

Track Changes

Track Changes

December 2020

WOLF THEISS

WiEReG | AUSTRIAN COMPLIANCE PACKAGE COMES INTO FORCE

Summary

On 10 November 2020, the specific provisions on the Austrian Compliance Package (§ 5a of the Act on the Register of Ultimate Beneficial Owners – *WiEReG*) came into force. Legal entities – through professional representatives (*befugte Parteienvertreter*) – may now voluntarily submit certain documents to the Register of Ultimate Beneficial Owners which will be stored electronically in a "package" for a period of 12 months. The principle aim of the Compliance Package is to standardise and simplify KYC processes and thus reduce the administrative burden of legal entities in this respect. Most of the information and documents required for a Compliance Package need to be obtained and checked regardless, due to the annual review and notification obligations.

1. EXISTING REVIEW, NOTIFICATION AND RETENTION OBLIGATIONS

Since the *WiEReG* itself came into force in 2018, legal entities have been obliged to carry out annual reviews regarding their ultimate beneficial owners. The review needs to be based on "appropriate measures", the intensity of which depends on the complexity of the ownership structure of the legal entity. In any event, accurate and up-to-date information on the ultimate beneficial owners, including precise information on the beneficial ownership, must be obtained. In order to ensure that the reported data is up-to-date, there is a mandatory annual reporting obligation even if the review has not revealed any changes in the data of the ultimate beneficial owners already registered.

The performance of the annual review needs to be documented and copies of the documents and information must be retained for at least five years after the end of the beneficial ownership of the individual concerned. Violations of this obligation to retain documents and information may result in a fine of up to € 75,000 in case of intent and up to € 25,000 in case of gross negligence.

2. COMPLIANCE PACKAGE

2.1. PRINCIPLE AIM

In practice, the preparation of the documentation required for KYC processes usually is a time-consuming and cost-intensive process for legal entities. If a legal entity enters into business relations with several contractual parties obliged to conduct KYC checks (e.g. credit institutions, tax consultants, attorneys, notaries), this process often has to be repeated several times during a specific year which creates further inefficiencies.

With the possibility of transmitting a Compliance Package, this situation will now be improved: in addition to the notification of the identified and verified ultimate beneficial owners, professional representatives will also be able to submit to the Register of Ultimate Beneficial Owners the documents on which this verification is based. This may result in the following advantages:

- A Compliance Package is generally valid for 12 months after transmission, provided that there are no changes in the ownership or control structure. A contractual party obliged to conduct KYC checks may access the documents contained in the Compliance Package in the context of the verification of the identity of the ultimate beneficial owner in accordance with § 11 para 2a WiEReG;
- The retention obligation according to § 3 para. 2 WiEReG is fulfilled by transmitting a Compliance Package;
- In group structures, the transmission of a Compliance Package of a domestic legal entity can be "used" by all subordinate legal entities: they may refer to such Compliance Package and at the same time fulfil their own retention obligation according to § 3 para. 2 WiEReG.

2.2. REQUIRED DOCUMENTS

§ 5a para. 1 WiEReG contains a list of the documents required for a Compliance Package. Basically, these are the same documents the legal entity needs to obtain to identify and verify its ultimate beneficial owners in the course of the annual review.

- If the legal entity is for example a general partnership, a limited partnership, a stock corporation or a limited liability company, the Compliance Package needs to contain an organisational chart showing the relevant ownership and control structure.
- Further, specific requirements depend on the legal form of the legal entity. For stock corporations, for example, proof of ownership of the relevant shares as well as the articles of association (only in the case of deviating voting rights or control relationships) must be provided. For limited liability companies, the articles of association must be provided if these contain voting rights or control relationships that deviate from the shareholdings. For private foundations, the foundation deed and foundation supplemental deed (*Stiftungszusatzurkunde*) as well as all other evidence necessary for the identification and verification of the relevant beneficiaries must be provided.

- These documents must also be provided for all domestic higher-level legal entities unless a Compliance Package has been transmitted for the relevant higher-level legal entity. For foreign higher-level legal entities, the name, the registration number, the legal form and the country of domicile as well as the evidence available under the foreign law to verify the existence of the foreign legal entity and the ownership structure must be provided.
- Additionally, any other evidence and documents necessary for the identification and verification of the ultimate beneficial owners must be provided. This typically includes voting agreements or other agreements that give an individual person a controlling influence.

The documents provided as part of the Compliance Package need to be up-to-date (e.g. extracts from foreign registers must not be older than six weeks). Any documents which are neither in English nor in German must be translated.

Failure to provide the required documents when transmitting a Compliance Package may result in a fine of up to € 10,000.

2.3. NOTE OF THE PROFESSIONAL REPRESENTATIVE IN LIEU OF DOCUMENTS

For the purpose of protecting legitimate interests (e.g. competition law reasons, disclosure of remuneration, personal interests that require protection), a note by the professional representative may be provided in lieu of specific documents in exceptional cases. Such a note needs to contain:

- date and place of review of the document;
- first name, surname, date of birth and signature of the individual who reviewed the document;
- exact description of the document reviewed, information on who created or issued and signed the document and in what capacity;
- a description of the content of the document and a summary of all parts of the document relevant for the beneficial ownership.

2.4. VALIDITY

The documents submitted as part of a Compliance Package are valid for a period of 12 months. This also applies in the event that the Compliance Package contains foreign documents. If there is a relevant change in the ownership or control structure, the change of the ultimate beneficial owner must be reported within four weeks and the Compliance Package must be updated.

The professional representative may submit a notification of a change of an existing Compliance Package which starts a new 12-month validity period. When submitting this notification, the completeness of the Compliance Package and that all documents contained therein are up-to-date and current must be checked and confirmed.

2.5. ACCESS TO THE COMPLIANCE PACKAGE

Compliance Packages can be accessed via the WiEReG Management System and the documents contained therein can be reviewed and downloaded. Each legal entity can decide who may access its Compliance Package. Access can be granted either to all persons obliged to conduct KYC checks or only to certain persons who were specified when the Compliance Package was submitted (*eingeschränktes Compliance Package*). Persons whose access was not (initially) permitted may apply for access to the Compliance Package from the respective professional representative or the legal entity itself.

2.6. INVOLVEMENT OF A PROFESSIONAL REPRESENTATIVE

Transmission of a Compliance Package requires that a professional representative has identified and verified the ultimate beneficial owners. Before transmitting, amending or supplementing a Compliance Package, a confirmation needs to be obtained from the management of the legal entity that the professional representative has been provided with all documents required to identify and verify the ultimate beneficial owners.

About WOLF THEISS

Wolf Theiss is one of the leading European law firms in Central, Eastern and South-Eastern Europe with a focus on international business law. With 340 lawyers in 13 countries, over 80% of the firm's work involves cross-border representation of international clients. Combining expertise in law and business, Wolf Theiss develops innovative solutions that integrate legal, financial and business know-how.

For more information about our services, please contact:



Christopher Juenger
Associate
christopher.juenger@wolftheiss.com
T: +43 1 51510 5313



Manuela Regner
Associate
manuela.regner@wolftheiss.com
T: +43 1 51510 5151

This memorandum has been prepared solely for the purpose of general information and is not a substitute for legal advice.

Therefore, WOLF THEISS accepts no responsibility if – in reliance on the information contained in this memorandum – you act, or fail to act, in any particular way.

If you would like to know more about the topics covered in this memorandum or our services in general, please get in touch with your usual WOLF THEISS contact or with:

Wolf Theiss
Schubertring 6
AT – 1010 Vienna