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European Commission  
Mrs Věra Jourová  
Commissioner for Justice, Consumers and Gender Equality  
Rue de la Loi / Wetstraat 200  
1049 Brussels  
Belgium

25.03.2019, Strasbourg

Dear Commissioner Jourová,

We would like to thank you for your answer of 12 March 2019, responding to our letter regarding the deficient transposition and implementation of the 4th Anti-Money Laundering Directive by Germany.

As regards the first issue, the obligation to identify and report the beneficial owners of a company, you state that it does not appear that Article 20 of the German Act on the Detection of Profits from Serious Criminal Offences (“Geldwäschegesetz”) is contrary to Article 30 of the Directive. In your view, Article 20 paragraph 1 of the German law obliges the legal entity to collect, retain and keep up to date information about the beneficial owners and Article 20 paragraph 3 is merely an additional provision laying down the methods regarding the way in which such beneficial ownership information is collected at the level of the legal entity.

However, the justification<sup>1</sup> of Article 20 paragraph 1 of the German law states that “The obligation referred to in paragraph 1 shall focus on the collection of information already known to associations or communicated to them by the shareholder. They are not obliged to carry out their own investigations, possibly down a longer participation chain. Rather, according to paragraph 3, it is the shareholders' duty to make the information relevant for the transparency register available to the companies without delay.” Furthermore, the justification of Article 20 paragraph 3 of the German law outlines that “A restriction applies to investment or control chains: The disclosure obligation pursuant to paragraph 3 exists only if the person subject to the disclosure obligation is either the beneficial owner himself or he is directly under the control of a beneficial owner, whether through a shareholdership or other means of exerting influence. A shareholder is not required to disclose any beneficial owner further downstream in a chain of shareholdings. (...) Therefore, neither the persons obliged to give notice pursuant to paragraph 1 nor the persons obliged to disclose information pursuant to paragraph 3 sentence 1 are subject to inquiry obligations in connection with investment chains.” Thus, paragraph 3 of Article 20 of the German law is not complementing paragraph 1 but rather represents its counterpart leading to the situation that in cases of indirect control, the beneficial owners will remain anonymous. We therefore remain convinced that the German law transposing the European Anti-Money Laundering Directive is deficient in this regard and we count

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<sup>1</sup> Entwurf eines Gesetzes zur Umsetzung der Vierten EU-Geldwäscherichtlinie, zur Ausführung der EU-Geldtransferverordnung und zur Neuorganisation der Zentralstelle für Finanztransaktionsuntersuchungen: <https://dip21.bundestag.de/dip21/btd/18/115/1811555.pdf>



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on the Commission to carefully look at this issue when assessing the correctness of the German transposing measures.

As regards the second issue, the non-functioning of the German Financial Investigation Unit (FIU) constituting a breach of Article 32 of the 4th Anti-Money Laundering Directive, you state that the Commission is of the view that the initial difficulties have been largely remedied.

However, in an article published on 25 March 2019, the Handelsblatt<sup>2</sup> reported that the situation at the German FIU has not improved at all. According to Sebastian Fiedler, chairman of the Association of German Criminal Investigators, not only the processing time of suspicious transaction reports remains problematic, but also the poor quality of the processing itself. Likewise, the structural problems persist because the FIU cannot technically and legally access all information of the criminal investigation authorities of the German Länder. Moreover, the announced staff increase will happen only after several years. We therefore strongly disagree with the Commission's assessment that the implementation of the relevant provisions of the 4th Anti-Money Laundering Directive is largely complete.

In the light of the aforementioned issues, we maintain our demand to the European Commission to launch infringement against the Federal Republic of Germany for incorrect transposition and deficient implementation of the 4th Anti-Money Laundering Directive (Directive (EU) 2015/849). I would like to urge the Commission to work more thoroughly on the issues raised in my complaint.

Kind regards,

Sven Giegold  
MEP

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<sup>2</sup> Handelsblatt article of 25 March 2019: <https://www.handelsblatt.com/politik/deutschland/financial-intelligence-unit-scholz-sorgentruppe-neue-kritik-an-geldwaesche-spezialeinheit-des-zolls/24133618.html>