

## German Transparency Register: Reporting duties for all companies from 1 August 2021



The German Transparency Register and Financial Information Act (TraFinG) entered into force on 1 August 2021. The TraFinG provisions create a considerable need for company measures, as the notification of the so-called ultimate beneficial owners of a company to the transparency register, introduced in 2017, is now compulsory for almost all companies. Whereas the number of legal entities subject to reporting requirements was previously around 400,000, the German government estimates that around 2.3 million companies will now have to be registered with the transparency register.

### Ultimate beneficial owners

So-called ultimate beneficial owners must be registered at the German transparency register. This essentially means each natural person holding more than 25% of a company's share capital, directly or indirectly, controlling more than 25% of the voting shares or exercising control over a given company in a comparable manner. If the shares, voting rights or control are otherwise held or exercised by another company, the person controlling the parent company is deemed to be the subsidiary's indirect ultimate beneficial owner. If there is no such effective ultimate beneficial owner, even after comprehensive

inspection, the legal representatives – i.e. the managing directors of a German private limited company (GmbH) or the management board of a German stock corporation (AG) – are deemed to be the so-called fictional ultimate beneficial owners.

### From a catch-all register to a full register: discontinuation of the reporting fiction

Under the legal situation applicable until 31 July 2021, the transparency register was designed as a catch-all register which recognises exemptions from the reporting obligation as

a so-called notification fiction. According to the notification fiction, it is not necessary to file the ultimate beneficial owners to the transparency register if certain information on the ultimate beneficial owners (first and last name, date of birth, place of residence as well as type and scope of the economic interest) is already available at other public registers, such as the commercial register.

With the “upgrade” of the transparency register from a catch-all to a full register as of 1 August 2021, this notification fiction will no longer apply. The background to the conversion to a full register is the planned interlinking of all European transparency registers.

## Affected companies

All companies, with the exception of the German general partnerships (GbRs), are obliged to register the required information on ultimate beneficial owners with the transparency register from 1 August 2021. This now also includes disclosure of all nationalities of each respective ultimate beneficial owner.

In addition to those companies which can no longer rely on the publication of the required information in other publicly accessible registers (discontinuation of the notification fiction), the companies required to register for the first time now also include publicly listed companies. These were previously exempt from notification to the transparency register due to the higher transparency requirements under securities trading law.

## Transitional rules for certain existing companies

For companies which can invoke the notification fiction under to the legal situation applicable until 31 July 2021, the TraFinG provides for various transition periods depending on the legal format in which the notification of the ultimate beneficial owners to the transparency register must be made.

The transition period runs:

- for an AG, SE or KGaA, until 31 March 2022,
- for a GmbH, (European) cooperative or partnership, until 30 June 2022 and
- in all other cases, until 31 December 2022.

Companies which are only incorporated after 1 August 2021 do not benefit from the transition periods and must fulfil their reporting obligations to the transparency register without delay in any case.

## Sanctions

Violations of the transparency register reporting obligations can be punished with a fine of up to EUR 150,000 if committed intentionally, and with a fine of up to EUR 100,000 if committed recklessly. In the case of a serious, repeated or systematic violation, a fine of up to EUR 1,000,000 or twice the economic benefit derived from the violation, is possible. If such violations are committed by certain obliged parties (including credit institutions), a fine of up to EUR 5,000,000 or 10% of its total revenue is possible.

The German Anti-Money Laundering Act (GwG) requires supervisory authorities to publicly disclose persons and companies found to have violated the GwG, as well as the nature and character of the violation. This procedure, known as “naming and shaming”, is carried out on the website of the German Federal Office of Administration (Bundesverwaltungsamt).

## Summary

The TraFinG significantly increases the importance of the transparency register for companies. For almost 1.9 million legal entities, there is now a concrete reporting and ongoing verification obligation for the first time. Companies should therefore carefully check who qualifies as an ultimate beneficial owner and make the necessary reports to the transparency register. Regarding entries in other registers (e.g. commercial register) and the submission of lists of shareholders, which are also required, care should be taken to ensure that the information is consistent.

This information bulletin is a non-binding overview only and is not a replacement for legal advice.

Please do not hesitate to contact us if you have any questions.

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