

# RegCORE Client Alert

## Revisiting Germany's due diligence requirements for the transfer of cryptoassets

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## Financial Crime

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**QuickTake**

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Extending the so-called "travel rule" to cryptoassets remains a priority as legislators all over the world continue to fill the corresponding gaps in their current financial services legislative and regulatory frameworks. Before the extension of the travel rule to cryptoassets, transfers could, to a large extent, be conducted anonymously.

The international AML standard setting body, the Financial Action Task Force (**FATF**) in 2019 first put forward its own recommendations to competent authorities (including those in the EU) on how to regulate what it terms "virtual assets" i.e., what in the EU are broadly captured as cryptoassets. FATF also introduced the concept of the travel rule. In order for FATF recommendations to be implemented in a manner to have the force of law, they need to be adopted in FATF member jurisdictions. On 20 May 2022 the G7 jurisdictions published a statement<sup>1</sup> confirming their intention to hold cryptoassets to the same standard as the rest of the (regulated) financial system and thus to introduce the travel rule in the legislative and regulatory frameworks in those jurisdictions.

On 1 October 2021 the Crypto Value Transfer Ordinance (**KryptoWTransferV**)<sup>2</sup> came into force in Germany. This domestic framework aims to improve the traceability of the transfer of cryptoassets – in November 2021 the German Federal Financial Services Authority – **BaFin** - published its form to be used for KryptoWTransferV relevant notifications.<sup>3</sup> On 1 September 2022 the BaFin published an update on its supervisory priorities and activities concerning cryptoassets, distributed ledger technology and the blockchain.<sup>4</sup>

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<sup>1</sup> Available [here](#).

<sup>2</sup> The publication can be found [here](#) (available only in German).

<sup>3</sup> Details (only in German) available [here](#).

<sup>4</sup> Available (only in German) [here](#).



Importantly, the KryptoWTransferV follows the BaFin developed definition of “crypto value” (*Kryptowerte*) which are defined as a “digital representation of value, which: (a) has not been issued or guaranteed by a central bank or authority; (b) is not an official currency but (i) accepted by other persons as currency or exchange medium or (ii) serves investment purposes; and (c) which can be traded or transferred electronically. Consequently, those persons that are in scope of the KryptoWTransferV will need to continue to assess firstly whether a cryptoasset is a crypto value for purposes of German law and whether the parties involved in the transaction are covered by the KryptoWTransferV and the travel rule and ultimately in a non-German context whether other requirements apply.

In July 2021, the EU Commission reacted to a proposal by the Financial Action Task Force (**FATF**)<sup>5</sup> by publishing several legislative proposals to combat money laundering in relation to the use of new technologies including cryptoassets.<sup>6</sup> However, since the EU’s legislative efforts remain in comparatively early stages of implementation, the KryptoWTransferV will apply in Germany as a national transitional measure until the EU’s Regulation (EU) 2015/847, (commonly referred to as the “Funds or Wire Transfer Regulation” – **WTR**) is revised and implemented accordingly. More information on the proposed financial crime tracing and prevention rules for cryptoassets within the European Union (**EU**) is provided in our corresponding EU RegCORE Client Alert.<sup>7</sup>

The KryptoWTransferV aligns the due diligence obligations of those persons that for purposes of the German Money Laundering Act (**GwG**) are “obliged entities” (*Verpflichtete*) (**GwG Relevant Persons**) when involved in the transfer of cryptoassets. Especially the transfer of cryptoassets to and from electronic wallets that are not managed by a cryptoasset custodian are considered as particularly risky by the German legislator. Therefore, the KryptoWTransferV established new due diligence obligations for credit and financial services institutions that carry out transfers of cryptoassets. Its scope of application exclusively includes German credit and financial services institutions as well as domestic branches and branch offices of foreign institutions when operating in Germany.

The KryptoWTransferV introduced the travel rule obligation on transfers of cryptoassets. GwG Relevant Persons must collect, store and, if necessary, transmit data from principals or beneficiaries of such transactions in which only cryptoasset service providers within the meaning of the KryptoWTransferV are involved. In contrast, for transactions that do not exclusively involve cryptoasset service providers, GwG Relevant Persons must evaluate the risk of money laundering and terrorist financing associated with the transfer and, based on this, take risk-appropriate measures to manage and mitigate the risks of money laundering, terrorist financing and financial crime. As such a risk-appropriate measure, the German legislator recommended the collection, storage and verification of the names and addresses of the parties to the transaction.

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## Obligations for credit and financial institutions

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As described above, the KryptoWTransferV distinguishes in its catalogue of obligations for financial service providers primarily according to whether or not cryptoasset service providers are exclusively involved in the cryptoasset transfer. Cryptoasset service providers are defined as companies that provide banking services within the meaning of Section 1 para. 1 sentence 2 of the German Banking Act (**KwG**), financial services within the meaning of Section 1 para. 1a sentence 2 KwG or securities services within the meaning of Section 3 para. 2 to 4 of the German Securities Institutions Act (**WpIG**) in relation to cryptoassets (Section 2 no. 5 KryptoWTransferV).

### Obligations for transfers in which only cryptoasset service providers are involved

If cryptoasset service providers are exclusively involved in a cryptoasset transfer for both the principal and the beneficiary, the provisions of the WTR apply accordingly (Section 3 para. 1 and 2 KryptoWTransferV). The scope of application of this regulation in Germany is extended to the transfer of cryptoassets.

When transferring cryptoassets, the **cryptoasset service provider of the principal** must now in particular:

- provide the cryptoasset service provider of the beneficiary with information on the principal and the beneficiary of the transfer - which includes the name, the account number, the address and the number

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<sup>5</sup> See [here](#).

<sup>6</sup> An overview over the proposals by the EU Commission can be found [here](#).

<sup>7</sup> See [here](#).

- of an official personal document of the principal (Art. 4 para. 1 WTR) as well as the name and the account number of the beneficiary (Art. 4 para. 2 WTR); and
- verify the accuracy of the information on the payer by means of documents, data or information before carrying out a cryptoasset transfer (Art. 4 para. 4 WTR).

The **cryptoasset service provider of the beneficiary** is obliged to

- establish effective procedures both to identify the absence of originator or beneficiary information (Art. 7(1) and (2) WTR) and to verify the information (Art. 7(3) and (4) WTR);
- establish effective risk-based procedures to assess whether a transaction should be executed, rejected or suspended and what follow-up action should be taken (Art. 8(1) WTR); and
- report suspicious transactions to the competent supervisory authority under certain conditions (Art. 8 para. 2 WTR).

### **Obligations for transfers not exclusively involving cryptoasset service providers**

If a transaction does not exclusively involve crypto value service providers, for example because the transfer is to or from an unhosted wallet, the credit or financial services institution involved in the transaction must

- identify the risk of the transaction being misused for money laundering or terrorist financial purposes;
- assess that risk; and
- take appropriate "risk-appropriate measures". This includes ensuring compliance with (financial) sanctions and embargoes.

Because these measures are intended particularly to ensure the traceability of the transfer, credit and financial services institutions must collect, store and verify the name and address of the person involved in the transaction on the other side (Section 4 para. 3 sentence 2 KryptoWTransferV).

### **De minimis thresholds**

In the case of transfers of exceeding EUR 1,000, the cryptoasset service provider of the beneficiary must verify the accuracy of the information on the beneficiary on the basis of documents, data or information obtained from a reliable and independent source. The revised WTR follows this approach.

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## **Outlook**

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With the KryptoWTransferV, the German legislator made a significant step towards further regulating the transfer of cryptoassets at the national level, although corresponding legislative procedures are still in progress at the EU level. The national regulation will cease to apply when the revised WTR will also – as planned – cover cryptoasset transfers in addition to traditional money transfers (Section 7 (2) KryptoWTransferV).

Affected market participants should therefore continue to ensure that they comply with the obligations set out in the KryptoWTransferV. This includes developing the necessary mechanisms and adapting their internal procedures as well as client facing communications explaining obligations under the KryptoWTransferV but equally signposting the forthcoming changes as a result of the revised WTR. BaFin continues to proactively monitor compliance with these requirements and given the further changes to German legislation and the supervisory architecture on financial crime prevention efforts.<sup>8</sup>

It is also recommended to benchmark this national development with the very dynamic regulatory environment in the cryptoasset and blockchain sector more broadly and therefore monitor national as well as European legislative reforms, notably the EU's Regulation on Markets in Crypto-Assets (**MiCA**). An evaluation of the KryptoWTransferV by the Federal Ministry of Finance is planned for 2024, insofar as a new version of the WTR has not entered into force by that time.

It remains to be seen to what extent the enforcement of the obligations can be reconciled with the principle of anonymity that is firmly anchored in the area of cryptoassets and how this affects national and EU's financial markets.

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<sup>8</sup> Details available from our EU RegCORE [here](#).

# About us

PwC Legal is assisting a number of financial services firms and market participants in forward planning for changes stemming from these proposals.

If you would like to discuss any of the developments mentioned above, or how they may affect your business more generally, please contact any of our key contacts or PwC Legal's EU RegCORE Team via [de\\_regcore@pwc.com](mailto:de_regcore@pwc.com) or our [website](#).

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