

Annex

To facilitate the provision of information on legislation, policies, practices and institutions on promoting beneficial ownership information transparency, including existing registry(ies) and mechanism(s) to make requests for such information, the Secretariat has prepared the following questionnaire as a guide that States parties may wish to use.

Collecting the information for this questionnaire may require cooperation by several different agencies/authorities. States parties may wish to send the questionnaire to the following agencies/authorities, depending on their national system for obtaining and recording information on legal persons and legal arrangements in their country, e.g.:

- Company registry and any other relevant registry(ies)
- Agency(ies)/authority(ies)/body(ies) responsible for obtaining and maintaining beneficial ownership information
- National competent authorities responsible for international cooperation in criminal matters, including freezing and confiscation of criminal proceeds

Questionnaire on Beneficial Ownership Information

Contact Information

1. Definition of beneficial ownership & mechanisms for obtaining beneficial ownership information

- 1.1 Please provide the definition of “beneficial ownership” in your country for: (a) legal persons; and (b) legal arrangements, including the relevant legislation (if applicable). Please describe criteria and thresholds that are applied to determine beneficial ownership, including any criteria for exercising control without legal ownership (e.g. voting rights, right to appoint or remove board of directors).

According to Section 3 of the German Money Laundering Act (Geldwäschegesetz, GwG), beneficial owner means

- 1. the natural person who ultimately owns or controls the contracting party, or*
- 2. the natural person at whose instruction a transaction is ultimately carried out or a business relationship is ultimately established.*

- a) In cases of legal persons other than foundations with legal capacity and of other corporate entities that are not listed on an organised market and that are not subject to transparency requirements with regard to voting rights consistent with Community laws or to equivalent international standards, beneficial owners include any natural person who, directly or indirectly,*

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1. holds more than 25 percent of the capital stock,
2. controls more than 25 percent of the voting rights or
3. exercises control in a comparable manner.

In particular, indirect control is deemed to exist when the corresponding percentages of shares are held by one or more associations which are controlled by a natural person. Control is deemed to exist in particular if the natural person is able to exercise, directly or indirectly, a dominant influence on the association.

- b) *In the case of foundations with legal capacity and legal arrangements used to manage or distribute assets on Treuhand or through which third parties are instructed with such management or distribution, or comparable legal constructs, beneficial owners include:*
1. any natural person acting as trustor, trustee or, where applicable, as protector,
 2. any natural person who is a member of the foundation's board,
 3. any natural person who has been designated as a beneficiary,
 4. the group of natural persons for whose benefit the assets are to be managed or distributed if the natural person intended to become the beneficiary of the assets under management has not been designated yet, and
 5. any natural person who, directly or indirectly, otherwise exercises a controlling influence on the management of the assets or on the distribution of the income.

2. Access to basic information on legal persons

- 2.1 Please describe the **process** for obtaining *basic information* on legal persons created or registered in your country, including the role of the company registry.

In Germany, there are several registers that provide basic information for legal persons. At the federal level, the business register (Unternehmensregister), maintained by the Bundesanzeiger Verlag GmbH on behalf of the Federal Minister of Justice, gathers most legally relevant company data. In particular, the business register provides access to the information contained in the commercial register, cooperative register and partnership register (to entries in the registers and to their publication, as well as to documents submitted to the registers in electronic form), to accounting documents, to publications in the Federal Gazette that are required under partnership and company law as well as to company-relevant messages from securities issuers such as voting right notifications.

The commercial register (Handelsregister) is a public register, which holds the essential details on the legal status of registered companies and merchants. All limited liability companies and stock companies must be entered in the commercial register regardless of the size and nature of their business undertaking, since registration is the condition for their existence from a legal point of view. The shareholders of a limited liability company are not entered into the commercial register itself, but into a list of shareholders that has to be filed with the commercial register and can be inspected by anyone electronically. The shareholders of a stock corporation are not entered into the commercial register itself either, only the founders are.

Similar to the commercial register, the cooperative register (Genossenschaftsregister) holds the essential information on the legal status of cooperatives and European Cooperative Societies (SCE). Cooperatives and SCE's acquire legal personality upon registration in the cooperative

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register, run by the local courts. Their by-laws must be provided at registration and contain the names of members of the board of directors and must be signed by their members. The board of directors must keep a list of all cooperative members, which is open to inspection by everyone with a legitimate interest.

The essential details on the legal status of partnership companies are held in the partnership register (Partnerschaftsregister). The partnership register provides information on the identity of all partners. Any subsequent changes in partners must also be registered.

A central register of beneficial owners (“Transparency Register”) complements the registers mentioned above. The register provides information on the beneficial owner of legal persons of private law, other registered commercial entities as well as on trusts and similar legal arrangements.

2.2 Please list the **categories** of *basic information* on legal persons that is obtained and recorded by the company registry (or other relevant registries), e.g. name of entity, date of incorporation, tax ID number, etc.

The company register may contain the following information:

- *Current address of the company*
- *Register entries as well as documents submitted for this purpose*
- *Annual balance sheets*
- *Accounting documents*
- *Information of the commercial register*
- *Current, chronological and historical imprints*
- *Tree structure of documents submitted to the register*
- *Company data*
- *Structured register content*
- *Information and announcements of the register of partnerships*
- *Information and announcements of the register of cooperatives*
- *Publications from the Federal Gazette*
- *Balance sheets filed with the Federal Gazette*
- *Announcements of the insolvency courts, insolvency information*

The exact content of specific entry in the commercial register depends largely on the type of legal person to be entered. In all cases, however, the register displays the power of representation of the respective managing partners or directors.

Typical information of the commercial register:

- *Company name*
- *Type of legal entity*
- *Subject of its business activity*
- *Date of incorporation*
- *Registered offices*
- *Registered capital*
- *Legal representatives (e.g. managing director, owner)*
- *Procuration*

2.3 Is the company registry available publicly & online in your country? **YES / NO**

If **YES**, please provide links to the company registry and any other relevant registries of legal persons, or provide details about how the public can access them.

Yes. All information in the commercial register, the cooperative register, the partnership register and the business register is public and can be accessed electronically (however, there are still some older documents which are available only in paper form at the local registers).

- *business register: <https://www.unternehmensregister.de/>*
- *commercial register, cooperative register and partnership register: <https://www.handelsregister.de/>*

3. Access to beneficial ownership information of legal persons

3.1 Through which mechanism(s) can competent authorities (such as law enforcement, police, financial intelligence unit and tax agencies) access *beneficial ownership information* on companies and other legal persons created or registered in your country. Please select all that apply.

Through a registry/registries with beneficial ownership information

Through a different mechanism

Competent authorities do not currently have access to beneficial ownership information

If **REGISTRY**, please provide further details on such registry(ies) including:

- *Authority(ies)/agency(ies) responsible for obtaining and maintaining beneficial ownership information and for maintaining the register(ies). Please list if more than one;*
Bundesanzeiger Verlag GmbH
- *Categories of beneficial ownership information (data fields) obtained, recorded and maintained on the registry(ies), e.g. name, nationality, date of birth, address, etc.;*
 - *first name and surname,*
 - *date of birth,*
 - *place of residence,*
 - *nature and extent of the beneficial interest, and*
 - *all nationalities.*
- *Types of legal entities covered within the scope of the beneficial ownership registry(ies), including any exempt entities;*
 - *Sole Trader*
 - *Limited liability company*
 - *Joint stock company*
 - *Trust*
 - *Public limited company*
 - *European public limited company (SE)*
 - *Limited partnership on shares*
 - *General partnership (incl. GmbH Co. OHG)*
 - *Limited partnership (incl. GmbH & Co. KG)*
 - *Partnership company*
 - *Registered cooperative*
 - *European Cooperative (SCE)*
 - *Legally capable foundation*
 - *Non-legally capable foundation*

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- *Foreign legal entity pursuant to section 20 (1) sentence 2 of the Money Laundering Act (GwG)*
- *Registered association*
- *Association under old law*
- *Economic association*
- *Mutual insurance association*

- Details of the registry's(ies') access policy:
 - Is the information on the registry(ies) available to the public? **YES**
 - If **YES**, please include a link(s) to the registry(ies).
www.transparenzregister.de
 - If **NO**, please list the authorities/agencies that have access to this information, or that can request access.

 - Does accessing beneficial ownership information in the registry(ies) entail any costs? *Yes, there is a fee allocated to the legal entities subject in the register. Accessing the register costs 1,65€ plus VAT per excerpt.*

 - Does the registry(ies) provide features to search information by different types of information, e.g. legal entity name, name of director, name of beneficial owner, by first or last name, by business address, by registered agent? Is it possible to search for a combination of information (Boolean searches)?
The register can generally only be searched for legal entities. However, for some competent authorities, e.g. FIUs, it is possible to not only search for entities, but also for first and last name, date of birth, place of residence and nationalities of the beneficial owner.

- Frequency of updates of information and triggers for updates;
Legal entities update their information in the Transparency Register as soon as there are changes to the beneficial owners. Since the Transparency Register is connected to the other national registers, changes to the legal entity itself are directly announced to the Transparency Register.

- Any mechanisms to verify beneficial ownership information submitted to the registry(ies) by legal persons or their representatives (if they exist).
After entering the information about the beneficial owners, the person entering it has to verify his or her authority to do so. Pursuant to section 18 (3) of the GwG, the office maintaining the register checks if the information is incomplete, unclear or if there is any doubt as to which association or legal arrangement the information provided is to be attributed to. Examples of errors that are checked for include if any information about the beneficial owner is missing; if the transmitted information is implausible – e.g. the beneficial interest is of the wrong nature (such as a beneficiary for a limited liability company (GmbH)); if the combination of the nature and extent of the beneficial interest is wrong (e.g. legal representative as nature and 50% of capital shares as extent); if the legal representative of the company is a minor; if first names and surnames have been mixed up, or if the association or legal arrangement is not clearly identifiable because of incomplete and wrong names or because of multiple notifications for the same association or legal arrangement. After successfully finishing this check, the information is finally registered.

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- 3.2 Please describe any other sources (mechanisms) through which competent authorities/agencies can access beneficial ownership information in your country. In each case, please describe how beneficial ownership information on companies and other legal entities is made available to authorities and/or the public (if applicable).

Examples may include through private-public partnerships (e.g. involving financial institutions, notaries and/or corporate service providers), through stock exchange or security exchange commission, or disclosure obligations for participation in public procurement processes, etc.

- 3.3 Are foreign legal persons, foreign (express) trusts or foreign legal arrangements allowed to operate in/own assets/ and/or register in your country? **YES**

If **YES**,

- how is basic information on these arrangements recorded (if at all)?
- how is beneficial ownership information on these arrangements recorded (if at all)? Please provide details of the relevant legislation and practices.

Basic information on foreign legal persons is only recorded in the German commercial register, if the foreign legal entity has a branch in Germany. In this case, both the basic information of the German branch office and some data of the foreign legal entity are recorded. If foreign legal persons or registered partnerships acquire real estate in Germany, they are obliged to obtain, retain and keep up to date the information specified in section 19 (1) of the Money Laundering Act (Geldwäschegesetz, GwG) on the beneficial owners of these associations and notify the registrar entity of this information without delay for entry into the transparency register.

Since German law does not recognise the legal institution of the trust, there are no trusts established under German law or governed by German law. Even if a trust established under foreign law is administered in Germany, the legal relations between the participants in the trust are subject to the law under which the trust was established. Due to section 21 (1) and (2) of the Money Laundering Act (GwG) administrators of trusts (trustees) resident or located in Germany are required to obtain, retain and keep up to date the information specified in section 19 (1) GwG on the beneficial owners of the trust they administer and the nationalities of the beneficial owners and to notify the registrar entity of this information without delay for entry into the transparency register. This obligation also applies to trustees who are resident or located outside the European Union if they initiate a business relationship for the trust with a contracting party whose registered office is in Germany, or if they undertake to acquire ownership of real estate located in Germany. These obligations apply, with the necessary modifications, to trustees whose residence or registered office is in Germany of legal arrangements like foundations without legal capacity if the purpose of the foundation is, from the donor's point of view, in their own interest and legal arrangements whose structure and function is equivalent to such foundations.

4. Access to basic information and beneficial ownership information of (express) trusts and other similar legal arrangements

- 4.1 Does your country recognize (express) trusts or other similar legal arrangements? **NO**

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- If **YES**, please provide a broad overview of your country's system and mechanisms for obtaining beneficial ownership information on (express) trusts and other similar legal arrangements created or registered in your country.
 - If **NO**, please skip to question 5
- 4.2 How is *basic information* on (express) trusts and other legal arrangements obtained and recorded in your country?
- 4.3 How is *beneficial ownership information* on (express) trusts and other legal arrangements obtained and recorded in your country?
- Through a registry/registries with beneficial ownership information
 - Through a different mechanism
 - Competent authorities do not currently have access to beneficial ownership information

If **REGISTRY**, please provide details on the registry(ies), authority(ies)/agency(ies) in charge of maintaining the registry(ies), type of information collected, and details on the access policy.

If **ALTERNATIVE MECHANISM**, please provide details on the mechanism, type of information collected, and details on the access policy.

5. Sanctions

- 5.1 Please describe the types of sanctions, sanctionable conduct, and targets of sanctions for noncompliance with beneficial ownership disclosure regulations (whether on the registry(ies) or through an alternative mechanism).

Breaches of the obligation to notify the Transparency Register are subject to a fine pursuant to section 56 (1) sentence 1 numbers 54 to 66 of the Money Laundering Act (GwG). This applies in particular to missing, incomplete, not updated or incorrect notifications relating to beneficial owners. It is also a breach of the law if the beneficial owners or shareholders fail to provide information to the association subject to the notification requirement.

Moreover, the failure to submit a discrepancy report by (legal) persons with special obligations under the GwG also constitutes a breach of regulations.

There is a very broad range of fines. Under section 56 paragraph 1 sentence 1 point 54 to 66 GwG breaches of the requirement of transparency on legal entities are administrative offences which can be punished by an administrative fine up to a maximum of 150.000 euro.

In case of serious, repeated or systematic violations those breaches can be punished by an administrative fine up to a maximum of 5.000.000 euro under section 56 paragraph 3 GwG. Alternatively, these violations can be punished in certain cases by an administrative fine up to a maximum of 10 percent of the total revenues of the legal entity under section 56 paragraph 1 sentence 2 GwG.

The calculation of fines as well as the framework of fines which are applied by the Federal Office of Administration (BVA) are explained in the BVA schedule of fines.

Under section 57 GwG, legally enforceable fines for violations of the transparency register regulations must also be published on the homepage of the Federal Office of Administration (BVA).

Fines imposed on associations which conduct a trade or engage in any other business activity are also entered in the Central Trade and Industry Register (Gewerbezentralregister) in accordance with section 149 (2) no 3 of the Trade Regulation Code (Gewerbeordnung, GewO) if the fine exceeds €200. The Central Trade and Industry Register can be consulted by public

authorities to check the reliability of a company. Negative entries can lead to the firm being debarred from the award of public contracts or, under section 35 of the Trade Regulation Code (GewO), to a ban on trade.

- 5.2 Please describe the powers available to the designated authority(ies)/agency(ies) to enforce sanctions for non-compliance with the beneficial ownership disclosure requirements, **including any statistics on enforcement of such sanctions.**

The BVA is responsible for imposing the above sanctions or fines. Unpaid fines are enforced by the German customs.

If the violated obligation is not remedied even after the imposition of a fine, a further and higher fine will be imposed. The process will be repeated until the obligation has been fulfilled.

Statistics 2018 - 2021 (as of 26.06.2022):

The statistics refer to the year in which the proceedings were opened. Listed are cases in which the Federal Office of Administration (BVA) has imposed a fine or warning fine. The BVA has additionally examined several thousand cases and closed them due to lack of suspicion, liquidation/insolvency or discretionary reasons before sanctions were imposed (2,140 in 2018; 9,417 in 2019; 3,502 in 2020 and 2,708 in 2021).

Type of Infringement	Year	No. of Sanctions or Other Measures	
		Fines¹	Warning fines²
Failure to notify the register of the BO	2018	197	60
	2019	4,271	144
	2020	235	25
	2021	864	80
Failure to notify the register of the BO in good time	2018	126	5,484
	2019	162	451
	2020	131	8
	2021	178	5
Other	2018	0	1
	2019	2	4
	2020	2	1
	2021	23	1
Total		6,191	6,264

6. International Cooperation, asset recovery and challenges

- 6.1. Does your country make beneficial ownership information available to foreign competent authorities (directly or upon request)? Please provide details of the relevant legislative and regulatory framework in your country that allows for the international exchange of such information.

Entries in the Transparenzregister are publicly available.

¹ 50 to 66,667 EUR.

² 50 EUR in each case under simplified procedure.

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According to sections 33 and 34 of the Money Laundering Act (GwG), the Financial Intelligence Unit (FIU) is authorised to exchange data with Member States of the European Union and with FIUs in other countries.

In 2022 the individual European transparency registers will be interconnected via a network to create a centralised European platform, thereby enabling public authorities in the Member States to access the transparency registers of other Member States for information on beneficial owners (section 26 of the Money Laundering Act (GwG)). Sections 54 and 55 of the Money Laundering Act (GwG) enable comprehensive cooperation between supervisory authorities, including in cross-border cases.

- 6.2. Please describe how foreign competent authorities may request or access beneficial ownership information on legal persons and legal arrangements formed in your country. Which agency(ies)/authority(ies) is/are responsible for receiving and responding to foreign requests?
Please provide contact information and instructions.

Foreign competent authorities have the possibility to access the register as general public. Another possibility to access the Transparency Register for foreign competent authorities is by administrative assistance.

- 6.3. In your opinion, what are the main challenges faced by foreign competent authorities to access beneficial ownership information held in your country?

In general, foreign competent authorities have good access to the registered information. Nevertheless, language barriers and different legal approaches pose challenges to access.

- 6.4. In your opinion, what are the main challenges faced by competent authorities of your country to access/receive beneficial ownership information held in a foreign country?

- 6.5. Do you have any case studies or examples where the transparency of beneficial ownership has enabled or enhanced the effective recovery and return of proceeds of crime in (or for) your country?

7. Good Practices for Beneficial Ownership Transparency

- 7.1. Has your country implemented any specific good practices relating to Beneficial Ownership Transparency that you wish to highlight? Examples could include good practices in verification, data format, searchability, use of technology, enforcement of sanctions, automatic red flagging, use or risk-based approach.

Provided there is an interest in doing so, we would be delighted to share our experiences and best practices in a bilateral meeting and after narrowing down the relevant areas of particular interest.

8. Follow-up to the special session of the General Assembly against corruption

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8.1. Please describe any other measures, if any, that your country may have taken to implement paragraph 16¹ of the political declaration adopted by the General Assembly at its special session against corruption held in June 2021.

Reference is made to the answers above in particular to question 3 to 6.

¹ 16. We commit to making efforts in international cooperation and taking appropriate measures to enhance beneficial ownership transparency by ensuring that adequate, accurate, reliable and timely beneficial ownership information is available and accessible to competent authorities and by promoting beneficial ownership disclosures and transparency, such as through appropriate registries, where consistent with the fundamental principles of domestic legal systems and using as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering. To this end, we will develop and implement the measures necessary to collect and share such information on the beneficial ownership of companies, legal structures and other complex legal mechanisms, and we will enhance the ability of competent authorities in this regard.