

# UPDATE TO THE TRANSPARENCY REGISTER

COMPREHENSIVE  
OVERVIEW

JULY 2021

## **Comprehensive transparency obligation for basically all German legal entities under private law and registered partnerships / Extension of obligations for foreign associations.**

Already today, legal entities under private law (in particular GmbHs, AGs, eGs, e.V. and foundations) and registered partnerships (in particular GmbH & Co. KGs, KGs, OHGs and PartGs) are required

- to collect
- to retain
- to keep up to date and
- to notify the transparency register without delay for registration („notification obligation“)

certain **information on their beneficial owners.**

### **What does beneficial owner mean?**

Actual beneficial owners are natural persons who ultimately own or control the relevant association, in particular company. In case of legal entities under private law and registered partnerships, the beneficial owner is in particular any natural person who directly or indirectly holds more than 25 percent of the capital shares, controls more than 25 percent of the voting rights or exercises control in a comparable manner (e.g. as general partner or owner of a veto right). If the voting rights or shares in or control over an association are held or exercised in any other way, the beneficial owner is deemed to be the person who controls the parent association within the meaning of Section 3 (2) sentence 2 German Anti-Money Laundering Act (Geldwäschegesetz - GwG) in conjunction with Section 290 (2) to (4) German Commercial Code (Handelsgesetzbuch – HGB). A controlling position is generally assumed if the beneficial owner holds more than 50 percent of the capital shares or voting rights. If there is no actual beneficial owner in the aforementioned sense or if such an actual beneficial owner cannot be determined by the party obliged to notify in selected cases, the legal representative, managing partner or partner of the association in question is deemed to be the so-called fictitious beneficial owner.

### **Expiring fiction of fulfillment of obligation**

In a large number of cases, the notification obligation is currently still deemed to have been fulfilled because, for example, the required information can already be derived from a list of shareholders that can be retrieved electronically from the commercial register or the company in question is listed on an organized market pursuant to Section 2 (11) of the German Securities Trading Act (Wertpapierhandelsgesetz - WpHG). However, this fiction of fulfilling the obligation in particular will now cease to apply with fundamental effect from 01.08.2021. This will create a new need for action for many companies.

### **Approval of the amendments to the Money Laundering Act**

On June 25, 2021, the Bundesrat approved the Bundestag resolution on the Transparency Register and Financial Information Act (Transparenzregister- und Finanzinformationsgesetz) of June 10, 2021 without amendments. After it is signed by the Federal President and published in the Federal Law Gazette, the Act will now enter into force on August 1, 2021.

### **Highlights**

As a result of the abolition of the so-called fiction of notification, **all legal entities under private law domiciled in Germany and every partnership entered in a German register are now obliged to provide the transparency register with information on the beneficial owners.** This also applies to **companies listed on the stock exchange.**

In addition, the group of foreign associations (in particular companies) subject to the reporting obligation is extended to various cases of acquisition of 90 percent of the shares in companies with real property in Germany. Up to now, the reporting obligation for foreign associations often only arose in connection with direct acquisitions of real property in Germany.

In the course of the amendment to the law, there are also a number of changes in detail.

The beneficial owners are required to provide the following information to the Transparency Register for registration: First name and surname (i.e. in principle all first names), date of birth, place of residence, type and scope of economic interest and all nationalities. Previously, the notification of one nationality was sufficient.

## Europe and the interconnection of transparency registers

The > **transparency register** is an electronic register designed to provide information on the beneficial owners of companies. The „transparency“ obligation, which is subject to financial penalties, is intended to prevent the concealment of illegal assets with complex company constructions. Already since 01.10.2017, legal representatives of legal entities under private law and registered partnerships as well as trustees of certain unincorporated foundations as well as comparable legal constructions are obliged under the Money Laundering Act to obtain the information on beneficial owners listed in Section 19 (1) GwG, to keep it, to keep it up to date and to report it immediately for entry in the transparency register. Due to the so-called notification fiction in Section 20 (2) GwG, these obligations did not apply in particular to associations for which the beneficial owner(s) were already identifiable electronically from other registers, in particular the commercial register. In the case of associations listed on an organized market pursuant to Section 2 (11) of the German Securities Trading Act, the notification obligation was generally deemed to have been fulfilled. In the future, the transparency of cross-border legal transactions is to be increased by establishing a > **European transparency register**, thereby further combating money laundering and the financing of terrorism. In the future, all data contained in the national transparency registers will be accessible via the European transparency register. For this reason, the German Transparency Register, which has so far been designed as a substituting register, will be transformed into a so-called full register as of August 1, 2021.

## Essential changes

- Abolition of the notification fiction in the case of other electronic availability of relevant information in other registers.

The core measure for the reorganization as a „full register“ is the comprehensive elimination of the previous notification fictions. In the future, a corporation will no longer be able to claim that the required information on beneficial owners is already available, for example, from a list of shareholders filed in the commercial register.

- Abolition of privileged treatment of listed companies

Another far-reaching consequence will be the deletion of the fiction of fulfilling duties for exchange-listed associations in Section 3 (2) Sentence 1 GwG. Accordingly, in the future, the irrefutable presumption will apply in particular to listed companies that any natural person is the beneficial owner if he or she directly or indirectly holds more than 25% of the capital shares, controls more than 25% of the voting rights or exercises control in a comparable manner.

Also, subsidiaries of listed companies often fell under this exemption under certain conditions. This is now no longer the case.

As before, the GwG does not recognize any group exemption with regard to the fulfillment of notification obligations.

As of 01.08.2021, every individual company in a group must therefore submit a separate notification of the beneficial owner(s) to the transparency register, irrespective of any stock exchange listing of the parent company.

- Extension of obligation to report for foreign associations in the case of share deals

Previously, a reporting obligation for a foreign association only applied if the association undertook to acquire ownership of a property located in Germany and the association was not already registered in a transparency register of another EU member state. For the extension of reporting obligation of foreign associations, reference is now made to the elements of § 1 (3) of the German Real Estate Transfer Tax Act (Grunderwerbsteuergesetz - GrEStG). According to Section 20 (1) Sentence 2 GwG new version, the reporting obligation will in future also apply if and as soon as a foreign association undertakes to acquire more than 90% of the shares in a company whose assets include a property located in Germany. The same applies in the event of the merger and/or transfer of more than 90% of the shares in a company owning real property to a foreign association. In addition, the foreign association is also subject to the notification obligation if it already directly or indirectly holds more than 90% of the shares in such a land-owning company.

However, an exemption from the notification requirement in Germany continues to apply if notification has already been made to another transparency register within the EU.

- Extension of the prohibition on notarization for notaries in case of missing entry in the transparency register

Under the old legal situation, notaries were already required to verify the identity of the beneficial owner, particularly in the case of real estate transactions, and to refuse notarization if there were discrepancies in the transparency register, in particular if there was no entry in the transparency register (cf. Section 11 (5a) in conjunction with Section 10 (9) GwG). The prohibition of notarization will now be extended to share deals as of 01.08.2021. The notary may only notarize with the participation of a foreign company that is obliged to report its beneficial owner to the transparency register if the company has fulfilled its reporting obligations (cf. Section 10 lit. d) GwG new version). In practice, this can lead to considerable additional work in the case of real estate transactions with foreign shareholders.

### **Verification of Information by the So-Called Obligated Entities under the GwG**

Lawyers, tax advisors, auditors, banking institutions and other so-called obligated entities (cf. Section 2 GwG) are furthermore obligated under Section 11 (5) GwG new version to collect at least the first and last names directly from the contracting party with regard to a beneficial owner. The identification of the contracting party or the authorized representative consists of the collection and verification of the information according to Section 19 (1) GwG. For the verification of the information, a comparison with the information in the transparency register is sufficient, provided that there are no discrepancies and no other indications that raise doubts about the identity of the beneficial owner, his position or indicate an increased risk of money laundering (cf. Section 12 (3) GwG, new version).

### **Notice**

Pursuant to Section 23a (1) GwG, obligated entities under the GwG must immediately report any inconsistencies between their collected data and the information in the transparency register to the registrar entity. A discrepancy exists if individual data elements such as first name, surname, place of birth or place of residence deviate from the information provided by the obligated party. This already applies to a discrepancy in the spelling of individual data, in particular if letters are missing or transposed. The information recorded in the respective official identification document is decisive for the correctness (cf. Section 12 (1) No. 1 GwG).

## Transition periods

For legal entities under private law and registered partnerships pursuant to Section 20 (1) GwG, whose notification obligation has so far been deemed to be fulfilled due to the notification fiction, the following transitional periods apply for entry in the transparency register (cf. Section 59 (9) GwG, new version):

- AG, SE, KGaA until 31.03.2022,
- GmbH, cooperative, European cooperative or partnership until 30.06.2022 and
- in all other cases until 31.12.2022 at the latest.

The registrar entity is subject to supervision by the Federal Office of Administration. In case of violations of the notification obligation, high fines may be imposed, depending in particular on the company's turnover. In addition, final measures and non-appealable fines imposed for violations of the GwG are publicly disclosed on the website of the Federal Office of Administration („**Online-Pillory**“) for fines of EUR 400 or more.

Discrepancy reports due to the absence of an entry pursuant to Section 20 GwG, insofar as the legal entity subject to the notification obligation was previously able to invoke the notification fiction, are not to be submitted until April 1, 2023 (cf. Section 59 (10) GwG, new version).

## Practical tip

It is advisable to immediately check or have someone to check whether and to what extent a transparency register obligation already existed or now arises as of 01.08.2021, but if so, one of the aforementioned transitional periods applies.

Any outstanding entries in the transparency register regarding the beneficial owners should be made without delay in order to avoid any discrepancy reports and administrative offence proceedings or, in any case, to limit their possible legal consequences.

Furthermore, the following applies:

If a company has already submitted a report to the transparency register that was correct at the time, the reported data must be checked on an ongoing basis to ensure that it is up to date. As long as there has been no change in the actual circumstances, nothing further needs to be done. If there have been relevant changes in this respect, these must be reported to the Transparency Register without delay as an update.

If a notification to the Transparency Register has not been made so far due to the notification fiction, it should be ensured by 31.07.2021 at the latest that the notification fiction actually applies by then. Only in this case can the association / company benefit from the transitional periods.

In addition, these companies should ensure that the information on beneficial owners is communicated to the transparency register by the end of the transition period.

GbRs in particular should monitor whether a public register will also be introduced for this type of company. As a result, a fundamentally comprehensive reporting obligation would also arise for these companies.

Companies that are newly founded are exempt from the transitional regulations and are therefore obliged, from the date of the change in law, to report the information on their beneficial owners to the transparency register without delay.

If you have any questions regarding your personal need for action, in particular regarding the entry of beneficial owners in the transparency register or the inspection thereof, please do not hesitate to contact us.

In addition, the Transparency Register offers a free service number (0800-1 23 43 37) from Mon-Fri from 8:00 am to 6:30 pm. For information on fees related to the Transparency Register, you can call the information number (0800-1 23 43 40).

**Your contact person:**

Jossip Hesse  
Lawyer/tax consultant | Partner

HANSA PARTNER-Gruppe  
Tel.: +49 40 37 6 37-318  
E-Mail: [jossip.hesse@hansapartner.de](mailto:jossip.hesse@hansapartner.de)

**Further information can be obtained via the following links:**

- › [Draft law of the German government on the European interconnection of transparency registers and the implementation of Directive 2019/1153 of the European Parliament and of the Council of June 20, 2019.](#)
- › [Directive \(EU\) 2019/1153 of the European Parliament and of the Council of 20 June 2019](#)
- › [Transparency Register - The official website of the Federal Republic of Germany](#)
- › [European Transparency Register](#)
- › [Quick Reference Guide Transparency Register](#)
- › [Frequently asked questions about the Transparency Register \(FAQs\)](#)
- › [Webinars of the Bundesanzeiger-Verlag on the Transparency Register](#)
- › [Catalog of fines](#)
- › [Publication of decisions imposing fines](#)
- › [FAQs Registration and Fees](#)