

FAQ

on the mandatory electronic submission process for
notifications on major holdings (§§ 33 ff. WpHG)

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

publication date: 13 March 2020

A. General

What are the changes for persons subject to the notification obligations of major holdings and issuers publishing such notifications due to the amendment of the regulation on the notification of major holdings (Stimmrechtsmitteilungsverordnung – StimmRMV) by 1 July 2020?

From 1 July 2020 on notifications of major holdings are to be submitted to BaFin and to the issuer exclusively by electronic means. The notification to BaFin must compulsorily be submitted via BaFin's Reporting and Publication Platform (Melde- und Veröffentlichungsplattform – MVP), the electronic submission to the issuer may be carried out either via email or via an electronic submission system provided by the issuer. The notification to the issuer, however, must, in addition, compulsorily be submitted as an XML-file (XML - Extensible Markup Language).

What are the main characteristics of the electronic submission process?

- 1) Single registration on the MVP (if not already done for another specialised procedure of the MVP) and application for admission to the specialised procedure „Notifications of major holdings (sec. 33 et seq. WpHG)“ by the person subject to the notification obligation/notifier
- 2) Submission of the notification to BaFin via the MVP by the person subject to the notification obligation/notifier
- 3) Submission of the notification as readable file and XML-file (both versions will be provided by the MVP after submission of the notification to BaFin) to the issuer via email or an electronic submission system of the issuer by the person subject to the notification obligation/notifier
- 4) Upload of the XML-file by the issuer via his service provider for the purpose of publication of the notification, storage of the publication in the Company Register and submission of the confirmation of publication to BaFin.

What are the significant advantages of the electronic submission process?

The electronic submission process offers the significant advantage of submitting and publishing notifications without any media discontinuity. This results in time savings and avoids submission

errors.

Is the electronic submission process mandatory or may a notification still be submitted via fax/mail to BaFin and the issuer?

Upon the entry into force of the amendment of the StimmRMV it is no longer legally allowed to submit notifications via fax/mail to BaFin and the issuer, i.e. notifications must compulsorily be submitted electronically. Only in case of technical interferences of the MVP or technical malfunctions on the part of the issuer persons subject to the notification obligations may submit notifications via fax or mail (sections 4 para. 2 and 6 para. 4 StimmRMV). It is therefore advisable for persons subject to the notification obligations to apply for admission to the MVP in a timely manner.

Will there be a transitional period during which notifications may be submitted via fax/mail? What applies if the amendment of the StimmRMV takes effect between triggering a threshold and submitting the notification?

No, there will be no such period. The obligation to submit a notification electronically applies also to notifications, which relates to triggering a threshold before the amendment of the StimmRMV takes effect.

What applies if a notification is nevertheless submitted via fax/mail?

If there are no technical interferences or malfunctions (section 4 para. 2 or 6 para. 4 StimmRMV), the submission does not comply with the legal requirements and thus constitutes a breach of the legal requirements which can be sanctioned with an administrative fine (section 120 para. 2 no. 2 WpHG).

Can/must corrections of notifications which have been submitted via fax/mail according to the former legislation or due to former interferences/malfunctions of the MVP be submitted via the MVP?

Yes, even corrections of such notifications must also be submitted via the MVP.

What are the technical requirements and what level of technical knowledge is required for the electronic filing process?

Access to the Internet is the minimum technical requirement for electronic submission of a notification to BaFin as well as to the issuer, special technical knowledge is not necessarily needed. The two files necessary for the submission of the notification to the issuer will be provided by BaFin via the MVP (for details please see below).

Why does the issuer receive two files? Why is the submission of the notification as pdf- or word-file (or similar files) not sufficient?

Notifications submitted only as pdf- or word-files would complicate further electronic processing to be carried out by the issuer (publication of the notification, storage of the publication in the Company Register, submission of the publication confirmation to BaFin). The XML-format

constitutes the current standard for electronic data processing across systems.

What applies to persons subject to the notification obligations if the issuer receives just one file?

Submitting just one file does not comply with the legal requirements and thus constitutes a breach of the legal requirements committed by the person subject to the notification requirements which can be sanctioned with an administrative fine (section 120 para. 2 no. 2 WpHG). In these cases the issuer should, first of all, contact BaFin in order to clarify the deadline for publishing the notification and to coordinate the next steps.

Why does a notification have to be submitted to BaFin via the MVP?

The MVP is a BaFin portal solution which already applies to various other specialised procedures and is equipped with interfaces to the different BaFin-internal systems.

How can a notification be submitted via the MVP and what are the advantages and disadvantages?

There are three ways for submitting a notification to BaFin via the MVP:

- 1) completion of an online form
- 2) upload the notification as xml-file
- 3) upload the notification via the SOAP web service.

The online form (1) offers certain helpfunctions (calculation- and completeness-checks) which are intended to avoid mistakes. However, entries into the online form cannot be saved and automatically expire after 30 minutes of inactivity. This does not apply to 2) and 3). However, creating an XML-file and using the SOAP web service requires compliance with strict formal requirements which are specified by a XSD-Schema Definition. Using the SOAP web service allows automatic submission of notifications and is particularly suitable for notifiers submitting notifications very frequently.

What efforts and expenses must be made for programming an application for creating an XML-file?

The efforts and expenses for programming such an application stay within reasonable limits, particularly if the company provides for an internal IT-unit. The more frequent notifications are disclosed, the more these efforts and expenses are put into perspective.

Where can information about creating the XML-file and using the SOAP web service be obtained?

Information can be obtained on BaFin's homepage in the subject area „MVP-portal“ under the heading specialised procedure for „Notifications of Major Holdings (sec. 33 et seq. WpHG)“. And here within the subject area „Information Sheets and User Manuals“ you will find all necessary information about creating the XML-file and using the SOAP web service.

Where within the MVP-account can the two files be found which are provided by the MVP for submitting the notification also to the issuer? What kind of advantages do these files offer?

Both files (pdf- as well as xml-file) are provided within a zip-file in the MVP-account under the item „View journal“ after successful submission of the notification to BaFin. The BaFin-files offer the advantage of already containing the information necessary for publication. The notification to BaFin and to the issuer are not identical (the notification to the issuer does not include the annex). The file submitted to BaFin therefore cannot also be submitted to the issuer, the notifier, instead, has to create two additional files, if he does not want to use the BaFin-files. The information sheet on BaFin’s homepage regarding how to create the XML-file also covers the creation of the XML-file for the issuer.

Does an issuer have to provide for his own electronic submission system?

No, there is no such obligation.

Does a notifier have to use an electronic submission system provided by the issuer or can the notification also be submitted via email?

No, there is no legal obligation to use an electronic submission system, if the issuer provides for such a system. However, by submitting a notification via email the notifier is responsible for the integrity and confidentiality of the submission. In case of an own electronic submission system the issuer is responsible for the operability as well as for the integrity and confidentiality of the submission.

To which email-address of the issuer can/must a notification be submitted? What applies if the notification is submitted to a different email-address?

Submission to the email-address indicated in the imprint (Impressum) or provided by the issuer for submitting notifications of major holdings is always sufficient. If the notification is submitted to another email-address, the person subject to the notification obligation bears the risk that the notification is considered as not having been submitted or as not having been submitted in time which would constitute a breach of the legal requirements. The email to which the notification is attached should be highlighted as a „notification of major holdings“. The issuer can neither prohibit the submission of notifications to the email-address indicated in the imprint nor make it mandatory to use a certain email address for submitting notifications of major holdings.

To whom can problems be addressed in the context of applying for the specialised procedure and concerning the submission of a notification?

Issues regarding the specialised procedure „Notifications of Major Holdings (sec. 33 et seq. WpHG)“ can be addressed to: stimmrechte-support@bafin.de.

Technical queries and problems in the context of your registration at the MVP portal and with regard to using the MVP can be addressed to: mvp-support@bafin.de.

Where can further information be found?

Further information can be found on BaFin's homepage under the item „MVP-Portal“ within the subject area dealing with the specialised procedure „Notifications of Major Holdings (sec. 33 et seq. WpHG)“. Under the headline „Information Sheets and User Manuals“ you will find all relevant information regarding the specialised procedure „Notifications of Major Holdings (sec. 33 et seq. WpHG)“ including detailed information on creating the XML-file(s).

B. Registration at MVP portal and admission to the specialised procedure

How complex and time-consuming is the application process on the MVP and when will admission be granted?

Registration and application will take less than 30 minutes. Admission will usually be granted within one working day after submitting the application form preferable via fax to +49 (0)228 4108 1550. However, registration and application should be done at an early stage; the deadline for submitting a notification will thus *not* be suspended by the registration and application process.

How can be applied for admission? To whom and how does the application have to be submitted?

In the MVP-account under „Application for a specialised procedure“ please select „Notifications of Major Holdings (sec. 33 et seq. WpHG)“. As „Notifying party“ please always select „Direct notifier“. After pressing „submit“ a fully filled-in pdf-document will be displayed: the application (if not, a pop-up blocker might be activated). By pressing „Submit application“ at the bottom the form will be submitted electronically into the BaFin-systems. The application still needs to be submitted signed by the notifier to BaFin (preferably by fax to +49 (0)228 4108 1550).

Important: Notifications can be submitted by the specialised procedure „Notification of Major Holdings (sec. 33 et seq. WpHG)“ only, if admission was granted, and it is only with admission that the specialised procedure will be activated.

Which documents have to be attached to the application form? Where in the MVP-account can the completed application be found?

No documents have to be attached to the application. However, BaFin reserves the right to request any documents it considers necessary for the application process. Completed applications can be found in the MVP-account under the item „View application list“.

What applies if the admission is still outstanding and the deadline for disclosing a notification is going to expire?

First, check whether you have submitted the application to BaFin. If yes, you should contact BaFin via email (via stimmrechte-support@bafin.de).

Who can register and make the application – the person subject to the notification obligation or also any other person?

For the specialised procedure „Notifications of Major Holdings (sec. 33 et seq. WpHG)“ the person subject to the notification obligation and the notifier do not need to be the same person. Also a person mandated by the person subject to the notification obligation or entitled by law may therefore register and apply to the specialised procedure „Notifications of Major Holdings (sec. 33 et seq. WpHG)“.

Are „firm accounts“ possible?

No, „firm accounts“ are not possible. The application must be made by a natural person. The account holder is responsible, if he grants other persons access to his account.

Can a MVP-account be used by other persons?

The MVP-account is not set up for use by more than one person, also not within a company or firm. The account holder is responsible, if he grants other persons access to his account.

Can functional email-addresses be used?

The use of functional email-addresses is possible. However, application can only be made by a natural person.

Is it required to make multiple applications, if submission of notifications on behalf of more than one person is intended (e.g. by an attorney)?

No. With one admission notifications for an unlimited number of persons subject to the notification obligations can be submitted, if the notifier is mandated or legally entitled.

What applies if logging in to the MVP-Account is not possible?

In this case please contact mvp-support@bafin.de.

C. Electronic submission of notifications of major holdings

Can the specialised procedure be tested via the MVP? Can the test be carried out with recent cases?

Testing the specialised procedure „Notifications of Major Holdings (sec. 33 et seq. WpHG)“ is possible by applying for the specialised procedure „TEST: Notifications of Major Holdings (sec. 33 et seq. WpHG)“ via your MVP-Account. By using the test procedure notifications will not be submitted to BaFin. Accordingly, BaFin cannot check these notifications and you can only test the functionalities, also with recent cases.

How can drafts of notifications be submitted to BaFin?

Drafts can be submitted to BaFin via email, submission via the MVP is not possible.

How can one check whether a notification has been accepted by BaFin? Will a confirmation be sent? Where in the MVP-account can submitted notifications be found?

All submitted notifications are listed under the item „View journal“ in the MVP-account. Notifications not having been accepted have the status „Processing“. Once the notification has been accepted the status will change to „Report accepted“ and a zip-file will be available containing the notification as pdf- and XML-file, which can be used for submitting the notification to the issuer. There will be no additional confirmation, e.g. via email.

How long does it take until the system accepts the notification? What applies if the status under „View journal“ remains as „Processing“?

Submission to BaFin takes only a couple of minutes. If the status remains as „Processing“, please contact mvp-support@bafin.de.

What applies if the zip-file cannot be opened due to internal security restrictions?

Measures have to be taken in order to open such files. Otherwise access to the two files will not be possible.

How is it possible to gain access to notifications submitted by a colleague?

The MVP-account is personalised. The account holder is responsible, if he grants other persons access to his account.

Can submitted notifications be used as a template for new notifications within the MVP? Can basic data (Stammdaten) be stored in the MVP?

Due to its current architecture submitted notifications cannot be stored in the MVP as a template for new notifications. Due to the same reason basic data cannot be stored in the MVP either.

In case of a correction of a notification is a new form required to be completed or can the submitted notification be amended within the system?

Due to its current architecture submitted notifications cannot be amended within the MVP. Corrections have to be submitted as new notifications and highlighted as „Correction of a notification dated...“.

When do entries into the online form expire?

After 30 minutes of inactivity all entries into the online form will expire.

How can the four-eyes principle be complied with by using the MVP? Can entries into the online form be saved temporarily?

It might be difficult to comply with the four-eyes principle by submitting a notification via the online form, as the MVP does not offer a temporary storage functionality and entries into the online form

expire after 30 minutes of inactivity. Accordingly, double-checks can only be made prior to any entry or within the permitted inactivity period. Depending on the frequency of submission of notifications the transfer of notifications via XML-upload is more suitable in this case. The four-eyes principle can be taken into account when setting up the application for creating XML-files. The efforts and expenses for the setup of such an application are reasonable.

What must be taken into consideration, if a notification must be withdrawn via the MVP?

If the original notification has not been published so far, the notification can be withdrawn informally via email sent to BaFin and to the issuer. If the original notification has already been published, the withdrawal has to be submitted via the MVP. Details can be aligned with BaFin.

Is it possible to upload a file containing the chains of controlled undertakings or will the chains have to be entered manually?

It is not possible to upload chains of controlled undertakings and manual entry of the chains is necessary. However, copy & paste is possible.

What applies if an organisational chart cannot be uploaded? Can the chart also be submitted via fax?

Please check whether the file complies with the requirements (e.g. file format). If this is the case, please contact mvp-support@bafin.de. As the chart is not part of the notification, it can also be submitted via fax.

How long will submitted notifications be available on the MVP?

Submitted notifications will be available as long as the account is active.

D. Publication of electronically submitted notifications

Is the issuer required to register on the MVP and to apply for admission to the specialised procedure for publishing notifications?

No, for the publication of the notification according to sec. 40 WpHG the issuer is not required to register on the MVP and to make an application. Only if the issuer himself is subject to the notification obligation, he is required to do so.

What applies if the notification is submitted to another email-address than the address indicated in the imprint (Impressum) or the address provided for submission of notifications of major holdings by the issuer and therefore the publication is made later than three trading days?

Depending on the individual circumstances of the case the notification may be considered as not having been submitted or as not having been submitted in time. In this case the deadline for publishing the notification does not start or starts later.

What applies if the issuer's spam filter treats submitted notifications as spam and thus, the publication is made later than three trading days?

If the notification is submitted to an admissible email-address, the issuer is responsible for taking any measures in order to comply with the publication requirements laid down in sec. 40 WpHG. However, if the notifier uses an email-address which spam filters usually treat as spam the case can be assessed differently.

What does the issuer have to consider, if a correction of a notification is to be uploaded via the service provider?

If the original notification has already been published by the issuer, the publication of the correction has to be highlighted as „Correction of a notification dated...“ in the system of the service provider. The correction itself remains unchanged. If the original notification has not been published so far, the correction has to be published without any reference to a correction.

How can a notification be published in English, if the notification is submitted in German?

A publication in English should be possible via the service provider. Most likely a translation of certain information (e.g. reason for the notification according to sec. 2 of the standard form) will be required.

What measures are to be taken, if BaFin asks the issuer to eliminate an error when publishing the notification?

After uploading the XML-file into the system of the service provider the issuer should be able to make any changes before the publication is made. For details please contact your service provider.

To what extent is the issuer entitled to make changes in the text of the notification?

In principle no changes have to be made by the issuer. In cases of doubt BaFin can be contacted.

What applies if the issuer does not use a service provider?

The issuer has to comply with the requirements for publication in any case. Further information can be found in the „Issuer Guidelines“ under I.3.2.1.3.

Whom can the issuer contact, if problems occur with uploading the XML-file into the system of the service provider?

In this case the service provider should be contacted.

What applies if the issuer cannot open the zip-file due to internal security restrictions?

The issuer has to take measures in order to be able to open such files.