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Research Report

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

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Regulatory and financial burdens of EU legislation in four Member States – a comparative study

Vol. 2: Burdens arising from the Posting of Workers Directive



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Comparing legislation as well as regulatory and financial burdens in four EU Member States



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"

This study is part of a larger project investigating whether and how European legislation is implemented in selected EU Member States on the legislative as well as administrative level and what (different) bureaucratic burdens are associated with their fulfilment in comparable family businesses. The project was started in autumn 2020; it covers Austria, France, Germany and Italy and deals with a selected number of European directives and regulations. This part of the project covers the EU Posting of Workers Directive and focusses on the administrative requirements for posting workers to Austria, France, Germany and Italy.

The study contributes to an evidence-based discussion on reducing regulatory burdens at the European and national levels by comparing the transposition and implementation of European legislation protecting posted workers and assessing the regulatory burden related to the EU Posting of Workers Directive. Part A – the comparison of the legislation – was completed in early 2021, Part B – on the economic assessment of the regulatory burdens – was finalised in autumn 2022.

The EU Posting of Workers Directive and its Enforcement Directive aim to ensure the equal treatment between posted workers and regular workers employed in the host Member State in areas such as minimum wage, remuneration, working hours and safety at work.

The study was made possible by numerous family businesses, chambers, consultancies and other experts that agreed to share their experiences with the posting of workers to other countries with the authors of this study. We are grateful for their commitment and the time spent on the interviews. Thank you!

Moreover, we would like to thank the Regulatory Control Council Baden-Wuerttemberg (Normenkontrollrat Baden-Württemberg), who had co-initiated and actively supported the study from 2019 to 2022.

Summary of main results

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.
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

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).
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.

*Posting workers
to France takes
longest.*

*companies out-
source administra-
tion of postings*

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.

*clear signs of
gold-plating in
all states*

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.

Part A: Comparative legal study by cep on administrative requirements related to the posting of workers to other Member States

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I. Introduction

The Posting of Workers Directive¹ was issued in 1996 and amended in 2018² (a corrigendum being issued in 2019³). It applies to undertakings established in a Member State⁴ which, in the framework of the transnational provision of services, post or hire out workers to the territory of a Member State. It stipulates the principle of equal treatment between posted workers and workers regularly working in the host Member State in areas such as minimum pay, working time and work safety. To ensure the enforcement of the Posting of Workers Directive, an Enforcement Directive⁵ (Enforcement of Posting of Workers Directive, hereinafter EPWD) was issued in 2014.

In the following, this study differentiates between two constellations:

Constellation 1: A company established in a Member State posts workers to another Member State within a regular employment relationship framework.

Constellation 2: A temporary work agency established in a Member State hires out workers to a user undertaking to work in another Member State.

While the EPWD does not differentiate between these constellations, the national legal orders of the Member States analysed in this study often foresee different administrative requirements for them. Terminologically, this study will refer to, in the first constellation, an “employer” who “posts” “workers” and in the second to a “temporary work agency” that “hires out” “workers” to a “user undertaking”.

Art. 9 (1) EPWD provides that Member States may impose those administrative requirements and control measures necessary in order to ensure effective monitoring of compliance with EU posting of workers law. It does not, however, oblige the Member States to impose such

-
- 1 Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, available at <https://eur-lex.europa.eu/eli/dir/1996/71/oj>.
 - 2 Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, available at <https://eur-lex.europa.eu/eli/dir/2018/957/oj>.
 - 3 Corrigendum to Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, available at <https://eur-lex.europa.eu/eli/dir/2018/957/corrigendum/2019-03-29/oj>.
 - 4 For this study, the term “Member State” encompasses EU Member States, EEA countries and Switzerland.
 - 5 Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System, available at <https://eur-lex.europa.eu/eli/dir/2014/67/oj>.

measures. More specifically, Art. 9 (1) EPWD provides the following non-exhaustive⁶ list of measures that the 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 at the latest at the commencement of the service provided by the posted or hired-out workers, into (one of) the official language(s) of the host Member State, or into (an)other language(s) accepted by the host Member State, containing the relevant information necessary in order to allow 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, in paper or electronic form, 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 during the period of posting or hiring out in an accessible and clearly identified place in its territory, such as the workplace or the building site,
- 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. That person may be different from the person referred to under the previous

⁶ Art. 9 (1) EPWD states that “Member States may in particular impose the following measures”.

bullet point and does not have to be present in the host Member State, but has to be available on a reasonable and justified request.

This section examines administrative requirements in Germany, Austria, France and Italy which undertakings posting or hiring out workers to these Member States must fulfil. Notably, it examines who must register a posting or hiring out, the information that must be provided, documents that must be kept available and additional administrative requirements that go beyond the ones listed in the EPWD.⁷

II. Austria

1. Legal sources

a) Primary national legislation

In Austria, the provisions of the EPWD on the duty to notify of a posting or hiring out, the notification of a contact person and the requirement to keep documents available were originally transposed in the Act Amending Labour Contract Law (Arbeitsvertragsrechts-Anpassungsgesetz, hereinafter AVRAG).⁸ In 2016, those AVRAG provisions were repealed and the subject was recodified in the Anti-Wage and Social Dumping Act (Lohn- und Sozialdumping-Bekämpfungsgesetz, hereinafter LSD-BG).⁹ It was most recently amended by the 2nd Financial Organisation Reform Act.¹⁰ Further relevant provisions can be found in the Annual Leave and Severance Pay for Construction Workers Act.¹¹

b) Secondary national legislation and other sources

In 2015, the Ministry of Social Affairs issued guidelines¹² on interpreting the anti-wage and social dumping provisions. However, since they were based on the provisions of the AVRAG

7 This section deals neither with special notification requirements for the transport sector that exist in some Member States nor with obligations to liaise with – and pay contributions to – a leave and bad weather fund, which exist, notably, in the construction sector.

8 Available as of 2015 at <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008872&FassungVom=2015-11-27>.

9 Available at <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20009555>. An unofficial and not entirely up-to-date English translation of the LSD-BG is available at https://www.entsendeplattform.at/cs/Satellite?blobcol=urldata&blobheadname1=content-type&blobheadname2=content-disposition&blobheadvalue1=application%2Fpdf&blobheadvalue2=inline%3B+filename%3D%22Anti-Wage_und_Sozial-Dumping_Act_%2528Lohn-_und_Sozialdumping-Bek%25C3%25A4mpfungsgesetz%252C_LSD-BG%2529_.pdf%22&blobkey=id&blobnocache=false&blobtable=MungoBlobs&blobwhere=1342632474969&ssbinary=true&site=Z04.

10 Available at https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2020_I_99/BGBLA_2020_I_99.html.

11 Available at <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008275>. This law stipulates, inter alia, that monthly reports must be submitted for construction work that lasts longer than one month. See section 5. An unofficial English translation of the Act as of 2010 is available at https://www.entsendeplattform.at/cs/Satellite?blobcol=urldata&blobheadname1=content-type&blobheadname2=content-disposition&blobheadvalue1=application%2Fpdf&blobheadvalue2=inline%3B+filename%3D%22Annual_Leave_and_Severance_Pay_for_Construction_Workers_Act_%2528BUAG%2529_in_English.pdf%22&blobkey=id&blobnocache=false&blobtable=MungoBlobs&blobwhere=1342622309259&ssbinary=true&site=Z04.

12 Available at https://www.wko.at/branchen/handel/endfassung_erlass_2015.pdf.

and not those of the LSD-BG that are in force today, using them to interpret the current legal framework can only be done with care. More useful is the website www.entsendeplattform.at, operated by the Ministry of Labour, Family and Youth, and the Construction Workers' Holiday and Severance Pay Fund (Bauarbeiter-Urlaubs- und Abfertigungskasse, hereinafter BUAK). This website offers information in seven languages (German, English, Hungarian, Polish, Czech, Slovak and Slovenian) on posting workers to Austria. Furthermore, the Ministry of Finance provides on its website informational sheets^{13, 14} on how to fill out the forms ZKO3 and ZKO4 in these languages as well as in Spanish and Croatian. ZKO3 is the form that must be used to register a posting. The ZKO4 form must be used to register a hiring out.

2. Subjects of the notification duty

Notification duties, according to the LSD-BG, fall on employers – in the case of posting – and on temporary work agencies – in the case of hiring out – with their seat in a Member State that post or hire out to Austria.¹⁵

3. Exemptions from the notification duty

The following exemptions from the application of the LSD-BG apply if a worker is posted to Austria exclusively for performing the following small, temporary tasks:¹⁶

- business meetings without rendering any other services,
- participation in seminars and lectures without rendering any other services,
- participation in trade fairs and similar events, except for preparatory and concluding activities for the event (assembling and dismantling exhibition facilities and delivering and removing trade fair objects),
- attending and participating in congresses and conventions,
- participation in and organisation of cultural events (music, dance, theatre or cabaret performances) taking place within the scope of a tour where the event(s) in Austria is (are) only of minor significance, provided that the workers work during most of the tour at least,
- participation in and organisation of specific international sports competitions, except for preparatory and concluding activities for the event (assembling and dismantling of facilities for the event), as well as providing food and beverages at the event,

13 Informational sheet for ZKO3 in English available at <https://formulare.bmf.gv.at/service/formulare/inter-Steuern/pdfd/9999/ZKO3Erl-GB.pdf>.

14 Informational sheet for ZKO4 in English available at <https://formulare.bmf.gv.at/service/formulare/inter-Steuern/pdfd/9999/ZKO4Erl-GB.pdf>.

15 § 19 (1) LSD-BG; https://www.entsendeplattform.at/cms/Z04/Z04_5.1/formalitaeten/meldepflichten.

16 § 1 (5) and (6) LSD-BG.

- work as a mobile worker or as a crew member in the cross-border transport of freight and passengers (transport sector), provided that the work is performed exclusively within the scope of transit traffic and that the habitual workplace is not in Austria,
- activities within a company group if the worker's salary is above a certain threshold (which is annually adjusted and is, as of 2020, at a gross monthly pay of 6,712.50 euros);
- work within the scope of international education and further training or research programmes at universities, or
- company group-internal postings of particularly skilled workers for a maximum length of two months per worker per calendar year if they are carried out for the purposes of
 - research and development, training courses held by the skilled worker, planning of project work, or
 - the exchange of experience, corporate consultancy services, financial controlling, or cooperation with group departments with centralised controlling and planning functions, which are responsible for several countries.

4. Notification of posting or hiring out

a) Design

Notifications must be submitted online to the Central Co-ordinating Agency charged with Investigating Illegal Deployment (Zentrale Koordinationsstelle für die Kontrolle der illegalen Beschäftigung, hereinafter ZKO), a department within the Ministry of Finance.¹⁷ For posting workers, the ZKO3 form¹⁸ must be used; if workers are hired out, the ZKO4 form.¹⁹ These forms can be accessed on the website formularservice.gv.at provided by the Bundesrechenzentrum and are available in German, Czech, English, Spanish, Croatian, Italian, Hungarian, Polish, Romanian, Slovenian and Slovak.²⁰ It is important to use the correct form; using the wrong one can result in a fine even if all the required information has been submitted.²¹ After completing

¹⁷ § 19 (2) LSD-BG.

¹⁸ Available at <https://www4.formularservice.gv.at/formularserver/user/formular.aspx?pid=fe66cedb506e495c-94b3e826701443e5&pn=B461f73088ab946fe9bd1d1cce573d81a&lang=en>. The IHK Hochrhein-Bodensee has filled out and published a template ZKO3 form, which is available at <https://www.ihk.de/blueprint/servlet/resource/blob/3976390/7bd87d1a23d37ac97b5908e99e10a471/muster-meldung-fuer-entsendung-nach-oesterreich-formular-zko3-data.pdf>. However, this was performed in 2018, and today's form has some slight deviations from the form used in 2018.

¹⁹ Available at <https://www3.formularservice.gv.at/formularserver/user/formular.aspx?pid=cc0245e96e3145f28adeac-c34a476f8d&pn=B8c0a8778f0824d4d886b1e6697edbb4b&lang=en>.

²⁰ Thus, the forms are available in Italian and Romanian, but not the explanations.

²¹ This was the case in a decision made by the Styria Administrative Court, available at https://www.ris.bka.gv.at/Dokumente/Lvwg/LVWGT_ST_20160422_LVwG_30_13_559_2015_00/LVWGT_ST_20160422_LVwG_30_13_559_2015_00.pdf; see Zankel, S. (2016), Die ZKO-Meldung – Analyse der Vorschriften und sich daraus ergebender Rechtsprobleme, Arbeits- und SozialrechtsKartei Vol. 20, pp. 377–383; Niksova, D. (2020), Case note on VwGH Ra 2018/11/0114, Zeitschrift für Arbeits- und Sozialrecht, Vol. 55, pp. 36–42; Kühnleub, S./Bele, A. (2019), LSD-BG: aktuelle Rechtsprechung und Erfahrungen mit Behörden und Verwaltungsstrafverfahren, Zeitschrift für Arbeits- und Sozialrecht, Vol. 54, pp. 125–137.

the form, the notification can be printed, enabling the employer or temporary work agency to prove the notification.

Notifications must be submitted before commencement of the work.²²

Only one notification is required for repeated posting or hiring out cases if the posting or hiring out has been agreed under one and the same service contract, one and the same service procurement contract²³ or within a company group. Such notification can cover a maximum period of three months. In such cases, the notification is to be submitted before the very first case of posting or hiring out.²⁴

If the posting involves the fulfilment of similar service contracts with several clients, all of them can be indicated within the same notification, provided that there is a close geographical and temporal connection between the service contracts.²⁵

b) Information to be provided

The following information must be provided both when posting workers and when hiring out:²⁶

- name, address and e-mail address²⁷ of the employer or temporary work agency,²⁸
- name and address of the client or user undertaking in Austria,²⁹
- VAT identification number and business licence or field of business of the employer or user undertaking,³⁰
- name³¹ and address of persons appointed to represent the employer or temporary work agency in external matters,³²
- names, addresses, dates of birth, social insurance numbers, competent social security institutions and citizenship of the workers posted or hired out,
- beginning and expected duration of deployment in Austria for each worker,

22 § 19 (2) LSD-BG.

23 German: Dienstverschaffungsvertrag.

24 § 19 (5) LSD-BG.

25 § 19 (6) LSD-BG.

26 § 19 (3) and (4) LSD-BG.

27 The e-mail address is not requested by law but is nevertheless a mandatory field in the forms.

28 The forms also request the phone number (voluntary).

29 The forms also request the e-mail address and phone number (both voluntary).

30 The forms also request all this information for the client in Austria (voluntary).

31 As far as natural persons are concerned, "name" refers to surname and given name(s).

32 The forms also request an e-mail address, phone number, citizenship and date of birth (all voluntary).

- amount of remuneration to which the worker is entitled,
- length and distribution of the regular working hours stipulated with each worker,³³
- place(s) of work in Austria,
- the place where the required documents³⁴ are kept available if it is not the workplace,³⁵
- type of work of the worker posted or hired out, considering the applicable Austrian collective bargaining agreement,³⁶
- if applicable:³⁷ work permit in the posting country (either a copy of the permit or information on the issuing authority, reference number, date of issue, and validity period), and
- if applicable:³⁸ residence permit in the posting country (either a copy of the permit or information on the issuing authority, reference number, date of issue, and validity period).

In addition, the following information is requested for posted workers:

- name and address of the contact person according to § 23 LSD-BG,³⁹
- beginning date of the worker's employment relationship and
- VAT identification number and field of business of the client in Austria (not mandatory).

c) Costs

Submitting a notification is free of charge.

33 While this is only requested by law for posted workers, it is also a mandatory field in the form for hiring out.

34 See section 6.

35 The forms request surname, given name(s), address, e-mail address and phone number (all mandatory).

36 The forms specifically ask whether the person works in the construction or transport sector.

37 That is, if the worker posted/hired out requires a work permit in the Member State in which the employer or temporary work agency is established.

38 That is, if the worker posted/hired out requires a residence permit in the Member State in which the employer or temporary work agency is established.

39 The contact person is regulated in § 19 (3) (3) in conjunction with § 23 LSD-BG. They must be either one of the posted workers or a person established in Austria who is authorised to professionally represent parties (chartered accountant, lawyer, or notary public). The contact person's task is to keep the documents available, accept documents served by the authorities and provide information. In addition to the information referred to above, the forms request an e-mail address, phone number, citizenship and date of birth (all voluntary).

d) Notification of changes

There are change notification forms for ZKO3⁴⁰ and ZKO4⁴¹. The law states that changes must be reported “without delay”.⁴² The ZKO change notification forms specify that this means notification on the day of the change, only in justifiable exceptional situations on the next working day. Furthermore, the notification forms state that if the notification entails an extension (workers stay in Austria longer than reported initially) or additional workers are reported, the notification must be submitted before the beginning of the respective work.

Both the ZKO3 and the ZKO4 forms contain the following categories of changes that can be indicated:

- subsequent notification of workers,
- full cancellation of the first notification and all workers,
- early termination of workers,
- cancellation of workers and
- correction of worker information in notification.

In addition, ZKO3 contains the categories “extension of a previous secondment notification” and “correction of the place of employment”, and ZKO4 contains the category “extension of workers”.

That does not mean that only these changes can be indicated. The explanatory guidance documents on ZKO3⁴³ and ZKO4⁴⁴ state that if a change falls outside one of these categories, the ZKO should be contacted via e-mail. Nevertheless, not all changes can be indicated in this way. The explanatory guidance document also states that an entirely new notification must be submitted if a subsequent workplace needs to be added.

5. Additional administrative requirements

For construction work that lasts longer than one month, monthly reports must be submitted to the BUAK.⁴⁵ These reports must contain the following information for every worker deployed:

40 Available at <https://www3.formularservice.gv.at/formularserver/user/formular.aspx?pid=cc0245e96e3145f28adeac-c34a476f8d&pn=B80fbd1999ae340d3b47309bf5e38b49d&lang=en>.

41 Available at <https://www3.formularservice.gv.at/formularserver/user/formular.aspx?pid=cc0245e96e3145f28adeac-c34a476f8d&pn=B309811cedf1f4c50abd139ecc794312c&lang=en>.

42 § 19 (1) LSD-BG.

43 Available in English at <https://formulare.bmf.gv.at/service/formulare/inter-Steuern/pdfd/9999/ZKO3Erl-GB.pdf>.

44 Available in English at <https://formulare.bmf.gv.at/service/formulare/inter-Steuern/pdfd/9999/ZKO4Erl-GB.pdf>.

45 § 33g (2) in conjunction with § 22 (2) of the Annual Leave and Severance Pay for Construction Workers Act.

- personal information,
- date of the first and of the last day of work,
- occupational qualification and
- hourly wage based on the collective bargaining agreement applying to the business.⁴⁶

6. Duty to keep documents available

§ 21 and § 22 LSD-BG provide a duty to keep several documents available for the time of posting or hiring out to Austria. The subject of this duty is the employer in the case of a posting and the user undertaking in the case of temporary agency work.⁴⁷ The documents must either be kept available in paper or be made available in electronic form on the spot (for instance, as PDF files stored on a computer accessible by the authorities in case of a control). It is crucial that the authorities can check the documents while they carry out the control and that the documents can be transmitted to the authorities.⁴⁸

Both for posting workers and hiring out, the following documents must be kept available:

- a copy of the notification,⁴⁹
- the A1 Certificate (or, by way of exception, equivalent documents⁵⁰ in German),
- pay documents which show the amount of remuneration due and paid out to the worker during the assignment in Austria, which include:
 - the employment contract or a written record of the employment contract's content (Dienstzettel) in the sense of Directive 91/533/EEC,⁵¹
 - the payslip (Lohnzettel), proof of payment by the employer or bank transfer statements,
 - documents relating to pay categorisation (for instance, education and training or earlier employment periods, if stipulated as relevant in the applicable collective bargaining agreement),
 - wage records (documents showing how remuneration was calculated),

46 https://www.entsendeplattform.at/cms/Z04/Z04_10.4.2/construction-works/notification-requirements.

47 The temporary work agency must provide the user undertaking with the pay documents.

48 Guidelines p. 22.

49 See section 4.

50 According to the explanatory memorandum to the LSD-BG, which is available at https://www.parlament.gv.at/PAKT/VHG/XXV/I/I_01111/fname_528287.pdf, this refers to the case that a company applied for the issuance of an A1 Certificate but did not receive it on time. The obligation, then, can be fulfilled by producing the application for an A1 Certificate and a confirmation from the competent social security institution that the worker is covered for the time of deployment to Austria, both in German.

51 Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship, available at <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31991L0533>.

- records of the hours worked for each worker⁵² and
- if required:⁵³ work permit from the country in which the employer or temporary work agency is established.

Pay documents and records of the hours worked must be in German; the employment contract may be in German or English. The A1 Certificate and the residence or work permit copy may be in the issuing Member State's language. As stated, the notification forms ZKO3 and ZKO4 can be filled out in several languages. However, they will automatically be transformed into German documents at the end.

The documents must either be kept available at the workplace, with a professional legal representative established in Austria, at a branch of the employer or temporary work agency, or an Austrian subsidiary or parent company of the same company group. Furthermore, in the case of posting of workers, documents can be kept available with the contact person according to § 23 LSD-BG. However, they may only be kept available at a place apart from the workplace if that has been stated in advance in the notification.

III. France

1. Legal sources

a) Primary national legislation

The provisions in force regarding the administrative requirements for posting and hiring out workers are codified in the "legal part"⁵⁴ of the French Labour Code⁵⁵ (Code du travail, hereinafter CT). More specifically, the provisions are laid down in Art. L.1261-1 to Art. L.1265-1 CT.

Art. 9 of the EPWD has been transposed into French national law by Laws No. 2014-790,⁵⁶ No. 2015-990⁵⁷ and No. 2016-1088,⁵⁸ which amended the French CT. France updated some

52 The remuneration and working time documents must be of such nature that it can be discerned how many hours the worker worked in Austria and how much money they received for it. Thus, if the documents merely state that, for instance, the worker worked x hours in Austria in October and y hours in Slovakia and received z euros for it, this is not sufficient because it cannot be ascertained how much money he received for the work in Austria.

53 For instance, if the worker posted or hired out requires an employment permit in the Member State in which the employer or temporary work agency is established.

54 The CT consists of a legal part and an executive part. The legal part codifies provisions of legislative nature (Art. L.-XX). The executive part codifies provisions of executive nature (Art. R-XX and D-XX).

55 Code du travail, available at https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006072050/.

56 Loi n° 2014-790 du 10 juillet 2014 visant à lutter contre la concurrence sociale déloyale, available at <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000029223420?r=qHX1sX8r8R>.

57 Loi n° 2015-990 du 6 août 2015 pour la croissance, l'activité et l'égalité des chances économiques, Art. 279 to 286, available at <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000030978561?r=yTonOxl8Ow>.

58 Loi n° 2016-1088 du 8 août 2016 relative au travail, à la modernisation du dialogue social et à la sécurisation des parcours professionnels, Art. 105 to 112, available at <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000032983213/>.

provisions on administrative requirements laid down in the CT with Law No. 2018-771⁵⁹ and Ordinance No. 2019-116.⁶⁰

Regarding the prior notification of posting or hiring out workers to France and the appointment of a contact person, the most relevant legislative provisions are codified in Art. L.1262-2-1 CT, Art. L.1262-2-2 CT, Art. L.1262-4-1 CT and Art. L.1263-1 CT. Art. L.1263-7 CT provides the obligation to store documents regarding posted or hired-out workers and their activities and to provide the Labour Inspectorate with these documents.⁶¹

b) Secondary national legislation and other sources

Based on these legal acts, the French Government has adopted several legally binding decrees providing for the detailed application of the legal provisions: Decrees No. 2015-364⁶², No. 2016-1044⁶³, No. 2019-555⁶⁴ and No. 2020-916.⁶⁵

These decrees are codified in the “executive part” of the CT. Hence, the detailed application of provisions regarding the posting and hiring out of workers to France are laid down in Art. R.1261-1 to D.1265-1 CT. In particular, Art. R.1263-1 to D.1263-21 CT provide for rules regarding the requirements for posting and hiring out to France, for instance, to submit a prior notification of posting.

Some particulars are determined by ministerial orders, such as the form for the posting or hiring out notification⁶⁶ or the list of activities not subject to the notification duty nor to the

59 Loi No. 2018-771 du 5 septembre 2018 pour la liberté de choisir son avenir professionnel, Art. 93, 96, available at <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000037367660?r=hXeJC77PRH>.

60 Ordonnance n° 2019-116 du 20 février 2019 portant transposition de la directive (UE) 2018/957 du Parlement européen et du Conseil du 28 juin 2018 modifiant la directive 96/71/CE concernant le détachement de travailleurs effectué dans le cadre d'une prestation de services, available at <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000038149580?r=meo7ADWEs4>. Applicable as from 30 July 2020.

61 The French Labour Inspectorate carried out approximately 24,000 controls on compliance with the posting rules in 2019 and approximately 13,000 in 2020, with almost 1,200 penalties imposed. Since approximately 516,000 registered workers were posted to France in 2019, this means that – if one disregards the fact that some of the checks certainly concerned non-registered postings – approximately 4.65% of posted workers were checked. From a French perspective, Germany is by far the largest posting country.

62 Décret n° 2015-364 du 30 mars 2015 relatif à la lutte contre les fraudes au détachement de travailleurs et à la lutte contre le travail illégal, available at <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000030419658?r=CMzusLDqC0>.

63 Décret n° 2016-1044 du 29 juillet 2016 relatif à la transmission dématérialisée des déclarations et attestations de détachement de salariés et autorisant un traitement des données à caractère personnel qui y figurent, available at <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000032950925?r=uNX6G7eSAd>.

64 Décret n° 2019-555 du 4 juin 2019 portant diverses dispositions relatives au détachement de travailleurs et au renforcement de la lutte contre le travail illégal, available at <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000038550042>.

65 Décret n° 2020-916 du 28 juillet 2020 relatif aux travailleurs détachés et à la lutte contre la concurrence déloyale, available at <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042165144?r=9wzWVdeKtA>.

66 Arrêté du 20 novembre 2017 relatif aux modèles de déclaration et d'attestation de détachement, available at <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000036211680?r=XUcQlxFVB7>; Arrêté du 28 juillet 2020 établissant la liste des informations mentionnées au IV de l'article L. 1262-2-1 du code du travail, available at <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042165263?r=ROHD5hLA3H>.

duty to appoint a contact person.⁶⁷ Furthermore, the French Labour Ministry provides for instructions on posting and hiring out requirements⁶⁸ and for a webpage available in several languages⁶⁹ with the requirements for the employer or temporary work agency⁷⁰ posting or hiring out workers to France.⁷¹ Explanatory guidelines on the prior notification are also available.⁷²

2. Subjects of the notification duty

In France, the duty to notify prior to the posting or hiring out of workers applies to the employer or temporary work agency.⁷³ However, if the client⁷⁴ in France does not receive an acknowledgement of receipt of the notification before the posting or hiring out gets underway, they must make a notification within 48 hours of the posting or hiring out getting underway.⁷⁵

3. Exemptions from the notification duty

French law differentiates between three types of posting:⁷⁶

- international provision of service posting, that is, posting on behalf of and under the direction of the employer, as part of a contract concluded between the employer and the client established or working in France,

67 Arrêté du 4 juin 2019 établissant la liste des activités mentionnées à l'article L. 1262-6 du code du travail, available at <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000038550186>.

68 Ministère du travail, de l'emploi et de l'insertion (2021), Instruction n° DGT/RT1/2021 du 19 janvier 2021 relative au détachement international de salariés en France, available at https://travail-emploi.gouv.fr/IMG/pdf/instruction_detachement_dgt_19012021.pdf.

69 French, English, Portuguese, Romanian, Bulgarian, German, Spanish, Italian and Polish.

70 Ministère du travail, de l'emploi et de l'insertion (2020), Employeurs: vos formalités préalables obligatoires, available at <https://travail-emploi.gouv.fr/droit-du-travail/detachement-des-salaries/detachement-des-salaries/article/employeurs-vos-formalites-prealables-obligatoires>.

71 Available at <https://travail-emploi.gouv.fr/droit-du-travail/detachement-des-salaries/>.

72 SIPSi (2020), Posting of workers in France, FAQs, available at <https://www.sipsi.travail.gouv.fr/#/faq>; Ministère du travail, de l'emploi et de l'insertion (2020), SIPSi, Posting of workers – Prior declaration of posting, available at <https://travail-emploi.gouv.fr/demarches-ressources-documentaires/formulaires-et-teledeclarations/etrangers-en-france/article/sipsi-posting-of-workers-prior-declaration-of-posting>.

73 Code du travail, Art. L.1262-2-1 (1); Ministère du travail, de l'emploi et de l'insertion (2020), Posting of employees: Obligations of the employer of posted employees, available at <https://travail-emploi.gouv.fr/droit-du-travail/detachement-des-salaries/posting-of-employees/article/obligations-of-the-employer-of-posted-employees>.

74 Depending on the type of posting or hiring out, "client" will be used to refer to: the principal ("donneur d'ordre"), the user undertaking ("entreprise utilisatrice") or the establishment / company hosting posted workers ("entreprise ou établissement d'accueil"). The principal ("donneur d'ordre") refers to the main contracting party, that is, "any natural or legal person benefitting from work commissioned from a company or service provider. By extension, the term refers to any natural or legal person having entrusted a job or service to another person through a corporate, commercial or service contract". Ministère du travail, de l'emploi et de l'insertion (2020), Glossary, available at <https://travail-emploi.gouv.fr/droit-du-travail/detachement-des-salaries/posting-of-employees/article/glossary#maincontracting>.

75 Code du travail, Art. L.1262-4-1; Ministère du travail, de l'emploi et de l'insertion (2020), Posting of employees: Requirements that contractors and main contracting parties in France must fulfil in the event of posting, available at <https://travail-emploi.gouv.fr/droit-du-travail/detachement-des-salaries/posting-of-employees/article/requirements-that-contractors-and-main-contracting-parties-in-france-must>. In cases where there is no client in France – such as posted workers participating in conferences – different rules apply (see section 3).

76 Code du travail, Art. L.1262-1, -2.

- intra-group posting, that is, posting between establishments of the same company or between companies in the same group, and
- posting on the employer's own account, that is, posting on behalf of the employer without a contract between the employer and a client. This covers, for instance, the participation in events or workers participating in business meetings.⁷⁷

French law does not differentiate between different types of hiring out – that is, hiring out via a foreign temporary work agency performing a labour supply agreement with a user undertaking in France.

The duties to notify and to appoint a contact person do not apply to:

- posting on the employer's own account,
- posting for short-term services or services provided as part of one-off events:^{78, 79}
 - artists in the fields of performing arts, film and audio-visual production as well as broadcasting and phonographic publishing (maximum 90 days in 12 months),
 - athletes, referees, members of the athletes' support team, official delegates attached to the practice or organisation of sports events (maximum 90 days in 12 months),
 - apprentices on temporary mobility in a company or establishment located in France as part of their theoretical or practical training (maximum 12 months in a row) and
 - researchers or teachers speaking at conferences, seminars and scientific events (maximum 12 months in a row).⁸⁰

4. Notification of posting or hiring out

a) Design

An employer or temporary work agency posting or hiring out workers to France must inform the Labour Inspectorate of the place where the service is provided with a notification of posting or hiring out before the posting or hiring out begins (déclaration préalable de détachement).⁸¹ The notification shall be made online via the SIPSI internet portal (système d'information sur

77 Ministère du travail, de l'emploi et de l'insertion (2020), Posting of employees: In a nutshell, available at <https://travail-emploi.gouv.fr/droit-du-travail/detachement-des-salaries/posting-of-employees/posting-of-employees>.

78 Regardless of whether it is an international provision of services posting or an intra-group posting.

79 Code du travail, Art. L.1262-6.

80 Business activities restrictively listed by ministerial order with specification of the maximum duration of activity in France over a reference period. Arrêté du 4 juin 2019 établissant la liste des activités mentionnées à l'article L. 1262-6 du code du travail.

81 Code du travail, Art. R.1263-4-1 et seq.

les prestations de service internationales).⁸² The notification form can be filled out in French, German, English, Spanish and Italian.⁸³

After the completion of the online notification, it is possible to print it and download a receipt providing an overview of the key information.⁸⁴

A template of the notification form⁸⁵ is available on the French Labour Ministry website, showing a receipt of a notification.⁸⁶ The “practical factsheet” for modifying a notification also gives an overview of the design.⁸⁷

b) Information to be provided

The rules on the notification to be submitted prior to the posting or hiring out to France are laid down in the executive part of the CT:⁸⁸

- Art. R.1263-3 CT covers international provision of service postings,
- Art. R.1263-4 CT covers intra-group postings and
- Art. R.1263-6 CT covers hiring out via temporary work agencies.

The following information is required for postings as well as for hiring out:⁸⁹

- information on the employer or temporary work agency: name, legal form, address, e-mail address, phone number, VAT number or – in absence of a VAT number – the reference of registration in a professional register or any other equivalent reference, as well as the identity of the executive(s)⁹⁰ – including for postings the name, surname, date, and place of birth of the executive(s),

82 Available at <https://www.sipsi.travail.gouv.fr/#/auth/login>.

83 Code du travail, Art. R.1263-5, Art. R.1263-7; Ministère du travail, de l’emploi et de l’insertion (2020), Posting of employees: In a nutshell, available at <https://travail-emploi.gouv.fr/droit-du-travail/detachement-des-salaries/posting-of-employees/posting-of-employees#Before-posting-prior-mandatory-formalities>.

84 SIPSI (2020), Posting of workers in France, FAQs, available at <https://www.sipsi.travail.gouv.fr/#/faq>.

85 Arrêté du 20 novembre 2017 relatif aux modèles de déclaration et d’attestation de détachement.

86 Available at <https://travail-emploi.gouv.fr/IMG/pdf/fiche-ar-dpd-sipsi-021219.pdf>.

87 Available at <https://travail-emploi.gouv.fr/IMG/pdf/fiche-pratique-maj-v13-fr.pdf>.

88 Code du travail, Art. R.1263-3, et seq.

89 Ministère du travail, de l’emploi et de l’insertion (2020), Posting of employees: Obligations of the employer of posted employees, available at <https://travail-emploi.gouv.fr/droit-du-travail/detachement-des-salaries/posting-of-employees/article/obligations-of-the-employer-of-posted-employees>.

90 For instance, the manager of the company.

- information on the client depends on whether the client is a user undertaking, principal or establishment/company hosting posted workers:
 - for the user undertaking: name or business name, address, e-mail address, phone number and, if there is one, VAT number,
 - for the principal:⁹¹ name, address and, if there is one, VAT number, and
 - for the establishment or company hosting posted workers:⁹² the VAT number if there is one,
- information on the workers posted or hired out: the worker's name, surname, sex, date and place of birth, address, nationality, professional qualification, job exercised during the posting or hiring out to France and hourly remuneration in euros,
- information on the beginning and foreseeable end date of the posting or hiring out,
- information on the working time: the hours at which work begins and ends as well as the hours and duration of rest,
- workplace(s) in France: the address and the date on which work at this site begins and foreseeably ends,
- the main activity carried out in France and, if applicable, information on dangerous work equipment or procedures used,
- information relating to posted or hired-out workers' social security: the state of affiliation to the social security of each worker; the request for an A1 Certificate must be indicated,⁹³
- the conditions under which the employer bears professional expenses, for instance, travel, food and accommodation expenses,
- name or business name, e-mail address and phone number, if applicable, also the identification number⁹⁴ of the contact person representing the employer or temporary work agency in France,⁹⁵

91 The principal ("donneur d'ordre") refers to the main contracting party, that is, "any natural or legal person benefiting from work commissioned from a company or service provider. By extension, the term refers to any natural or legal person having entrusted a job or service to another person through a corporate, commercial, or service contract". Ministère du travail, de l'emploi et de l'insertion (2020), Glossary, available at <https://travail-emploi.gouv.fr/droit-du-travail/detachement-des-salaries/posting-of-employees/article/glossary#maincontracting>.

92 The establishment or company hosting posted workers ("entreprise ou établissement d'accueil") refers to the hosting of posted workers as part of intra-group transfers.

93 Not applicable if the state of affiliation is France.

94 "Numéro SIRET", which is attributed to each French establishment. This provision only applies where the appointed contact person is a professional mandated for this purpose, established in France, and capable of carrying out this mission.

95 The contact person is responsible for liaising with the various control agents for the duration of the posting [Code du travail, Art. L.1262-2-1 (II)] and for fulfilling on behalf of the employer the duty to keep documents available (see section 6.). Any person easily reachable by e-mail or by phone and capable of presenting documents and communicate with inspection officers can act as a contact person [Ministère du travail, de l'emploi et de l'insertion (2020), Posting of employees: Obligations of the employer of posted employees, available at <https://travail-emploi.gouv.fr/droit-du-travail/detachement-des-salaries/posting-of-employees/article/obligations-of-the-employer-of-posted-employees>]. (Code du travail, Art. R.1263-3, et seq).

- the place in which the documents that the employer or temporary work agency needs to keep available⁹⁶ are kept or the procedures for accessing and consulting them from French territory and
- if applicable: the address of collective accommodation of posted or hired-out workers.

In addition, for postings, the signature date of the work contract of posted workers must be indicated.

Furthermore, for hiring out via a temporary work agency, the body having granted a financial guarantee or equivalent guarantee⁹⁷ in the country of origin must be indicated.⁹⁸

c) Costs

Submitting a notification is free of charge. However, the professional identification card (hereinafter BTP Card),⁹⁹ which every worker on construction sites must carry, costs 9.80 euros per card.¹⁰⁰

d) Notification of changes

If the posting or hiring out is cancelled or the dates of the posting or hiring out are changed, the employer or temporary work agency is required to revoke or amend their prior notification via the SIPSI website.¹⁰¹ It is possible to amend or delete notifications before they are transmitted to the Labour Inspectorate. For notifications that have already been transmitted, the update is accessible via the dashboard (pencil icon) and only possible on future postings and hiring outs, postings and hiring outs in progress or postings and hiring outs completed less than three days after the end date initially reported.¹⁰²

⁹⁶ See section 6.

⁹⁷ Temporary work agencies must prove the existence of financial collateral, ensuring that in case of failure on their part, hired-out workers receive all the wages they are owed during their hiring out to France (see section 5. c)).

⁹⁸ See section 5. c).

⁹⁹ The BTP Card is a professional identification card containing information that identifies the worker as well as the designation as posted/hired-out worker (see section 5. a)). BTP stands for secteur économique du bâtiment et des travaux publics.

¹⁰⁰ See section 5. a).

¹⁰¹ Code du travail, Art. R.1263-5 Art. R.1263-7; SIPSI (2020), <https://www.sipsi.travail.gouv.fr/>. It is not specified when changes must be indicated, but regarding the informative objective of the declaration, changes shall be indicated as soon as possible.

¹⁰² SIPSI (2020), Posting of workers in France, FAQs, available at <https://www.sipsi.travail.gouv.fr/#/faq>.

A practical factsheet¹⁰³ provides information that can or cannot be updated. Information that cannot be updated includes:

- the name or company name,
- the country of establishment of the employer or temporary work agency, as well as information on its registering, for instance, its register number,
- the identity of the client, except the e-mail address,
- the workplace,
- the information on posted or hired-out workers, except the dates of the posting and their address, and
- the function of the contact person; for instance, whether the contact person is the client, a posted worker or someone hired to carry out this duty.

5. Additional administrative requirements

a) Professional identification card

To fight illegal work in construction and public works sectors, every worker shall carry on construction sites in France the mandatory BTP Card. The QR code on the BTP Card will allow control authorities to access information on the regularity of the situation.¹⁰⁴ The BTP Card is provided to each worker by the employer or temporary work agency and shall be requested online.¹⁰⁵ Regarding posted or hired-out workers, the card is only valid for the duration of the posting.¹⁰⁶ The employer shall request the BTP card before the posting, after registering the posting via SIPSI.¹⁰⁷ Information to be provided concerning the identification of the worker that appears on the BTP card are the name, surname, sex and a picture.¹⁰⁸ The name or business name of the employer or temporary work agency established outside of France, as well as “posted worker” or “hired-out worker” also appear on this card.¹⁰⁹ Employers and temporary work agencies may use the reference number of the notification of posting to retrieve information

103 Ministère du travail, de l’emploi et de l’insertion (2020), <https://travail-emploi.gouv.fr/IMG/pdf/fiche-pratique-maj-v13-fr.pdf>.

104 L’Union des caisses de France Congés Intempéries BTP (UCF CIBTP) (2020), Carte BTP, accueil, available at <https://www.cartetbp.fr/>.

105 At <https://www.cartetbp.fr/>.

106 CIBTP (2020), Carte BTP, Informations affichées, available at <https://www.cartetbp.fr/informations-affichees-sur-la-cartetbp.html>.

107 Ministère du travail, de l’emploi et de l’insertion (2020), Posting of employees: Obligations of the employer of posted employees, available at <https://travail-emploi.gouv.fr/droit-du-travail/detachement-des-salaries/posting-of-employees/article/obligations-of-the-employer-of-posted-employees>.

108 “Making the declaration to request a card, the employer informs employees that personal data relating to them have been sent to the UCF”, Ministère du travail, de l’emploi et de l’insertion (2020), Posting of employees: Obligations of the employer of posted employees, available at <https://travail-emploi.gouv.fr/droit-du-travail/detachement-des-salaries/posting-of-employees/article/obligations-of-the-employer-of-posted-employees>.

109 CIBTP (2020), Carte BTP, Informations affichées, available at <https://www.cartetbp.fr/informations-affichees-sur-la-cartetbp.html>.

already provided via SIPSI.¹¹⁰ Further explanatory guidelines are available in English on the BTP Card website.¹¹¹

b) Information of the Temporary Work Agency

Where the client of a temporary work agency not established in France is a user undertaking not established in France either, they must – prior to the hiring out – inform the temporary work agency of the hiring out to France and of applicable rules. If controlled, the user undertaking must prove by every means the compliance with this provision.¹¹²

Where the user undertaking is established in France, they must only inform the temporary work agency of the rules applicable to workers regarding their remuneration while hired out to France.¹¹³

c) Financial collateral

Provisions specific to temporary work law apply to temporary work agencies established outside of France, making their temporary workers available to French user undertakings. To that extent, temporary work agencies must prove the existence of financial collateral¹¹⁴ (garantie financière), ensuring that in case of failure on their part, hired-out workers receive all the wages they are owed during their hiring out to France.¹¹⁵

6. Duty to keep documents available

According to Art. L.1263-7 CT and Art. R. 1263-1 CT, during the period of posting or hiring out, the employer or temporary work agency shall keep several documents available and submit them “without delay” to the Labour Inspectorate in case of a request.¹¹⁶ The contact person acts for the employer or temporary work agency in this regard.¹¹⁷ The documents must

110 Ministère du travail, de l’emploi et de l’insertion (2020), Posting of employees: Obligations of the employer of posted employees, available at <https://travail-emploi.gouv.fr/droit-du-travail/detachement-des-salaries/posting-of-employees/article/obligations-of-the-employer-of-posted-employees>.

111 CIBTP (2018), Carte BTP, Questions-Answers, available at https://www.cartebtp.fr/fileadmin/medias/images/FAQ/FAQ_Toutes_cibles_en.pdf.

112 Code du travail, Art. L.1262-2-1 (IV), Art. R.1263-8-1.

113 Code du travail, Art. L.1262-2-1 (V).

114 “Financial collateral is a surety bond taken out with a mutual or collective guarantee company, an insurance undertaking, a bank or a financial institution established in France, in the European Union or in the European Economic Area and authorised to grant bonds and operate on French territory.” Ministère du travail, de l’emploi et de l’insertion (2020), Posting of employees: Obligations of the employer of posted employees, available at <https://travail-emploi.gouv.fr/droit-du-travail/detachement-des-salaries/posting-of-employees/article/obligations-of-the-employer-of-posted-employees>.

115 Code du travail, Art. L.1251-49; Art. R.1262-17.

116 See also Ministère du travail, de l’emploi et de l’insertion (2020), Posting of employees: Obligations of the employer of posted employees, available at <https://travail-emploi.gouv.fr/droit-du-travail/detachement-des-salaries/posting-of-employees/article/obligations-of-the-employer-of-posted-employees>.

117 Code du travail, Art. R.1263-2-1.

be translated into French and include amounts of money converted into Euro, if necessary.¹¹⁸ They can be kept available either in paper or electronically.¹¹⁹

The following documents must be kept available (Art. R.1263-1 CT):

- if applicable: a work permit allowing a third-country national to exercise an activity as a worker,
- where appropriate: the document certifying a medical examination in the country-of-origin equivalent to that provided for in Art. R. 1262-13 CT, that is, where a medical examination of “employability” before the assignment to a position presenting specific health or safety risks has been carried out in the country of origin,
- where the period of posting is less than one month: any document providing proof of compliance with the minimum remuneration,
- where the period of posting is at least one month: the payslips of each posted or hired-out worker or any equivalent document certifying the remuneration and including the following information:
 - gross remuneration,
 - period and hours of work to which the remuneration relates, distinguishing between hours paid at the normal rate and those with a premium,
 - holidays and public holidays as well as related compensation items, that is, paid leave,
 - if applicable: conditions for being subject to holiday and bad weather funds, and
 - if applicable: the title of the branch collective agreement applicable to the worker,
- any document attesting to the actual payment of the remuneration,
- a time-sheet indicating the beginning, end and duration of each worker's daily working time,
- if available in writing, the employment contract or any equivalent document attesting to the place of employment,
- any document attesting to the law applicable to the contract between the employer or temporary work agency and the client in France, and

¹¹⁸ Code du travail, Art. R.1263-2.

¹¹⁹ Ministère du travail, de l'emploi et de l'insertion (2020), Posting of employees: Obligations of the employer of posted employees, available at <https://travail-emploi.gouv.fr/droit-du-travail/detachement-des-salaries/posting-of-employees/article/obligations-of-the-employer-of-posted-employees>.

- any document attesting the number of contracts performed¹²⁰ and the amount of turnover¹²¹ that the employer or temporary work agency generates in the state in which it is established and in France.

The documents shall be kept available at the workplace of the posted or hired-out worker, or in case of “material impossibility” – situations with no facilities in which these documents can be kept¹²² – at any place in France available for the contact person.

In addition to these documents, temporary work agencies shall provide the Labour Inspectorate – if requested – with:¹²³

- a document attesting the existence of financial collateral (see section 5. c)),
- an availability contract (contrat de mise à disposition),¹²⁴ concluded between the temporary work agency and the user undertaking, including the following information:
 - ▶ the reason for which the temporary worker is hired by the user undertaking, with precise justifications,
 - ▶ the end of the hiring out,
 - ▶ if applicable: a clause providing for the possibility of modifying the duration of the hiring out under certain conditions or an amendment providing for the renewal of the availability contract,
 - ▶ the characteristics of the position to be filled, in particular, if it appears on the list of positions presenting particular risks for the health or safety of workers provided for in Art. L.4154-2 CT, the professional qualification required, the place of the assignment and the timetable,
 - ▶ the nature of the personal protective equipment that the worker uses and, if applicable, whether the temporary work agency provides such equipment, and
 - ▶ the amount of the remuneration with its various components, including, if any, the bonuses and salary accessories that would be received in the user undertaking, after a trial period, by a worker with an equivalent professional qualification occupying the same job,

120 Generally, the reference period will correspond to the current year. However, a longer or shorter period may be considered where appropriate.

121 The annual turnover, but several years or just a few months may be considered a sufficient reference period.

122 For instance: the posted or hired-out worker is assigned to a construction site or felling trees in the forest.

123 Code du travail, Art. R.1263-8.

124 Code du travail, Art. L.1251-43.

- a written assignment contract (contrat de mission),¹²⁵ concluded between the temporary work agency and the worker, including the following information:
 - the reproduction of the clauses and particulars of the availability contract,
 - the professional qualification of the worker,
 - the terms and conditions of the remuneration due to the worker, including those of the termination indemnity,
 - the duration of any trial period that may be provided for,
 - a clause for repatriation of the worker at the expense of the temporary work agency when the assignment takes place outside metropolitan France,¹²⁶
 - the name and address of the complementary pension fund and the pension fund of the temporary work agency and
 - the statement that the hiring of the worker by the user undertaking at the end of the assignment is not prohibited.

The exemption from the notification duty does not apply to the duty to keep documents available to the French Labour Inspectorate. Regarding short-term services,¹²⁷ employers established outside of France have 15 days to provide the documents listed in Art. R.1263-1 CT, at the request of the Labour Inspectorate of the place where the service is provided. In the case of posting on the employer's own account, the employer must provide – at the Labour Inspectorate's request – without delay the documents listed by Art. R.1263-1 CT, and within 15 days the documents relating to the medical examination and those relating to the employer's effective activity.

IV. Germany

1. Legal sources

a) Primary national legislation

Germany considered its legislation to be in line with the EPWD, so no specific transposition measures were issued. Administrative requirements similar to those in Art. 9 EPWD – for example, a duty to register a posting or hiring out, documentation obligations and obligations to keep documents available – already existed in provisions of the Mindestlohnsgesetz¹²⁸

¹²⁵ Code du travail, Art. L.1251-16.

¹²⁶ Not applicable if the contract is terminated at the worker's initiative.

¹²⁷ See section 3.

¹²⁸ Gesetz zur Regelung eines allgemeinen Mindestlohns, available at <http://www.gesetze-im-internet.de/millog/BJNR134810014.html>.

(hereinafter MiLoG) and of the Arbeitnehmer-Entsendegesetz¹²⁹ (hereinafter AEntG). The sectors in which a duty to notify under the MiLoG exists are listed in § 2a of the Schwarzarbeitsbekämpfungsgesetz¹³⁰ (hereinafter SchwarzArbG).¹³¹ The duty to register a posting or hiring out according to the AEntG initially only applied to a few specific sectors.¹³² In 2020, an amendment to the AEntG¹³³ extended the notification duty to all the sectors for which the controlling body of the Customs Administration is authorised to carry out inspections.¹³⁴

Administrative requirements similar to those in Art. 9 EPWD also exist in provisions of the Arbeitnehmerüberlassungsgesetz¹³⁵ (hereinafter AÜG).

b) Secondary national legislation and other sources

Based on these federal laws, the German Federal Ministry of Finance and the Ministry of Labour and Social Affairs have issued several ordinances (Rechtsverordnungen).¹³⁶ They set out the details of the administrative requirements for posting and hiring out workers, for instance, that notifications must be submitted online and to which authority the notifications must be submitted. Helpful information on posting and hiring out workers to Germany can be found in English and German on the website www.zoll.de,¹³⁷ operated by the Customs Administration (Zollverwaltung). Informational sheets on how to fill out the notification form are available

129 Gesetz über zwingende Arbeitsbedingungen für grenzüberschreitend entsandte und für regelmäßig im Inland beschäftigte Arbeitnehmer und Arbeitnehmerinnen, available at http://www.gesetze-im-internet.de/aentg_2009/index.html.

130 Gesetz zur Bekämpfung der Schwarzarbeit und illegalen Beschäftigung, available at http://www.gesetze-im-internet.de/schwarzarbg_2004/index.html.

131 For a list of sectors, see section 2.

132 Namely the construction sector and construction-related industries, building cleaning services and care services.

133 Gesetz zur Umsetzung der Richtlinie (EU) 2018/957 des Europäischen Parlaments und des Rates vom 28. Juni 2018 zur Änderung der Richtlinie 96/71/EG über die Entsendung von Arbeitnehmern im Rahmen der Erbringung von Dienstleistungen, available at https://www.bgb1.de/xaver/bgb1/start.xav?startbk=Bundesanzeiger_BGBI&jumpTo=bgb120s1657.pdf#__bgb1__%2F%2F%2F%5B%40attr_id%3D%27bgb120s1657.pdf%27%5D__1613725845002.

134 Under § 16 AEntG, the controlling body of the Customs Administration is authorised to carry out inspections of the fulfilment of the employer's obligations to grant certain working conditions – as under § 5 sentence 1 No. 1–4 AEntG – if those conditions are covered by generally binding collective agreements or ordinances, § 8 AEntG. For a list of sectors, see section 2.

135 Gesetz zur Regelung der Arbeitnehmerüberlassung, available at http://www.gesetze-im-internet.de/a_g/index.html.

136 Verordnung zur Bestimmung der zuständigen Behörde nach § 16 Absatz 6 des Mindestlohngesetzes (hereinafter MiLoGMeldStellV), available at <https://www.gesetze-im-internet.de/milogmeldstellv/BjNR182300014.html>; Verordnung zur Bestimmung der zuständigen Behörde bei Mitteilungen und Anmeldungen nach § 18 Absatz 6 des Arbeitnehmer-Entsendegesetzes (hereinafter AEntGMeldStellV), available at http://www.gesetze-im-internet.de/aentgmeldstellv_2020/BjNR197600020.html; Verordnung zur Bestimmung der zuständigen Behörde nach § 17b Absatz 4 des Arbeitnehmerüberlassungsgesetzes (hereinafter AÜGMeldstellV), available at https://www.gesetze-im-internet.de/a_gmeldstellv/BjNR199500011.html; Verordnung zu den Dokumentationspflichten nach den §§ 16 und 17 des Mindestlohngesetzes und den §§ 18 und 19 des Arbeitnehmer-Entsendegesetzes in Bezug auf bestimmte Arbeitnehmergruppen (hereinafter MiLoDokV), available at https://www.gesetze-im-internet.de/milodokv_2015/BjNR621200015.html.

137 English version available https://www.zoll.de/EN/Businesses/Work/Foreign-domiciled-employers-posting/Obligatory-notification-workers-posted/obligatory-notification-workers-posted_node.html.

in six languages (Bulgarian, Italian, Polish, Romanian, Spanish and Hungarian). The Generalzolldirektion operates as the competent authority for notifications.¹³⁸

2. Subjects of the notification duty

Under the MiLoG, an employer established in another Member State must notify the custom administration if the undertaking posts one or more workers to Germany in one of the following economic sectors or branches of industry: building industry (Baugewerbe), catering and hotel business, passenger transportation industry, haulage (Spedition), transport and associated logistics industry, fairground and amusement sector, forestry, industrial cleaning, setting up and dismantling trade fairs and exhibitions, meat industry, prostitution as well as the private security sector.¹³⁹ The same notification duty applies to a user undertaking that engages a worker hired out by a temporary work agency established in another Member State.¹⁴⁰

According to the AEntG, an employer established in another Member State must notify the custom administration if they post one or more workers to Germany in one of the sectors for which the controlling body of the Customs Administration is authorised to carry out inspections.¹⁴¹ The following sectors are listed on the Customs Authority website:¹⁴² waste management, including street cleaning and winter maintenance, education and training services under the second or third book of the Social Code, building cleaning services, care provision as well as the mainstream construction and construction-related industries (Bauhauptgewerbe or Baunebengewerbe according to Baubetriebe-Verordnung¹⁴³).¹⁴⁴ The same notification duty applies to a user undertaking that engages a worker hired out by a temporary work agency established in another Member State.¹⁴⁵

138 § 1 MiLoGMeldStellV; § 1 AEntGMeldStellV; § 1 AÜGMeldstellV.

139 § 16 (1) MiLoG in conjunction with § 2a SchwarzArbG.

140 § 16 (3) MiLoG in conjunction with § 1 MiLoMeldV.

141 § 18 (1) AEntG; under § 16 AEntG, the controlling body of the Customs Administration is authorised to carry out inspections of the fulfilment of the employer's obligations to grant certain working conditions – as under § 5 sentence 1 No. 1-4 AEntG – if those conditions are covered by generally binding collective agreements or ordinances, § 8 AEntG. The notification requirement also concerns employers of third-country nationals under service contract (Werkvertragsarbeitgeber) who are operating in Germany within the framework of a bilateral government agreement. See also Arbeitsagentur, Merkblatt Beschäftigung ausländischer Arbeitnehmer im Rahmen von Werkverträgen in Deutschland (2018), p. 7, 8; available at https://www.arbeitsagentur.de/datei/Merkblatt-16-AuslaendischeAN_ba015375.pdf.

142 Available at https://www.zoll.de/EN/Businesses/Work/Foreign-domiciled-employers-posting/Obligatory-notification-workers-posted/Notification/notification_node.html#doc206268bodyText2.

143 Verordnung über die Betriebe des Baugewerbes, in denen die ganzjährige Beschäftigung zu fördern ist, available at https://www.gesetze-im-internet.de/baubetr_v_1980/BjNR020330980.html.

144 Customs Authority website, available at https://www.zoll.de/EN/Businesses/Work/Foreign-domiciled-employers-posting/Obligatory-notification-workers-posted/Notification/notification_node.html.

145 § 18 (3) AEntG in conjunction with § 1 MiLoMeldV.

Table 1: Notification duty

MiLoG	AEntG	AÜG
<ul style="list-style-type: none"> ■ Posting or hiring out in the sectors listed in § 2a SchwarzArbG 	<ul style="list-style-type: none"> ■ Posting or hiring out in the sectors for which the controlling body of the Customs Administration is authorised to carry out inspections ■ Inspections may be carried out to control the employer's obligations to grant specific working conditions if those conditions are covered by generally binding collective agreements or ordinances 	<ul style="list-style-type: none"> ■ Hiring out whenever an ordinance applies

According to the AÜG,¹⁴⁶ a user undertaking that engages a worker hired out by a temporary work agency established in another Member State must submit a notification whenever an ordinance applies. Since September 2020, an ordinance – the “4. Verordnung über eine Lohnuntergrenze in der Arbeitnehmerüberlassung”¹⁴⁷ (hereinafter LohnUGAÜV4) – applies to the temporary work sector as such. Based on this ordinance, user undertakings must make a notification whenever a worker hired out by a temporary work agency established in another Member State is engaged. The LohnUGAÜV4 expired on 31 December 2022. However, in the past, such ordinances have been replaced by successor ordinances upon expiry.

A notification duty for the user undertaking that engages workers in one of the sectors for which the controlling body of the Customs Administration is authorised to carry out inspections according to the AEntG takes precedence over an obligation to notify under the AÜG based on an ordinance.¹⁴⁸ However, an obligation to notify under the AÜG based on an ordinance takes precedence over an obligation to notify based on the MiLoG.¹⁴⁹ Therefore, in the absence of such an ordinance, the user undertaking must submit a notification for those workers engaged

146 § 3a AÜG.

147 Available at <https://www.buzer.de/gesetz/14102/index.htm>.

148 § 18 (3) AEntG in conjunction with § 1 MiLoMeldV; see also Carsten in: Ferme/Carsten u.a., Kommentar zum Mindestlohngesetz, MiLoG § 16 Meldepflicht / 4.4 Verhältnis zur Anmeldung nach § 18 Abs. 3 AEntG und § 17b Abs. 1 AÜG, Haufe, para. 31, available at https://www.haufe.de/personal/haufe-personal-office-platin/fermecarsten-ua-milog-16-meldepflicht-44-verhaeltnis-zur-anmeldung-nach-18-abs3-aentg-und-17b-abs1-aueg_idesk_PI42323_HI8386083.html.

149 See also § 1 (3) MiLoG.

in sectors covered by the MiLoG.¹⁵⁰ Where the duty of notification exists based on several legislative instruments, it is sufficient to submit only one uniform notification.¹⁵¹

3. Exemptions from the notification duty

- a) Exemptions under § 1 (1) and (2) Mindestlohndokumentationspflichtenverordnung (hereinafter MiLoDokV)

According to § 1 (1) MiLoDokV, notifications under the MiLoG are not required for posted workers.¹⁵²

- whose fixed monthly wage exceeds a gross 2,958 euros or
- whose fixed monthly wage exceeds a gross 2,000 euros provided that the employer can submit evidence of such payment for the past 12 months (disregarding any times without entitlement to pay).

These exemptions do not apply in the case of notifications according to the AEntG or AÜG.

According to § 1 (2) MiLoDokV, notifications¹⁵³ under both MiLoG and AEntG are not required where the posted or hired-out worker is the employer's spouse, registered life partner, child or parent. Where the employer is a legal person or a "partnership with capacity to act in its own right" (rechtsfähige Personengesellschaft), the employer is exempted from the notification duty only in cases where the above family relationship exists with the organ (or a member of such organ) entitled to represent the legal person or with an authorised partner¹⁵⁴ in the partnership.¹⁵⁵

The exemption under § 1 (2) MiLoDokV applies only for posting or hiring out under the MiLoG and the AEntG. No exemptions from the duty to notify under the AÜG apply.

150 § 16 (3) MiLoG in conjunction with § 1 MiLoMeldV.

151 Customs Authority website, available at https://www.zoll.de/EN/Businesses/Work/Foreign-domiciled-employers-posting/Obligatory-notification-workers-posted/Notification/notification_node.html#doc206268bodyText4.

152 § 1 (1) MiLoDokV; these categories are also exempted from the duty to provide an assurance (see section 5. a)) and to keep documents available under § 16 (2) or (4), § 17 (1) and (2) MiLoG, only documents must be kept attesting the fulfilment of the conditions in § 1 (1) MiLoDokV.

153 § 1 (2) MiLoDokV, also exempted from the duty to provide an assurance (see section 5. a)) and to keep documents available under § 16 (1)–(4), § 17 (1), (2) MiLoG and § 18 (1)–(4), § 19 (1), (2) AEntG. Only documents must be kept attesting to the fulfilment of the conditions in § 1 (2) MiLoDokV.

154 That is, a partner who is entitled to represent the partnership.

155 § 1 (2) MiLoDokV. Family members who are not under an employment contract and who engage in the establishment's affairs by virtue of their family relationship only are not deemed to be workers and are therefore not subject to the reporting obligations regulated by the MiLoG and AEntG legislation. See Customs Authority website, available at <https://www.zoll.de/EN/Businesses/Work/Foreign-domiciled-employers-posting/Obligatory-notification-workers-posted/Notification>.

b) Exemptions under § 24 (2) AEntG

Under the AEntG, the employer or the user undertaking is exempted from the duty to register a posting or hiring out for specific activities in Germany, such as:

- conducting consultations or negotiations, drawing up or concluding a contract on behalf of the employer or the user undertaking,
- participating as a visitor at a fair event, a symposium or an expert conference on behalf of the employer or the user undertaking, without performing activities under § 2a (1) No. 8 of SchwarzArbG,¹⁵⁶ or
- working as professionals of an internationally operating group or company in the German part of the group or company for vocational education and training.

For the exemption to apply, two other conditions must be fulfilled:

- there must be no provision of work or services on behalf of the employer for a third party in Germany and
- the worker must not be posted or hired out for more than 30 days within 12 months, with none of the postings exceeding 14 consecutive days.

4. Notification of posting

a) Design

All notifications are to be submitted online via the Minimum Wage Notification Portal www.meldeportal-mindestlohn.de, which is administrated by the Customs Administration (Zollverwaltung).¹⁵⁷ Alternatively, a notification by ordinary mail to the postal address of the General Customs Directorship – DVII – in Cologne is possible as well.¹⁵⁸ In order to submit the notification online, a user account with a personal password must be created. Information must then be filled in via an entry mask in German, English or French. Different fields must be selected for notification by an employer or a user undertaking.

All notifications must be submitted prior to the beginning of the work, separately for each place of employment or construction site,¹⁵⁹ irrespective of the duration of the relevant work

¹⁵⁶ Activities involving setting up and dismantling trade fairs and exhibitions.

¹⁵⁷ § 1 MiLoMeldV.

¹⁵⁸ See the Privacy Policy of the Minimum Wage Registration Website, available at <https://www.meldeportal-mindestlohn.de/Meldeportal/form/display.do?%24context=EE24656A41B2B9A961CB>.

¹⁵⁹ § 16 (1), (3) MiLoG; § 18 (1), (3) AEntG; § 17b AÜG – before hiring out.

or service provision.¹⁶⁰ The system supports notification for up to 999 workers at the same time.¹⁶¹ After submitting the notification, a confirmation is issued containing a notification ID and the exact date and time the notification was submitted. The printed confirmation serves as proof of submission of the notification.¹⁶²

b) Information to be provided

The following information must be provided by employers that post workers:

- name, company, address and country of origin of the employer (same information as in the registration for the account),
- the names and dates of birth of the posted workers,
- the beginning and anticipated duration of posting,
- the place of posting or site for construction work (either address or designation of a parcel of land),
- the name and address of the person or company in Germany where the documents required¹⁶³ are kept available,
- the name, date of birth and address in Germany of the contact person,¹⁶⁴
- the industry branch in which the workers are to be posted (when submitting a notification under MiLoG, an indication of the industry branch is voluntary) and
- the name and address in Germany of an authorised recipient¹⁶⁵ unless the authorised recipient is identical to the contact person.

160 Customs Authority website, available at https://www.zoll.de/EN/Businesses/Work/Foreign-domiciled-employers-posting/Obligatory-notification-workers-posted/Notification/notification_node.html.

161 FAQ registration portal, available at <https://www.meldeportal-mindestlohn.de/Meldeportal/form/display.do?%24context=EE24656A41B2B9A961CB>.

162 Customs Authority website: https://www.zoll.de/EN/Businesses/Work/Foreign-domiciled-employers-posting/Obligatory-notification-workers-posted/Notification/notification_node.html#doc206268bodyText6.

163 Pursuant to § 17 MiLoG or § 19 AEntG. The form mentions employment contracts, time-sheets, payslips and proof of payment of wages; see section 6. for further information. If a private person keeps the documents, the entry in the field “company” will be “no company”.

164 A person appointed by the employer to be available to the inspecting authority to answer questions. This person can be, e.g., the construction manager, the foreman or the object manager, an agent of the employer entitled to exercise the authority to give directives, the owner or managing director of the company or any other person in a managerial capacity; see Customs Authority website, available at http://www.zoll.de/SharedDocs/Boxen/EN/Fragen/0043_domestic_representative.

165 The domestic representative authorised to accept service (Zustellungsbevollmächtigter) will take receipt of any written document to be served on the employer, see Customs Authority Website, available at https://www.zoll.de/SharedDocs/Boxen/EN/Fragen/0044_domestic_representative_authorised_to_accept_service.html?nn=206282&faqCalledDoc=206282.

The following information must be notified by user undertakings who engage workers hired out by a temporary work agency established in another Member State and falling under the scope of a duty to notify:

- name, company, address, and country of origin of the user undertaking (same information as in the registration for the account),
- the names and dates of birth of the hired-out workers,
- the beginning and duration of hiring out for each worker,
- the place of hiring out or construction site (either address or designation of the parcel of land),
- the name and address of the person or company where the documents required¹⁶⁶ are kept available,¹⁶⁷
- the name and the address in Germany of an authorised recipient of the temporary work agency,¹⁶⁸
- the industry branch in which the workers hired out are to be engaged (when submitting a notification under the MiLoG, an indication of the industry branch is voluntary) and
- the name, company, address and country of origin of the temporary work agency.

Notifications must be submitted separately for each workplace or construction site.¹⁶⁹

In derogation from the notification duty as mentioned above,¹⁷⁰ employers or user undertakings must submit a different notification for shift or night work or if workers work at more than one workplace on the same day.¹⁷¹ The notification must include the following information:

- contact data of the employer or user (name, company, address and country of origin); if workers are hired out, details on the temporary work agency must also be provided (name or company, address and country of origin),

166 Pursuant to § 17 MiLoG, § 19 AEntG or § 17 AÜG. The form indicates the employment contracts, time-sheets, payslips and proof of payment of wages as the temporary work agency's mandatory documents; see section 6.

167 This information does not have to be indicated if the user undertaking ticks the checkbox "I certify that the information given in the supplier's assurance to the place where the documents are preserved is complete and correct". For the supplier assurance, see section 5. a).

168 This information does not have to be indicated if the user undertaking ticks the checkbox "I certify that the information given in the supplier's assurance regarding the authorised recipient is complete and correct". For the supplier assurance, see section 5. a).

169 § 16 (1), (3) MiLoG; § 18 (1), (3) AEntG; § 17b AÜG.

170 For posting or hiring out under the duty to notify according to § 16 (1) MiLoG, § 18 (1) AEntG or § 16 (3) MiLoG, § 18 (3) AEntG, § 17b (1) AÜG.

171 § 2 (1) No. 1 and 2 MiLoMeldV.

- the industry branch in which the workers are to be posted or hired out (when submitting a notification under the MiLoG, an indication of the industry branch is voluntary),
- the beginning and anticipated duration of the posting or hiring out,
- the names and dates of birth of the persons posted or hired out to Germany,
- the precise dates and times¹⁷² when the workers are to be posted or hired out,
- the place of posting or hiring out or site for construction work (address or designation of a parcel of land),
- the name and address of the person or company where the documents required¹⁷³ are kept available,
- the name, date of birth and address in Germany of the contact person (only for employers), and
- the name and the address in Germany of an authorised recipient unless they are identical to the contact person.¹⁷⁴

c) Costs

Submitting a notification is free of charge.

d) Notification of changes

Employer and user undertakings under a duty to notify must submit “without delay”¹⁷⁵ a notification of changes if:

- the beginning of the service provision changes,
- other workers than those of whom a notification was originally given are posted or hired out,
- the place of posting or hiring out in Germany changes or, for workers in the construction sector, the construction site’s location in Germany changes,
- the documents¹⁷⁶ are kept at a different place than the place initially indicated,

172 The starting work time for each working day must be filled in.

173 Pursuant to § 17 MiLoG, § 19 AEntG or § 17 AÜG. The form indicates the following documents: employment contracts, time-sheets, payslips and proof of payment of wages; see section 6.

174 This information does not have to be indicated if the user undertaking ticks the checkbox “I certify that the information given in the supplier’s assurance regarding the authorised recipient is complete and correct”; for the supplier assurance, see below under 5. a).

175 § 16 (1), (3) MiLoG; § 18 (1), (3) AEntG; § 17b AÜG.

176 See section 6.

- a different person than the one previously notified is appointed as authorised recipient and/or contact person¹⁷⁷ or
- the address of the authorised recipient and/or contact person¹⁷⁸ changes.

Additionally, user undertakings must make a notification if the beginning or end of the period during which the temporary workers are hired out changes.

Notifications of changes shall be indicated as such by ticking the relevant box on the electronic notification form.¹⁷⁹

Exemptions from the duty to indicate changes apply to certain situations for shift or night work or workers that work at more than one workplace on the same day.¹⁸⁰

5. Additional administrative requirements

a) Assurance

All employers under a duty to notify must also submit a confirmation of compliance with applicable labour law standards.¹⁸¹ In the minimum wage notification portal, employers are only able to submit a notification after confirming this assurance (by ticking the corresponding checkbox).¹⁸²

User undertakings that engage one or more workers from a temporary work agency established in another Member State to carry out an activity or perform services in Germany are required to submit a written assurance of the temporary work agency¹⁸³ confirming compliance with applicable labour law standards.¹⁸⁴ A form for the assurance¹⁸⁵ of the temporary work agency

¹⁷⁷ Contact person data is only applicable in the case of posting.

¹⁷⁸ Contact person data is only applicable in the case of posting.

¹⁷⁹ Customs Authority website, available at https://www.zoll.de/EN/Businesses/Work/Foreign-domiciled-employers-posting/Obligatory-notification-workers-posted/Notification-of-changes/notification-of-changes_node.html.

¹⁸⁰ § 3 MiLoMeldV. See section 4. b).

¹⁸¹ § 16 (2) MiLoG; § 18 (2) AEntG; Customs Authority website, available at https://www.zoll.de/EN/Businesses/Work/Foreign-domiciled-employers-posting/Obligatory-notification-workers-posted/Notification/notification_node.html%23doc206268bodyText6.

¹⁸² Customs Authority website, available at https://www.zoll.de/EN/Businesses/Work/Foreign-domiciled-employers-posting/Obligatory-notification-workers-posted/Notification/notification_node.html%23doc206268bodyText6.

¹⁸³ § 16 (4) MiLoG; § 18 (4) AEntG, § 17b (2) AÜG; Customs Authority website, available at https://www.zoll.de/EN/Businesses/Work/Foreign-domiciled-employers-posting/Obligatory-notification-workers-posted/Notification/notification_node.html%23doc206268bodyText6.

¹⁸⁴ The form for the assurance also includes: the name or company, address, country of origin of the temporary work agency, authorised recipient in Germany to accept documents on behalf of the temporary work agency and contact data of the user undertaking.

¹⁸⁵ Available at <https://www.formulare-bfinv.de/ffw/content.do?%24csrf=AKPJBKY62PA9943M2ZY93CJPQ>.

can be accessed and filled out. The assurance is uploaded by the user undertaking as a file and submitted as an attachment to the notification portal.¹⁸⁶

b) Record of working time

All employers and user undertakings¹⁸⁷ under a duty to notify¹⁸⁸ must record the beginning, end and duration of the workers' daily working times by the end of the seventh calendar day following the day on which the relevant work was performed. Additionally, they must retain such records for a minimum period of two years from the date that gave rise to such recording obligation. The recording obligation applies to:

- Employers established in another Member State who post workers in any of the economic sectors or branches
 - listed in § 2a SchwarzArbG¹⁸⁹ or
 - within the scope of the AEntG.¹⁹⁰
- User undertakings that engage workers hired out by a temporary work agency established in another Member State:
 - in any of the economic sectors listed in § 2a SchwarzArbG,¹⁹¹
 - in any of the economic sectors within the scope of the AEntG¹⁹² or
 - if the employment relationship is subject to an ordinance issued by § 3a AÜG.¹⁹³

The working time records may be either electronic or paper files.

186 Customs Authority website, available at https://www.zoll.de/EN/Businesses/Work/Foreign-domiciled-employers-posting/Obligatory-notification-workers-posted/Notification/notification_node.html%23doc206268bodyText6.

187 In the meat industry, both the temporary work agency and the user undertaking must keep working time records immediately upon commencement of work. They must also record the end and total hours of that work on, the very day when the relevant work ended – § 6 (1) Gesetz zur Sicherung von Arbeitnehmerrechten in der Fleischwirtschaft (GSA Fleisch), available at <https://www.gesetze-im-internet.de/safleischwig/BJNR257200017.html>.

188 See section 2.

189 § 17 (1) MiLoG; § 2a SchwarzArbG lists the following sectors: building industry (Baugewerbe), catering and hotel business, passenger transportation industry, haulage (Spedition), transport and associated logistics industry, fairground and amusement sector, forestry, industrial cleaning, setting up and dismantling trade fairs and exhibitions, meat industry, prostitution as well as the private security sector.

190 § 19 (1) AEntG, see section 2.

191 § 17 (1) sentence 2 MiLoG, see section 2.

192 § 19 (1) sentence 2 AEntG in conjunction with § 8 (3) AEntG; see section 2.

193 § 17c (1) AÜG; see also section 2.

6. Duty to keep documents available

The employer or temporary work agency must keep available in German the following documents¹⁹⁴ to prove compliance with applicable labour law standards in Germany:¹⁹⁵

- employment contracts and/or any other documents that reveal the essential terms of the employment relationship in the sense of Directive 91/533/EEC,
- payslips,
- evidence of wage payments made and
- evidence of working time.

The documents can be kept either in paper or electronic form.¹⁹⁶ Documents must be kept available during the whole time of actual posting or hiring out, at least for the whole length of the provision of the work or services,¹⁹⁷ but no longer than two years.¹⁹⁸

Specific information on where and by whom the documents are kept is to be provided in the notification form.¹⁹⁹ Upon request of the controlling authority, such documents must be kept available also at the working place or construction site.²⁰⁰ Additional documents such as the posting certificate – the document confirming that a notification was made – may also be required.²⁰¹

194 Customs Authority website, available at https://www.zoll.de/EN/Businesses/Work/Foreign-domiciled-employers-posting/Obligations-during-inspections/obligations-during-inspections_node.html. The legal provisions do not specify which documents are required.

195 § 17 (2) MiLoG, § 19 (2) AEntG, § 17c (2) AÜG.

196 The Customs website mentions that no requirement as to the form of the working time records applies and that working time documents may be kept either as electronic or as paper files, see https://www.zoll.de/EN/Businesses/Work/Foreign-domiciled-employers-posting/Minimum-conditions-of-employment/Other-obligations/other-obligations_node.html.

197 The temporary work agency must keep documents for the whole time of actual hiring out, but no longer than two years – § 17c (2) AÜG.

198 § 17 (2) MiLoG, § 19 (2) AEntG, § 17c (2) AÜG.

199 See section 4. b).

200 § 17 (2) MiLoG, § 19 (2) AEntG, § 17c (2) AÜG.

201 Customs Authority website, available at https://www.zoll.de/EN/Businesses/Work/Foreign-domiciled-employers-posting/Obligations-during-inspections/obligations-during-inspections_node.html.

V. Italy

1. Legal sources

a) Primary national legislation

Legislative Decree No. 136 of 17 July 2016²⁰² implements the provisions set out in the EPWD on the posting or hiring out of workers to another Member State.

b) Secondary national legislation and other sources

The Ministerial Decree of the Ministry of Labour and Social Policies of 10 August 2016²⁰³ defines for the notification of the posting or hiring out of workers the operating standards and transmission rules²⁰⁴ for employers and temporary work agencies that intend to send workers to Italy from another Member State.

Circulars No. 3/2016²⁰⁵ and No. 1/2017²⁰⁶ of the Ministry of Labour and Social Policies provide further clarifications on how to fill in the form required for submitting the notification. In addition, a website published by the Ministry of Labour and Social Policy contains a multitude of information and explanations on the regulation of the posting and hiring out of workers in the Italian legal system.²⁰⁷

202 Decreto Legislativo 17 luglio 2016, n. 136, Attuazione della direttiva 2014/67/UE del Parlamento europeo e del Consiglio, del 15 maggio 2014, concernente l'applicazione della direttiva 96/71/CE relativa al distacco dei lavoratori nell'ambito di una prestazione di servizi e recante modifica del regolamento (UE) n. 1024/2012 relativo alla cooperazione amministrativa attraverso il sistema di informazione del mercato interno («regolamento IMI»), Gazzetta Ufficiale No. 169 of 21 July 2016, available at https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2016-07-21&atto.codiceRedazionale=16G00152&elenco30giorni=true.

203 Decreto Ministeriale del Ministero del Lavoro e delle Politiche Sociali, 10 August 2016, available at <https://www.lavoro.gov.it/documenti-e-norme/normative/Documents/2016/Decreto-Ministeriale-10082016.pdf>.

204 Art. 2 of the Decree specifies the operating standards and rules for the online transmission of notifications due from service providers to the Ministry of Labour and Social Policies that post or hire out workers to Italy, that is, the regulation of the postings or hiring out and the procedures for the online transmission of the necessary information for the postings or hiring out.

205 Circolare dell'Ispettorato del Lavoro No. 3 of 22 December 2016, available at <https://www.lavoro.gov.it/documenti-e-norme/normative/Documents/2016/INL-circolare-n3-comunicazione-preventiva-distacco-transnazionale-e-regime-sanzionatorio.pdf>. The Labour Inspectorate is a subdivision of the Ministry of Labour and Social Policies.

206 Circolare dell'Ispettorato del Lavoro No. 1 of 19 January 2017, available at <https://www.lavoro.gov.it/documenti-e-norme/normative/Documents/2017/circolare-INL-9-gennaio-2017-n.1.pdf>.

207 The site is available in Italian and English. The English version is available at <http://distaccoue.lavoro.gov.it/en-gb/>.

2. Subjects of the notification duty

The Italian legislation applies to:

- companies established in another Member State which, during the provision of services, post to Italy one or more workers to another company, even if belonging to the same group, or another production unit or another recipient, provided that during the period of posting, an employment relationship with the posted worker continues (“employer”),²⁰⁸ and
- temporary work agencies established in another Member State which hire out workers to a user enterprise with its headquarters or production unit in Italy.²⁰⁹

3. Exemptions from the notification duty

Workers who are posted to another Member State but not in order to provide a service are not considered posted workers, for instance, workers who attend conferences, meetings or events.²¹⁰ Likewise, concerning workers sent to international trade fairs, Note 4833 of 5 June 2017²¹¹ of the National Labour Inspectorate clarifies that exhibiting or selling products through participation in a single event does not require notification.

4. Notification of posting or hiring out

a) Design

From 26 December 2016, the notification of posting or hiring out must be submitted online to the Ministry of Labour and Social Policies via the Modello Telematico UNI_DISTACCO_UE.^{212, 213} This form can be filled out on the institutional portal of the Ministry of Labour and Social Policies²¹⁴ and is only available in Italian.²¹⁵ The following types of notifications are available:

²⁰⁸ Art. 1 of Legislative Decree 136/2016.

²⁰⁹ Art. 1 of Legislative Decree 136/2016.

²¹⁰ A complete list of activities which can be intended as “posted working activities” does not exist. Nevertheless, according to the Italian National Labour Inspectorate, if (a) a foreign company sends its employees to Italy to temporary stands set up in the framework of fairs, exhibitions, trade shows and congressional events and (b) it is impossible to identify a service provision towards a recipient with their registered office or operational headquarters in Italy, and (c) it does not seem possible to classify the temporary stand set up as a “transnational provision of services”. On the contrary, where a transnational provision of services to a recipient located on Italian territory can be found, for instance, in the case of execution of contracts for the assembly, disassembly of the stand, possible realisation of exhibition structures, the sending of workers to Italy by the foreign fitter, even if only for a few days, results in a “transnational provision of services”, see Note 4833/2017, available at <https://www.ispettorato.gov.it/it-it/notizie/Documents/INL-nota-4833-del-05062017-distacco-transnazionale.pdf>.

²¹¹ Available at <https://www.ispettorato.gov.it/it-it/notizie/Documents/INL-nota-4833-del-05062017-distacco-transnazionale.pdf>.

²¹² Available at https://www.cgil.lombardia.it/wp-content/uploads/2016/11/Modello_Uni_distacco_UE.pdf.

²¹³ Art. 10 of Legislative Decree 136/2016. The operating procedures by which it must be transmitted are contained in the Ministerial Decree of 10 August 2016 and in Labour Inspectorate Circulars No. 3/2016 and No. 1/2017.

²¹⁴ Available at <http://distaccoue.lavoro.gov.it/it-it/>.

²¹⁵ As described in the Ministerial Decree of 10 August 2016, Annex A, available at http://sldm.it/sldm_upl/documents/D.M.-10.08.2016-e-relativi-allegati.pdf.

- prior notifications: to be submitted to communicate the beginning of one or more postings or hiring outs with the indication of the number of posted or hired-out workers and the workplace for each period of posting or hiring out. The notification is the employer's or temporary work agency's duty and must be submitted by midnight of the day before the beginning of the posting or hiring out,
- postponed notifications: if a prior notification could not be submitted in time due to certified unavailability of the online system, a postponed notification must be submitted by midnight on the day after the system is restored to full operation, and
- cancellations: to be carried out before the beginning of the posting or hiring out in case it is necessary to delete one or more so-called "essential data". A new notification must be made by midnight of the day before the beginning of the posting or hiring out. As far as employers and temporary work agencies are concerned, "essential data" refers to the identification code,²¹⁶ the state of origin or residence and the company fiscal code.²¹⁷ Regarding workers, "essential data" are the identification code,²¹⁸ state of birth and citizenship.²¹⁹

To be able to submit a notification, the employer or temporary work agency must register on www.lavoro.gov.it.²²⁰ The credentials obtained on this portal are necessary to submit a notification.

The Ministry of Labour and Social Affairs has released a guide available online on how to fill out the UNI_DISTACCO_UE form.²²¹

b) Information to be provided

The notification must contain the following information, regardless of whether it is made by an employer posting or a temporary work agency:²²²

216 The identification code is a unique code of the company attributed by the state of origin or residence of the employer or temporary work agency for tax, social security or similar purposes.

217 The Italian fiscal code, officially known in Italy as Codice fiscale, is the tax code in Italy, similar to a Social Security Number in the United States or the National Insurance Number issued in the United Kingdom.

218 For natural persons, this is a code assigned by the state of origin or residence for tax identification or similar purposes.

219 Ministerial Decree of 10 August 2016, Annex C, available at http://sldm.it/sldm_upl/documents/D.M.-10.08.2016-e-relativi-allegati.pdf.

220 Art. 1 of Legislative Decree 136/2016. See the internet page of the Ministry of Labour and Social Policies about "Distacco transnazionale" (posting), available at <https://www.lavoro.gov.it/strumenti-e-servizi/Distacco-transnazionale/Pagine/default.aspx>.

221 See Guida alla compilazione dei modelli UNI_DISTACCO_UE e UNI_CAB_UE, available at <https://distaccoue.lavoro.gov.it/AnteprimaPDF.aspx?id=248&lang=it-it>.

222 See Ministerial Decree of 10 August 2016, Annex A, available at http://sldm.it/sldm_upl/documents/D.M.-10.08.2016-e-relativi-allegati.pdf.

- address and contact details (phone number, mobile number, fax number, e-mail address) of the employer or temporary work agency,
- general information (Italian fiscal code if available or identification code provided by the worker's state of residence, surname and first name, sex, date of birth, state and place of birth)²²³ on posted or hired-out workers,
- duration of posting or hiring out, including the date of the beginning of the posting or hiring out and its foreseeable end date,
- place of posting or hiring out,
- services provided by the posted or hired-out worker(s),
- name and address of the contact person according to Art. 10 (3) (b) of Legislative Decree 136/2016²²⁴ and
- name and address of the contact person referred to in Art. 10 (4) of Legislative Decree 136/2016.²²⁵

In addition, an employer must indicate their identification code provided by their state of establishment and their name. Temporary work agencies must indicate their authorisation number.²²⁶

c) Costs

Submitting a notification is free of charge.

d) Notification of changes²²⁷

Notifications may be updated. This is done to correct the so-called "non-essential data" and must be carried out using the same procedure as for the notification within five days from the date on which the change occurs.²²⁸

223 Ministerial Decree of 10 August 2016, Annex A, available at http://sldm.it/sldm_upl/documents/D.M.-10.08.2016-e-relativi-allegati.pdf.

224 A person responsible for exhibiting, sending and receiving all documents related to the posting or hiring out when necessary; they may be any natural person domiciled in Italy (Par. 8 of Labour Inspectorate Circular 1/2017). See Legislative Decree 136/2016.

225 A legal representative of the company that posts or hires out employees to Italy; they are tasked with maintaining relations with the social partners interested in conducting negotiations related to collective bargaining of the second level. See section 5.

226 Provided by the Ministry in charge of Labour matters of the concerned Member State.

227 Ministero del Lavoro e delle Politiche Sociali, Applicazioni Distacco Transnazionale e Cabotaggio Manuale utente, available at <https://mlps.my.salesforce.com/sfc/p/#0Y0000034BQk/a/1v0000013R7g/UWdQ8nq2zdOAB6YqELjTjfXgS4IH7PQkvo9pQK3iTvA>, pp. 14 ff.

228 Ministerial Decree of 10 August 2016, Annex C, available at http://sldm.it/sldm_upl/documents/D.M.-10.08.2016-e-relativi-allegati.pdf.

According to the ministerial decree, the following data²²⁹ can be modified:

- start date, end date and duration of the posting or hiring out,
- place of posting or hiring out,
- type of services,
- general information and address for service of the contact person referred to in Art. 10 (3) (b) of Legislative Decree 136/2016²³⁰ and
- general details of the contact person referred to in Art. 10 (4) of Legislative Decree 136/2016.²³¹

Likewise, a notification that has been transmitted can be cancelled.

5. Additional administrative requirements²³²

According to Art. 10 (4) of Legislative Decree 136/2016, Italian law provides for a second type of contact person: the employer or temporary work agency posting or hiring out workers according to Italian legislation²³³ is obliged to designate, for the entire period of posting or hiring out, a contact person in Italy with powers of representation to maintain relations with the Italian social partners interested in promoting second-level collective bargaining²³⁴ with the obligation to be available in the event of a reasoned request from the social partners.²³⁵

6. Duty to keep documents available²³⁶

During the period of posting or hiring out and for up to two years after its termination, the employer or temporary work agency is obliged to keep available the following documents:

229 There is no reference to further data changes in the decree.

230 See section 4. b).

231 See section 5.

232 Ministerial Decree of 10 August 2016, Annex C, available at http://sldm.it/sldm_upl/documents/D.M.-10.08.2016-e-relativi-allegati.pdf.

233 See Comunicazione Preventiva Distacco Transnazionale. Guida alla compilazione del modello UNI_Distacco_UE, available at http://sldm.it/sldm_upl/documents/Guida-alla-compilazione-UNI_DISTACCO_UE.pdf.

234 Second-level collective bargaining agreements, also known as decentralised bargaining, supplement the national collective labour agreement. They are flexible tools that allow the integration of some economic and regulatory provisions governed by National Collective Bargaining Agreements or specific regulations. Remuneration, grading, fixed-term contracts, working hours, supplementary welfare, professional training, work environment, health and safety, work organisation and equal opportunities are just some of the provisions that can be the subject of Second Level Agreements. They aim to provide more effective work rules tailored to the characteristics and needs of the company and drawn up with the involvement of workers, gaining greater autonomy and flexibility. For further explanations, see "Collective Bargaining", available at <https://www.worker-participation.eu/national-industrial-relations/countries/italy>.

235 Art. 10 (3) (b) of Legislative Decree 136/2016.

236 Art. 10 (3) (a) of Legislative Decree 136/2016.

- the employment contract or any other document in the sense of Directive 91/533/EEC,
- the payslips,
- the slips indicating the beginning, end and duration of the daily working hours,
- the documents proving payment of wages or equivalent documents,
- the public notice of the establishment of the employment relationship²³⁷ or equivalent documents and
- the certificate relating to the applicable social security legislation (A1 Certificate).²³⁸

All documents must be kept in the original language and Italian (legal translation) and stored in paper or electronic format, provided they cannot be altered (for instance: PDF). In the event of an audit, the document must be printable with a non-editable handwritten or electronic signature.

VI. Comparative analysis

In the following, we summarise and compare the most relevant national provisions regarding notifications of posted workers, documents that must be kept available and further particularities that might increase red tape. Apart from the latter, the following tables cover the posting of workers *stricto sensu* and not the hiring out of workers. The focus lies on requirements likely to increase administrative burdens. However, to what extent these requirements increase red tape is an empirical question.

While the EPWD mentions several categories of information that Member States may request, this list is not exhaustive. Furthermore, Member States are not required to request any of these pieces of information. Thus, EU law provides neither a minimum nor a maximum threshold of information that Member States can or must request.

1. Applicable legislation and scope of application

Table 2 provides an overview of the applicable legislation – both primary and secondary – and the scope of application of notification duties.

²³⁷ Employers who establish an employment relationship are obliged to online notify the competent Employment Service in whose area the workplace is located by midnight on the day before the start of work, utilising documentation with a specific transmission date.

²³⁸ Art. 10 (3) (a) of Legislative Decree 136/2016.

Table 2: Applicable legislation and scope of application

	Austria	France	Germany	Italy
Primary national legislation	<ul style="list-style-type: none"> ■ Lohn- und Sozialdumping-Bekämpfungsgesetz ■ Bauarbeiter-Urlaubs- und Abfertigungsgesetz 	<ul style="list-style-type: none"> ■ Code du travail (legal part) 	<ul style="list-style-type: none"> ■ Mindestlohngesetz ■ Arbeitnehmer-Entsendegesetz ■ Schwarzarbeitsbekämpfungsgesetz ■ Arbeitnehmerüberlassungsgesetz 	<ul style="list-style-type: none"> ■ Decreto Legislativo of 17 July 2016, No. 136
Secondary national legislation and other sources	<ul style="list-style-type: none"> ■ ZK03 notification form 	<ul style="list-style-type: none"> ■ Code du travail (executive part) ■ Arrêté du 20 novembre 2017 relatif aux modèles de déclaration et d'attestation de détachement ■ Arrêté du 28 juillet 2020 établissant la liste des informations mentionnées au IV de l'article L. 1262-2-1 du code du travail ■ Arrêté du 4 juin 2019 établissant la liste des activités mentionnées à l'article L. 1262-6 du code du travail ■ Instruction DGT/RT1/2021 du 19 janvier 2021 relative au détachement international de salariés en France 	<ul style="list-style-type: none"> ■ Verordnung zur Bestimmung der zuständigen Behörde nach § 16 Absatz 6 des Mindestlohngesetzes ■ Verordnung zur Bestimmung der zuständigen Behörde bei Mitteilungen und Anmeldungen nach § 18 Absatz 6 des Arbeitnehmer-Entsendegesetzes ■ Verordnung zur Bestimmung der zuständigen Behörde nach § 17b Absatz 4 des Arbeitnehmerüberlassungsgesetzes ■ Verordnung zu den Dokumentationspflichten nach den §§ 16 und 17 des Mindestlohngesetzes und den §§ 18 und 19 des Arbeitnehmer-Entsendegesetzes in Bezug auf bestimmte Arbeitnehmergruppen ■ 4. Verordnung über eine Lohnuntergrenze in der Arbeitnehmerüberlassung 	<ul style="list-style-type: none"> ■ Decreto Ministeriale del Ministero del Lavoro e delle Politiche Sociali of 10 August 2016 ■ Circolare dell'Ispettorato del Lavoro No. 3 of 22 December 2016 ■ Circolare dell'Ispettorato del Lavoro No. 1 of 19 January 2017
Covered sectors	<p>All sectors</p>	<p>All sectors</p>	<p>Specific sectors</p>	<p>All sectors</p>
Exemptions for posted workers	<ul style="list-style-type: none"> ■ For certain training and educational purposes ■ For business meetings, congresses and trade fairs ■ For cultural events and international sports competitions ■ Under certain conditions within a company group 	<ul style="list-style-type: none"> ■ For posting on employer's own account ■ Posting for short-term services provided as part of one-off events 	<ul style="list-style-type: none"> ■ For certain wage levels if a minimum wage exists in this sector ■ For some instances of family relationships ■ For certain services 	<ul style="list-style-type: none"> ■ For workers that do not provide a service ■ For workers exhibiting or selling products at a single event

2. Information to be provided

Table 3 gives an overview of the commonalities and differences concerning the information referred to in the EPWD that must be provided when registering a posting.

Table 3: Information to be provided referred to in the EPWD

Category of information required	Information to be provided in all Member States researched	Austria: additional information required	France: additional information required	Germany: additional information required	Italy: additional information required
Identity of the service provider	<ul style="list-style-type: none"> Name Address 	<ul style="list-style-type: none"> VAT number Business licence/field of business 	<ul style="list-style-type: none"> VAT number Legal form 	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> Identification code
Anticipated number of clearly identifiable posted workers	<ul style="list-style-type: none"> Name(s) Date(s) of birth 	<ul style="list-style-type: none"> Address Social security number Competent social security institution Citizenship Type of work carried out in Austria 	<ul style="list-style-type: none"> Address Sex Place of birth Citizenship Professional qualification Job exercised during posting to France 	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> Sex State and place of birth Italian fiscal code/identification code
Contact person to liaise with authorities	<ul style="list-style-type: none"> Name 	<ul style="list-style-type: none"> Address 	<ul style="list-style-type: none"> E-mail address Phone number If applicable: SIRET number 	<ul style="list-style-type: none"> Date of birth Address 	<ul style="list-style-type: none"> Address
Contact person for collective bargaining	<ul style="list-style-type: none"> No common information requirements 	<ul style="list-style-type: none"> No contact person needs to be appointed 	<ul style="list-style-type: none"> No contact person needs to be appointed 	<ul style="list-style-type: none"> No contact person needs to be appointed 	<ul style="list-style-type: none"> Name Address
Anticipated duration, envisaged beginning and end date of posting	<ul style="list-style-type: none"> Beginning 	<ul style="list-style-type: none"> Anticipated duration 	<ul style="list-style-type: none"> Foreseeable end date 	<ul style="list-style-type: none"> Anticipated duration 	<ul style="list-style-type: none"> Anticipated duration Foreseeable end date
Address(es) of the workplace	<ul style="list-style-type: none"> Address(es) of the workplace(s) 	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> In addition to the address: date on which work at the respective site begins and foreseeably ends 	<ul style="list-style-type: none"> Alternatively to the address(es) of the workplace(s): the designation of a parcel of land 	<ul style="list-style-type: none"> None

Category of information required	Information to be provided in all Member States researched	Austria: additional information required	France: additional information required	Germany: additional information required	Italy: additional information required
Nature of the services justifying the posting	<input type="checkbox"/> No common information requirements	<input type="checkbox"/> Business licence/field of business	<input type="checkbox"/> Main activity carried out in France, indicating, if applicable, nature of dangerous work equipment or procedures used	<input type="checkbox"/> Industry branch ²³⁹	<input type="checkbox"/> Type of services
Accepted languages	<input type="checkbox"/> No common language accepted	<input type="checkbox"/> German <input type="checkbox"/> Czech <input type="checkbox"/> English <input type="checkbox"/> Spanish <input type="checkbox"/> Croatian <input type="checkbox"/> Italian <input type="checkbox"/> Hungarian <input type="checkbox"/> Polish <input type="checkbox"/> Romanian <input type="checkbox"/> Slovenian <input type="checkbox"/> Slovak	<input type="checkbox"/> French <input type="checkbox"/> German <input type="checkbox"/> English <input type="checkbox"/> Spanish <input type="checkbox"/> Italian	<input type="checkbox"/> German <input type="checkbox"/> English <input type="checkbox"/> French	<input type="checkbox"/> Italian

²³⁹ Voluntary for notifications under the MiLoG.

Adding to Table 3, Table 4 provides an overview of the commonalities and differences concerning the pieces of information not referred to in the EPWD that must be provided when notifying the authority of a posting.

Table 4: Information to be provided not referred to in the EPWD

Category of information required	Austria	France	Germany	Italy
Information on the client	<input type="checkbox"/> Name <input type="checkbox"/> Address	<input type="checkbox"/> VAT number <input type="checkbox"/> Name (only for principals) <input type="checkbox"/> Address (only for principals)	<input type="checkbox"/> None	<input type="checkbox"/> None
Information on executives	<input type="checkbox"/> Name <input type="checkbox"/> Address	<input type="checkbox"/> Name <input type="checkbox"/> Date of birth <input type="checkbox"/> Place of birth	<input type="checkbox"/> None	<input type="checkbox"/> None
Information on working hours	<input type="checkbox"/> Length and distribution of working hours	<input type="checkbox"/> Beginning and end of working hours <input type="checkbox"/> Hours and duration of rest	<input type="checkbox"/> For shift or night work and workers that work at more than one workplace on the same day: precise dates and times (starting work time for each day)	<input type="checkbox"/> None
Information on remuneration	<input type="checkbox"/> Remuneration to which the worker is entitled	<input type="checkbox"/> Hourly remuneration	<input type="checkbox"/> None	<input type="checkbox"/> None
Information on social security	<input type="checkbox"/> None	<input type="checkbox"/> State of affiliation to social security; <input type="checkbox"/> Application for A1 Certificate	<input type="checkbox"/> None	<input type="checkbox"/> None
Information on professional expenses	<input type="checkbox"/> None	<input type="checkbox"/> Conditions under which the employer covers travel, food, and, if applicable, accommodation expenses	<input type="checkbox"/> None	<input type="checkbox"/> None
Information on accommodation	<input type="checkbox"/> None	<input type="checkbox"/> If applicable: place of collective accommodation	<input type="checkbox"/> None	<input type="checkbox"/> None
Information on work permit	<input type="checkbox"/> If required in the posting country: a work permit	<input type="checkbox"/> None	<input type="checkbox"/> None	<input type="checkbox"/> None
Information on residence permit	<input type="checkbox"/> If required in the posting country: residence permit	<input type="checkbox"/> None	<input type="checkbox"/> None	<input type="checkbox"/> None
Information on the employment relationship	<input type="checkbox"/> Beginning of the employment relationship	<input type="checkbox"/> Signature date of employment contract	<input type="checkbox"/> None	<input type="checkbox"/> None

3. Additional administrative requirements

Table 5 provides an overview of further administrative requirements – that is, requirements not directly related to the notification of a posting – that might increase red tape.

Table 5: Additional administrative requirements that might increase red tape

Member State	
Austria	<ul style="list-style-type: none"> ■ Monthly reports for construction work, including each worker's personal information, date of first and last day of work, occupational qualification and hourly wage
France	<ul style="list-style-type: none"> ■ BTP Card for construction workers (9.80 euros per worker) ■ For temporary work agencies: financial collateral to guarantee that workers will receive their wages
Germany	<ul style="list-style-type: none"> ■ User undertakings must submit a written assurance of the temporary work agency confirming compliance with applicable labour law ■ Working time records
Italy	<ul style="list-style-type: none"> ■ None

4. Documents to be kept available

Table 6 provides an overview of the documents which Member States may require to be kept available that are referred to in the EPWD. In addition, all Member States surveyed require that the place where the documents are held available be indicated.

Table 6: Documents to be kept available referred to in the EPWD

Type of document	Austria	France	Germany	Italy
Working contract or equivalent document	Required	Required	Required	Required
Payslips	Required	Required	Required	Required
Proof of payments	Required	Required	Required	Required
Working time records	Required	Required	Required	Required
Accepted language(s) for the required documents				
	<ul style="list-style-type: none"> ■ German ■ For the employment contract also English 	<ul style="list-style-type: none"> ■ French 	<ul style="list-style-type: none"> ■ German 	<ul style="list-style-type: none"> ■ Italian and the original language required

Adding to Table 6, Table 7 provides an overview of the documents not referred to in the EPWD that Austria, France, and Italy require to be kept available.

Table 7: Documents to be kept available not referred to in the EPWD

Type of document	Austria	France	Germany	Italy
A1 Certificate	Required	Required under social security law	Not required	Required
Documents relating to pay categorisation ²⁴⁰	Required	Not required	Not required	Not required
Wage records ²⁴¹	Required	Not required	Not required	Not required
Work permit from the posting country	If required in the posting country	If required in the posting country	Not required	Not required
Document attesting the law applicable to the contract between the service provider and their client	Not required	Required	Not required	Not required
Document attesting the number of contracts performed and turnover generated by the service provider	Not required	Required	Not required	Not required
Document demonstrating a medical examination	Not required	Where a medical examination of "employability" has been carried out in the country of origin before the assignment to a position presenting specific health or safety risks	Not required	Not required
Copy of the notification	Required	Not required	Not required	Not required
Accepted language(s) for the required documents				
	<ul style="list-style-type: none"> ■ German ■ Language of the issuing Member State for a work permit and an A1 Certificate 	<ul style="list-style-type: none"> ■ French 	<ul style="list-style-type: none"> ■ German 	<ul style="list-style-type: none"> ■ Italian

²⁴⁰ For instance, education and training or previous employment periods, if declared relevant by the applicable collective bargaining agreement.

²⁴¹ Documents attesting how remuneration was calculated.

5. Digitisation

Table 8 provides an overview of the digital means employed to fulfil the notification obligation and obligation to keep documents available.

Table 8: Use of electronic means

Type of obligation	Austria	France	Germany	Italy
Electronic notification	Possible	Possible	Possible	Possible
Keeping documents available electronically	Possible	Possible	Possible	Possible

Considering all tables above, we arrive at the following conclusions: Firstly, finding out whether a notification is required appears to be burdensome, especially in Germany. Secondly, France requires a particularly large body on information, both regarding categories of information referred to in the 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 researched. 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.

Part B: Assessment of regulatory burdens by Prognos AG and CSIL

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I. Introduction

If a business from an EU Member State seeks to post an employee to another Member state, questions arise about labour and social security law. In 1996, the EU issued the Posting of Workers Directive (amended in 2018) to ensure the principle of equal treatment of posted workers and regular workers employed in the host Member State in areas such as minimum wage, remuneration, working hours and safety at work. In 2014, the Enforcement of Posting Workers Directive was adopted to enforce the Directive. The legal framework for fair competition and the protection of posted workers' rights aims to ensure a level playing field in the internal EU market to carry out work or to provide a service in another Member State.

For businesses, excessive bureaucracy is not only a nuisance, but also ties up valuable human and financial resources. Bureaucracy is perceived as a barrier to the EU's internal market, which guarantees the free movement of goods, services, capital and people between Member States. Cutting red tape for businesses has become an essential competitive factor in a global economy and is on the political agenda of the EU and its Member States. Since the beginning of the 2000s, it has been a declared goal of the EU Commission to reduce the administrative burdens for businesses and citizens. These efforts find expression, for example, in the Regulatory Fitness and Performance Programme (REFIT), which examines the potential impact of new regulations in advance and provides the EU Commission with a decision-making aid.²⁴²

This study aims to compare the burdens on companies of complying with the obligations of the Posting of Workers Directive when posting workers in four EU Member States: Austria, France, Germany and Italy. The study takes a more comprehensive approach to measuring compliance costs for companies compared to the EU standard cost model, which focuses on the costs incurred by complying with information obligations only. In doing so, it contributes to a more evidence-based discussion on reducing regulatory burdens at the European and national levels.

Overall, the study aims to answer the following research questions for each Member State within a comparative study design:

- How is EU legislation transposed into national law, and does “gold-plating” occur here?
- How are the provisions implemented in the administrative context?
- What are the standard processes (procedures) for businesses to register a posting?

²⁴² European Commission, REFIT – making EU law simpler, less costly and future proof, https://commission.europa.eu/law/law-making-process/evaluating-and-improving-existing-laws/refit-making-eu-law-simpler-less-costly-and-future-proof_en#documents.

- To what extent are the registration procedures and administrative services digital?
- What are the average compliance costs for a company to register a posting?
- What are perceived burdens for companies?
- What are the compliance costs for the economy as a whole?
- What changes could improve the administrative procedure?

The findings of this second part of the study are presented in the following chapters, starting with the comparative analysis (B.II). More details on the countries may then be found in the individual country chapters (B.III to B.VI). Details on the methodological approach and the data collection for this study are available in the final chapter (B.VII).

II. Comparison of the regulatory burdens of posting workers in Austria, France, Italy and Germany

1. Posting workers in Europe

The number of registered postings is not centrally recorded at the EU level. Statistics on Portable Documents A1 (PDs A1) issued are sometimes used as a proxy for the number of postings in the Member States. However, not all postings are necessarily registered (i.e. exemptions, non-compliance) and there are no unified recordings of registered postings at the EU level. The number of PDs A1 issued for a particular EU Member State can, therefore, not be equated with the number of postings. While no official statistics on the number of notified postings are available for Austria and Germany,²⁴³ they are recorded in France and Italy. The respective country chapters present and discuss the statistics on postings to France and Italy. It becomes clear that the statistics on PDs A1 differ significantly from those on postings. An extrapolation of the overall economic costs resulting from compliance with the Posting of Workers Directive based on the statistics on PDs A1 is therefore invalid. For this reason, an estimate of the total time spent can only be made based on the available statistics on postings to France and Italy.

2. Transposition and administrative implementation

The transposition of the Posting of Workers Directive and the Enforcement of the Posting of Workers Directive into national law and the corresponding administrative implementation led to major differences in the scope of reporting and information requirements in the Member States compared. In the tables below, the scope of the information obligations (number of characteristics to be provided upon registration) and reporting obligations (documents to be

²⁴³ In 2018, a response by the German Federal Government to a minor interpellation (Kleine Anfrage) in the German Bundestag showed that there is no statistical data on the number of workers posted from Germany to other Member States of the European Union, nor on the number of workers posted from other Member States to Germany. There is no Union-wide reporting obligation for postings in either the country of origin or the country of posting (host country) (Drucksache 19/2806).

kept available for postings in each country) are quantitatively assessed based on the legal study. Recent legal changes have yet to be considered.

Table 9: Quantity of information requested by each national notification process Information referred to in the EPWD

Category of information required	Pieces of information to be provided in all Member States	Additional information required by			
		Austria	France	Germany	Italy
Identity of the service provider	2	+2	+2	None	+1
Anticipated number of clearly identifiable posted workers	2	+5	+6	None	+3
Contact person to liaise with authorities	1	+1	+3	+2	+1
Contact person for collective bargaining	None	None	None	None	+2
Anticipated duration, envisaged beginning and end date of the posting	1	+1	+1	+1	+2
Address(es) of the workplace	1	None	+1	+1	None
Nature of the services justifying the posting	None	+1	+1	+1	+1
Total	7	+10	+14	+5	+10

A direct comparison of the information requirements mentioned in the EPWD shows that the scope varies from country to country. While the posting company must provide a name and address in all countries, additional information such as legal form or VAT number is required in Austria, France and Italy. The same applies to posted workers. In addition to the name and date of birth, Austria, France, and Italy require up to six other categories of information, such as gender, home address, nationality or national insurance number. There are fourteen additional information requirements in France, ten in Austria and Italy as well as five in Germany, which are referred to in the EPWD.

Additional information requirements can be classified as gold-plating.

Furthermore, there are fourteen additional information requirements in France, nine in Austria and one in Germany that do not originate from the EPWD and can therefore be classified as gold-plating (Table 10).

Table 10: Quantity of information requested by each national notification process information not referred to in the EPWD

Category of information required	Austria	France	Germany	Italy
Information on the client	+2	+3	None	None
Information on executives	+2	+3	None	None
Information on working hours	+1	+2	+1	None
Information on remuneration	+1	+1	None	None
Information on social security	None	+2	None	None
Information on professional expenses	None	+1	None	None
Information on accommodation	None	+1	None	None
Information on work permit	+1	None	None	None
Information on residence permit	+1	None	None	None
Information on the employment relationship	+1	+1	None	None
Total	+9	+14	+1	+0

In Austria and France, for example, additional information is required on the name and address of the client and the executor (in France, the VAT number as well). Except for Italy, all countries require documentation of working hours. In the interviews, this was described as particularly time-consuming. France also requires additional information on the application for the A1 Certificate, the payment of travel and living expenses and, if applicable, the place of shared accommodation. Austria demands additional information on work and residence permits if posted workers must present them for the country they are posted from (e.g., if a non-EU worker has a work permit for Germany and is posted from there to Austria). Finally, in Austria and France, information on the date of the start of the employment contract is also required.

In total, 28 additional characteristics are required in France, almost five times as many as in Germany with six characteristics. Austria and Italy require 19 and 10 additional information characteristics, respectively. In contrast to the other three countries, Italy has no evident gold-plating.

France requires 28 additional characteristics.

Regarding the documents to be kept available for posting in the individual countries, France and Austria also have higher requirements than Germany and Italy (see Table 11 for an overview). All countries demand the employment contract or equivalent, payslips, proof of payment, working time records and the A1 Certificate (except Germany). However, Austria requires further proof, such as documents on salary classification, including wage records, and France requests, among others, documents proving a medical examination.

Table 11: Documents to be kept available for postings in each country

Austria	France	Germany	Italy
Working contract or equivalent document	Working contract or equivalent document	Working contract or equivalent document	Working contract or equivalent document
Payslips	Payslips	Payslips	Payslips
Proof of payments	Proof of payments	Proof of payments	Proof of payments
Working time records	Working time records	Working time records	Working time records
A1 Certificate	A1 Certificate		A1 Certificate
Documents relating to pay categorisation	Document attesting the number of contracts performed and turnover generated by the service provider		
Wage records	Document attesting the law applicable to the contract between the service provider and its client		
Work permit from the posting country	Work permit from the posting country		
Copy of the notification	Document demonstrating a medical examination		

Nonetheless, the quantitatively recorded information and documentation obligations cannot be used directly to estimate the effort. Many of the information obligations encompass pre-existing data in the companies that do not have to be recorded separately. Instead, the burdens vary greatly depending on the requirement: for example, the Codice fiscale in Italy seems to be a significant burden for foreign companies posting to Italy. In France, the tendering process has been drastically simplified in recent years by improving the online portal for companies. At the same time, the French system is characterised by a strong and explicit commitment to a high level of controls.

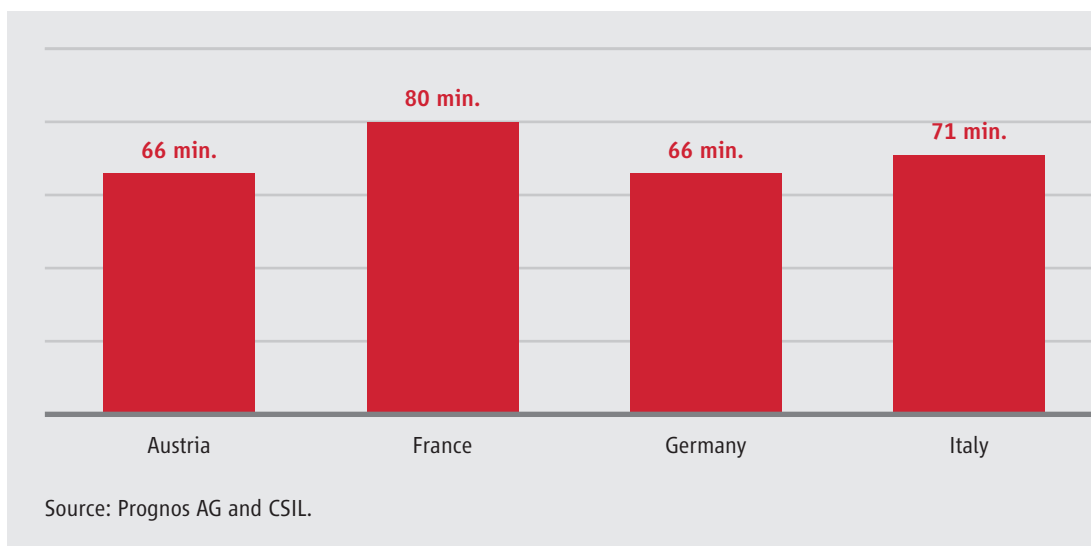
3. Efforts and costs of standard application processes

The estimated total time needed on average for a company to register a posting varies considerably between the countries studied (Figure 1). On average, a company needs 15 minutes longer for the posting process in France (80 minutes – excluding additional time for construction companies) than in Austria and Germany (66 minutes each). For Italy, the posting process takes an average of 71 minutes. It should be noted that the efforts for familiarisation with the requirements and initial registration on the posting portals are not included in these

longest posting process in France, leanest processes in Austria and Germany

estimates. A driving factor seems to be the time needed to compile the documents required for the procedure or in case of an inspection (country-specific documents, translations etc.). Gold-plating can partly explain this development, but other factors, such as high complexity and uncertainty about national legislation, also play a role.

Figure 1: Total estimated time for registering and providing documents at the company level in minutes



When interpreting the results, it should be noted that they are based on median values; the estimated efforts vary greatly in individual cases. The composition of the samples varies from country to country. In Germany, mainly companies in the border region with France were surveyed, while in Austria, Italy and France, the share of experts interviewed is higher.

In all the countries studied, the most significant effort arises from the fact that posting requires familiarisation with the rules of the country concerned. Businesses posting workers to another EU Member State must devote considerable resources to an initial analysis of the situation before making the posting notifications. Understanding the specificities of national legislation in general and for postings in particular is a challenge, not only because of the language barrier but also because of the differences in the labour and social systems. Therefore, foreign companies need to conduct an analysis of numerous aspects, including identifying possible exemptions, applicable social agreements (e.g. for wages), coverage of leave, accommodation etc.

In Austria, various online information services facilitate familiarisation with legal requirements. However, most companies see the Austrian collective bargaining system as a burden. The companies from France, Germany and Italy estimated that it took them about half a day to two working days to familiarise themselves with the Austrian system. The German companies

tended to report less effort, as familiarisation was easier for them was easier for them owing to sharing the same language and having similar administrative systems.

In France, legislation has changed frequently in the past, prompting several companies to use consultancy services to administer these aspects. Smaller companies can also be discouraged by this situation. The strength and rigour of the controls are also perceived as unfavourable by most foreign companies posting to France. Austrian, German, and Italian companies estimate they need between six hours and two and a half working days to familiarise themselves with the French system. Companies with French-speaking staff or companies that have outsourced the posting process report less effort.

Germany is the only country surveyed in which the Posting of Workers Directive only applies to specific sectors and industries. Different laws apply to posting in Germany, depending on the industry or sector. The requirements may vary depending on the applicable law. For many sectors, the minimum gross wage limit of 2,000 euros per month applies, above which posting notification is no longer required. This exemption, however, does not apply to the construction industry. Industries that do not fall under the exemption expend higher effort to familiarise themselves with the obligation. This led to uncertainties among the companies surveyed, especially when posting workers to Germany for the first time, as it is not immediately clear which law the notification is based on and whether the activity in question is exempt. Businesses from Austria, France and Italy estimated the time required for familiarisation with the German system at half a working day to one and a half working days. Further, businesses from industries that fall under the exemptions reported expending significantly lower effort.

Even in the case of postings to Italy, the first step of familiarisation requires a considerable amount of time on the part of the companies, which is often associated with a request for support from international mobility consultants. With the support of experts, uncertainties regarding requirements and procedures, language barriers and difficulties in accessing the web portal can be overcome more easily.

The companies from Austria, France and Germany estimated the time required for familiarisation with the Italian system at between six hours and two and a half working days, whereby the time spent by the companies depended on whether they used external support.

In all countries studied, registration of posting is available as an online service, either via a website (Austria) or an online portal (France, Germany, Italy). In Austria, there is no posting platform in the technical sense. The posting must be registered via a browser-based web form. In Germany, authentication is required for the initial registration on the posting platform,

which requires a separate upload of certain documents. Using the posting platform requires some training but is described as user-friendly overall. In addition, the necessary steps are well explained in the FAQs on the website of the posting portal. Accordingly, the registration took the companies between 10 and 30 minutes. In France, it is necessary to register on the SIPSI portal to perform notifications (French companies can also create accounts to follow the demands of their foreign partners). The process takes some time but must only be performed once and is facilitated by the available translations. The primary issue is that the accounts are linked to a single e-mail address and cannot be transferred. This means that in cases of changes in the staff (e.g. the departure of the person managing the notifications), a new account must be created, which is a source of tension for companies. The SIPSI portal team is currently working to solve this issue. However, the effort required for registering can range from 10 to 60 minutes.

For postings to Italy, access to the Servizi Lavoro portal is possible in four ways. The Digital Identity System (SPID) or the Electronic Identity Card (CIE) grants users with an Italian fiscal code access to the system. Other users can recur to the electronic IDentification Authentication and Signature (eIDAS), which is only available in some foreign countries (e.g. in Austria) or use foreign user credentials. The access for foreign users through credentials requires a specific accreditation procedure. This is to certify the identity of the user (when using the other three systems, a certified identity is already implied) and consists in filling out a request form (with information on the user such as the name, date and place of birth, address etc. as well as uploading the signed copy of an identity document). Once the form requiring foreign user access is completed, a dedicated assistance service checks the request. If the outcome is positive, the user receives an e-mail with foreign user credentials to access the Servizi Lavoro portal. The initial registration on the Servizi Lavoro portal was described by companies in Austria, France, and Germany as overly complex. Some companies reported that they had failed at the initial registration process. Due to the extensive requirements and the language barrier, the companies described requiring 90 to 120 minutes.

*initial registration
on the Servizi Lavoro
portal in Italy is
overly complex*

In Austria, using a web form for posting means that company-specific information cannot be saved and must be re-entered for each posting. However, the possibility of adjusting the language of the web form makes it easy for foreign companies to complete the form. Accordingly, companies described efforts of 10 to 30 minutes. The German posting portal was described as needing to be more intuitive by companies from Austria, France and Italy. In particular, companies that rarely post to Germany reported that a training period was required. The time spent by the Austrian, French and Italian companies ranged from 10 to 40 minutes, depending on how often they posted. The application to register a posting in France is made via the SIPSI portal. There are different forms depending on the posting (e.g. on own account, for multinationals, ...), but the information required is similar. The amount of information

required is considered high. However, the portal also has several features that reduce the burdens on companies (e.g. saving of previous postings/information, auto-completion, support information and FAQ). Most companies from Austria, Germany and Italy reported an effort of 20 to 30 minutes, but in some cases, an effort of up to 60 minutes was recorded. In Italy, the compilation of the UNI_DISTACCO_UE model is reported as unintuitive, and the lack of adequate support from the helpdesk does not facilitate the companies' tasks. Nevertheless, experienced companies only need about 15 minutes for processing, while some companies require up to 60 minutes.

In Austria, the effort to provide documents results from compliance with collective wages. The companies from France, Germany and Italy described a time expenditure of 30 to 60 minutes. Companies posting to France also report an initial extra effort for translation, estimated at 30 to 60 minutes. In Germany, the comparatively low effort for providing documents is due to the lower number of documents required. Posted workers only need the employment contract and pay slips. Therefore, the time required to submit the documents is less than in Austria, France and Italy, at 20 to 45 minutes. In France, documents can be uploaded to the portal when preparing the registration. However, they must be translated into French and ready for checks. Failure to provide the documents can result in heavy fines. In Italy, an upload of the supporting documents is not requested, but they must be kept available. The Austrian, French and German companies described an effort of 30 to 60 minutes to provide documents for the posting to Italy. To this end, an Italy-based representative's appointment to keep the documents is foreseen. Usually, businesses outsource this task to a tax advisor, incurring additional costs.

4. Perceived burdens

The following perceived burdens are based on the suggestions from interviewees who participated in the study. The identified burdens are common in all countries studied.

*familiarising with
legal requirements:
challenging and
ressource intensive*

Companies in all countries surveyed indicated that familiarising with the respective legal requirements of the Posting of Workers Directive is the most challenging and resource intensive step. This is due to the high complexity and diversity of the requirements to be met in the respective countries (e.g. payment of the collectively agreed wage with more than 800 collective agreements in Austria). On the other hand, language barriers add to the difficulty, as access to information is more complex and documents must be translated. Most of the companies surveyed said they had informed themselves intensively (through local and national Chambers of Commerce, internet research, newsletters, training, external consultants or working groups). However, many companies are unsure whether their knowledge is up to date and whether they comply with the applicable legal framework.

In France and Austria, in particular, the complexity and scope of the rules and requirements related to the Posting of Workers Directive were perceived by some companies as a form of protectionism, as the effort and costs involved are a considerable barrier to market entry.

5. Proposals to reduce burdens

The general suggestions of the study participants from Austria, France, Germany and Italy to reduce the regulatory and administrative burdens point to greater standardisation across the Member States.

a) Standardisation of posting requirements and acceptance of English documents

In general, businesses are overwhelmed by the multitude of national requirements related to the Posting of Workers Directive (e.g. for the exceptions to the obligation to register a posting) and uniquely structured registration and reporting processes resulting from country-specific administrative implementation. In addition, it is necessary to keep abreast of legislative developments and administrative changes in the respective countries. Therefore, experts and businesses suggested common exemptions for the activities and services to be reported should be defined and the information and reporting obligations reduced to the absolute minimum as well as standardised throughout the EU. Moreover, uniform recognition of documents in English should be possible: many EU Member States, including Austria, France, Germany and Italy, require translating the necessary documents (including employment contracts) into their official language. In particular, companies that post to several EU countries would benefit from English being uniformly recognised as the official language for postings in the EU.

b) Single and uniform reporting portal for all EU Member States

Experts and businesses expressed the desire for a uniformly structured EU-wide reporting portal which allows the registering of postings to all EU Member States in English, for example a standardised and structured input mask in which the country of posting can be selected. The model for such an EU-wide portal could be the Internal Market Information (IMI) website recently launched for road traffic notifications. The country-specific requirements could be integrated into the process steps and clearly defined. In addition, the portal should provide easy-to-understand information on essential areas of law in the respective countries of posting and, above all, practical assistance for implementing the notification, such as legal sources, and information material in several languages. Moreover, software tools such as wage calculators could help to determine the wages paid according to the country's requirements (e.g. collective agreements in Austria).

exemptions for activities/services needed

reduction of reporting obligations needed

EU-wide standardisation needed

English documents should be accepted in every Member State.

EU-wide reporting portal in English needed

limit reporting obligations to essential, high-risk sectors/activities

exemptions for certain posting constellations needed

c) Simplification of posting requirements for specific situations

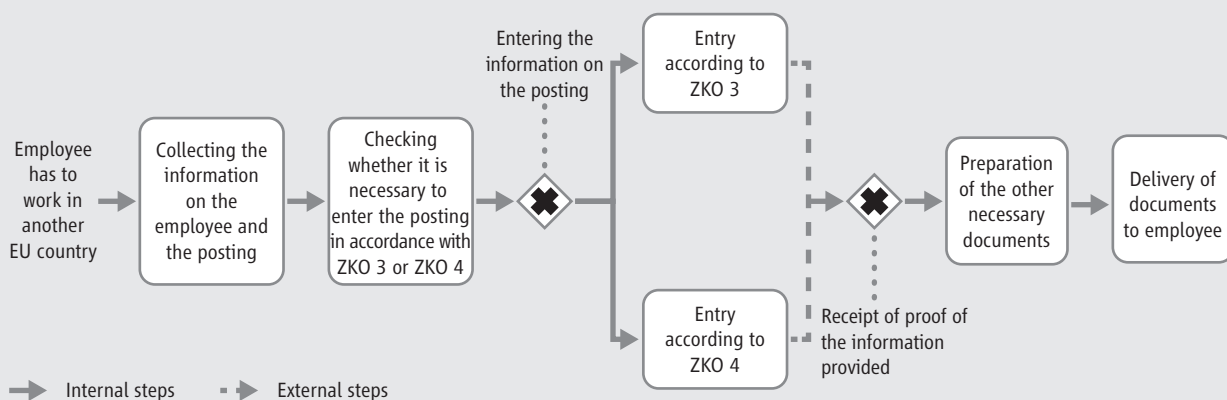
Uniform criteria for the services to be reported should be defined and posting requirements for specific situations should be simplified. One solution is to limit the reporting obligation to essential, high-risk sectors and activities. Other proposals include exemptions or reduced reporting requirements for certain posting constellations, e.g. short-term postings for repair or service purposes, unplanned emergency assignments, especially in cross-border regions, or intra-company postings where no reporting is required. German and Italian companies, in particular, oppose mandatory national contact points or contact persons in the country. Furthermore, the validity of the respective collective agreements should only apply to longer, plannable assignments. Otherwise, lump sum payments should be made.

d) Merging of application processes for A1 Certificates and posted workers

The relationship between the Posting of Workers Directive and the A1 Certificate is often perceived as “two sides of the same coin”. However, the administrative processes of the respective notifications run separately. Individual companies have therefore expressed the wish to merge the processes and map the notification of both regulations in one notification process. Combining the procedures for the application for the A1 Certificates with the notification duty could simplify the management of postings for companies. However, this would require strong cooperation between organisations and a harmonisation effort across the EU, for example by creating links between existing national databases.

facilitate notification by linking two processes

III. Austria



In Austria, the protective provisions of the Posting of Workers Directive, such as maximum working hours, minimum wages and labour protection provisions, are implemented primarily by the Wage and Social Dumping Combating Act (Lohn- und Sozialdumping-Bekämpfungsgesetz – LSD-BG), Holiday Act (Urlaubsgesetz – UrlaubsG), and Working Hours Act (Arbeitszeitgesetz – AZG).

In general, all companies based abroad are obliged to register their posted workers. However, if no services are provided, the LSD-BG provides exemptions for minor, temporary activities, such as business meetings or participation in trade fairs, congresses, conferences or international sports competitions. In addition, an employee is exempt from registering if they earn a gross monthly salary of 6,660 euros or more.²⁴⁴

1. Standard application processes

In Austria, employers must register postings before they begin with the Central Coordination Unit for Combating Illegal Employment (Zentrale Koordinationsstelle für die Kontrolle der illegalen Beschäftigung – ZKO) at the Ministry of Finance. Information on posting workers to Austria and the application procedure is available on various websites, including a website published by the Ministry of Labour called “Posting of workers platform” (www.entsendeplattform.at) and a website of the Ministry of Finance.²⁴⁵ The website set up by the Ministry of Labour per the EU Directive is available in German, English, Hungarian, Polish, Czech, Slovenian and Slovak.

Companies must submit their posting notification separately for each posting via the ZKO3 web form.^{246, 247, 248} Registration is free of charge, and the web form is available in 11 different languages: German, Czech, English, Spanish, Croatian, Italian, Hungarian, Polish, Romanian, Slovenian and Slovak. When registering a posting, all workers can be registered at once; separate registrations for each worker are not required.

The LSD-BG defines the information required for the registration:

- Employer of the posted worker,
- An appointed person to represent the employer externally,
- Contact person on site,
- Client,
- Period of posting and
- Place of employment in Austria

²⁴⁴ § 1 (5) and (6) LSD-BG.

²⁴⁵ <https://www.bmf.gv.at/themen/betrugsbekaempfung/zentrale-koordinationsstelle.html>.

²⁴⁶ In the case of worker provision, form ZKO4 is required. Both forms usually require similar information, e.g. the duration of the posting or general company information.

²⁴⁷ <https://www3.formularservice.gv.at/formularserver/user/formular.aspx?pid=cc0245e96e3145f28adeacc34a476f8d&pn=B8c0a8778f0824d4d886b1e6697edbb4b&lang=en>.

²⁴⁸ Austria makes a fundamental distinction between the posting of workers (Entsendung) and the provision of workers (Überlassung).

The information is automatically checked for validity when filling out the web form.²⁴⁹ Once the form has been completed, a link containing a list of the required documents and proof of registration is generated. Any changes to the original entry must be made via the link before the posting.

Austrian regulations stipulate that in the event of an on-site inspection by the authorities, certain documents must be available in paper or electronic form. The documents must be kept available at the workplace, a professional legal representative established in Austria, a branch of the employer or an Austrian subsidiary or parent company of the same group. It is not sufficient to keep the documents, e.g. in a hotel, or to send them on request. They may only be kept at a place other than the workplace if this has been indicated during registration.

The following documents must be kept available in case of an inspection:

- copy of posting notification,
 - documentation of changes made to the notification
- the A1 Certificate,
- pay documents which show the amount of remuneration due and paid out to the worker during the posting to Austria, which includes:
 - the employment contract or a written record of the employment contract's content (Dienstzettel),
 - the payslip (Lohnzettel), proof of payment by the employer or bank transfer statements,
 - documents relating to pay categorisation (for instance, education and training or earlier employment periods, if stipulated as relevant in the applicable collective bargaining agreement) and
 - wage records (documents showing how remuneration was calculated)
- records of the hours worked by each worker and
- if required: work permit from the country in which the employer or temporary work agency is established

The wage documents and the timesheets must be written in German; the employment contract, however, may be in German or English. The A1 Certificate and the copy of the residence or work permit may be in the language of the issuing Member State.

²⁴⁹ E.g., the VAT identification number must be a sequence of digits or an e-mail address must contain an at sign.

2. Perceived burdens and compliance costs

The interviewed experts and companies in France, Germany and Italy described the scope of the Posting of Workers Directive in Austria as complex and very broad. The familiarisation with Austria's relevant laws and collective agreements was described as highly time-consuming. On average, companies needed about one working day, while some required four hours and others two working days to get up to speed. The information provided on the ministries' websites has been deemed to be helpful and of high quality. Ambiguities and questions could be resolved as a result. However, many companies still obtain information on the requirements mainly from the Chambers of Commerce and business associations in their home countries. Companies use internet research, training, external consultants or working groups to keep up to date with changes in legislation, specifications and posting procedures. The time spent on this is estimated to average about half a working day per year, with some companies reporting that they invest up to one and a half days annually.

Familiarisation with legal context is highly time-consuming.

Nevertheless, some companies are not confident whether their knowledge is up to date and whether they comply with the current legal framework. In principle, companies can find all relevant information on posting workers to Austria on the website issued by the Ministry of Labour (www.entsendeplattform.at). However, the website on which the registration form can be found does not contain detailed information, which has led to confusion among companies regarding the primary source of information. For example, distinguishing between the ZKO3 and ZKO4 forms was initially a challenge for some companies, as the background to this distinction is not explained on the registration page.

Distinguishing between different forms is a challenge.

The posting registration takes place via a web form accessed via an internet browser. As there is no web portal with a user account in Austria, i.e., a specially designed website on which it is possible to register and monitor postings, initial registration is optional.

The table below lists and describes the standard activities required to register a posting. The time required was estimated in the interviews, and the median value was calculated. Due to the small number of cases and the variance present, ranges have been given to illustrate the minimum and maximum working time.

In the interviewed companies, internal procedures have usually been set up for the notification of a posting to the department or person making the A1 request and the registration of the posting on the respective national posting platform. While an electronic procedure usually prevails in large companies, internal notification in small and micro companies is ad hoc. It is common for the managing director to apply for the A1 Certificate and register the posting

themselves. The companies surveyed in France, Germany and Italy spent between 10 and 15 minutes gathering information for the posting process, with a median of 13 minutes.

Repeatedly providing information for each posting is cumbersome.

no web form in French

As shown, saving data in a web form is impossible. Consequently, companies must repeatedly provide information on themselves and their workers for each posting. The Austrian web form offers a wide range of language options compared to its counterparts, including some of the most common languages (English, Spanish and Italian). Businesses describe the web form as accessible since it is designed user friendly and can be completed in the chosen language. The confirmation generated after the registration of the posting is also produced in the chosen language and is thus easily verifiable for the companies. However, French companies pointed out that the web form is not available in French, making it more strenuous for them to post. Companies from France, Germany and Italy spent between 10 and 30 minutes registering a posting via the web form, with a median value of 18 minutes. Some companies reported that registering a posting to Austria is faster in their company as every employee can access the web form. A time-consuming internal process in which the data are collected and registered via a central office is, therefore, only sometimes necessary.

800 collective agreements leading to time-consuming research

The companies interviewed in Italy, France and Germany stated that the main effort in posting is to prepare the documents needed in case of an inspection. This may include translated employment contracts or time-sheets and payslips. The median time for this step is 35 minutes, with estimates ranging from 30 minutes to an hour. *The efforts to prepare and keep the documents ready stem mainly from the fact that the wages must be verified according to the minimal wages classified in the Austrian collective agreements.*²⁵⁰ This may also include special payments such as holiday and Christmas bonuses, which must be calculated separately. In Austria, the trade unions conclude over 450 collective agreements with the employers each year. In total, there are over 800 collective agreements, making it very time-consuming for the posting company to ascertain which collective agreement applies to its workers.

In addition, a contact person must be appointed who can present the documents in the event of an inspection. The contact person may be one of the posted workers. On-site, the documents can be present either in paper form or on a digital source.

The total time required for preparing a secondment to Austria (obtaining information, registering via the web form, compiling country-specific documents, translations etc.) ranged from 50 to 105 minutes for the surveyed companies in France, Germany and Italy, with a median of 66 minutes.

²⁵⁰ https://www.entsendeplattform.at/cms/Z04/Z04_3.3/kollektivvertraege/grundsaeetze.

Table 12: Efforts of posting workers to Austria

Standard activity	Description	Median time spent (in minutes)
Collecting/gathering data	Gathering of the necessary information	13 (10–15)
Request for individual posting	Enter company and employee data	18 (10–30)
Providing documents	Compilation of the documents required for the procedure (country-specific documents, translations etc.)	35 (30–60)

3. Proposals to reduce burdens

The general suggestions for reducing regulatory and administrative burdens are based on suggestions from interviewees and summarised in the comparative chapter for all countries studied. The proposals specifically for Austria are:

First, the repeated entry of company data is particularly time-consuming for companies when posting to Austria. Suggestions for improvement included a function to store company profiles or an interface to payroll programmes via which the data could be transmitted directly.

Second, expanding the posting page to include information on posting by merging the information page with the actual posting page.

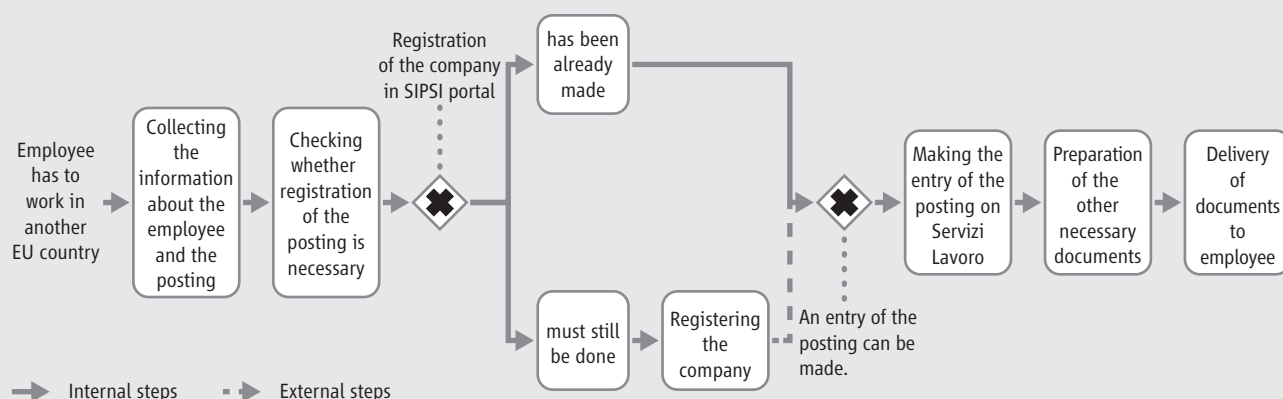
Third, setting up a French subpage, as this would integrate the most common languages in the EU.

Storing company profiles would be helpful.

merger of posting and information pages necessary

French sub-page needed

IV. France



In France, the provisions regarding the administrative requirements for posting workers are defined in the French Labour Code (Code du travail), from Art. L.1261-1 to Art. L.1265-1 CT. The Posting of Workers Directive was transposed into French national law through a series of laws from 2014 to 2016, which amended the French Labour Code. Moreover, a reform of the administrative requirements was undertaken with a law in 2018 (No. 2018-771) and an Ordinance of 2019 (No. 2019-116)²⁵¹. The relevant articles of the Labour Code (notably Art. L.1262-2-1 CT, Art. L.1262-2-2 CT, Art. L.1262-4-1 CT and Art. L.1263-1 CT) organise the notification duties and the appointment of a legal representative in France for sending companies. Another article (Art. L.1263-7 CT) focusses explicitly on the obligation to store documents and make them available to the Labour Inspectorate in case of controls.

The central government organises posted work in France through the national Ministry of Labour. It notably provides instructions on posting and hiring out requirements,²⁵² with information in multiple languages.

In general, employers from all industries posting workers to France must send a prior notification using the SIPSI portal (see below).²⁵³ Some sectors (especially public works and construction) also face additional requirements, including the provision of a personal identification card (BTP Card).²⁵⁴

²⁵¹ Apart from issues linked to the administrative process to register postings, this ordinance also introduced significant changes, such as the principle of equal compensation for the same work in the same workplace (i.e. new rights for posted workers) and stricter sanctions for frauds (see <https://www.vie-publique.fr/en-bref/275653-nouvelles-dispositions-pour-les-travailleurs-detaches>).

²⁵² https://travail-emploi.gouv.fr/IMG/pdf/instruction_detachement_dgt_19012021.pdf.

²⁵³ <https://www.sipsi.travail.gouv.fr/#/faq>.

²⁵⁴ <https://travail-emploi.gouv.fr/droit-du-travail/detachement-des-salaries-posting-of-employees/posting-of-employees/article/obligations-of-the-employer-of-posted-employees>.

Since February 2022, posted workers for the road transport sector must be declared on the EU-wide IMI portal.²⁵⁵ There are also additional exemptions to the duties to notify the French authorities and to appoint a contact person for postings apply:²⁵⁶

- Postings on the employer's account (postings on behalf of the employer without a contract with a client, e.g. participation in events, business meetings),
- Postings for short-term services or services provided as part of one-off events (performing arts with a limit of 90 days in 12 months),
- Athletes, referees, members of the support teams and officials in sports events (maximum 90 days in 12 months),
- Apprentices on temporary mobility in a company as part of training (maximum 12 months in a row),
- Researchers or teachers speaking at conferences or related events (maximum 12 months in a row),
- Self-employed individuals do not need to send a notification²⁵⁷ and
- Employees on a naval ship are also excluded²⁵⁸.

Controls are frequent, as the matter of posted workers is politically sensitive in France. Accordingly, it is set as a fundamental priority for the Ministry of Labour and its controls. These checks (in particular to identify potential frauds) are conducted by the regional branches of the Ministry of Labour, the Labour Inspectorates from the Directions régionales de l'économie, de l'emploi, du travail et des solidarités (Regional Directorates of the Economy, Employment, Work and Solidarity – DREETS, formerly the DIRECCTE). Fraud detection related to postings is a significant priority of the Labour Inspectorates, especially in high-profile sectors (e.g. construction and agriculture).

1. Standard application processes

A company or work agency posting a worker to France must inform the regional branch of the Labour Inspectorate of the place where the service is provided. This notification must be made before the start of the posting ("déclaration préalable de détachement"). Concretely, the notification is sent through an online portal, which is the same for all French regions. This portal is called the SIPSI²⁵⁹ (Système d'information sur les prestations de service internationales). It

255 <https://www.ecologie.gouv.fr/formalites-declaratives-applicables-au-detachement-dans-transport-routier>.

256 Code du travail, Art. L.1262-6 and <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000038550186/>.

257 <https://www.sipsi.travail.gouv.fr/#/faq>.

258 Ibid.

259 <https://www.sipsi.travail.gouv.fr/>.

is multilingual (French, German, English, Spanish, Italian) and has been updated in July 2019 to adapt to legal changes and allow additional features (e.g. cancelling of potential postings that were not carried out, limits to the number of activities per posting and refined sectoral breakdown).

All notifications must be submitted prior to the beginning of the posting. The SIPSI portal is mandatory (i.e., there is no paper-based procedure) but free of charge. The procedure can be considered to be at level 4 in the Digital Maturity Model. An account must be created to use the online portal. The e-mail address used for registering an account serves as an identifier and is impossible to change. The account is password-protected. However, issues can arise if the person that created the account with a personal e-mail address leaves the company.

The SIPSI portal allows access to the history of past notifications.²⁶⁰ Some information of the submitted notifications can be changed in retrospect (e.g. place of housing, phone number), but not all, due to the necessity to consolidate the data (for instance, it is not possible to change the name of the client during the posting). Data on previously posted workers are retained in the system and can be reused automatically without manually inputting the same information.

As part of the notification request, several employees who are posted for the same assignment may be registered at the same time. The notification of a posting must contain a defined set of information.

The following data must be included when submitting a notification request:²⁶¹

- Employer,
- Contact person in France (can be a posted worker, a French representative etc.) who must be able to discuss in French with the inspectorate services, provide documents and be readily available,
- Client,
- Mission details and
- Individual posted workers.

²⁶⁰ Since the update of SIPSI in 2019, some past notifications are no longer stored.

²⁶¹ <https://travail-emploi.gouv.fr/droit-du-travail/detachement-des-salaries-posting-of-employees/posting-of-employees/article/obligations-of-the-employer-of-posted-employees>.

Accordingly, the scope of information requested during the notification of a posting to France is broad, with clear signs of gold-plating (defined as information not mentioned in the EU Directive):²⁶²

*notification
processes for
postings to France
show clear signs of
gold-plating*

- Information on the client:
 - VAT, name and address
- Information on executives:
 - name, date and place of birth
- Information on working hours:
 - beginning and end of working hours, hours worked, and duration of rest
- Information on remuneration:
 - hourly remuneration
- Information on social security:
 - state of affiliation to social security and application for an A1 Certificate
- Information on professional expenses:
 - conditions under which the employer covers food, travel and accommodation (if relevant) expenditures
- Information on accommodation:
 - the place of collective accommodation (if applicable)
- Information on the employment relationship:
 - signature date of the employment contract

The Ministry of Labour provides guidelines to fill out the form of the SPSI portal.²⁶³

After registration submission, the company receives an information e-mail with no legal value. The confirmation of receipt²⁶⁴ has a legal significance and can be requested during controls. The full version of the declaration is only accessible to the control services of the Labour Inspectorate and the applicant.

²⁶² See Part A.

²⁶³ E.g. <https://travail-emploi.gouv.fr/IMG/pdf/fiche-pratique-maj-v13-fr.pdf>.

²⁶⁴ <https://travail-emploi.gouv.fr/IMG/pdf/fiche-ar-dpd-sipsi-021219.pdf>.

Beyond the notification duties, the companies posting workers to France must keep documentation available and provide it to the Labour Inspectorate services if requested (they do not have to be uploaded on the portal during the notification process). The contact person for the posting acts as the company's representative in this situation. Documents must be translated into French and currencies converted to euros (if applicable). The documents can be stored electronically or in paper form.

This storage and availability duty applies to the following documents:²⁶⁵

- Work permits (if applicable),
- Medical examination certificate (if applicable),
- Proof of compliance with minimum remuneration (postings below one month),
- Payslips of workers (postings of one month and more) including several pieces of information (gross remuneration, working time etc.),
- Proof of actual payment,
- Time-sheet of daily working time,
- Employment contract (if available in writing),
- Attestation of the applicable law to the contract between the employer and the French client and
- Attestation of the number of contracts performed and the turnover of the employer generated in the home country as well as in France.

Temporary work agencies are subject to additional documentation requests.

Documents must be sent to the Labour Inspectorate without delay when they are mentioned by Art. R.1263-1 CT if the posting is performed on the employer's account. There is a delay of 15 days for documents related to medical examination and the employer's effective activity. For short-term services, the delay amounts to 15 days – even for documents listed in Art. R.1263-1.

France has a clear policy of setting high standards for controls of postings. The SIPSI portal has a dual purpose: serving companies carrying out postings and providing a tool to the Labour Inspectorates for controls. As a result, France requires highly detailed information compared to most countries, as shown in the legal analysis of this study. The BTP Card for public works and construction workers is charged at 9.80 euros per worker.

²⁶⁵ Art. R.1263-1 CT.

2. Perceived burdens and compliance costs

The French process to register postings has been substantially improved since 2016 (with the creation of SIPSI²⁶⁶) and particularly with its overhaul in 2019 (new functionalities, auto-completion possibilities, introduction of further languages, reduction of the number of technical bugs etc.). The SIPSI team also offers tools such as an online FAQ and an e-mail service for additional questions. According to the Observatory of Online Administrative Procedures, SIPSI has a satisfaction rating of 8.4/10, with the main identified issues being the lack of information prior to the start of the procedure and delays.²⁶⁷

Despite these notable changes, there is high agreement among interviewed stakeholders that the process of registering postings to France is burdensome. Indeed, the complexity of the legal framework, the level of detail of the information requested in the form (i.e. clear evidence of gold-plating) and the probability of controls are seen as high compared to other countries. French administrations (such as the Labour Inspectorates) are often recognised by companies as inaccessible and only sometimes able to deliver precise and timely information pertaining to their specific questions. Their ability to communicate in other than French can also be an issue. It tends to discourage postings to France.

Due to the emphasis on controls and detailed information, companies posting workers to France face substantial burdens. The estimates for the initial analysis of legislation average around 360 minutes one-time but can be considerably higher – up to 1,200 minutes). Keeping up to date with legislative and regulatory take on average 240 minutes yearly, but with considerable heterogeneities as well, ranging from 120 to 960 minutes. These upstream steps indeed require mastering the French language and law (e.g., labour law, collective agreements by sector). Consequently, foreign companies with sufficient means often delegate this analysis to consultancies, which can incur specific costs (varying depending on the package). They can also rely on free advice from various institutions (e.g. EURES network, Chambers of Commerce). Overall, this complexity can discourage companies from posting workers to France.

The SIPSI portal requires registration prior to being used. The process is relatively straightforward (taking about 20-30 minutes) but can be burdensome due to the type of information requested and its linkage to a specific e-mail address.²⁶⁸

notification process is burdensome due to e.g. complex legal framework

French administration not accessible

initial analysis of legislation can take up to 1,200 min.

complexity discourages companies

²⁶⁶ Prior to this date, postings were registered through e-mail, standard mail and fax. Companies had to send documentation to the local French Labour Inspectorates, which posed issues, both for companies and controls.

²⁶⁷ <https://observatoire.numerique.gouv.fr/Demarches/54?view-mode=statistics&date-debut=2021-01-01&date-fin=2021-12-31>. However, it should be noted that it is unlikely that the sample is representative.

²⁶⁸ Indeed, SIPSI accounts are non-transferable and linked to a specific e-mail address. This poses issues when the employee managing the process leaves the company. Accounts are also linked to a specific establishment of a company. This means that if a company posts workers from 10 different addresses, there can be 10 different accounts involved, leading to coordination issues.

Once these initial steps are performed, the notification of a posting to France must be repeated each time.²⁶⁹ The steps are summarised in the following table:

Table 13: Efforts of posting workers to France (base case – non-construction sector)

Standard activity	Description	Median time spent (in minutes)
Collecting/gathering data	Collecting information required for the posting notification. The burdens depend strongly on the type, complexity and number of persons involved in the posting.	14 (10–20)
Compilation of the form for a posting notification	Entering the relevant data on employees, postings and the contact of the legal representative (SIPSI portal)	28 (20–60)
Reception of the confirmation of notification	Receiving the confirmation of receipt of the notification, which has legal value	N/A
Management of documents (translation and storage)	Documents must not be transmitted directly through SIPSI but must be kept available for potential controls. They must be translated into French to be valid.	38 (30–60)

The compilation of the form on the SIPSI portal is somewhat streamlined but can lead to specific issues:

- **Dates:** Companies may be uncertain when it comes to the exact date of the work (e.g. due to the weather for construction sites). Nevertheless, the Labour Inspectorate requires exact dates to carry out controls.
- **Addresses:** The address of the posting must be provided. In most cases, the system is efficient. However, filling in an address that is not recognised by the system is impossible. For some industrial buildings (e.g. power plants, greenhouses) GPS coordinates may have to be provided, which is a burdensome factor for companies.
- **Multiple workers:** Creating a single notification for multiple workers is possible. However, if there are changes during the posting, the cancellation/modification can only be applied to the entire group, even if the changes apply to only some of the workers.

²⁶⁹ Postings can be saved to fasten the process (e.g. if the same workers are posted multiple times).

Overall, performing a formal posting notification thus generates about 80 minutes of effort for companies (not covering upstream steps). The estimated burdens are relatively high, which is consistent with the priorities of the French system.

Moreover, companies in the construction sector (about 30 per cent of postings) must also perform additional procedures, i.e. the release of workers' identification cards (BTP Cards), which can take about 20 to 30 extra minutes per worker. The release of this card costs 9.80 euros. This obligation is regarded as a tool to tackle fraud and social dumping in the sector by the authorities and the French sectoral associations active in construction/public works.

Incoming postings from Austria, Germany, and Italy

According to a recent DARES study, 261,300 workers were posted at least once to France (excluding road transportation²⁷⁰) in 2019, totaling 675,300 postings.²⁷¹ They are predominantly involved in construction (34 per cent) and industry (34 per cent).

Data are collected through the SIPSI portal. The number of declarations rose sharply until the end of 2017. Between 2018 and 2019, the yearly average of posted workers in France increased by 5.9 per cent from 68,617 to 72,634. Numbers plummeted in 2020 due to the COVID crisis.²⁷²

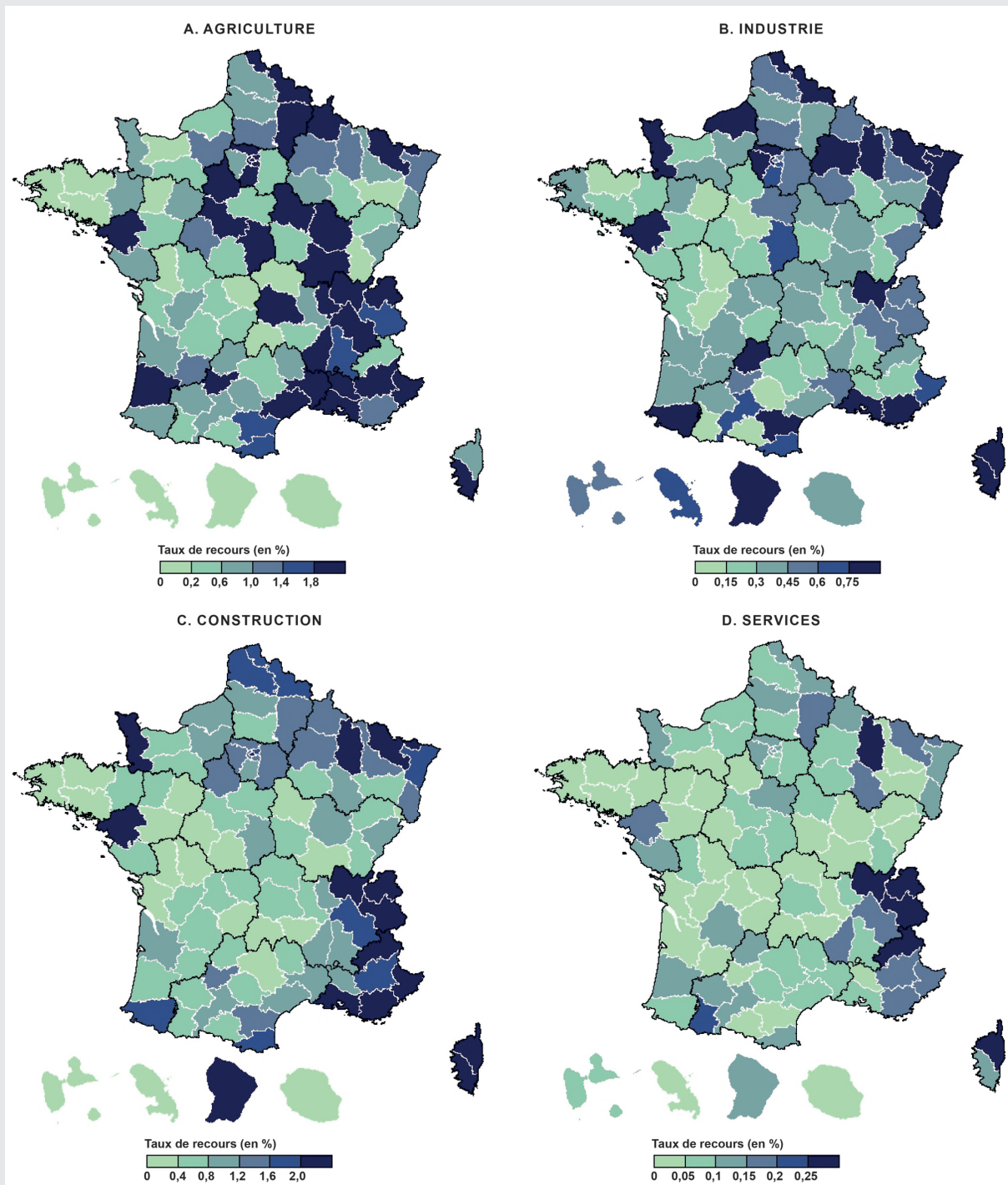
Data on posted workers active in France are available with a high level of territorial granularity (*département*). It shows that the use of posted workers (as a share of total private employment) varies substantially across France. Indeed, border regions are notable receivers of posted workers.

270 For road transportation, there are specific rules related to postings. The declaration of posting is replaced by a form attributed to each worker without mentioning specific periods or places of work. These declarations are integrated into the SIPSI portal. However, companies operating in this sector have made a habit of requesting these documents for each worker, regardless of their actual activity. This leads to a vast number of declarations, which take more work to interpret. They are, therefore, excluded from the presented statistics.

271 https://dares.travail-emploi.gouv.fr/sites/default/files/db0038327dea991c45122a62cb07353b/Dares%20Analyses_travailleurs%20d%C3%A9tach%C3%A9s.pdf.

272 <https://travail-emploi.gouv.fr/IMG/pdf/bilan-travaildetache2019-2021vf.pdf>.

Figure 2: Ratio of posted workers to total private employment by economic sector



Note: A – Agriculture, B – Industry, C – Construction, D – Services

Source: DARES, 2021.

With the available data, it is also possible to estimate the total time spent by the companies based in Austria, Germany and Italy to perform posting notifications to France. However, the data do not cover upstream steps dedicated to analysing the legislation and understanding

the overall framework. There are inescapable uncertainties in deriving such estimates, but a tentative projection is presented in the table below:

Table 14: Time spent by Austrian, German and Italian companies to register postings to France (2019)

Country of companies	Austria	Germany	Italy
Number of posting notifications on SIPSI (2019)	2,227	61,516	27,609
Number of unique workers sent by companies (2019)	2,181	36,031	28,902
Share of posted workers in construction ²⁷³	17.4 %	17.4 %	33.3 %
Working days for core steps of the notification (all companies – 2019) ²⁷⁴	371	10,253	4,602
Additional working days spent for construction-related obligations (Carte BTP – 2019) ²⁷⁵	20	327	501
Total working days spent for notifications by companies based in the country (2019) ²⁷⁶	391	10,579	5,103

Source: Elaboration based on Base SIPSI / DGT (French Ministry of Labour)²⁷⁷ and DARES²⁷⁸

In France, the number of notifications is relatively high, consistent with the probability of controls and sanctions faced by non-compliant companies. As a result, it is probable that foreign companies do not avoid the notification obligation on a massive scale (unlike in other countries where this phenomenon can be an issue; see the section on Italy in this report). The estimates for the time spent by foreign companies for the core steps of notifications are thus probably quite close to the theoretical number (incorporating all companies that should register postings), even if there may be avoidance in some cases (e.g. concise postings).

-
- 273 Share of unique posted workers active in construction, based on data from DARES. No figure was available for Austria, so the share was considered equal to the German one.
- 274 Time spent for the core steps of the notifications (excluding upstream steps), as described in the previous section. The total estimate of 80 minutes per posting is multiplied by the number of postings. This includes the time construction companies spend on the standard steps of the process. Converted to working days (1 working day = 8 hours).
- 275 Additional time spent by construction companies registering postings linked to the release of BTP Cards for each posted worker, estimated by multiplying the number of unique workers by the share of posted workers active in construction and the estimate of 25 minutes for the burden related to this activity. Converted to working days (1 working day = 8 hours).
- 276 Addition of the time spent for the standard notification activities and the extra time for construction-related obligations. Converted to working days (1 working day = 8 hours).
- 277 We thank the direction générale du travail of the French Ministry of Labour for providing data on the number of notifications by country of origin and the number of posted workers. This information is derived from an extraction of the SIPSI database.
- 278 <https://dares.travail-emploi.gouv.fr/publication/qui-sont-les-travailleurs-detaches-en-france>.

German companies dedicate the highest time to the notification duties for postings to France, with a volume of 10,579 working days for 2019. Italy is second at 5,103, while Austria is far behind at 391.²⁷⁹ The volume of postings and the share of construction in the activities of posted workers explain, by design, these critical differences.

3. Proposals to reduce burdens

The following proposals for reducing regulatory and administrative burdens are based on the suggestions by interviewees from France (focussing on country-specific ones). The study participants' general proposals for reducing regulatory and administrative burdens are summarised in the comparative chapter on all the countries studied.

a) Further improvements to the SIPSI portal

While there is a strong agreement that the SIPSI portal has been substantially improved since 2019, interviewees had recommendations for further enhancements.

- First, continuous attention should be dedicated to the reduction of technical bugs.
- Then, a series of new functionalities could be introduced to facilitate the completion of notifications on the portal:
 - The possibility of creating a single account for multiple establishments (i.e. branches with different addresses) of the same company or transferring accounts between e-mail addresses should be introduced.
 - The possibility of modifying the information for a single worker (in a grouped declaration) during the posting could also be a valuable addition.
 - The possibility of indicating a location without a registered address should be facilitated.

The completion of forms could be further automated, e.g., by favouring connections with other administrative sources and data exchanges between institutions. More ambitiously, building an EU-wide and interoperable registry of companies (communicating with the national systems) was suggested to mitigate the burden for inputs by companies (especially foreign ones lacking a French company code) on SIPSI.

²⁷⁹ These estimates assume similar time spent in each country for individual companies and are thus to be interpreted with caution.

b) Improvement of the card for construction workers

Workers from the construction sector posted to France must carry a nominative identification card, which must be requested on a dedicated portal. Some companies have suggested obtaining an electronic version of the card, which authorities could check via a QR code. This would eliminate the issue of waiting to obtain the cards.

*electronic card
needed*

c) Enhanced access to information

As companies face difficulties accessing and understanding the specificities of the French system (due to, e.g., language issues and differences in the social security and labour systems), it is advisable to facilitate the sharing of legal and practical information. This could take the form of up-to-date websites in multiple languages or, more ambitiously, an EU-wide simulator of requirements linked to postings (covering all Member States; see Chapter 2 for related proposals).

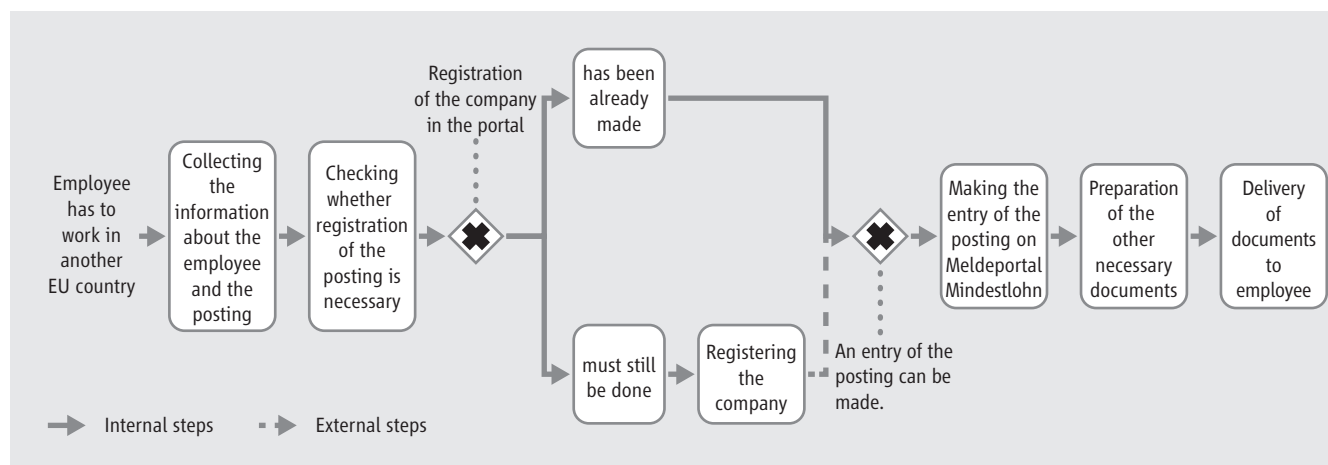
*timely information
in more languages
needed*

d) “Right to error” for companies

Several stakeholders reported that heavy sanctions could be imposed on companies, even for minor discrepancies (e.g. a total fine for a complete lack of declaration and a minor mistake in the declaration). Modulating the fines/sanctions and distinguishing further outright fraud from minor mistakes would benefit the development of postings in a fair way, according to some interviewees.

*review of fines for
minor mistakes
necessary*

V. Germany



Companies based in other EU countries that post workers to Germany to provide labour or services must comply with several regulations and register their posted workers. The EU Posting of Workers Directive is regulated at the federal level primarily in the Arbeitnehmer-Entsendegesetz (Posted Workers Act – AEntG), the Mindestlohnengesetz (Minimum Wage Act – MiLoG)

and the Schwarzarbeitsbekämpfungsgesetz (Act to Combat Undeclared Work – SchwarzArbG) (see Part A/legal analysis of this study). The federal government sets the standards and implements the regulations through the Ministry of Finance as well as the Ministry of Labour and Social Affairs. For example, registration must be made online. The competent authority for reporting and control is the Customs Administration, which is part of the Federal Finance Administration and subordinate to the Federal Ministry of Finance.

The reporting obligation applies to all companies in the sectors defined in the MiLoG and the SchwarzArbG: Construction, catering and accommodation, passenger transport, freight forwarding, transport and related logistics, showmen, forestry, cleaning, construction and dismantling of trade fairs and exhibitions, meat trade, prostitution and private security. In 2020, an amendment to the AEntG extended the reporting obligation to all sectors subject to control by the Customs Administration: waste management, including street cleaning and winter services, educational and training services, building cleaning, care and the main and ancillary construction trades.²⁸⁰

Exemptions from the obligation to report apply to sectors under the MiLoG and concern posted workers who receive a gross monthly salary of more than 2,958 euros or whose regular gross monthly salary exceeds 2,000 euros and to whom the employer has demonstrably paid this monthly salary in the last full 12 months.

Exemptions for industries under the AEntG apply to posted workers

- to advise or negotiate, draw up or conclude a contract on behalf of the employer,
- to attend a trade fair, symposium or conference on behalf of the employer as a visitor and
- to work as professionals of an internationally operating group of companies in the German part of the group of companies or the enterprise for vocational training.

However, the worker may not be posted for more than 30 days in any 12-month period, with no posting exceeding 14 consecutive days, nor may they perform work or services on behalf of the employer for a third party in Germany. Posted workers who are spouses, registered partners, children or parents of the employer are excluded in all cases.

²⁸⁰ The obligation also applies to companies that employ one or more temporary workers provided by a company outside Germany to carry out work in Germany.

1. Standard application processes

Companies must report their postings online via the Customs Administration minimum wage reporting portal (www.meldeportal-mindestlohn.de). The website is available in German, English and French as well as in sign language. The reporting portal requires a one-time initial registration to create a user profile. The registration data are stored in the portal and does not need to be reentered. The profile is password-protected and can be used by companies to register the posting of employees repeatedly. In addition, companies can retrieve information on notifications already carried out and report changes to their ongoing postings.

When registering a posting, several employees posted for the same assignment can be registered simultaneously. The registration of a posting must contain specific details:

- the surnames, first names and dates of birth of the individuals working for the employer in Germany,
- the start and expected duration of the employment,
- the place of employment or the construction site for the construction work,
- the place in Germany where the required documents are kept available,
- the surname, first name, date of birth and address in Germany of the responsible person,
- the surname, first name and address in Germany of an authorised representative if not identical to the responsible person,
- the economic sector to which the workers are to be posted (voluntary, according to the MiLoG).

The employer can only submit the notification after they have confirmed by ticking a checkbox that they comply with the minimum working conditions according to the MiLoG and the AEntG. Finally, the data are confirmed and the notification can be sent. After successful submission, the employer receives a confirmation of receipt containing a registration ID and the date and time of submission. The acknowledgement of receipt can be printed out or saved as proof of submission of the declaration. All notifications must be submitted before the start of the posting and are free of charge.

At the time of posting, an employment contract or equivalent document, payslips for wages paid until then, evidence of wages paid during the posting to Germany and a record of hours worked must be available at the workplace in German in paper or electronic form.

2. Perceived burdens and compliance costs

*uncertainties due
to complex legal
framework*

*difficulties in
obtaining help*

*Companies accept
risk of sanctions
rather than
complying with
complex rules.*

In Germany, the requirements of the Posting of Workers Directive only apply to selected sectors and industries,²⁸¹ which creates uncertainty, especially for companies posting to Germany for the first time. In addition, posting companies must comply with the MiLoG and the SchwarzArbG, which are aimed mainly at the low-wage sector, e.g., in the construction industry. Usually, postings of workers who regularly earn more than 2,000 euros per month do not need to be registered, but this only applies to specific industries (e.g., construction, hospitality, or passenger transport). The interviews showed that the legal situation's complexity is challenging to navigate for foreign companies. French and Italian companies pointed out that it is difficult for them to check whether an activity is exempt, especially in unclear cases. In the metal industry, for example, some activities are closely related to construction or public works, and it is sometimes unclear how they are regulated. In addition, the official sources of information are predominantly legalistic and, therefore, difficult to understand, even for German-speaking companies from Austria. Furthermore, there is no central contact point for companies if they have any questions.

The experts and companies interviewed estimated the initial time required for familiarisation with the legal situation and the requirements related to the PWD in Germany at about one working day, with some companies indicating only half and others a full working day. The annual time spent to keep up to date with all changes was estimated at an average of half a working day, ranging from two and a half hours to one and a half working days. Some companies stated that they are not willing or able to deal with the multitude of German regulations in the necessary depth and therefore risk sanctions.

The table below lists and describes the standard activities required to register a posting. The time required was estimated in the interviews, and the median value was calculated.

Most companies indicated that they have an internal procedure for recording all the information required for the registration of the posting. Larger companies typically use an electronic procedure. In smaller and micro enterprises or craft enterprises, on the other hand, internal coordination is usually ad hoc. It is often the managing director who registers the posting. The time spent collecting the relevant data was estimated at five to 15 minutes, with a mean value of 9 minutes.

The German posting portal is multilingual and has a variety of functions. One function, for example, enables the uploading of employee data by file, which is incredibly helpful, especially

281 The study only recorded the efforts incurred by companies affected by the Posting of Workers Directive. Therefore, the compliance costs for Germany are only comparable with other Member States to a limited extent.

for more frequent postings. Austrian companies describe the “Easy Language” setting as particularly facilitating when registering the posting, as all relevant information and processes are presented. On the other hand, companies that rarely post to the German posting portal rate it as complex. The fact that the individual user ID cannot be restored was also deemed enervating by companies that rarely book: If the access data are lost, it cannot be restored or reset like a password, e.g., by e-mail. As a result, a completely new user ID must be registered. The companies in Austria, France and Italy estimated the time required to register the posting in the web portal at 10 to 40 minutes, depending on the posting frequency, with a mean value of 27 minutes.

Finally, preparing the required documents in German or their translation was also described as time-consuming. In particular, companies legally obliged to comply with certain wages for their posted workers report significantly higher effort, as they have to prove their compliance via corresponding documents. The average time for compiling the documents required for posting was 30 minutes, ranging from 20 to 45 minutes.

*time-consuming
preparation of
documents*

Table 15: Efforts of posting workers to Germany

Standard activity	Description	Median time spent (in minutes)
Collecting/gathering data	Gathering of the necessary information	9 (5–15)
Request for individual posting	Entering company and employee data and uploading documents	27 (10–40)
Providing documents	Compilation of the documents required for the posting (country-specific documents, translations etc.)	30 (20–45)

The total time required for registering a posting to Germany (obtaining information, registering via the portal, compiling country-specific documents, incl. translations etc.) was 66 minutes on average for the companies surveyed in Austria, France and Italy.

3. Proposals to reduce burdens

The general suggestions of the study participants for reducing regulatory and administrative burdens are summarised in the comparative chapter for all countries studied. The proposals specifically for Germany are:

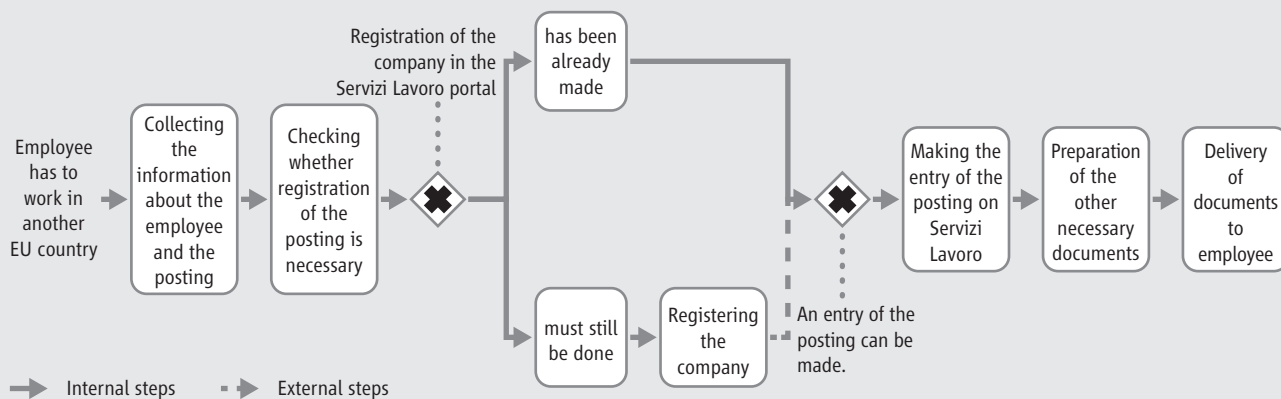
*user ID recovery
needed*

*facilitation of
exemptions necessary*

First, some businesses indicated that they would welcome a user ID recovery option for the posting platform to reduce the hassle in the event of a lost login.

Second, French and Italian companies expressed confusion about the current exemptions from the Posting of Workers Directive. For example, the exemption from the posting reporting requirement for posted workers earning 2,000 euros per month or more only applies to a few industries. A cross-industry minimum income exempting from the posting obligation would, therefore, be welcome.

VI. Italy



Foreign-domiciled companies posting one or multiple workers to Italy must comply with Legislative Decree No. 136 of 17 July 2016, which implements the provisions in the Posting of Workers Directive. Concerning the notification of the posting of workers, Ministerial Decree of the Ministry of Labour No. 170 of 6 August 2021 sets out the operating standards and transmission rules for employers and temporary work agencies that intend to send workers to Italy.²⁸²

Accordingly, businesses posting workers to Italy must register the posting with the Ministry of Labour through an online form called UNI_DISTACCO_UE, which can only be completed in Italian or English.²⁸³ The information transmitted to the Ministry of Labour is also accessible to the National Inspectorate of Labour, the National Institute for Social Security (INPS) and the National Institute for Insurance against Accidents at Work (INAIL).

²⁸² Ministerial Decree No. 170 of 6 August 2021 has replaced the previous Ministerial Decree of 10 August 2016 on the same matter.

²⁸³ The English version of the webpage illustrating the notification process can be found at <https://distaccoue.lavoro.gov.it/en-gb/Thematic-Areas/Thematic-area-detail/id/12/Mandatory-communication>.

Circulars No. 2/2021 and Note No. 1659/2021 of the National Inspectorate for Labour as well as a Guidance Document for filling in the UNI_DISTACCO_UE model²⁸⁴ provide practical clarifications complementing the provisions of Ministerial Decree No. 170/2021. The modifications introduced in 2021 did not significantly alter the notification system under the previous regime.²⁸⁵ The notification is not requested in the case of workers temporarily transferred to Italy to participate in conferences, meetings, exhibitions and fairs, based on a Note by the National Inspectorate for Labour (an independent government body operating under the supervision of the Ministry of Labour).²⁸⁶

1. Standard application processes

The notification must be transmitted electronically through the UNI_DISTACCO_UE form by midnight of the day preceding the beginning of the posting period.²⁸⁷ Any subsequent change in the notice must be submitted within five days of the occurrence of the modification event (a change in the start date of the posting must be communicated by midnight on the day prior to the start of the posting).

To fill in the notification, it is necessary to access the web portal Servizi Lavoro.²⁸⁸ For users with an Italian fiscal code, access to the portal is possible through the Digital Identity System (SPID) or the Electronic Identity Card (CIE). In contrast, other users can recur to the electronic IDentification Authentication and Signature (eIDAS) or use foreign user credentials. Foreign user access requires a specific accreditation procedure, consisting of filling out a request form (which entails providing information on the user such as the name, date and place of birth and address) and uploading the signed copy of an identity document. Once the form is completed, the request is checked by a dedicated assistance service. If the outcome is positive, the user receives an e-mail with foreign user credentials to access the Servizi Lavoro portal.

The UNI_DISTACCO_UE model is structured into several sections. The initial section contains information on the foreign business posting workers to Italy. This section's main elements are pre-filled (and not modifiable), as they were already provided at the registration stage. Afterwards, information is required on the business the worker is posted to as well as on the posted worker,²⁸⁹ the start date and end date of the posting, the municipality, the address at

284 The Guidance Document's latest version was issued in November 2021 and is available at <https://distaccoue.lavoro.gov.it/AnteprimaPDF.aspx?id=248&lang=it-it>.

285 See Legislative Decree 136/2016 as well as Circulars No. 3/2016 and No. 1/2017 of the Ministry of Labour.

286 Note No. 4833 of 5 June 2017.

287 In the case of postings within the cabotage of goods or passengers, the posting foreign company must use a particular telematic procedure that has been active since 2017.

288 <https://servizi.lavoro.gov.it/>.

289 If a worker was previously posted to Italy and the posting was registered through the portal, the respective data will automatically be filled in.

which the posting takes place and the typology of services provided. If the posting exceeds 12 months, the motivation for the duration of the posting needs to be indicated. Information on the role of the worker within the firm is optional.

In addition, information is required on the legal representative of the posting business and the representative in charge of sending and receiving documentation related to the posting.

Activities related to the notification of postings are carried out either by posting companies themselves or by their Italian counterparts. Posting companies frequently recur to consultancies specialised in international mobility for expert advisory and the fulfilment of practical tasks related to the notification. Across Italy, many business associations have established ties with consultancies, which then offer their services to the associations' members and, in some cases, produce guidelines to be used by the associations to help support businesses. Typically, a consultancy package including advisory services dealing with all matters related to postings, including the notification, costs about 450 euros for posting a team of 3 to 4 workers. Labour consultants (not specialised in international mobility) are reported to cost slightly less (350 euros for a similar package).

2. Perceived burdens and compliance costs

Qualitative feedback about the perceived burdens and compliance costs, collected as part of the interview programme, is presented in the following.

- The fact that the UNI_DISTACCO_UE model is only available in Italian and English represents a significant issue for foreign companies (also considering that the main countries of origin are Romania and Germany). In many cases, Italian businesses eventually must carry out the notification process on behalf of their foreign partners posting workers to Italy. At the same time, this is frequently impossible due to confidentiality issues or because the foreign company may have multiple Italian clients.
- The accessibility of the portal is of particular concern, especially as regards the access for foreign users through the accreditation system, which interviewees widely see as a severe obstacle. In addition to the burden the accreditation process represents, its digital maturity was also criticised during interviews. In particular, uploading a hand-signed copy of an identity document is considered a paradox in the context of a digital procedure.
- The helpdesk is reported to reply only in Italian and to e-mail requests made in Italian or English. The helpdesk's support is generally viewed as insufficient by interviewees.

notification form in Italian and English is not sufficient

digital procedure is immature

helpdesk answers exclusively in Italian

- De facto, the challenges foreign companies face when registering postings to Italy force them to frequently recur to consultancies, business associations or their business partners for the notification. According to some interviewees, this challenge could even be interpreted as a significant limitation to the freedom to provide services within the EU.
- Most of the businesses surveyed reported a high amount of effort involved in posting employees to Italy; in limited cases, some companies even cancelled planned assignments to Italy because of the high initial efforts involved in a posting. In several interviews, there were indications that employers were not complying with the Posting of Workers Directive due to the excessive burdens as well as the difficulty of using the portal (i.e., workers were only posted with an A1 Certificate).
- Another burden, not strictly related to the notification procedure, is the appointment of a representative for keeping the documents in Italy who must be available for the period after the assignment. Usually, businesses outsource this task to a tax advisor or similar, which causes additional costs.

companies accept risk of sanctions rather than complying with complex rules

A typical notification (excluding upstream familiarisation with the requirements and procedure as well as the necessary registration on the portal) involves the steps summarised in the following table. The time required to perform each step is indicated based on interview feedback.

Table 16: Efforts of posting workers to Italy

Standard activity	Description	Median time spent (in minutes)
Collecting/gathering data	Gathering the necessary information	11 (10–15)
Application for individual posting	Entering the relevant data on employees and the posting	20 (15–60)
Management of documents (translation and storage)	Compilation of the documents required for the procedure (country-specific documents, translations etc.)	40 (30–60)

Performing a standard posting notification thus generates about 70 minutes of effort for companies.

Incoming postings from Austria, France and Germany

A report issued by the National Observatory on Postings,²⁹⁰ established within the Ministry of Labour, provides data on the number of postings from 2017 to 2019.²⁹¹ No disaggregation of the data by year is available.

In this period, 98,873 postings to Italy were registered (90 per cent of which were from the EU). Assuming an equal proportion of postings between the years, this corresponds to approximately 33,000 postings per year. Over the three years, Romania was the most relevant country of origin with over 39,000 postings registered, followed by Germany with about 15,000. In the following table, more precise data on postings from the countries under the scope in this study are provided:

Table 17: *Incoming postings from Austria, France and Germany from 2017 to 2019*

Country of origin	Number of postings	Number of posted workers	Number of posting companies
Austria	5,180	2,803	333
France	746	620	206
Germany	14,929	7,422	1,103

Source: National Observatory on Postings

Data are also available on the first six months of 2021.²⁹² While these data are affected by the impact of the COVID-19 pandemic on international mobility, they show an identical percentage of postings coming from the EU as between 2017 and 2019 as well as the same two most important countries of origin. In fact, in the first six months of 2021, 20,077 postings to Italy were notified to the Italian Ministry of Labour, about 90 per cent of which were related to EU countries. The most represented countries of origin were again Romania (over 8,000 postings) and Germany (over 3,000 postings). Moreover, almost all notifications (98 per cent, i.e. 19,672) concerned less than five workers per posting. 38.8 per cent of the postings lasted less than 30 days (7,794 postings).

With the available data, it is possible to estimate the total time spent by the companies based in Austria, France and Germany to perform posting notifications to Italy. This estimation does

290 The report is available online at <https://distaccoue.lavoro.gov.it/AnteprimaPDF.aspx?id=203&lang=it-it>.

291 More precisely, the report covers the period from 27 December 2016 until 31 December 2019. Based on the Decree by the Minister of Labour of 27 October 2016, the notification of a posting takes place through the UNI_Distacco_UE model starting on 27 December 2016.

292 <https://distaccoue.lavoro.gov.it/AnteprimaPDF.aspx?id=242&lang=it-it>.

not cover upstream steps dedicated to analysing the legislation and understanding of the overall framework.

The estimation uses data on posting notifications in 2019 (assuming they correspond to a third of the total notifications of the 2017 to 2019 period) to ensure that the analysis is not influenced by the impacts generated by COVID-19 on labour mobility.

Table 18: Time spent by Austrian, French and German companies to notify postings to Italy (2019)

	Austria	France	Germany
Number of posting notifications through UNI_DISTACCO_UE (2019)	1,727	249	4,976
Number of unique workers sent by companies (2019)	934	207	2,474
Total working days spent for notifications by companies based in the country (2019) ²⁹³	252	36	726

Source: Elaboration based on data by National Observatory on Postings.

3. Proposals to reduce burdens

- Three interviewed businesses as well as a foreign chamber of commerce in Italy noted that the creation of a shared online portal at the European level would significantly simplify the notification procedures and result in considerable efficiency gains for businesses, especially those that, posting their workers to multiple countries, have to become familiar with procedures of different Member States.
- Bilateral agreements with the countries posting most workers to Italy could benefit businesses, for instance, by offering guidelines or comparisons of national labour law and collective bargaining provisions.
- Providing the UNI_DISTACCO_UE model in more languages would be beneficial, especially considering the leading countries of origin (Romania and Germany).

common online portal at EU level needed

more exchange between Italy and other states necessary

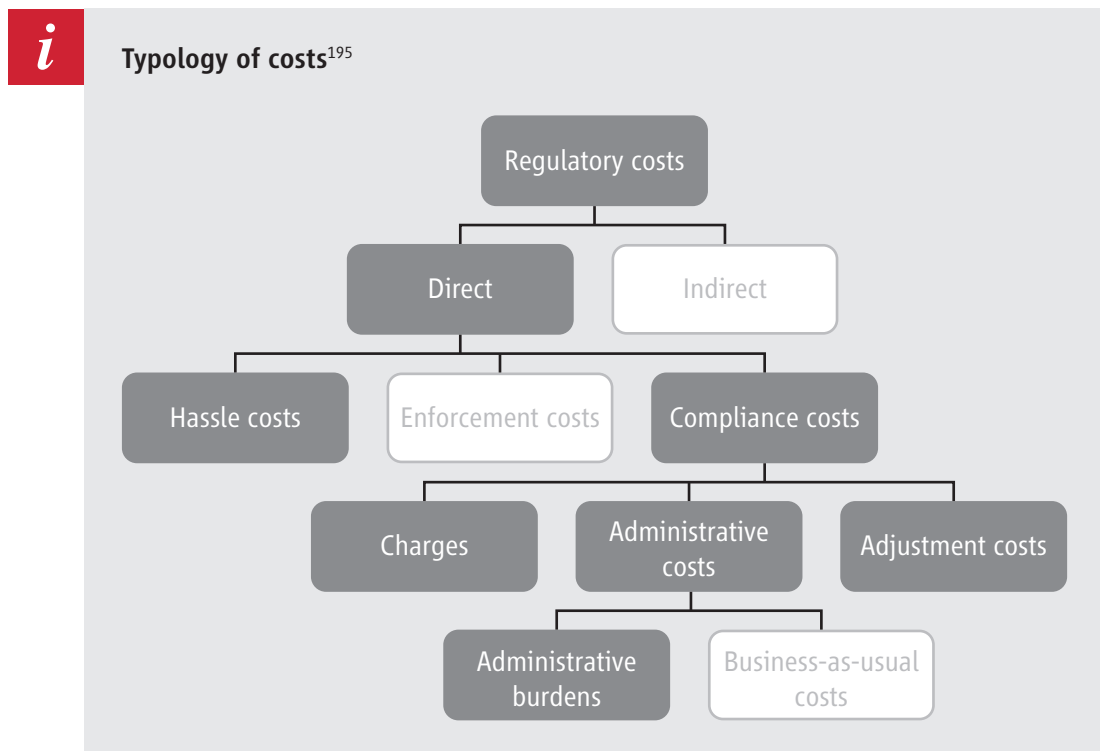
notification form in Romanian and German needed

²⁹³ Time spent on the core steps of the notifications (excluding upstream steps), as described in the previous section. The total estimate of 70 minutes per posting is multiplied by the number of postings. Converted to working days (1 working day = 8 hours).

VII. Study approach

1. Methodology

The methodology is based on the concept of “compliance costs” used by the German Federal Government in its regulatory projects.²⁹⁴ Compared to the EU Standard Cost Model (EU-SCM), this concept is a more comprehensive measure of bureaucracy. To align the concept of compliance costs with EU studies, the cost types are defined following the Better Regulation toolbox of the European Commission (see infobox). The methodological approach of the EU-SCM only assesses the costs of the administrative burdens: costs arising from compliance with information obligations under legal regulation. For a comprehensive assessment of the regulatory burdens resulting from the Posting of Workers Directive, the methodological approach must include hassle costs, charges and adjustment costs. Business-as-usual costs, i.e. costs resulting from information obligations that companies must comply with regardless of the existence of the regulation, are not considered in any of the methodological approaches.



294 See Leitfaden zur Ermittlung und Darstellung des Erfüllungsaufwands in Regelungsvorhaben der Bundesregierung, 2018.

295 All definitions originate from the Better regulation toolbox of the European Commission (2021), https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how/better-regulation-guidelines-and-toolbox_en.

Regulatory costs are a general term. They consist of **indirect costs** incurred in related markets that are not directly affected by regulation (e.g. changes in consumer prices in the regulated sector due to increased compliance costs and in the quantity of goods and services available). **Direct costs**, on the other hand, are specifically associated with regulation.

Direct costs include:

- **Hassle costs:** costs arising from unnecessary delays, redundancy or corruption during the regulatory process. Due to their broad definition and qualitative nature, they are not included in the methodological approach of the EU-SCM. In this study, they are captured qualitatively to identify additional burdens due to complications.
- **Enforcement costs:** costs associated with activities related to the implementation of a regulation borne by public authorities, such as monitoring, inspection and litigation. They are not included in the EU-SCM model or in this assessment.
- **Compliance costs:** costs borne to comply with the provision of regulation.

The focus of this study is on **compliance costs**. These consist of:

- **Adjustment costs:** the additional costs of complying with a new regulation. They include the expenses and investments that companies must bear to adapt to a regulation's requirements.
- **Administrative costs:** these costs stem from the administrative activities necessary to comply with the information obligations of a regulation. They consist of administrative costs and business-as-usual costs.
- **Charges:** e.g. fees, levies and taxes related to the regulation.

a) Compliance costs

Compliance costs are captured at the company level. Rules and regulations force companies to meet certain targets or requirements, e.g. applying for certificates, training to achieve a particular qualification or providing and sharing information (labels, applications, documentation etc.). The companies' tasks to meet such requirements can be modelled in standard activities. To capture the compliance costs, the average time to perform all activities is usually multiplied by the average labour cost in euros. One-off compliance costs are multiplied by their annual frequency to obtain annual values. If material and procurement costs are directly incurred to fulfil a requirement, they are added either once or based on an average annual material cost (for continuous tasks).

However, the Posting of Workers Directive is primarily aimed at companies from other EU Member States that post workers to the regulating Member State. Therefore, the compliance burdens for regulating the posting of workers does not arise domestically but abroad. This has implications for the methodological design of estimating the regulatory burdens. The burdens of posting businesses may arise in any Member State and cannot be adequately captured in a study that focusses on only four Member States. For example, the burdens on a company from Sweden or Bulgaria that posted workers to Germany is not captured. In addition, the average gross labour costs in the individual EU Member States vary considerably. For this reason, it is impossible to assume a common representative gross hourly wage in the four countries of comparison. The results are therefore given in time units but can equally be extrapolated for the economy of a Member State based on official statistics.

b) Transposition into national law

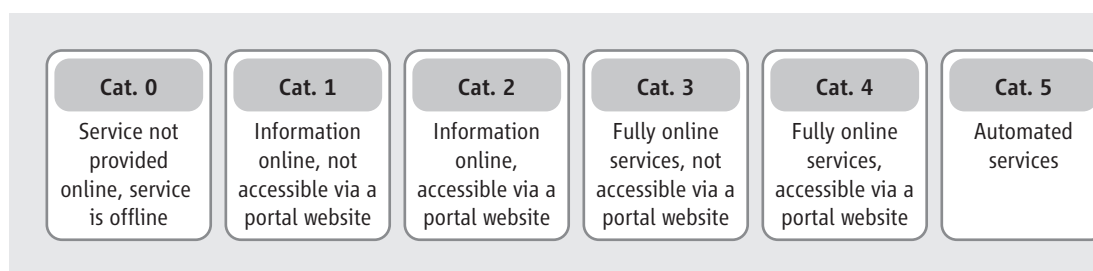
Regulations and directives, such as Regulation (EC) No 883/2004 on the coordination of social security systems and Directive (EU) 2018/957 on the posting of workers, are the most common form of EU legal acts. Regulations have general application and are directly effective without the need for transposition. Directives however do not apply directly at the national level. Instead, they specify an objective to be achieved and leave it to individual Member States to decide how to implement their provisions ("transposition"). This gives Member States the opportunity to ensure legislation is in line with national legislation and allows for adaption to national specificities.

Thus, the national provisions resulting from the same EU legislation may differ between EU Member States. If this transposition leads to additional obligations, it is often referred to as "gold-plating". For the purpose of this study, we consider it as "gold-plating", when national requirements differ substantially from the common core of obligations of all countries, in particular when these contain new requirements. So we used the information required by all national systems as the baseline and considered obligations going beyond this common denominator as an indicator of gold-plating.

c) Digital Maturity Model

The Digital Maturity Model is based on the eGovernment Benchmark 2018 published by the European Commission. In this study, the online availability of administrative services is assessed based on six availability types, which can be ranked from category 0 to category 5 in the following.

Figure 3: Categories of the Digital Maturity Model



The highest category is automatic services (cat. 5), meaning users do not have to initiate the service. The lowest category, on the other hand, describes an offline service (cat. 0). In between, information on the service is made available online by the public administration, which can be accessed via a website (cat. 1) or a central domain portal (cat. 2), while the service is not available online. The same applies to online services available via a website (cat. 3) or an online portal (cat. 4).

However, the model neglects other important aspects, such as the online processing of the application, including all supporting documents or the application of the “once-only” principle for verifications.

2. Data collection

The data collected are based on standardised interviews with experts and company representatives in Austria, France, Germany and Italy to assess the A1 application and posting procedure for workers and to gain insights into perceived regulatory burdens. A similar approach was taken in all countries to recruit qualified interview partners. First, experts from Chambers of Commerce and business associations were interviewed and then acted as intermediaries to contact companies. In the companies, the human resources department was specifically approached, as this is where the information required for the posting is collected, and the registration on the respective posting portal is handled.

The person who carried out the posting process was interviewed in order to assess the process steps and the effort behind them validly. In Austria and France, the support provided by intermediaries (such as Chambers of Commerce, business development agencies or business associations) had limited success in establishing contacts with companies. Therefore, the approach’s focus was shifted to experts who have direct experience with how companies handle the administrative procedures for A1 Certificates and the posting of workers. The interviews took place between September 2021 and June 2022.

- In Austria, representatives of the Austrian Federal Economic Chamber (WKO) foreign trade department, the regional representatives of the Enterprise Europe Network and the Federation of Austrian Industries were approached for expert interviews. The sample is mainly based on experts with direct experience in handling the application procedure for A1 Certificates and the posting of workers in the companies.
- In France, Chambers of Commerce, economic development agencies and business associations were initially contacted. The sample includes consultancies in international mobility (providing advisory services or conducting the administrative procedure for the A1 Certificate), lawyers (social security law) and other support bodies in the field (e.g. Chambers of Commerce and Craftsmen, EURES network, EEN). In addition, experts from the academic sector and the institutions that carry out the procedure for obtaining A1 Certificates and registering posting workers were interviewed.
- In Germany, business associations, Chambers of Industry and Commerce and Chambers of Skilled Crafts (IHK, HWK) as well as the Regulatory Control Council of Baden-Wuerttemberg were initially contacted to conduct expert interviews with their respective representatives and to obtain contacts with companies from their network. The invitations were widely distributed via newsletters and thematic working groups. Other companies throughout Germany were contacted via the networks of the Foundation for Family Businesses (Stiftung Familienunternehmen). The sample consists of industry experts and predominantly family businesses, including small and medium-sized as well as large companies from various sectors, mainly from Baden-Wuerttemberg. The construction industry and craft businesses are more strongly represented, as the posting of workers is more widespread here.
- In Italy, business and sectoral associations at the national, regional and local levels as well as the Italian Trade Agency and Chambers of Commerce were contacted for expert interviews and to obtain contacts with companies. In addition, consultancies in international mobility, with experience in supporting companies in matters related to postings, including A1 Certificate applications, were contacted. The sample consists of business associations (covering large, medium, small and micro enterprises), businesses (located in three different regions and working in different sectors) and international mobility consultancies (having experience in advising thousands of companies in total).

The sample makes it possible to obtain reliable information on the concrete experiences of companies complying with the Posting of Workers Directive (e.g. in terms of sectors, locations) in Austria, France, Germany and Italy.

Table 19: Interviews per country

	Germany	Austria	Italy	France
Businesses	21	3	5	2
Chambers	7	6	-	3
Consultancies	-	2	6	8
Other experts	1	1	11	6
Total	29	12	22	19

To estimate perceived burdens and compliance costs, the companies contacted were asked about their practices regarding posting to the other three countries in this study. However, not every company interviewed posted to all three other countries. The data from the different countries were combined and analysed. The number of data sets available for each country is shown in the following table.

Table 20: Number of data sets for posting workers to the countries studied

Germany	Austria	Italy	France
16	16	15	38

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