FAQs

on the transparency requirements under
part 6 (section 33 et seq.) and part 7 (section 48 et seq.) of the WpHG

(Note: This translation is furnished for information purposes only. The original German text is binding in all respects.)

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I. Questions on the notification standard form

1. **Question:** If thresholds are crossed or reached twice within a short period of time (t+3), can the notifications be bundled into one notification? Is it sufficient to submit only one notification for the most recent date when a threshold was crossed or reached?

   **Answer:**
   No. A separate voting rights notification must be submitted each time a threshold is crossed or reached.

2. **Question:** What is an “Other reason” for the notification (item 2 in the form)?

   **Answer:**
   First, it must be determined whether one of the other reasons given under item 2 does not already cover the event triggering the notification requirement. Where that is not the case – for instance a notification on existing shareholdings (sections 33 (2) and 127 (10) of the WpHG), the exercise or expiration of instruments, voluntary group notifications, the termination or expiry of a voting agreement or proxy – “Other reason” must be ticked and a concise and clear description must be given in the space provided. In cases of doubt, BaFin can be consulted.

3. **Question:** Which event is relevant when giving the reason for the notification (item 2 in the form)? What are the rules for group notifications?

   **Answer:**
   The relevant event is the one that led to a threshold being crossed or reached by the party subject to the notification requirement. Any changes in one of the holdings as referred to in sections 33, 38 or 39 of the WpHG that do not result in a threshold being crossed or reached are irrelevant. Several reasons may have to be given, particularly in cases where thresholds have been crossed or reached under sections 33, 34 or 38 of the WpHG, e.g. when the exercise of instruments has resulted in the acquisition of voting rights. In cases of doubt, BaFin can be consulted.

   In the case of group notifications, it is not necessary for every group company that has crossed or reached a threshold to provide the reason(s) for this; in fact, it is enough to give the “initial reason” that resulted in a change in the group holding (on the date the threshold was crossed or reached).

   **Examples:**
   *If an acquisition of voting rights by a subsidiary leads to a threshold being reached or crossed, the parent undertaking must tick “Acquisition/disposal of shares with voting rights”.*
If a majority stake is acquired in an undertaking that already holds voting rights in an issuer, “Other reason” must be ticked and the acquisition process must be described in the space provided, e.g. “Acquisition of a majority stake in a subsidiary”.

If a holding is transferred to another entity within a group, both “Acquisition/disposal of shares with voting rights” and “Other reason” must be ticked in the parent undertaking’s group notification, followed by “Voluntary group notification with a threshold crossed/reached at subsidiary level” in the space provided.

4. **Question:** What is the second line of the table under item 7a to be used for?

**Answer:** In most cases, only the first line of item 7a will have to be completed as issuers falling under the scope of the WpHG can usually issue only one class of shares with voting rights, namely ordinary shares. Only in exceptional cases voting rights attached to preference shares become exercisable (section 140 (2) of the German Stock Corporation Act (Aktiengesetz – AktG)). Incidentally, voting rights originating from shares of different classes are only conceivable in the case of foreign legal forms.

5. **Question:** What information needs to be provided in the standard form if instruments are held indirectly?

**Answer:** Sections 38 and 39 of the WpHG stipulate that a notification must be submitted when instruments are held indirectly. It is not, however, mandatory to submit a breakdown of instruments into those that are held directly and those that are held indirectly, as is the case with voting rights.

6. **Question:** What information needs to be provided under item 8 of the standard form (chain of controlled undertakings) if a GmbH & Co. KG is a subsidiary (section 35 (1) of the WpHG) of both the general partner and of the limited partner that holds the majority of the shares in the partnership?

**Answer:** If the general partner and the limited partner submit separate notifications, they only need to provide information on the chain of controlled undertakings that is relevant for them in item 8. BaFin does not deem a joint notification by both – as in the case of multiple controlling parent undertakings – to be inadmissible (provided the other conditions for a joint notification are fulfilled). By analogy with the multiple controlling parent undertakings, such a joint notification would have to specify either a joint chain, i.e. the general partner and the limited partner in one
line (variant 1 below) or two separate chains for the general partner and limited partner (variant 2 below) in item 8.

<table>
<thead>
<tr>
<th>Variant 1:</th>
<th>Variant 2:</th>
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<tbody>
<tr>
<td>Undertaking</td>
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<td>general partner/limited partner</td>
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<td>Limited partnership</td>
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6a. **Question:** How are “collars” to be dealt with in a voting rights notification?

**Answer:**

“Collars” are options with which a buyer of shares hedges the economic risk arising from the performance of the acquired shares. By purchasing a put option, the owner of the shares is protected against the negative impact of a decline in the share’s value; in return for financing the put option, the owner grants a call option to the writer of the put option. BaFin must be notified the two instruments even in cases where both options are settled in cash only. There is no aggregation of the two instruments, as both options cannot be exercised at the same time. A note to this effect is to be included under item 10 (Other useful information) of the voting rights form.

**Example:**

In the context of the acquisition of a 5% stake in issuer I, bank X agrees on a collar with fund F. X submits a notification to BaFin regarding 5% instruments as the writer of the put and 5% of the call and indicates this under item 10 in the voting rights form. The two instruments (which involve the same voting rights) may not be aggregated. F submits a notification referring to 5% of the voting rights.

The notification requirements described above apply even if the instrument refers to shares which already belong to the legal owner of the instruments; in this case, an aggregation of the instruments with the voting rights is not permitted.

**Example (variation of the example above):**

In the context of the acquisition of a 5% stake in issuer I, bank X agrees on a collar with fund F; the 5% of acquired shares in I are credited to an account of bank X and held for the fund’s account only. As the legal owner, X notifies BaFin of the voting rights, 5% instruments as the writer of the put and 5% of the call and indicates this under item 10 in the voting rights form. The instruments (which involve the same voting rights) may not be aggregated. Depending on the agreement reached, F
submits a notification referring to 5% of the voting rights under item 2 (naming X as a shareholder under item 4) or under section 38 of the WpHG.

II. Notification requirements under section 33 et seq. of the WpHG

7. **Question:** In the case of voting stock held in the corporate assets of a limited partnership (LP), can independence also be declared for the LP?

**Answer:**

If shares carrying voting rights are held as part of the corporate assets of a limited partnership (LP), the voting rights are, as a rule, attributed to the general partner (GP) under section 34 (1) sentence 1 no. 1 of the WpHG, because of the GP's far-reaching authority as a shareholder (section 35 (1) no. 1 in conjunction with section 290 (2) no. 2 of the German Commercial Code (Handelsgesetzbuch - HGB). For the purposes of declaring independence, the GP and LP are, however, considered as a single investment unit. Provided the other conditions for independence are fulfilled, independence can therefore be declared for the LP (and the GP) by the GP's parent undertaking(s) or by the limited partner holding the majority of shares in the LP.

In the case of independence, only the LP and the GP would be subject to the notification requirement under section 33 et seq. of the WpHG, with the GP being able to file a group notification.

8. **Question:** Which threshold date is to be used for secondary subscribers who, in the context of a capital increase, acquire new shares of the issuer in cooperation with an underwriter (primary subscriber) a) for new investors and b) for existing investors if they have exercised their subscription rights?

**Answer:**

The issuer’s new shares are created upon registration of the implementation of the capital increase in the commercial register (sections 189 and 203 of the AktG) and are taken over by the underwriter at that point in time. From this moment, the exemption provision of section 36 (3) no. 1 of the WpHG applies to the underwriter, which stipulates that the voting rights attached to new shares held for the sole purpose of clearing and settlement for a maximum period of three trading days from the primary subscription remain unconsidered when calculating the percentage of voting rights.

a) It can be difficult for the new investors (secondary subscribers to the new shares) to determine whether they are entitled to the immediate unconditional delivery of shares by the underwriter at the point in time when the new shares are created (see section 33 (3) of the WpHG). In view of this, BaFin allows investors to use the time when the new shares are credited to their securities account (= transfer of legal title) as the date on which a threshold is crossed or reached.
In this context, BaFin does not consider that investors are subject to the notification requirement under section 38 (1) of the WpHG in the period between the registration of the implementation of the capital increase and the entry into the securities account.

b) For the existing shareholders, the legal situation with respect to a potential dilution in the case of a capital increase remains unchanged: as a rule, the dilution effect occurs when the implementation of a capital increase is registered. BaFin assumes, however, that the shares allocated are to be taken into account as voting rights of the shareholder concerned (either under section 34 (1) sentence 1 no.2 of the WpHG or even under section 33 (3) of the WpHG) from the moment the implementation of the capital increase is registered and irrespective of the new shares’ entry into the shareholder’s securities account.

8a. Question: How has BaFin’s administrative practice changed with regard to attributions in accordance with section 34 (2) of the WpHG (acting in concert) since the Federal Court of Justice’s ruling of 25 September 2018 (II ZR 190/27)?

Answer:
Under BaFin’s prior administrative practice, the conditions for an exemption in an individual case within the meaning of section 34 (2) of the WpHG were not fulfilled if acting in concert was both intended to and a means suitable for exerting significant influence over an issuer’s business strategy; the main criterion was the intended impact of acting in concert on corporate policy. In the wake of the Federal Court of Justice’s ruling of 25 September 2018 (II ZR 190/17), BaFin no longer adheres to this administrative practice. From now on, only formal criteria will be used to determine whether an exemption is applicable in an individual case; following the Court’s ruling, the (intended) impact of acting in concert on the business strategy will be disregarded.

8b. Question: When are voting rights attached to shares held in an investment fund to be attributed to investors in such a fund under section 34 (1) sentence 1 no. 2 of the WpHG?

Answer:
In such cases, BaFin previously considered that voting rights were, in principle, to be attributed to investors in proportion to their interest in the investment fund in accordance with section 34 (1) sentence 1 no. 2 of the WpHG. This approach was based not least on the principle of equal treatment with regard to notification requirements between such investors and investors in common funds (Sondervermögen) that are co-owners of these funds (section 92 (1) of the German Investment Code (Kapitalanlagegesetzbuch – KAGB)) and thus required to take into account their (proportional) holding of voting rights derived from their interest in such funds when calculating their total holdings of voting rights.
However, this practice potentially conflicts with other cases involving the attribution of voting rights under section 34 (1) sentence 1 no. 2 of the WpHG, in which, in addition to bearing economic risks and opportunities, the beneficial owner must be able to exert legal or actual influence over the exercise of voting rights.

BaFin has therefore reviewed its administrative practice and made the following changes: in future, BaFin will consider that investors are not able to influence the exercise of voting rights if their interest in the fund amounts to less than 25%. Thus, such investors will no longer be attributed voting rights on a proportional basis. For investors with an interest of 25% or more, BaFin will (continue to) consider that voting rights are to be attributed on a proportional basis (on the condition that the investor is not considered to have also control over the fund (50%+x) in cases where the fund has legal capacity).

In the case of a co-ownership in common funds, there will be no changes for the time being; however, investors are advised to contact BaFin if the notification requirement potentially applies.

9. **Question:** Who will be deemed an indirect holder of an instrument within the meaning of section 38 (1) of the WpHG?

**Answer:**

Parent undertakings and trustors in a fiduciary relationship were previously considered indirect holders of (financial) instruments. This administrative practice adopted by BaFin is proving too limited in the course of European harmonisation. Therefore, in addition to the aspects considered in the past, cases of acting in concert within the meaning of section 34 (2) of the WpHG and those involving the granting of a proxy within the meaning of section 34 (1) sentence 1 no. 6 of the WpHG will also be categorised as indirect holdings of an instrument. Other cases (e.g. the application, mutatis mutandis, of other attribution provisions) will depend on further developments at European level.

10. **Question:** Under what circumstances does acting in concert constitute an indirect holding of instruments?

**Answer:**

As the notification requirement targets the (possible) acquisition of shares with voting rights, every instance of acting in concert with regard to the coordinated acquisition of shares with voting rights through instruments is relevant. In this case, conduct can be coordinated on the basis of an agreement or in another manner. This does not result in any changes to BaFin’s administrative practice with regard to section 34 (2) of the WpHG, which stipulates that if the parties involved coordinate the acquisition or disposal of shares with voting rights, this does not constitute acting in concert relevant for the attribution of voting rights.
11. **Question:** When does a proxy constitute an indirect holding of instruments?

**Answer:**
Here, too, the (possible) acquisition of shares with voting rights through instruments is relevant. A proxy must therefore cover the exercise of instruments. Anyone granted a proxy to exercise instruments holds the instruments indirectly if such party can exercise the instruments at its own discretion in the absence of specific instructions from the direct holder. This applies mutatis mutandis if instruments are entrusted in the same way to a party subject to the notification requirement.

12. **Question:** Does an indirect holding due to acting in concert or a proxy presuppose that the exercise of instruments after the acquisition of shares also leads to acting in concert or that the proxy also refers to such action?

**Answer:**
No. An indirect holding of instruments does not presuppose that the exercise is followed by coordinated conduct or the granting of a proxy with regard to the exercise of voting rights attached to the acquired shares, as the central motivation in the case of instruments is the acquisition of shares with voting rights and not the exercise of voting rights.

13. **Question:** Which notification requirements under sections 33 and 38 of the WpHG will apply in the standard case of securities lending where the lenders are obliged to transfer their shares with voting rights to the borrowers unconditionally and without delay?

**Answer:**
In such a standard case of securities lending, the requirements under section 33 (3) of the WpHG are fulfilled the moment the securities lending is agreed. At that point, both the lender and the borrower are subject to the notification requirement under section 33 (1) of the WpHG if a threshold is crossed or reached. It is true that, from the lender’s perspective, a threshold within the meaning of section 38 (1) of the WpHG is only crossed or reached when a claim to a retransfer arises. With a securities lending, this is the case when the shares are transferred from the lender to the borrower, i.e. when the obligation arising from the securities lending is fulfilled by transfer of legal title. However, this would mean that the notification under section 33 of the WpHG and the notification associated with the claim to a retransfer under section 38 of the WpHG would not be contemporaneous.

In the standard case of a securities lending to be fulfilled immediately, as described above, BaFin will therefore accept a single voting rights notification by the lender submitted at the time when the securities lending is agreed, including information not only on the threshold that has been
reached or crossed under section 33 of the WpHG, but also on the threshold that has been reached or crossed under section 38 of the WpHG. This is because bringing forward the date on which a threshold is crossed or reached under section 33 (3) of the WpHG, which is intended to distinguish more clearly between transactions requiring notification under section 33 and instruments falling under the notification requirement as defined in section 38 (see the grounds for the government draft, Bundestag printed paper 18/5010, p. 44), would artificially split a single set of circumstances by two separate notification requirements at different times. With a single notification, on the other hand, the two instances in which a threshold is crossed or reached under section 33 and section 38, resulting from one and the same securities lending, are outlined in a comprehensible and transparent manner.

Example:
On 11 January, A undertakes to transfer to B its entire 6% stake of shares carrying voting rights in an issuer – unconditionally and without delay - by way of a securities lending up to 29 January. As planned, the shares are entered into B’s securities account on 13 January. A was previously not a holder of instruments within the meaning of section 38 (1) of the WpHG.

In this case, BaFin accepts a single notification submitted by A giving 11 January as the date on which a threshold was crossed or reached, in which A notifies BaFin that the share of voting rights has fallen below the 5% threshold (falling to 0%) under section 33 of the WpHG and exceeded the 5% threshold (rising to 6%) under section 38 of the WpHG; under section 39, there would be no change in the percentage of voting rights.

It is advisable to consult BaFin if the transfer of the shares and thus the establishment of the lender’s claim to a retransfer is unexpectedly delayed. In this case, there would, in principle, be doubts surrounding the notification relating to the threshold crossed or reached under section 38 (1) of the WpHG and the threshold crossed or reached under section 33 (1) of the WpHG. The question would arise whether the criteria for an unconditional transaction to be fulfilled without delay within the meaning of section 33 (3) of the WpHG were already met when the securities lending was concluded.

13a. Question: If a notification requirement applies during a takeover procedure, is the bidder in a takeover bid required to include in the notification the shares for which, up to that point, the bid had been accepted? In the event that a takeover bid is accepted for shares subject to a previously notified irrevocable (or irrevocable undertaking), which notification requirements apply for the bidder?

Answer:

Based on its administrative practice, BaFin does not consider the acceptance of takeover bids to be an instrument within the meaning of section 38 (1) of the WpHG as these are already disclosed in accordance with section 23 of the German Securities Acquisition and Takeover Act (Wertpapiererwerbs- und Übernahmegesetz – WpÜG; see BaFin’s Issuer Guidelines, Module B, last

FAQs on the transparency requirements under part 6 (section 33 et seq.) and part 7 (section 48 et seq.) of the WpHG
updated on 30 October 2018, p. 44). This means that any previously accepted takeover bids must not be taken into account if a notification obligation arises for the bidder during the takeover procedure, e.g. due to simultaneous purchases of shares or instruments in the market. The inclusion of previously accepted takeover bids in the notification would otherwise lead to inconsistencies if, at a later date but prior to the end of the takeover procedure, instruments are sold or they expire and the holdings need to be recalculated. Information on the takeover procedure and the number of shareholders that have accepted a takeover bid as at the date on which the threshold is crossed can still be added under item 10 of the standard form.

In the case of a previously notified irrevocable, this means that the lapse of the irrevocable is not replaced with the acceptance of the bid for the irrevocable shares (i.e. one instrument is not replaced with another); rather, a notification must be submitted if, due to the lapse of the irrevocable, the bidder’s holding of voting rights falls below a threshold. An explanatory note can and should be added under item 10 of the standard form, especially in such cases.

14. **Question:** How does BaFin assess short-term acquisitions of a substantial stock position (5% or more) on the capital market?

**Answer:**

Unless specific circumstances arise, a short-term acquisition of a substantial stock position on the capital market (= acquisition from a large number of shareholders) without having an impact on the market becomes difficult with increasing number of shares. A purchase is (therefore) usually conducted through third parties, particularly banks. BaFin takes a critical view of substantial prior purchases by banks, particularly if the purchases are relevant to the crossing or reaching of thresholds and if they result in a transfer of the shares to the investor; BaFin considers it to be evident that already at the time of the prior purchases, there is an – ex- or implicit – agreement between the bank and the investor that results in the subsequent acquisition of the shares by the investor. Where the existence of an management agreement (= attribution to the investor under section 34 (1) sentence 1 no. 2 of the WpHG) between the investor and the bank is not yet to be assumed in these cases, the investor may hold a financial instrument as defined in section 38 (1) no. 2 of the WpHG.

15. **Question:** In which cases does BaFin deem an instrument to be exempt from the notification requirement under section 38 (1) of the WpHG?

**Answer:**

BaFin does not consider that the notification requirement under section 38 (1) of the WpHG is applicable in the following cases:
- commercial pledge of shares (section 1259 of the German Civil Code (Bürgerliches Gesetzbuch – BGB)),
- agreements that provide acquisition opportunities for a third party only,
- voting rights attached to shares for which a purchase offer based on an offer under the German Securities Acquisition and Takeover Act (Wertpapiererwerbs- und Übernahmegesetz – WpÜG) was accepted and is required to be disclosed under section 23 (1) of the WpÜG (previously exemptions under section 25 (2a) of the old version of the WpHG and section 25a (1) sentence 5 of the old version of the WpHG for interim publications during tender offer);
- section 305 of the AktG, if, on the basis of a profit transfer and domination agreement with a listed company, there is an obligation to acquire shares with voting rights against payment of adequate compensation at the request of the other shareholders;
- mergers and other transformation measures under the German Transformation Act (Umwandlungsgesetz – UmwG) if shares with voting rights in a listed company can be acquired as a consequence of the transformation.

However, such instances must always be assessed on a case-by-case basis; in cases of doubt, it is advisable to consult BaFin.

III. Obligations subsequent to stock exchange admission under section 48 et seq. of the WpHG

16. Question: What is to be done if, due to a change in administrative practice, the relevant time of publication of an exclusion of pre-emptive rights in the context of using own shares now lies in the past?

Answer: BaFin has changed its administrative practice with regard to the time of publication of an exclusion of pre-emptive rights in the context of the disposal of own shares, meaning that the trigger for publication is no longer the resolution by the management board/supervisory board; instead, in compliance with section 49 (1) no. 2 of the WpHG, a general meeting resolution must be published without delay once it has been adopted and becomes effective. If the management board is authorised, by way of a general meeting resolution, to dispose of own shares and disregard the principle of equal treatment, this is treated as an exclusion of pre-emptive rights under section 71 (1) no. 8 sentence 5 of the AktG in conjunction with sections 186 (3),(4)
and 193 (2) no. 4 of the AktG. In this case, the rights concerning the shareholders are already regulated by the general meeting.

Where, in individual cases, the resolution of the general meeting has not been published in the context of previous administrative practice, BaFin tolerates a retrospective publication of the general meeting’s resolution no later than when the management/supervisory board’s next resolution is published.

IV. Publication of the home member state (section 5 of the WpHG)

17. **Question:** When are issuers obliged to publish their home member state?

   **Answer:**
   The new subsection (1) of section 5 of the WpHG stipulates that all issuers for whom the Federal Republic of Germany is the home member state or which may choose the Federal Republic of Germany as their home member state under section 4 (1) or (2) of the WpHG, must publish this without delay.

   In accordance with section 128 of the WpHG, section 5 of the WpHG is not applicable to issuers within the meaning of section 2 (13) sentence 1 no. 1 (b) or no. 2 of the WpHG (see subsequent FAQs for more details) for whom the Federal Republic of Germany is the home member state on the day the German Act Implementing the Amended Transparency Directive came into effect and that have notified BaFin of their choice.

18. **Question:** Which obligations must be fulfilled when publishing the home member state in accordance with section 5 of the WpHG?

   **Answer:**
   The new subsection (1) of section 5 of the WpHG is based on the provisions of European law set out in Article 2(1)(i) of the Amended Transparency Directive.

   Section 5 (1) of the WpHG stipulates that all issuers for whom the Federal Republic of Germany is the home member state or which may choose the Federal Republic of Germany as their home member state under section 4 (1) or (2) of the WpHG have to publish this without delay.

   Furthermore, this information must be transmitted to the company register for storage in accordance with section 8b of the German Commercial Code (*Handelsgesetzbuch* – HGB). In addition, the issuer must submit this information to BaFin – where applicable, the supervisory authority of the other EU/EEA member in which the issuer is domiciled – and, if financial instruments are admitted to trading on an organised market in another EU/EEA member state, to the competent authorities there (see government draft, Bundestag printed paper 18/5010, p. 43).

FAQs on the transparency requirements under part 6 (section 33 et seq.) and part 7 (section 48 et seq.) of the WpHG
19. **Question:** How is the home member state of an issuer determined?

**Answer:**
Under section 2 (13) of the WpHG, the home member state of an issuer is either determined by law or by the issuer’s choice. When determining the home member state or the right to choose the home member state, the decisive factors are, on the one hand, the type of securities issued, and on the other hand, the member state where the issuer is domiciled and the member state where the securities are admitted to trading on an organised market.

20. **Question:** Under what circumstances is the Federal Republic of Germany the home member state of an issuer of shares?

**Answer:**
For issuers of shares that are domiciled in Germany and whose shares are admitted to trading on an organised market in Germany and/or in another EU/EEA member state, the Federal Republic of Germany is, in accordance with section 2 (13) no. 1 (a) of the WpHG, the home member state by law. Such issuers of shares domiciled in a third country (see section 2 (12) of the WpHG) may choose the Federal Republic of Germany as their home member state (see section 2 (13) no. 1 (b) of the WpHG).

Example 1:
For a domestic issuer of shares, the Federal Republic of Germany is the home member state by law.

Example 2:
For an issuer of shares domiciled in the United States of America (third country), the Federal Republic is the home member state if the issuer has made and published such a choice.

21. **Question:** Under what circumstances is the Federal Republic of Germany the home member state of an issuer of debt instruments?

**Answer:**
For - domestic - issuers of debt securities of which the denomination per unit is less than €1,000 or the value of such denomination per unit in another currency, the Federal Republic is the home member state by law.

Issuers of debt securities of which the denomination per unit is equal to/exceeds €1,000, are free to choose their home member state in accordance with section 2 (13) no. 2 of the WpHG. In this case, the Federal Republic is the home member state as soon as such choice is published.
22. **Question:** What are the rules with regard to the home member state of issuers of securities other than those referred to in section 2 (13) no. 1 of the WpHG?

**Answer:**
Under section 2 (13) no. 2 of the WpHG, issuers of securities that are neither shares nor debt securities of which the denomination per unit is less than €1,000 or the value of such denomination per unit in another currency as at the date of issue, and which are either domiciled in Germany and/or whose other financial instruments are admitted to trading on an organised market in Germany or another EU/EEA member state are free to choose their home member state (see government draft, Bundestag printed paper 18/5010, p. 43).

23. **Question:** When does the choice of home member state (= section 2 (13) sentence 1 no. 1 (b) or no. 2 of the WpHG) take effect?

**Answer:**
In accordance with section 5 of the WpHG, the choice of home member state becomes effective with its publication (section 4 (3) of the WpHG).

24. **Question:** What are the consequences if an issuer of shares domiciled in the United States of America whose shares are admitted to trading on an organised market in Germany, the Netherlands and France does not publish its home member state?

**Answer:**
Issuers domiciled in a third country whose shares are admitted to trading on an organised market in Germany and other EU/EEA member states are free to choose their home member state under section 2 (13) no. 2 of the WpHG. As long as the issuer has not chosen either the Federal Republic of Germany in accordance with section 4 in conjunction with the publication obligation under section 5 of the WpHG or the applicable provisions of another EU/EEA member state, the Federal Republic is the issuer’s home member state under section 2 (13) no. 3 of the WpHG. This default provision becomes immediately effective if the issuer is free to choose its home member state but does not exercise this choice (see government draft, Bundestag printed paper 18/5010, p. 43). The same result applies to issuers domiciled in Germany whose debt securities of which the denomination per unit is equal to/exceeds €1,000 are admitted to trading on an organised market in Germany and another EU/EEA member state.