

New Transparency Register available now ...

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... forcing companies to look closely into their shareholdings.

That is new

With the update of the Anti Money Laundering Act (Geldwäschegesetz/GWG), which came into effect on 26 June 2017, a new public register was introduced called the "Transparency Register". The establishment of the transparency register is based on European law. Comparable registers therefore also exist in the other EU countries.

The Transparency Register will include the natural persons who are economically entitled to legal entities of private law (for example, limited liability company, cooperatives and associations), registered partnerships (e.g. unlimited commercial partnerships, limited partnerships/KG), and trust-like structures. The transparency register therefore affects all companies and corporate forms, with the exception of the civil law partnership (GbR). Legal entities and registered partnerships in the new law are also referred to as "associations".

The Transparency Register is intended to reveal the actual beneficial shareholdings and participations, including trusts, silent partnerships and other indirect participations.

The association must collect information on who the beneficial owners are. In practice this is up to the association's managing directors, board members or authorized representatives. They must collect and keep up-to-date that information and inform the registering authority immediately of any changes that occur. Violations of this obligation will be subject to delicate fines. The Federal Administrative Office (Bundesverwaltungsamt) is responsible for the enforcement. The transparency register as such is managed by the Bundesanzeiger Verlag.

Obligations from 1 October 2017

The notifying association must provide the transparency register with the first and last name, date of birth and place of residence of the beneficial owner as well as the nature and extent of his economic interest. This is done electronically on the platform transparenzregister.de.

All data shall be submitted by 1 October 2017. Article 59 (1) GWG does not provide for a transitional period. We would expect however, that late registration before mid of

November 2017 would usually rather not be fined since the information from the transparency register will only be available for inspection from 27 December 2017.

There are, however, exceptions from the obligation to getting registered: beneficiaries, whose details and the scope of their interest are already visible from an other public register, for example from the list of shareholders deposited with the commercial register, do not need to register separately with the transparency register. Any changes in the future, however, such as a change in shareholdings, must be registered separately also with the transparency register, even though such change is at the same time registered in the commercial register. In the case of stock corporations listed at a stock exchange, it is deemed that the obligation to notify the transparency register is fulfilled. Future changes in the voting rights also do not need to be registered with the transparency register.

Who is the beneficial owner?

In the case of legal persons and registered companies, the natural person who:

- holds more than 25 percent of the capital shares,
- more than 25 percent of the voting rights or
- is economically entitled to the association in a comparable manner.

The determination of the beneficial owner appears trivial only at first sight. For example, not only direct participation in a company, but also, for example, fiduciary relationships, vesting and pooling agreements or silent participations can lead to a reporting obligation.

In the case of foundations, every natural person and every demarcable group of persons is to be reported, that is entitled to benefits from the foundation according to the purpose of the foundation. This applies irrespective of the amount or scope of the right of the beneficiary.

Blind spots

The objective of the transparency register, however, to make the actual beneficial ownership and participations transparent will only be reached to a very limited extent.

The associations which are actually subject to the notification obligation are, in fact, subject to no obligation to investigate the association's beneficial shareholdings and participations. Thus, for example, if the beneficial owner not resident in the EU holds his participation in an association having its registered office in Germany not directly but through an offshore company and if he does not disclose his identity, the beneficial owner will neither be able to effectively identify him nor can the beneficial owner be compelled to comply with the obligation to provide information to the transparency register. In such constellations, instead of the real beneficial owner, the directors of the German association would be listed

as “fictitious” beneficial owners in the transparency register. This is not real transparency.