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“Strengthening the Capacities of Law Enforcement and Judiciary in the Fight against Corruption in Serbia” (PACS)

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Technical Paper

Addendum to the Training Manual “Basic Anti-Corruption Concepts”

**DATA ON THE STATUS OF WEALTH OF PRIVATE CITIZENS IN
CORRUPTION INVESTIGATIONS - PRACTICE AND LEGAL FRAMEWORK
IN GERMANY**

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1. INTRODUCTION

Over the last years, the anti-corruption literature dedicated much attention to monitoring the financial wealth of public officials.¹ It is the aim of such income and asset declaration systems to detect any inexplicable wealth among public officials as a possible sign of enrichment through corruption in office.

For private citizens, no such systematic system of monitoring their wealth exists. In general, this would seem logical: other than public officials, private citizens are not in a position to illegally enrich themselves through receiving bribes in exchange for a “public service”. However, private citizens can also amass illicit wealth through public corruption: by bribing their way to building permits, tax relieves, etc., or by participating in schemes to embezzle public funds. In private corruption, such as business-to-business, similar possibilities of enrichment are obvious.

Illicit enrichment as foreseen by Article 20 of the United Nations Convention against Corruption (UNCAC)² is no criminal offence in Germany. However, any irregular financial transaction or enrichment might trigger a first suspicion of money laundering and thus justify further collection of data through a criminal investigation.

How can one establish a person’s wealth? Comparatively easy is it to search the house of a suspect and to collect all data which is there in paper and on a computer. However, if there is still not enough evidence for obtaining a search warrant, data from publicly available sources, such as internet, and much more importantly, from state databases is needed.

There are several manuals available for investigating corruption and economic crime. There is no systematic overview, though, on what state databases investigators can tap – in line with data protection – for corroborating suspicions that private citizens illicitly enrich themselves through corruption and other economic crime.

The following is

- an overview of data available in databases
- maintained by the state or to which the state has direct access to for law enforcement purposes
- within the German framework

for assessing a private citizen’s wealth.

One has to keep in mind, though, that data from state databases and from private databases to which the state has direct access to (e.g. bank account numbers) represents only a small fraction of options that are available to investigate a suspect’s wealth:

¹ See for example: OECD, Asset Declarations for Public Officials – A Tool To Prevent Corruption (2011), www.oecd.org/dataoecd/40/6/47489446.pdf; World Bank Group/Alexandra Habershon, Stephanie Trapnell: “Public Office, Private Interests: Accountability Through Income and Asset Disclosure” (2012); http://www1.worldbank.org/finance/star_site/documents/PublicPrivateInterests/Public-Office-Private-Interests.pdf; RAI, Rules and experiences on integrity issues (2012), http://www.rai-see.org/doc/Study-Rules_and_experiences_on_integrity_issues-February_2012.pdf.

² www.unodc.org/unodc/en/treaties/CAC/.

Source	Examples
State databases – asset (direct conclusion on ownership)	- land registry - car registry
State databases – non asset (indirect conclusions on wealth)	- court files (e.g. criminal) - export licences ³
Private databases	- credit card transactions - news reports
Witnesses	- Cash purchases - Hidden assets
Documents	- Hotel bill - Plane tickets

A useful and comprehensive “Financial Investigations Guide” and “Financial Investigations Checklist” for using trails and leads in financial investigations is available from the U.S. Department of Justice (Asset Forfeiture and Money Laundering Section).⁴ The following excerpt shows the strategic perspective of the guide:

- Civil and Criminal Court Records (County and State Records)*
 - Civil suits and settlements*
 - Criminal actions*
 - Leads to hidden transactions or assets revealed through civil suits*
 - Leads to witnesses who may be hostile to the subject*
 - Leads to aliases, multiple Social Security numbers, or previously unknown addresses*
 - Leads to previously unknown affiliations with other persons or entities*
- Divorce and Legal Separation Records (County Records)*
 - Leads to hidden transactions or assets revealed through divorce proceedings*
 - Leads to witnesses who may be hostile to the subject*
 - Leads to previously unknown affiliations with other persons or entities*

³ For example by the Federal Office of Economics and Export Control (“Bundesamt für Wirtschaft und Ausfuhrkontrolle – BAFA”), <http://www.bafa.de/bafa/en/index.html> (English).

⁴ <http://www.justice.gov/criminal/afmls/pubs/> (English).

2. SUMMARY

The following are the main databases in Germany to which law enforcement agencies have access to for establishing a suspect's wealth:

State Database	Asset	Threshold	Data on value	Net access	Special int'l link
Land registry	real estate	all	no	yes	no
Central car registry	automobiles	all	no	yes	yes
Ships registry	boats	>15 meters	no	no	no
Planes registry	aircraft	no	no	no	no
Aviation sport registry	aviation sport devices	no	no	no	no
Money laundering database	money (cash, wire transfers)	no	yes	no	yes
Commercial registry	company, merchant's business	no	partial	yes	no
Trade registry	trade business	no	no	no	no
Tax database	taxes (income, VAT, etc.)	no	yes	yes	yes

Privately maintained database with special state access	Asset	Threshold	Value	Net access	Int'l link
Bank accounts	bank account (number)	no	no	yes	yes
Insurances	policy with cash-value	no	yes	no	no
Securities	shares, bonds, etc.	no	yes	no	yes

There are a few other state data sources, which on rather rare occasions provide insight into or leads about a citizen's wealth (see below at 0).

3. DATABASES

3.1. Real estate

Background

All real estate must be registered in the land registry, which is an institution of public law. The jurisdiction of the land registry officials, the form of establishing and maintaining the land register are manifested in the German "Grundbuchordnung" (GBO) – Landregistry-Order – and in additional orders of the federal minister of justice.⁵ The land registration offices are part of the administration of justice in the 16 German states ("Länder" – regions). Each of the 650 district courts⁶ in Germany maintains a land registry for its jurisdiction.

In its legal documentation and publication role the register functions as the statutory basis for property conveyance, in particular to ensure unequivocal status of ownership and other titles, as well as for mortgage loans. The land register is characterised by two important legal principles:

- Changes of rights to land do not take effect before being registered in the land register.
- Until otherwise proven, the correctness of all titles recorded on the register is assumed. The land register enjoys the "public faith", in other words, the details registered may be presumed correct by anyone acquiring a legal title with regard to property unless an appeal against the correctness is recorded or the person acquiring the title is aware of the entry being incorrect.

The contents of the land register are based on private contracts certified by public notaries. It is not a deed system,⁷ but the contracts are stored in the files belonging to each record. Registrations are done only by application. So normally the land registry does not become active on its own.

Rights on land being able to register are

- ownership,
- share-ownership of a property,
- ownership of a building without ownership of the land (long term lease),
- full ownership of an apartment in combination with part-ownership to the land,
- easement as a limited right for an owner of one parcel to use or prevent use of some kind of a neighbouring parcel. The right is connected to a parcel, like rights-of-ways,
- easement as a limited right for a person or the community, like the right for the municipality to build a gas pipe on private ground,
- mortgages in different forms to secure loans,
- the privilege right for a person to buy a property,
- the privilege right to re-buy a property.

⁵ Parts of this chapter on real estate are cited from or based on a summary by Winfried Hawerk, Grundbuch and Cadastral Systems in Germany, Austria and Switzerland (undated), http://www.fig.net/commission7/reports/events/delft_seminar_95/paper3.html (English).

⁶

http://www.bmj.de/SharedDocs/Downloads/DE/pdfs/Anzahl_der_Gerichte_des_Bundes_und_der_Laender.pdf?blob=publicationFile (German).

⁷ <http://www.landtrusttn.com/difference-between-ownership-by-deeds-and-torrens-system/> (English).

Database

There are two ways of register land tenure:

- the real folio, in which each parcel is registered in a special folio
- the personal folio, in which all parcels of an owner are registered in one folio

The personal folio is the common one in these days. Generally each parcel has to be registered in the land register, except parcels in state ownership which are not part of a normal land market, e.g. streets.

A folio has a structure described as follows:

- title
 - o responsible district court
 - o district
 - o number of folio
- list of properties
 - o numbers of properties
 - o numbers of parcels (a property may be separated in a number of parcels)
 - o description of parcels (area, land use, location)
 - o rights of the owner to other parcels (leaseholds)
 - o share-ownership
- part I
 - o name of the land owners
 - o number of properties
- part II
 - o all forms of easement, protests and other restrictions
 - o ranking of rights
- part III
 - o all forms of mortgages

Beside this official register there are files containing contracts and other documents related to the folio. The land register shows (only) the legal status of all real property, not its purchase price or market value. However, by accessing the contract contained in the paper file, one can get information on the buying value. In addition, from mortgages and other financially relevant rights, one can normally draw conclusions on the lending value (= market value) of the property.

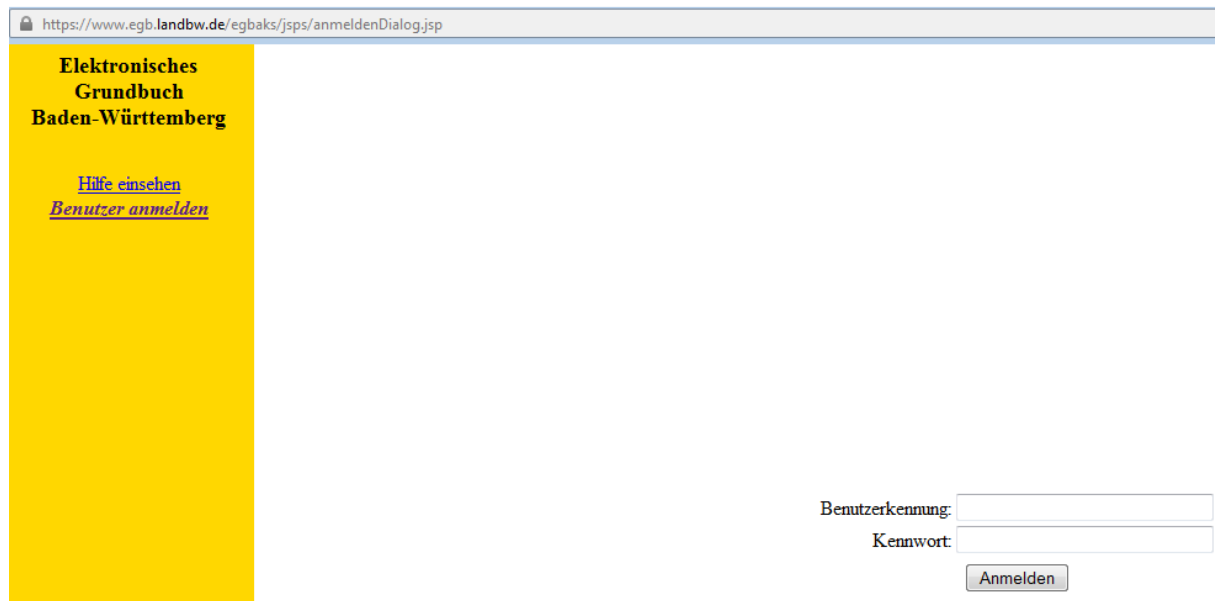
Access

Any person has the right of access to the land register and getting extracts of it. For private citizens, this right is limited to a special interest concerning a special folio which has to be declared to the officials in order to follow the data protection regulations in Germany. State agencies have unlimited access to the land registry.

§ 133 GBO⁸ foresees the electronic land registry. It is an online database (www.grundbuch-portal.de/). From this homepage one can choose the electronic land registry of one of the 16

⁸ http://www.gesetze-im-internet.de/gbo/_133.html (German).

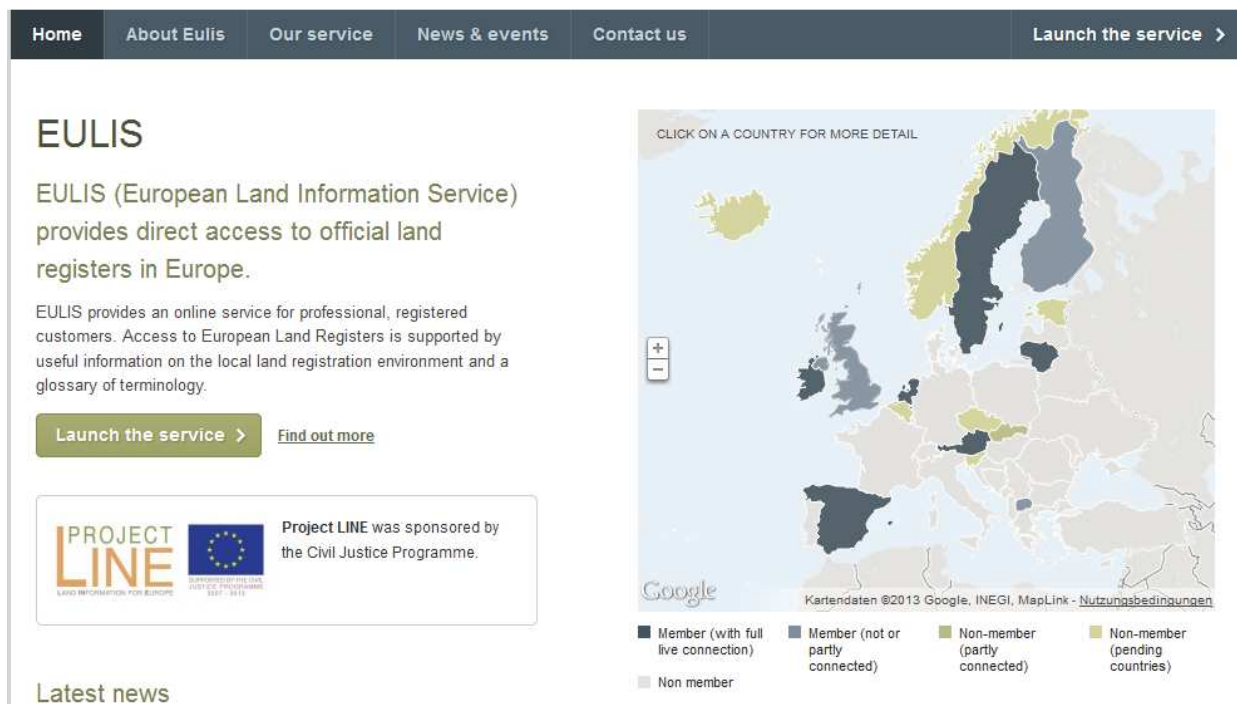
German states. As a state agency, one has to key in a user name and password and can then access all data in the database:



The screenshot shows a web browser window with the URL <https://www.egb.landbw.de/egbaks/jsp/anmeldenDialog.jsp>. On the left, there is a yellow sidebar with the text "Elektronisches Grundbuch Baden-Württemberg" and links for "Hilfe einsehen" and "Benutzer anmelden". On the right, there is a login form with fields for "Benutzerkennung:" and "Kennwort:", and an "Anmelden" button.

International links

As any other information, data from the land registry is subject to regular international legal assistance. In addition, the European Land Information Service (EULIS)⁹ connects the online databases of several European states (not necessarily EU Member States):



The screenshot shows the homepage of the European Land Information Service (EULIS). The navigation bar includes "Home", "About Eulis", "Our service", "News & events", "Contact us", and "Launch the service >". The main content area features the EULIS logo, a description of the service, and a "Launch the service >" button. A map of Europe is displayed on the right, with a legend indicating membership status: Member (with full live connection), Member (not or partly connected), Non-member (partly connected), Non-member (pending countries), and Non member. A "Project LINE" banner is also visible, mentioning sponsorship by the Civil Justice Programme.

The database is limited to civil use of data only. Otherwise, the direct provision of foreign data in a criminal proceeding would circumvent the requirements and procedures set up for mutual legal assistance; furthermore, there is no legal basis for international data exchange for law enforcement purposes.

⁹ <http://eulis.eu/> (English).

3.2. Cars

Background

The Federal Motor Transport Authority (Kraftfahrt-Bundesamt – KBA) maintains the Central Vehicle Register (Zentrales Fahrzeugregister).¹⁰ The main legal basis for the Register is § 31 Road Traffic Act (“Straßenverkehrsgesetz – StVG”)¹¹ and § 30 Vehicle Licencing Ordinance (“Fahrzeug-Zulassungsverordnung – FZV”)¹².

51.7 million motor vehicles and 6.2 million trailers are recorded in the KBA’s Central Vehicle Register (as of July 2013).¹³

Database

The Central Vehicle Register collects, records and processes vehicle and owner data conveyed by the local registration authorities and insurers on vehicles with

- official registration numbers
- export number plates (formerly customs plates)
- vintage cars’ number plates
- seasonal number plates
- insurance number plates (light motor-cycles, mopeds, motorized wheelchairs)
- and also data on holders of red number plates (temporary so-called transfer plates).

Data notifications are submitted to the KBA for new registrations, change of ownership, deregistrations, temporary layups and technical alterations on motor vehicles and trailers.

The car register shows (only) the identity features of the car, not its purchase price or market value. There is no information on the purchasing price in the database or its files. However, from the type and age of the car one can normally draw conclusions on its market value.

Access

The Central Vehicle Register is part of a larger (online) database of the KBA, the Central Traffic Information System (Zentrale Verkehrs-Informationssystem – ZEVIS). All road traffic agencies, police, and customs have online access to this database. The police are connected via the police-network INPOL, to which about 270,000 police workplaces all over Germany are connected.¹⁴

¹⁰

http://www.kba.de/cln_031/nn_130624/EN/ZentraleRegister_en/ZFZR_en/zfzr_node_en.html?_nnn=trurue (English).

¹¹ <http://www.gesetze-im-internet.de/stvg/BJNR004370909.html> (German).

¹² http://www.gesetze-im-internet.de/fzv_2011/BJNR013900011.html (German).

¹³

http://www.kba.de/cln_031/nn_130624/EN/ZentraleRegister_en/ZFZR_en/zfzr_node_en.html?_nnn=trurue (English).

¹⁴ http://www.pcwelt.de/start/gaming_fun/archiv/32947/ (German).



Zentrale Register	Das KBA	Zentrale Register	Statistik	Fahrzeugtechnik	Presse	Punk
Zentrales Fahrzeugregister						
Verkehrszentralregister						
Zentrales Fahrerlaubnisregister						
Zentrales Kontrollgerätkartenregister						
EG-Kontrollgerät						
ZEVIS						
EUCARIS						
Geschützter Bereich für Behörden, Softwareanbieter und Genehmigungsinhaber						

› [Startseite](#) › [Zentrale Register](#) › Geschützter Bereich für Behörden, Softwareanbieter und Genehmigungsinhaber

Geschützter Bereich für Behörden, Softwareanbieter und Genehmigungsinhaber

Authentifizierung erforderlich

http://www.kba.de verlangt einen Benutzernamen und ein Passwort. Ausgabe der Website: "KBA-ZentraleRegister-Realm"

Benutzername:

Passwort:

Informationen für Genehmigungsinhaber

International links

EUCARIS is the European Car and Driving License Information System.¹⁵ EUCARIS is a unique system that provides opportunities to countries to share their car and driving licence registration information and/or other transport related data helping a.o. to fight car theft and registration fraud. EUCARIS is not a database but an exchange mechanism that connects the Vehicle and Driving License Registration Authorities in Europe. EUCARIS is developed by and for governmental authorities.

EUCARIS not only contributes to the prevention, detection and prosecution of violations of the law, the system also plays a part in keeping the national vehicle and driving licence records accurate and up-to-date. The quick exchange of data increases the efficiency, efficacy and accuracy of administrative procedures and the registers.

The strength of EUCARIS lies in the quick, interactive, exchange of data; this is crucial in the fight against car theft, registration and document fraud. Being a participant of EUCARIS does not involve any extra work in terms of transmitting data to a central system.

The national registers show the original details; whereas documents can be forged, national registers cannot. Direct access to the registers of participant countries ensures that up-to-date information is obtained.

Administrative authorities, police, customs and judicial and national security organisations can carry out inquiries in all participating countries during road-side checks and during investigations related to traffic accidents and the prevention of terrorism, crime and fraud.

The information exchange is based on Article 2 and 9 of the EUCARIS Treaty, and Article 12 of the EU Council Decision 2008 on cross-border cooperation:

Automated searching of vehicle registration data

1. For the prevention and investigation of criminal offences and in dealing with other offences coming within the jurisdiction of the courts or the public prosecution service in the searching Member State, as well as in maintaining public security, Member States shall allow other Member

¹⁵ Information from this subchapter is largely cited from or based on: <https://www.eucaris.net/use-of-eucaris> (English).

States' national contact points, as referred to in paragraph 2, access to the following national vehicle registration data, with the power to conduct automated searches in individual cases:

(a) data relating to owners or operators; and

(b) data relating to vehicles.

Searches may be conducted only with a full chassis number or a full registration number. Searches may be conducted only in compliance with the searching Member State's national law.

2. For the purposes of the supply of data as referred to in paragraph 1, each Member State shall designate a national contact point for incoming requests. The powers of the national contact points shall be governed by the applicable national law. Details of technical arrangements for the procedure shall be laid down in the implementing measures as referred to in Article 33.¹⁶

Under above regulation, “data relating to owners or operators” can be automatically searched. The information that is exchanged consists of:

- Licence number
- Vehicle Identification Number (VIN)
- Document ID
- Registration date
- Additional identifying attributes like colour, make and commercial type of the vehicle
- All EU harmonized attributes that are indicated on the Vehicle Document

3.3. Ships and boats

Background

The Ship Register Ordinance (Schiffsregisterordnung)¹⁷ establishes a register for different kinds of ships, domestic shipping and maritime shipping.

Owners are obliged to register their ships for domestic ships, if they can carry at least 20 tons of weight. Maritime ships must be registered if they are at least 15 meters long.

In addition, smaller domestic shipping boats (for sport, leisure and other purposes) have to carry a number plate, and are thus also publicly registered.¹⁸

All above three registers are decentralized. The domestic and maritime ship registers are maintained by the 650 district courts.¹⁹ The smaller domestic ship number plates are assigned by the 39 German local and regional Water- and Ship Agencies.²⁰

¹⁶ Article 12 Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, Official Journal L 210, 06/08/2008 P. 0001–0011, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:210:0001:01:EN:HTML>; see also Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime; Official Journal L 210, 06/08/2008 P. 0012 – 0072 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:210:0012:01:EN:HTML> (English).

¹⁷ www.gesetze-im-internet.de/bundesrecht/schregog/gesamt.pdf (German).

¹⁸ Small Vehicle Ordinance – Verordnung über die Kennzeichnung von auf Binnenschiffahrtsstraßen verkehrenden Kleinfahrzeugen – KfzKV-BinSch, <https://www.elwis.de/Freizeitschiffahrt/Verzeichnisse/Verordnungen/KfzKV-BinSch.pdf> (German).

¹⁹ <http://www.berlin.de/sen/justiz/gerichte/ag/charl/schiffsregister.html#> (German).

²⁰ <http://www.wsv.de/> (German).

There is no central online platform or consolidated database – other than with the land registry. An investigator would have to inquire with multiple courts and agencies in Germany in order to find out whether a concrete person would own a boat or ship (with a home port in Germany).

Database

The database of ships and boats is similarly structured as the land registry. It contains in particular the following information on the ship and on its owner:

- the name, number or other designation and the type of ship
- the year and place of construction
- the name of the owner

The ship register shows (only) the identity features of the ship, not its purchase price or market value. There is no information on the purchasing price in the database or its files. However, from the type and age of the ship one can normally draw conclusions on its market value.

Access

State agencies have access to the registers under § 8 Ship Register Ordinance. For registers with online access, § 68 Ordinance on the Implementation of the Ship Register Ordinance (Verordnung zur Durchführung der Schiffsregisterordnung – SchRegDV)²¹ foresees automated access to data (for state agencies or other entitled parties).

International links

As any other information, data from the ship registries is subject to regular international legal assistance. Apart from that, there is no international or European platform. The European Parliament has called on the Commission in 2001 to create a “European Ship Registry”;²² however, no action can be seen so far on this topic.

3.4. Aviation

Background

Under § 64 Air Traffic Act, the Federal Aviation Office (LBA) is maintaining a central aircraft register and a sport aviation tool register. Natural or legal persons are registered as owners on the German aircraft register, if their permanent residence or location is in the Federal Republic of Germany.

Database

According to § 64 Air Traffic Act, the database contains in particular the following information on the plane and on its owner:

- the name, number or other designation and the type of the plane
- the name and address of the owner

The plane register shows (only) the identity features of the plane, not its purchase price or market value. There is no information on the purchasing price in the database or its files. However, from the type and age of the plane one can normally draw conclusions on its market value.

Access

All state agencies have access to the database according to § 64 par. 7 Air Traffic Act for the purpose of preventing public dangers or for investigating criminal offences. There is no online access to the database.

²¹ <http://www.gesetze-im-internet.de/schregdv/BJNR021690980.html> (German).

²² Document No. PA\434127EN.doc, www.europarl.europa.eu/meetdocs/committees/rett/20010910/434127EN.pdf (English).

International links

As any other information, data from the aviation registries is subject to regular international legal assistance. Apart from that, there is no international or European platform.

3.5. Bank accounts and securities account

Background

According to § 24c German Banking Act²³ all banks in Germany have to keep a register of all their bank accounts and securities account (for stock exchange etc.). The Federal Financial Supervisory Authority (“Bundesanstalt für Finanzdienstleistungsaufsicht” – BaFin) has automated access to these registers. However, the registers contain only the account number, and the name and birthday of its holder, but no financial information. Nonetheless, it is a frequently used tool by investigators to determine at which bank detailed information on the account of a specific person can be requested.

Description of database

The database contains the following information:

- account number
- name and date of birth of the owner or the holder of the right of disposal.

Three years after closure of the account the data has to be erased.²⁴

Access

§ 24c par. 3- 7 Banking Act contains detailed regulation on the automated access to the database:

“(3) Upon request, BaFin provides information entered in the data file pursuant to subsection (1) sentence 1 to

[...]

2 the authorities or courts responsible for providing international judicial assistance in criminal cases, and otherwise for the prosecution and punishment of criminal offences, insofar as this is necessary to enable them to perform their statutory functions,

[...]

BaFin shall access the data stored in the data files by means of an automated procedure and transmit them to the agency making the request. BaFin verifies the permissibility of such transmission only if it has particular grounds for doing so. Responsibility for the permissibility of the transmission shall lie with the agency making the request. BaFin may, pursuant to section 4b of the Federal Data Protection Act, provide foreign agencies with information from the data file pursuant to subsection (1) sentence 1 for the purposes described in sentence 1. Section 9 (1) sentences 5 and 6 and subsection (2) shall apply mutatis mutandis. This is without prejudice to the provisions on international judicial assistance in criminal cases.

(4) For the purpose of monitoring compliance with data protection rules on the part of the competent agency, BaFin logs the time of each data retrieval, the data used during the retrieval, the data retrieved, the name of the retriever, the reference number and, if the data are retrieved at the request of another agency, the name of that agency and its reference number. The log data may not be used for any other purposes. The log data shall be kept for at least 18 months and deleted after two years at the latest.

²³ See § 24c Gesetz über das Kreditwesen (KWG) – German Banking Act, English version available at http://www.bundesbank.de/Redaktion/EN/Downloads/Core_business_areas/Banking_supervision/PDF/banking_act.pdf?_blob=publicationFile.

²⁴ Häberle, in: Erbs/Kohlhaas, Strafrechtliche Nebengesetze, KWG § 24c Automatisierter Abruf von Kontoinformationen, version June 2011, no. 1-6 [Criminal Sublaws (German)].

(5) The credit institution shall, at its own expense, put in place all the procedures necessary for the automated data access within its area of responsibility. These include, in each case in accordance with the relevant BaFin provisions, the procurement of the equipment necessary to ensure confidentiality and protection against unauthorised access, the installation of a suitable telecommunications link and participation in the closed user system, as well as the on-going provision of these facilities.

(6) The credit institution and BaFin shall put in place state-of-the-art measures to safeguard data protection and data security, which in particular shall guarantee the confidentiality and integrity of the retrieved and transmitted data. The state of the art shall be defined by BaFin in consultation with the Federal Office for Information Security (Bundesamt für Sicherheit in der Informationstechnik) by a procedure of BaFin's choice.

(7) The Federal Ministry of Finance may, by way of a statutory order, permit exemptions from the obligation to transmit data by means of an automated procedure. It may delegate this authority to BaFin by way of a statutory order.

International links

The above cited regulation in § 24c par. 3-7 Banking Act allows for direct data transfer to foreign state agencies as long as it serves the purposes laid down in par. 3 sentence 1. § 24c par. 3 makes reference to § 4b Federal Data Protection Law,²⁵ which regulates data exchange with foreign entities. The basic requirement of § 4b is that the foreign state has a similar level of data protection and that there is no other interest of the person concerned contradicting the data transfer.

In addition, the EU Savings Directive²⁶ seeks to ensure that individuals resident in an EU Member State who receive interest income from another Member State are taxed in the Member State in which they are resident for tax purposes.²⁷ To this end, payments of interest made on or after 1 July 2005 are either (1) reportable by paying agents in the EU to the tax authorities in the paying agents home territory or (2) subject to withholding tax in those territories which have opted to apply withholding tax rather than report the payment. Austria, Belgium and Luxembourg have opted to apply the withholding tax instead of exchanging information. Some associated and dependent territories, namely, Netherlands Antilles, Jersey, Guernsey, Isle of Man, British Virgin Islands and Turks and Caicos Islands and certain third countries, namely, Andorra, Liechtenstein, Monaco, San Marino and Switzerland will also apply a withholding tax.

Apart from that, data of BaFin is subject to regular international legal assistance.

3.6. Insurances (with cash-value)

Background

Certain insurances provide not only compensation once a certain risk materialises, but also represent cash value. This is true in particular for a type of life insurance policy that pays out upon the policyholder's death, and also accumulates value during the policyholder's lifetime. The policyholders can use the cash value as a fund from which to borrow, or they can pass it on to their heirs.²⁸ There is no national register of insurance policies or their holders. However, the Federal Financial Supervisory Authority (BaFin) can access data on such policies as part of its oversight on insurance companies.²⁹

²⁵ www.bfdi.bund.de/EN/DataProtectionActs/Artikel/BDSG_idFv01092009.pdf (English version).

²⁶ Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0048:EN:HTML>.

²⁷ <http://www.revenue.ie/en/about/publications/eu-savings-directive-withholding-tax.html> (English).

²⁸ <http://www.investopedia.com/terms/c/cash-value-life-insurance.asp> (English).

²⁹ See Lammer in: Widmaier, Münchener Anwaltsbandbuch Strafverteidigung, 1st edition 2006, no. 69 "1. Verfahrens unabhängige Finanzermittlungen" [Handbook on Criminal Defence (German)]; Tshanett, in:

Database

All insurance companies have to maintain electronic databases with information on the insurance policies and their holders.

Access

Under § 80d par. 3 Act on the Supervision of Insurance Undertakings (Versicherungsaufsichtsgesetz – VAG)³⁰ all insurance companies have to nominate a contact person for cooperating with law enforcement in the realm of money laundering cases. As almost any case of illicit enrichment is also a case of money laundering, this contact point would be the entry point for a data exchange on cash value insurance policies. If money laundering is not involved, the general data exchange clause of § 85 par. 3 VAG applies: “The supervisory authorities may use information obtained [...] only for the following purposes: [...] 5. Within the framework of proceedings in administrative courts, insolvency courts, criminal prosecuting authorities or courts having competent jurisdiction for administrative fines and criminal matters.”

International links

Data obtained by BaFin is subject to regular international legal assistance.

3.7. Financial transactions

Background

Financial Intelligence Units usually observe two kinds of financial patterns in order to detect cases of money laundering:

- Transactions with suspicious specifics, as for example money transfers to a tax haven.
- Transactions above a certain threshold, for example 15,000 €.

In Germany, all financial institutions including insurance companies (and certain non-financial businesses and professions) have to report suspicious of transactions to the FIU and have to register the identity of threshold transactions (>15,000 €) in case the FIU will have an inquiry about this person later on. The reporting obligations are regulated by § 10 Act on the Detection of Proceeds from Serious Crimes – Money Laundering Act (Geldwäschegesetz – GwG).³¹ The FIU records and analyses the Suspicious Transaction Reports (STR) and information about Cash Transaction Reports (CTR) for possible further investigation. Those reports are an invaluable source for establishing a citizen’s wealth. The Federal Police (“Bundeskriminalamt – BKA”) is the FIU in Germany and maintains an electronic database on transaction reports.³²

Wabnitz/Janovsky, Handbuch Wirtschafts- u. Steuerstrafrechts, 3rd edition 2007, no. 7 – 8 „b) Versicherungsaufsicht“ [Handbook on Economic and Tax Crime (German)].

³⁰ <http://www.gesetze-im-internet.de/vag/BJNR001390901.html> (German, up to date); http://www.bafin.de/SharedDocs/Aufsichtsrecht/EN/Gesetz/vag_010512_va_en.html;jsessionid=99483FCB094CD11E8D2D5DF8DDCB7788.1_cid381 (English, however not up to date – Article 80d not yet included).

³¹

http://www.bka.de/nn_195368/SharedDocs/Downloads/EN/Subjects_A_Z/FIU/moneyLaunderingAct2008.html (English).

³²

http://www.bka.de/nn_195636/EN/SubjectsAZ/FinancialIntelligenceUnit/financialIntelligenceUnit_node.html? nnn=true (English).

Database

The database contains the following categories of information collected from suspicious and threshold transaction reports:³³

- Natural person involved in the financial transaction:
 - o Name
 - o Citizenship
 - o Date of birth
 - o Address
 - o Profession
 - o Identification document used
 - o Other identity features if no identification document was used
- Legal person involved in the financial transaction: identity information
- Financial transaction
 - o Country of origin and destination
 - o Type of transaction
 - o Account number
 - o Information about banks
 - o Type of account
 - o Particularities of the transaction (amount, suspicious circumstances)

Access

According to § 11 par. 6 and § 15 Money Laundering Act, the data collected may only be used for the prosecution of money laundering and terrorist financing. However, most economic crimes are a predicate offence of money laundering, so the transfer of the proceeds of economic crime most often also constitutes a money laundering offence. Thus, in practice, only the police, prosecutors, and courts have access to the database. However, once a criminal proceeding has been opened, the tax authorities have to be informed for taxation and prosecution purposes and can use the data to this end as well (§ 15 par. 2 Money Laundering Act).

International links

Data exchange with foreign FIUs is privileged as it is not limited to the usual (and rather formal) mutual legal assistance channels (via the Ministry of Justice). § 11 par. 2 Money Laundering Act allows for a direct exchange as long as the data is used for anti-money laundering purposes:

(2) The Federal Criminal Police Office - Financial Intelligence Unit - shall co-operate with the financial intelligence units of other states responsible for the prevention and prosecution of money laundering and terrorist financing. It is the financial intelligence unit as defined in Article 2 (3) of the Council Decision (2000/642/JHA) of 17 October 2000 concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information (OJ L 271, p. 4).

(3) Where necessary for the performance of its duties pursuant to paragraphs 1 and 2, the Federal Criminal Police Office - Financial Intelligence Unit - may collect, process and use personal data in accordance with Sections 7 to 14 and Sections 27 to 37 of the Federal Criminal Police Act. In

³³ See the form for reporting a suspicious transaction:

http://www.bka.de/nn_242046/DE/ThemenABisZ/Deliktsbereiche/GeldwaescheFIU/Veroeffentlichungen/Verdachtsmeldung/FormularFormular,templateld=processForm.html (German).

Section 7 (2) of the Federal Criminal Police Act, the duties listed in paragraphs 1 and 2 shall replace the duty as central unit pursuant to Section 2 (2) no. 1 of the Federal Criminal Police Act. Section 14 (1) of the Federal Criminal Police Act shall be applied with the provision that transmission to the other countries' financial intelligence units is allowed. The Federal Criminal Police Office - Financial Intelligence Unit - may request information from the Federal Financial Supervisory Authority (BaFin) pursuant to Section 24c (3) first sentence no 2 of the Banking Act where necessary to perform its duties in accordance with paragraphs 1 and 2.

(4) The Federal Criminal Police Office - Financial Intelligence Unit - may use data provided by the financial intelligence unit of another country solely in line with the conditions imposed by the financial intelligence unit which provided the data. It may impose its own restrictions and conditions on the use of information transmitted to the financial intelligence unit of another country.³⁴

3.8. Securities, shares

Background

Listed companies and market participants must comply with various regulations under the Securities Trading Act (Wertpapierhandelsgesetz – WpHG);³⁵ The Federal Financial Supervisory Authority (“Bundesanstalt für Finanzdienstleistungsaufsicht” – BaFin) is responsible for monitoring whether they do so.³⁶

For the purposes of monitoring compliance with the prohibition of insider trading, BaFin routinely analyses trading activities. To this end, it analyses data on all securities transactions which credit and financial services institutions have to report according to § 9 WpHG:

(1) Investment services enterprises and branches within the meaning of section 53b of the Banking Act (Kreditwesengesetz) shall be required to report to the Supervisory Authority not later than the next working day (excluding Saturdays) after conclusion of the transaction, pursuant to subsection (2), any transaction in financial instruments which are admitted to trading on an organised market or are included in the regulated market (regulierter Markt) or the regulated unofficial market (Freiverkehr) of a German stock exchange. [...]

(2) The report must be transmitted to the Supervisory Authority by way of remote electronic data transfer unless the requirements of Article 12 of Commission Regulation (EC) No. 1287/2006 are satisfied according to which the report may be stored on a data medium. [...]

In addition, BaFin can access the register of all securities accounts (see above 3.5). For citizens who do not use securities accounts at banks for their stock exchange trading but brokers, BaFin can access data from the brokers as part of the oversight on them.

Database

The electronic database of BaFin contains information on the type of transaction and on the identity of the depot owner or principal.³⁷

³⁴http://www.bka.de/nr_195368/SharedDocs/Downloads/EN/Subjects_A_Z/FIU/moneyLaunderingAct2008.html (English).

³⁵ English version of the law:

http://www.bafin.de/SharedDocs/Aufsichtsrecht/EN/Gesetz/wphg_101119_en.html?nn=2821360.

³⁶ http://www.bafin.de/EN/Supervision/StockExchangesMarkets/stockexchangesmarkets_node.html (English).

³⁷ For further details see Annex II, Table 1, Commission Regulation (EC) No 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive, Official Journal L 241, 02/09/2006 P. 0001 – 0025, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:241:0001:01:EN:HTML> (English).

Access

Under § 8 WpHG, BaFin employees can disclose information obtained in the course of their activities “if facts are communicated to public prosecutors’ offices or courts having jurisdiction in criminal cases and administrative offence cases; [...] central banks, the European System of Central Banks or the European Central Bank in their capacity as monetary authorities and other state authorities entrusted with the supervision of payment systems; [...] provided that these bodies require the information for the performance of their functions. The obligation of confidentiality as specified in sentence 1 shall apply mutatis mutandis to persons employed by such bodies. If the body is located in another country, the facts may be communicated only if that body and the persons commissioned by it are subject to an obligation of confidentiality equivalent to that specified in sentence 1.”

International links

As specified above, the BaFin can exchange data with foreign law enforcement bodies if they maintain the same level of confidentiality as BaFin itself. Apart from that, data from the BaFin is subject to regular international legal assistance.

3.9. Companies and businesses

Background

There is two kind of registers for companies and businesses:

- Trade Register (Gewerberegister)
- Commercial Register (Handelsregister)

Both are registers maintained by public bodies. The Trade Register serves solely the purpose of public control on trade and businesses, whereas the Commercial Register serves primarily private law publicity purposes (informing private business partners).

Trade Register

The commencement, any change and termination of every established trade activity must be notified to the Trades Office responsible for the relevant place of business.³⁸ This applies to every company regardless of its legal status. The registration of the business takes place at the local administration. For the registration it is only necessary to take an ID-card Furthermore, a company already listed in the Commercial register has to prove this by an up-to-date extract of the Commercial register.

An established trade (as against a travelling trade) is defined as when a tradesman conducts his trade permanently or regularly in premises fitted out for the conduct of day to day business. There is no requirement for particular premises to be used exclusively for trade or commercial purposes, an office can be run from a private home (provided local authority regulations do not rule this out).

If a trade is not exercised from fixed premises but is conducted on the move (travelling tradesman) a travelling tradesman’s permit must be applied for. A travelling tradesman’s permit can only be issued to individuals, not to legal entities.

Commercial Register

The Commercial Register (Handelsregister) in Germany is a public register that contains details of all tradespeople and legal entities in the district of the registrar (generally the

³⁸ Large parts of this paragraph chapter are based on or cited from: http://www.frankfurt-main.ihk.de/english/business/trade_reg_notification/ (English).

Amtsgericht (local district court) of the place where the Landgericht (superior court)) is also situated.

The Commercial Register in Germany contains two branches: Branch A deals with partnerships, sole traders and registered associations (Vereine) without share capital. Branch B contains all incorporated companies with share capital. Applications (for new entries, changes and liquidations) must be made in notarized form in the presence of a public notary.

The functions of the Commercial Register with respect to the information submitted are publication, examination, control and safekeeping (in the realm of private law). The content may be taken as accurate by any party referring to the register.

The entries to the Commercial Register are made by a judge or an authorised employee. In many of the 16 Federal States, the Register is kept electronically.

Legal entities are mostly obliged to publish their Annual Report by sending it to the Commercial Register. This obligation doesn't depend on the size of the company.

Entries to the Commercial Register are sent to the Bundesanzeiger (Federal gazette of the government) and published by them. Newspapers sometimes also publish new entries, although since 2009, entries to newspapers are no longer mandatory. Also, all registered companies are required to submit their annual accounts to the Bundesanzeiger for publication.

Database

The Trade Register contains the following information:

- Identity and address of the personal or legal person performing the trade
- Address of the trade
- Type of trade

There is no financial information registered on capital invested or the value of the trade etc. Any value can only be concluded from the existence of a trade and from additional information (tax declarations etc.).

The Commercial Register contains in particular information on:

- Legal name of a company or (one-man) merchant
- Registered office
- People representing the company (Managing Director, Board of Directors, holders of Proxy)
- Shareholders or owners
- Subscribed capital (if any)

Financial information on companies or merchants can be derived from their annual accounts.

Access

The Trade Register is maintained by hundreds of different local administrations. State agencies can request information on a case by case basis. A working group of the national e-Government initiative „Deutschland-online“ is working to build a standardised electronic platform for automated transfer of data from all local Trade Registers.

The Commercial Register is an online database open to everybody. State agencies can use the online service cost-free.

International links

The Trade Register and the Commercial Register are subject to regular international legal assistance.

Foreign entities can download information from the Commercial Register as regular private users but might not be able to use it for law enforcement purposes under their international legal assistance regulations (because the data was not provided for law enforcement purposes).

The EU-Directive 2012/17/EU on the interconnection of central, commercial and companies registers from 13 June 2012 requests Member States to harmonise and to interconnect their central, commercial and companies registers, inter alia in order to improve access to business information and making it available for citizens in their own language.³⁹ According to this directive, the European e-Justice Portal will serve as the European electronic access point for business register information. This European initiative concerns for German registers only the Commercial Register.

Until the transposition of Directive 2012/17/EU, the EBR is the only network of business registers that operates at European level. The EBR started off as an informal technical cooperation between business registers. Over time, it became a network of business registers whose objective is to offer reliable information on companies all over Europe. Citizens, businesses and public authorities may subscribe to the services of EBR via the business register of their own country. Subscribers can search for a company name or a person throughout all the registers which are members of EBR by submitting a single query in their own language. As the result of the search, a specific set of company information becomes available, in the language of the query.

Currently, the business registers of 17 Member States of the EU and five other European countries or crown dependencies take part in the EBR network. All these countries are parties to an Information Sharing Agreement (ISA) in which the contracting parties undertook to give each other access to information stored in the business registers. The ISA remains the basis for cooperation between the parties.

Based on the ISA, the parties shall give each other non-exclusive access to the data stored in the business registers and deliver the predefined information in a standardised report. Access is ensured through software provided by the EBR. The minimum service the ISA requires from all parties is to provide for company searches and company profiles. In addition, there is a possibility to deliver standardised reports on person searches, personal appointments and company appointments. Most countries, however, provide for even broader information.

3.10. Taxes: Income, property, etc.

Background

The following taxes allow direct conclusions about a citizen's wealth:⁴⁰

- Income tax for residents
- Flat rate tax on private income from capital and capital gains
- Business taxes
- Corporation tax

³⁹ The following information is cited from https://e-justice.europa.eu/content_business_registers_at_european_level-105-en.do (English).

⁴⁰ http://www.steuerliches-info-center.de/EN/SteuerrechtFuerInvestoren/steuerrechtFuerInvestoren_node.html (English)

- Trade tax (for businesses registered as trade, see above 3.9)
- Real property tax
- Real property transfer tax
- Inheritance and gift tax

The Tax Department, also known as the Revenue Administration, is the public-sector body responsible for assessing and collecting taxes. The Tax Department in the Federal Republic of Germany is split between central government and the federal states. The Federal Ministry of Finance is the supreme authority of the Federal Revenue Administration. Subordinate to it are various senior authorities which perform specific functions for which central government is responsible, such as the Federal Central Tax Office.

Strictly speaking, the Federal Revenue Administration includes the Federal Ministry of Finance as the supreme federal authority, the senior federal authorities, the medium-level authorities, local authorities and other departments such as the Data Processing and Information Technology Centre (ZIVIT). It also includes authorities and public sector bodies under the authority of the Federal Ministry (e.g. the Federal Financial Supervisory Agency).

Database

Declaration of taxes and other data exchange with the tax authorities is done via a central national online platform, "ELSTER".⁴¹ All tax data including all financial information is contained and processed through standardised databases connected through ELSTER.

Access

Technically, ELSTER allows all state bodies to exchange data electronically with the tax authorities. Legally, tax data is available to other state bodies according to § 30 Fiscal Code ("Abgabenordnung")⁴² for criminal investigations as follows:

- (1) Public officials shall be obliged to observe tax secrecy.*
- (2) Public officials shall be in breach of tax secrecy if they*
- 1. disclose or make use of, without authorisation, circumstances of a third person which have become known to them*
 - a) in an administrative procedure, an auditing procedure or in judicial proceedings in tax matters,*
 - b) in criminal proceedings for tax crimes or in administrative fine proceedings for tax offences,*
 - c) for other reasons from notification by a revenue authority or from the statutory submission of a tax assessment notice or a certification of findings made in the course of taxation,*
 - or*
 - 2. disclose or make use of, without authorisation, a corporate or commercial secret which has become known to them in a procedure as designated under number 1 above,*
 - or*
 - 3. electronically retrieve, without authorisation, data protected pursuant to number 1 or 2 above which have been stored in a file for a procedure as designated under number 1 above.*
- (3) The following shall be deemed to be of equivalent status to public officials:*
- 1. persons under special obligations to the civil service (section 11(1) number 4 of the Criminal Code),*
 - 1a. the persons designated in section 193(2) of the Act on the Constitution of Courts,*
 - 2. officially consulted experts,*
 - 3. holders of offices of the churches and other religious communities being public-law entities.*

⁴¹ <https://www.elster.de/index.php> (German).

⁴² http://www.gesetze-im-internet.de/englisch_ao/englisch_ao.html#p0149 (English).

(4) Disclosure of information obtained pursuant to subsection (2) above shall be permissible, insofar as

2. it is expressly permitted by law,

3. the persons concerned give their consent,

4. it serves the implementation of criminal proceedings for a crime other than a tax crime, and such information

a) was obtained in the course of proceedings for tax crimes or tax offences; however, this shall not apply in relation to facts which a taxpayer has disclosed while unaware of the instigation of the criminal proceedings or the administrative fine proceedings or which have already become known in the course of taxation before the instigation of such proceedings, or

b) was obtained in the absence of any tax liability or by waiver of a right to withhold information,

5. there is a compelling public interest in such disclosure; such compelling public interest shall be deemed to exist in particular where

a) crimes and wilful serious offences against life and limb or against the State and its institutions are being or are to be prosecuted,

b) economic crimes are being or are to be prosecuted, and which in view of the method of their perpetration or the extent of the damage caused by them are likely to disrupt substantially the economic order or to undermine substantially general confidence in the integrity of business dealings or the orderly functioning of authorities and public institutions, or

c) disclosure is necessary to correct publicly disseminated incorrect facts which are likely to undermine substantially confidence in the administration; such decision shall be taken by the highest revenue authority responsible in mutual agreement with Federal Ministry of Finance; the taxpayer is to be heard before correction of the facts.

(5) Wilfully false statements by the person concerned may be disclosed to the law enforcement authorities.

(6) The electronic retrieval of data which have been stored for a procedure as designated under subsection (2) number 1 above shall be permissible only insofar as it serves the implementation of a procedure within the meaning of subsection (2) number 1(a) and (b) above or the permissible transmission of data. To protect tax secrecy, the Federal Ministry of Finance may stipulate, by way of ordinance and subject to the consent of the Bundesrat, which technical and organisational measures are to be adopted to preclude the unauthorised retrieval of data. In particular, it may set out detailed rules on the type of data, the retrieval of which is permissible, and on the group of public officials entitled to retrieve such data. Ordinances shall not require the agreement of the Bundesrat where they concern import/export duties and excise duties, with the exception of beer duty.

International links

Under § 117 Fiscal Code, tax authorities are entitled to engage in direct international legal assistance in tax matters:

(1) The revenue authorities may avail themselves of international legal and administrative assistance subject to the provisions of German law.

(2) The revenue authorities may provide international legal and administrative assistance on the basis of nationally applicable international agreements, nationally applicable legal instruments of the European Communities and the EC Mutual Assistance Act.

(3) The revenue authorities may at their duty-bound discretion provide international legal and administrative assistance upon request in other cases where

1. reciprocity is assured,

2. the requesting state guarantees that the information and the documents supplied will be used only for the purposes of its taxation or criminal tax procedure (including offence proceedings) and that the information and the documents supplied will be disclosed only to such persons, authorities or courts as are concerned with the processing of the tax case or the prosecution of the tax crime;

3. the requesting state guarantees that it is prepared to avoid any double taxation on income, capital gains and assets by way of mutual agreement procedure through the appropriate adjustment of the basis of taxation, and

4. compliance with the request is not detrimental to the sovereignty, security, public order or other essential interests of the Federation or its political subdivisions and there is no danger of the person concerned in Germany incurring damage incompatible with the purpose of the legal and administrative assistance in the event that a trade, industrial, commercial or professional secret or a business process which is to be communicated on the basis of the request is disclosed.

To the extent that international legal and administrative assistance concerns taxes administered by the revenue authorities of the Länder, the Federal Ministry of Finance shall take a decision in mutual agreement with the competent highest authority of that Land.

(4) When implementing legal and administrative assistance, the powers of the revenue authorities and the rights and obligations of the participants and other persons shall be based on the provisions applying to taxes as defined in section 1(1). Section 114 shall apply accordingly. Section 91 shall apply accordingly with regard to domestic participants where information and documents are transmitted; notwithstanding section 91(1), domestic participants shall invariably be heard where legal and administrative assistance concerns taxes administered by the revenue authorities of the Länder, unless VAT is concerned or exceptional circumstances within the meaning of section 91(2) or (3) exist.

(5) For the purposes of promoting international cooperation, the Federal Ministry of Finance shall be authorised, by way of ordinance with the consent of the Bundesrat, to enact international agreements on mutual legal and administrative assistance in customs matters if the obligations thus assumed do not go beyond the scope of the international legal and administrative assistance permissible under this Code.

3.11. Other databases

There are other state data sources, which on rather rare occasions provide insight into or leads about a citizen's wealth:

- **The National Firearms Register** (financially relevant if the number or type of weapons points towards wealth of the owner): According to the EU Weapons Directive, by 31 December 2014 all Member States must "ensure the establishment and maintenance of a computerized data-filing system" at national level for weapons subject to the Directive. The Directive also stipulates that all responsible authorities must have access to the data in this filing system. As a result, Germany passed legislation stipulating that the National Firearms Register (NWR) is to be created by the end of 2012, two years ahead of the deadline given in the EU Weapons Directive (Section 43a of the German Weapons Act). The details are governed by the Act Establishing a National Firearms Register that entered into force in summer 2012.⁴³ The central component of NWR comprises the Central Firearms Register, a portal application, and a communications interface ("XWaffe-Dienst"). The weapons administration systems of the local weapons authorities and the Central Component communicate exclusively via government networks using the XWaffe standard for data sharing. For this reason, all the weapons authorities must have an NWR-compliant weapons administration system and access to a government network such as Deutschland-Online infrastructure. The police and security authorities can be given access to the necessary NWR data via the portal application. Such access will require only a suitable web browser and capacity. The details are governed by regulations implementing the Act Establishing a National Firearms Register.⁴⁴ §§ 10-16 of the Act regulate the data transfer to other state agencies, in particular the police and courts for purposes of criminal

⁴³ Large parts of this paragraph chapter are based on or cited from:

http://www.bva.bund.de/cln_321/nn_2341852/EN/Tasks/NWR/node.html?_nnn=true (English).

⁴⁴ <http://www.gesetze-im-internet.de/nwrg/> (German).

investigations. The regulation includes details on electronic access and on obligations to protocol the data exchanges (§ 16).

- **Court cases** on civil or family matters involving financial claims: the national justice online platform⁴⁵ does not yet allow a search for civil cases connected to a certain person. An investigator would thus have to request from specific courts (most likely with jurisdiction over the person in question) whether there are any court cases. Data can be requested from courts under general access to data in criminal investigations (see below at 4).
- Registry of children obliged to visit **school**: All local authorities control whether children who are by age required to attend school comply. If any of those children visit a private school, this is also registered with the local authorities. The rather expensive fees for private school (compared to cost-free public schools) would allow an investigator to draw conclusions as to the wealth of the children's parents. Data can be requested from local authorities under general access to data in criminal investigations (see below at 4).
- **Customs**: It might be that a person would have imported cash or valuable goods and declared those imports to the customs. Data from declarations is collected and processed electronically. The customs are part of the tax administration. Hence, for the data exchange with other state agencies the same rules apply as with any other tax information.
- **Copyrights, patents, trademarks**: such rights are not only assets, but can be an indicator for business, and consequently for further wealth of its owner. Patents and trademarks are kept in publicly available databases which can be searched by owner's names;⁴⁶ however, the – possibly enormous – value of such rights is not indicated in the databases, but is determined by the market. If the owner has to submit annual financial reports (because he/she is a merchant, or because he owns the rights through a company), the value of the rights has to be indicated.

4. ACCESS TO DATA IN CRIMINAL PROCEDURES

Investigators and prosecutors have access to data from state agencies under the general clause of § 161 Criminal Procedure Code ("Strafprozessordnung"):⁴⁷

(1) For the purpose indicated in Section 160 subsections (1) to (3) [=investigation], the public prosecution office shall be entitled to request information from all authorities and to make investigations of any kind, either itself or through the authorities and officials in the police force provided there are no other statutory provisions specifically regulating their powers. The authorities and officials in the police force shall be obliged to comply with the request or order of the public prosecution office and shall be entitled, in such cases, to request information from all authorities.

The Constitution Court has approved the general character of the clause as sufficiently detailed and as a valid basis for data exchange.⁴⁸

As shown above in chapter 3, often more specific regulations allow the police and prosecution to access data (see for example the detailed regulation in the Fiscal code, chapter 3.10, subchapter "Access"). Those more specific regulations will come to primary application, wherever they go into more detail than § 161 Criminal Procedure Code.

Both, the general clause of § 161 Criminal Procedure Code, and the more specific regulations in other legislations cover all stages of the investigation, prosecution and trial

⁴⁵ <http://en.justiz.de/onlinedienste/index.php> (English).

⁴⁶ <https://register.dpma.de/DPMAREgister/Uebersicht?lang=en> (English).

⁴⁷ http://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html#p1328 (English).

⁴⁸ Constitutional Court decision 26 May 1981, BVerfGE 57, 250, 283 = NJW 1981, 1719, 1723.

with a uniform authorization for data access. In other words: there are no more specific or restrictive regulations for obtaining data at a later stage, for example during a trial.

5. INTERNATIONAL LEGAL ASSISTANCE

There are two ways of international legal assistance:

- General international legal assistance rules (Act on International Cooperation in Criminal Matters, conventions, etc.)
- Specific regulations for direct legal assistance of specific state agencies (taxes, financial oversight, weapons register, etc.)

The specific regulations are described above in chapter 3.

As for general regulations, the Act on International Cooperation in Criminal Matters (Gesetz über die internationale Rechtshilfe in Strafsachen - IRG)⁴⁹ will apply for data exchanges if no more specific convention, such as UNCAC, overrides the application of the IRG.

§ 59 “Admissibility of Assistance” of the IRG is the key section for data transmission:

(1) At the request of a competent authority of a foreign State, other legal assistance in a criminal matter may be provided.
(2) Legal assistance within the meaning of subsection (1) above shall be any kind of support given for foreign criminal proceedings regardless of whether the foreign proceedings are conducted by a court or by an executive authority and whether the legal assistance is to be provided by a court or by an executive authority.
(3) Legal assistance may be provided only in those cases in which German courts and executive authorities could render mutual legal assistance to each other.

Following the logic of par. 3, all (domestic) limitations concerning data transfers apply also to international transfers.⁵⁰

On a technical level, there are no specific means or tools for electronic data exchange. The information may be provided by email or access to an electronic database, if this technically keeps data protection standards.

§ 61a IRG opens the possibility to transmit personal data to foreign public authorities if

1. transmission without request to a German court or to a German public prosecution service were admissible,
2. facts exist which warrant the expectation that the transmission is necessary [...] and
3. the public authority to which the data are transmitted is competent to implement the appropriate measures under no. 2 above.

§ 61a par. 2-4 IRG further lay out conditions for sufficient data protection for the transmissions.

Joint Investigation Teams are another possibility of international data exchange. Such teams are allowed under § 61b

(1) If an international treaty so provides joint investigation teams may be established. A member of the joint investigation team seconded by a foreign State may be allowed to conduct investigations

⁴⁹ http://www.gesetze-im-internet.de/englisch_irg/index.html (English).

⁵⁰ Schomburg, International Cooperation in Criminal Matters, 4th edition, Munich 2006, § 59 no. 46 (German).

under the supervision of the relevant German team member if this has been previously approved by the sending State.

(2) Other persons may participate in the joint investigation team based on the law of the participating States or any agreement between them.

(3) The German officers participating in the joint investigation team may directly transmit information obtained in the execution of their office, including personal data, to the members sent by other States, insofar as this is necessary for the work of the joint investigation team.

(4) Insofar as the transmission of the information obtained under subsection (3) above requires a specific agreement amending the purpose of its use such an agreement is admissible if a request for the use of the information was admissible.

A problematic area are data informal data transmissions from an open foreign database to Germany. For example, a German prosecutor accesses data from a public online land registry in Georgia. Under German law, information from public authorities obtained without consent of the foreign state violates international law and can thus not be used in German criminal proceedings.⁵¹ Other states apply even stricter standards of territorial integrity: in Switzerland, questioning of a citizen by a lawyer involved in a criminal proceeding may have the character of an act of public law.⁵² Even data transfer into a foreign state without its consent can violate their territorial integrity: the postal summons to a witness in a foreign country for a domestic court procedure violates the territory of the foreign state according to many laws.⁵³

Specific conventions overriding the general mutual legal assistance rules are in particular the following:

- Article 50 Convention implementing the Schengen Agreement (European Union)⁵⁴
- Convention on the protection of the European Communities' financial interests and related Protocols (European Union)⁵⁵
- European Convention on Mutual Assistance in Criminal Matters and Protocols (Council of Europe)⁵⁶

6. GENERAL DATA PROTECTION

Above regulations mostly already contain specific regulations for data protection. Whenever those regulations do not cover all aspects of data protection, the general rules of the Federal Data Protection Act ("Bundesdatenschutzgesetz" – BDSG)⁵⁷ apply, in particular the following:

Section 10 Automated retrieval procedures

(1) It shall be lawful to establish an automated procedure to retrieve personal data as long as this procedure is appropriate in view of the legitimate interests of data Federal Data Protection Act (BDSG) As at 1 September 2009 with amendments 2010 subjects and the tasks or commercial

⁵¹ Federal Supreme Court (BGH), decision of 8 April 1987 - 3 StR 11/87, NJW 1987, page 2168 and 2171 (German).

⁵² Swiss Federal Supreme Court, E 114 IV 128, http://www.polyreg.ch/d/informationen/bgeleitentscheide/Band_114_1988/BGE_114_IV_128.html (German).

⁵³ Müller/Wildhaber, Praxis des Völkerrechts, 3rd edition 2001, VII 2 a, 428 (German).

⁵⁴ [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:42000A0922\(02\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:42000A0922(02):EN:HTML) (English).

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http://europa.eu/legislation_summaries/fight_against_fraud/protecting_european_communitys_financial_in_terests/l33019_en.htm (English).

⁵⁶ <http://conventions.coe.int/Treaty/EN/Treaties/Html/030.htm> (English).

⁵⁷ www.bfdi.bund.de/EN/DataProtectionActs/Artikel/BDSG_idFv01092009.pdf (English).

purposes of the bodies involved. Provisions on the lawfulness of individual retrieval shall remain unaffected.

(2) The bodies involved shall ensure that the lawfulness of the retrieval procedure can be monitored. For this purpose, they shall specify in writing:

- 1. the reason for and purpose of the retrieval procedure,*
- 2. third parties to which data are transferred,*
- 3. the type of data to be transferred,*
- 4. technical and organizational measures required under Section 9.*

In the public sector, the supervisory authorities may specify this information as necessary.

(3) In cases where the bodies referred to in Section 12 (1) are involved, the Federal Commissioner for Data Protection and Freedom of Information shall be informed when retrieval procedures are established and of the information specified under subsection 2. Establishing retrieval procedures in which the bodies referred to in Section 6 (2) and Section 19 (3) are involved shall be lawful only if the federal or Land ministry responsible for the recording body and the retrieving body has given its consent.

(4) The lawfulness of individual retrieval shall be the responsibility of the third party to which data are transferred. The recording body shall examine the lawfulness of retrieval only if there is cause for such examination. The recording body shall ensure that the transfer of personal data can be ascertained and checked at least by means of suitable random sampling procedures. If an entire collection of personal data is retrieved or transferred (batch processing), it shall be sufficient to ensure that the lawfulness of retrieval or transfer of the entire collection can be ascertained and checked.

(5) Subsections 1 through 4 shall not apply to the retrieval of generally accessible data. Generally accessible data are those which anyone can use, with or without prior registration, permission or the payment of a fee.

Section 15 Transfer of data to public bodies

(1) Transfer of personal data to public bodies shall be lawful if

- 1. required to carry out the tasks for which the body transferring the data or the third party to which the data are transferred is responsible, and*
- 2. the conditions are met which would allow use under Section 14.*

(2) The body transferring the data shall be responsible for ensuring the lawfulness of the transfer. If the data are transferred at the request of the third party to which the data are transferred, the third party shall be responsible. In this case, the body transferring the data shall examine only whether the request for transfer lies within the remit of the third party to which the data are transferred, unless there is special reason to examine the lawfulness of transfer. Section 10 (4) shall remain unaffected.

(3) The third party to which the data are transferred may process or use these data for the purpose for which they were transferred. Processing or use for other purposes shall be lawful only under the conditions of Section 14 (2).

(4) Subsections 1 through 3 shall apply accordingly to the transfer of personal data to religious associations under public law, if it is ensured that these religious associations take sufficient data protection measures.

(5) If personal data which may be transferred under subsection 1 are linked to other personal data of the data subject or a third party in such a way that they cannot be separated without a disproportionate effort, then it shall be lawful to transfer also these data, unless the data subject or a third party clearly has an overriding legitimate interest in keeping them secret; use of these data shall not be lawful.

(6) Subsection 5 shall apply accordingly if personal data are transferred within the same public body.