



EUROPEAN COMMISSION

SECRETARIAT-GENERAL

Brussels,

SG-Greffe(2010)D/

STÄNDIGE VERTRETUNG DER
BUNDESREPUBLIK
DEUTSCHLAND
BEI DER EUROPÄISCHEN UNION
Rue J. de Lalaing, 8-14
1040 - BRÜSSEL

RO 258 TFEU/cases other than failure to notify measures

05

Subject: Reasoned Opinion
- Infringement No 2009/4572

Please find enclosed the text of the Reasoned Opinion addressed by the European Commission to the Federal Republic of Germany under Article 258 of the Treaty on the Functioning of the European Union, on account of deficiencies by the Federal Republic of Germany in implementing Article 37 of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

For the Secretary-General,

[Redacted signature]

Annex: C(2010)

UK



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REASONED OPINION

addressed to the Federal Republic of Germany under Article 258 of the Treaty on the Functioning of the European Union, on account of deficiencies by the Federal Republic of Germany in implementing Article 37 of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

REASONED OPINION

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1. Statement of facts

Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (hereinafter “the Directive”) requires that the entities listed in Article 2 of the Directive comply with a number of obligations (inter alia to apply customer due diligence, to keep records, to report suspicious transactions); to ensure compliance with these obligations, Member States have to assign competent authorities to supervise the entities in fulfilling their tasks (Article 37). According to Article 37 paragraph (1), Member States shall require *„the competent authorities at least to effectively monitor and to take the necessary measures with a view to ensuring compliance with the requirements of this Directive by all the institutions and persons covered by this Directive“*; paragraphs (2) to (5) of Article 37 further detail this obligation. According to the Commission’s information, not all the “Bundesländer” of the Federal Republic of Germany have designated such supervisory authorities for all obliged entities which are mentioned by the Directive: there seem to be deficiencies in implementation with regard to real estate agents, insurance intermediaries and the persons as described under Article 2 1. (3) (e) of the Directive.

By letter of 5 November 2009, the European Commission asked the German Government to explain this situation. The Federal Republic of Germany responded on 21 December 2009. As this response did not provide complete information, the European Commission asked the Federal Republic of Germany by letter of 28 January 2010 for further information within 1 month. The Federal Republic of Germany asked with letter of 3 March 2010 for an extension of this deadline (2 months). The European Commission refused this request with regard to the fact that already for the first letter an extension of one month had been given.

With letter of 19 April 2010, the Federal Republic of Germany provided the requested information. It was explained that supervisory authorities for casinos have been designated in all German Bundesländer. Concerning the other entities (i.e. real estate agents, insurance intermediaries and the persons as described under Article 2 1. (3) (e) of the Directive), the Federal Republic of Germany conceded that not all Bundesländer had issued the relevant legislation to assign supervisory authorities according to Article 37 of the Directive.

On 28 June 2010, the Commission sent the German government a letter of formal notice (ref. SG(2010)D/9298) concerning the deficiencies in implementing Article 37 of the Directive.

The German authorities replied on 16 August 2010 (Ref INF(2010)101252). The main points and arguments are as follows:

The German authorities reiterated that for casinos the relevant supervisory authorities had been designated in all German Bundesländer. With regard to the other entities (i.e. real estate agents, insurance intermediaries and the persons as described under Article 2 1. (3) (e) of the Directive), the Federal Republic of Germany informed that there has been progress in designating supervisory authorities. However, it was conceded that in the German Bundesländer Bremen, Mecklenburg-Vorpommern, Niedersachsen, Rheinland-Pfalz, Saarland, Sachsen-Anhalt und Thüringen the relevant provisions are not yet in force - it was expected that this will soon be the case. Concerning the Bundesland Brandenburg, the German authorities informed that the designation of supervisory authorities is still open. German government expected that all German Bundesländer will have designated supervisory authorities for all relevant entities by the end of the 3rd quarter 2010; it was also expressed that German government will report back about further progress.

With letter of 20 January 2011, the Federal Republic of Germany informed that in the meanwhile also in the Bundesländer Brandenburg, Bremen, Niedersachsen, Rheinland-Pfalz, Saarland und Thüringen the legal provisions determining the supervisory authorities for all obliged entities had entered into force. In Sachsen-Anhalt, the relevant regulation had been dealt with by the Committee on Internal Affairs of the Sachsen-Anhalt Parliament; the entering into force is expected for February 2011. On 14 December 2010, the government of Mecklenburg-Vorpommern agreed on a cabinet decision to determine the competent supervisory authority; it is expected that the respective regulation will soon enter into force.

Since then, the Commission did not receive further information from German authorities.

2. Legal Situation

Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (hereinafter “the Directive”) requires that the entities listed in Article 2 of the Directive comply with a number of obligations; to ensure compliance with these obligations, Member States have to assign competent authorities to supervise the entities in fulfilling their tasks (Article 37). According to Article 45 paragraph 1 of Directive 2005/60/EC, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 15 December 2007.

According to the German Anti-money laundering law (“Gesetz über das Aufspüren von Gewinnen aus schweren Straftaten”), the “Bundesländer” in the Federal Republic of Germany are responsible for the designation of the supervisory authorities as prescribed by Article 37 of the Directive for certain entities which are mentioned by the Directive. Not all the “Bundesländer” of the Federal Republic of Germany have designated such supervisory authorities for all obliged entities which are mentioned by the Directive: there are deficiencies in implementation with regard to real estate agents, insurance intermediaries and the persons as described under Article 2 1. (3) (e) of the Directive. Deficiencies in implementation occur in the following German Bundesländer: Mecklenburg-Vorpommern and Sachsen-Anhalt.

The European Commission consequently takes the view that the Federal Republic of Germany has failed to fulfil its obligations under Article 37 of Directive 2005/60/EC.

FOR THESE REASONS
THE EUROPEAN COMMISSION

after giving the Federal Republic of Germany the opportunity to submit its observations by letter dated 24 June 2010 (ref. SG(2010)D/9298)] and in view of the reply of the Federal Republic of Germany dated 16 August 2010 (Ref INF(2010)101252),

HEREBY DELIVERS THE FOLLOWING REASONED OPINION

under the first paragraph of Article 258 of the Treaty on the Functioning of the European Union, by, the omission to designate supervisory authorities in accordance with Article 37 of Directive 2005/60/EC in all German Bundesländer with regard to real estate agents, insurance intermediaries and the persons as described under Article 2 1. (3) (e) of the Directive, the Federal Republic of Germany has failed to fulfil its obligations under Article 37 of Directive 2005/60/EC.

Pursuant to the first paragraph of Article 258 of the Treaty on the Functioning of the European Union, the Commission invites the Federal Republic of Germany to take the necessary measures to comply with this Reasoned Opinion within two months of receipt of this Opinion.

Done at Brussels,

For the Commission
Michel Barnier
Member of the Commission