domestic public authority involved.

Establishment of the automated process is subject to this being possible in the relevant individual case for the Financial Intelligence Unit. In this respect technical, temporal and financial aspects in particular must be taken into account.

Finally, the law deems it necessary, as well as sufficient, to document the retrieval process in reference to its permissibility; this relates to aspects of the retrieval process classed as important in accordance with numbers 1 to 4.

Concerning Absatz 4

Subsection (4) regulates the automated retrieval process as a *lex specialis* in reference to personal data stored in the police information system and necessary for the performance of the tasks of the Financial Intelligence Unit within the framework of the operational analysis it is obliged to conduct under section 28 subsection (1), second sentence, number 2.

Police information system data is that data within the meaning of section 11 subsections (1) and (2) in conjunction with section 13 subsections (1) and (3) of the Act on the Bundeskriminalamt. The data to be provided accordingly must comply with the requirements regarding the prevention and prosecution of criminal offences with transnational, international or material significance under section 2 subsection (1) of the Act on the Bundeskriminalamt and have a particular level of materiality.

Under section 2 subsection (3) of the Act on the Bundeskriminalamt, the Bundeskriminalamt administers the police information system in its function as a central body.

Hitherto the Customs/Police Joint Financial Investigative Teams (GFG) established at the Offices of Criminal Investigation of the *Länder* have compared personal data using automated data retrieval with the databases of the police information system as part of threat prevention within the scope of the "preliminary investigation" carried out there of a detailed report of suspected money laundering, in order to be able to record the intrinsic value of the matter reported under the Money Laundering Act. This task, considered as essential, will also be performed in the future with the purpose of maintaining the status quo, but is being transferred to the Financial Intelligence Unit.

With this in mind the second sentence regulates the so-called "hit/no-hit process", within the scope of which the Financial Intelligence Unit is entitled to retrieve the data by automated means in the event of a "data hit". In accordance with this the Financial Intelligence Unit transmits, by automated means, personal data to the police information system where a comparison is performed to check for a match. In the event of a match – known as a hit – the Financial Intelligence Unit shall receive, by automated means, information of this and at the same time shall retrieve the data which is stored on this in the police information system.

If the process described in the second sentence results in a match with data stored in the police information system that has previously been categorised by the authority holding the data as being especially sensitive, under the third sentence only the respective data holder

shall receive, by automated means, the information that a match (or hit) has been established and hence also of the unsuccessful attempt to retrieve the data by the Financial Intelligence Unit.

Under the fourth sentence, the participant in the police information system holding the data is obliged, as a basic principle, to contact the Financial Intelligence Unit without due delay in order to make the data which exists in the police information system available to it. The type and scope of the information to be transmitted may be restricted insofar as transmission restrictions preclude data transmission. Such transmission restrictions may exist if, for instance, provision of the data could have a negative impact on the success of ongoing investigations, threat prevention measures could be adversely affected or stipulations of foreign authorities relating to the use of data could preclude it. The authority holding the data decides according to its best judgement whether such transmission restrictions should be in place. In an individual case the authority holding the data is entitled to even refrain from making contact with the Financial Intelligence Unit with the result that the Financial Intelligence Unit does not become aware of the data match established. The data holder may refrain from making contact particularly when the fact that a criminal investigation is being conducted against one or more individuals is already categorised as being especially sensitive and hence the simple disclosure of this fact could lead to jeopardising the outcome of the investigation.

The fifth sentence clarifies the relationship with the regulation on automated data retrieval in the police information system that is adopted in the Act on the Bundeskriminalamt, whereby section 11 subsection 5 of the Act on the Bundeskriminalamt takes second place to the requirements of section 27 subsection 1, first to fourth sentences.

Finally, the sixth sentence stipulates the establishment of an automated retrieval process that goes beyond the regulatory content of the first to fourth sentences, subject to the consent of the Federal Ministry of the Interior, the Federal Ministry of Finance and the interior ministries and senate departments for the interior of the *Länder*. The appropriateness test set out in the sixth sentence must consider that the task of prosecution – in reference to the relevant police information system data – only permits an extended direct retrieval in circumstances that are determined by the limiting nature of the particular urgency and the legitimate interests of the data subjects.

Concerning Absatz 5

Subsection (5) establishes a *lex specialis* relating to revenue authorities.

The first sentence has a clarifying function as it refers to the duty of the revenue authorities to provide information and disseminate reports to the Financial Intelligence Unit ensuing from section 31b subsections (1) and (2) of the Fiscal Code. The tax secrecy requirement under section 30 of the Fiscal Code does not preclude this by virtue of a legally prescribed exemption.

To be able to address a request for information under section 31b subsection (1) of the Fiscal Code specifically to the relevant competent tax office, the Financial Intelligence Unit is authorised by the second sentence to establish, by providing the name and address of a natural person (and if applicable the date of birth), whether – and if applicable at which tax office and under which tax number – the person concerned is managed for tax purposes. This serves to improve the efficiency of the Financial Intelligence Unit in its analysis work and also reduces the workload of the tax offices as they only have to deal with requests for which they have tax information.

Automated retrieval by the Financial Intelligence Unit of data other than that mentioned in the second sentence above, which is stored by the revenue authorities and subject to the tax secrecy requirement, shall only be permitted as a basic principle insofar as an appropriate power is laid down in the Fiscal Code or an individual tax law. By way of derogation from this, the fourth sentence stipulates that the Financial Intelligence Unit is entitled to retrieve data, by automated means, from the revenue authorities of the Customs Administration in

accordance with the conditions of subsection (3). It is, for instance, permitted to retrieve, by automated means, data that are based on the legal basis of section 33 subsection (1) of the Customs Investigations Services Act (*Zollfahndungsdienstgesetz*).

Concerning Absatz 6

Subsection (6) includes the account retrieval process referred to in section 24c subsection (1) of the Banking Act separately due to its fundamental importance for the work of the Financial Intelligence Unit. Section 24c of the Banking Act is adapted correspondingly. It shall be possible for the Financial Intelligence Unit to access the account master data of credit institutions and institutions directly. Credit institutions and institutions are to be understood as defined in section 2 subsection (1) numbers 1 and 3.

In addition, reference is made to the provisions under section 24c subsections (4) to (8) of the Banking Act.

Concerning Absatz 7

In the performance of its tasks the Financial Intelligence Unit may retrieve data held at registry offices by means of manual applications under section 34 subsection (1) of the Federal Act on Registration (*Bundesmeldesgesetz*) and also using the automated process under section 38 subsection (1) of the Federal Act on Registration. The data collected under section 34 subsection (1) of the Federal Act on Registration is routinely not sufficient for verifying data notified by the obliged entities which are mainly collected within the scope of "Know Your Customer" enquiries. To facilitate this, it is necessary, in accordance with section 38 subsection 5 of the Federal Act on Registration in conjunction with the present regulation, to be able to retrieve the other data mentioned there. Illegal money-laundering activities are routinely based on concealing the real identity of the person initiating the transaction, the contracting party and beneficial owner.

Concerning § 32 (Obligation to transmit data to domestic public authorities)

Section 32 regulates the conditions for and type of data transmission by the Financial Intelligence Unit to domestic public authorities.

Concerning Absatz 1

The Financial Intelligence Unit is required under subsection (1) to transmit all suspicious activity reports under section 43 and all other reports from domestic authorities under section 44 to the Federal Office for the Protection of the Constitution immediately on receipt and without due delay, if the matter set out in the report indicates that knowledge of the report is necessary for the Federal Office for the Protection of the Constitution to perform its tasks. In accordance with the tasks of the Federal Office for the Protection of the Constitution under section 3 subsection (1) numbers 1 and 2 of the Federal Constitution Protection Act this shall be the case particularly when the obliged entity or the public authority has expressed a suspicion of terrorist financing in the report or as soon as this suspicion becomes apparent during the analysis performed by the Financial Intelligence Unit. Subsection (1) is thus a special version of section 18 subsection (1b) of the Federal Constitution Protection Act. The Federal Office for the Protection of the Constitution shall forward such reports at its discretion to offices for the protection of the constitution of the *Länder* if the contents concern them.

Concerning Absatz 2

Subsection (2) describes the conclusion of the operational analysis and stipulates which domestic authority the result of the analysis should be forwarded to.

Under the first sentence if the Financial Intelligence Unit comes to the conclusion in its analysis that the property referred to in the report is related to money laundering, terrorist financing or another criminal activity, it must transmit all relevant information including its result report to the competent law enforcement agency. A connection with money laundering, terrorist financing or another criminal activity exists if in consideration of the individual case and all the information consulted during the analysis there could be sufficient factual

indications of a criminal offence being committed. This degree of suspicion thus lies below prosecutable initial suspicion under section 152 subsection (2) in conjunction with section 160 of the Code of Criminal Procedure (*Strafprozeßordnung*), as the assessment as to whether there is a prosecutable initial suspicion continues to be the exclusive responsibility of the competent law enforcement agency.

If the Financial Intelligence Unit comes to a positive analysis result under the first sentence and the facts indicate that this information is necessary for the Federal Intelligence Service to perform its tasks, the Financial Intelligence Unit must transmit this information to the Federal Intelligence Service under the second sentence. This rule is thus a special version of section 23 subsection (1) number 2 of the Federal Intelligence Service Act (*Bundesnachrichtendienst-Gesetz*).

If a connection with money laundering, terrorist financing or another criminal offence cannot be established by the Financial Intelligence Unit during the analysis, no further measures are taken and the case must be closed.

If the Financial Intelligence Unit forwarded the report to the Federal Office for the Protection of the Constitution under the first sentence, in accordance with the third sentence it shall inform the Federal Office for the Protection of the Constitution of the analysis result after its analysis has been concluded. This therefore also includes cases where a connection with a criminal offence could not be established.

Concerning Absatz 3

Upon request from the law enforcement agencies, the Federal Office for the Protection of the Constitution, the Federal Intelligence Service and the military counterintelligence office, the Financial Intelligence Unit is authorised to transmit information in relation to individual cases to the aforementioned authorities for the purpose of conducting a criminal investigation, as well as for investigating threats in advance. This ensures that the information available at the Financial Intelligence Unit can be used when necessary for proceedings being conducted by the authorities mentioned.

Under the second sentence the Financial Intelligence Unit has the power, ex officio or upon request, to transmit personal data to the relevant competent authorities for the purpose of conducting a taxation procedure, for procedures to protect the social security system and for the performance of tasks by the supervisory authorities.

The first and second sentences thus implement Article 32 paragraph 4, second sentence, of the Fourth Money Laundering Directive.

Concerning subsection (4)

To conduct criminal proceedings and to investigate threats under subsection (3) numbers 1 and 2, the law enforcement agencies and the Federal Office for the Protection of the Constitution are entitled under subsection (4) to establish an automated process to retrieve the data stored at the Financial Intelligence Unit. This speeds up the exchange of data and takes account of the fact that there is often a particular urgency in procedures for prosecuting and investigating organised crime or terrorist financing. In addition, this aims to minimise the time and personnel required by the requesting and requested authority. The content of the regulation, restricted to its specific application, ultimately reflects the regulatory content relating to section 31 subsection (4).

Concerning subsection (5)

The duty to answer requests for information or transmit information ex officio is not without restriction.

A request can be rejected under the first sentence number 1 if the provision of the information could have a negative impact on the success of investigations by law enforcement agencies or other domestic public authorities. If, for instance, the Financial Intelligence Unit has transmitted the matter to the competent law enforcement agency and a

revenue authority requests data on the same data subject to be transmitted, the Financial Intelligence Unit must reject the request for information from the revenue authority to protect the criminal investigation, unless the law enforcement agency consents to the data transmission in the individual case. The Financial Intelligence Unit can and must, however, only take the interests of other domestic public authorities into account when it is aware of current proceedings there.

Under the first sentence number 2 data shall also not be disseminated if it would be disproportionate in the individual case. This complies with the requirements of Article 32 paragraph 5 of the Fourth Money Laundering Directive which stipulates that data shall not be transmitted where “disclosure of the information would be clearly disproportionate to the legitimate interests of a natural or legal person”. This will be pertinent in very specific exceptional cases, where for instance a person becomes known to the Financial Intelligence Unit within the context of a report, but it is apparent from other circumstances that this is not the person to which an information request that has been received from another domestic public authority relates.

If statutory transmission restrictions are in effect, for instance as a result of tax secrecy or the protection of personal data, that exclude the automatic retrieval of all data available on a person or matter under subsection (4), the Financial Intelligence Unit shall receive a notification, by automated means, of the unsuccessful retrieval attempt in accordance with the second sentence. It must then examine whether and which data can be transmitted to the requesting public authority in the individual case and taking account of the transmission restrictions.

Concerning subsection (6)

Subsection (6) regulates that the law enforcement agency concerned under subsection (2) is required to notify the revenue authority of the matter transmitted to it by the Financial Intelligence Unit, if it establishes during its own investigation that a transaction it has knowledge of could be of relevance for the initiation or conduct of taxation procedures or criminal tax proceedings. If personal data that was collected by the obliged entity when identifying the data subject was also used in the criminal proceedings, this data may also be transmitted to the revenue authority. The third sentence then expands the data processing purpose: The revenue authorities are also to be allowed to use the information that the law enforcement agencies have obtained through the Financial Intelligence Unit for their own purposes for the conducting of taxation procedures and for criminal tax proceedings.

Concerning Absatz 7

The data transmitted by the Financial Intelligence Unit shall be used by the receiving public authority solely for the purpose for which the data was made available to it. The public authority may only change the way data is used if the transmission of the data would also have been permissible for the altered purpose.

Concerning § 33 (Exchange of data with Member States of the European Union)

This section serves to transpose Articles 52, 53, 54, 55, 56 and 57 of the Fourth Money Laundering Directive and particularly takes into account recitals 54 and 56. The financial intelligence units of individual Member States are to cooperate as closely as possible. In accordance with the stipulations of the Fourth Money Laundering Directive, the definition of facilitated conditions gives cooperation with the financial intelligence units within the European Union higher priority than cooperation with financial intelligence units in third countries.

Concerning Absatz 1

Subsection (1) standardises the principles governing the cooperation that is generally to be carried out between the Member States of the European Union. The exchange of data between the financial intelligence units of the Member States of the European Union is to be ensured irrespective of predicate offences.

The second sentence serves to transpose Article 1 paragraph (4) and Article 57 of the Fourth Money Laundering Directive. Divergent national definitions of tax crimes which can qualify as a predicate offence for money laundering shall not preclude an exchange of information with other Member States of the European Union.

The third sentence serves to transpose Article 53 paragraph (1), subsection 3 of the Fourth Money Laundering Directive. Accordingly, the Financial Intelligence Unit shall pass on reports of activity that it receives from obliged entities to the financial intelligence unit of the affected Member State of the European Union. This is particularly the case in situations in which the matter at hand not only displays international relevance but is also focused in a foreign country – i.e. the transactions and resulting effects that are to be analysed have occurred in that foreign country.

Concerning Absatz 2

Subsection (2) refers to the corresponding regulations governing international data transmission in accordance with section 31 subsections (2) to (6). Special attention should be paid here to section 31 subsection (3), which defines the standard requirements that must be met by a financial intelligence unit of another Member State of the European Union when requesting the transmission of information. This relates to the actual implementation of Article 53 paragraph (1), subsection 2 of the Fourth Money Laundering Directive, which states: "A request shall contain the relevant facts, background information, reasons for the request and how the information sought will be used". A more detailed explanation is provided in the relevant subsections of section 31.

If the Financial Intelligence Unit transmits personal data to the financial intelligence units of other Member States, it shall be responsible for ensuring that the data transmission is permitted. In other words, the Financial Intelligence Unit must be sure that the data may in fact be transmitted. The Financial Intelligence Unit shall also take into consideration all possible restrictions on data use and conditions of use. To this end, it may also impose conditions on the use of the data by the financial intelligence unit that requested the data. If the data in question is personal data that the Financial Intelligence Unit has received from another authority, the Financial Intelligence Unit shall ensure that the required declarations of consent have been received before it transmits the data. It might also have to obtain a declaration of consent as described in subsection (4).

Concerning Absatz 3

Subsection (3) serves to transpose Article 53 paragraph (2), subsection 2, first sentence of the Fourth Money Laundering Directive and also expands the group of countries affected. Accordingly, the Financial Intelligence Unit can address a request for information to a financial intelligence unit in another state if the obliged entity to be examined operates in Germany but is listed in the other country in a register similar to the German commercial register, or else is registered in some other manner. The state to which the request is to be addressed is the state in which the obliged entity is registered. It is thus once again made clear that all requests for information to a foreign authority are not to be made "diagonally" (i.e. directly to that authority) but instead to the financial intelligence unit in the country in question.

Concerning Absatz 4

In certain limited exceptions, and in accordance with the first sentence, the Financial Intelligence Unit may deny a request for transmission of information made by the financial intelligence unit of another Member State. These exceptions are described in numbers 1 to 4. Article 53 paragraph (3) of the Fourth Money Laundering Directive is transposed by this subsection. Here, the denial of such a request for information can only be justified by the need to protect a public good, such as the internal or external security of the Federal Republic of Germany, basic principles of German law or a vital criminal investigation. The Financial Intelligence Unit may also deny a request to disclose information received from

other countries within the framework of cross-border cooperation in criminal matters under conditions that are to be taken into account by the responsible authorities.

The second sentence describes the obligation of the Financial Intelligence Unit to adequately explain the reasoning behind a denial issued in accordance with the first sentence. This ensures that the financial intelligence units of other Member States always receive a response to their requests – either a positive response containing the requested data and other information, or a denial with an explanation.

Concerning Absatz 5

Subsection (5) serves to transpose Article 55 of the Fourth Money Laundering Directive. In order to ensure effective cooperation between the individual financial intelligence units of the Member States, the Financial Intelligence Unit, when transmitting requested data, shall also grant its consent that the receiving financial intelligence unit may disseminate this information to other authorities in the Member State in question. Such a declaration of consent can either be comprehensive or else limited to certain types of data.

In accordance with the third sentence, the refusal to issue a declaration of consent for the further use of data within a Member State can be based on the reasons described in subsection (3), first sentence, or else may be based on the ascertainment that the criminal offence of money laundering or terrorist financing in the data-receiving Member State is not defined in the same manner as under German law. Here, the provisions contained in subsection (1), first and second sentence remain unaffected. If the Financial Intelligence Unit should exercise its right to refuse to issue a declaration of consent, it must adequately explain the reasons for its decision. If the information provided by the Financial Intelligence Unit is to be used by another state for purposes other than those described in its request, the state in question must first obtain approval for such use from the Financial Intelligence Unit.

Concerning § 34 (Information requests in the framework of international cooperation)

This section governs international cooperation between financial intelligence units. To the extent that section 33 contains no special provisions, this section and section 35 shall also apply to cooperation between Member States of the European Union.

Concerning Absatz 1

Subsection (1) stipulates that the Financial Intelligence Unit shall cooperate with the financial intelligence units of other states. This obligation to cooperate stems from the fact that money laundering and terrorist financing cannot be combated solely on the national level. These are instead cross-border phenomena, and efforts to combat them thus necessitate cooperation among the financial intelligence units that have been established to prevent, detect and eliminate money laundering and terrorist financing. This subsection and the subsections that follow define the rules governing requests for information submitted by the German Financial Intelligence Unit to foreign financial intelligence units.

Concerning Absatz 2

The Financial Intelligence Unit may submit requests for information to foreign financial intelligence units for the purpose of the performance of its tasks. The Financial Intelligence Unit may also transmit personal data with such a request in order to substantiate a legitimate interest in the information sought. Here, the Financial Intelligence Unit must consider whether such transmission of personal data might affect the legitimate interests of the individual concerned.

Concerning Absatz 3

In accordance with subsection (3), the Financial Intelligence Unit must disclose in its request the purpose of the desired data collection. In the event that the Financial Intelligence Unit has issued a request for information under subsection 1 on behalf of another authority, or if it is apparent that the Financial Intelligence Unit plans to disseminate the data to another domestic public authority, then the Financial Intelligence Unit must disclose this intention in

its request. The financial intelligence unit from which information is being requested can place certain restrictions regarding the further disclosure or the purposes of the further use of the data it provides, and these restrictions must be complied with by the Financial Intelligence Unit .

If the Financial Intelligence Unit wishes to disseminate the data it receives to another domestic public authority at a later point in time, it must first obtain permission to do so from the financial intelligence unit from which the information is being requested. Such approval must also be obtained if the Financial Intelligence Unit plans to use the data it receives for purposes other than those stated in its request.

It is generally assumed that the Financial Intelligence Unit provides in its requests the information required by Article 53 paragraph (1), subsection 2 of the Fourth Money Laundering Directive as well as by section 35 subsection (3) of this draft legislation.

Concerning § 35 (Data transmission in the framework of international cooperation)

Section 35 governs the framework for the transmission of data by the Financial Intelligence Unit to a foreign financial intelligence unit that has requested such a transmission.

Concerning Absatz 1

Subsection (1) serves to transpose Article 53 paragraph (1), subsection 3 of the Fourth Money Laundering Directive and also extends the scope of application to include the international exchange of information. Accordingly, the Financial Intelligence Unit may, after giving due consideration to all circumstances, pass on reports of activity that it receives from obliged entities to the financial intelligence unit of another country if this information affects that other country. This is particularly the case in situations in which the matter at hand not only displays international relevance but is also focused in a foreign country – i.e. the transactions and resulting effects that are to be analysed have occurred in that foreign country. Notification of the restrictions on the use of such information should be provided in the form of conditions on the transmission of the information as governed by international law.

Concerning Absatz 2

Subsection (2) provides guidelines concerning situations in which the Financial Intelligence Unit is allowed to transmit personal data to a foreign financial intelligence unit. This would be the case if the foreign financial intelligence unit requests data for its own operational analyses. In accordance with the first sentence, number 2, the Financial Intelligence Unit may also make data available if the foreign financial intelligence unit making the request requires this data for an urgent measure under section 40. Here, the foreign financial intelligence unit making the request shall present evidence that the relevant property or asset is located in Germany and is connected with a matter the foreign financial intelligence unit is investigating. The first sentence, number 3 provides guidelines concerning situations in which a foreign financial intelligence unit requests information from the Financial Intelligence Unit on behalf of one of its own public authorities responsible for the prevention, detection and combating of money laundering, predicate offences for money laundering and terrorist financing (for example, a supervisory authority).

In order to comply with such a request, the Financial Intelligence Unit may use data and other information it has in its possession. Should other data obtained by the Financial Intelligence Unit from outside authorities within the framework of national or international requests prove to be relevant for the request for information submitted to the Financial Intelligence Unit, the latter shall obtain the consent of the outside authorities in question before disclosing such data. This provision does not apply if such information is publicly available or if the Financial Intelligence Unit, upon receiving the data or at a later time, had already received approval from the outside authority to use the data for the purpose of preventing, detecting and combating money laundering and terrorism.

If the data requested is not in the possession of the Financial Intelligence Unit, it may request relevant data from domestic public authorities. The Financial Intelligence Unit may also request information from obliged entities for this purpose.

The Financial Intelligence Unit shall respond within a reasonable amount of time to requests for information submitted by foreign authorities. If proof of the urgency of a request for information is presented by a foreign financial intelligence unit, the Financial Intelligence Unit shall take steps to ensure a rapid response.

Concerning Absatz 3

Subsection (3) serves to transpose Article 53 paragraph (1), subsection 2 of the Fourth Money Laundering Directive and also extends the scope of its application to the international realm. Accordingly, a request for information by a foreign country should at a minimum contain the information described in numbers 1-5. Such information will allow the Financial Intelligence Unit to determine whether its own interests or data protection considerations might prevent it from complying with the request for information.

Number 1 requires that a request for information by a foreign financial intelligence unit should include the unit's official name, its address and the contact details that will also be used further. Number 2 stipulates that the request for information and the purposes for which the information is to be used must be explained. This provision also makes it possible for the Financial Intelligence Unit to conduct its own examination of possible data protection related issues in order to ensure that German and European data protection standards will be met when personal data is used.

Details on the identity of the data subject (number 3) represent one type of background information that can help the Financial Intelligence Unit with a data comparison in order to obtain the information needed to determine whether the above-mentioned data protection standards will be met. In this manner, the Financial Intelligence Unit can also ascertain whether proceedings have been initiated against the data subject in the foreign country that might prevent the Financial Intelligence Unit from complying with the request for information. Also helpful in terms of the ability of the Financial Intelligence Unit to offer an adequate response are the facts and background information that must be provided on the matter at hand in accordance with number 4, and which are available to the foreign financial intelligence unit and form the basis of its request.

In order to make the relevance of such information clear to the Financial Intelligence Unit, a connection between the matter at hand and money laundering or terrorist financing must be demonstrated by the financial intelligence unit that issued the request for information (number 5).

Concerning Absatz 4

Even without receiving a request, the Financial Intelligence Unit may transmit personal data to a foreign financial intelligence unit if the Financial Intelligence Unit, based on the facts known to it, suspects that crimes involving money laundering or terrorist financing have been committed in the territory of the state in which the foreign financial intelligence unit operates. Subsection (4) goes beyond subsection 1 by addressing cases in which facts become known to the Financial Intelligence Unit within the framework of its examinations and data analyses that indicate an international aspect to money laundering or terrorist financing activities. In such situations, the Financial Intelligence Unit may transmit personal data to a foreign financial intelligence unit ex officio.

Concerning Absatz 5

Subsection (5) describes the principle that the Financial Intelligence Unit is responsible in each instance for ensuring that the transmission of personal data does not violate data protection laws. To this end, it may also restrict the scope of the data transmission or set certain requirements for the transmission.

Concerning Absatz 6

Subsection 6 requires that the Financial Intelligence Unit expressly state to the foreign financial intelligence unit the purpose for which data is to be used. If the transmitted data is to be forwarded by the foreign financial intelligence unit making the request to other foreign public authorities, then the foreign financial intelligence unit must first obtain permission to do this from the Financial Intelligence Unit. The Financial Intelligence Unit can grant this permission when transmitting the personal data. Here, the foreign financial intelligence unit must take into account the purpose the data is to be used for and the legitimate interests of the data subject. Notification of the restrictions on the use of such information should be provided in the form of conditions on the transmission of the information as governed by international law.

Concerning Absatz 7

Subsection (7) describes the reasons for refusal that must be used by way of explanation when a request for information is denied, whereby the Financial Intelligence Unit does have certain leeway in deciding whether the reasons for refusal apply in each individual case.

The situations described in the first sentence represent essential cases, which must be considered, in which the interest of a foreign country in the transmission of data is to be viewed as subordinate to the justifications for withholding such data. These justifications are vital national interests (number 1), special legal restrictions on the use of data (number 2) and the higher-ranking legitimate interests of the data subject as determined by an examination of the specific case (number 3). With regard to number 3, the Financial Intelligence Unit shall determine whether the receiving state or the receiving foreign authority is able to take measures to guarantee the protection of the personal data of the individual concerned.

Concerning Absatz 8

The cases described in subsection (2) are examples that illustrate the rules that govern the circumstances under which a data transmission request is to be denied. In exceptional cases, the Financial Intelligence Unit may deviate from these rules and transmit information requested by a foreign financial intelligence unit. The justification for such a derogation must be officially documented. In accordance with number 1, the Financial Intelligence Unit shall generally refuse to transmit data if such transmission would adversely affect criminal investigations or judicial proceedings. Number 2 describes the principle of reciprocity, whereby the Financial Intelligence Unit should not comply with a request for information if it can be assumed that the financial intelligence unit making the request would deny a similar request made by the Financial Intelligence Unit.

Concerning Absatz 9

Subsection (9) stipulates that the Financial Intelligence Unit must adequately explain to a foreign financial intelligence unit its refusal to comply with a request for information on the grounds described in subsections (7) and (8). In general, the Financial Intelligence Unit must explain to the foreign financial intelligence unit why no transmission of personal data occurred. Only in exceptional cases may the Financial Intelligence Unit be exempted from this obligation to provide an explanation. Sound judgement should be maintained with regard to the scope of an explanation, which may not affect the interests of the Federal Republic of Germany. Should the Financial Intelligence Unit deny a request for information for other reasons, particularly in cases in which the minimum requirements for such a request as described in subsection (3) are not met, then the Financial Intelligence Unit should provide the foreign financial intelligence unit that made the request with concise information on this issue.

Concerning Absatz 10

If the Financial Intelligence Unit should pass on a report in accordance with section 43 subsection (1), or if it transmits personal data to a foreign financial intelligence unit, it must

then record the date, the scope of the data transmitted (including any limitations or conditions) and the receiving financial intelligence unit, and must also store this information for three years. The same procedure applies in cases in which the Financial Intelligence Unit denies a request for information. The three-year storage period begins on the date on which the data is transmitted. In general, the date of transmission should also be the date on which the above-mentioned information is recorded.

Concerning § 36 (Automated data comparison in a European network)

Section 36 implements Article 56 of the Fourth Money Laundering Directive. Member States are to ensure that financial intelligence units are able to make use of secured communication channels when exchanging information, whereby the use of FIU.net or a related network is recommended. FIU.net is a decentralised IT system that has been in existence since 2000 and is currently used by all 28 Member States of the European Union and EUROPOL. In view of the fact that cases of money laundering or terrorist financing often involve cross-border activities, this system is designed to simplify the exchange of data between financial intelligence units in the European Union. However, in order to safeguard the data protection interests of citizens, only encrypted automated comparisons are made of the data held by the individual financial intelligence units. To this end, the financial intelligence units have established reference databases containing first and last names and birth dates. All of this data is encrypted, which means the data subjects cannot be directly identified. FIU.net members allow each other access to these encrypted reference databases for the purpose of conducting analyses. This includes the right to obtain automated access by means of data comparisons. If, in the course of such automated access, a match should be found between transmitted data and data stored in the files of the receiving FIU.net member, the enquiring financial intelligence unit receives, by automated means, the information that a match exists and the name of the country in which the match was found. The enquiring financial intelligence unit can then contact the financial intelligence unit in the country where the match was found and request that information on the data subject be transmitted to it.

Concerning § 37 (Rectification, restriction of processing and erasure of personal data in the case of automated processing and in the case of storage in automated files)

The right to informational self-determination protects individuals against the unlimited collection, storage, use and disclosure of their personal data, although there are limitations to this informational self-determination (Ruling 65, 1, 43 of the German Federal Constitutional Court). Limitations are generally to be accepted as being in the overriding public interest if they are based on a legal foundation that clearly defines the conditions and scope of the limitations. The decisive aspect as regards the right-holder is that the processing of their personal data that they are compelled to accept should be carried out with the correct information and only as long as, and to the extent that, such data is needed by the processing authority in the overriding public interest. The authority shall comply with the provisions of sections 37 and 38 by taking all necessary precautions to ensure the basic rights of the data subject as regards rectification, erasure and the restrictions on data use. In addition, the Financial Intelligence Unit itself has an interest in ensuring it utilises correct and complete data only.

The provisions of sections 37 and 38 are addressed to the Financial Intelligence Unit. However, from these provisions also logically follow the inalienable rights of the affected individual to rectification, erasure and restrictions on the use of their personal data.

In order to ensure a better overview of the situation at all times, a distinction is made with regard to the way data is stored so that storage in files or collections of files can also be documented as cases of non-automated data storage.

In terms of their language and content, sections 37 and 38 also take into account the new regulations stemming from Articles 3 and 16 of Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal

penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA.

Concerning Absatz 1

Subsection (1) addresses the obligation of the Financial Intelligence Unit to rectify inaccurate personal data. This applies to data that is either processed by automated means or stored in an automated file.

This obligation to make rectifications applies when data is inaccurate. The term "inaccurate data" here refers to data whose information content does not accord, or no longer accords, with reality. The right to rectification is independent of the time of and reason for the inaccuracy.

Concerning Absatz 2

The provisions here govern the obligation to erase data whose storage was not permitted, or for whose storage the justification provided no longer applies. Storage of data is impermissible in any situation not covered by a legal standard or a situation in which the data subject has not granted their permission for such storage. In accordance with the principles of data protection law, situations in which the justification for storing data no longer applies refer to situations in which the data is not needed, not completely needed or no longer needed to perform a task or conduct an analysis. Further details are provided in the respective order opening the file (see section 35 subsection (2), number 8).

Concerning Absatz 3

Subsection (3) addresses restriction obligations similar to those involving erasures. These are used instead of erasure as described in subsection (2).

The first sentence makes it clear that prior to final erasure in accordance with the enumerated list of reasons, it should be determined whether a processing restriction might not also be appropriate. The circumstances under which a processing restriction can be employed instead of an erasure are described in Article 16 paragraph (3), sentence b of Directive (EU) 2016/680.

Concerning Absatz 4

Subsection (4) addresses the time limits for reviewing the selection of data. These time limits can be defined within the framework of the processing of individual items, but may not exceed the time limits defined in the order opening the file. If no special time limit is defined within the framework of the processing of individual items, the review shall be conducted in accordance with the maximum time limits for reviewing the selection of data as stated in the order opening the file.

Concerning Absatz 5

The provision in this subsection stipulates when the time limits for reviewing the selection of data begin.

Concerning Absatz 6

Subsection (6) serves to transpose Article 7 paragraph (2) of Directive (EU) 2016/680.

Concerning Absatz 7

Subsection (7) transposes the provisions of Article 16 paragraph (6) of Directive (EU) 2016/680.

Concerning § 38 (Rectification, restriction of processing and destruction of personal data which is neither processed by automated means nor stored in an automated file)

Section 38 governs the rectification, restriction of processing and destruction of personal data which is neither processed by automated means nor stored in an automated file. This includes data in files and file collections that does not fall under the category of automated

data – i.e. its format does not correspond to identically structured collections, nor is it possible to access and evaluate the data on the basis of specific attributes.

Concerning Absatz 1 and subsection (2)

Subsections (1) and (2) reflect the legislative content of section 20 subsection (1), second sentence of the German Federal Data Protection Act (Bundesdatenschutzgesetz). In line with the applicable principles of file integrity and clarity, rectification in the form of erasure is not provided for.

Concerning Absatz 3

This subsection implements the legal principles underlying section 20 subsection (6) of the Federal Data Protection Act, whereby the Financial Intelligence Unit is obligated to place restrictions on data whose occasional processing has led to the realisation that without such restrictions the legitimate interests of the data subject would be adversely affected.

Concerning Absatz 4

Subsection (4) first sentence governs the destruction of documents in accordance with secondary regulations. Such regulations concern the retention of files in the federal revenue administration. The second sentence describes two exceptions from the general destruction obligation. The third sentence states that a restriction note shall be attached to data meeting the criteria for one of the exceptions.

Concerning Absatz 5

The provisions in subsection 5 are designed to ensure that those documents are retained that have a lasting value for the research or understanding of Germany history, the safeguarding of the legitimate interests of the public, or the provision of information for the formation of legislation, the execution of administrative functions and the administration of justice. Such documents shall be offered to the Federal Archives, which shall then decide in consultation with the Financial Intelligence Unit whether the documents do in fact possess a lasting value.

Concerning Absatz 6

Subsection 6 describes the validity mutatis mutandis of section 37 subsection (7) for personal data in files.

Concerning § 39 (Order opening a file)

Section 39 governs the order opening a file. This section stipulates that an order opening a file must be issued when any automated file is created. In particular, this order shall provide information on the purpose of the file, the legal basis for its establishment and additional aspects relevant to data protection law, thereby safeguarding internal and external data protection controls.

Concerning Absatz 1

Subsection (1) addresses the necessity of the order opening a file and specifies the authorities involved in the process.

Concerning Absatz 2

Subsection (2) defines the content of automated files and the procedures to be used when creating them. The individual parameters to be set out are listed enumeratively. The order opening a file is issued by the Financial Intelligence Unit with the consent of the Federal Ministry of Finance and the participation of the Federal Commissioner for Data Protection and Freedom of Information.

Concerning Absatz 3

Subsection (3) contains a special provision for urgent cases. The provision applies if the measures associated with obtaining approval from the Federal Ministry of Finance (including

the input of the opinion of the Federal Commissioner for Data Protection and Freedom of Information) could foreseeably run counter to an urgent need to complete a task without delay. The procedure under subsection (1) shall subsequently take place without undue delay.

Concerning Absatz 4

Subsection (4) takes into account the principle of proportionality and expands the already standardised obligation to review stored personal data and determine whether it should be rectified or erased in individual cases. The adequacy of the intervals is determined in particular on the basis of the purpose of the processing of such data and the type of stored personal data covered in the order opening a file.

Concerning § 40 (Urgent measures)

Article 32 paragraph (7) of the of the Fourth Money Laundering Directive is transposed by section 40.

Concerning Absatz 1

The first sentence authorises the Financial Intelligence Unit to stop the execution of transactions for which it has indications that the transaction is related to money laundering or terrorist financing. The possibility to stop suspicious transactions has been assessed by the United Nations Security Council, the Financial Action Task Force (FATF) and the European Commission as an important instrument for effectively combating money laundering and terrorist financing. Recital 38 second sentence of the Fourth Money Laundering Directive also states: "This [the prohibition on the execution of suspicious transactions], however, should be without prejudice to the international obligations accepted by the Member States to freeze without delay funds or other assets of terrorists, terrorist organisations or those who finance terrorism, in accordance with the relevant United Nations Security Council resolutions." Article 32 paragraph (7), first sentence of the Fourth Money Laundering Directive stipulates: "Member States shall ensure that the FIU is empowered to take urgent action, directly or indirectly, where there is a suspicion that a transaction is related to money laundering or terrorist financing, to suspend or withhold consent to a transaction that is proceeding, in order to analyse the transaction, confirm the suspicion and disseminate the results of the analysis to the competent authorities." This involves an immediate measure for which the Financial Intelligence Unit must make a rapid decision based on the indications that have come to its attention. The Financial Intelligence Unit is not obligated to conduct an operational analyses in accordance with section 30 subsection (2), but can instead take action, due to the urgency of the situation, by assessing all the known facts.

In addition to stopping the execution of a transaction, the Financial Intelligence Unit may take those measures described in the second sentence – i.e. pursuant to number 1 establish contact with an obliged entity as defined in section 2 subsection (1), numbers 1 to 3 and block access to accounts or securities accounts or else prohibit other transactions (e.g. the execution of a bank transfer following a cash deposit by the individual in question); pursuant to number 2, instruct a bank or financial institution (as defined in section 2 subsection (1), number 1) to deny access to / refuse to open a safe deposit box, or, pursuant to number 3, issue to obliged entities other instructions concerning specific transactions. The above can include, for example, an instruction to not transfer ownership of an object (e.g. a vehicle) or an instruction to block payment of a life insurance benefit by a life insurance company.

Unless otherwise indicated in this draft legislation, the Administrative Procedure Act (*Verwaltungsverfahrensgesetz*) shall generally apply when measures are adopted under subsection (1). Accordingly, a hearing must be conducted with the person concerned prior to the adoption of such measures. The Financial Intelligence Unit, is, however, entitled to determine whether, pursuant to section 28 subsections (2) and (3) of the Administrative Procedure Act, it might be possible to forgo a hearing, if, for example, holding such a hearing might defeat the purpose of the measures – for example, if the person concerned would then

be able to withdraw all funds from their bank accounts or empty their safe deposit boxes during the period in which the hearing is conducted.

Concerning Absatz 2

Subsection (2) transposes the provisions of Article 32 paragraph (7), second sentence of the the Fourth Money Laundering Directive and extends the scope of application in line with recommendation 38 of the FATF to include international cooperation between financial intelligence units. The purpose of the regulation is to enable rapid responses across borders in order to freeze or confiscate incriminated assets and property.

The Financial Intelligence Unit may take urgent measures as described in subsection (1) if a foreign financial intelligence unit should make a request that meets the requirements of section 35 subsection (3). The Financial Intelligence Unit has a certain degree of discretion here and is not obligated to grant the request made by the foreign financial intelligence unit. The Financial Intelligence Unit must adequately explain the reasons for its refusal to comply with such a request for information.

Concerning Absatz 3

Subsection (3) stipulates that urgent measures taken pursuant to subsection (1) shall be rescinded as soon as or insofar as the conditions for the measures are no longer met. This is particularly the case if an analysis has been conducted by the Financial Intelligence Unit and this analysis has determined that in the view of the Financial Intelligence Unit, there is no longer any indication of a connection to money laundering or terrorist financing.

Concerning Absatz 4

This subsection stipulates that measures taken pursuant to subsection (1) shall end when the matter is passed on to the responsible law enforcement agency. The measures shall be discontinued either in accordance with applicable provisions or else after at least five working day have elapsed since the matter was passed on to the law enforcement agency, whereby Saturday shall not be treated as a working day. If the analysis should take longer than that, the measures shall be discontinued no later than when one month has elapsed since the ordering of the measures by the Financial Intelligence Unit.

Concerning Absatz 5

Subsection (5) addresses the possibility that the Financial Intelligence Unit, if requested, might release certain assets or property affected by an urgent measure if such assets/property are needed to cover the basic needs of the person concerned or their family members, or to pay for pensions or maintenance or similar necessities.

Concerning Absatz 6

The measures taken pursuant to subsection (1) may be disputed by the affected obliged entity or another adversely affected party by use of the legal recourse of filing an objection to such measures. The basic suspensory effect of an objection in accordance with section 80 subsection (1) of the Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung*) is subject to derogation here in accordance with section 80 subsection (2), number 3 of the Code of Administrative Court Procedure.

Concerning § 41 (Feedback to reporting obliged entities)

In accordance with Article 46 paragraph (3) of the Fourth Money Laundering Directive, the Financial Intelligence Unit shall reply to a reporting obliged entity in a timely manner, to the extent that this is feasible. As is explained in recital 49 of the Fourth Money Laundering Directive, the important thing is also to give the obliged entities the impression that their reports have an effect and are useful. Such feedback can help make obliged entities more aware of the need and opportunities to prevent money laundering and terrorist financing. The feedback can also provide obliged entities with important information that they can use to critically examine their reporting behaviour and, if necessary, make adjustments to internal processes within the framework of due diligence activities.

Concerning Absatz 1

Subsection (1) requires the Financial Intelligence Unit to send a confirmation message after receiving an electronic report under section 43 subsection (1). This confirmation documents the time the report on suspicious activity was submitted, and this information can be used at a later date by a regulatory authority to check that feedback was issued in a timely manner.

Concerning Absatz 2

Subsection (2) defines the legal basis for feedback on the content and quality of reports. It is clear that it is not feasible to require the Financial Intelligence Unit to provide feedback on the quality of each and every report it receives. In this sense, the Financial Intelligence Unit is given a certain amount of discretion for deciding whether and to what extent feedback needs to be provided in each situation in order to achieve the goals described above. Strict limitations on the use of personal data are to be observed when feedback is provided in a specific case. Along with feedback in individual cases, it might also make sense to provide general-abstract feedback regarding certain categories of matters, or to specific groups of obliged entities, in order to help optimise internal risk management and reporting behaviour.

Concerning § 42 (Notification by domestic public authorities to the Financial Intelligence Unit)

An obligation to notify the public prosecution office is already contained in section 11 subsection (8) of the previous version of the Money Laundering Act (GwG). Section 42 serves to transpose Article 32 paragraph (6) of the Fourth Money Laundering Directive. Accordingly, the responsible authorities shall make notifications concerning the way information provided in accordance with this article is used and also provide notifications on the results of the investigations carried out on the basis of such information.

Concerning Absatz 1

Subsection (1) governs the notification obligation on the part of the public prosecution office. If the public prosecution office has initiated criminal proceedings on the basis of, or in connection with, information disclosed by the Financial Intelligence Unit, the public prosecution office shall notify the Financial Intelligence Unit as to whether an indictment has been handed down and also provide information on the outcome of the proceedings once they have concluded. Such notification shall be effected by sending a copy of the indictment, the reasoned decision to terminate proceedings, the order of punishment or the verdict of the main proceedings.

Concerning Absatz 2

If the Financial Intelligence Unit disseminates information to other domestic public authorities, the receiving authority shall notify the Financial Intelligence Unit of the final use made of the information provided and the result brought about by its application. The public authorities required to provide such notifications after receiving information include police departments, revenue authorities or authorities responsible for maintaining and protecting the social security system; exempted here are those authorities obligated to maintain the secrecy of social data in accordance with section 35 subsection (1) of Book I of the German Social Code (*Sozialgesetzbuch*). The notification shall include a description of the final use made of the information provided and of the outcome of the measures taken on the basis of this information. Special legal prohibitions on transmissions, such as those described in section 23 of the Act on the Federal Office for the Protection of the Constitution (*Bundesverfassungsschutzgesetz*) or section 27 of the Act on the Bundeskriminalamt (*Bundeskriminalamtgesetz*) remain unaffected here, however.

Concerning Abschnitt 6 (Obligations concerning the reporting of matters)

Concerning § 43 (Reporting obligation of obliged entities)

This section is largely based on section 11 of the previous version of the Money Laundering Act (GwG). It serves to transpose Article 33 of the Fourth Money Laundering Directive.

Concerning Absatz 1

This subsection basically corresponds to section 11 subsection (1) of the GwG in its previous version; only minor editorial changes have been made. The formulation in subsection (1) that facts indicating a specific matter must be known is retained. The insertion of numbering was done for the sake of clarity.

The recommendations made by the Federal Ministry of Finance on 6 November 2014 for interpreting the manner in which the reporting system for suspicious activity (section 11 GwG) is dealt with continue to apply. With regard to the reporting threshold, the recommendation is as follows: "The obliged entity and the employees acting on its behalf by no means need to be certain of a connection between a transaction or a business relationship to money laundering, a corresponding specific predicate offence or a case of terrorist financing. In order to meet the requirement for a suspicion that must be reported, it is sufficient if facts are known that indicate the existence of a business relationship or a transaction designed to facilitate terrorist financing, or through which illegal funds would be protected against confiscation by law enforcement agencies, or the origin of illegal assets could be concealed. A criminal background of terrorist financing or a crime as defined in section 261 of the German Criminal Code (*Strafgesetzbuch*) cannot be excluded in such cases." This makes it clear that the obliged entity and the employees acting on its behalf have a certain amount of discretion when assessing a situation. Among other things, the outcome of the situation depends on the obliged entity's subjective assessment of the specific circumstances. As indicated by the recommendations, there must be an understandable justification for an assessment that a specific matter involves a crime. The associated report should not be indiscriminate. Conversely, there is also no need for the presentation of a detailed legal analysis. Instead, the obliged entity "shall evaluate a matter on the basis of general experience and the professional knowledge possessed by its employees as regards the matter's unusual nature and abnormality in the given business context [...]". Such an evaluation shall take into account: the transaction purpose and type; peculiarities of the customer or beneficial owner; the financial and business background of the customer and the origin of the asset/property associated with the transaction.

The brokerage sector has been added to number 1, since both real estate brokerage companies and insurance brokers can be connected with a business relationship or a transaction without being directly involved in these. This addition was thus carried out for the sake of clarity. The transaction here can be an attempted or impending transaction, or one that is in progress or has already been completed.

Concerning Absatz 2

Subsection (2) corresponds verbatim to section 11 subsection (4) of the previous version of the GwG and has not been changed. It transposes the stipulations of Article 34 paragraph (2) of the Fourth Money Laundering Directive.

Concerning Absatz 3

This subsection is new and serves to transpose Article 33 paragraph (2) of the Fourth Money Laundering Directive. Accordingly, if an obliged entity does not operate an establishment in Germany, it is not subject to the reporting obligation as described in subsection (1). Such an obliged entity should report any activity it deems suspicious to the authorities in the country in which it is registered. If the obliged entity operates establishments in different countries and the matter to be reported affects legal dealings in Germany, the associated domestic connotations trigger the reporting obligation as described in subsection (1).

Concerning Absatz 4

Subsection (4) corresponds verbatim to section 11 subsection (5) of the previous version of the GwG and has not been changed.

Concerning Absatz 5

Subsection (5) serves to simplify cooperation between the Financial Intelligence Unit, supervisory authorities and obliged entities. Definitions of transaction types here are designed to help obliged entities identify indications of illegal money laundering activities that would trigger the obligation to send a report to the Financial Intelligence Unit. The concept of transaction types is already contained in section 11 subsection (7) of the previous version of the GwG.

Concerning § 44 (Reporting obligation of supervisory authorities)

This section largely corresponds to section 14 of the previous version of the GwG. It serves to transpose Article 36 in connection with Article 32 paragraph (3) of the Fourth Money Laundering Directive. Supervisory authorities as defined in section 50 shall report to the Financial Intelligence Unit suspicious matters that have come to its attention within the framework of its supervisory activities or in some other manner.

Concerning § 45 (Form of reporting, authorisation to issue ordinances)

This section defines for obliged entities and reporting authorities a standardised form of reporting, as well as possible derogations from this standard.

Concerning Absatz 1

Obliged entities and authorities subject to a reporting obligation shall generally file a report electronically using an interface made available on the Internet by the Financial Intelligence Unit. The design of the interface input mask is meant to ensure maximum user-friendliness and efficient data processing by the Financial Intelligence Unit.

Authorities subject to a reporting obligation as defined in section 44 may also be authorities of the federal states. The obligation to submit a report electronically also governs administrative procedures for the federal states (without any derogation possibility). A particular need for uniform nationwide regulations exists according to Article 84 paragraph (1), fifth sentence Basic Law (*Grundgesetz*), as a uniform data transmission procedure can only be established by a federal act. A uniform level of enforcement can only be achieved by a federal act that regulates the electronic transmission format.

The written transmission of a report by post is permissible in exceptional cases where electronic data transmission is disrupted.

Concerning Absatz 2

To avoid undue hardship, subsection (2) grants obliged entities, upon request, the possibility of exemption by the Financial Intelligence Unit from the obligation to electronically transmit a report under section 43 subsection (1). In such cases, the report shall be transmitted by post to the Financial Intelligence Unit.

Concerning Absatz 3

Subsection (3) stipulates that any report under sections 43 and 44 that is sent by post must be sent using the official form of the Financial Intelligence Unit. This form can be downloaded from the Financial Intelligence Unit website.

Concerning Absatz 4

The Federal Ministry of Finance may by means of an ordinance enact more detailed provisions concerning the form of reporting and possible additionally permitted transmission formats. This makes it possible to respond flexibly to any need to make adjustments that might arise due to practical experience or technical developments. The second sentence reiterates that no derogations are permissible by means of Land law.

Concerning § 46 (Execution of transactions)

This section largely corresponds to section 11 subsection (1a) of the previous version of the GwG and serves to transpose Article 35 of the Fourth Money Laundering Directive. The

obliged entity shall only execute a questionable transaction if it has submitted a report under section 43 and has either received authorisation from the Financial Intelligence Unit or the responsible public prosecution office, or the third working day has elapsed after the day on which the report was sent without the execution of the transaction having been prohibited by the Financial Intelligence Unit or the responsible public prosecution office.

Concerning § 47 (Prohibition of disclosure, authorisation to issue ordinances)

This section largely corresponds to section 12 of the previous version of the GwG and transposes the stipulations of Article 39 of the Fourth Money Laundering Directive.

Subsection (1) adds the stipulation that an obliged entity that receives a request for information from the Financial Intelligence Unit shall be prohibited from informing the subject of the enquiry of the request.

The exceptions to this stipulation described in subsection (2) transpose the associated stipulations in Article 39 of the Fourth Money Laundering Directive. A disclosure without sanctions is thus possible between government agencies or obliged entities which are part of the same group. In addition, an exchange of information may be carried out between the obliged entities mentioned in numbers 3 and 4 – for example attorneys, notaries and auditors.

The exchange of information in accordance with number 5 between obliged entities or their subsidiary group undertakings under numbers 2 to 4 may only be carried out for the purpose of preventing money laundering or terrorist financing. The exchange of information for other purposes, for example for commercial purposes, is prohibited and subject to sanctions.

Subsection (3) defines a confidentiality obligation that also applies to authorities that have become aware of the existence of reports. The confidentiality obligation applies to reports under section 43 subsection (1) and section 44, as well as to notifications under section 31b of the Fiscal Code. It also applies if the report or notification in question was submitted by the authority itself. Revenue authorities are subject to a confidentiality obligation with regard to matters they have reported to the Financial Intelligence Unit under section 31b of the Fiscal Code.

Concerning § 48 (Exemption from liability)

Subsection (1) and subsection (2) number 1 of this section correspond to section 13 of the previous version of the GwG and serve to transpose Article 37 of the Fourth Money Laundering Directive.

Subsection (2) number 2 is a new addition. Individuals shall be exempt from liability as described in this section if they have responded to a request for information made by the Financial Intelligence Unit. This applies to obliged entities that have received a request for information from the Financial Intelligence Unit. This can also involve a demand for more detailed information from a reporting obliged entity. The Financial Intelligence Unit may also approach an obliged entity with a request for information even if such an entity has not previously submitted a report or notification under section 43.

The request for information shall be for the purpose of conducting further analyses and obtaining information of value for the activities of the Financial Intelligence Unit. In this sense, an employee shall not be held liable for providing initial or supplemental information as long as the information is true or there was at least no wilful intent to provide false information.

Concerning § 49 (Access to information and protection of reporting employees)

This section serves to transpose Article 38 and also takes into account recital 41 of the Fourth Money Laundering Directive. The first three subsections regulate the access of the person concerned to information, while the fourth subsection protects employees who have filed reports. The Federal Freedom of Information Act shall not apply here if the Financial Intelligence Unit is performing tasks under section 1 of the Ordinance Establishing Security Vetting Requirements for Vital and Defence Establishments.

Concerning Absatz 1

Subsection (1) stipulates that the person concerned shall, upon request, receive from the Financial Intelligence Unit details of the available information concerning him or her during an ongoing analysis if this will not adversely affect the operational analysis being carried out by the Financial Intelligence Unit.

The person concerned here is any individual directly involved in a matter that has been reported under section 43. In particular, this refers to any contracting party to, or beneficiary of, a transaction or business relationship.

The Financial Intelligence Unit gives due consideration to the circumstances of each case. The Financial Intelligence Unit may refuse to provide information, particularly insofar as the premature disclosure of such information might thwart the success of a decision or of impending measures planned by an authority.

If the Financial Intelligence Unit complies with the request for information by the person concerned during an ongoing investigation, it shall redact the personal data of the individual who filed the report, including data on the employee or representative of the obliged entity. This serves to protect the reporting individual against threats and hostility.

Concerning Absatz 2

Subsection (2) describes the rules that apply to a request for information by a person concerned which is made after the Financial Intelligence Unit has completed its analysis and the matter in question has not been transmitted to the responsible law enforcement agency for further investigation. In such cases, the Financial Intelligence Unit shall, after giving due consideration, grant the request of the person concerned as long as the provision of such information will have no negative effects with regard to the relations or proceedings listed in the second sentence, numbers 1 to 4.

If the Financial Intelligence Unit complies with the request for information by the person concerned, it shall in this case as well redact the personal data of the individual who filed the report, including data on the employee or representative of the obliged entity.

Concerning Absatz 3

Subsection (3) describes the rules that apply to a request for information by a person concerned which is made after the Financial Intelligence Unit has completed its analysis and the matter in question has been transmitted to the responsible law enforcement agency. The Financial Intelligence Unit no longer has any control over data and its use after it has transmitted the matter in question to the responsible law enforcement agency. Once proceedings by the public prosecution office or the court have been completed, control of the data is transferred back to the Financial Intelligence Unit once again. In this case, the Financial Intelligence Unit is again authorised to respond, in accordance with subsection (2), to requests for information made by the person concerned.

Concerning Absatz 4

Subsection (4) addresses the protection of individuals employed by an obliged entity. An individual who has filed a report under section 43 or reported a money laundering matter internally may not suffer any discrimination in their job – for example through an unjustified dismissal, professional disadvantages or demotions, or hostility within the company.