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Enhancement of the protection of the rights of entrepreneurs in Germany.

Submitted by: A not-for-profit Association "[Justice for All International / Justice pour Tous Internationale](https://justice-for-all-international.business.site/)" is registered in Geneva (CHE-226.634.549). The Association has no profit purposes, including combating injustice and human rights abuses worldwide; promoting and protecting human rights and fundamental freedoms, with a particular focus on the protection of entrepreneurs, human rights defenders, political activists, bloggers, and journalists at risk of persecution; and strengthen developing civil societies and democracies in the countries engaged. The Association offers *inter alia* free-of-charge assistance in preparing and submitting human rights violation complaints to the UN protection mechanisms.

The proliferation of unilateral sanctions, AML/CFT regulations, and risks has led to stifled entrepreneurial freedom in Germany, characterized by arbitrary interpretation of regulations, flawed application of sanctions, increased compliance burden, restricted access to financial services, and heightened de-risking and fears of legal consequences.

Introduction

The protection of entrepreneurs' rights in Germany is essential for creating an inclusive business environment that encourages innovation, economic growth, and sustainable development. However, entrepreneurs in the country [encounter challenges](#) due to violations of their rights, which can impede their ability to conduct business and contribute to the economy. This report examines the challenges faced by entrepreneurs in Germany, focusing on the case of a woman entrepreneur whose rights were violated due to arbitrary interpretation of regulations and the connection between these violations and EU sanctions. Additionally, the report provides global and Germany-specific statistics, an explanation of the relevant customs codes, and proposes measures to address these issues and strengthen the protection of entrepreneurs' rights in Germany.

According to the Global Entrepreneurship Monitor, there are over 582 million entrepreneurs worldwide, with 274 million being women. In Germany, 3.4 million enterprises employ 35.1 million people, including 2.5 million small and medium-sized enterprises (SMEs). These SMEs account for 55% of employment and generate 42% of the Gross value added at factor cost (Statistisches Bundesamt).

EU Sanctions and the Relevant German Regulatory Framework on Their Enforcement

In January 2023, the Bundestag passed the second Sanctions Enforcement Act (Sanktionsdurchsetzungsgesetz II; SDG II) to enhance the enforcement of EU sanctions in Germany. This new legislation builds upon the foundation laid by the Sanctions Enforcement Act I (SDG I), which was passed in May 2022. While SDG I focused on immediate, implementable measures, SDG II aims to provide structural improvements for sanctions enforcement, thereby increasing public pressure on companies to comply with EU sanctions. EU sanctions serve as a foreign policy tool,

targeting individuals, entities, and countries involved in activities such as human rights violations, terrorism, and the proliferation of weapons of mass destruction. These sanctions are legally binding on all EU member states, including Germany, and are implemented through national legislation.

SDG II focuses on providing a clear allocation of competencies to the federal government, ensuring the effective enforcement of EU sanctions. By expanding the legal toolbox for sanctions enforcement and developing effective structures for prosecuting violations, the federal government seeks to improve the effectiveness of these restrictive measures. Under SDG I, the investigative powers of authorities were extended to better locate sanctioned assets, granting investigators the authority to search homes and offices if they suspect sanctioned assets are concealed there.

Fast progress in increasing public pressure on companies to comply with EU sanctions, was achieved by SDG II, which allocated competencies from states' authorities to the federal government, facilitating coordination and collaboration among the various authorities responsible for enforcing EU sanctions. Moreover, investigative powers for prosecuting money laundering and enforcing sanctions were consolidated with Federal Government, further streamlining the enforcement process.

Case of the Woman Entrepreneur and EU Sanctions: Human Rights Violations

A woman entrepreneur, a German citizen, encountered human rights violations due to the arbitrary interpretation of regulations by German customs authorities and the prosecutor's office. She imported flax briquettes from Belarus to Germany, declaring them under Code 14, which covers plant-based products. However, customs authorities reclassified the briquettes under Code 44, pertaining to wood-based products, arguing that dry plants pressed into briquettes are considered wood. Imports under Code 44 are subject to EU sanctions imposed in response to the situation in Ukraine, leading to the prohibition of specific wood-based products entering Germany. As a result, the woman entrepreneur faced criminal charges.

Following the charges, the woman entrepreneur experienced a series of human rights violations. Authorities searched her house, seized her mobile phone and laptop, and the prosecutor's office ordered a comprehensive tax inspection of her business. These actions constitute judicial harassment and violations of her privacy, adversely affecting her ability to conduct business and potentially discouraging other entrepreneurs from engaging in legitimate trade.

Challenges Faced by Entrepreneurs in Germany

We would like to draw attention to the **arbitrary interpretation of regulations and EU sanctions**. Entrepreneurs in Germany may be subjected to arbitrary interpretation and enforcement of regulations by customs authorities and other regulatory bodies. In the case of the woman entrepreneur who declared flax briquettes under Code 14, customs reclassified them under Code 44, leading to criminal charges. This arbitrary interpretation of regulations, in the context of the EU's 4th package of sanctions against Russia, created an environment of fear and uncertainty for the entrepreneur and potentially affected her business operations.

Furthermore, our association expresses its concern about the **flawed application of sanctions and persecution**. Entrepreneurs in Germany may be unfairly targeted and subjected to unjust treatment due to the flawed application of sanctions and persecution. In the aforementioned case, the woman entrepreneur was singled out and faced judicial harassment, potentially discouraging other entrepreneurs from engaging in legitimate trade with countries like Russia.

We would also like to highlight the **increased compliance burden in Germany** that entrepreneurs face due to the complex and ever-evolving regulatory landscape surrounding sanctions, AML, and CFT. These regulations require businesses to implement stringent measures such as customer due diligence, transaction monitoring, and reporting of suspicious activities. The cost and time associated with adhering to these requirements can be particularly challenging for small and medium-sized enterprises (SMEs), which often lack the resources to navigate the complexities of the regulatory environment.

In addition, we are concerned about the **growing restriction on access to financial services** for entrepreneurs in Germany. The implementation of sanctions and AML/CFT regulations has led to financial institutions adopting a risk-averse approach, resulting in the closure of bank accounts and the denial of financial services to entrepreneurs, especially those involved in high-risk industries or operating in countries under sanctions. This phenomenon, known as de-risking, has significantly impacted entrepreneurs' ability to access financial services, hindering their capacity to grow and expand their businesses.

Our association expresses its grave concern about **heightened de-risking and fears of legal consequences** as a growing challenge for German entrepreneurs. The potential legal consequences of inadvertently violating sanctions or AML/CFT regulations can lead to a cautious approach by entrepreneurs in Germany. This heightened sense of risk can limit their willingness to innovate, explore new markets, and establish partnerships, impacting their ability to grow and contribute to the economy, ultimately stifling entrepreneurial freedom in Germany.

We would like to draw attention to the **impact on innovation and economic growth** in Germany. The stifled entrepreneurial freedom in Germany has broader implications for the country's innovation and economic growth. As entrepreneurs face increased challenges in navigating the regulatory environment, their ability to create jobs, develop new products and services, and contribute to the country's competitiveness is diminished.

Furthermore, our association expresses its concern about the **disincentive for aspiring entrepreneurs**. The complex regulatory landscape and the potential consequences of non-compliance may discourage aspiring entrepreneurs from pursuing business endeavours in Germany. This could lead to a decline in entrepreneurial activities and negatively impact the country's economic growth and progress towards sustainable development goals.

The proliferation of sanctions, AML/CFT regulations, and risks has led to **stifled entrepreneurial freedom in Germany**, characterized by arbitrary interpretation of regulations, flawed application of sanctions, increased compliance burden, restricted access to financial services, and heightened fears of legal consequences. Addressing these challenges and enhancing the protection of entrepreneurs' rights is crucial for fostering a more inclusive and innovative business environment that supports economic growth and development in the country.

Recommendations to Germany for Improving Law and Practice and Protecting Entrepreneurial Freedom

The Association "Justice for All International / Justice pour Tous Internationale" calls on the Members States of the United Nations to address the aforementioned challenges faced by entrepreneurs in Germany by recommending to its government to:

1. **Strengthen human rights standards within its sanctions and AML/CFT regulatory framework.** Germany should integrate and reinforce human rights standards of due process, the presumption of innocence, and property rights within its enforcement of sanctions, AML/CFT regulations, and related legislation. This can be achieved through:
 - a. **Legislative reform:** Review and amend current legislation to prioritize entrepreneurs' rights, ensuring compliance with international human rights standards and minimizing adverse impacts on entrepreneurs, in particular on women entrepreneurs, who appeared to be more vulnerable to being targeted by German authorities.
 - b. **Enhanced oversight and accountability:** Establish independent oversight mechanisms to monitor the enforcement of sanctions and AML/CFT measures, protect entrepreneurs' rights, and address abuses of power and arbitrary prosecutions.
 - c. **Training and capacity building:** Invest in the training of law enforcement, judiciary, and regulatory authorities to uphold human rights standards and promote a culture of human rights protection.
 - d. **Promoting transparency and public participation:** Encourage transparency in regulatory processes and decision-making by involving civil society and entrepreneurs in the development and implementation of regulatory frameworks, advocating for proportionate sanctions enforcement to minimize the undue burden on legitimate businesses.
2. **Establish support mechanisms to help entrepreneurs navigate the complexities of the regulatory environment, particularly regarding sanctions and AML/CFT.** This may include providing information, resources, legal assistance, and fostering dialogue among businesses, regulators, and stakeholders.
3. **Actively engage in international cooperation and dialogue, in particular with the European Union and G7's Financial Actions Task Force (FATF), to promote the integration of human rights standards in sanctions and AML/CFT enforcement.** Collaborate with other countries and international organizations, including the UN Working Group on Business and Human Rights and the UN Special Rapporteur on unilateral coercive measures to develop best practices and guidelines that protect entrepreneurs' rights globally with the view to mitigating unintended consequences suffered by entrepreneurs due to insufficient protection of their rights.
4. **Offer appropriate redress and compensation to entrepreneurs who have suffered human rights abuses as a result of the flawed application of sanctions and AML/CFT regulatory measures.**

By implementing these recommendations, Germany can create a fair and inclusive business environment that fosters innovation, prosperity, and the achievement of sustainable development goals. Addressing the challenges faced by entrepreneurs and ensuring their rights are protected will empower them to drive economic growth and contribute positively to society.