

Translation of Response from BaFin on April 30th 2024

This is NOT the original letter.

All communications made public by the YEM Foundation as BaFin issued its unjustified warning in public.

BaFin - Postfach 1253 - 53002 Bonn

Mrs
Lora Bilger

GZ: IF 5-QF 5000/00040#00159 - 83533 (Please always specify)

Possible unauthorized conduct of banking business and/or provision of financial services in the Federal Republic of Germany

Your letter dated 12.04.2024

Dear Mrs Bilger,

In the above-mentioned letter, in response to my publication, you explained why, in your view, there are no reasons for YEM FOUNDATION to conduct cross-border banking business. Accordingly, you requested the deletion of the notification pursuant to Section 37 (4) KWG dated 22 March 2024 regarding YEM FOUNDATION.

In a letter dated 22 May 2018, I informed you as Vice President of the Rainbow Currency Foundation regarding the cryptocurrency "Rainbow Currency" that, in connection with your activities, you could provide financial services requiring a licence within the meaning of Section 1 (1a) sentence 2 of the German Banking Act (Kreditwesengesetz - KWG) or, depending on the specific structure, also conduct e-money business requiring a licence within the meaning of Section 1 (2) sentence 3 of the German Payment Services Supervision Act (Zahlungsdiensteaufsichtsgesetz - ZAG). I have already explicitly pointed out that by acquiring or selling financial instruments for your own account as a service for others, you could provide proprietary trading and thus a financial service pursuant to Section 1 (1a) sentence 2 no. 4 (c) KWG.

Accordingly, I have noted that a precise legal classification is only possible after submission of a detailed description of your planned activity and the technical design of the intended cryptocurrency as well as after submission of detailed model contracts.

According to your website yem.foundation, you have now started your business under the name YEM FOUNDATION, whereby the YEM FOUNDATION was founded as the Rainbow Currency Foundation, and offer the so-called digital currency YEM. You are the president of the YEM FOUNDATION.

Accordingly, facts justify the assumption that you conduct cross-border banking business in the Federal Republic of Germany within the meaning of Section 1 (1) sentence 2 KWG or provide financial services within the meaning of Section 1 (1a) sentence 2 KWG. If applicable, you could alternatively conduct e-money business within the meaning of Section 1 (2) sentence 3 ZAG.

Anyone wishing to conduct banking business or provide financial services in the Federal Republic of Germany on a commercial basis, or to an extent that requires a commercially organised business operation, requires my prior written permission in accordance with Section 32 (1) of the German Banking Act (KWG). You are not in possession of such a licence.

An operation in Germany within the meaning of Section 32 KWG is not only deemed to exist if the operator has its registered office in Germany, but also if its registered office is abroad, but it specifically addresses persons or companies with their habitual residence or registered office in Germany in order to offer them banking or financial services transactions. You are also targeting the German domestic market with your offer, as you have a National Director in the Federal Republic of Germany.

I therefore ask you again pursuant to Section 44c (1) sentence 1 no. 1 KWG for a detailed description of your business activities, in particular I request that you send me the contractual documents to be used and a list of all your clients domiciled or habitually resident in the Federal Republic of Germany and the funds received from them.

I have set a deadline of four weeks from the date of this letter for you to send me the above-mentioned documents and your comments.

If I do not receive the requested explanations and documents or do not receive them in full within the above-mentioned period, you must expect formal orders to be issued in accordance with Sections 37, 44c KWG. I hereby give you the opportunity pursuant to Section 28 (1) of the German Administrative Procedure Act (VwVfG) to comment on my statements and the adoption of formal measures pursuant to Sections 37, 44c KWG.

In accordance with Section 37 (4) KWG, I have already informed the public that facts justify the assumption that YEM FOUNDATION is conducting banking business or providing financial services in Germany without the necessary authorisation.

In accordance with Section 28 (2) no. 1 of the Administrative Procedure Act, I had already given you the opportunity in my letter dated 8 February 2024 to comment on my statements and the adoption of formal measures. There was no response to this.

Yours sincerely
On behalf of
signed. Maxemjuk

