

The new transparency register

by Daniel Wuhrmann

Background

In order to implement the specifications of the Fourth EU Money Laundering Directive (RL 2015/849 of 20 May 2015), the federal government passed the Transposition Act for the Money Laundering Directive in the spring of 2017. It came into force on 26 June 2017 and supplemented the German Money Laundering Act (GwG) by adding a section of its own on the electronic transparency register (Section 18 ff. of the GwG).

The transparency register

The newly created transparency register is an exclusively electronic register which is intended to improve transparency in business transactions. The aim is to prevent the abuse of non-transparent corporate structures for the purposes of laundering money or financing terror.

According to the new Section 20 (1) of the GwG, in particular legal entities under private law (e.g. AG, GmbH, e.V.) and trading partnerships (e.g. GbR, OHG, KG) are under obligation to obtain information on the organisation's 'economic beneficiaries', preserve that information and keep it up to date, and communicate it to the administration agency without delay so that it can be entered in the transparency register.

'Economic beneficiaries' are the persons defined in Section 3 of the GwG. Those covered are exclusively natural persons who have final control over an organisation. In the case of legal entities, these are as a matter of basic principle the shareholders who – directly or indirectly – hold more than 25% of the capital shares, control more than 25% of the voting rights, or exercise control in some other comparable way.

In holding structures, this therefore also includes natural persons who, by virtue of their controlling influence over intermediate companies, only exercise indirect control over a company.

According to Section 19 of the GwG, the following information usually needs to be communicated in respect of 'economic beneficiaries': first and last name, date of birth, place of residence and type and scope of economic interest.

Having said that, according to Section 20 (2) of the GwG, these obligations to notify are deemed to have been fulfilled if the relevant information is already available from other German sources (commercial register or registers of partnerships, cooperatives, associations or companies), or if the companies involved have shares which are traded on an organised market.

According to Section 56 of the GwG, one-off contraventions of these obligations to notify can be punished by fines of up to 100,000 EUR; in the case of severe, repeated or systematic contraventions up to 1m EUR or twice the economic advantage gained as a result of the contravention. In addition to that, adjudications in which fines are imposed, with the names of the persons responsible for the contravention, are published on the Internet pages of the supervisory authorities.

Practical tips

The information must be communicated for the first time by 1 October 2017 at the latest. In particular with international groups, determining who the economic beneficiaries are can prove to be something of a challenge, since tracing them abroad can involve high administrative cost.

The time that remains should be used to take steps to obtain all the relevant information from the shareholders and, if appropriate, investigate whether or not it is already to be found in other registers.



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