

NATIONAL-LEVEL CORPORATE ANTI-ABUSE MEASURES RELEVANT TO THE EU COMPANY LAW PACKAGE

Expert Questionnaire

Austria
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1) Anti-abuse mechanisms - do any of the following mechanisms exist in this country? If so, how do they work?

a. Disqualified Directors

i. Is there an official definition of “disqualified director”? If so, what are the grounds for disqualification? In which law can this be found? (link to legal text(s))

Austria has no regulation (official definition) regarding “disqualified directors”. As part of the implementation of the Directive (EU) 2019/2121 as regards cross-border conversions, mergers and divisions, regulations regarding “disqualified directors” will also be introduced (2023 at the latest).

ii. Is there an official list of (current) disqualified directors? If so, where can this be found? (name of organization maintaining it and link)

No

iii. If there is an official list, who has access to this list (general public or restricted)?

n/a

b. Beneficial Owners

i. Where is the database of beneficial owners and which organisation maintains it (link)

The Beneficial Owners Register Act (BORA) forms the legal basis for the Register of Beneficial Owners. The register is maintained by the register authority set up within the Federal Ministry of Finance (BORA-Registry Authority)

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Information Website: <https://www.bmf.gv.at/services/wiereg.html>

Website Public Access: <https://www.bmf.gv.at/services/wiereg.html>

Public Extracts: <https://wieregms.bmf.gv.at/at.gv.bmf.wiereg-p/wiereg?execution=e1s1>

With the Register of Beneficial Owners, a central register has been established to implement Articles 30 and 31 of the 5th Money Laundering Directive, in which information on the beneficial owners of companies, foundations and trusts are entered. Reports can be submitted to the register electronically.

ii. Are there any checks on the authenticity of beneficial owners, or does the organisation depend on a “statutory declaration” or “affidavit” from the company directors?

In order to make completion of the reporting form as easy as possible, an automatic reconciliation with the Central Register of Residents is carried out for beneficial owners with their principal residence in Austria and an automatic reconciliation with the register of companies, register of associations and supplementary register for other affected parties is carried out for top-level legal entities with their principal residence in Austria.

Since 10 January 2020 (implementation of the 5th Money Laundering Directive) the following measures have to be taken by the register authority for the purposes of ensuring that the data stored in the register is adequate, accurate and up-to-date:

- semi-automatic analysis of the reports with the purpose of classifying them into risk categories and identifying potentially incorrect reports
- random-sample checking of incoming reports on the basis of risk analysis
- continuous monitoring of the incoming reports and random-sample checks of those legal entities that do not replace a notice with a new report within six weeks,
- occasional and prospective performance of analyses

iii. How quickly must the company give notice when ownership has changed (updating of lists/databases)?

According to Article 3 BORA, the legal entities are obligated to determine and verify their beneficial owners once a year. Legal entities that are not exempt from the reporting obligation must report their beneficial owners within four weeks of their initial entry into the respective master register. In addition, legal entities that are not exempt from the reporting obligation must, within four weeks of the due date of the annual review, report any changes identified during the review or confirm the reported data.

The legal entities themselves report the data on the beneficial owners to the register electronically via the Business Service Portal of the Federal Government. By registering with the Business Service Portal, each legal entity is clearly identified. It is also possible to have the report carried out by a professional representative (e.g. notary or lawyer).

Deliberate violations of the reporting obligations are punishable as financial offences with a penalty of up to EUR 200,000 in the case of an intentional offence. A grossly negligent violation of the reporting obligations is sanctioned with up to EUR 100,000.

iv. Who has access to the beneficial ownership database? Does the general public have unrestricted access, restricted access or no access?

The general public has restricted access. Extracts are available for a user charge of EUR 3. Search queries can be conducted by using either the identification number or the name of the legal entity. A search of beneficial owners is not intended.

The public excerpt contains the following information:

- Details about the legal entity (name, address, commercial register, register number, legal form, date of incorporation)

- Details about direct beneficial owners and indirect beneficial owners (given name, surname, date of birth, nationality, country of residence)
- Nature and scope of the beneficial interest

In cases where a restriction on access to the register has been granted, details about the beneficial owner are not shown. Instead, a notification about the access restriction pursuant to this Article shown.

[Here you find the guide to public inspection of the register of beneficial owners.](#)

c. Electronic identity (eID) scheme – is there a scheme registered with the European Commission, and if so, what eIDAS level of assurance does it have?

Austria is in the process of implementing the further development of the citizen card / mobile phone signature concept and will be able to put the new electronic proof of identity (ID Austria) into full operation at the end of 2021. ID Austria will replace the mobile phone signature as electronic proof of identity in the future. For more information see: [ID Austria \(oesterreich.gv.at\)](https://www.oesterreich.gv.at)

Austria has not yet made a notification according to the eIDAS Regulation; this is planned for this year, with the level of assurance “high”.

2) Company registry – transparency, access, cost

a. Which organization maintains the company registry? (name and link)

The commercial register (Firmenbuch) is a central public register maintained by the regional courts; in places with several courts of first instance, there are special jurisdictions. In Vienna, for example, the commercial register is kept by the Commercial Court of Vienna (Handelsgericht Wien), and in Graz by the Regional Court for Civil Matters in Graz. In Austria, there are 16 courts of first instance which keep the company register. The local jurisdiction depends on the respective seat of the legal entity. The Commercial Court of Vienna is by far the most important company register court ([Handelsgericht Wien \(justiz.gv.at\)](https://www.justiz.gv.at)). The legal basis is the Commercial Register Act (Firmenbuchgesetz – FBG). Easy access to the commercial register is via justizonline.gv.at (www.justizonline.gv.at)

b. To what extent is the registry digitalized? Can company foundations/registrations and reporting be carried out fully online/digitally?

The commercial register is an electronic register in which all data, both current and historical, has been available electronically.

All initial and subsequent submissions to the court can be transmitted electronically via the Electronic Legal Communication of the Judiciary (Elektronischer Rechtsverkehr der Justiz). For example, the entire process of establishing a GmbH (limited liability company) can be done digitally and online (more below). Certain institutions have to use the electronic legal communication (e.g. lawyers, notaries, financial institutions). Every year approximately 320,000 submissions to the company register courts are made. 90 % are submitted electronically and 10 % in paper form. Paper submissions are scanned by the court.

c. Are bulk downloads of the entire list of registered companies possible?

Excerpts of the Company register are basically individual inquiries. Bulk downloads, which refer to the entire database, are possible but require approval by the Federal Ministry of Justice.

d. Does the registry have search features beyond the name of the company or person (e.g. by sector or employee size)

An excerpt from the company register can be retrieved from the database by specifying the company register number.

If the company register number is unknown, it can be searched for using the name of the legal entity or using the name of a person who exercises a function in the legal entity. There is no additional search.

e. What is the typical cost of downloading a document from the registry?

The following basic data (brief information) are free of charge: Commercial register number, the company name, the legal form, the registered office, the registered country and the business address of the legal entity has been free of charge since June 1, 2017.

A fee is payable for detailed company statements or documents. The costs are set by law for each type of document. The fee for the latest company register extract is € 3.53, the fee with historical data is € 5.90.

f. Is there information on employment levels beyond what is contained in annual accounts?

No

g. Information on European company forms and EU reorganizations (CBM) - is a search possible for companies with the SE legal form or companies reorganized through a CBM?

The European Company (SE) and the documents and information relating to the European Company (SE) are entered in the commercial register in accordance with the provisions applicable to national stock corporations. The search function is of course limited to European Companies that are registered in Austria (see answer d). A special search function for CBM is only possible with an approval by the Federal Ministry of Justice.

3) Firm foundations

a. What authority or organization is responsible for registering new companies (with link)?

The commercial register courts are responsible for registering new companies. In Vienna it is the Commercial Court of Vienna (Handelsgericht Wien). Depending on size and legal form the

checks and registration are made either by the responsible judge or the legal clerk (Diplomrechtspfleger/in)

Link to Commercial Court of Vienna: [Handelsgericht Wien \(justiz.gv.at\)](https://www.justiz.gv.at/handelsgericht-wien)

b. What are the steps needed to found and register a new company? To what extent can these happen digitally?

As mentioned above, a limited liability company (GmbH) can be founded completely online and digitally. A notary must be consulted when drawing up the memorandum of association, certifying signatures and registering companies (the exception is the so-called "simplified GmbH formation").

The "simplified" GmbH formation with only one founder, who is also the sole managing director, can only be carried out online. In this case, a notary is not required. The credit institute checks the identity of the founder when the founder opens a bank account to pay in the share capital. The credit institution transmits electronically the bank confirmation, a copy of the photo identification as well as a certification of signature directly to the commercial register. The articles of association shall also be submitted online to the company register and may only contain the minimum contents (company name, register seat, corporate purpose, share capital, managing director) (§ 9a GmbH).

The consultation with the notary takes place within the framework of one or, depending on the case, several video conferences.

The identification of the founders and, if applicable, other participants (e.g. third-party managing directors) is carried out pursuant to § 69b Para. 2 No. 1 NO (Notariatsordnung, Notary-E-Identification-Regulations).

In the future, identification via the E-ID ("ID Austria") will also be available as an identification alternative.

The articles of association/declaration of incorporation in the form of a notarial act are drawn up electronically within the framework of a video conference between founders and the notary in a single act using electronic signatures pursuant to § 69b NO.

The manager's signature is also certified by the notary within the framework of a video conference pursuant to section 79(9) NO.

If the managing director is not appointed in the articles of association but by resolution of the shareholders, the certification of signatures pursuant to section 79(9) NO may also take place in a video conference using electronic signatures.

When founding a GmbH, at least half of the minimum share capital (€ 17.500) must be paid in cash. For this purpose, a bank account must be opened for the GmbH, into which the shareholders pay the capital. The bank must confirm that the minimum capital is available and at the free disposal of the managing directors. New since 01.01.2018: In order to be able to carry out the formation of the GmbH at the notary's office even faster, it is possible for share capital to be paid to a notary trust account via the Notary Bank (Notariatsbank), which forwards the payment to the company account after registration of the new company. In this way the notary can issue the bank confirmation.

The documents that must be submitted to the Company Register Court are transmitted to via the document archive of the Austrian notary's office and Electronic Legal Communication (Elektronischer Rechtsverkehr).

c. What checks (if any) are done on the authenticity of documents, identity of founders, record of founders (e.g. disqualification as directors) and beneficial owners (company name, register seat,

i. By registration authority

Once the documents have arrived in the commercial register court, the checks and registration are carried out either by the responsible judge or the legal clerk (Diplomrechtspfleger/in) depending on the size and legal form. For example, Limited Liability Companies (GmbH) with share capital up to € 100.000 are checked and registered by the legal clerk.

The commercial register court checks the documents both formally and materially. Formally, the judge or the legal clerk checks the documents for completeness and if the memorandum of association complies with legal requirements. The legal clerk checks the memorandum of association also materially (e.g. company name: the company name must have a distinctive character, in particular it must be clearly distinguishable from all companies existing at the same place and registered in the company register). There are often improvement orders regarding the company name.

Checks in relation to social fraud are not done automatically. Only in case of suspicion of social fraud (mainly in building and construction sector) queries are also made to the tax authorities. If the tax authority answers negatively, applications are then withdrawn or rejected. No checks take place in relation to money laundering.

ii. By notaries

The tasks of the notary are manifold:

Maintaining high security standards: Various preventive measures should help to protect both the founder and all legal relations from misuse and identity fraud. In this context it is also a central task of the notary to verify identity in order to prevent money laundering and terrorist financing.

In the case of transactions over € 15.000, the notary has special duties of care, identification, reporting and safekeeping:

- Verification of identity and beneficial owners
- Obtaining information on the purpose and nature of the business relationship or transaction
- Reporting suspicious cases
- Providing information to the competent authorities
- Keeping records and information

Especially in connection with the verification of the identity of beneficial owners, there are strict obligations for the notary: since the Berufsrechts-Änderungsgesetz 2020 (BRÄG 2020), there is an obligation to obtain an excerpt from the Register of Beneficial Owners (WiEReG)

every time a new business relationship is established with a legal entity (company, other legal entity with its registered office in Austria, trust and trust-like agreement). In addition, in the case of legal entities, trusts, companies, foundations and comparable structures, the notary must also understand the concrete ownership and control structure. If he/she doesn't, the contractual relationship may not be established and the transaction may not be carried out. Already existing business relationships must be terminated.

The notary instructs and advises founders in drafting the memorandum of association, checks the legal capacity and power of representation as well as the legality of the foundation document and sends it to the commercial register (see above).

The cooperation between the notary and the registry court is based on the principle of dual control (4 eyes principle) and ensures the necessary level of protection of confidence in legal relations, especially in electronic legal transactions.

iii. By "facilitator" companies (foundation agents)

Facilitator companies, such as consulting firms; have often an important advisory role in relation to incorporations and restructurings, but don't play a role under statutory authority.

4) Cross-border Mergers (CBMs)

a. Which authority is responsible for the pre-merger certificate (outbound CBMs), which authority is responsible for approving the merger (inbound CBMs)? (name and link)

The commercial register courts are responsible for pre-merger certificates. In Vienna it is the Commercial Court of Vienna (Handelsgericht Wien). With regard to cross-border mergers, only judges are responsible for inbound and outbound cross border mergers.

Link to Commercial Court of Vienna: [Handelsgericht Wien \(justiz.gv.at\)](https://www.justiz.gv.at/handelsgericht-wien/)

b. What personnel capacity/qualifications does the authority/ies listed above (organization(s) granting the pre-merger certificate + approving merger) have?

At the commercial court of Vienna 5 judges (full-time equivalent) and 25 legal clerk deal with corporate law issues. An estimated total of around 20-25 judges deal with company law in Austria.

c. What (if any) anti-abuse checks are made?

- i. Purpose of reorganization**
- ii. Background check on directors**
- iii. Identity of beneficial owners**
- iv. Worker I/C/P arrangements**

The merger must be checked for legality and correctness. This is done by a judge. His or her checks are primarily of a formal nature. After checking for the completeness of the documents and correctness of the resolutions (merger agreement, audit reports, merger reports, annual financial statement, resolution of the general meeting), if everything is in order, he/she will issue a pre-merger certificate or approve the merger.

With regard to worker arrangements, in more than 90 % of the CBMs the question of worker agreements does not arise, due to a lack of employees in the merging firms. In the other cases the checks are limited to the question whether discussions with worker representatives are taking place.

Checks on the purpose of reorganization, background check on directors, and the identity of beneficial owners are not made regularly.