

CHRISTOPH TRAUTVETTER AND MARKUS HENN

TRANSPARENCY REGISTER: NO TRANSPARENCY

A RESEARCH REPORT ON ANONYMITY
IN BERLIN'S REAL ESTATE MARKET

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SUMMARY

Around the world, landlords in pursuit of maximum profits are endangering the rights to housing and to affordable accommodation. Non-transparent real estate and financial markets frequently promote injustice and money laundering. To enable effective law enforcement, political regulation, the self-regulation of the market, and not least, an informed public debate about wealth and social responsibility, the Berlin real estate market needs more transparency. Using the example of Berlin and on the basis of a selection of over 400 companies that own Berlin property, the following study demonstrates the extent of the city's problem with anonymous real estate owners and opaque ownership structures, the forms that this anonymity takes, and why the transparency register, introduced in 2017 with the aim of ensuring more transparent ownership structures, has thus far failed to live up to its name.

Anonymous companies that own Berlin real estate	135 out of 433
No entry in the transparency register, despite obligation to register	83 out of 111

Overview of the main results of the study

No natural person could be identified as owner for as many as 135 of the companies included in the study, despite extensive research in the available registers.

These companies thus continue to operate anonymously, in many cases violating the 2017 law. The January 2020 publication of the German register fully reveals its problems and limitations for the first time:

- Germany is one of only four EU countries that, under certain conditions, has been waiving the obligation for companies already entered in other

registers to be entered into the transparency register (a waiver known as *Meldefiktion*). In January 2021, the German Government presented a legislative proposal that would remove this waiver, however as of April 2021 it remains in effect.

- Out of the 111 German companies to which, according to our analysis, this waiver does not apply and which consequently ought to register their beneficial owner in the transparency register, 82 of them had still failed to fulfil this obligation after more than two years. In only seven cases was a genuine beneficial owner entered into the register, and in 22 cases a notional beneficial owner had been listed – justifiably in some cases, spuriously in others.
- The technical implementation of the transparency register in Germany, compared with other EU countries, is unnecessarily complicated. In Denmark, Malta, and Luxembourg, as well as in the (former EU) UK, registration takes a few mouse clicks, with no long detours or waiting times, and costs nothing.

In order to effectively combat anonymity in Berlin and around the world:

- the Berlin state government needs to facilitate a systematic analysis of the *Grundbuch* (land registry) and record beneficial owners for all Berlin dwellings in the proposed housing cadastre;
- the Federal Government and the Federal Office of Administration need to enforce the obligation to be entered into the transparency register, and improve the technical implementation and oversight of the register;
- the European Commission and the OECD need to adjust or even abolish the reporting threshold for beneficial ownership, and/or introduce efficacious mechanisms for the registration of investment funds and publicly traded companies.

RESULTS OF THE RESEARCH

"The problem in this context [money laundering in the real estate market] is that the transactions often involve foreign legal entities for which we are unable to ascertain the beneficial owners. We simply do not know who is behind these entities and have no way of finding out."
Jana Berthold, Berlin Office of Public Prosecutions¹

"The real estate sector is considered a high-risk area for money laundering. Effective anonymity can be achieved through share deals and complex company structures (particularly in interplay with so-called letterbox companies located abroad)."
National Risk Analysis, 2019²

"Due to the myriad legal configurations available to corporate entities both within Germany and abroad, the potential within the real estate sector for obfuscating the origin of funds and the associated ownership structures can generally be evaluated as high. ... The Federal Government shares the assumption that a lack of knowledge about the identity of a beneficial owner, who is a natural person and perpetrates breaches of law, will tend to hamper due legal proceedings against that natural person."
Federal Government response to a Parliamentary Question, 2019³

In recent years, sales prices and rents for residential real estate in many cities around the world and particularly in Berlin have virtually exploded. Long-established tenants are being brutally displaced, public servants can no longer afford to live in the city proper, and rent levels have become a major factor in the increasingly unequal distribution of wealth and disposable income. In the search for a clearer understanding of this drastic situation, and for solutions to the resultant suffering, politicians, academics, the press, and the public want answers: who owns the city? And tenants struggling to remind their landlords of their social obligations would like to know: who really owns my apartment?

The search for the owners of real estate has already cost tenants in Germany and around the world enormous amounts of effort and free time, and provided grist for many a working group. In 2019, citizen journalists working on the topic in Germany won the Grimme Online Award.⁴ By now the issue has even reached the Federal Government. Not least because judicial authorities also want better information about ownership structures, in order to actually be able to combat criminality effectively. With the 2020 implementation in German law of the EU's Fifth Money Laundering Directive (5AMLD), not only has the transparency register been made public, but international companies that purchase German real estate are now obliged to be entered into the register. Germany is one of the first countries in the world to require this. Working from a

selection of over 400 companies that own real estate in Berlin, the following study demonstrates the extent of the city's anonymity problem, examines the forms that this anonymity takes, and shows why the transparency register still has yet to live up to its name.⁵ The study proceeds step-by-step along the path to identifying real estate owners. The results are illustrated with specific examples. Detailed information about the identified owners is available in the study *Who Owns the City?*

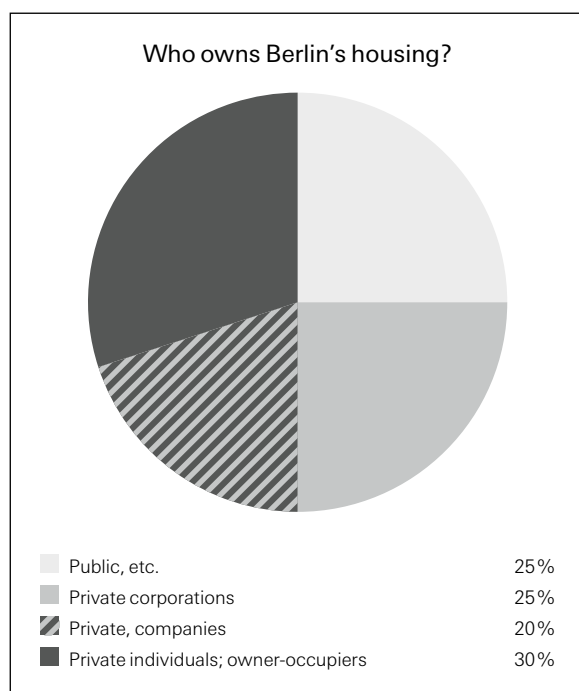
THE GRUNDBUCH: THE BASIS FOR NON-TRANSPARENT REAL ESTATE MARKETS

In Germany, all owners of real estate are recorded in the *Grundbuch* (the land registry), which is maintained by either district or state authorities. There are two problems with this system, however. Firstly, the *Grundbücher* are neither digital and centralized, nor readily accessible.⁶ Secondly, the *Grundbuch* does not have to list the ultimate beneficial owners, i.e. the actual owners of the property, but only the direct owners in the legal sense. These are often so-called "special-purpose vehicles" (SPVs, also known as "conduits" or "special-purpose entities"), forming part of a larger complex of companies and incorporated solely for the management of one or more real estate assets. The ultimate beneficial owners of such structures can, in some circumstances, be indirectly ascertained via the relevant register (primarily the *Handelsregister* [German Commercial Register] and the transparency register). So far, the Berlin Senate has declined to establish a real estate register which would include information about the beneficial owners, pointing to federal sovereignty in respect to the *Grundbuch* and the transparency register.⁷

¹ Public hearing in the Bundestag for the implementation of the amendments to the EU's Fourth Money Laundering Directive (4AMLD), 6 November 2019, www.bundestag.de/resource/blob/672448/9072145f34f9328bb89fbb01159bfe27/Protokoll-data.pdf. ² As of 19 October 2019; see *Erste Nationale Risikoanalyse: Bekämpfung von Geldwäsche und Terrorismusfinanzierung 2018/2019*, German Finance Ministry, October 2019, https://www.bundesfinanzministerium.de/Content/DE/Downloads/Broschueren_Bestellservice/2019-10-19-erste-nationale-risikoanalyse_2018-2019.pdf?__blob=publicationFile&v=7. ³ Answer to the parliamentary inquiry by the Greens in the Bundestag, "Drucksache 19/1956(neu)", 2 May 2018, <https://dip21.bundestag.de/dip21/btd/19/019/1901956.pdf>. ⁴ See "Wem gehört Hamburg?", *Grimme Online Award*, www.grimme-online-award.de/archiv/2019/preistraeger/p/d/wem-gehört-hamburg-1/. ⁵ The name "transparency register" (*Transparenzregister*) is a German contrivance and intuitively points to the hoped-for purpose of the register. In the EU Directive a somewhat more technical term is used, "Register of Beneficial Ownership". In this study, regardless of the name used in the respective national context, we use the term "transparency register" to denote the various national registers of beneficial owners. ⁶ A project of the state governments for the digitalization and centralization of this data has already been under way for years. According to official plans, the project will be finished mid-2021 at the earliest, and possibly not until 2024. See also Frank Matthias Drost, "Einführung des 'Datenbankgrundbuchs' verzögert sich um Jahre", *Handelsblatt*, 5 February 2020, <https://www.handelsblatt.com/politik/deutschland/immobilienregister-einfuehrung-des-datenbankgrundbuchs-verzoegert-sich-um-mehrere-jahre/25503960.html>. ⁷ Due to the lack of regulatory authority, the Berlin Senate tabled a proposal for a central real estate register in the federal parliament at the beginning of 2021. See <https://www.bundesrat.de/SharedDocs/beratungsvorgaenge/2021/0001-0100/0040-21.html>.

Because no systematic analysis of the owners registered in the *Grundbuch* has been undertaken thus far, and would be close to impossible even with considerable effort, the analysis of ownership structures has hitherto relied on alternative sources, primarily statistical analyses. These are based on data from owner surveys—particularly from the building and housing census that takes place every ten years,⁸ and a nationwide survey of 3,000 randomly selected owners carried out by the Bundesinstitut für Bau-, Stadt- und Raumforschung (Federal Institute for Construction, Urban, and Spatial Research, BBSR) in 2015.⁹ These statistical assessments, however, work with an insufficiently detailed definition of ownership based on economic criteria, and rely on inconsistent self-reporting. Since 2015, the Berlin *Gutachterausschuss* (committee of real estate appraisals) has also been gathering data on the type and country of origin of real estate buyers from the contracts of sale entered into the *Grundbuch*; but again, this only includes direct, legal ownership as per the contract. Lastly, some of the large housing companies and professional investors (voluntarily) publish information about their Berlin real estate holdings in their financial reports.

Figure 1. Ownership Structures in the Berlin Real Estate Market



Source: simplified, schematic presentation based on the 2011 building and housing census

By and large, there is as yet only very rough data about the actual owners. Using the 2011 census results and the subsequent updates to these,¹⁰ the owners can be roughly broken down into three groups:

1. Public, non-profit, church, and cooperative organizations, owning around a quarter of housing stock.

2. Private businesses—including large publicly listed companies as well as small real estate businesses and institutional investors such as insurance companies, investment funds, and asset managers—likewise owning around one quarter of housing stock.
3. Private individuals, who own around half of all housing stock, with the majority of whom renting to tenants. For one segment of this group, the *Grundbuch* lists a natural person (this is the most common situation for almost 200,000 privately-owned detached houses and small blocks of flats, as well as for almost 400,000 privately-owned apartments in *Wohneigentümergeinschaften*—similar to homeowner associations). Another segment of the housing stock in this group is owned by private individuals indirectly, via companies and other legal entities (here especially the roughly 350,000 apartments in buildings containing more than seven apartments). The exact ratios are unknown.

In order to identify and describe the actual owners, this study attempts (to our knowledge, for the first time at this scale, at least in Germany) to systematically analyse information from the *Grundbuch* and combine this with information from the various company registers worldwide. For this purpose we have made use of around 3,000 individual queries made by tenants and journalists, who are normally able to acquire written information about their landlords and also gain access to the *Grundbuch* in particular cases. Our study focuses on analysing the anonymity that results from opaque corporate networks. Hence, SPVs belonging to public or non-profit institutions, or to large publicly listed companies that have already been the subject of detailed investigation,¹¹ were excluded from these individual queries, as was real estate under the direct ownership of private individuals (thus, from Figure 1, group 1, and parts of group 3). Altogether the study is based on a selection of 433 companies that own real estate in Berlin and for which an actual owner is not apparent from the *Grundbuch*. Because the selection is not random, it is possible that this study has under-represented “conflict-free”, “ordinary” landlords, such as housing cooperatives (*Genossenschaften*) or small-scale property owners whom their tenants personally know (because of a lesser perceived need to take part in data collection about owners), as well as empty individual apartments being used for speculation or investment by anonymous

⁸ Available at www.statistik-berlin-brandenburg.de/grundlagen/zensus-gwz.asp?Ptyp=150&Sageb=10015&creg=BBB&anzwer=6. ⁹ BBSR, “Privateigentümer von Mietwohnungen in Mehrfamilienhäusern”, *Federal Office for Building and Regional Planning (BBSR)*, February 2015, www.bbsr.bund.de/BBSR/DE/Veroeffentlichungen/BBSROnline/2015/ON022015.html?nn=446674. ¹⁰ The yearly real estate report by the Berlin Investment Bank (IBB) contains an update of the housing count, as well as of the number of newly built or divided dwellings, and the number of owner-occupiers, but no records of ownership. ¹¹ See Sophie Bonczyk and Christoph Trautvetter, *Profitmaximierer oder verantwortungsvolle Vermieter: Große Immobilienunternehmen mit mehr als 3.000 Wohnungen in Berlin im Profil*, Studien 3/2019, Berlin: Rosa-Luxemburg-Stiftung, 2019, www.rosalux.de/publikation/id/40502/profitmaximierer-oder-verantwortungsvolle-vermieter.

investors (due to the lack of tenants with a justifiable interest). (Further details about the selection can be found in Appendix 1 – Methodology).

Example 1: The British Heirs

Until recently, the Berlin real estate market had never heard of Great Britain's Pears brothers. They were not listed among the owners of the more than 3,000 apartments in the Berlin Senate's research in connection to the petition "Expropriate Deutsche Wohnen & Co". The estimated 6,000 apartments that they do own are, according to the *Grundbuch*, the property of almost 50 different companies from Luxembourg, which ultimately belong to the three Pears brothers, with each owning one third, via further companies in Cyprus and the British Virgin Islands. It is not known whether the Pears brothers or their administrators reported themselves to the census as private owners, private real estate enterprises, or other private sector enterprises. Their network of companies was exposed by tenants and the management of Syndikat (a neighbourhood pub in Berlin's Neukölln district, since closed), and documented by the *Tagesspiegel* and *Correctiv* magazine via a systematic analysis of the *Grundbuch*.¹² Some of the Luxembourg companies also turn up in the selection made for this study. The Pears brothers are currently on another real estate shopping spree in Berlin. Thanks to Luxembourg's transparency register, this time they were rapidly identified as the buyers.¹³

THE BUSINESS REGISTER: FAIRLY TRANSPARENT, BUT ALSO OFTEN ANONYMOUS

Owners both within and outside of Germany frequently make use of SPVs (especially of the legal designations GmbH or GmbH & Co. KG)¹⁴ based in Germany or even in Berlin. This has the advantage that tenants and the authorities can easily ascertain the owners—at least, the direct owners. Shareholder lists can be downloaded for EUR 1.50–4.50 (as a PDF or image file),¹⁵ and those of Berlin companies can also be examined for free at the Charlottenburg district court. A large proportion of the owners—often individuals and families from Berlin and Germany, but also individuals from abroad—can be identified in this way, including date of birth and place of residence. In many cases, however, the shareholder lists include German companies that are not listed on the company register (AGs—*Aktiengesellschaften*—roughly equivalent to public limited companies [PLCs], foundations, or civil law partnerships, etc.), or foreign companies.

As regards foreign companies, the availability of information varies starkly—from completely free and digitally available in Denmark, Luxembourg, Malta, or the UK, to countries like Cyprus and Spain as well as the British Crown Dependency Jersey, where the information is only partially available and expensive to access, through to countries where there is no reliable,

centralized company register. Commercial providers like Bureau van Dijk (which operates the Orbis database, among others)¹⁶ collect the available information from registers worldwide and make it centrally searchable and digitally analysable—for a high price, however, and with a non-negligible amount of errors. Overall, with foreign companies, in most cases corporate structures make the search for the actual owners more difficult or even impossible, and not only for tenants. Such structures also hamper criminal prosecution, social regulation, and the enforcement of corporate accountability.

By far the most frequent case (223 out of 433 cases) is that of owners who directly or indirectly own real estate via a company registered in Berlin or Germany. Among these, the most typical case (96) is that of Berlin individuals or families holding their property or properties via an SPV located in Berlin, and who are registered with name, date of birth, and place of residence at the Charlottenburg district court, freely viewable by all Berliners. Foreign companies that directly own Berlin real estate are rather less frequent (76 out of 433 cases). Mostly these are companies from the neighbouring countries Luxembourg, Denmark, and Austria; only six came from non-EU countries abroad (two from Jersey and one from each of Gibraltar, the Isle of Man, Norway, and Liechtenstein).¹⁷ Overall, in almost every third case in the existing registers, the ultimate beneficial owners remain unascertainable (135 out of 433). The highest proportion of these is accounted for by businesses registered in Berlin and Germany (97) and in the EU (33). These are the cases that the transparency register, effective across the EU since 2017, is actually supposed to remedy.

¹² See "Das verdeckte Imperium", *Tagesspiegel*, 31 May 2019, <https://interaktiv.tagesspiegel.de/lab/das-verdeckte-imperium/>. ¹³ Jens Anker, "Drei Milliarden gehört jetzt das 'Luftbrückenhaus'", *Morgenpost*, 3 April 2020, <https://www.morgenpost.de/berlin/article228844357/Drei-Milliarden-gehört-jetzt-das-Luftbrueckenhaus.html>. ¹⁴ GmbH: *Gesellschaft mit beschränkter Haftung* (company with limited liability), broadly equivalent to Ltd. in the UK or LLC in the USA. KG: *Kommanditgesellschaft*, similar to a limited partnership, made up of general partners (*Komplementär*) with unlimited liability and limited partners (*Kommanditisten*) whose liability is restricted to their fixed contributions. GmbH & Co. KG: a type of *Kommanditgesellschaft* where the sole *Komplementär* (general partner) is a GmbH. AG: *Aktiengesellschaft*, a special form of limited liability company comparable to the British PLC. ¹⁵ Exceptions to this are companies where the most recent change of shareholders occurred prior to 2007. Shareholder lists for these companies can only be accessed in the paper files in the relevant district court. ¹⁶ See www.bvdinfo.com/de-de. The main provider for the German data is Creditreform. Bureau van Dijk has been owned since 2017 by the US rating agency Moody's. ¹⁷ It is possible that among the individual apartments kept as speculative investments—under-represented in our selection of companies—there is a higher proportion of businesses from countries outside the EU.

Table 1. Anonymity of Real Estate Owners in Berlin

Ultimate owner ascertained via special-purpose vehicle (SPV) located in ...	German register	Other register	Not ascertainable	Total
Berlin	163	34	72	269
Germany	60	3	25	88
EU	0	37	33	70
Non-EU	0	1	5	6
Total	223	75	135	433

Source: our analysis, based on a selection of companies

THE TRANSPARENCY REGISTER: NOT THE END OF ANONYMITY (YET)

The EU's Fourth Money Laundering Directive (4AMLD), adopted in 2015, obliged all member states to set up a register by June 2017 which would record the beneficial owners for all legal entities subject to registration. Hence, Germany introduced what it called a transparency register in 2017—at the last minute, and as a supplement to the already-existing registers. According to section 3, paragraph 1 of the *Geldwäschegesetz* (GwG, German Money Laundering Act), the transparency register records: “the natural person who ultimately owns or controls the contracting party, or the natural person at whose instruction a transaction is ultimately carried out or a business relationship is ultimately established.”

However, the law provides that information about ownership or control (e.g. over voting rights) only be collected and recorded after a 25 percent threshold is crossed. Provided that no natural person can be identified as the beneficial owner for a company, a legal representative, such as the chief executive, is substituted as the notional beneficial owner.

With the implementation of an amending directive in January 2020, this register was made accessible to the German public. Additionally, non-European businesses are now also obliged to be entered into the German transparency register if they purchase property in Germany. Criticisms of the content of the German transparency register had frequently been raised as early as 2018.¹⁸ Owing to the now publicly accessible records, this study structurally verifies these criticisms for the first time. The evaluation of the companies we selected shows that this promising attempt at more transparency:

- has often been left unimplemented by the obligated parties, and insufficiently enforced by the Bundesverwaltungsamt (Federal Office of Administration, BVA);
- has been implemented in a very cumbersome and user-unfriendly manner by the *Bundesanzeiger Verlag GmbH*, the private company charged with administering the register;
- was markedly better implemented in a few other EU countries, but still leaves much to be desired in the rest of the EU and worldwide; and

d. continues to allow anonymity at a German, European, and global level, through fundamental weaknesses in the definition of beneficial owners.

These criticisms are further detailed in the following chapters.

Mandatory Registration in the German Transparency Register Is Being Neglected

Germany decided to introduce the transparency register both parallel and as a supplement to the registers that already existed. In principle, this creates a double obligation to register. In order to avoid excessive red tape, all companies for which the necessary information is already included in the existing registers have been exempted from the additional obligation to register (the aforementioned *Meldefiktion*). For many companies, therefore, especially GmbHs, there is no obligation to register beyond registration in the *Handelsregister*. According to a comparative study by PricewaterhouseCoopers (PwC)¹⁹ that appeared at the end of 2019, Germany is thus (along with Malta, Sweden, and Norway) one of the only EU countries that does not compel all companies to register in the transparency register. Supplementary registration in the transparency register is required in the following cases:

- German companies with foreign company participation, provided these companies in turn have beneficial owners;²⁰

Example 2: The Letterbox Company from the British Virgin Islands, and its Owners from Lebanon

In the German *Handelsregister*, Immo Two Ltd. is listed as the sole limited partner of a German GmbH & Co. KG. Because Immo Two Ltd. is only registered in

¹⁸ See for example: Hans-Martin Tillack, “Warum das neue Transparenzregister seinen Namen nicht verdient”, *Stern*, 6 April 2018, www.stern.de/politik/deutschland/tillack/das-neue-transparenzregister-ist-selbst-wenig-transparent-7929378.html; Jörg Diel and Philipp Seibt, “Eine Datenmüllhalde”, *Der Spiegel*, 1 November 2018, www.spiegel.de/panorama/justiz/transparenzregister-wird-kaum-genutzt-a-1236233.html. ¹⁹ PricewaterhouseCoopers, *The UBO register: update 2019*, December 2019, www.pwc.nl/nl/assets/documents/the-ubo-register-update-december-2019.pdf. ²⁰ The BVA is unequivocal on this point: “In the case of participation by foreign associations, behind which there is a beneficial owner according to Section 3 (1), (2) of the Money Laundering Act ... the option, provided by Section 20 (2) of the Act, of proceeding as if notification had taken place (*Mitteilungsfiktion*) shall, in general, be ruled out. Foreign registers do not meet the requirements of Section 20 (2) sentence 1 of the Act. The provision expressly refers only to the German registers mentioned therein.”

the British Virgin Islands (which according to the Tax Justice Network's Financial Secrecy Index is the place with the highest density of letterbox companies globally), the actual owner remained heretofore unknown. In the German transparency register, a certain Mr. B. from Lebanon is now listed as beneficial owner of the German GmbH & Co. KG.

- German companies whose shareholders are not registered in any of the *Handelsregister*, partnership register, cooperative society register, register of associations, or company register (e.g. AG, *Stiftungen* [foundations], etc.), provided that they have beneficial owners;

Example 3: Business Secrets of the Schleswig-Holstein Chamber of Dentists

Until August 2019, the Schleswig-Holstein Chamber of Dentists was listed in the *Handelsregister* as having a 24.9 percent stake in Fortis Real Estate Investment GmbH—a company which had attracted attention in Berlin by imposing eye-watering rent hikes.²¹ This GmbH was subsequently converted into an AG. Since AGs, unlike GmbHs, only record their shareholders internally and are not obliged to keep a public list, they are required to be entered into the transparency register. On the other hand, because the transparency register only requires beneficial owners who hold more than 25 percent of shares and/or voting rights to be listed, how the Schleswig-Holstein Chamber of Dentists' stake in the company subsequently developed cannot be ascertained. There should have been an entry in the transparency register anyway—if necessary, with a notional beneficial owner—but no such entry was present at the time of our inquiry in March 2020.

- German companies for which the required information about beneficial owners (first and last name, date of birth, place of residence, as well as type and extent of financial interest) is not evident in the German register entries; for example:
 - GmbH & Co. KG where the charter stipulates allocation of voting rights other than according to liable contribution (*Kommanditeinlage*);²²

Example 4: c/o Shelter Trust Anstalt, Vaduz, Liechtenstein

Aramid GmbH & Co. KG has already caused quite a few headaches for tenants and journalists from Berlin and Munich. The German *Handelsregister* lists a Mr. J. (ten percent) and the Aramid-Stiftung foundation from Liechtenstein (90 percent) as the firm's limited partners (*Kommanditisten*). "Aramid" recalls the name of one of the companies owned by the Samwer brothers (Aramis), and what is more, the legal listed address—c/o the Shelter Trust Anstalt in Liechtenstein—is the same as the address of one of their foundations. Mr. J. is in the transparency register

as the "managing limited partner", and thereby the notional beneficial owner. He also functions as one of three board members of the foundation in Liechtenstein. According to the Liechtenstein commercial register, the goal of the foundation, among others, lies in "care for the founder's memory and that of his parents", as well as in "performing disbursements from miscellaneous foundation funds to members of one or more specified families". Who the founder is and who the beneficiary families are remains unclear. The foundation's password-protected website does not lend support to any particular conclusions either.

- GmbH and other companies for which no digital shareholder list is available because the shareholders either have not changed since 2007 or are only listed in the articles of incorporation;
- Capital management companies that count as owners of the real estate assets under civil law and have executive powers in relation to them, but only manage them on trust for a real estate fund.

As Table 2 shows, the bulk of the companies from our selection are not entered into the transparency register, including even in those cases where there demonstrably is a beneficial owner in the form of a foreign shareholder. While exactly three of these companies have fulfilled their obligation to register, to all appearances 33 of them are infringing the applicable laws, two years on.

Only in the category of German companies that previously had no registration obligations (privately held AGs, foundations) is there an entry in the majority of cases (12 out of 15). However, there was also a case with no entry, and two cases (one foundation and one AG) where our application for access was still not approved after one month. For the 12 cases we were able to access, there was information available about the beneficial owners in only half of the cases. In part, this is due to the fact that no beneficial owner exists according to the applicable definition (holding more than 25 percent of shares or voting rights); in one case though, this was provably false; in two further cases, there was every appearance that an existing beneficial owner had—wrongly, as far as we can tell—not been entered into the transparency register (see examples 3, 4, and 15).

²¹ On this point, see Jörn Kersten, "Wie Zahnärzte Steuern sparen - und Berliner Mieten hochtreiben", *rbb24*, 3 July 2019, www.rbb24.de/politik/beitrag/2019/07/berlin-friedrichshain-modernisierung-fortis-zahnaerztekammer-share-deal.html. ²² The shareholder in a KG is referred to as a *Kommanditist*, and is somewhat like a limited partner. Liability is borne according to contribution level, which is entered into the *Handelsregister*. This often also corresponds to voting rights; deviations from this can be stipulated in the charter. Management is the responsibility of the *Komplementär* (equivalent to a general partner) who is unrestrictedly liable, unless this role is fulfilled by a limited liability company (as in the GmbH & Co. KG form). In this regard, the BVA makes plain that a voting share that differs from capital share or contribution level does not have to be specifically reported to the transparency register if the person can already be identified as beneficial owner via the capital share as recorded in the *Handelsregister*. On this point, see <https://transparenzregister.de/treg/de/Rechtshinweise-BVA.pdf> (I. 5, p. 5).

Table 2. Results of the German Transparency Register Queries

Reason for transparency register entry	Entry with BO*	Entry with notional BO	No entry	Total
Foreign shareholder	1	16	73	90
- <i>with ascertainable BO</i>	1	2	33	36
- <i>probably no foreign BO</i>		13	18	31
- <i>with unclear ownership structures</i>		1	22	23
German company, not previously obliged to register	6	6	3**	15
German company without digital shareholder list		0	6	6
Total	7	22	82	111

Source: own presentation, based on own company list

*BO stands for beneficial owner

**including two companies where our application for access was not approved

Example 5: The Family Foundation

According to its own website, B. & K., a family foundation (*Stiftung*), unites a string of businesses under its aegis, which hold, manage, and develop its real estate portfolio of 5,700 apartments and 340,000 m² of commercial space. The foundation's executive board is closely connected with the business, while the board of trustees is populated with professional real estate agents. According to the Berlin foundation register, the purpose of B. & K. is the "maintenance and increase of the foundation's capital and the support of the founders, their wives, and their biological offspring and adoptive children via payments from the proceeds".²³ A corresponding entry can also be found in the transparency register, without, however, giving the founders' names (as would be normal in Austria, for example). In the case of two other family foundations, where according to the foundation register there are clearly-defined beneficiaries who on the face of it are obliged to register (e.g. "wife"), only notional beneficial owners were listed in the transparency register—which appeared to us to be wrong. In the case of one foundation, our application for access had still gone unanswered after more than a month.

Of those cases involving a foreign shareholder, where, judging by the foreign register entries, in all probability no beneficial owner exists, in comparatively many cases a notional beneficial owner is listed (12 out of 30). This particularly applies to (foreign) professional investors. We were not conclusively able to determine why, in the other cases, there was no listing, or whether this was in fact required in all cases.

Example 6: Light at the End of the 'Black' Tunnel

In the case of KC Isabella GmbH, the route leading to the notional beneficial owner runs—via around ten stages—from Germany, through Luxembourg and the Cayman Islands, all the way to the USA. In the

German transparency register—as per the intent of the law—the person in question can be found without any of these detours: it is Stephen Allen Schwarzman, multi-billionaire CEO and founder of the US private equity company Blackstone (as well as Blackrock, an erstwhile subsidiary). According to the transparency register, he exercises control—in that he appoints and recalls the management board of Blackstone Group Management LLC. These board members in turn oversee Blackstone Group LP, which indirectly controls the SPV, which itself indirectly holds shares in the German GmbH (KC Isabella). Those wishing to find out more specific details will have to look in the traditional registers. However, who the investors—and thus the beneficiaries—of the SPV controlled by Schwarzman are, can be found neither there nor in the transparency register.

Bundesanzeiger Verlag GmbH—a subsidiary of the DuMont media group, i.e. a private company—is responsible for the practical implementation of the transparency register. This mandate was awarded by secondary legislation.²⁴ Oversight occurs via the BVA. Fines of up to 100,000 euros, and in severe cases up to five million euros, are possible. Imposed fines have been appearing on the BVA website since January 2020.²⁵ According to the response to a parliamentary inquiry by the Greens, as of 11 October 2018 the figure for concluded non-compliance procedures was still only at 2,571. Two years later, in the Federal Government response to a parliamentary inquiry on

²³ See www.berlin.de/sen/justiz/service/stiftungsaufsicht/artikel.275316.php. ²⁴ *Transparenzregisterbeleihungsverordnung – iBelv* (Regulation for the Commissioning of the Transparency Register), *Bundesgesetzblatt*, part I, no. 41, p. 1938, www.bgbl.de/xaver/bgbl/start.xav?start=%2F%2F%5B%40attr_id%3D%27bgbl117s1938.pdf%27%5D#_bgbl_%2F%2F%5B%40attr_id%3D%27bgbl117s1938.pdf%27%5D...1583242771014. ²⁵ See “Bußgeldentscheidungen (Transparenzregister)”, *BVA*, https://www.bva.bund.de/DE/Das-BVA/Aufgaben/T/Transparenzregister/Bussgeldentscheidungen/bussgeldentscheidungen_node.html.

4 August 2020 from Die Linke in the Bundestag, by the middle of July the same year, 5,994 warning fines had been issued and 1,520 fines imposed.²⁶ This being said, few new cases were launched in 2020, due both to the large numbers of old cases from 2019, and to COVID-19.

At the time of the inquiry, the Federal Government could not provide details about how many businesses and other legal entities were obliged to register, and how many had had their obligation waived as per the *Meldefiktion*. Overall, the number of entities requiring review could be well over a million.²⁷ According to the Federal Government's response to the inquiry from Die Linke, the BVA had 21 staff members allocated to this review (as of 2018 it was four and a half full-time positions). Neither automated verification of the obligation to register nor verification had taken place in 2020. Even the very clear directions handed down by chambers of commerce²⁸ and chambers of notaries²⁹ seem not to have led to comprehensively-correct entries thus far. Since 2020, responsible individuals like notaries, for example, should be reporting discrepancies, but only when there is suspicion of money laundering. According to the Federal Government's response to the parliamentary inquiry, discrepancy reports increased steadily in the first months of 2021, adding to the most recent total of 637 in June 2020, although none of these reports came from the authorities who are obliged to report discrepancies.

Example 7: The Project Developer at Checkpoint Charlie

There has already been a good deal written in the media about Trockland—as the developer of the area around Checkpoint Charlie in Berlin, among other projects, which at times has worked with questionable and/or anonymous investors.³⁰ Up to August 2019, chief executive Yeheskel Nathaniel was, according to German and Cypriot commercial registers, an indirect party to the Checkpoint-Charlie-Gesellschaft with more than 25 percent of the shares, via Tree of Life Holding GmbH (Germany) and Trockland Holdings Limited (Cyprus). This was not obvious in the German *Handelsregister*, so ought to have been entered into the transparency register, which was however not the case. Upon request, the BVA answered that it wished to review the matter. In the meantime the shareholder structure was altered so that an entry in the transparency register was no longer required. With other Trockland projects, for example at the East Side Gallery, anonymous Cypriot companies continue to be involved as before, via German GmbHs, without entries in the transparency register being made as the law requires.

The German Transparency Register Is Often Unnecessarily Complicated

Because the transparency register exists in parallel to the previously-created registers, is only poorly linked with them, and is poorly implemented technically,

research into ownership structures gives rise to unnecessary complications.

1. Despite Public Access, Every Inspection Is Individually Reviewed and Must Be Paid For

It is only possible to view an entry in the transparency register after registering online and then applying to inspect an entry. Every application is reviewed by hand, by employees of the Bundesanzeiger Verlag.³¹ In our test, the majority of applications for inspection were approved within one or two days; for some applications though—especially for those where information was in fact available—the review process took one to two weeks. Sometimes it had still not been completed after more than a month. After approval is granted, it is possible to determine whether there is an entry at all (which can be recognized by the fact that there is a date associated with the entry; otherwise the only feedback is a zero report), place it in the document basket, and pay (EUR 1.96 per entry³²). Finally, each document—after a total of 17 clicks—can be individually downloaded from the application overview.

2. There Is No Meaningful Correlation between Entries in the Transparency Register and Other Registers

There is a link from each entry in the transparency register to the entries in an existing register (usually the *Handelsregister*), but conversely, with longer chains of companies, the entry listing the ultimate beneficial owner of the parent company subject to registration is not automatically available in the transparency register, only the entry for the respective subsidiary company is. In other words, you have to click through the existing registers in order to then call up the transparency register entry for the last of the shareholders listed in the existing registers.

²⁶ Answer to the parliamentary inquiry by Die Linke in the Bundestag, "Drucksache 19/21441", 4 August 2020, <https://dip21.bundestag.de/dip21/btd/19/019/1901956.pdf>. ²⁷ <https://dip21.bundestag.de/dip21/btd/19/214/1921441.pdf>. ²⁸ "Unternehmensstatistik 2019", *Statistisches Bundesamt (Federal Statistical Office of Germany)*, 7 December 2020, www.destatis.de/DE/Themen/Branchen-Unternehmen/Unternehmen/Unternehmensregister/Tabellen/unternehmen-rechtsformen-wz08.html. ²⁹ See for example "Mitteilungspflicht an das Transparenzregister", *Berlin Chamber of Commerce and Industry*, www.ihk-berlin.de/service-und-beratung/recht-und-steuern/kaufmaennische-pflichten/mitteilungspflicht-transparenzregister-3948492#titleInText2. ³⁰ See for example "Newsletter 04/2019", *Berlin Chamber of Notaries*, www.notarkammer-berlin.de/intern/newsletter/newsletter-04-2019. ³¹ See Gabriele Keller, "Trockland-Investoren am Checkpoint Charlie: Die Spur führt nach Turkmenistan", *Berliner Zeitung*, 4 December 2018, <https://www.berliner-zeitung.de/mensch-metropole/trockland-investoren-am-checkpoint-charlie-die-spur-fuehrt-nach-turkmenistan-li.19860>. ³² In response to an inquiry, the BVA justified this policy by saying that on the one hand, even the obliged entities themselves, should they wish to inspect the register, were required to "demonstrate to the registrar entity that the inspection is being carried out in order to fulfil their due diligence obligations"; and on the other hand that the public does not receive all the data, but only month and year of birth, and country of residence (section 23, paragraph 1, sentence 1 of the German money laundering act, or GwG). ³³ The access price was dropped to EUR 1.96 (gross) in 2020, from a previous price of EUR 5.36. Why this price was suddenly able to be lowered to such an extent—although the Bundesanzeiger per se may only charge fees "to cover the administrative costs" (section 24, paragraph 2, GwG), is unclear. Had the net outlay suddenly gone down? Or is it that far too much was previously being charged? And what is the justification for the current fee?

Example 8: Greetings from the Bahamas

Our selection of companies includes an SPV belonging to the Swedish real estate firm Akelius. Its ultimate owner is a foundation in the Bahamas, via multiple steps in Germany, Sweden, and Cyprus. If the transparency register entry for the SPV entered in the *Grundbuch* is called up, all it contains is a reference to the *Handelsregister*. If one follows the trail via the shareholder list (obtainable from the latter as a TIF or PDF file, for a fee) until the last company registered in Germany, the five individuals are revealed who, according to the Akelius website, are board members of the foundation in the Bahamas. Information about how voting interest is organized within this foundation, about the rights that the founder—Roger Akelius—has reserved for himself in the foundation charter, and other possible arrangements, is published nowhere in the Bahamas. Not even the name of the foundation appears in the transparency register, and no details about founders or beneficiaries—as transparency register entries for foundations are actually meant to have.³³

3. The Register is Not Searchable

Unlike in Denmark or Malta, for example, the register continues to be searchable only by company name, despite the fact that since 2017 the Money Laundering Act (section 23, paragraph 4) has unambiguously stated: “The transparency register allows associations under section 20 (1) sentence 1 and legal arrangements under section 21 to be searched for in all stored data as well as all index data.” Yet there is no plan to improve search functionality, as the BVA disclosed when asked.³⁴ Only state apparatuses like the Zentralstelle für Finanztransaktionsuntersuchungen (Financial Intelligence Unit) will have the ability to search via direct data access.

Several Other EU States Have Implemented the Transparency Register Considerably More Effectively

The situation in other EU countries varies widely.³⁵ Certain countries (Cyprus, for example³⁶) have not even introduced the register, which has been mandatory throughout the EU since June 2017. In other countries, publication scheduled for January 2020 has been delayed (e.g. in the Netherlands³⁷ and Italy³⁸). In Austria the register is already available. It is accessible without online registration; however, retrievals cost three euros per company, and search functionality is poor because the exact name of the company must be entered. Though indirect owners are also listed and there is no waiver for companies already listed elsewhere, the ownership structures of longer chains of companies can only be traced with considerable difficulty.

Example 9: European Nobility

Searching for “Auxilium Holding” in the Austrian transparency register produces no results. The desired information can only be retrieved by typing the exact name into the search field: namely, Auxilium Holding GmbH (the Austrian shareholder in a German GmbH & Co. KG with Berlin real estate assets). Here one discovers that a certain Mr. G. is the indirect beneficial owner, with a 50 percent share. According to the Austrian equivalent of the *Handelsregister*, G. owns 50 percent of the shares in Fidicus GmbH (two other members of G.’s family own 25 percent each), which in turn owns shares in Auxilium Holding GmbH.

Like Austria and Germany, Luxembourg introduced a transparency register in addition to existing registers. This can be accessed without prior registration and is free of charge, and leads directly (without the need to call the information up) to the ultimate beneficial owners of the parent company. However, there are also ambiguities here when making comparisons with the traditional company register.

Example 10: Asset Manager or Owner

According to the Luxembourg transparency register, three lawyers from Switzerland and Liechtenstein are registered as the beneficial owners of Victoria Immo SCSp and Albert Immo SCSp. Both of these companies hold Berlin real estate worth several hundred million euros via subsidiary companies. However, according to the register, the three lawyers are not the ultimate owners but each acts as a “*Directeur de la fiducie*”, i.e. a trustee. Further information about the fiduciary relationship (e.g. type, registration number, registered office, name) is not included in the register. The register for Luxembourg fiduciary companies, adopted in July 2020, is not publicly accessible.

User-friendly, integrated implementation of the transparency register has been in effect in the UK (since 2017), Denmark (since 2018), and Malta (since 2020). Here entries can be viewed without online registration and for free. Moreover, the registers are interconnected, which means that for every company it is possible to see not only the beneficial owners but also the direct shareholders, and in a clearly-formatted HTML presentation (as opposed to the German PDF).

³³ Further information about Akelius can be found in Bonczyk and Trautvetter, *Profitmaximierer*. ³⁴ E-mail from the BVA, 7 February 2020. ³⁵ An overview of the current state of implementation across Europe can be found at PricewaterhouseCoopers, *The UBO register: update 2019*; see also “Patchy progress in setting up public beneficial ownership registers in the EU”, *Global Witness*, 2 March 2010, www.globalwitness.org/en/campaigns/corruption-and-money-laundering/anonymous-company-owners/5aml-d-patchy-progress/. ³⁶ According to unofficial information from a Cypriot law firm (Elias Neocleous & Co LLC, 8 January 2020), after the consultation process has been completed, the bill for introducing the register was to be introduced to parliament in the summer of 2020. ³⁷ As of 12 March 2020, the government’s legislative proposal was still awaiting a parliamentary decision. See www.eerstekamer.nl/wetsvoorstel/35179_implementationwet_registratie?zoekrol=vgh5mt4dsdk1. ³⁸ The government’s legislative proposal was actually supposed to be adopted in December 2019, but continues to be delayed. See <http://open.gov.it/monitora/3-registro-dei-titolari-effettivi> (as of 12 March 2020).

This means that in cases where there is no beneficial owner it is possible to access information about the individual direct shareholders with a single click, in order to check individually whether a beneficial owner can at least be found among these.

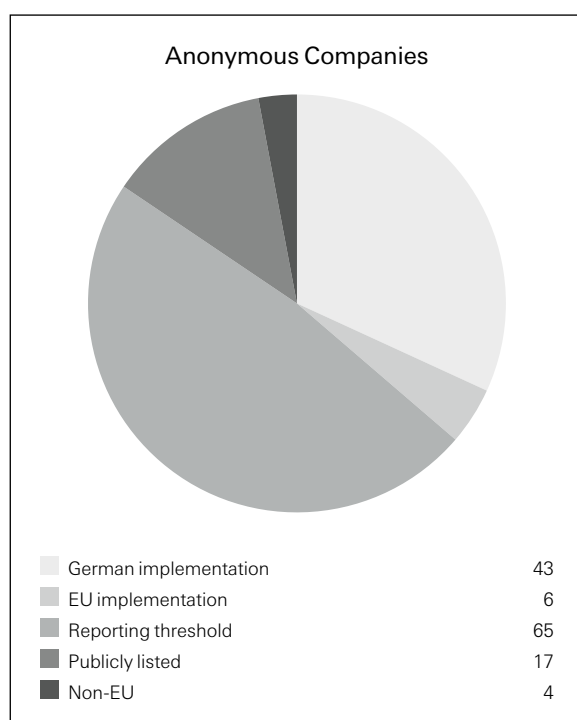
Example 11: Click It Yourself

If you want to see how a well-made transparency register ought to work, go to <https://datacvr.virk.dk>, enter “Esplanaden Berlin” into the search field, choose the first result, and then click on “Ejerforhold/Ownership”. Because none of the owners holds more than a 25 percent share, there is no beneficial owner, but only four direct owners. Whoever has time and interest can follow every single one of these four strands, with a few clicks and entirely for free, up to the respective natural person in each case. The annual financial statements can also be found two clicks further on.

In Many Cases, EU and German Rules Do Not Address Anonymity

Even if Germany corrected the problems in the implementation of its register (which in the best case would result in 43 fewer anonymous companies), if all EU states introduced a transparency register, and if all businesses subject to registration entered their details there correctly (six anonymous companies fewer), a large proportion of the real estate owners (86 out of 135) would still be anonymous. This is partly due to the insufficiency of the definition of the beneficial owner—but primarily due to the reporting threshold of 25 percent.

Figure 2. Reasons for Anonymity



Source: our analysis, based on a selection of companies

- Unlike in the German *Handelsregister*, where every shareholder has to be listed regardless of share size, for in the transparency register only natural persons who directly or indirectly hold more than 25 percent of capital shares or the same percentage of voting rights count as beneficial owners.³⁹ For German or foreign companies that have four or more shareholders (mainly investment funds, but also family companies) and that do not need to make their shareholders accessible via another register (e.g. the German AG, the Luxembourgish SCSp,⁴⁰ or protected cell companies⁴¹ from Guernsey) the owner remains unknown.

Example 12: The Investment GmbH & Co. KG

According to the German *Handelsregister*, the K5W2 GmbH & Co. KG has 24 limited partners (*Kommanditisten*). Among these are anonymous companies like Kodama Investment Ltd. (location unknown) and Kodama Investment AG (Switzerland), as well as family holdings and natural persons, all with shares of less than 25 percent. Due to the number of shareholders it is unlikely that any one of them holds more than 25 percent. However, this cannot be checked from the information in the German register. Moreover, a considerable proportion of the owners remain anonymous, via the Swiss AG and the foreign limited company. There is no transparency register entry.

Example 13: From Oranienstrasse via Luxembourg to Great Britain and Liechtenstein

Victoria Immo Properties recently bought a building in Berlin's Oranienstrasse from Mr. Berggruen. As is habitual for professional foreign investors, in the Luxembourg company register there is a series of companies with Victoria in their names that (at least partly) own real estate in Berlin. Their collective parent company is Victoria Immo SCSp—SCSp being a special kind of *Kommanditgesellschaft* particularly prized by investment funds for its anonymity. In the Luxembourg company register, none of the *Kommanditisten* (mostly the investors, and thereby the beneficial owners) but rather only the management (*Komplementär*) are registered. In this case the latter is a French former investment banker and his London-based investment company. Thanks to the Luxembourg transparency register, information can now be obtained about the limited partners. In this case, three lawyers with ties to Liechtenstein are listed. According to the register they are appointed in trust (as

³⁹ In Germany, moreover, in cases where “even after extensive investigations ... no natural person has been identified or if there are doubts as to whether the person identified is the beneficial owner” (section 3, paragraph 2, GwG), a notional beneficial owner can be recorded, which potentially opens up an additional loophole. ⁴⁰ This legal construct, especially favoured by investment funds, roughly corresponds to a limited partnership (or a KG in Germany). However, unlike in Germany, in Luxembourg the limited partners are not listed in the company register. ⁴¹ This “innovation” in corporate law, becoming more widespread in tax havens around the world, consolidates multiple mutually independent cells with one owner (e.g. ownership of a yacht or a building) into a single organism with multiple different owners.

Directeur de la fiducie [100 percent]) by one or more beneficial owners, for example via an establishment in Liechtenstein or a trust. But because the transparency register only contains name, place of birth, and current addresses for the lawyers, but not the name of the vehicle for which they function as trustees, the trail to the ultimate beneficial owner is not easy to follow. An internet search using the names of the lawyers, however, leads to the Liechtenstein trust of a very wealthy Anglo-Swedish business family. Whether this family is the actual owner could not be definitively ascertained as of the conclusion of this study.⁴²

- Europe-wide, listed companies are exempted (and globally according to similar standards). In Germany, they are already under extensive registration obligations from a threshold of three percent. Below this threshold, so-called registered shares are entered into the non-public, internal company share register, but in this case it is possible to register shares via a trustee (Section 67 [1] of the AktG) and, in particular, the depositing bank. An obligation to announce the beneficial owner does not hold in all cases. There are imaginable constellations in which natural persons, via investment funds, the depositing bank, and bearer shares, could anonymously own assets worth hundreds of millions of euros.

Example 14: Deutsche Wohnen AG

In their yearly financial report and in accordance with the rules, Deutsche Wohnen AG names four stockholders with more than three percent participation. Besides the Norwegian sovereign wealth fund, these are the investment companies Blackrock, MFS, and State Street—information about the investors in these companies is not publicly available. According to commercial databases, at the end of 2019 there were a total of 455 other professional investors holding shares under the three percent threshold (the smallest of these holdings being two shares, with a combined value of EUR 75), to a total participation of 73 percent. The beneficial owners behind the investment companies are not recorded.

Example 15: The Last Bit of Anonymity

The company “a tempo AG” (not listed on the stock market) owns, via its subsidiaries, more than an estimated 1,000 apartments in Berlin. According to the company’s charter, its capital consists of bearer shares. Unlike with registered shares, then, the shareholder is not recorded in any shares register, but is simply the current possessor of the share (on paper or in digital form). Because this makes any reliable tracing of the shareholder next to impossible, such shares are in the process of being forbidden in countries around the world. In Germany they have been forbidden since 2015—unless, as in the case of “a tempo AG”, the stock is old, is issued by a stock-market-listed AG, or the shares are lodged with a securities clearing

and deposit bank or a central securities depository (section 12 of the *Aktiengesetz* [Public Companies Act]). Stockholders do have to disclose shares of more than 25 percent of the AG, but the company itself would have difficulty verifying if this was the case. For “a tempo AG”, so far there has been solely a notional beneficial owner entered into the transparency register—falsely, as became clear after intensive research. When asked by the *Berliner Zeitung*, the lawyer listed as the notional beneficial owner stated that he was holding the shares in the AG in trust for a well-known Berlin real estate business. He remarked that there was a legitimate interest in anonymity, but also that the false entry was merely an error that would be corrected forthwith. In contrast to this, in the Austrian transparency register, the business partners of “a tempo AG” are correctly entered for another large-scale Berlin property package—although they too remained hidden behind lawyers in the Austrian *Handelsregister*. The partners are René Benko—founder of the Signa group, which also owns Galeria Karstadt Kaufhof—and his mother.⁴³

NEXT STEPS TOWARDS TRANSPARENCY

As the capital of Germany and as a city of tenants (83 percent of housing stock is rented), with extreme price increases in comparison to the rest of Germany and the world, Berlin is at the focal point of a worldwide problem. The proportion of international and anonymous investors whose orientation is principally financial is especially high here, as is the danger of money laundering. For effective criminal prosecution, for political regulation, as well as for the self-regulation of the market and not least for an informed public debate about wealth and responsibility, more transparency is needed on the Berlin real estate market.

For this reason the Berlin state government must enable or itself carry out a systematic evaluation of the *Grundbuch*, and for example gather information on the beneficial owners of all Berlin housing, via the housing cadastre proposed in the context of the “rent cap” (*Mietendeckel*), the law for limiting housing rents in Berlin, which came into effect on 23 February 2020 and which was struck down on 15 April 2021 by the Karlsruhe constitutional court.

Even then, many owners of Berlin housing would still be able to continue operating anonymously (from our selection, likely as many as 135 of 433 companies). The German transparency register has not (yet) delivered the hoped-for improvements, and the obligation for foreign companies to be entered into the transparency register, enacted at the end of 2019, has in large part not addressed anonymity.

⁴² Nicolas Šustr, “Kartontilliarden gegen Bücher – Immobilienfonds will Kreuzberger Buchladen Kisch & Co vor die Tür setzen”, *Neues Deutschland*, 15 April 2020, www.neues-deutschland.de/artikel/1135512.verdraengung-kartontilliarden-gegen-buecher.html. ⁴³ Gabriele Keller, “Der geheime Eigentümer der Immobiliengruppe Lebensgut”, *Berliner Zeitung*, 22 March 2020, www.berliner-zeitung.de/wirtschaft-verantwortung/der-geheime-eigentuemer-li.79219.

In order to change this, the Federal Government (and the BVA) would *first* have to enforce the obligation to register in the transparency register, and improve the technical implementation and oversight of the register. Access to and processing of the data should also be made more straightforward.

Second, the European Commission and the OECD would have to adjust or even abolish the reporting threshold for beneficial ownership, and/or create effective registration mechanisms for investment funds and market-listed companies.

APPENDIX 1 – METHODOLOGY

Because neither the *Grundbuch* nor the transparency register are accessible for the purposes of a systematic analysis, we based our study and our test of the transparency register on a selection of companies which deal in Berlin real estate. The selection is based on around 3,000 individual *Grundbuch* queries made by tenants and journalists with a justified interest, and/or the rental contracts of the affected tenants. This dataset was available anonymously—i.e. without addresses or contact information for the tenants—and comes from various sources, in particular from the research support provided to affected tenants in the context of the Rosa-Luxemburg-Stiftung’s *Who Owns the City?* project,⁴⁴ from our own internet research, as well as from the published results of the *Correctiv/Tagesspiegel* appeal in relation to *Who Owns Berlin?* The entries originate from the period from 2017 to 2020.

From these individual queries, multiple refinements resulted in the removal of the following entries:

- Entries with the same firm;
- *Gesellschaften bürgerlichen Rechts* (civil law partnerships, GbR) and natural persons as direct owners. (In terms of real estate market transparency such cases are not necessarily unproblematic. GbRs are sometimes also used by institutional investors as investment funds, but natural persons are mostly entered directly into the *Grundbuch* as partners and such entries, theoretically at least, have to be kept up to date. With entries for private individuals it is entirely possible—and there is anecdotal evidence to support this—that entries are made using “straw people”; or at the GbR level, agreements can be made that are not recorded in the *Grundbuch* but

which do essentially influence the ownership structure. However, due to data protection concerns and the insufficiency of available data, such situations could not be systematically evaluated);

- Companies that were able to be directly ascribed to large, well-known parent companies (e.g. subsidiaries of Deutsche Wohnen AG, but not subsidiaries of the Pears corporate network);
- Companies for which no clear record was available in the company register (e.g. deletions, multiple companies with the same name);
- Companies with a public or non-profit owner.

Overall, these exclusions leave 433 companies that own real estate in Berlin. A comparison with the total population is not possible because the number of companies entered into the *Grundbuch* is unknown. However, a preliminary analysis of the parent companies identified in the selection shows that directly or indirectly a significant proportion of Berlin housing stock is covered. Further details can be found in the follow-up study *Who Owns the City? Analysis of Property Owner Groups and Their Practices on the Berlin Real Estate Market*.⁴⁵

We then researched the 433 identified companies in the Berlin *Handelsregister* and then via Orbis, a commercial database with publicly available information about shareholders from commercial registers worldwide.⁴⁶ Where opacities or missing entries arose, this search was supplemented with direct requests for information from the German company register and other registers abroad, and finally with requests in those transparency registers that were already publicly accessible. More particularly, the following information was gathered:

Table 3. Overview of the Ownership Structures and the Content of the List of Companies

	Estimate based on the 2011 building and housing census	Selection of companies
Public, cooperatives, non-profits	500,000	(40 entries, not analysed)
Large publicly listed companies	200,000	(due to preselection, each included in the selection only once)
Private real estate companies, institutional investors, and professional landlords	700,000	433 companies, approx. 100,000 to 200,000 dwellings
Owner-occupiers and private individuals	500,000	(598 entries, including 95 GbR, not analysed)

Source: 2011 building and housing census, own research

⁴⁴ The project website is at <https://www.rosalux.de/en/dossiers/wohnen-ist-ein-menschenrecht/who-owns-the-city>. ⁴⁵ Christoph Trautvetter, *Who Owns the City? Analysis of Property Owner Groups and Their Practices on the Berlin Real Estate Market*, Studien 6/2021, Berlin: Rosa-Luxemburg-Stiftung, 2021, https://www.rosalux.de/fileadmin/rls_uploads/pdfs/Studien/Studien_6-2021_Who_Owns_The_City.pdf. ⁴⁶ Access to the Orbis database is subject to a fee. For further information, see https://en.wikipedia.org/wiki/Bureau_van_Dijk.

1. The last company in German registers and registered shareholders: for multi-step chains of companies, the final company entered in a German register was identified, along with its shareholders, and the entries were subdivided into the following categories:
 - a. only natural persons as shareholders of the final company registered in Germany (no further research required, not anonymous);
 - b. the final shareholder is a company that is not obligated to register, and is often a listed company (no further research required, anonymous);
 - c. foreign companies as final shareholders (further research required).
2. Owners of foreign companies according to Orbis and/or foreign company and transparency registers:
 - a. *Beneficial owner ascertainable*. All cases for which the natural person behind at least 75 percent of the capital shares could be ascertained (not anonymous).
 - b. *Probably no beneficial owner*. This category covers all cases where, consulting a register abroad, it was obvious that no beneficial owner exists (e.g. a notional beneficial owner entered in a foreign transparency register). Moreover, large investment companies and typical vehicles for investment funds were included in this category at our discretion, when from the overall picture of the available data it was conjecturable that no beneficial owner according to the EU definition exists (anonymous).
 - c. *Ownership structure unclear*. For all cases of foreign companies where there was insufficient information for the attribution of at least 75 percent of capital shares to a natural person (anonymous).
3. For all non-anonymous companies, the sources of information on ownership were gathered in the following order, though only if the actual beneficial owner (and not only a notional beneficial owner) thereby emerged:
 - a. German company register,
 - b. Orbis or company register abroad,
 - c. German transparency register,
 - d. European transparency register.
4. For all anonymous companies, the reason for anonymity was attributed to one of the following categories according to the authors' estimation:
 - a. reporting threshold (all cases with notional beneficial owners as well as investment funds and capital management companies, et al.);
 - b. public listing (companies listed on the German or a foreign market as the last identified shareholders of a German or foreign SPV);
 - c. implementation of the German transparency register (all German companies with a foreign company as shareholder, for which there was no entry in the German transparency register. These could in some circumstances also be companies that remain anonymous despite an entry and would fall into one of the other categories given here);
 - d. implementation of the European transparency register (because there were no missing entries at the European level—unlike in Germany—this category only includes cases from countries where there was no publicly available transparency register at the time of the study. Verification of the register entries was not possible).

APPENDIX 2 – USEFUL LINKS

German company and transparency registers:

- www.handelregister.de
- www.unternehmensregister.de
- www.transparenzregister.de

Company registers abroad:

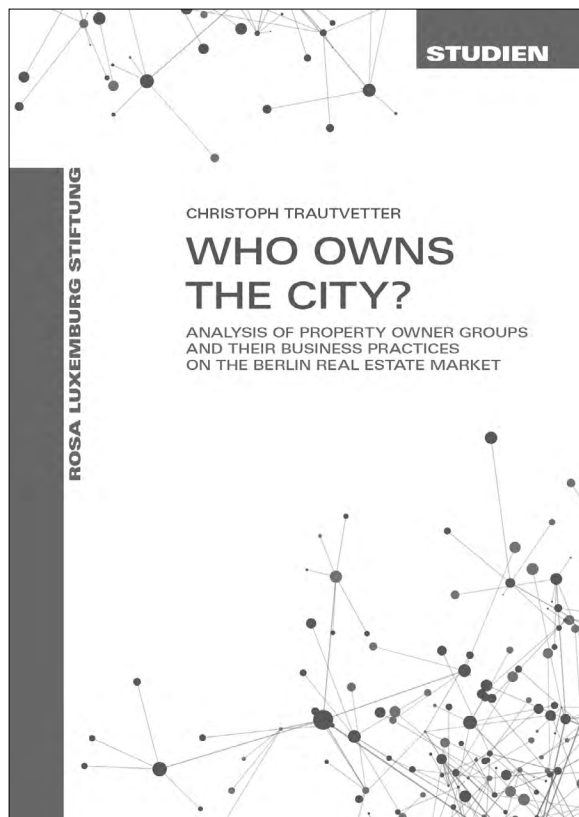
- Luxembourg
 - Transparency register: www.lbr.lu/mjracs-rbe
 - Company register: www.lbr.lu/mjracs
- Austria:
 - Company register: www.firmenabc.at
 - Transparency register: <https://wieregms.bmf.gv.at/at.gv.bmf.wiereg-p/wiereg?execution=e1s1>
- United Kingdom (both): <https://beta.companieshouse.gov.uk>
- Denmark (both): <https://data.virk.dk>
- Malta (both): <https://registry.mbr.mt/ROC/>
- Cyprus (company register): www.mcit.gov.cy/mcit/drcor/drcor.nsf/index_en/index_en#

- Jersey (company register): www.jerseyfsc.org/registry/documentsearch/
- Italy (company register): www.registroimprese.it/ricerca-libera-e-acquisto
- List of company registers in the EU: https://e-justice.europa.eu/content_business_registers-104-en.do
- List of company registers worldwide: https://en.wikipedia.org/wiki/List_of_company_registers

Further databases with information about companies:

- freely available information from registers worldwide: www.opencorporates.com
- freely available information from the German *Handelsregister*: www.northdata.de (no information on shareholders)
- leaked data (including from non-public registers): <https://offshoreleaks.icij.org>

ALSO APPEARED IN THIS SERIES ...



Almost half of Berlin is owned by a few thousand multimillionaires. *Who Owns the City?*, a new study published by the Rosa-Luxemburg-Stiftung, represents the first systematic evaluation of property ownership in Berlin and the various business models involved. It cracks open the black box of large private property owners, revealing hitherto unknown property owners with more than 3,000 housing units as well as those who are below this limit and about whom little is known so far.

“The study dispels the myth of the small private landlord ‘next door’ as the main player on the real estate market, just as much as it dispels the myth of home ownership as universal, social security”, summarizes the study’s author Christoph Trautvetter, head of the Rosa-Luxemburg-Stiftung’s “Who Owns the City?” project. Because almost half of the city belongs to a few thousand multimillionaires, the ongoing, continuous price rises on the housing market bring them massive returns, sometimes of more than 20 percent per year, with little to no effort on their part. The study also compares business figures and practices of the listed housing companies with their state-owned and co-operative counterparts.

WHO OWNS MY HOUSE?

Property owner research in the online annex to the study

Tenants can also dive into the research data with just a few clicks at www.wemgehoerdiestadt.de. The website contains further data on the owners presented in the study and on more than 200 other players on Berlin’s real estate market, making it easier for tenants to search for further clues about the property owners based on their address or the name of the company.

CONTACT

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STEFAN THIMMEL, Housing and Urban Policy Officer at the Rosa-Luxemburg-Stiftung

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