Foundation for
Family Businesses

Regulatory and financial burdens of EU legislation in four Member States

Conclusions from four comparative studies

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Stiftung Familienunternehmen
Prinzregentenstraße 50
80538 Munich
Germany
Phone: +49 (0) 89 / 12 76 400 02
Fax: +49 (0) 89 / 12 76 400 09
E-mail: info@familienunternehmen.de
www.familienunternehmen.de/en

Prepared by:

cep
Centres for European Policy Network
FREIBURG | BERLIN | PARIS | ROMA

cep
Kaiser-Joseph-Straße 266
79098 Freiburg im Breisgau
Germany

Dr. Lukas Harta, LL.M.
Dr. Anja Hoffmann
Dr. Matthias Kullas
Dr. Bert Van Roosebeke
Prof. Dr. Andrea de Petris
Marion Jousseaume
Lavinia Petrache, LL.M.

prognos
Wir geben Orientierung.

Prognos AG
Goethestraße 85
10623 Berlin
Germany

Jan Tiessen
Michael Schaaf
Jan-Felix Czichon
Lorenz Löffler
Paul Braunsdorf
Pia Czarnetzki

CSIL

CSIL
Corso Monforte 15
20122 Milan
Italy

Jessica Catalano
Sara Banfi
Anthony Bovagnet
Louis Colnot
Matteo Pedralli

alerion
AVOCATS

Alerion
137 rue de l'Université
75007 Paris
France

Carole Bui
Caroline Leroy-Blanvillain
Corinne Thierache

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A. Lessons learned – approaches to cutting red tape

Overarching results from the four-volume cross-European comparative study project on the burden of bureaucracy

Introduction

Between autumn 2020 and summer 2023, the Centres for European Policy Network and Prognos AG investigated on behalf of the Foundation for Family Businesses whether and how European legal requirements are implemented at the legislative and administrative level in Austria, France, Germany and Italy and what bureaucratic burden is associated with meeting these requirements. To this end, the legal implementation was evaluated in those four member states and a total of 177 companies and experts were interviewed to estimate the time and effort involved. In detail, key provisions of four European legislative acts were evaluated:

Comparison of four EU legislative acts in Europe

- **Issue of an A1 certificate** pursuant to Article 12 of Regulation 883/2004. Employers must apply for this certificate when they post an employee temporarily to another EU member state, even for just a short business trip. It documents that employees are covered by the social security systems in their home Member States.
- The notification of posted employees in the host Member State pursuant to Article 9 of Directive 2014/67/EU (**"Posting of Workers Directive"**).
- Entry in the **transparency register** pursuant to Article 30 of Directive 2015/849/EU.
- Preparation and maintenance of a record of processing activities pursuant to Article 30 and notification of personal data breaches to the competent supervisory authority pursuant to Article 33 of Regulation 2016/679/EU (**"General Data Protection Regulation"**).

The results of the studies have made it possible not only to quantify the bureaucratic burden, but also to contribute to an evidence-based discussion of ways to reduce the regulatory burden at the European and national level. In this position paper, we present six overarching conclusions from the four case studies, which are intended to encourage solution-focused debate on reducing bureaucracy.

I. It is a question of how: a substantial reduction can be achieved in administrative implementation

Substantial reduction of time and effort, e.g. by automatic register matching

Main conclusion from the four case studies in the four countries: even IF the legal situation is largely the same and differences in national transposition are only minor, companies face very different levels of burden in the countries that were compared. The critical difference is administrative implementation, which determines how much time a company actually has to invest to comply with the law. The implementation of the Anti-Money Laundering Directive shows the relevance of different approaches to administrative implementations. While most Austrian companies hardly notice the implementation due to automated data exchange between registers, companies in other Member States report high efforts for data entry and maintenance. In the case of the A1 certificate on the other hand, the compliance effort for Italian companies is almost 70 percent higher than in Austria, and still 40 percent higher for German companies, even though the legal situation is largely the same.

Possible solutions

- In designing the law, questions on how to implement it need to be tought of from the outset.
- What is needed is a change of perspective. In implementing regulations, legislators and administration should put the users first, how can they make it as straightforward as possible for companies to comply with the law? What information do I really need for enforcement? Is this information available as standard?
- When transposing European law, the EU should make it easier for implementing authorities in the member states to exchange information using suitable administrative procedures.

II. There is "digital" and there is "digital": user orientation is the key to efficiency

In all four provisons investigated, online processes are standard for filing applications and interacting with the competent authorities. However, one finding is that an online solution on its own is not enough. The solutions observed are neither particularly user-friendly nor do they make use of the full potential of digital solutions. In many cases, the online solution is simply a digital version of the former analogue form. Nevertheless, the case studies indicate how to relieve the burden: by using automated data reconciliation between existing registers and implementing the once-only principle, or by establishing company portals to facilitate application process management.

A strict user centricity makes digital solutions efficient.

Possible solutions

- A key approach to reducing the burden is to apply a user-oriented design to digital solutions, to test prototypes with companies and to continuously improve the solutions.
- Make use of all digital options: automated data reconciliation, automation, intuitive user guidance, provision of precise information, storage and management of one's own data etc.

III. Complicated and complex: the cost of gathering information is a key cost driver

Reading the law should help to understand the legislation – but unfortunately, reading is not enough. In all the legislative areas examined, becoming familiar with the legal situation and gathering information required a significant amount of time and effort, far exceeding the time needed for the actual notification process. Especially because the national and European requirements are sometimes difficult to understand. The national transposition of a single piece of EU legislation may sometimes be reflected in several national laws. Furthermore, many of the forms and templates are difficult to find and not self-explanatory. And finally there are often exemptions that are not always intuitive and therefore difficult to understand. This means that in many cases companies have to rely on external consultancy services in order to comply with the regulations. Ambiguous legal terms (especially in the General Data Protection Regulation) are also a problem, as they leave Member States much room for interpretation and thus create uncertainty in implementation.

Good advice and information needed to understand the law

Possible solutions

- Guidance is important: It should be part of the service orientation of administrations and public authorities to advise businesses on compliance.
- Reduce the amount of information required to a minimum and use existing information sources within the administrations.
- Increase accessibility via established channels and increase active communication.
- Provide hands-on guidance and tools to facilitate compliance.

IV. Exemptions by way of exception: making exemptions usable in practice

Many EU legislative acts contain exemptions, especially for small and medium-sized enterprises (SMEs). They are intended to protect these types of companies from excessive red tape. But the example of the General Data Protection Regulation shows that, in some instances, these exemptions do not apply. For example, companies with fewer than 250 employees are exempt from the obligation to keep a record of processing activities. However, this exemption applies only in very specific circumstances, i.e. only if the processing does not pose any risk to the rights and freedoms of the affected persons, the processing is occasional and no special categories of personal data as defined in Article 9 (1) GDPR are processed. But most companies with fewer than 250 employees do not meet these criteria so that they, too, have to keep a record of processing activities. Exemptions should therefore be clearly defined and comprehensibly set out. For example, in connection with reporting via the German posting portal, foreign companies report that checking whether they are eligible for an exemption is time-consuming and tedious.

Exemptions must be applicable in practice.

Possible solutions

- Clear and comprehensible definition of exemptions, if possible integration into a simple test logic for companies (“if a, then b”).
- Regularly review exemptions in empirical evaluations to establish their usability in practice (key question: are the exemptions used in the way expected?).

V. (Not a) game changer: gold plating and regulatory requirements

Gold plating, i.e. adding new national requirements on top when transposing European laws, is often suspected of contributing significantly to the bureaucratic burden on companies. Although gold plating was found in the areas of the legislative areas investigated, it was not a critical factor in driving the compliance effort. An exception is the notification of an employee posting in the respective host country. The additional proof and documentation requirements of some Member States significantly exceed the European standards. To a small extent, gold plating was also identified in the requirement to create and maintain a record of processing activities and to notify personal data breaches to the supervisory authority. The potential for cutting red tape by reducing gold plating is therefore limited. However, significant potential for reducing the regulatory burden results from the adjustment of requirements that influence the frequency of administrative contacts and application procedures without touching the material core of the respective regulation. For example: obligations to update entries in the transparency register annually, duration of the validity of an individual A1 certificate, or thresholds etc.

Gold plating is not the main factor driving the burden.

Possible solutions

- Avoid gold plating and reduce additions to an absolute minimum.
- Review timelines, frequencies and validity periods to reduce the number of administrative contacts and application procedures.

VI. A long way to go: harmonisation with conflicting objectives

The purpose of the study was to compare the implementation of four European legislative acts across Europe. As intended, transposition leads to broadly similar requirements in the Member States. However, differences in administrative practice and in national rules and regulations mean that harmonisation becomes less relevant for businesses. An intensive consideration of the national regulations remains necessary.

Companies with operations across Europe support further standardisation, including standardised requirements (GDPR) and application processes (standard registration portal, Posting of Workers Directive) and certificates (European social security ID, A1 certificate). A level of unease persists, however, in relation to Europe-wide data capture (European transparency register).

National differences continue to shape transposition

Language barriers continue to be a major obstacle, especially in terms of getting familiar with national law in the Member States, but also when submitting documents and certificates (for posting workers, for example).

The way the Posting of Workers Directive in particular has been transposed seems to suggest that the process under national law is used to protect domestic companies from competition from other EU Member States – in this specific case by imposing burdensome requirements to provide documentary evidence.

Possible solutions

- Continue European harmonisation of legal requirements and create European portal solutions.
- Use English as an official second language for information, counselling, certificates and documentation.

B. Burdens arising from the A1 Certificate – Summary of main results

Study „Regulatory and financial burdens of EU legislation in four Member States – a comparative study, Vol. 1: Regulatory and financial burdens arising from the A1 Certificate"

Key findings of the legal study (cep)

1. EU law stipulates that as a general rule, a person shall be subject to the social security legislation of one Member State only. Usually, this is the Member State in which the individual works, but in cases of temporary posting – maximum 24 months –, the law of the home Member State continues to apply.
2. In such cases, the competent social security institution of the home Member States issues, upon request, an attestation that its social security legislation is applicable. It is this attestation that is referred to as an A1 Certificate. EU law does not stipulate what information the application for an A1 Certificate must entail.
3. In addition, a person may want to be subject to the social security legislation of their home Member State although the conditions for issuing an A1 Certificate are not fulfilled, e.g. because the posting or deployment lasts longer than 24 months. In this case, the Member States concerned may agree to provide for an exception. The attestation that affirms the applicability of the home Member State's social security legislation in such cases is referred to as a "certificate according to Art. 16". EU law does not specify what information must be provided in the application for this certificate either.
4. Some information is required in the application for an A1 Certificate in all four researched Member States. These are:
   - name, contact details, register number and primary country of activity of the employer;
   - name, date of birth, sex, nationality, social security number/fiscal code and address (both in the state of residence and in the state of posting) of the posted employee;
   - state and place of posting, type of work carried out and envisaged period of posting.

Each Member State asks for additional information.

5. In addition, each researched Member State requires some information that none or only some of the other require. For instance, Austria, France and Germany require information on the employer's sector of activity; Austria and Germany the employer's legal form and whether the employee was posted to the same Member State in the two months prior to the current posting; Austria and France the beginning date of the employment relationship; Germany whether the German social security legislation applied for the posted employee for at least one month immediately before the posting; Italy the employer's date of establishment and the date on which the employment contract was signed; and France whether the employee had been posted to the same undertaking in the past. As all Member State researched require some information that none or only some of the other require, it is highly likely that all four Member States can reduce the information requirements and thus bureaucratic costs.

A1 Certificate: reduction potential for information requirements in all four states

6. Regarding the application for a certificate according to Art. 16, no information is available for Italy. Austria, France and Germany all require:

   - name, address and sector of activity of the employer as well as the extent to which their business activity is carried out in the posting state;
   - host state, place where the work will be carried out and the period for which the certificate is applied for;
   - the employee's name, date of birth, nationality, social security number and the name of their social security organisation before the posting;
   - the date on which the employee joined the company, who is responsible for remuneration during the posting, whether the employment relationship in the home Member State continues throughout the posting and whether there is a contract between the employee and the host company.

7. In addition, Austria, France and Germany require information that is not required in (all) the other researched Member States. For instance, France requires the employer's and the host company's total number of employees and posted employees as well as the employee's place of birth; Austria and France the name of the host company and whether the posting is intra-group; Austria and Germany whether social security contributions continue being paid in the home Member State; Germany whether the employee worked in the past two years in the country which the certificate is now applied for; and Austria the employee's address in the state of residence. Given the different information requirements in Austria, France and Germany, it appears very likely that information requirements and thus bureaucratic costs can be reduced in all three Member States.

Streamlined and simple application procedures needed

8. In terms of digitisation, electronic applications for both the A1 Certificate and the certificate according to Art. 16 are possible in Austria, Germany and Italy. In France, an electronic application for an A1 Certificate is only possible for postings up to three months and impossible for certificates according to Art. 16. As all four Member States require a lot of

information, it is very important to offer streamlined and simple application procedures in order to minimise bureaucratic costs.

Key findings of the assessment of the regulatory burdens (Prognos AG and CSIL)

Approach

1. Part B of this study **compares the regulatory burdens related to the issuance of the A1 Certificate** in four European countries based on the concept of compliance cost. The empirical assessment is informed by a total of 82 interviews conducted with companies and experts across the four Member States.

Current practice

2. All four countries **offer an online solution to apply for the A1 Certificate**. The ease of use differs considerably between countries. While France now offers a fully automated process and Austria relies on an established portal (ELDA), the German and Italian solutions require more input from the users.

3. The **total time to apply for an A1 Certificate** varies considerably between over 30 minutes in Italy and just under 20 minutes in Austria and France. In Germany, the average time was estimated to be around 26 minutes. This includes the time to compile and submit the information and distribute the Certificate.

   Leanest processes in Austria and France

   This total time taken translates into compliance costs ranging from around seven euros per application in Austria (6.80 EUR) and France (7.12 EUR) to above ten euros in Italy and Germany (10.28 EUR). Total economic cost are highest in Germany (around 16.7m EUR in 2019), and lowest in Austria (0.66m EUR), followed by France (0.83m EUR) and Italy (1.66m EUR). However, this mainly reflects the vast differences in the number of A1 Certificates issued in the respective countries.

4. Prior to applying, companies must **familiarise themselves with the legal requirements**. Efforts to familiarise with the regulation differ between the four countries and have been described as particularly high in Germany.

5. The time required for **compiling the information to be submitted** (e.g. on wages) differs between the countries. France recently introduced a once-only solution, providing a pre-filled form using social security data, thus reducing the time to compile and fill in the data considerably.

6. **Filling in the provided online forms** differs as well between countries. In particular, the French once-only solution and the use of the ELDA portal in Austria reduce the time needed to fill in the forms, while e.g. the German solution does not allow saving employee data, thus requiring re-entering the data for every application.

7. **Processing and delivery time of the Certificate** by the responsible authorities follow a similar pattern. In France, the application is usually processed instantaneously and can be downloaded from the portal. While legally required to issue the Certificates within three working days, companies reported longer waiting times in Italy and Germany. Even short-term delays in the issuance of the Certificates are, however, an obstacle to complying with the regulation, in particular in border regions, where working across the border on short notice is not uncommon.

Proposals for reducing administrative burdens

8. Introducing a **European Social Security Card** as a proof of national affiliation with social security cover – modelled according to the principles of the European Health Insurance Card – could substantially reduce the need for frequently issuing A1 Certificates to the same persons.

9. **Merging the requirements and processes** of the A1 Certificate and the Posting of Workers Directive as well as making the process available through a central EU-wide portal, giving companies a single point of access when posting workers abroad. However, this would require substantial cooperation and harmonisation between Member States, making such a portal more of a long-term solution.

Application of once-only principle and use of unique identifiers would lead to more user-friendlyness

10. In the short to medium term, Member States, in particular Germany, should aim to set up portals, bundling all relevant information on posting abroad and allowing the application for A1 Certificates in a user-friendly way, in particular by applying the once-only principle and using unique identifiers (such as the tax ID in Germany).

11. Simplifying requirements for some forms of posting abroad, e.g. by the length of stay (under five days), in border regions, or for specific types of working such as teleworking ("workation").

C. Burdens arising from the Posting of Workers Directive – Summary of main results

Study „Regulatory and financial burdens of EU legislation in four Member States – a comparative study, Vol. 2: Burdens arising from the Posting of Workers Directive"

Key findings of the legal study (cep)

1. EU law provides that Member States may impose administrative requirements and control measures necessary to ensure effective monitoring of compliance with EU posting of workers law. It does not, however, oblige the Member States to impose such measures. It provides the following non-exhaustive list of measures that Member States may impose:
   - an obligation for employers and temporary work agencies established in another Member State to make a notification to the responsible national competent authorities containing the relevant information necessary allowing factual controls at the workplace, including:
     - the identity of the employer or temporary work agency,
     - the anticipated number of clearly identifiable posted or hired-out workers,
     - the persons referred to in the two preceding bullet points,
     - the anticipated duration, envisaged beginning and end date of the posting or hiring out,
     - the address(es) of the workplace, and
     - the nature of the services that the posted or hired-out workers are to carry out,
   - an obligation to keep or make available and/or retain copies of the employment contract or an equivalent document, payslips, time-sheets indicating the beginning, end and duration of the daily working time and proof of payment of wages or copies of equivalent documents,

- an obligation to deliver such documents, after the period of posting, at the request of the authorities of the host Member State, within a reasonable period,
- an obligation to provide a translation of the documents into (one of) the official language(s) of the host Member State or into (an)other language(s) accepted by the host Member State,
- an obligation to name a contact person to liaise with the competent authorities in the host Member State in which the services are provided and to send out and receive documents and/or notices, if need be, and
- an obligation to name a contact person, if necessary, acting as a representative through whom the relevant social partners may seek to engage the service provider to enter collective bargaining within the host Member State during the period in which the services are provided.

2. In terms of scope of application, while Austrian, French and Italian legislation covers all sectors, Germany's covers specific sectors only. Furthermore, all researched Member States provide certain exemptions from the notification duties, e.g., in Germany, for some instances of family relationships. These exemptions are entirely different from state to state.
3. As far as notifications are concerned, each researched Member State uses almost all the categories of information requirements listed by EU law. All of them require
   - the name and address of the service provider,
   - the name and date of birth of each posted worker,
   - the name of a contact person to liaise with the authorities,
   - the anticipated beginning of the posting (each state also requests the anticipated duration and/or the foreseeable end date),
   - the address of the workplace, and
   - some information on the nature of services justifying the posting (different between the states; while Germany asks for the industry branch, Austria requests the business licence).
4. Only Italy uses the category "contact person for collective bargaining" and requests the name and address of such a person.
5. Each researched Member State requests several other pieces of information linked to the categories enumerated in EU law. For instance, Austria and France request the service provider's VAT number, the posted worker's address, citizenship and work exercised in Austria/France. Furthermore, France and Italy require the posted worker's place of birth, whereas Austria, Germany and Italy request the contact person's address, Germany the contact person's date of birth and Austria the posted worker's social security number.

6. In addition, Austria, France and Germany also require some pieces of information that are not referred to in EU law. In Germany, it is the precise dates and working times, specified for each day, for shift or night workers that work at more than one workplace on the same day. Austria and France request, inter alia, the name and address of the client and the name of the executives of the posting company. Moreover, Austria requests, e.g., information on the remuneration to which the worker is entitled, the length and distribution of working hours and the beginning date of the employment relationship. France requests, e.g., the application for an A1 Certificate, the hourly remuneration and the date on which the employment contract was signed.

Each Member State asks for additional information.

7. Language policies differ significantly. Italy only accepts notifications in Italian, whereas Germany accepts German, English and French. France approves French, German, English, Spanish and Italian. Austria accepts 11 different languages.

Notifications in foreign languages not accepted by Italy

8. EU law also contains a list of documents which host Member States may – and the researched Member States do – require to be kept available for inspection:
   - working contract or equivalent document,
   - payslips,
   - proof of payment and
   - working time records.
9. Additionally, Member States require some documents to be kept available that are not referred to in EU law. This includes the A1 Certificate in Austria, France and Italy, wage records in Austria, and if required in the posting country, a work permit from the posting country in Austria and France.
10. In all researched Member States, notifications can be submitted and documents kept available electronically.
11. Considering the above, we arrive at the following conclusions: First, determining whether a notification is required appears to be quite burdensome, especially in Germany. Second, France requires a particularly large body of information, both regarding categories of information referred to in the Enforcement of Posting of Workers Directive (EPWD) and categories of information not referred to in the EPWD. Furthermore, France requires more documents to be kept available than the other Member States examined. Consequently, making postings to France burdensome seems to be intended by French authorities. In the other Member States researched, posting notifications also appear to be more burdensome than necessary due to disinterest in reducing regulatory burden.

Key findings of the assessment of the regulatory burdens (Prognos AG and CSIL)

Approach

1. Part B of this study **compares the regulatory burden related to posting of workers** in four European countries based on the concept of compliance costs. The empirical assessment of this study is informed by a total of 82 interviews conducted with companies and experts across the four Member States.

Current practice

Posting workers to France takes longest.

2. **Companies face substantial burdens** in complying with the Posting of Workers Directive. The estimated effort required to register a posting to one of the four countries surveyed ranges from 66 minutes in Austria and Germany to 80 minutes in France. For Italy, the time required is 71 minutes.

3. Companies need to register their posted workers in the host country. Thus, the regulatory and financial burdens of national regulation fall on foreign companies only, reducing the incentive of national administrations to offer streamlined services.

4. In all countries, **registration of posting is available as an online service**, either via a website (Austria) or an online portal (France, Germany, Italy). Information on legal requirements and procedures is provided on the portals or linked to other websites. However, the userfriendliness of the online platform varies between the countries (e.g., changes to the posting can be made and confirmed digitally).

5. Before registration, **substantial efforts are required to familiarise with the relevant national regulations**. These can range from six hours, to up to two and a half working days. Businesses tend to be overwhelmed by the multitude of national requirements related to the Posting of Workers Directive (e.g. identifying applicable exemptions in Germany or navigating the more than 800 separate collective agreements in Austria).

Companies outsource administration of postings

6. **Language barriers and requirements are driving up costs** of acquiring necessary information, registering on the relevant websites and, in particular, the requirements of translating documents into the language of the host countries (e.g. contracts). Due to the efforts required and the legal complexity, companies increasingly outsource the management of their postings abroad, further increasing costs.

Clear signs of gold plating in all states

7. The analysis of the information obligations **shows clear signs of gold plating**, with additional and more stringent information and reporting requirements in Austria and France, such as requiring proof of medical examination. In addition, companies indicated that compliance with the requirements is monitored more strictly in Austria and France. The Member States make different use of exemptions from the posting requirements, with Germany having the broadest exemption. Companies perceive the stringency of regulation

and enforcement in Austria and France as an attempt to impede access to the respective markets.

Proposals for reducing administrative burdens

8. **Harmonising EU-wide requirements** by defining a common list of exemptions, reducing and standardising the documentation requirements to the most necessary and allowing the use of English as a common language for translating documents and providing information on national systems.
9. **Merging the application process** for A1 certificates and posted workers and setting up a uniform reporting portal for both documentation requirements. The model for such an EU-wide portal could be the Internal Market Information (IMI) website, recently launched for road traffic notifications.
10. If an agreement at the EU level, in this case, is not foreseeable, **strengthening of national portals** is recommended, providing companies with all the necessary information on the requirements of other EU Member States on posting workers, thus reducing the cost of searching for relevant information.
11. Further **exempting short-term work** from posting requirements under the directive, e.g. for cross-border repairs or services or emergency assignments.

D. Burdens arising from the transparency register of the Anti-Money Laundering Directive – Summary of main results

Study „Regulatory and financial burdens of EU legislation in four Member States – a comparative study, Vol. 3: Burdens arising from the transparency register of the Anti-Money Laundering Directive"

Key findings of the legal study (cep)

1. EU law requires Member States to install central transparency registers to combat money laundering. These may take the form of a public register or an existing commercial register. EU law is silent on exchanging information between transparency registers and other current registers.
2. The "beneficial owners" of corporate and legal entities must be found in the transparency registers. This obligation does not apply to companies listed on the stock market.
3. Beneficial owners are defined in EU law as natural person(s) who ultimately own or control a corporate or legal entity through direct or indirect ownership of a sufficient percentage (i.e. more than 25 per cent) of the shares or voting rights or ownership interest in that entity. In the absence of such natural persons, the senior management shall be considered as a beneficial owner.
4. Covered entities must, by EU law, "obtain and hold adequate, accurate and current information" on beneficial owners. This information includes "the details" of the beneficial interests held and must be held in the transparency register.
5. Austria, France and Italy provide an extensive list of entities that are subject to the notification duty. Under German law, the responsibility falls on all legal persons under private law and registered partnerships with a statutory seat in Germany. Despite the exception for companies listed on the stock market, Austria, Germany and Italy also subject them to the notification duty.

Germany, Austria and Italy extend the notification duty further than required.

6. In all researched Member States, direct beneficial ownership is established through owning more than 25 per cent of the shares or voting rights. In Austria and Germany, direct beneficial ownership can also be established through pooling and voting rights agreements, in Germany additionally through de facto veto rights.
7. Indirect beneficial ownership is established in Austria, Germany and Italy if a natural person controls a legal entity that has direct control over another. In France, it is, inter alia, joint and inseparable ownership of more than 25 per cent by natural persons.
8. In all researched Member States, legal representatives or managers are considered beneficial owners as residuals.

The periods for updating obligations vary

9. All researched Member States require the notification of the name, date of birth, place of residence and nature/scope of interest of the beneficial owner. Austria, France and Italy also require the place of birth, whereas Austria, France and Germany also request the nationality.
10. In France and Italy, changes must be communicated within 30 days, in Austria within four weeks. In Germany, updates must be made directly. Additionally, Austria has a yearly verification duty.

Austria as a role model: urgent need to take over data from other registers

11. Austria uses data available in other registers for the transparency register so that many entities do not have to make notifications themselves. Germany abandoned a comparable practice in 2021.

Key findings of the assessment of the regulatory burdens (Prognos AG and CSIL)

Approach

1. Part B of this study compares the regulatory burden related to the introduction of a transparency register in four EU Member States based on the concept of compliance costs. The empirical assessment is informed by a total of 33 in-depth interviews conducted with companies and experts across the four Member States.

Current practice

Discrepancy within the EU internal market: stand alone register in Germany; missing implementation in Italy

2. As of November 2022, transparency registers are operational in three of the four Member States surveyed. The implementation of the Italian register has been delayed due to legal reasons. Despite the fact that technical preparations have been finalised, the register is still inoperative in March 2023. In Austria, France and Italy, the registers are part of the business registers ("sectional registers"), while Germany introduced – after a transition period – a stand-alone register.

3. The information requirements of the transparency registers are broadly similar across countries with only slight differences. There is no obvious evidence of countries adding substantial additional burdens to the register in the sense of gold plating. However, the analysis clearly shows how different approaches to implementation result in substantially different amounts of burden despite applying the same information requirements.

4. All four countries (will) offer a digital portal to provide and update the necessary information in the transparency register. In Austria, an automated data exchange has been implemented between the business register and the transparency register, substantially reducing the regulatory burden for around 80 per cent of businesses. Conversely, the end of the "Mitteilungsfiktion" in Germany resulted in substantially increased burden for businesses after the end of a transitional period.

5. Comparing time and costs required to comply with the legal requirements clearly shows the benefits of the "once-only", automatic registration process. While most businesses in Austria expended no time at all, businesses in Germany spent up to 45 minutes for the initial registration, compared to 20 minutes in France and 32 minutes for the around 20 per cent of Austrian companies not covered by the automatic registration.

Initial registration takes longest in Germany

6. When calculating administrative burdens, user fees must be included as well, changing the costs substantially. Costs in Austria are between 0 and 19 EUR, 28 EUR in Germany, but 33 EUR in France. Registration fees make France the country with the highest costs for the initial registration.

Highest registration fees in France

7. All countries require updates to the register, either on a regular basis or if underlying data change. Here as well, Austria has the lowest burden (between 0 and 6 EUR) while France has the highest burden (49 EUR), mostly due to fees of 43 EUR. Germany also requires fees for the maintenance of the data (23 EUR), resulting in total costs of 34 EUR. Due to the registers having been implemented only recently, there are no reliable data on how often updates are conducted in practice.

Updating the French register is most expensive.

8. While the administrative burden of the transparency register is fairly small for businesses with simple ownership structures, larger, privately owned companies with more complex ownership structures are disproportionally affected. Preparing the necessary information and keeping it up to date for subsidiaries has been described as resource intensive and challenging.

9. The concerns about security, data and privacy protection remain one of the main barriers for companies to fulfil the requirements of the transparency register. A centralised, publicly accessible database containing private information runs contrary to the desire of company officials and beneficial owners to protect their private data.

Proposals to reduce administrative burdens

10. Having national transparency registers for companies operating in a multinational environment increases the burden for businesses. The aim should be to create a single European transparency register.

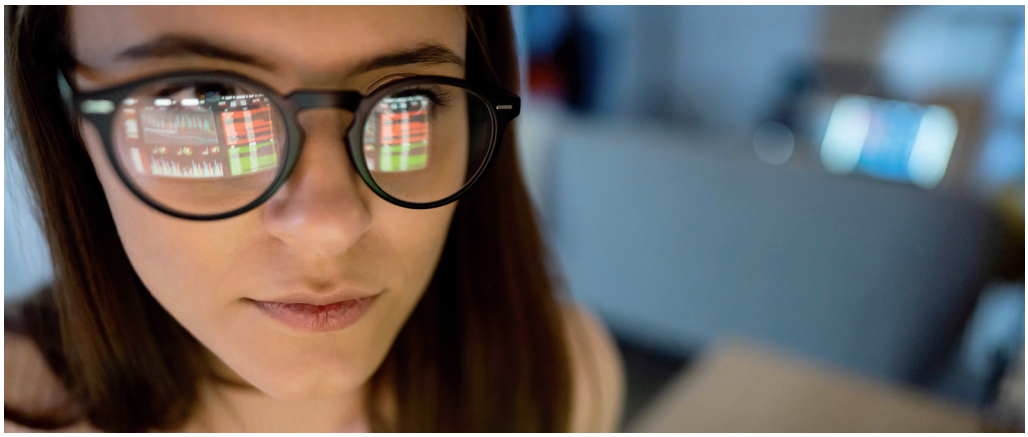
Once-only principle would reduce burden substantially

11. As this would be a long-term option, we recommend increasing the use of the once-only principle on a national level. The case of Austria shows the potential for substantially reducing the administrative burden through automatic data exchanges.

12. The functionality of the national registers should be improved. Many perceived burdens are the result of user-unfriendly digital solutions and processes. Possible improvements include options to centrally manage the entries of multiple subsidiaries, avoiding repetitive data entries on beneficial owners as well as reminders as to when data needs updating.

13. Finally, improve support and advice to companies through personal contact points and comprehensive and understandable information material and guidelines.

E. Burdens arising from Art. 30 and 33 of the General Data Protection Regulation – Summary of main results



Study „Regulatory and financial burdens of EU legislation in four Member States – a comparative study, Vol. 4: Burdens arising from Art. 30 and 33 of the General Data Protection Regulation"

Key findings of the legal study (cep and Alerion)

1. Part A of this study compares the regulatory burden related to the compliance with two provisions of the EU General Data Protection Regulation (GDPR) in Austria, France, Germany and Italy. The study focusses on the legal and administrative requirements with regard to
   - the preparation and maintenance of a record of processing activities according to Art. 30 GDPR and
   - the requirements related to the notification of personal data breaches to the competent supervisory authority according to Art. 33 GDPR.
2. Art. 30 GDPR requires controllers and processors of personal data to maintain a record of processing activities (RPA) containing a range of information on the data processed by the company, including
   - the name and contact details of the controller,
   - the purposes of the processing,
   - a description of the categories of data processed and of the categories of affected data subjects,
   - the categories of recipients to whom such data are being disclosed,
   - an indication of whether the data are transferred to a third country and,

- where possible, the timelines for the deletion of the data as well as a general description of the technical and organisational security measures applied to the data by the company.

No definition of "processing activity" in Art. 30 GDPR

3. Since the information listed above must be provided for each "processing activity", the volume of the RPA depends on the understanding of the notion of a "processing activity". However, the term is not defined in the GDPR. While the Austrian and the Italian data protection authorities (DPAs) do not provide any relevant help here, it becomes clear from the guidance given by the French and the German[1] DPAs that not every single processing operation must be included in the RPA, but a certain abstraction can be made. However, the appropriate level of abstraction is not entirely clear.
4. Overall, the levels of guidance and help given on the websites of the national DPAs on how to draft an RPA differ significantly between the four Member States researched. While the Austrian DPA does not provide a template and gives only very little information on the duties in relation to the drafting of an RPA, the other authorities provide significantly more guidance and help.
5. As the GDPR lists the information to be included in the RPA without detailing it, the official templates provided by the national DPAs differ to a certain extent. For example, other than in Austria (where there is no official template at all) and in Italy, the German and French templates clearly list which exact contact details must be indicated. Although a more comprehensive template seems to create a greater burden, it makes it clearer for the controller what level of granularity of information is required.
6. Some of the Member States researched request additional information to be included in the RPA, which can be regarded as gold plating; however, the extent of gold plating is marginal.
7. The bureaucratic burden with regard to the drafting of an RPA also depends on the availability and user-friendliness of the official templates provided by the competent DPAs.

Exemption for smaller enterprises applies rarely

8. The exemption for smaller enterprises with fewer than 250 employees from the obligation to maintain an RPA in Art. 30 (5) GDPR largely runs dry. As the counter-exceptions are wide, the exemption rarely applies.

Room for simplification and improvement

9. Based on the above, we issue the following recommendations: The bureaucratic burden could be reduced by the provision of improved official templates for an RPA which meet the following criteria:
   - they are harmonised and translated into the respective national language,

1 Germany has a federal system of data protection supervision. It consists of the DPAs of the Federation (the "Bund") and the 16 federal states (the "Länder"). As far as the data protection supervisory authorities of the federal states are the competent authority, this study is based on the templates and guidance provided by the Landesbeauftragter für Datenschutz und Informationsfreiheit (LfDI) Baden-Württemberg.

- they combine the advantages of existing templates of national DPAs, e.g. by
  - being clearly structured,
  - being self-explanatory or containing direct links to sources where further information is available,
  - offering checkboxes or, preferably, drop-down menus at least for the most relevant information (like the template of the French DPA),
- they provide more help for small and medium-sized enterprises on how to create a simplified RPA.

10. Art. 33 GDPR obliges the controller to document personal data breaches and to report specific data breaches to the competent data protection authority. The notification must be made "without undue delay" and, "where feasible", within 72 hours after the controller has "become aware" of the breach.

11. The GDPR defines a "personal data breach" as a security breach which leads to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data which are transmitted, stored or otherwise processed.

12. According to Art. 33 GDPR, the notification shall contain at least
    - a description of the nature of the personal data breach,
    - the name and contact details of the data protection officer or other contact point where more information can be obtained,
    - a description of the likely consequences of the personal data breach and
    - a description of the measures taken or proposed to be taken by the controller to address the personal data breach.

13. In addition, France, Germany[2] and Italy request some information that is not required by the GDPR. For instance, France and Italy ask, inter alia, for security measures taken before the data breach and the data breach's estimated level of severity. We consider these requirements to be gold plating.

Gold plating by France, Germany and Italy

14. Interestingly, not all notification forms request every piece of information that Art. 33 GDPR requires. For instance, the German online notification form does not require the name and contact details of the data protection officer.

15. Overall, the information to be included in the notification varies significantly in terms of its level of detail. The Austrian form requests the smallest amount of information, followed by the German, French and Italian form. However, it must also be considered that the Italian form operates mainly with checkboxes as opposed to the open text boxes that the Austrian

2 For Germany, the notification form of the LfDI Baden-Württemberg was analysed.

and German forms use predominantly. Furthermore, while Italy requests more information than the other three Member States, it also provides guidance on some aspects that are not further specified in the other Member States, for example, regarding the measures taken or proposed to be taken by the controller to address the personal data breach.

Prevention of gold plating and user-friendly notification forms recommended

16. Based on the above, we issue the following recommendations:
    - Member States should refrain from requesting information that is not required by the GDPR and
    - notification forms should be made more user-friendly, e.g. by using checkboxes instead of open text boxes.

Key findings of the assessment of the regulatory burdens (Prognos AG and CSIL)

Approach

1. Part B of this study compares the regulatory burden related to the implementation of Art. 30 and 33 of the **General Data Protection Regulation (GDPR)** in four EU Member States based on the concept of compliance costs. The empirical assessment is informed by a total of 67 in-depth interviews conducted with companies and experts across the four Member States.

Current practice

2. Art. 30 GDPR requires businesses to document all processing activities involving personal data in a record of processing activities (RPA). If a data breach occurs, companies are, according to Art. 33, obliged to notify the supervisory authority within 72 hours. Apart from one exception, all companies surveyed had fully implemented the requirements of Art. 30 and 33.

3. In practice, the exception for small and medium-sized enterprises under Art. 30 (5) cannot be used by businesses, as almost every company handles special categories of data under Art. 9 (1) (e.g. payroll accounting) and is thus obliged to create and maintain an RPA.

4. **The notification process under Art. 33 can be conducted digitally.** In France and Italy, the notification must be submitted to the authority via an electronic form; in Austria via mail or e-mail and in Germany depending on the regulations of the data protection authority of the respective federal state, often as an electronic form, alternatively by e-mail or phone.

5. **The implementation of and compliance with Art. 30 and 33 require substantial efforts on the part of the companies.** No country-specific differences for the imposed

burdens have been identified in the comparative study. Instead, the burdens are related to the size of the company and the number of processing activities.

6. **Due to insufficiently defined legal terms, companies rely heavily on official information and templates to comply with Art. 30 GDPR.** As the GDPR does not define what a "processing activity" is, but rather only contains a wide definition of the term "processing", meaning any operation involving personal data, companies across all Member States used templates that were either provided by the authorities, consultants or, in rare cases, by companies themselves.

Uncertainties due to insufficiently defined legal terms shape corporate practice

7. **Especially large and micro-enterprises are affected by the regulations of Art. 30 GDPR.** Micro-enterprises often do not have sufficient resources and/or competencies and are therefore particularly dependent on external service providers, which results in additional costs. Large companies, on the other hand, often have more complex business models that operate with personal data.
8. The study shows extensive use of external consultancies supplementing the internal efforts. External expertise was necessary to ensure a timely and sufficient level of compliance to prevent sanctions and damage to the companies' brand reputation.
9. **Companies with B2C business models faces substantial burdens due to Art. 30 GDPR** as B2C approaches result in a particularly high number of processing activities.
10. **The maintenance and updating of the RPA represent substantial annual expenses perceived as a distinct burden.** Companies spend annually an average of one hour per processing activity to maintain the included information. There was no country difference identified; thus, compliance costs are dependent on the size of the company and RPA, ranging from 30 to 40 hours for micro- and small enterprises and from 92 to 297 hours for medium-sized and large enterprises. The majority indicated that the RPA is used only for compliance reasons; accordingly, these efforts are perceived as a special burden.

Maintenance and updating of the RPA are not subject to country-specific differences, but generate significant costs.

11. **Internal processes and the risk assessment require the most time and effort for companies when reporting data breaches.** The data protection officer must be informed of the data protection incident and conduct a risk assessment to decide whether the incident must be reported to the authority. Risk is also indeterminate, which is why assessment frequently involves significant effort and is perceived as a burden.
12. **The implementation of the notification process is not a specific burden, except in France.** The online form in France imposes a burden because it lacks user orientation and a good user experience (e.g. through intuitive user interface, clear instructions as well as the possibility to store recurring details). For example, it is not possible to save entries for later use or to return to previous pages for adjustments. In Italy and some federal states in Germany, there are also online portals, but these were not mentioned as a burden. Otherwise, the notification is made by e-mail or via predefined forms that must be sent to the authorities. In Austria, the predefined form is mandatory.

Proposals for reducing administrative burdens

13. **More precise definitions of indeterminate legal terms.** Indeterminate legal terms create uncertainty, additional efforts and consultancy costs. The GDPR should be amended by commenting or changed to clearly define the terms used. This would also make it possible to unify and standardise templates for records of processing activities (RPA) for all Member States.

SMEs need legal certainty in the use of the opening clause.

14. **Enforcing the opening clause for small and medium-sized enterprises.** The practical implementation of the opening clause for small and medium-sized enterprises would reduce the burden on companies significantly. This requires a clear definition of which data subject to special protection under Art. 9 (1) GDPR may be processed without the need to create a RPA.

15. **Improved support from official authorities.** Consultancy services as well as best-practice examples, templates and information that are particularly practice-oriented and thus provide immediate value added for affected companies.

16. **Consistent reporting procedure among data protection authorities, considering user-centricity, fluent user experience and automation.** The administrative implementation of Art. 33 should be standardised as an online solution to reduce the time per notification. Reporting via automated and user-friendly online platform saves time, especially if company data can be stored and/or typical cases can be recalled.