

Obligation to notify the Transparency Register

**Organisational effort, risk of fines
and recommended solutions**

KPMG Law supports you in
checking beneficial ownership and,
upon request, can then notify the
Transparency Register





As of January 1, 2023: In principle reporting obligation for all types of companies, foundations (“rechtsfähige Stiftungen”) and associations (“eingetragene Vereine – e.V.”)



Missing or incorrect notifications lead to increased administrative effort, discrepancy reports (“Unstimmigkeitsmeldungen”) and operational risks (i.g. certification bans).



Adjusted catalog of fines – close monitoring of notifications leads to not inconsiderable risk of fines

The challenge

Legal persons under private law, registered partnerships, trusts and comparable legal entities must report information on beneficial ownership to the Transparency Register. In particular, the common legal forms

- limited liability company [GmbH]
 - limited partnership [KG/GmbH & Co. KG]
 - corporation limited by shares [Aktiengesellschaft]
- are required to perform checks and take action.

Beneficial owner – who is affected?

A beneficial owner is anyone who direct or indirect

- holds more than 25% of ownership interest
- controls more than 25% of the voting rights or
- exercises control in a comparable way.

Particularly in the case of multi-level ownership structures, as well as in the case of a GmbH & Co. KG, certain particularities may need to be considered in order to determine the beneficial owner. In addition, it should be checked whether voting rights agreements, voting rights pools or comparable special rules, that deviate from the situation on paper, have been agreed between the shareholders.

Special constellations, in particular in the case of integration into a foundation structure or a foreign parent company, may have to be assessed individually.

Filing and updating

The Transparency Register has been completely converted to a full register as of January 1, 2023 and the transition periods for the individual legal entities has been expired no later than December 31, 2022.

A reference to entries in the commercial register no longer eliminates a reporting obligation. This means that all companies in particular are obliged to file or update the actual or fictitious beneficial owner(s).

This entails a not inconsiderable administrative burden:

- Changes to the (fictitious) beneficial owners must be reported immediately
- Changes in the personal data of a beneficial owner must be reported immediately
- Changes in the scope of beneficial ownership are to be reported from the threshold value of 0.01 %

All these points represent a challenge, especially for groups of companies with a large number of companies; central “group reporting” is not provided by the legislator.

Since January 1, 2023 at the latest, associations (“eingetragene Vereine – e.V.”) are also required to report their beneficial owners – typically the board of directors – to the Transparency Register. Although an automatic data transfer from the register of associations is provided for in the law as a simplification, it must be examined in each individual case whether the requirements are actually met (major exception to automated data reconciliation: foreign nationals as fictitious beneficial owners).

Transparency Register in the EU – support from a single source

Comparable reporting and updating obligations exist in almost all EU countries. If this has not yet been done, the EU legislator has stipulated that national registers for beneficial owners must be introduced throughout the EU in the near future. Against the backdrop of the fundamental reporting obligations and the partly differing national regulations, there is therefore a considerable amount of checking and coordination work for groups of companies operating throughout the EU.

Through our European KPMG Law network, we can advise you centrally and from a single source on all legal issues, including in the EU countries relevant to you, and, if necessary, make filings/notifications in the national registers for you.

Increased risk of consequences if reports are incorrect/not made

This topic is particularly significant, as obliged entities under the German Anti-Money Laundering Act [GwG] are required to obtain and review an extract from the Transparency Register in the course of identifying business partners.

If they identify any deviations from the information they have, they must file a discrepancy report ("Unstimmigkeitsmeldung").

In practice, banks and notaries in particular, as well as industrial companies, file a considerable number of discrepancy reports due to inconsistencies or missing entries in the Transparency Register.

With regard to real estate transactions, there is now an express prohibition on notarization in the event of a missing/incorrect entry in the Transparency Register. In practice, notaries regard an up-to-date Transparency Register as a prerequisite for the notarization of transactions under company law (e.g. appointment of managing directors, restructuring).

In addition, there is a risk of operational delays in the event of missing or incorrect entries, as external advisors or banks often only become active once a correct Transparency Register entry has been submitted.

The discrepancy reports are checked by the Federal Office of Administration – and if errors or missing reports are identified, fines may be imposed.

If, in the case of groups of companies, there are errors in several legal entities, the fines quickly add up to a significant amount.

Our service – your benefits

Checking beneficial ownership

- Preliminary examination to determine the beneficial owner, taking into account the specifics of certain legal forms as well as the latest legal opinion of the Federal Office of Administration
- Advice and support in cases involving the negative control

Notifying the Transparency Register

- Filing the required information on the (fictitious) beneficial owners to the Transparency Register
- Full Service offer: Ongoing review of data on beneficial owners and updating in the Transparency Register by KPMG Law

KPMG Law Transparency Register Tool

- Simple, legally secure technical solution for a clear and structured Transparency Register notification process.
- Central monitoring and control of Transparency Register entries in the Group. Filings for other EU countries can also be processed via the KPMG Law network.
- The tool is suitable for multiple users, allowing you to save and process your data in the application run by KPMG Law and KPMG AG Wirtschaftsprüfungsgesellschaft.

Communication with the Transparency Register

- Advice on discrepancy reports
- Responding to inquiries from the Transparency Register
- Requests for extracts from the Transparency Register

Defence/advice in administration fine proceedings

Well equipped to meet your needs

KPMG Law has been providing support in relation to the Transparency Register since its introduction in 2017 and has extensive professional expertise in determining beneficial ownership and defence advice in administrative fine proceedings.

For further information or if you have any questions, please get in touch.

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