

CHANGES RESULTING FROM THE TRANSPARENCY REGISTER AND FINANCIAL INFORMATION ACT* - RISK OF ADMINISTRATIVE FINES

The „Transparency Register and Financial Information Act“ (TraFinG, „Transparenzregister- und Finanzinformationsgesetz“) came into force on August 1, 2021 and is intended, among other things, to prevent money laundering and terrorist financing. Even though the already simplistic name of the law seems at first glance to be of interest only to financial companies, in practice the law also affects numerous other companies and businesses and their beneficial owners. This is because the act changes the German transparency register, which serves to identify the beneficial owners of companies, from the previous catch-all register - which for the majority of German companies referred to other registers - to a full register.

The TraFinG primarily eliminated the notification fiction of Section 20 (2) GwG. According to this, companies/entities were previously exempt from notification to the transparency register if the relevant data could be already retrieved electronically from another public register, in particular the commercial register. From now on, all listed companies and all companies/entities with their registered office in Germany must report their actual or fictitious beneficial owners, even if this information can be retrieved from the commercial register, partnership register, register of cooperatives, register of associations or business register. In addition, the data must now be kept up to date at all times in multiple registers. A non-compliance constitutes an administrative offense. In such cases, the Federal Administrative Office can impose fines of up to EUR 150,000.

! NOTICE:

The law provides for the following transitional periods for the reporting of the required information to the Transparency Register::

AG, SE, KGaA (stock corporations, European companies, partnerships limited by shares)	31 March 2022
GmbH, eG, European Cooperative Society (SCE) & Partnerships (limited liability companies, cooperatives, European cooperatives, partnerships)	30 June 2022
Other	31 December 2022

In this respect, notifications that have not been carried out shall not be deemed to be an administrative offense for one year after the expiry of the respective transitional period. In addition, notifications of discrepancies due to the absence of an entry are not to be submitted until April 1, 2023.

However, the aforementioned transitional provisions do not benefit those legal entities that were previously not able to invoke the notification fiction (e.g. due to a lack of electronic retrievability or an outdated list of shareholders). Many administrative fine proceedings have already been initiated in these cases, as there was a duty to notify that had to be fulfilled immediately, and this duty continues to exist in the same way. Likewise, legal entities newly established after August 1, 2021 must comply with their notification obligations without delay; the above-mentioned transitional periods do not apply to them either.



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The new regulations introduced by the TraFinG are also accompanied by further changes:

- ▶ The notification obligation for registered associations will be adapted to the conversion of the transparency register.
- ▶ The notification obligation for foreign purchasers of German real estate and for foreign trusts has been expanded.
- ▶ Multiple nationalities must now also be reported to the Transparency Register.

In addition, automated access to the transparency register will be implemented for so-called privileged obligated parties. This will provide them with direct access to the data on the beneficial owner of a company without having to submit an application for access in advance. The planned restriction to obligated parties subject to BaFin supervision and notaries has been met with criticism. Tax advisors, auditors and lawyers also have a considerable need for simplified and standardized access to the transparency register via an electronic interface. These professional groups, like notaries, are subject to both a legal duty of confidentiality and strict supervision by the chambers.

Please do not hesitate to contact us at any time. We will be happy to support you in examining the required action that now needs to be taken, in identifying the beneficial owners and in communicating the corresponding information to the Transparency Register in order to avoid unnecessary fines for your company.

*Sidenote:

The full title of the law is: „Law on the European interconnection of transparency registers and on the implementation of Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 on the use of financial information for the purposes of combating money laundering, terrorism financing and other serious crime (Transparency Register and Financial Information Act - TraFinG)“.