



The EU Anti-Money Laundering (AML) package

Comprehensive expansion of compliance obligations for companies regarding UBO notifications to the German transparency register

Introduction & Agenda

Speakers



Jens Hoffmann

Attorney at law | Counsel
Corporate Law | Regulatory & Compliance

Deloitte Legal Berlin

Phone: +49 30 25468 236

Email: jenhoffmann@deloitte.de



Anna-Lena Kringel

Attorney at law | Senior Associate
Corporate/M&A | Regulatory & Compliance

Deloitte Legal Berlin

Phone: +49 30 25468 246

Email: akringel@deloitte.de

Agenda

A. Overview

B. Key elements of the new regulation

1. Expansion of the scope of companies subject to notification obligations
2. New system for the determination of (actual) beneficial owners
3. Expansion of the scope of persons to be notified as “fictitious beneficial owners”
4. Extension of the information on beneficial owners to be notified
5. Extension of documentation obligations / New requirements for evidence & additional statements to be submitted

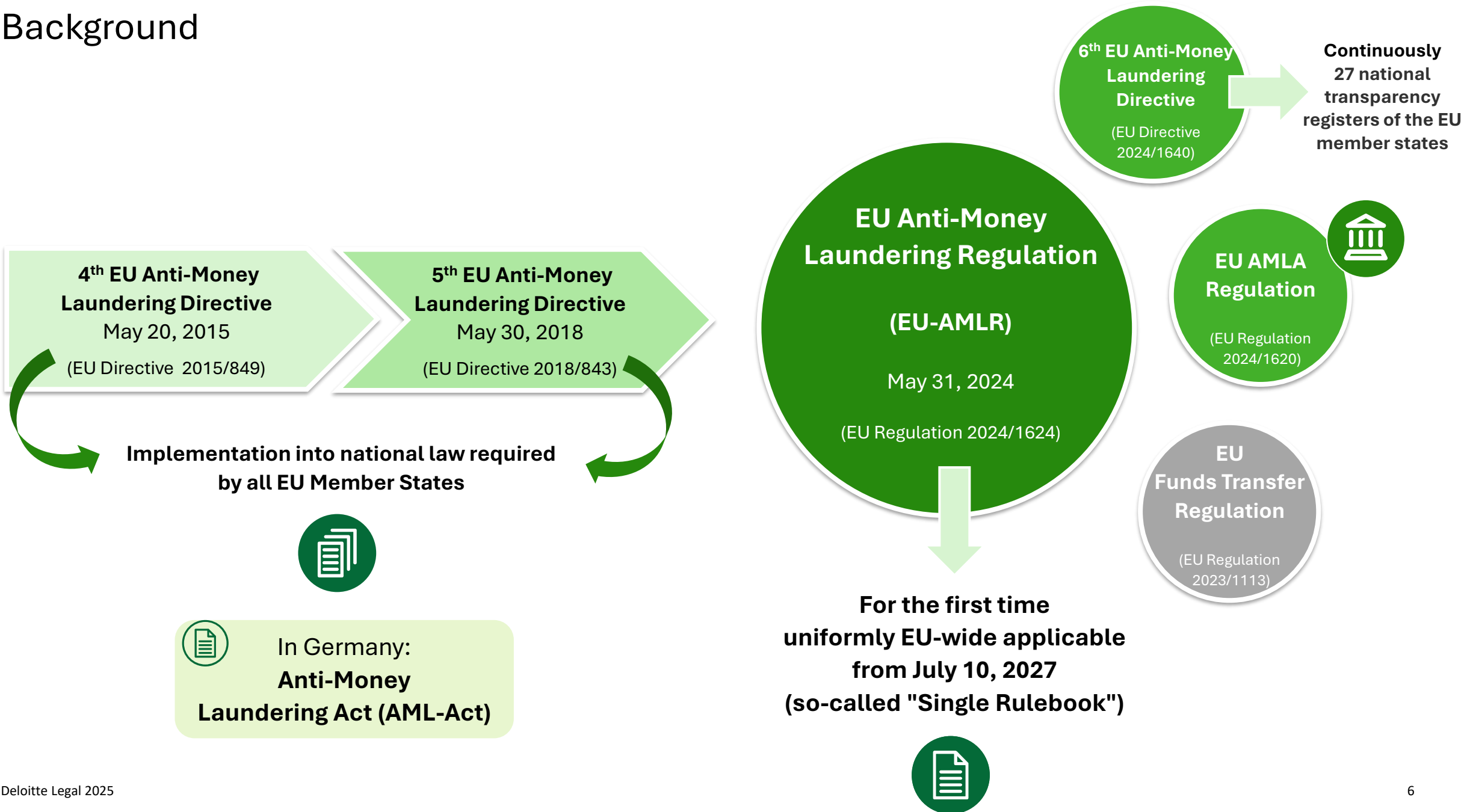
C. Recommendations & Outlook

D. Q&A

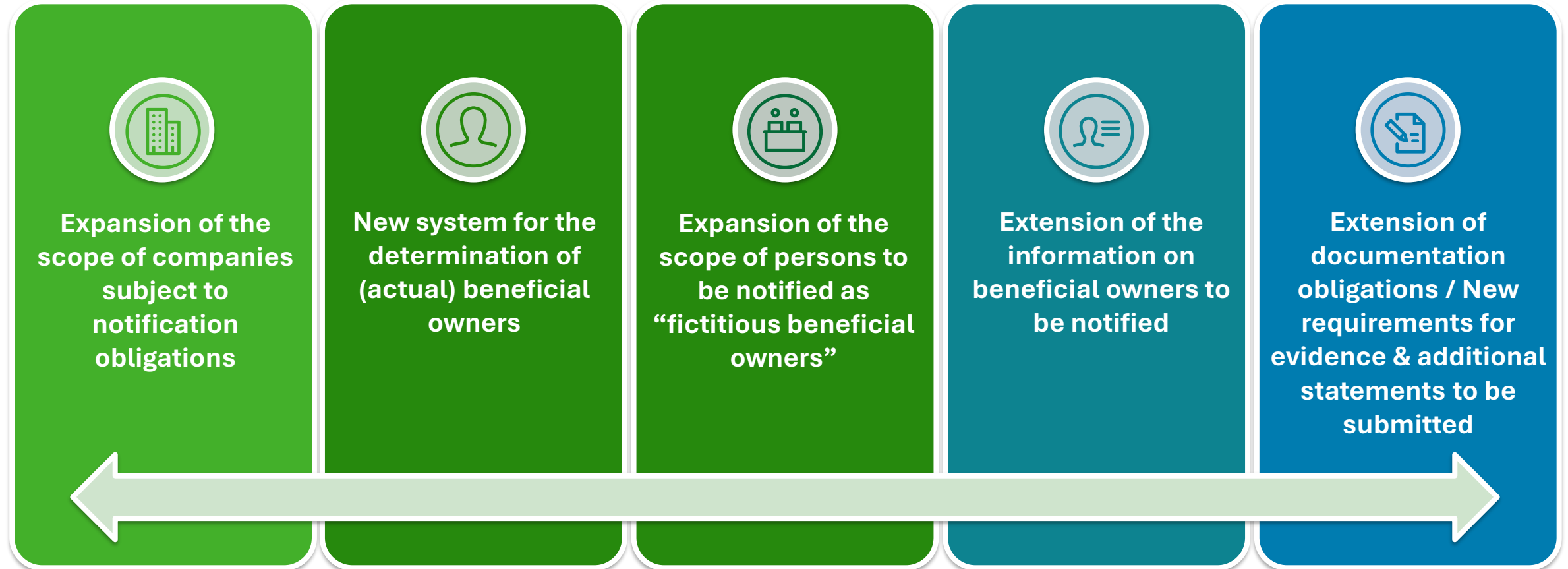


A. Overview

Background



Key elements of the new EU-AMLR



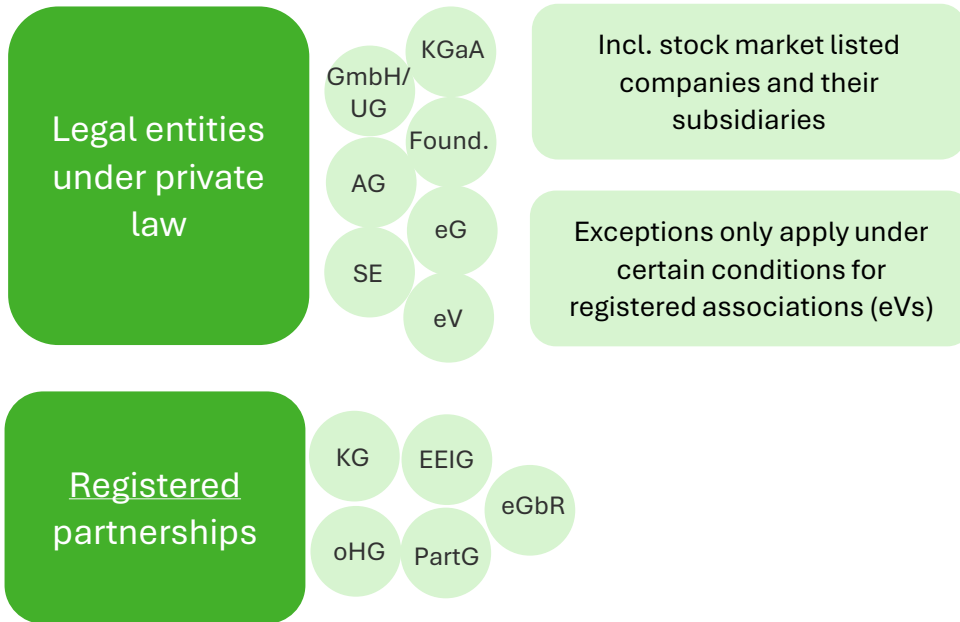
B. Key elements of the new regulation

Expansion of the scope of companies subject to notification obligations

Companies subject to notification obligations with registered seat in Germany

Current German legal situation

Sec. 20 para. 1 sent. 1, sec. 20a AML-Act



Future EU-wide legal situation

Art. 63, Art. 65 EU-AMLR



Regarding notification obligations of trustees respectively trustees of “special legal arrangements” see Deloitte Legal series of articles on the EU Anti-Money Laundering (AML) package (Part 2)

Companies subject to notification obligations with registered seat outside the EU

Current German legal situation

Sec. 20 para. 1 sent. 2, sent. 3 AML-Act in conjunction with sec. 1 para. 3, para. 3a German Real Estate Transfer Tax Act (GrEStG)



Connection to **real estate** located in Germany

Exception:

The information on the beneficial owner has already been notified to a transparency register of another EU Member State

Future EU-wide legal situation

Art. 67 EU-AMLR



Real estate acquisitions

(new acquisitions and existing ownership)



Receipt of a **public contract** for goods, services or concessions



Establishment of a **business relationship with entities subject to special AML obligations**



Acquisition of motor vehicles or watercraft and aircraft at a particularly high price

Exception:

The information on the beneficial owner has already been notified to a transparency register of another EU Member State

New system for the determination of beneficial owners

Determination of beneficial owners

Current German legal situation

Basic rule

The beneficial owner is generally the natural person who ultimately **owns** or **controls** the entity or special legal arrangement.

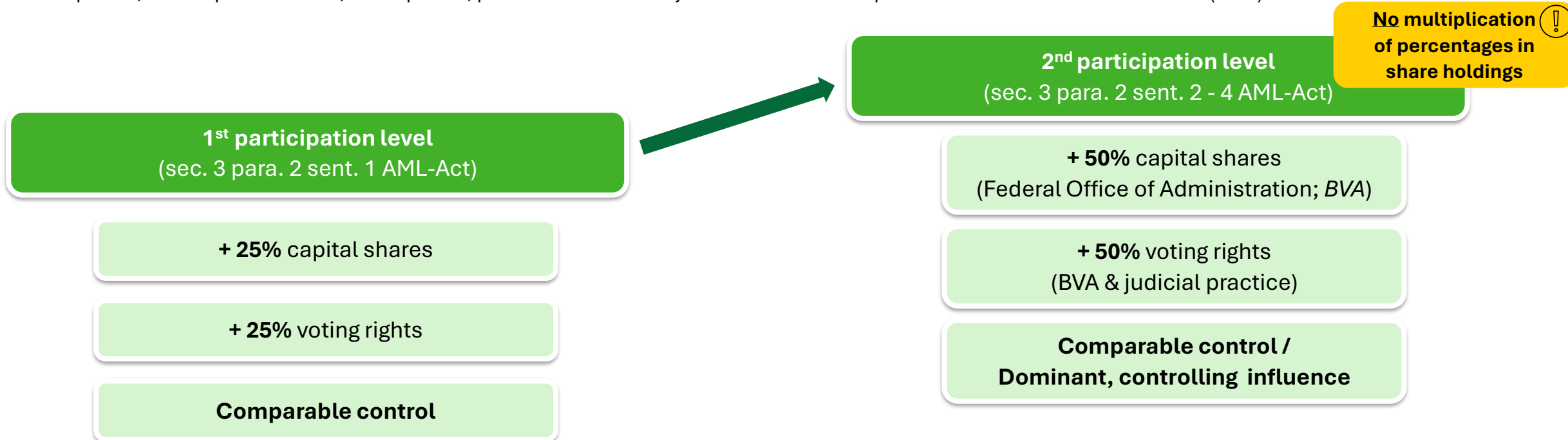
(sec. 3 para. 1 sent. 1 no. 1 AML-Act)

Determination of beneficial owners

Current German legal situation | System

(Standard scenario: Legal entities and registered partnerships)

Sec. 20 para. 1, sec. 19 para. 2 sent. 1, sec. 3 para. 1, para. 2 AML-Act in conjunction with sec. 290 para. 2 - 4 German Commercial Code (*HGB*)



Special regulations apply to stock market listed companies (sec. 20 para. 1, sec. 19 para. 2 sent. 1, sec. 3 para. 1 AML-Act), foundations with legal capacity (sec. 20 para. 1, sec. 19 para. 2 sent. 2, sec. 3 para. 1, para. 3 AML-Act) and trusts & „special legal arrangements“ (sec. 21 para. 1, para. 2, sec. 19 para. 2 sent. 2, sec. 3 para. 1, para. 3 AML-Act).

Determination of beneficial owners

Future EU-wide legal situation

Basic rule

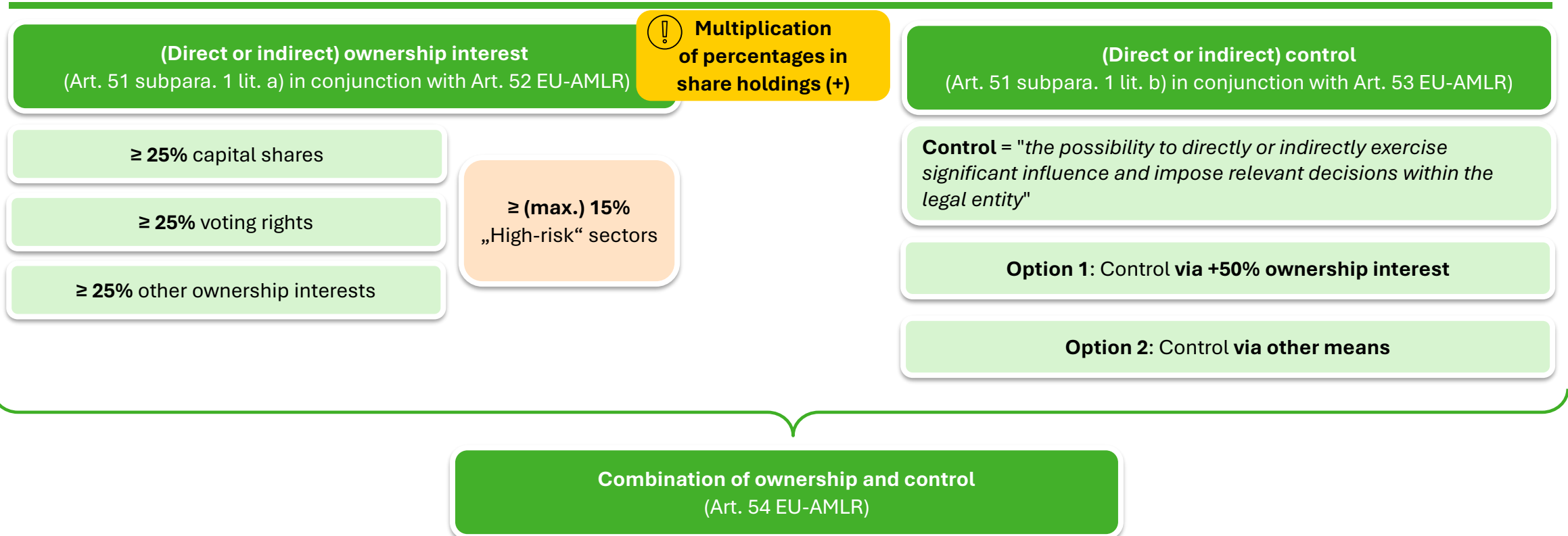
The beneficial owner is the natural person (i) who ultimately **owns** or (ii) **controls** a legal entity (in the broader sense of EU law, including partnerships), an express trust (i.e., a trust created intentionally to place assets under the control of a trustee for the benefit of a beneficiary or for a specific purpose) or a similar legal arrangement.

(Art. 2 para. 1 no. 28 EU-AMLR)

Determination of beneficial owners

Future EU-wide legal situation | System

(Standard scenario: Legal entities in the broader sense, including partnerships)



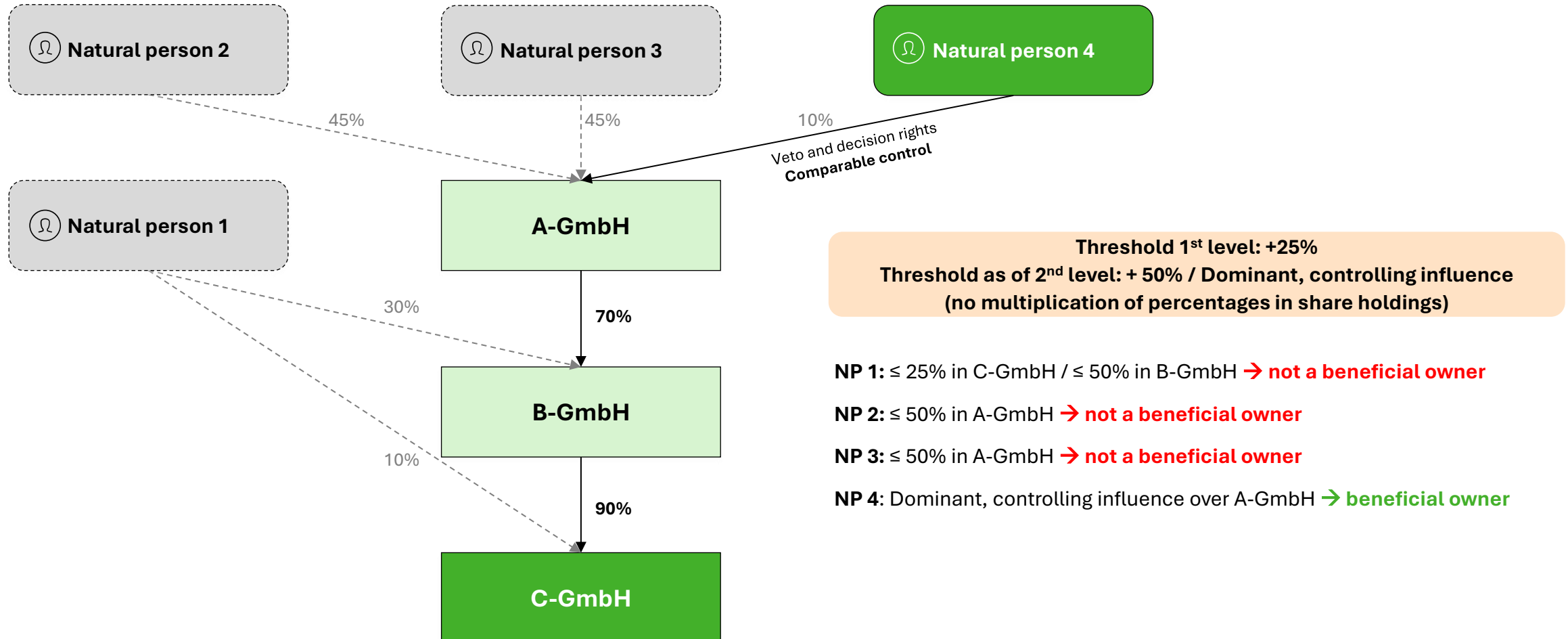
Legal entities similar to express trusts, express trusts and similar legal arrangements are subject to **special rules** pursuant to Art. 57 para.1, Art. 58 para. 1 EU-AMLR; in multi-level **foundation/trust structures**, the provisions of **Art. 55 EU-AMLR** must be observed; see Deloitte Legal series of articles on the EU Anti-Money Laundering (AML) package (Part 3).

Case study

Determination of beneficial owners

Case study: Beneficial ownership according to the current legal situation

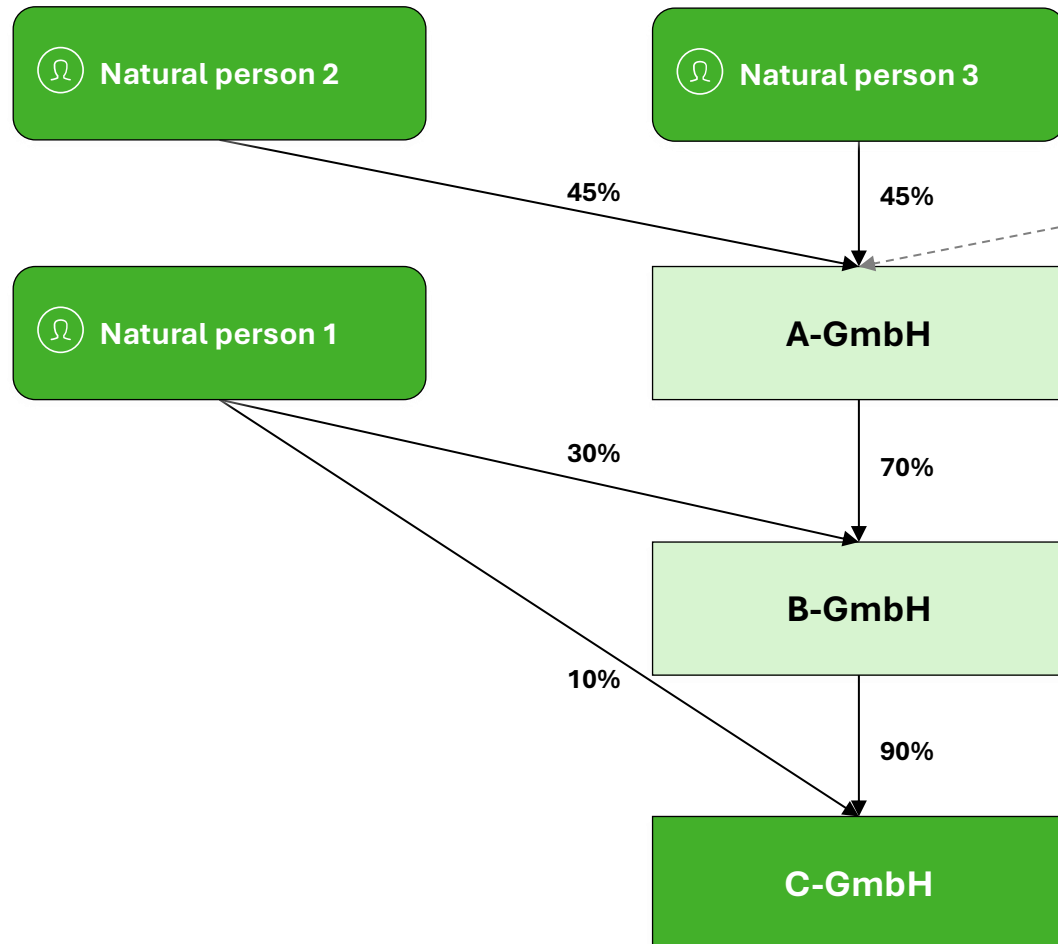
(sec. 20 para. 1, sec. 19 para. 2 sent. 1, sec. 3 para. 1, para. 2 AML-Act; sec. 290 para. 2 - 4 German Commercial Code)



Determination of beneficial owners

EU Examination Step 1: Beneficial ownership via (direct or indirect) ownership interest

(Art. 51 subpara. 1 lit. a) in conjunction with Art. 52 EU-AMLR)



10%
Veto and decision rights



Threshold: $\geq 25\%$
Multiplication of percentages in share holdings (+)

„**Ownership interest in** the company means the direct or indirect ownership of 25 % or more of the shares or voting rights or other ownership interest in the company“

„**Indirect ownership** is calculated by multiplying the shares or voting rights or other ownership interests, [...] in the chain [...], and adding the results from these different chains together, [...].“

NP 1: $(0.3 \times 0.9) + 0.1 \rightarrow 37\% \rightarrow$ **beneficial owner**

NP 2: $0.45 \times 0.7 \times 0.9 \rightarrow 28.35\% \rightarrow$ **beneficial owner**

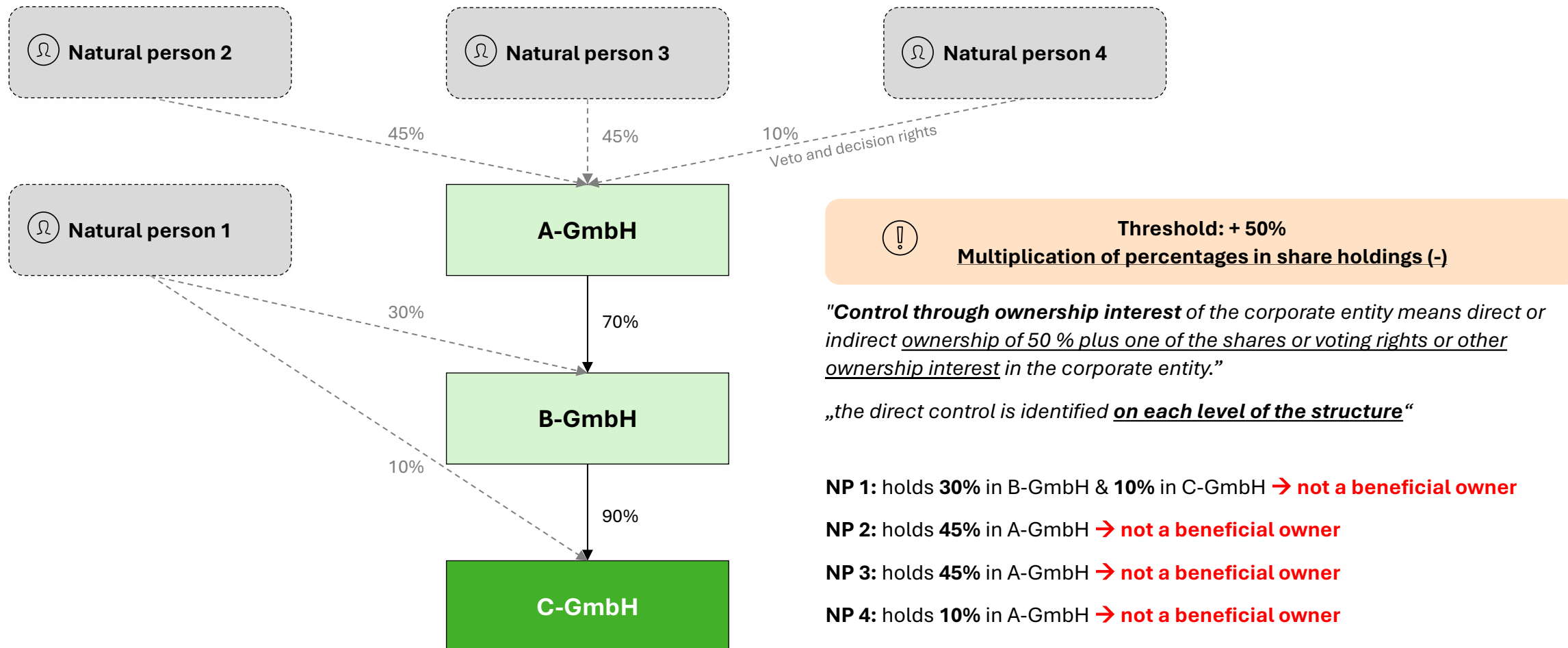
NP 3: $0.45 \times 0.7 \times 0.9 \rightarrow 28.35\% \rightarrow$ **beneficial owner**

NP 4: $0.1 \times 0.7 \times 0.9 \rightarrow 6.3\% \rightarrow$ **not a beneficial owner**

Determination of beneficial owners

EU Examination Step 2.1: Beneficial ownership via control through ownership interest

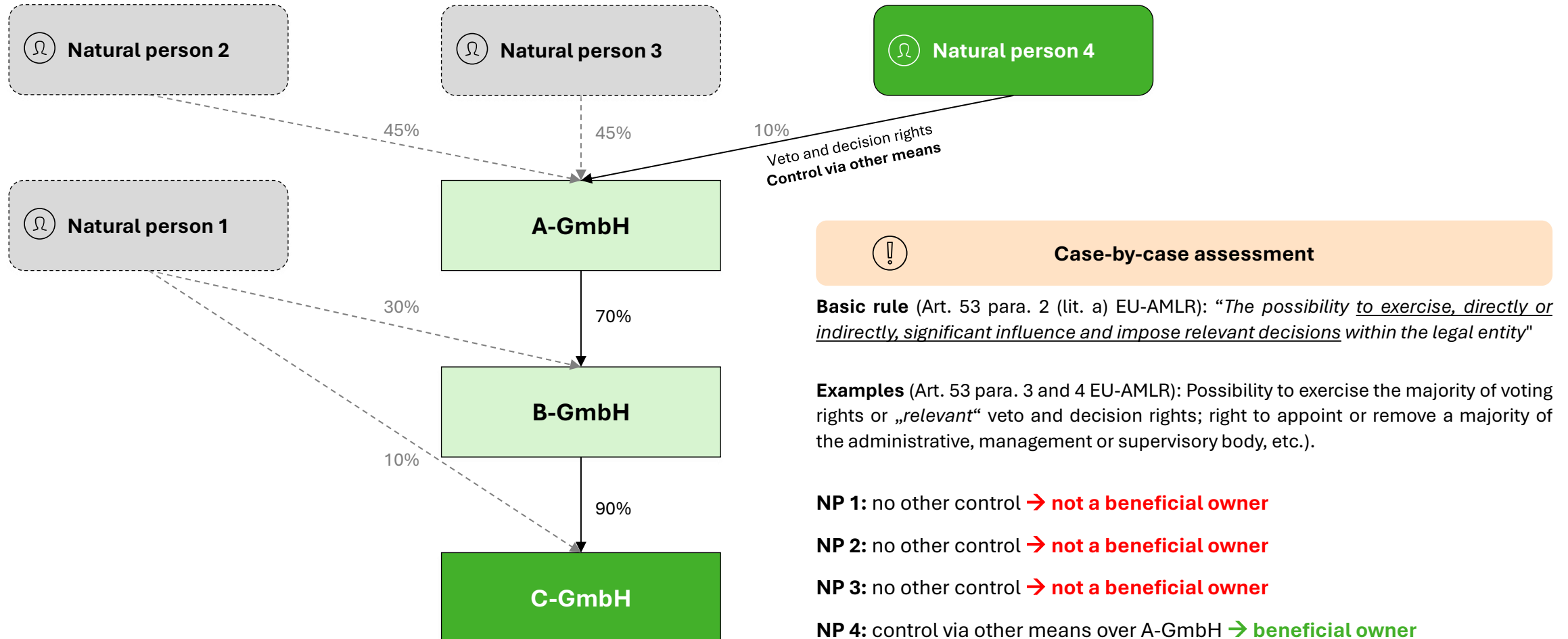
(Art. 51 subpara. 1 lit. b) in conjunction with Art. 53 para. 1 var. 1, para. 2 (lit c.) EU-AMLR)



Determination of beneficial owners

EU Examination Step 2.2: Beneficial ownership due to control via other means

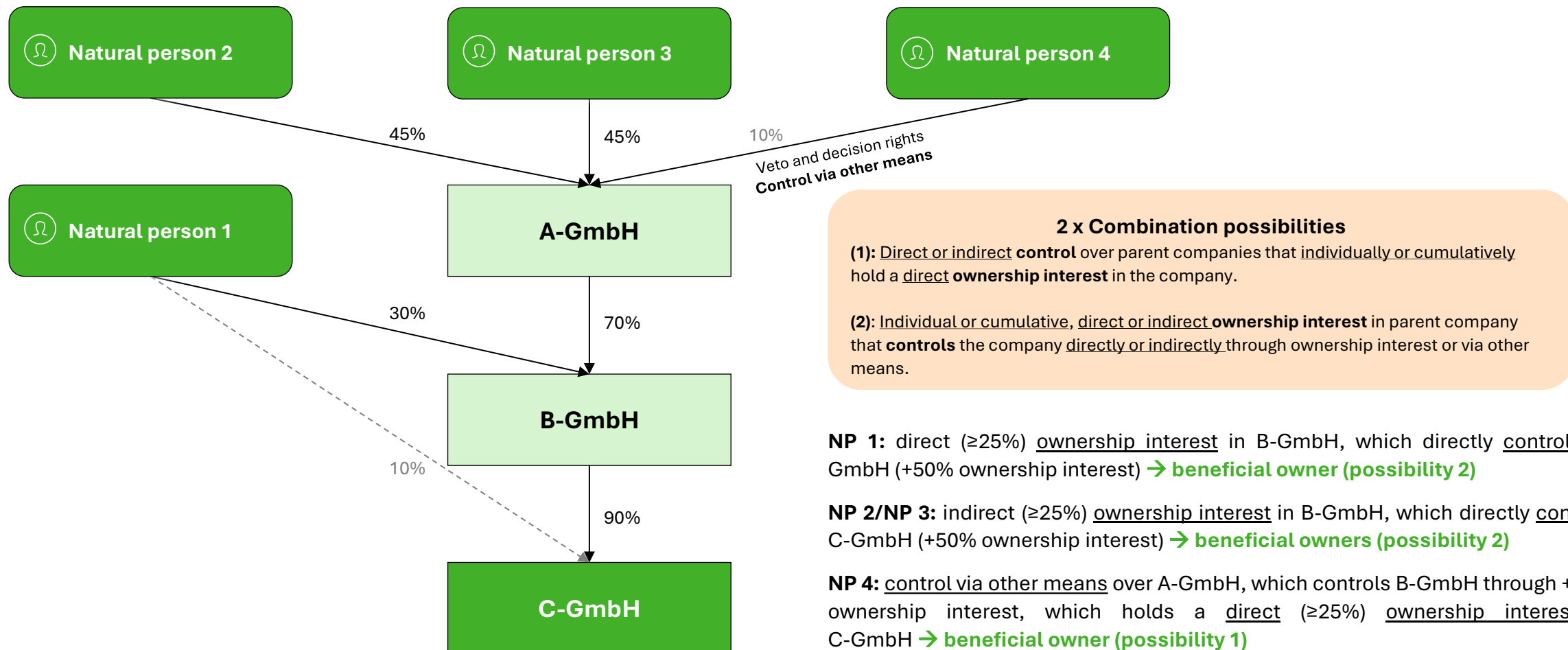
(Art. 51 subpara. 1 lit. b) in conjunction with Art. 53 para. 1 var. 2, para. 2 (lit. a, b), para. 3 and 4 EU-AMLR)



Determination of beneficial owners

EU Examination Step 3: Beneficial ownership due to a combination of control and ownership

(Multi-layered ownership structures: Art. 54 EU-AMLR)



**Expansion of the scope of persons to be notified as
“fictitious beneficial owners”**

Expansion of the scope of persons to be notified as “fictitious beneficial owners”

Current German legal situation

Sec. 3 para. 2 sent. 5 AML-Act (in conjunction with sec. 20 para. 1, sec. 19 para. 2 sent. 1 AML-Act)

After comprehensive examinations
no actual beneficial owner can be identified

→ Obligation to notify the so-called
“**fictitious beneficial owner**”

Scope of persons:
„legal representatives, the managing shareholder or the partner“ of the association

Future EU-wide legal situation

Art. 63 para. 3, para. 4 subpara. 1 lit. b) EU-AMLR

After exhausting all possible means of identification,
no natural person can be identified
as the actual beneficial owner

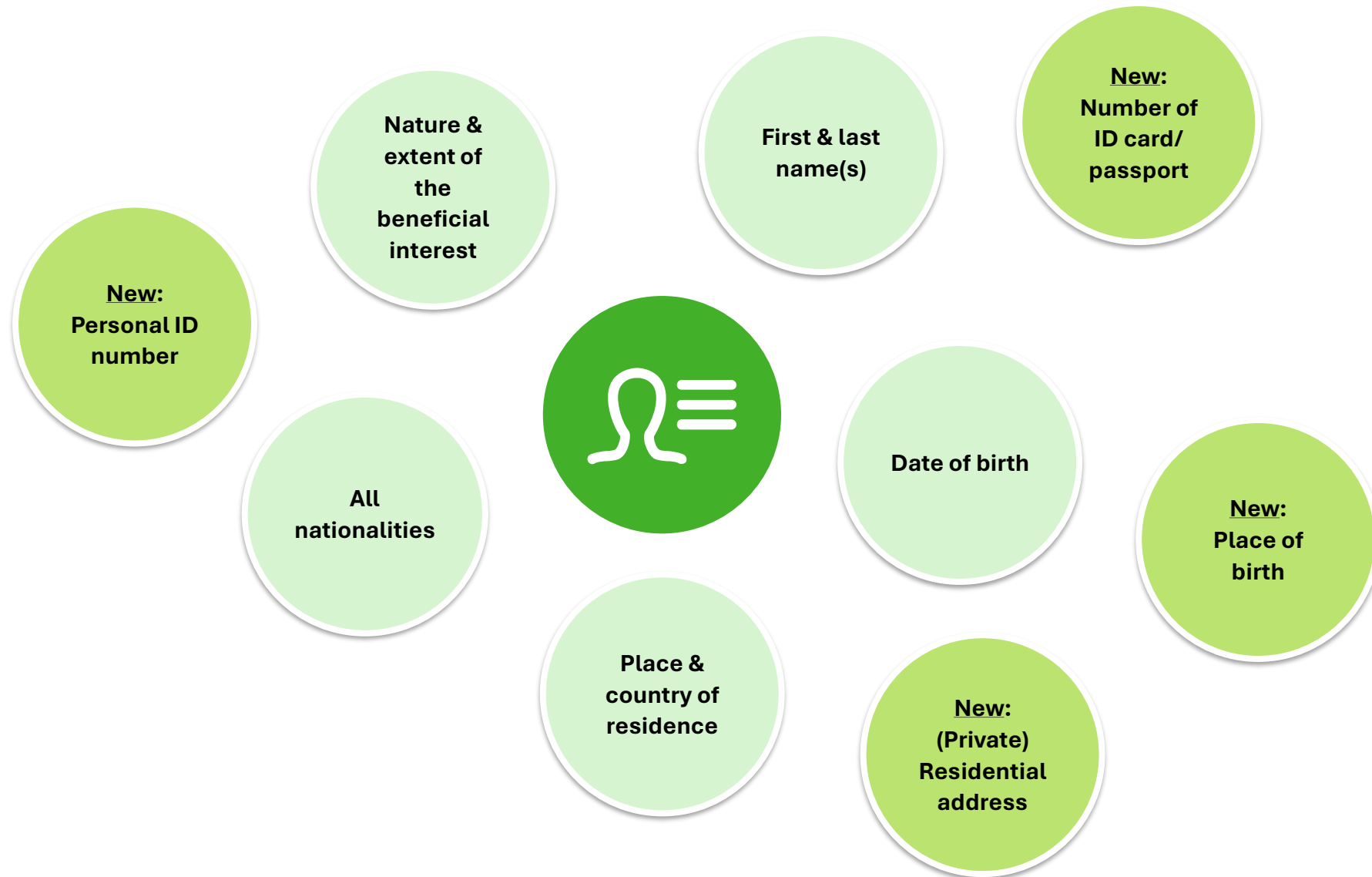
→ Obligation to notify the so-called
“**fictitious beneficial owner**”



Extended scope of persons:
All natural persons “who hold the position of senior managing officials in the legal entity”

**Extension of the information on beneficial owners
to be notified**

Information to be notified



Extension of documentation obligations / New requirements for evidence & additional statements to be submitted

Documentation obligations

Current German legal situation

Sec. 20 para. 1 sent. 1 case 2, sec. 20 para. 3a sent. 4, sec. 21 para. 1 sent. 1 case 2, para. 2 AML-Act



Retention of **information on the beneficial owners**



Documentation of **information requests**
via-à-vis the shareholders
regarding beneficial owners and the
information obtained



Future EU-wide legal situation

Art. 63, Art. 64 EU-AMLR



Comprehensive documentation obligation



Retention of **information on the beneficial owners**



Regular (at least annual)
verification of up-to-dateness of information on the beneficial owners



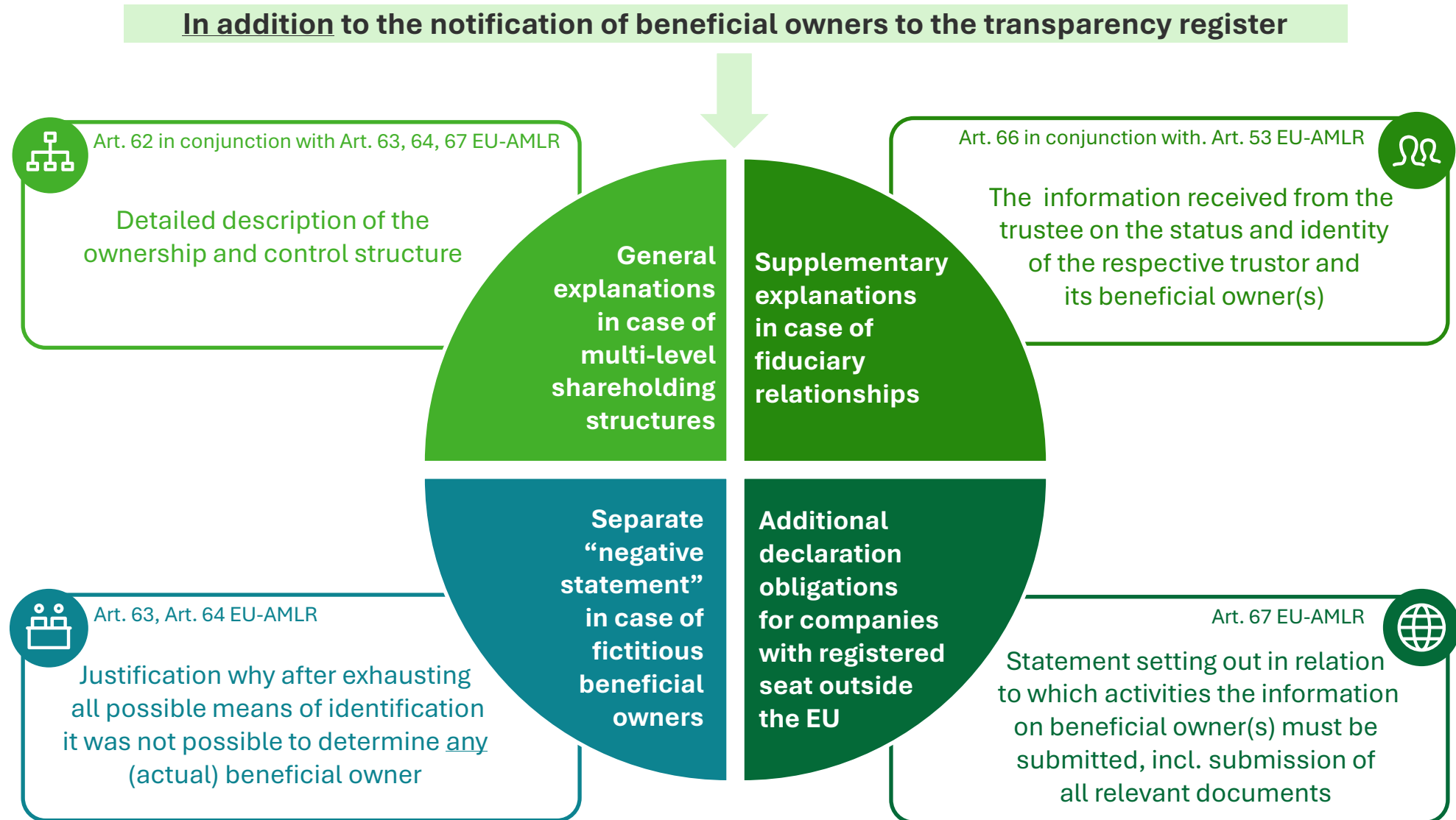
Documentation of the **information obtained**
from the beneficial owners or the shareholders



Separate records **of the actions taken in order to identify beneficial owners**
in case of notification of so-called
“fictitious beneficial owners”



New requirements for evidence & additional statements to be submitted



C. Recommendations & Outlook

Recommendations & Outlook

Preparation at an early stage:



- **Clarification of (new) notification obligations**, particularly for (i) non-registered partnerships (e.g. civil law partnerships; *GbRs*) and (ii) non-EU companies within the preparation of real estate transactions and in the context of public procurement



- **Review of the requirement/extent of new notifications**, particularly against the background of new calculation model applicable under future legal situation (e.g., required multiplication of percentages in share holdings) as well as **clarification/drafting of required documentation/evidence & statements**



- **In the case of “fictitious beneficial owners”**: Clarification of the scope of persons in the company (group) to be notified as fictitious beneficial owners in the future (“holding the position of senior managing officials“)



- **Follow-up on the adoption/content of national implementing legislation** concerning sanction and procedural law relevant parts of the EU Anti-Money Laundering (AML) package (particularly resulting from the 6th EU Anti-Money Laundering Directive), inter alia with respect to the required implementation of an “effective, proportionate and dissuasive” sanction mechanism

Recommendations & Outlook



Establishment of a centralized Compliance Management to avoid contradictory notifications, particularly:

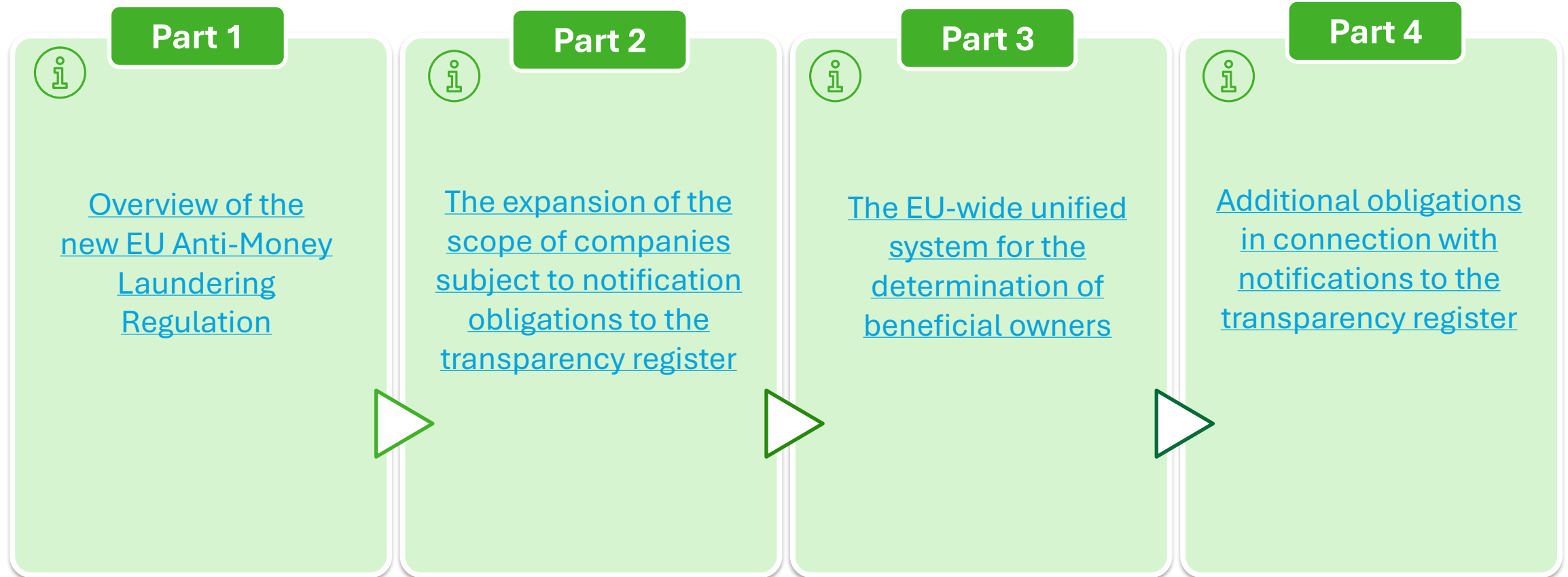
- in case of company groups | multi-layer structured group/affiliated companies
- in case of presence in several EU Member States (EU-wide interconnection of national transparency registers / BORIS)

D. Q&A



Thank you
for your attention

Deloitte Legal series of articles on the EU Anti-Money Laundering (AML) package



Deloitte Legal

Your contact



Jens Hoffmann

Attorney at law | Counsel
Corporate Law | Regulatory & Compliance

Deloitte Legal Berlin

Phone: +49 30 25468 236

Email: jenhoffmann@deloitte.de



Anna-Lena Kringel

Attorney at law | Senior Associate
Corporate/M&A | Regulatory & Compliance

Deloitte Legal Berlin

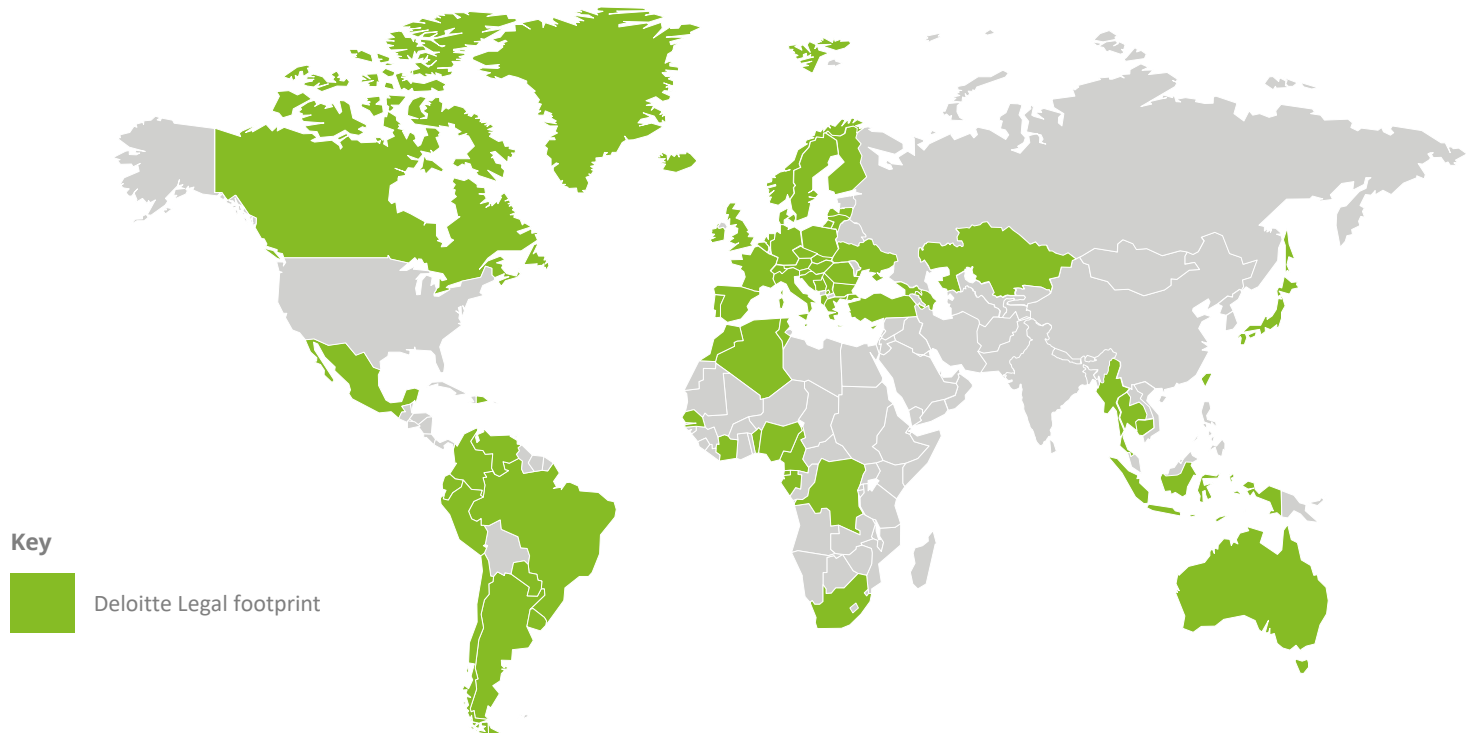
Phone: +49 30 25468 246

Email: akringel@deloitte.de

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