

Harta, Lukas et al.

## Research Report

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

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Family Businesses

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

Vol. 3: Burdens arising from the transparency register of the  
Anti-Money Laundering Directive



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

This study is part of a larger project investigating whether and how European legislation is implemented in selected EU Member States on legislative and administrative levels 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 transparency register introduced by the 4<sup>th</sup> EU Anti-Money Laundering Directive and focusses on the design of reporting obligations to such registers.

The study contributes to an evidence-based discussion on the reduction of regulatory burdens at European and national levels by comparing the transposition and implementation of European legislation aiming to prevent the abuse of the financial system through the concealment and shifting of assets of illegal origin and the financing of terrorism. Part A – the comparison of the legislations – was essentially completed in early 2021, Part B – on the economic assessment of the regulatory burden – was finalised in November 2022.

The transparency register introduced by the 4<sup>th</sup> EU Anti-Money Laundering Directive requires information on the company's beneficial owner – first and last name, date of birth, place of residence, nature and extent of economic interest, nationality.

The study was made possible by numerous family businesses, chambers, consultancies and other experts that agreed to share their experiences concerning the transparency register with the scientists. We are grateful for their commitment and the time they invested in the interviews. Thank you!

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



*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"*



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

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# Summary of main results

## Key findings of the legal study (cep)

1. EU law requires Member States to install central transparency registers to combat money laundering. These may take the form of a public register or an existing commercial register. EU law is silent on exchanging information between transparency registers and other current registers.
2. The “beneficial owners” of corporate and legal entities must be found in the transparency registers. This obligation does not apply to companies listed on the stock market.
3. Beneficial owners are defined in EU law as natural person(s) who ultimately own or control a corporate or legal entity through direct or indirect ownership of a sufficient percentage (i.e. more than 25 per cent) of the shares or voting rights or ownership interest in that entity. In the absence of such natural persons, the senior management shall be considered as a beneficial owner.
4. Covered entities must, by EU law, “obtain and hold adequate, accurate and current information” on beneficial owners. This information includes “the details” of the beneficial interests held and must be held in the transparency register.
5. Austria, France and Italy provide an extensive list of entities that are subject to the notification duty. Under German law, the responsibility falls on all legal persons under private law and registered partnerships with a statutory seat in Germany. Despite the exception for companies listed on the stock market, Austria, Germany and Italy also subject them to the notification duty.
6. In all researched Member States, direct beneficial ownership is established through owning more than 25 per cent of the shares or voting rights. In Austria and Germany, direct beneficial ownership can also be established through pooling and voting rights agreements, in Germany additionally through de facto veto rights.
7. Indirect beneficial ownership is established in Austria, Germany and Italy if a natural person controls a legal entity that has direct control over another. In France, it is, inter alia, joint and inseparable ownership of more than 25 per cent by natural persons.
8. In all researched Member States, legal representatives or managers are considered beneficial owners as residuals.
9. All researched Member States require the notification of the name, date of birth, place of residence and nature/scope of interest of the beneficial owner. Austria, France and Italy also require the place of birth, whereas Austria, France and Germany also request the nationality.

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

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*The periods for updating obligations vary*

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

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10. In France and Italy, changes must be communicated within 30 days, in Austria within four weeks. In Germany, updates must be made directly. Additionally, Austria has a yearly verification duty.
11. Austria uses data available in other registers for the transparency register so that many entities do not have to make notifications themselves. Germany abandoned a comparable practice in 2021.

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

### **Approach**

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

### **Current practice**

2. As of November 2022, transparency registers are operational in three of the four Member States surveyed. The implementation of the Italian register has been delayed due to legal reasons. Despite the fact that technical preparations have been finalised, the register is still inoperative in March 2023. In Austria, France and Italy, the registers are part of the business registers (“sectional registers”), while Germany introduced – after a transition period – a stand-alone register.
3. The information requirements of the transparency registers are broadly similar across countries with only slight differences. There is no obvious evidence of countries adding substantial additional burdens to the register in the sense of gold plating. However, the analysis clearly shows how different approaches to implementation result in substantially different amounts of burden despite applying the same information requirements.
4. All four countries (will) offer a digital portal to provide and update the necessary information in the transparency register. In Austria, an automated data exchange has been implemented between the business register and the transparency register, substantially reducing the regulatory burden for around 80 per cent of businesses. Conversely, the end of the “Mitteilungsfiktion” in Germany resulted in substantially increased burden for businesses after the end of a transitional period.

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

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5. Comparing time and costs required to comply with the legal requirements clearly shows the benefits of the “once-only”, automatic registration process. While most businesses in Austria expended no time at all, businesses in Germany spent up to 45 minutes for the initial registration, compared to 20 minutes in France and 32 minutes for the around 20 per cent of Austrian companies not covered by the automatic registration.
6. When calculating administrative burdens, user fees must be included as well, changing the costs substantially. Costs in Austria are between 0 and 19 EUR, 28 EUR in Germany, but 33 EUR in France. Registration fees make France the country with the highest costs for the initial registration.
7. All countries require updates to the register, either on a regular basis or if underlying data change. Here as well, Austria has the lowest burden (between 0 and 6 EUR) while France has the highest burden (49 EUR), mostly due to fees of 43 EUR. Germany also requires fees for the maintenance of the data (23 EUR), resulting in total costs of 34 EUR. Due to the registers having been implemented only recently, there are no reliable data on how often updates are conducted in practice.
8. While the administrative burden of the transparency register is fairly small for businesses with simple ownership structures, larger, privately owned companies with more complex ownership structures are disproportionately affected. Preparing the necessary information and keeping it up to date for subsidiaries has been described as resource intensive and challenging.
9. The concerns about security, data and privacy protection remain one of the main barriers for companies to fulfil the requirements of the transparency register. A centralised, publicly accessible database containing private information runs contrary to the desire of company officials and beneficial owners to protect their private data.

#### **Proposals to reduce administrative burdens**

10. Having national transparency registers for companies operating in a multinational environment increases the burden for businesses. The aim should be to create a single European transparency register.
11. As this would be a long-term option, we recommend increasing the use of the once-only principle on a national level. The case of Austria shows the potential for substantially reducing the administrative burden through automatic data exchanges.

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*Initial registration takes longest in Germany*

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*Highest registration fees in France*

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*Updating the French register is most expensive*

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*Once only principle would reduce burden substantially*

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12. The functionality of the national registers should be improved. Many perceived burdens are the result of user-unfriendly digital solutions and processes. Possible improvements include options to centrally manage the entries of multiple subsidiaries, avoiding repetitive data entries on beneficial owners as well as reminders as to when data needs updating.
  
13. Finally, improve support and advice to companies through personal contact points and comprehensive and understandable information material and guidelines.



# Part A: Comparative legal study by cep on regulatory burdens resulting from the transparency register of the 4<sup>th</sup> AMLD

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## I. Introduction

The history of the European Union's anti-money laundering legislation dates back to 1991. With the first Anti-Money Laundering Directive<sup>1</sup> (AMLD1), the EU started its attempts to prevent the use of the financial system for money laundering purposes. As of 2020, the EU has arrived at its sixth AMLD.<sup>2</sup> This chapter focusses on the transparency registers introduced by the fourth EU-Anti-Money Laundering Directive (AMLD4).<sup>3</sup>

The AMLD4 introduced a duty for EU Member States to install central transparency registers.<sup>4</sup> These registers were to be in force by 26 June 2017, the deadline for transposition of the AMLD4 into national law.<sup>5</sup> Almost a year after the expiry of this deadline, the AMLD5 extended it to 10 January 2020.<sup>6</sup>

In the transparency registers, the "beneficial owners" of corporate and legal entities must be found. Beneficial owners are defined in the AMLD4 as natural person(s) who ultimately own or control a corporate or legal entity on whose behalf transactions are being conducted.<sup>7</sup> The AMLD5 introduced minor changes to the definition of "beneficial ownership" and the notification duty to the register.<sup>8</sup> As these corporate and legal entities must obtain information on their beneficial owners and may have to supply this information to the transparency register, there is a bureaucratic cost to this at the detriment of corporate and legal entities.<sup>9</sup> This analysis does not deal with the costs incurred by banks and other regulated entities such as financial services providers which must use the register's information to correctly identify a customer's beneficial owner and prevent money laundering, nor with the question of who may access the information in the register. Consequently, it does not deal with the recent ECJ judgment<sup>10</sup> declaring Art. 30 para. 5 subpara. 1 lit. c of AMLD4 – stipulating that anyone can access the information on the beneficial owner contained in the register – invalid.

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- 1 Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering.
  - 2 Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law.
  - 3 Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015.
  - 4 Art. 30 et seq., Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission directive 2006/70/EC.
  - 5 Art. 67, Directive (EU) 2015/849 in the AMLD4 version.
  - 6 Art. 67, Directive (EU) 2015/849 in the AMLD5 version as amended by Directive (EU) 2018/843 of 30 May 2018.
  - 7 Art. 3 (6), Directive (EU) 2015/849, referring to a.o. holding at least 25 per cent of the shares of a legal entity.
  - 8 Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018.
  - 9 Art. 30 (1), Directive (EU) 2015/849.
  - 10 ECJ, Joined Cases C-37/20 and C-601/20, (Luxembourg Business Registers), Judgment of 22 November 2022, ECLI:EU:C:2022:912.

The following gives an overview of the legal provisions in Austria, France, Germany and Italy concerning corporate and legal entities' obligations regarding providing information to the transparency register. Although these provisions stem from the respective versions of the European AMLD, they may differ depending upon the national transposition of the Directive and national administrative practice.

For each of the four countries, we focus on the subjects (Art. 30 AMLD4 as amended by AMLD5) of the notification duty, on the definition of beneficial ownership (Art. 3(6) AMLD4 as amended by AMLD5) and the general design of the national transparency register as well as the costs associated with notifications to them.

## **II. EU legislation**

### **1. Subjects of the notification duty**

EU law forces Member States to ensure that "corporate and other legal entities incorporated within their territory" obtain data on their beneficial ownership.<sup>11</sup> The exception for companies listed on the stock market (see paragraph below) means that there is no notification duty for these entities under EU law.

### **2. Definition of beneficial ownership**

EU law defines beneficial owners as the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage (e.g. more than 25 per cent) of the shares or voting rights or ownership interest in that entity. This includes bearer shareholdings or control via other means. This does not apply to companies listed on the stock market. In the absence of such natural persons, the senior management shall be considered as a beneficial owner.<sup>12</sup>

### **3. Transparency register**

#### **a) Design**

EU law requests a "central register" in each Member State only. This may be a public register or an existing commercial register.<sup>13</sup>

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11 Art. 30 (1), Directive (EU) 2015/849.

12 Art. 3 (6), Directive (EU) 2015/849.

13 Art. 30 (3), Directive (EU) 2015/849.

b) Information to be reported and updating duties

EU law requires affected entities to “obtain and hold adequate, accurate and current information” on beneficial owners. This includes “the details” of the beneficial interests held.<sup>14</sup>

c) Automatic information exchange

EU law is silent on the exchange of information between transparency registers and other registers. It allows for “information on beneficial ownership to be collected in accordance with national systems”.<sup>15</sup>

### III. Austria

#### 1. Legal sources

a) Primary national legislation

In Austria, the relevant parts of the AMLD4 have been transposed by the Federal Act on the establishment of a register of beneficial owners of companies, other legal entities, and trusts<sup>16</sup> [Wirtschaftliche Eigentümer Registergesetz<sup>17</sup> (Beneficial Owners Register Act<sup>18</sup>) – WiEReG]. The AMLD5 was transposed by the EU-Finanz-Anpassungsgesetz 2019.<sup>19</sup> The most recent amendment to the WiEReG was implemented by the 3<sup>rd</sup> COVID-19 Act.<sup>20, 21</sup>

b) Secondary national legislation and other sources

Based on this federal law, the Austrian Federal Minister of Finance has issued two ordinances<sup>22</sup>, setting out details of the transparency register.<sup>23</sup> In addition, the Federal Ministry of Finance

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14 Art. 30 (1), Directive (EU) 2015/849.

15 Art. 30 (3), Directive (EU) 2015/849.

16 Available at <http://www.ris.bka.gv.at/GeltendeFassung/Bundesnormen/20009980/WiEReG%2c%20Fassung%20vom%2009.02.2021.pdf>.

17 Federal Law Gazette I No. 136/2017, available at [https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA\\_2017\\_I\\_136/BGBLA\\_2017\\_I\\_136.html](https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2017_I_136/BGBLA_2017_I_136.html).

18 The Austrian Financial Market Authority has provided an unofficial English translation at <https://www.fma.gv.at/en/national/supervisory-laws/#58>.

19 Federal Law Gazette I No. 62/2019, available at [https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA\\_2019\\_I\\_62/BGBLA\\_2019\\_I\\_62.html](https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2019_I_62/BGBLA_2019_I_62.html).

20 These recent amendments concern extensions of deadlines and time limits due to the COVID-19 pandemic.

21 Federal Law Gazette I No. 23/2020; a consolidated version of the act is available at <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20009980#:~:text=Wenn%20die%20nat%C3%BCrlichen%20Personen%2C%20die,5%20WiEReG%20zu%20beenden.>

22 Ordinance of the Federal Minister of Finance on the Definition of User Fees for Use of the Register of Beneficial Owners, Federal Law Gazette II No 77/2018, available at <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20010186> (English translation at <https://www.bmf.gv.at/en/topics/financial-sector/beneficial-owners-register-act/legal-basis-and-FAQ.html>); Ordinance of the Federal Minister of Finance on Additional Technical Options for Inspection of the Register, Federal Law Gazette II No 390/2019, available at [https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA\\_2019\\_II\\_390/BGBLA\\_2019\\_II\\_390.html](https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2019_II_390/BGBLA_2019_II_390.html) (English translation at <https://www.bmf.gv.at/en/topics/financial-sector/beneficial-owners-register-act/legal-basis-and-FAQ.html>).

23 They are concerned with technical details on the inspection of the register and the fees to be paid for it.

has released a decree<sup>24</sup> as well as an FAQ document<sup>25</sup> and a collection of examples<sup>26</sup>. While only the ordinances are legally binding for everyone, the decree does constitute an official statement on the Ministry's interpretation of the act. Insofar as it does not contravene the law, it is binding on the tax authorities, which can, therefore, be expected to comply with the decree. The FAQs and the collection of examples merely serve informational purposes.

## 2. Subjects of the notification duty

In Austria, the duty to report beneficial owners in the WiEReG applies to the following legal entities:<sup>27</sup>

- offene Gesellschaften (general partnerships; OG),
- Kommanditgesellschaften (limited partnerships, KG),
- Aktiengesellschaften (stock corporations, AG),
- Gesellschaften mit beschränkter Haftung (limited companies, GmbH),
- Erwerbs- und Wirtschaftsgenossenschaften (commercial and industrial cooperatives),
- Versicherungsvereine auf Gegenseitigkeit (mutual insurance companies, VersVaG),
- kleine Versicherungsvereine (small mutual insurance companies),
- Sparkassen (savings banks),
- Europäische wirtschaftliche Interessenvereinigung (European Economic Interest Groupings, EWIV),
- Societates Europaeae (European Companies, SE),
- Societates Cooperativae Europaeae (European Cooperative Societies, SCE),
- Privatstiftungen (private foundations, PS),
- other legal entities required to be entered into the Commercial Register pursuant to Art. 2 no. 13 of the Firmenbuchgesetz (Commercial Register Act)<sup>28</sup>,
- Vereine (associations),
- Stiftungen and Fonds (foundations and funds) pursuant to Art. 1 of the Bundes-Stiftungs- und Fondsgesetz 2015 (Federal Act on Foundations and Funds) ,

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24 Available at <https://findok.bmf.gv.at/findok/resources/pdf/c1ad831a-d36e-4c97-b98f-d367c8f1cc43/74337.1.X.X.pdf>.

25 Available at <https://www.bmf.gv.at/en/topics/financial-sector/beneficial-owners-register-act/legal-basis-and-FAQ.html>.

26 Available at <https://www.bmf.gv.at/services/wiereg/rechtliche-grundlagen-faq-fallbeispiele-wiereg.html>.

27 § 1 WiEReG.

28 This includes, e.g., the Austrian Federal Railways, the Austrian Broadcasting Corporation and the Austrian National Library.

- Stiftungen and Fonds established based on a state act, provided that the application of the WiEReG is allowed under state law (which is the case for all states as far as notification duties are concerned).

Companies listed on stock markets are not excluded from the notification duty, although the EU Directive does not cover them.<sup>29</sup>

### 3. Definition of beneficial ownership

Austrian law defines “beneficial owner” in § 2 WiEReG as “any natural person(s) who ultimately owns or controls a legal entity”. Beneficial ownership can be established directly, indirectly and via legal representation.

#### a) Direct beneficial ownership

A person is a direct beneficial owner if they hold more than 25 per cent of the shares, voting rights or ownership interest in a company.<sup>30</sup> Likewise, several persons who only jointly hold more than 25 per cent are all considered direct beneficial owners if they individually agree to exercise their voting rights uniformly and unanimously and their combined voting rights exceed the threshold of 25 per cent. In contrast, if such shareholders exercise their voting rights uniformly but their internal decision mode on exercising their voting rights is a majority vote, only a person with a majority of votes within that pool is a beneficial owner.

#### b) Indirect beneficial ownership

If a legal entity holds more than 25 per cent of the shares, voting rights or ownership interest in a company and a natural person controls the legal entity directly or indirectly, this person is the indirect beneficial owner of the company.<sup>31</sup> If a person controls various legal entities that together exceed the threshold of 25 per cent, such a person is an indirect beneficial owner as well. Control can be established in the following ways:<sup>32</sup>

- the shareholding or an ownership interest of more than 50 per cent,
- having the right to appoint or remove a majority of the members of the administrative, management or supervisory board while being a shareholder in that entity,

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29 Art. 3(6) a (i), Directive (EU) 2015/849.

30 § 2 (1) (a) (aa) WiEReG.

31 § 2 (1) (a) (bb) WiEReG.

32 § 2 (1) (a) (bb) WiEReG in conjunction with Art. 244 (2) Commercial Code.

- having the right, utilising an agreement with other shareholders, to determine how their voting rights in the appointment or removal of a majority of the members of the management or supervisory boards are used if this is necessary to reach a majority of votes,
- having the right to exercise a dominant influence,
- beneficial ownership of a trust, foundation, fund or private foundation,
- a Treuhanderschaft (fiduciary agreement) and
- other means (e.g. if the direct owner is strongly influenced by their parents because they might otherwise face disadvantages in future probate proceedings).

Indirect beneficial ownership, like direct beneficial ownership, can be established through the pooling of voting rights. Furthermore, beneficial ownership can be established by adding, e.g., direct ownership of 15 per cent and indirect control over a share of 15 per cent.

Moreover, indirect beneficial ownership can be established through a Treuhanderschaft, i.e., a natural person acting as Treuhänder (fiduciary) is the direct beneficial owner of a company. The Treugeber (trustor) qualifies as an indirect beneficial owner.

#### c) Control via legal representation

If no direct or indirect beneficial owner of a company can be established, the natural persons belonging to the company's top management level are the company's beneficial owners.<sup>33</sup>

In the case of Privatstiftungen, Stiftungen and Fonds, the founders, the management board members, the circle of beneficiaries (i.e. the group of persons from whom the actual beneficiaries are selected) and any other person exercising control over the entity are beneficial owners. Additionally, in the case of Privatstiftungen, the beneficiaries and persons from the circle of beneficiaries who receive benefits from the private foundation whose amount exceeds 2,000 EUR per calendar year are beneficial owners as well (the latter only for the year in which they receive such benefits).<sup>34</sup>

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33 § 2 (1) (b) WiEReG.

34 § 2 (3) WiEReG.

#### 4. Transparency register

##### a) Design

The transparency register is a stand-alone register administered by Statistik Austria for the Federal Ministry of Finance. Entities must fulfil their notification duties electronically via the Austrian platform “Unternehmensservice Portal”.<sup>35</sup>

##### b) Information to be reported<sup>36</sup>

The following information on beneficial owners must be reported:

- name,
- date and place of birth,
- place of residence,
- the number and type of the official ID document submitted if the beneficial owner has no place of residence in Austria,
- nationality<sup>37</sup> and
- the nature and scope of the beneficial interest.

In addition, for indirect beneficial owners, the entity they control directly, and the mode of control must be identified. Indirect beneficial owners do not have to be reported if the entity which they hold is a trust, foundation, fund, private foundation or trust-like legal arrangement that is itself entered in the beneficial owners’ register.

##### c) Initial notification and updating duties

Initial notifications to the register were to be made by 1 June 2018. However, non-compliance with this duty was not sanctioned until 15 August 2018. Entities must report changes to the information contained in the register within four weeks of obtaining knowledge of the change.<sup>38</sup> In addition, entities must check at least once a year whether the information contained in the register is still accurate.<sup>39</sup> Even if it is, they must confirm the data recorded in the register.<sup>40</sup>

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35 § 5 (2) WiEReG. The Unternehmensserviceportal is available at <https://www.usp.gv.at/Portal.Node/usp/public>.

36 § 5 (1) WiEReG.

37 Unlike in Germany, Austrian law required this information to be included already under national rules transposing the AMLD4.

38 § 5 (1) WiEReG.

39 § 3 (3) WiEReG.

40 Federal Ministry of Finance’s FAQ document on the WiEReG p. 10, available at <https://www.bmf.gv.at/services/wiereg/rechtliche-grundlagen-faq-fallbeispiele-wiereg.html>.



#### d) Automatic information exchange

Data can be automatically transferred from other registers, notably the Firmenbuch (commercial register), the Vereinsregister (association register) and the Zentrales Melderegister (central residence register). Consequently, some entities are exempt from the duty to notify the register:<sup>41</sup>

- Offene Gesellschaften, Kommanditgesellschaften and GmbHs are exempt if all shareholders are natural persons and no person other than the shareholders or top managers registered in the company register qualifies as a beneficial owner.
- Erwerbs- und Wirtschaftsgenossenschaften, Versicherungsvereine auf Gegenseitigkeit, kleine Versicherungsvereine, Sparkassen and Vereine are exempt if – as is usually the case – no person other than the members of the management board/the official representatives qualify as a beneficial owner.

If an exemption exists, the notification system will recognise this automatically and will inform anyone in the process of entering information. In that case, one can choose whether to utilise the exemption.

Changes in these data are imported automatically from the respective register. The legal entities concerned are still required, however, to report changes that do not appear in the registers (e.g., if a person acquires control without being a shareholder) and to check yearly whether the information is still accurate.

Additionally, for beneficial owners residing in Austria, the only personal information to be reported is their name and date of birth. The place of birth, nationality and residence are automatically imported from the central residence register. These data are automatically updated if changes occur. In contrast, for beneficial owners residing abroad, all of this information and a copy of an ID document must be submitted and updated manually.

#### e) Costs

Entering information in the register is cost-free for legal entities.

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41 See <https://www.ris.bka.gv.at/NormDokument.wxe?Abfrage=Bundesnormen&Gesetzesnummer%20=20009980&FassungVom=2020-10-23&Artikel=&Paragraf=6&Anlage=&Uebergangsrec>.

## IV. France

### 1. Legal sources

#### a) Primary national legislation

In France, the relevant parts of the AMLD4 have been transposed by Ordinance No 2016-1635<sup>42</sup> of 1 December 2016, strengthening France's system against money laundering and terrorist financing. France updated these provisions by transposing the AMLD5 with Ordinance No 2020-115<sup>43</sup> of 12 February 2020, reinforcing the national strategy for fighting against money laundering and terrorist financing.

The provisions regarding beneficial ownership are codified in the French Monetary and Financial Code (Code monétaire et financier – CMF). As Laws and ratified Ordinances have legal force, they are codified in the “legal part” of the CMF (Art. L-XX).

Regarding beneficial ownership and the transparency register, the relevant legislative provisions are codified in Art. L.561-2-2 CMF (definition of beneficial ownership) and Art. L.561-45-1 to L.561-50 CMF (information on beneficial owners).<sup>44</sup>

#### b) Secondary national legislation and other sources

Based on these Ordinances, the French Government has adopted several legally binding decrees providing for the detailed application of the legal provisions: Decrees No 2017-1094<sup>45</sup> on the register of beneficial owners and No 2018-284<sup>46</sup> strengthening the French system for combating money laundering and the financing of terrorism, that were updated in 2020 with Decrees No 2020-118<sup>47</sup> and No 2020-119<sup>48</sup>.

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42 Ordonnance n° 2016-1635 du 1er décembre 2016 renforçant le dispositif français de lutte contre le blanchiment et le financement du terrorisme, available at <https://www.legifrance.gouv.fr/eli/ordonnance/2016/12/1/ECFT1628231R/jo/texte>.

43 Ordonnance n° 2020-115 du 12 février 2020 renforçant le dispositif national de lutte contre le blanchiment de capitaux et le financement du terrorisme, available at <https://www.legifrance.gouv.fr/eli/ordonnance/2020/2/12/ECOT1932860R/jo/texte>.

44 Code monétaire et financier (Octobre 2020): partie législative.

45 Décret n°2017-1094 du 12 juin 2017 relatif au registre des bénéficiaires effectifs définis à l'article L. 561-2-2 du code monétaire et financier, available at <https://www.legifrance.gouv.fr/eli/decret/2017/6/12/ECOT1706881D/jo/texte>.

46 Décret n° 2018-284 du 18 avril 2018 renforçant le dispositif français de lutte contre le blanchiment de capitaux et le financement du terrorisme, available at <https://www.legifrance.gouv.fr/eli/decret/2018/4/18/ECOT1808327D/jo/texte>.

47 Décret n° 2020-118 du 12 février 2020 renforçant le dispositif national de lutte contre le blanchiment de capitaux et le financement du terrorisme. Art. 12 updates provisions on the Transparency Register, available at <https://www.legifrance.gouv.fr/eli/decret/2020/2/12/ECOT1932863D/jo/texte>.

48 Décret n° 2020-119 du 12 février 2020 renforçant le dispositif national de lutte contre le blanchiment de capitaux et le financement du terrorisme, available at <https://www.legifrance.gouv.fr/eli/decret/2020/2/12/ECOT2002245D/jo/texte>.

The executive provisions in force regarding beneficial ownership are codified in the “executive part” of the CMF (Art. R-XX).<sup>49</sup> Hence, the detailed application of the legal provisions is laid down in Art. R.561-1 to R.561-3-0 CMF (definition of beneficial ownership) and in Art. R.561-55 to R.561-64 CMF (register of beneficial owners).

The National Council of Commercial Court Clerks and Infogreffe – whose role is to simplify the life of entrepreneurs by providing digital access to information from registries - have issued non-binding guidelines and documents with detailed information on questions such as to which legal entities the notification duty applies and how beneficial owners are to be identified in different corporate scenarios or in collective investments and economic interest groupings.<sup>50</sup>

## 2. Subjects of the notification duty

In France, the duty to report beneficial owners applies to<sup>51</sup> the following entities upon their registration in the Commercial and Companies Register (registre du commerce et des sociétés - RCS):<sup>52</sup>

- sociétés et groupements d'intérêt économique (European Economic Interest Groupings) having their seat in a French department and enjoying legal personality,
- sociétés commerciales (commercial companies) with an establishment in a French department and
- other legal entities<sup>53</sup> that must register with the RCS.

Companies listed on the stock market are not subject to the notification duty.<sup>54</sup>

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49 Code monétaire et financier (Octobre 2020), partie réglementaire, available at [https://www.legifrance.gouv.fr/codes/section\\_lc/LEGITEXT000006072026/LEGISCTA000006139674/#LEGISCTA000023217160](https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006072026/LEGISCTA000006139674/#LEGISCTA000023217160).

50 Infogreffe (2020), Formulaire et Modèles, available at <https://www.infogreffe.fr/formalites-entreprise/telecharger-formulaires-formalites-entreprise.html>, see for instance: Notice M'BE Sociétés, CERFA 52313#01; Conseil National des Greffiers des Tribunaux de Commerce [CNGTC] (2020), Schémas pour identifier les BE, available at <https://www.infogreffe.fr/documents/20126/0/Sch%C3%A9mas+pour+identifier+les+BE+-+31+03+2020.pdf>.

51 Code monétaire et financier, Art. L.561-45-1, available at [https://www.legifrance.gouv.fr/codes/article\\_lc/LEGIARTI000041572371](https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000041572371).

52 Code monétaire et financier, Art. L.561-45-1(1), in conjunction with Code de commerce, Art. L.123-1(I).

53 Infogreffe (2020), L'immatriculation au Registre du Commerce et des sociétés, available at <https://www.infogreffe.fr/informations-et-dossiers-entreprises/dossiers-thematiques/creation-entreprise/dossier-immatriculation-au-rcs.html>.

54 Code monétaire et financier, Art. L.561-45-1(1).

### 3. Definition of beneficial ownership

French law defines beneficial ownership as (the) natural person(s) who ultimately control directly or indirectly a legal entity (mathematical approach) or for whom an operation or an activity is being conducted (legal approach).<sup>55</sup>

Specific criteria to determine the beneficial ownership of corporate entities are laid down in the CMF, which differentiates between direct and indirect ownership, control via other means and legal representation.<sup>56</sup>

#### a) Direct beneficial ownership

Natural persons holding more than 25 per cent of the capital or voting rights of the corporate entity directly are beneficial owners of this entity.<sup>57</sup> The direct ownership of the capital of a corporate entity covers full and bare ownership, and the direct ownership of voting rights covers, in addition, the usufruct.<sup>58</sup>

In the case of a minor being the beneficial owner through the ownership of more than 25 per cent of the share or of the capital of a corporate entity, their legal representatives are designated as well as beneficial owners, as they exercise their voting rights until the legal majority.<sup>59</sup>

#### b) Indirect beneficial ownership

Natural persons holding more than 25 per cent of the capital or voting rights of the corporate entity indirectly are indirect beneficial owners of this entity.<sup>60</sup> The indirect ownership of the capital covers full and bare ownership, and the indirect ownership of voting rights covers, in addition, the usufruct.<sup>61</sup>

Indirect beneficial ownership is often established through ownership of either a share of the capital or voting rights of one or several legal persons linked to the corporate entity or both. In that case, a natural person is an indirect beneficial owner when the product obtained after multiplying the share in each intermediate legal person is higher than 25 per cent.<sup>62</sup>

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55 Code monétaire et financier, Art. L.561-2-2.

56 Code monétaire et financier, Art. R.561-1.

57 Code monétaire et financier, Art. R.561-1.

58 Infogreffe (2020), Formulaire M'BE Sociétés, CERFA 16062\*01, available at <https://www.infogreffe.fr/documents/20126/0/Formulaire+M%27BE+Soci%C3%A9t%C3%A9s.pdf>; Conseil National des Greffiers des Tribunaux de Commerce [CNGTC] (2020), Schémas pour identifier les BE, No 1, 3-4, 10 and 12, available at <https://www.infogreffe.fr/documents/20126/0/Sch%C3%A9mas+pour+identifier+les+BE+-+31+03+2020.pdf>.

59 CNGTC (2020), Schémas pour identifier les BE, No 13.

60 Code monétaire et financier, Art. R.561-1.

61 Infogreffe (2020), Formulaire M'BE Sociétés, CERFA 16062\*01.

62 CNGTC (2020), Schémas pour identifier les BE, No 2, 3 and 5.

Indirect beneficial ownership can also be established through joint and inseparable ownership (“indivision”) by two or more natural persons having joint possession of more than 25 per cent of either a corporate entity’s capital, its voting rights or both. These co-owners are all indirect beneficial owners of this entity.<sup>63</sup> Any natural person acting as a fiduciary (“mandataire”) permanently for these indirect beneficial owners qualifies as a beneficial owner as well.

c) Control via other means

Natural persons may qualify as beneficial owners through control via other means.<sup>64</sup> This concerns a person who may determine the decisions in the general meetings through the voting rights at their disposal. It also covers shareholders with the power to appoint or dismiss the majority of the members of the administrative, management or supervisory bodies.<sup>65</sup> This approach involves the analysis of legal acts to determine the beneficial owner, as shareholders’ agreements, associates’ pacts, co-ownership agreements or legal set-ups to exercise control.<sup>66</sup>

Furthermore, two or more persons acting in concerted action shall be deemed to jointly control another when they factually determine the decisions taken in a general meeting.<sup>67</sup> To that extent, a family group can be qualified as another means of control – and thus its members as beneficial owners – of a corporate entity.<sup>68</sup> In France, this notion designates a person’s ascendants or descendants, spouse (or civil partner), ascendants or descendants of the person’s spouse (or civil partner) and siblings of the person’s spouse (or civil partner).<sup>69</sup> Hence, several family members, detaining each less than 25 per cent of a corporate entity, are beneficial owners as part of a family group, if they act in concerted action and the family group represents more than 25 per cent of the corporate entity.<sup>70</sup> In that case, concerted action can be implied and no formal agreement is needed. However, this notion of family Group raised some concern among stakeholders, as its scope remains unclear.<sup>71</sup> In particular, the industry organisation Association Nationale des Sociétés par Actions (ANSA) outlined in 2018 that belonging to the

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63 CNGTC (2020), Schémas pour identifier les BE, No 11 and 12.

64 Code monétaire et financier, Art. R.561-1.

65 Code monétaire et financier, Art. R.561-1, in conjunction with Code de commerce, Art. L.233-3(I), No. 3-4.

66 CNGTC (2020), Schémas pour identifier les BE, No 6–9 and 14.

67 Code de commerce, Art. L.233-3(III).

68 CNGTC (2020), Schémas pour identifier les BE, pp. 10–11.

69 CNGTC (2020), Schémas pour identifier les BE, pp. 10–11; Assemblée Nationale (2015), réponse ministérielle Question N°41145, available at <http://questions.assemblee-nationale.fr/q14/14-41145QE.htm>.

70 CNGTC (2020), Schémas pour identifier les BE, pp. 10-11.

71 Editions Francis Lefebvre (2018), Groupe familial majoritaire : la question des bénéficiaires effectifs de la société fait débat !, available at <https://www.eff.fr/actualites/affaires/societes/details.html?ref=UI-3305c962-b432-4d97-9fec-6454bcd1fe04>.

same family does not necessarily imply an agreement between its members.<sup>72</sup> Until then, the clerk's office guidelines only mentioned that members of a family group representing more than 25 per cent of the corporate entity could be beneficial owners. In the 2020 update of these guidelines, a factual concerted action, through a tacit or formal agreement, is a prerequisite for being classified as a beneficial owner in the context of a family group.<sup>73</sup>

#### d) Control via legal representation

If no beneficial ownership of a corporate entity can be identified through direct and indirect ownership or through the control via other means, the beneficial owner shall be the legal representative of the corporate entity.<sup>74</sup> It is the manager(s) for general partnerships, limited partnerships, limited liability companies, partnerships limited by shares and non-trading companies; the managing director for public limited companies with a board of directors. For public limited companies with a management board and supervisory board, it is the sole managing director or the chairperson of the management board; for simplified stock companies, it is the chairperson and, where applicable, the managing director. If those legal representatives are legal persons, the beneficial owner is the natural person(s) legally representing these legal persons.<sup>75</sup> For other legal forms (especially "placement collectifs"), similar rules apply.<sup>76</sup>

### 4. Transparency register

#### a) Design

The transparency register is the register of beneficial owners (registre des bénéficiaires effectif – RBE). French public authorities have assigned its management to the clerk's office of local Commercial Courts. While registering with the Commercial and Companies Register (RCS), corporate entities can notify directly at the local clerk's office.<sup>77</sup> Alternatively, notifications can be made online through the portal Guichet des formalités des entreprises.<sup>78</sup> Several private companies also offer the notification as a paid service.

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72 The Association Nationale des Sociétés par Actions (ANSA) recalled in 2018 that belonging to the same family group does not necessarily imply an agreement between the members, except minor children who must be attached to their parents (Communication Ansa, comité juridique n° 18-017 du 4-4-2018, quoted according to Editions Francis Lefebvre (2018), Groupe familial majoritaire : la question des bénéficiaires effectifs de la société fait débat !, available at <https://www.eff.fr/actualites/affaires/societes/details.html?ref=UI-3305c962-b432-4d97-9fec-6454bcd1fe04>).

73 Infogreffe (2020), Schémas pour identifier les BE, p. 10.

74 Code monétaire et financier, Art. R.561-1.

75 Code monétaire et financier, Art. R.561-1.

76 Code monétaire et financier, Art. R.561-2 and R.561-3.

77 See Infogreffe (not dated), Registre des bénéficiaires effectifs, available at <https://www.infogreffe.fr/rbe>.

78 See Direction de l'information légale et administrative (2023), Guichet des formalités des entreprises (Démarche en ligne), available at <https://entreprendre.service-public.fr/vosdroits/R61572>.

b) Information to be reported

The following information on beneficial owners must be reported:<sup>79</sup>

- name,
- date and place of birth,
- nationality,
- address of residence,
- nature, terms and scope of control exercised over the corporate entity and
- the date on which the natural person(s) became the beneficial owner(s) of the corporate entity.<sup>80</sup>

The nature of the control exercised by the beneficial owner(s) must be indicated in the declaration on beneficial ownership.<sup>81</sup> By ownership of either a share of the capital and its voting rights or both, the total percentage of ownership must be indicated, as well as its declination. I.e., it must be indicated with a percentage whether the natural person has full ownership or only covers either bare ownership or the usufruct.

c) Initial notification and updating duties

Initial notifications to the register were to be made as of 1 August 2017 for each entity registering to the RCS. Entities that were already registered before this date had until 1 April 2018 to declare the information on beneficial ownership.<sup>82</sup> Corporate entities are obliged to update information on their beneficial owners.<sup>83</sup> The corporate entity shall ask for an amended registration within 30 days of any fact or act making it necessary to correct or complete the information on beneficial ownership declared to the RCS.<sup>84</sup>

d) Automatic information exchange

There is no automatic information exchange between the RBE and other existing registers in France. Even where the required information is already present in different registers (for instance, the Extrait Kbis of entities registered to the RCS<sup>85</sup>), the entities do have to provide

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79 Code monétaire et financier, Art. R.561-56; Infogreffe (2020), Formulaire M'BE Sociétés, CERFA 16062\*01, Notice M'BE Sociétés, CERFA 52313#01.

80 Code monétaire et financier, Art. R.561-56, para. 2.

81 Infogreffe (2020), Formulaire M'BE Sociétés, CERFA 16062\*01.

82 Décret n° 2017-1094 du 12 juin 2017 relatif au registre des bénéficiaires effectifs définis à l'article L. 561-2-2 du code monétaire et financier, Art. 5.

83 Code monétaire et financier, Art. L.561-45-1.

84 Code monétaire et financier, Art. R.561-55.

85 Infogreffe (2020), Extrait Kbis, available at <https://www.infogreffe.fr/documents-officiels/demande-kbis.html>.

the information. Furthermore, clerks of commercial courts have to verify the information on the beneficial owner (whether it is complete, compliance with the legal and regulatory provisions, supporting documents, and compatibility with the status of the file).<sup>86</sup> Where “obliged entities” report a difference between the information they have and the information provided in the RBE, the clerk shall mention ex officio in the register the discrepancy noted, specifying the information on the beneficial owner to which the discrepancy relates.<sup>87</sup>

e) Costs

Online declarations of beneficial ownership cost 22.52 EUR. Updates cost 45.32 EUR each. Offline declarations at the clerk’s office of Commercial Courts cost 23.78 EUR for an initial declaration and 46.58 EUR for each updated declaration.<sup>88</sup>

## V. Germany

### 1. Legal sources

a) Primary national legislation

In Germany, the AMLD4 has been transposed by the Federal Act on Money Laundering (Gesetz zur Umsetzung der Vierten EU-Geldwäscherichtlinie, zur Ausführung der EU-Geldtransferverordnung und zur Neuorganisation der Zentralstelle für Finanztransaktionsuntersuchungen).<sup>89, 90</sup> The German Bundestag adopted the Act with the consent of the Bundesrat as Art. 1 of the Act of 23 June 2017 (Federal Law Gazette 2017 I p. 1822). It entered into force on 26 June 2017 per Art. 24, sentence 1 of that Act. Initial notifications to the register were to be made by 1 October 2017.<sup>91</sup>

The AMLD5 has been transposed by a Federal Act changing the aforementioned Act (Gesetz zur Umsetzung der Änderungsrichtlinie zur Vierten EU-Geldwäscherichtlinie).<sup>92</sup> The Act entered into force on 1 January 2020. A consolidated version of the Federal Act is available online.<sup>93</sup>

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86 Code monétaire et financier, Art. L.561-47(1).

87 Code monétaire et financier, Art. R. 561-64.

88 Infogreffe (2020), RBE, tarifs, available at <https://www.infogreffe.fr/rbe>.

89 Available at [http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBI&jumpTo=bgbl117s1822.pdf](http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&jumpTo=bgbl117s1822.pdf).

90 The German Financial Market Authority has provided an unofficial English translation, available at [https://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Aufsichtsrecht/Gesetz/GwG\\_en.html](https://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Aufsichtsrecht/Gesetz/GwG_en.html).

91 § 59 (1) of the Gesetz zur Umsetzung der Vierten EU-Geldwäscherichtlinie, zur Ausführung der EU-Geldtransferverordnung und zur Neuorganisation der Zentralstelle für Finanztransaktionsuntersuchungen.

92 Available at [http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBI&jumpTo=bgbl119s2602.pdf](http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&jumpTo=bgbl119s2602.pdf).

93 Available at [https://www.gesetze-im-internet.de/gwg\\_2017/GwG.pdf](https://www.gesetze-im-internet.de/gwg_2017/GwG.pdf).



b) Secondary national legislation and other sources

Based on this federal law, the German Federal Ministry of Finance has issued several ordinances setting out the details of the transparency register, e.g. regarding the conferral of the registrar function of the register to a private party, the costs of notifying and accessing the register.<sup>94</sup> The Bundesanzeiger Verlag GmbH manages the transparency register. The Bundesverwaltungsamt operates as the supervising public entity.<sup>95</sup>

The Bundesverwaltungsamt published a frequently updated FAQ document with detailed information on questions such as to which legal entities the notification duty applies and how beneficial owners are to be identified in different corporate scenarios.<sup>96</sup>

## 2. Subjects of the notification duty

In Germany, the duty to notify beneficial owners to the transparency registers applies to all legal persons under private law and registered partnerships (“eingetragene Personengesellschaften”) with a statutory seat in Germany.<sup>97</sup> This includes Germany’s most common company types, such as:

- Gesellschaft mit beschränkter Haftung (limited liability company, GmbH),
- Aktiengesellschaft (stock company, AG),
- Kommanditgesellschaft (limited partnership, KG),
- Offene Handelsgesellschaft (general partnership, OHG),
- Rechtsfähige und nicht-rechtsfähige Stiftung (foundation with and without legal capacity),
- Trusts,
- eingetragener Verein (registered association) and
- Partnerschaftsgesellschaft (partnership company, PartG).

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94 All regulations are available at [https://www.bva.bund.de/DE/Das-BVA/Aufgaben/T/Transparenzregister/\\_documents/Rechtsgrund\\_transparenz\\_kachel.html](https://www.bva.bund.de/DE/Das-BVA/Aufgaben/T/Transparenzregister/_documents/Rechtsgrund_transparenz_kachel.html).

95 § 25 (6) of the Gesetz zur Umsetzung der Änderungsrichtlinie zur Vierten EU-Geldwäscherichtlinie.

96 Bundesverwaltungsamt, Transparenzregister: Fragen und Antworten zum Geldwäschegesetz (GwG), 19 August 2020, available at [https://www.bva.bund.de/DE/Das-BVA/Aufgaben/T/Transparenzregister/\\_documents/FAQ\\_transparenz\\_kachel.html](https://www.bva.bund.de/DE/Das-BVA/Aufgaben/T/Transparenzregister/_documents/FAQ_transparenz_kachel.html).

97 § 20 (1) and § 21 GwG.

Companies listed on the stock market are not excluded from the notification duty<sup>98</sup>, although they originally were<sup>99</sup>. The Bundesverwaltungsamt's FAQs offer further guidance on the notification duty of legal persons and partnerships.<sup>100</sup>

### 3. Definition of beneficial ownership

German law defines beneficial ownership in § 3 (1) GwG as the natural person in whose ownership or under whose control a legal entity is or on whose behalf a transaction is conducted. Beneficial ownership can be established directly, indirectly and via legal representation.

#### a) Direct beneficial ownership

A person is a direct beneficial owner if they hold more than 25 per cent of the shares or voting rights or exercise control similarly.<sup>101</sup> The latter encompasses pooling and voting rights agreements on the joint use of voting rights. In such cases, the person who may represent the pool qualifies as a beneficial owner when the pool's shares or voting rights exceed 25 per cent. If this representation is subject to a majority decision of persons (each falling short of 25 per cent interest), no pool or voting rights agreement member qualifies as a beneficial owner. However, a natural person with direct ownership below 25 per cent qualifies as a beneficial owner when they can control corporate decisions because of an explicit or implicit veto right, e.g. because the corporate statute demands unanimity decisions or because they have an absolute majority in a pool which represents more than 25 per cent of the shares or voting rights and which decides by absolute majority.<sup>102</sup>

For foundations with legal capacity and fiduciary legal structures, the trustee qualifies as a direct beneficial owner when they have been trusted with more than 25 per cent of voting rights shares. Trustors with such shares qualify as indirect beneficial owners, even if they have allocated their share to several trustees, each of whom manages a stake of less than 25 per cent.<sup>103</sup>

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98 Bundesverwaltungsamt, Transparenzregister: Fragen und Antworten zum Geldwäschegesetz (GwG), available at [https://www.bva.bund.de/DE/Das-BVA/Aufgaben/T/Transparenzregister/\\_documents/FAQ\\_transparenz\\_kachel.html](https://www.bva.bund.de/DE/Das-BVA/Aufgaben/T/Transparenzregister/_documents/FAQ_transparenz_kachel.html).

99 See e.g. Kunst, K. (not dated), Unternehmenspflichten beim Transparenzregister / 4.2 Bei börsennotierten Unternehmen, available at [https://www.haufe.de/finance/haufe-finance-office-premium/unternehmenspflichten-beim-transparenzregister-42-bei-boersennotierten-unternehmen\\_idesk\\_Pi20354\\_HI11575376.html](https://www.haufe.de/finance/haufe-finance-office-premium/unternehmenspflichten-beim-transparenzregister-42-bei-boersennotierten-unternehmen_idesk_Pi20354_HI11575376.html).

100 Bundesverwaltungsamt, Transparenzregister: Fragen und Antworten zum Geldwäschegesetz (GwG), 19 August 2020, No 1–8, pp. 3–5.

101 § 3 (2) GwG.

102 Bundesverwaltungsamt, Transparenzregister: Fragen und Antworten zum Geldwäschegesetz (GwG), 19 August 2020, Nr. 1, 3–4, pp. 10–12.

103 § 3 (3) GwG and Bundesverwaltungsamt, Transparenzregister: Fragen und Antworten zum Geldwäschegesetz (GwG), 19 August 2020, Nr. 2, p. 10.

b) Indirect beneficial ownership

If a legal person under private law or a registered partnership holds more than 25 per cent of shares or voting rights of a legal entity and the former is under the dominant influence of a natural person, they qualify as a beneficial owner of the legal entity. The dominant influence of the natural person in the legal person under private law or in the registered partnership is present when the natural person is in a position to determine the financial and corporate policy of this company, e.g. by owning the majority of voting rights or by being able to decide upon the appointment of a majority of members of the relevant boards.<sup>104</sup> In this case as well, the presence of implicit veto rights leads to a qualification as the beneficial owner also when the natural person's direct ownership right is below 50 per cent.<sup>105</sup>

c) Control via legal representation

If no direct or indirect beneficial owner can be identified – this includes investigations as to the existence of voting rights agreements – the legal representative or managing partner of the legal entity qualifies as a fictitious beneficial owner.<sup>106</sup>

In the case of private foundations with legal personality and funds, the founders, the members of the management board, the circle of beneficiaries (i.e. the group of persons from whom the actual beneficiaries are selected) and any other person exercising control over the entity are beneficial owners.<sup>107</sup>

#### 4. Transparency register

a) Design

The transparency register is a stand-alone register administered by Bundesanzeiger Verlag GmbH. The Bundesverwaltungsamt operates as the supervising public entity. Entities must fulfil their notification duties electronically via the German platform [transparenzregister.de](https://www.transparenzregister.de).

b) Information to be reported

The following information on beneficial owners must be reported:

- name,

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104 § 3 (2) para. 2 GwG and § 290 (2) – (4) HGB.

105 Bundesverwaltungsamt, Transparenzregister: Fragen und Antworten zum Geldwäschegesetz (GwG), 19 August 2020, Nr. 1–6, pp. 13–19.

106 § 3 (1) GwG and Bundesverwaltungsamt, Transparenzregister: Fragen und Antworten zum Geldwäschegesetz (GwG), 19 August 2020, No 1, p. 6.

107 § 3 (3) GwG and Bundesverwaltungsamt, Transparenzregister: Fragen und Antworten zum Geldwäschegesetz (GwG), 19 August 2020, No 1-10, p. 30.

- date of birth,
- place of residence,
- nationality<sup>108</sup> and
- the nature and scope of the beneficial interest.

The latter is valid for both direct and indirect beneficial ownership. This information may encompass the relative size of direct or indirect voting rights or shares or an explanation of control via other means, such as pooling and fiduciary agreements or the function of a legal representative or managing partner.<sup>109</sup>

c) Initial notification and updating duties

Initial notifications to the register were to be made by 1 October 2017.<sup>110</sup> Entities must keep the information in the register up to date.<sup>111</sup> Any changes to the information on beneficial owners must be reported to the transparency register without delay.<sup>112</sup> This encompasses changes related to the size, nature and identity of beneficial owners as well as to their names and place of residence.<sup>113</sup> Moreover, changes relating to the legal identity itself (name, legal form, deletion of merger) must be communicated to the register immediately if that legal identity is not registered in other relevant corporate registers.<sup>114</sup>

d) Automatic information exchange

Initially, a notification to the transparency register regarding the identity of beneficial owners did not have to be made (“Mitteilungsfiktion”) if that information was already available as an official entry in electronic form in one or more of the following corporate registers:<sup>115</sup>

- Handelsregister (commercial register),
- Partnerschaftsregister (partnership register),
- Genossenschaftsregister (register of cooperatives),

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108 The nationality of beneficial owners must be reported only since the AMLD5, i.e., with the effect of January 2020. In Germany, prior notifications do not have to be updated with the nationality of beneficial owners, unless an update must be carried out for other reasons.

109 § 19 (3) GwG.

110 § 59 (1) of the Gesetz zur Umsetzung der Vierten EU-Geldwäscherichtlinie, zur Ausführung der EU-Geldtransferverordnung und zur Neuorganisation der Zentralstelle für Finanztransaktionsuntersuchungen.

111 § 20 (1) GwG.

112 § 20 (1) GwG.

113 Bundesverwaltungsamt, Transparenzregister: Fragen und Antworten zum Geldwäschegesetz (GwG), 19 August 2020, No 2, p. 33.

114 § 20 (1a) GwG.

115 § 20 (2) GwG.

- Vereinsregister (register of associations) and
- Unternehmensregister (business register).

As of 1 August 2021, the concept of *Mitteilungsfiktion* was dropped in an amendment, albeit with a transition period. According to this amendment, some entities (AG, SE, KGaA) had to notify until 31 March 2022, others (GmbH, Genossenschaft, Europäische Genossenschaft and Partnerschaft) until 30 June 2022 and all others until 31 December 2022.<sup>116</sup>

#### e) Costs

The notification of information to the register is free of cost. However, all legal persons under private law and registered partnerships must contribute to the general management with a yearly fee of 4.80 EUR.<sup>117</sup>

## VI. Italy

### 1. Legal sources

#### a) Primary national legislation

In Italy, the AMLD4 was implemented by Legislative Decree No 90/2017 of 25 May 2017, which entered into force on 4 July 2017.<sup>118</sup> Among other things, the legislative decree amended Art. 21 para. 1 and 2 of Legislative Decree No 231/2007<sup>119</sup>, which already provided for a Companies Register (Registro delle Imprese). Legislative Decree No 90/2017 establishes the obligation for companies with legal personality registered in the Register of Companies and private legal persons referred to in Presidential Decree No 361 of 10 February 2000 to communicate to the Companies Register information relating to the beneficial owner. All communications must be made exclusively via the Internet.

The AMLD5 has been implemented by Legislative Decree No 125/2019 of 4 October 2019, which came into force on 10 November 2019<sup>120</sup> and made significant changes to Legislative Decree No 90/2017.

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116 Bundesverwaltungsamt, Transparenzregister, [https://www.bva.bund.de/DE/Das-BVA/Aufgaben/T/Transparenzregister/transparenz\\_node.html](https://www.bva.bund.de/DE/Das-BVA/Aufgaben/T/Transparenzregister/transparenz_node.html).

117 § 24 (1) GwG and Besondere Gebührenverordnung des Bundesministeriums der Finanzen zum Transparenzregister (TrGebV) vom 8. Januar 2020, Annex 1, available at [https://www.bva.bund.de/SharedDocs/Downloads/DE/Aufgaben/ZMV/Transparenzregister/verordnung\\_TrGebV\\_2020.pdf?\\_\\_blob=publicationFile&v=2](https://www.bva.bund.de/SharedDocs/Downloads/DE/Aufgaben/ZMV/Transparenzregister/verordnung_TrGebV_2020.pdf?__blob=publicationFile&v=2).

118 Gazzetta Ufficiale n. 140 of 19 June 2017, available at <https://www.gazzettaufficiale.it/eli/id/2017/06/19/17G00104/sg>.

119 Gazzetta Ufficiale n. 290 of 14 December 2007, available at <https://www.gazzettaufficiale.it/eli/id/2007/12/14/007X0246/sg>.

120 Gazzetta Ufficiale n. 252 of 26 October 2019, available at <https://www.gazzettaufficiale.it/eli/id/2019/10/26/19G00131/sg>. The version of the Legislative Decree published on 26/10/2019 was amended with the adjustments issued in Gazzetta Ufficiale n. 253 of 28 October 2019 and Gazzetta Ufficiale n. 254 of 29 October 2019.

b) Secondary national legislation and other sources

The National Commission for Companies and the Stock Exchange (Commissione Nazionale per le Società e la Borsa – CONSOB)<sup>121</sup> has issued a Regulation<sup>122</sup> amending the implementing provisions of Legislative Decree No 231/2007, following its amendments by Legislative Decree No 90/2017 and No 125/2019. Art. 25 of the CONSOB Regulation specifies the procedures for identifying beneficial owners. Unlike in Austria, Germany and France, there is no central, informal guidance on how to identify beneficial ownership in Italy.<sup>123</sup>

In December 2019, the Minister of Economy and Finance and the Minister of Economic Development issued a draft regulation implementing Decree Law No 15/2019, which would establish a “register of beneficial owners” as a particular section of the Companies Register.<sup>124</sup> A public consultation on the draft was closed on 28 February 2020. The regulation was supposed to enter into force at the beginning of 2021. However, the Council of State blocked approval of the implementing regulation on 19 March 2021. At the time of writing, it is still being determined in what form and when it will enter into force. The following sections present the rules foreseen by the draft regulation.

In the meantime, the data on beneficial owners are entered in the above-mentioned Companies Register.

## 2. Subjects of the notification duty

In Italy, the obligation to report the data on the beneficial owners applies to:<sup>125</sup>

- companies with legal personality (joint-stock companies, limited liability companies, limited joint-stock partnerships and cooperatives),
- private legal persons (associations, foundations and committees) and

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121 The National Commission for Companies and the Stock Exchange (CONSOB) is the body aimed at protecting investors, efficiency, transparency and development of the Italian securities market; it is an independent administrative authority with independent legal personality and full operational autonomy, established by Law No 216 of 7 June 1974.

122 Gazzetta Ufficiale n. 214 of 14 September 2018, available at <https://www.gazzettaufficiale.it/eli/id/2018/09/14/18A05881/sg>.

123 Sector-specific information touching on selected issues of beneficial ownership is provided in more general FAQs on anti-money laundering regulation issued by the Bank of Italy (available at <https://www.bancaditalia.it/compiti/vigilanza/normativa/archivio-norme/riciclaggio-terrorismo/faq/index.html#faq8761-33>) or by the Treasury Department within the Ministry of Economy (available at [https://www.dt.mef.gov.it/it/attivita\\_istituzionali/prevenzione\\_reati\\_finanziari/faq\\_prevenzione\\_reati/](https://www.dt.mef.gov.it/it/attivita_istituzionali/prevenzione_reati_finanziari/faq_prevenzione_reati/)). Relevant information can also be found in a document containing guidelines on the interpretation of Legislative Decree No 231/2007 issued by the National Council of Chartered Accountants and Accounting Experts (available at <https://commercialisti.it/visualizzatore-articolo?articleId=1345302&plid=323242>).

124 The draft is available at [http://www.dt.mef.gov.it/modules/documenti\\_it/regolamentazione\\_bancaria\\_finanziaria/consultazioni\\_pubbliche/BOZZA\\_SCHEMA\\_DM\\_TITOLARE\\_EFFETTIVO\\_-\\_CONSULTAZIONE.pdf](http://www.dt.mef.gov.it/modules/documenti_it/regolamentazione_bancaria_finanziaria/consultazioni_pubbliche/BOZZA_SCHEMA_DM_TITOLARE_EFFETTIVO_-_CONSULTAZIONE.pdf).

125 Art. 21 Legislative Decree No 231/2007, as amended by Legislative Decree No 90/2017 and No 125/2019.

- trusts producing legal effects for tax purposes and related legal institutions.

Companies listed on stock markets are not excluded from the notification duty, although the EU directive does not cover them.<sup>126</sup>

### 3. Definition of beneficial ownership

In Italy, the beneficial owner is defined as “the natural person or natural persons, different from the customer, in whose interest or in the last instance, the ongoing relationship is established, the professional service is rendered, or the operation is performed”.<sup>127</sup>

In the case of a legal person, it is the natural person or persons who, in the last instance, have direct or indirect ownership or control of the entity. Art. 20 of Legislative Decree No 231/2007 establishes the criteria for determining the effective ownership by other than natural persons, attributing this qualification to the natural person to whom the direct or indirect ownership of the legal entity or its control is referable.<sup>128</sup>

#### a) Direct beneficial ownership

As a basic rule, a natural person has direct control of a company if they own more than 25 per cent of its capital.<sup>129</sup>

#### b) Indirect beneficial ownership

In cases in which the examination of the ownership structure does not make it possible to identify the beneficial owner, indirect beneficial ownership by a natural person or natural persons is found when they exercise control through:

- the majority of the votes in ordinary shareholders’ meetings,
- sufficient votes to exercise a dominant influence in the shareholders’ meeting,
- the existence of contractual constraints (e.g. voting agreements) that allow a dominant force to be exercised or

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126 Art. 3(6) a (i), Directive (EU) 2015/849.

127 Art. 1, par. 2, letter pp of Legislative Decree No 231/2007, as amended by Legislative Decree No 90/2017 and No 125/2019.

128 The National Council of Chartered Accountants and Auditors has issued guidelines on the interpretation of Legislative Decree No 231/2007, to facilitate the correct application of the decree to its members. Consiglio Nazionale dei Dottori Commercialisti e degli Esperti Contabili (2019), Linee guida per la valutazione del rischio, adeguata verifica della clientela, conservazione dei documenti, dei dati e delle informazioni ai sensi del D.Lgs. 231/2007 (come modificato dal D.Lgs. 25 Maggio 2017, n. 90), p. 35 ff., available at [https://commercialisti.it/visualizzatore-articolo?\\_articleId=1345302&plid=323242](https://commercialisti.it/visualizzatore-articolo?_articleId=1345302&plid=323242).

129 Art. 20 par. 2 of Legislative Decree No 231/2007, as amended by Legislative Decree No 90/2017 and 125/2019.

- the ownership of more than 25 per cent of the client's capital, held through subsidiaries, trust companies or third parties.<sup>130</sup>

c) Control via legal representation residual

If the criteria referred to in the preceding paragraphs do not allow for the identification of one or more beneficial owners, the beneficial owner will be the natural person(s) with powers of legal representation, administration or management of the company.<sup>131</sup>

#### 4. Transparency register

a) Design

The Companies Register of Companies is a public online register<sup>132</sup> in which companies and other bodies (e.g. foundations, associations) carrying out an economic activity are required to sign up.<sup>133</sup> Since 1 April 2010, registrations or changes in the Companies Register must be made exclusively via the Internet. The Companies Register is currently divided into an ordinary owners' section and five special sections, to which an additional special section should be added at the beginning of 2021 to collect the companies' beneficial owners.<sup>134</sup> In other words, there is currently no specific register of beneficial owners, but only a general business register, in which information on beneficial owners is additionally collected. This information will be gathered in the special section of the register when the new decree comes into force.

b) Information to be reported

In the future, the communication of data on beneficial owners must contain<sup>135</sup>:

- name,
- date and place of birth,
- personal residence,
- identification document details,
- fiscal code and
- nature and scope of the beneficial interest.

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130 Art. 20 par. 2 Legislative Decree No 231/2007, as amended by Legislative Decree No 90/2017 and 125/2019.

131 Art. 20 par. 3 Legislative Decree No 231/2007, as amended by Legislative Decree No 90/2017 and 125/2019.

132 The first version of the Companies Register was provided for in Art. 2188 of the Civil Code of 1942.

133 The Companies Register was fully implemented by Law No 580 of 29 December 1993.

134 S. par. 2.1.

135 According to draft regulation implementing Decree Law No 15/2019, Art. 1(2) c and Art. 4, available at [https://www.dt.mef.gov.it/export/sites/sitodt/modules/documenti\\_it/regolamentazione\\_bancaria\\_finanziaria/consultazioni\\_pubbliche/BOZZA\\_SCHEMA\\_DM\\_TITOLARE\\_EFFETTIVO\\_-\\_CONSULTAZIONE.pdf](https://www.dt.mef.gov.it/export/sites/sitodt/modules/documenti_it/regolamentazione_bancaria_finanziaria/consultazioni_pubbliche/BOZZA_SCHEMA_DM_TITOLARE_EFFETTIVO_-_CONSULTAZIONE.pdf).



c) Initial notification and updating duties

According to the draft decree, the administrators of legal persons should acquire the data and information on their actual ownership and shall communicate them by 15 March 2021 to the office of the Companies Register. Although the Privacy Guarantor issued a positive opinion on 14 January 2021, the decree has not entered into force at the time of writing since, as mentioned, it was blocked by the Council of State.

As the draft decree does not mention any data transfer from the existing register to the new one, we assume companies will have to report existing data on beneficial owners to the new register. Companies established after the operational beginning of the new register shall provide such communication within 30 days of their establishment. Managers shall notify any changes to data and information on their actual ownership within 30 days of the fulfilment of the act giving rise to the change.

d) Automatic information exchange

The Italian regulations do not foresee any information exchange using data of other company registers.

e) Costs

The costs of the future notification of data on beneficial owners to the new register are not yet decided. Following the negative opinion of the Council of State on the implementing regulation in March 2021, it is unclear when the notification costs will be determined at the time of writing. Currently, corporations face charges of 155 EUR for online notification to the commercial register.

## VII. A comparative analysis

In the following, we summarise and compare some of the most relevant national provisions regarding notifications to the national transparency registers.

### 1. Subjects of the notification duty

Comparing how Member States transposed the AMLD5 into national law regarding the subjects of the notification duty is challenging. The legal nature and form of subjects to notification are diverse amongst Member States. Nevertheless, all four Member States seem to have all the major corporate forms covered, and significant deviations are not apparent, neither between the Member States nor as compared to the EU directive.

The major difference between Member States and the AMLD5 concerns companies listed on the stock market. Given the high degree of transparency requirements these companies are already subject to, the EU directive entails an exemption from the notification duty. However, Austria and Italy did not apply it. Germany originally exempted companies listed on the stock market from the notification duty, but later on decided to extend the notification duty. Yet, in Austria, the automatic import from data in other registers diminishes the importance of this non-exemption.

*Table 1: Subjects of the notification duty*

AMLD5	Austria	France	Germany	Italy
Notification duty for corporate and other legal entities within the national territory	Extensive list of legal persons	Extensive list of legal persons registered in commercial and companies registers	All legal persons under private law and registered partnerships with a statutory seat in Germany	Extensive list of legal persons
Exemption for companies listed on the stock market	✗	✓	✗	✗

## 2. Definition of beneficial ownership

Member States generally adhere to the directive's definition of beneficial ownership. The directive's distinction between direct and indirect beneficial ownership is picked up in national law. Minor differences are present, in the categorisation of beneficial ownership as well. However, the definition of beneficial ownership is largely consistent.

Table 2: Comparison of beneficial ownership definitions

	Austria	France	Germany	Italy
<b>Direct beneficial ownership</b>				
Capital control/ voting rights	> 25 %	> 25 %	> 25 %	> 25 %
Similar control	<ul style="list-style-type: none"> <li>■ Pooling and voting rights agreements</li> </ul>		<ul style="list-style-type: none"> <li>■ Pooling and voting rights agreements</li> <li>■ De facto veto rights</li> </ul>	
<b>Indirect beneficial ownership</b>				
	<ul style="list-style-type: none"> <li>■ A natural person controls a legal entity with direct control over another entity</li> </ul>	<ul style="list-style-type: none"> <li>■ Product of shares/voting rights in intermediate legal persons &gt; 25 %</li> <li>■ Joint and inseparable ownership by natural persons of &gt; 25 %</li> </ul>	<ul style="list-style-type: none"> <li>■ A natural person controls a legal entity with direct control over another entity</li> </ul>	<ul style="list-style-type: none"> <li>■ A natural person controls a legal entity with direct control over another entity</li> </ul>
<b>Control via other means</b>				
		<ul style="list-style-type: none"> <li>■ Natural persons with sufficient decision powers to influence general meetings or board composition</li> <li>■ Groups of family members when the family owns &gt; 25 % and there is an implicit formal agreement about joint action</li> </ul>		
<b>Control via legal representation</b>				
	<ul style="list-style-type: none"> <li>■ Legal representative or manager as residual</li> </ul>	<ul style="list-style-type: none"> <li>■ Legal representative or manager as residual</li> </ul>	<ul style="list-style-type: none"> <li>■ Legal representative or manager as residual</li> </ul>	<ul style="list-style-type: none"> <li>■ Legal representative or manager as residual</li> </ul>

### 3. Information to be reported and updating duties

The directive is vague on the information on beneficial owners to be reported. The information must be “adequate, accurate and current”, including the “details” of beneficial owners. EU law does not specify what information this refers to. Nevertheless, with some differences, the information requested by national registers is similar. Updating duties are similar in Austria,

France and Italy; however, they are less clear in Germany. Austria requests a yearly verification of registered information.

Table 3: Comparison of notification duties

	Austria	France	Germany	Italy	Remarks
<b>Electronic notification</b>					
	✓	✓	✓	✓	
<b>Information to be reported</b>					
Name	✓	✓	✓	✓	
Date of birth	✓	✓	✓	✓	
Place of birth	✓	✓	✗	✓	In AT: imported automatically from other registers for Austrian residents
Place of residence	✓	✓	✓	✓	In DE: city only; in AT, FR and IT: full address; in AT: imported automatically from other registers for Austrian residents
Nationality	✓	✓	✓	✓	In DE: only as of January 2020, the proposal to notify all nationalities; in AT: imported automatically from other registers for Austrian residents
Nature/scope of interest	✓	✓	✓	✓	
<b>Notification costs in EUR</b>					
	–	22.52–46.58	4.80/year	Unclear	
<b>Updating duties</b>					
	<ul style="list-style-type: none"> <li>■ Update within four weeks after obtaining knowledge</li> <li>■ Yearly verification duty</li> </ul>	<ul style="list-style-type: none"> <li>■ Information must be up to date</li> <li>■ Update within 30 days of any change</li> </ul>	<ul style="list-style-type: none"> <li>■ Without delay, information must be up to date</li> </ul>	<ul style="list-style-type: none"> <li>■ Information must be up to date</li> <li>■ Update within 30 days of any change</li> </ul>	

**4. Information exchange**

The EU directive remains silent on the exact manner of notification. Austria has chosen to use information available in other company registers proactively. This has led to a significant number of entities not being subject to notification requirements and has subsequently reduced notification costs. While Germany initially also refrained from requiring entities to provide information in other registers, this was changed in 2021 to reduce the costs of obliged entities (mainly banks) in identifying beneficial owners of customers.

Table 4: Information exchange

Austria	France	Germany	Italy	Remarks
✓	✗	✗	✗	In DE: information exchange discontinued in 2021



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

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## I. Introduction

Transparency registers are formal registers that serve to collect information on beneficial ownership and make it available to the public. They are a regulatory instrument to “[prevent] the use of the financial system for the purposes of money laundering or terrorist financing” as laid out in Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015. They are operated and monitored by governmental institutions, their clients are companies and a variety of other organisations which must report (and update if necessary) data on beneficial ownership. Transparency registers are designed as either sectional or stand-alone registers. While sectional registers are linked to other sources (e.g. business registers) and the data in question are transferred automatically, a stand-alone register contains all the relevant information in one place.

While EU law urges Member States to set up transparency registers, Member States decide how the rules are implemented in national administrations. Therefore, a significant part of the regulatory burden results from the transposition into national law and the respective administrative context and implementation. At the time of writing, the status of the implementation of transparency registers differs between Member States.<sup>136</sup> This report focusses on Austria, France, Germany and Italy. While transparency registers are in operation in Austria, Germany and France, the transparency register in Italy has been delayed and is not yet operational. Due to the only relatively recent launch of the registers, there are still some transitional periods in effect for the companies to submit their data on beneficial ownership.

For businesses, excessive bureaucracy is not only a nuisance, but ties up valuable human and financial resources. Bureaucracy is seen 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 important 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 European Commission to reduce the administrative burden 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 European Commission with a decision-making aid.

The study takes a more comprehensive approach to measuring compliance costs for companies compared to the EU Standard Cost Model, which focusses on the costs incurred by complying

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<sup>136</sup> For example, examined in: Granjo, A. F. and Martini M. (2021), *ACCESS DENIED? Availability and accessibility of beneficial ownership data in the European Union*, available at <https://images.transparencycdn.org/images/2021-Report-Access-denied-Availability-and-accessibility-of-beneficial-ownership-data-in-the-European-Union.pdf>.



with information obligations only. In doing so, it contributes to an evidence-based discussion on the reduction of regulatory burdens at European and national level.

The goal of this study is to compare the burden incurred by fulfilling the requirements of the transparency register in four EU Member States: Austria, France, Germany and Italy. Although a variety of entities must submit data on beneficial ownership, the scope of this study is limited to economic parties (companies).

Deriving from these assumptions, the following research questions are raised for each of the four Member States and compared in the final chapter:

- How is EU legislation transposed into national law?
- How are the provisions implemented in the administrative context?
- What are the standard processes (procedures) for companies to comply with the requirements of the registers?
- What are the average compliance costs to cover the standard process?
- What burdens do companies perceive?
- What changes could improve the process?

It should be noted that the transparency registers in Austria and France have started operation only recently. In Germany, the register has been set up recently as well, but there are still transitional periods in effect and not all entities had to have been registered at the time of writing. In Italy, while already set up, the register is still not operational due to legal reasons. This study can thus only estimate the (perceived) burden of the early stages of the operation of the registers. The burden actually incurred by companies might therefore change in the coming years. It is safe to assume that it is likely to decrease for individual companies, as both companies as well as the public administrations learn how to comply with and implement the regulation.

## **II. Comparison of the regulatory burdens**

### **1. Transposition and administrative implementation**

The transparency register has been implemented formally in Austria, France and Germany, while the Italian register was not operational at the time of finalising this study (November 2022). In all three countries with an operational register, the standard process follows the same logic and can be divided into three steps: 1) creating the user account, 2) submitting the

information on the company and the beneficial owner(s) and 3) editing the data if necessary. The information requested is similar as well (see chapter VII.3):

*Table 5: Comparison of required information on the beneficial owner(s)*

	Austria	France	Germany
Name	Entire name	Entire name	Entire name
Date of birth	Exact date of birth	Exact date of birth	Exact date of birth
Address	Entire address (automatically imported for Austrian residents)	Entire address	City only
Nature/scope of interest	Percentage specification and the date on which the natural person(s) became the beneficial owner(s) of the corporate entity	Percentage specification	Percentage specification
Place of birth	To be stated	To be stated	Not required
Nationality	According to identity document (automatically imported for Austrian residents)	According to identity document	According to identity document

In all four countries, a fully digital portal is (as for Italy: will be) in operation allowing the companies to fulfil their legal obligations entirely online. In addition, France still offers a paper-based solution for submitting the information in the register and updating it. In terms of the digital maturity of the services, all countries fall at least in category 4 as online accessible, fully digital services. The automated data exchange in Austria further reduces administrative burden for businesses. The differences between the services can be seen in Table 6.

Only Austria requires an annual confirmation that the data provided is up to date (Italy is likely to require this as well), while France and Germany only require action/changes once data have actually changed. Nevertheless, outdated information must be updated within a certain timespan (on average four weeks) after the change occurred. Fees are raised differently and may affect both the initial and the recurring process steps. While there are no fees concerning the Austrian transparency register, the expenses can be quite high in the case of France (see chapter IV.2).

Austria is furthermore the only country in which companies benefit from an automatic exchange of data between registers. This occurs both for the initial registration as well as the recurring efforts to keep the data up to date. Most companies did not have to register their

beneficial ownership manually due to the transfer of data from the business register. When updating data in either of the registers, the changes are automatically synchronised in all data sets. As shown below, this lowers the expenses to fulfil the requirements of the transparency register significantly.

Table 6: Comparison of the registers

Category	Austria	France	Germany	Italy
In operation since	2018	2017	2017 <sup>137</sup>	Pending
Operated by	Ministry of Finance	Infogreffe (digital portal), Clerks of Commercial Courts (processing and legal responsibility for the register), INPI (archiving and diffusion)	Bundesanzeigerverlag (entrusted by the Ministry of Finance)	Business Register
Type of register	Sectional	Sectional	Stand-alone	Sectional
Exemptions	Yes (Meldebefreiung)	No	No (until 2021: Mitteilungsfiktion)	Pending
Automatic data exchange	Yes	No	No	Pending
Total number of legal entities registered currently	0.39 Mio.	Approx. 3.5 Mio.	1.1 Mio.	0
Total number of legal entities registered anticipated	0.43 Mio.	5 Mio.	2.3 Mio.	Up to 6 Mio.
Annual confirmation of correctness of the data required	Yes	No	No	Yes
Fees	No	Yes, for the initial registration and each change	Yes, annual fees for the maintenance of the register	Yes, not specified yet

The number of companies that must register differs between countries and is not proportional to the overall population or the GDP. In both categories, Germany has by far the highest numbers but ranks only third in this comparison with a considerably lower figure than France and Italy. The overall burdens stemming from the transparency register therefore affect the national economies of France and Italy considerably more.

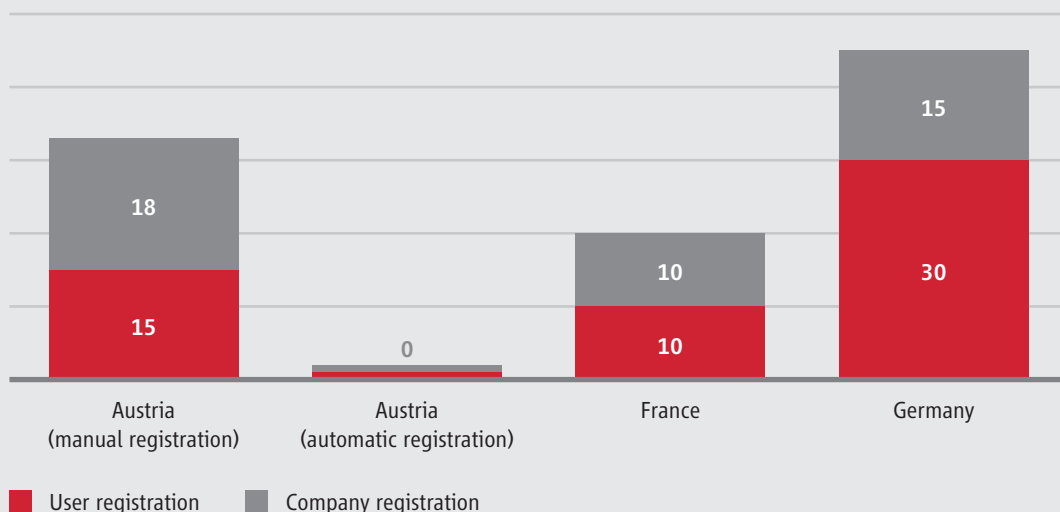
137 Conversion to full register in 2021.

## 2. Efforts and compliance costs for standard application

### a) Efforts to carry out the standard process

The formal steps of the process to be registered in the transparency register are very similar in each country. Nevertheless, the amount of time companies invest in the first two of three process steps (registering as a user and submitting the data on beneficial ownership) varies substantially. As shown in the figure below, German clients of the transparency register did spend more time than their colleagues in Austria and even twice as much as those in France. This might reflect the particularities of the sample of businesses interviewed in Germany with a focus on the more difficult cases but is in line with the description of the somewhat bumpy start of the register. In addition, it should be noted that the results are based on median values; the estimated efforts vary greatly in individual cases.

Figure 1: Time expended for user and company registration in minutes



*While Austrian databases were connected, German clients started from scratch*

Despite different economic structures and some minor variations in the data collection (e.g., the form to be registered as a user is less complex in France than its counterparts in Austria and Germany), the conclusion seems to be appropriate that the automatic data exchange (Austria) determines the required efforts to a high degree. Therefore, companies in Austria benefitted from information transfer from pre-existing databases and described the effort invested as rather low. Some companies even rejected kindly the invitation to an interview, pointing to the fact that working with the transparency register was entirely effortless. Meanwhile, German clients had to start from scratch and create all data sets manually. In conjunction with an unsatisfying flow of information by the Bundesanzeiger Verlag at the start of the operation of the transparency register, the process in Germany, although quite easy to manage formally, was described as opaque and rather irritating.

b) Costs of carrying out the standard process

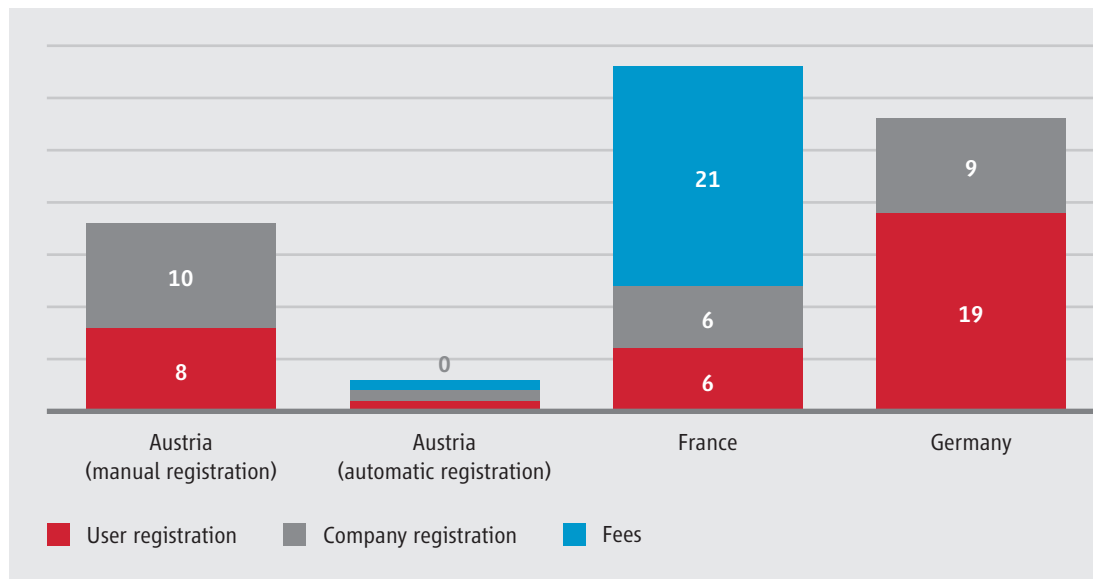
With German clients investing considerably more time in the initial process steps than their counterparts in Austria and France, Germany unsurprisingly has the highest personnel expenses as well. This observation is also reinforced by the fact that German employers pay higher salaries than companies in Austria or France. However, including fees as an additional element of the administrative burden changes the comparison of costs substantially. As shown in the table below, no fees are raised in Austria and Germany for the initial process steps while French clients are charged to such a degree that the overall costs are even higher than in Germany.

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*Highest personnel expenses in Germany*

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Figure 2: Costs of user and company registration and fees in EUR



c) Projection of recurring efforts and costs

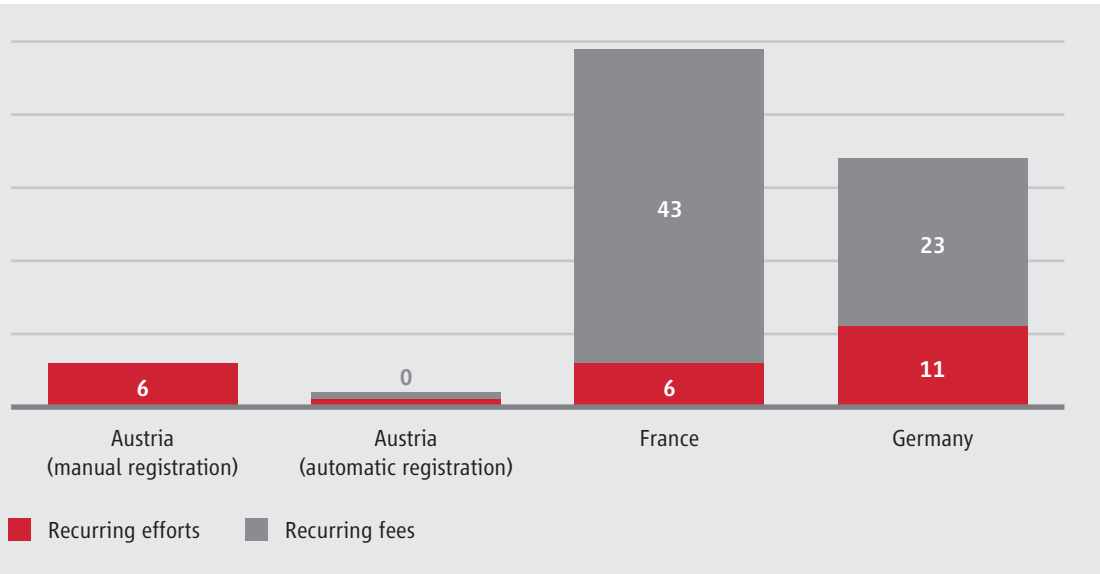
As for the previous observations on the initial efforts and costs, similar deductions can be made when referring to the recurring efforts and costs. Consequently, German clients have to invest the highest amount of time (and therefore money) to edit already submitted data sets. In addition, German clients are charged an annual fee for editing data. France raises a fee as well, which is both the highest fee overall and is charged per data change (and not annually like in Germany). Austrian clients – again – are not charged any fee at all. The overall costs (expenses and fees) are therefore the highest in France and the lowest in Austria.

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*Highest overall costs in France, lowest in Austria*

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Figure 3: Potential recurring costs and fees in EUR



By referring to the data collected, the efforts for a single update of an already registered beneficial ownership can be deducted. However, an accurate overall projection cannot be made because the number of changes occurring (per company per year) remains unclear. Interviewees stated that estimating the frequency of changes to their registered entries on beneficial ownership was impossible for various reasons:

- Due to the rather short period of time the transparency registers have been in operation in Austria, Germany and France, companies were not able to collect sufficient empirical values yet.
- The frequency of data changes may depend on variables such as sector or company size and whether the company in question is a family business or not.
- In addition, for subsidiaries, the fulfilment of the requirements of the transparency register is usually handled entirely by the mother company. A solid projection would therefore require a proportional distribution of the overall companies between mother companies and subsidiaries for each of the four countries.
- The mandatory confirmation that the data are still up to date (France and Italy) does not correlate with the frequency of changes. Regardless of the legal obligations, the data may change more or less frequently than once per year.

Figure 4: Calculation of recurring regulatory costs

$$\begin{array}{l} \text{Q} \\ \text{Number of businesses} \\ \text{that are subject to} \\ \text{the provision} \end{array} \times \begin{array}{l} \text{E} \\ \text{Efforts per} \\ \text{change of} \\ \text{information} \end{array} \times \begin{array}{l} ? \\ \text{Frequency} \\ \text{of} \\ \text{changes} \end{array} = \begin{array}{l} \text{Total regulatory} \\ \text{costs for the national} \\ \text{economy (p.a.)} \end{array}$$

### 3. Perceived burdens

Besides the human and financial resources spent on the formal process to submit and edit data, the concerns about security, data and privacy protection remain one of the main barriers for companies to fulfil the requirements of the transparency register. A centralised, publicly accessible database containing private information runs contrary to the desire of company officials and beneficial owners to protect their private data. The name and the date of birth must be stated in every case, as well as the nationality or nationalities of the beneficial owner(s) and their place(s) of birth. Residence information must be provided as well but with the important distinction that beneficial owners must submit their entire address in Austria and France (street name and house number) while German clients must state the place of residence only.

Likely owing to a specific national emphasis on data protection and privacy and the sample of businesses interviewed (more privately held companies with complex ownership structures in the German sample), German respondents expressed particular concerns about submitting these data, citing amongst other reasons security concerns for the beneficial owners. The well-functioning of the transparency register is hampered by these obstacles. Some interviewees even admitted to submitting false information on the place of residence, willingly risking and accepting consequences such as fines.

Increasing the transparency of ownership structures is, however, the very purpose of the transparency register. As such, this criticism must be understood as a critique of the content of the regulation rather than its administrative implementation.

### 4. Proposals to reduce regulatory burdens

Interview respondents formulated several proposals to reduce the regulatory burden related to the implementation of the transparency register. In all four registers (again, Italy must be treated as an exception), the information on beneficial ownership is directly linked to the entry of the company. As an effect, the information on beneficial ownership must be submitted (or later edited) manually and individually for each company, although the beneficial owner and the information to be submitted (or edited) are the same.

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*Lack of data protection leads to intentional submission of false information*

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### Example

A beneficial owner holds at least 25 per cent of the shares of eight entities in the transparency register. She changes her place of residence and moves from Munich to Hamburg. The information on beneficial ownership must be updated eight times (for each company separately), despite the information in question (in this case: new place of residence “Hamburg”) being the very same.

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*Centralised  
profile for beneficial  
owners*

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A centralised profile for the beneficial owners would resolve this issue. It should contain all general information (except the scope of interest, of course, which may be different for each company) and provide the option to assign the beneficial owner to one or more companies. If a change of data occurred, all company profiles would be updated automatically.

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*EU-wide register  
for international  
companies to be  
discussed*

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Interviewees belonging to rather large international holding structures also emphasised the benefits of a possible EU-wide register. Currently, international companies must deal with each national transposition individually. This may lead to considerable additional efforts handling different obligations and requirements. The still evolving character of some transparency registers within the EU and the frequent adjustment of regulations contribute to this problem as well. Language barriers may be an additional obstacle when dealing with transparency registers in foreign countries.

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*Data protection,  
privacy and  
security are  
important issues*

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Both proposals (centralised information on beneficial ownership and an EU-wide transparency register) would, however, increase the amount of centrally held data, which fails to account for many of the formulated concerns of the businesses in terms of data protection, privacy and security. While centralised data and a barrier-free EU-wide register probably would ease the formal procedure significantly, they are contrary to the objectives of the businesses to keep private data from the public.

### III. Austria

In Austria, the transparency register was implemented on 15 January 2018. It is operated as a part of the established Business Service Portal (“Unternehmensserviceportal”), which also contains other services of the federal ministries.<sup>138</sup> It can therefore be classified as a sectional register with most of the companies (benefitting from the “Meldebefreiung” (reporting exemption); fully automatic exchange of information between registers). For the same reason, the vast majority of companies might not have had to do anything with the transparency

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<sup>138</sup> See <https://www.usp.gv.at/en/index.html>.



register at all, which is also reflected in the data collection. Currently, 388,065 legal entities have registered their beneficial owners compared to an estimated total of 430,000 companies obliged to register.

Table 7: Overview cluster of companies - Austria

	Cluster A	Cluster B
Benefit from Meldebefreiung	Yes	No
Benefit from Meldebefreiung	80 %	20 %
Effect	Submitting data to one register, benefit from automatic data exchange	Submitting data to all registers manually, no automatic data exchange

## 1. Standard process

The process to fulfil the formal requirements of the transparency register can be divided into three steps: creating a user account, entering the required data, and updating them if necessary. According to § 3 WiReG, companies must confirm that the data concerning the beneficial owners reported to the register are still up to date at least once a year.

For most companies, however, the first two steps did not require any manual intervention whatsoever. Around 80 per cent (287,404 in total) benefitted from the automatic information exchange (Meldebefreiung):<sup>139</sup> If the company and its beneficial owners were already registered in an existing register ("Firmenbuch" or "Vereinsregister"), their data were transferred to the transparency register automatically.<sup>140</sup> This applied to the following types of organisations (see chapter 2):

- offene Gesellschaften (OG),
- Kommanditgesellschaften (KG),
- Aktiengesellschaften (AG),
- Gesellschaften mit beschränkter Haftung (GmbH),
- Erwerbs- und Wirtschaftsgenossenschaften,
- Versicherungsvereine auf Gegenseitigkeit (VersVaG),
- kleine Versicherungsvereine,

139 As of November 2020.

140 § 6 WiReG.

- Sparkassen,
- Europäische wirtschaftliche Interessenvereinigungen (EWIV),
- Societates Europaeae (SE),
- Societates Cooperativae Europaeae (SCE),
- Privatstiftungen (PS),
- other legal entities required to be entered into the Commercial Register pursuant to Art. 2 no. 13 of the Austrian Commercial Register Act (Firmenbuchgesetz),
- Vereine,
- Stiftungen and Fonds pursuant to Art. 1 of the Federal Act on Foundations and Funds (Bundes-Stiftungs- und Fondsgesetz 2015),
- Stiftungen and Fonds established based on a provincial act, provided that the application of the WiEReG is allowed under provincial law (which is the case for all provinces as far as notification duties are concerned).

In all other cases (20 per cent), the beneficial owners had to be registered manually. This is usually either conducted by the company itself or by a legal professional (e.g. lawyer, accountant, notary). Newly established companies must be registered within four weeks. Clients required to register beneficial owners must create a user account on the Business Service Portal manually at first. If one seeks to use the portal without registering beneficial owners, a user account is required as well.

The following information on beneficial owners must be reported (see chapter 4):<sup>141</sup>

- name,
- date and place of birth,
- place of residence and exact address (street name and house number),
- the number and type of the official ID document submitted if the beneficial owner has no place of residence in Austria,
- nationality<sup>142</sup> and
- the nature and scope of the beneficial interest.

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<sup>141</sup> See <https://www.bmf.gv.at/services/wiereg/meldungen-an-das-register.html>.

<sup>142</sup> Unlike in Germany, Austrian law required this piece of information to be included already under national rules transposing the AMLD4.

The entry in the transparency register must be updated within four weeks if the information submitted changes. In any event, the validity of the data must be confirmed once a year, regardless of whether the relevant information changed or not. The clients benefit from the dynamic exchange between different registers when updating data as well. If, for example, the change of the main place of residence of a beneficial owner is documented in the Firmenbuch, the information is updated in the transparency register automatically.

## 2. Perceived burdens and compliance costs

### a) Measurable burdens and compliance costs

Whether the transparency register causes any additional efforts for Austrian companies or not is obviously linked to the Meldebefreiung. If the companies benefit from the Meldebefreiung, no or only little efforts are required to comply with the legal obligations of the transparency register. If applicable, companies described the actual efforts to fulfil the requirements raised by the transparency register as shown in the table below.

Table 8: Compliance costs - Austria

Standard activity	Description	Cluster A Median time spent in minutes	Cluster B Median time spent in minutes	Cluster A Costs in EUR	Cluster A Fees in EUR
User registration (once)	Creating a user account is mandatory in order to enter, edit or browse data of any kind	15 (10–45)	0	8.46 <sup>143</sup>	–
Company registration (once)	Entering the required information on the beneficial owners or checking the automatically transferred data	18 (10–40)	0	10.15	–
Editing data (recurring)	Updating the required information on the beneficial owners	15 (5–20)	0	5.64	–

No fees are raised for using the transparency register in Austria. However, companies are billed for certain additional services.<sup>144</sup>

### b) Qualitative burdens

#### Indirect communication concerning subsidiaries

Subsidiaries are in most cases registered by their mother company. However, bilateral communication between the Business Service Portal and the client runs via the subsidiary, even

<sup>143</sup> Based on the labour costs for professionals in Austria (33.83 EUR/hour).

<sup>144</sup> Extracts are charged at 3 to 7.20 EUR based on their extent.

though it is not concerned with this process at all. Consequently, any message concerning the entry in question is mailed to the subsidiary, where its staff in most cases cannot assign the origin and context of the letter. Therefore, additional burdens occur to identify the staff member in charge and to forward the message.

### **Concerns about privacy and security**

Doubts regarding data protection and further concerns about the overall security of the beneficial owners were emphasised strongly. For Austria, this issue may be even more significant because beneficial owners are registered with their exact address (street name and house number) rather than only their place of residence (name of city).

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*Strong concerns regarding data protection and overall security*

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### **3. Proposals to reduce burden**

#### **Enlarge the scope of the automatic information exchange**

Although most companies benefit from the automatic information exchange (beneficial owners were already registered in an existing register), this does not apply to all types of companies. The efforts to fulfil the requirements of the transparency register are therefore perceived rather differently, depending on whether the automatic information exchange applies or not. Companies who did not experience any advantages in this regard felt neglected and argued that the automatic information exchange should apply to all types of companies.

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*All types of companies should benefit from automatic information exchange*

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#### **Annual reminder to confirm data**

As described above, the register's clients must check on a yearly basis if the data submitted to the transparency register are still valid. However, there is no option in place to remind the clients automatically to do so. Companies therefore must check manually if the confirmation has already been submitted or if it is still pending. To receive a message that the annual validation will be due soon would ease this circumstance.

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*Automatic reminder needed*

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## **IV. France**

In France, the transparency register (registre des bénéficiaires effectifs – RBE) was implemented in 2017 as a sectional register of the existing register of trade and companies (registre du commerce et des sociétés – RCS). There are thus formal and legal linkages between these two registries. However, there is no automatic exchange of data between the RCS and the RBE. In particular, a company in its creation phase (registering with the RCS) must also register with the RBE immediately (if it falls under its scope). Moreover, when beneficiaries are changed, controls of coherence between the RBE and the RCS are performed.

The governance of the transparency register involves several stakeholders. Commercial courts located across the French territory (141 local branches involving 230 clerks) are responsible for managing the registrations with the RBE for companies within their areas<sup>145</sup> (e.g. receiving the information, performing full legal checks, compiling the register ...). Clerks from these courts are represented at the national level by the National Council of Commercial Courts' Clerks (Conseil National des Greffiers des Tribunaux de Commerce – CNGTC). Infogreffe is the economic interest group of commercial courts' clerks. Its role is to support the clerks through the diffusion of legal information and the digitalisation of administrative procedures. In particular, its website allows companies to register with the RBE. Infogreffe then transmits the provided information to the relevant commercial court, whose clerks manage the demand. The National Institute for Intellectual Property (Institut National de la Propriété Intellectuelle – INPI) saves copies from the RBE and the RCS, which are transmitted by the clerks of the commercial courts. It also shares the consolidated information of the RBE on its website.<sup>146</sup> Moreover, in the future, the INPI will also manage a unique contact point for companies' administrative procedures, which will include the registration to the RBE. This is planned for 2023.

At first (2017), the transparency register obligation was performed through an annex to the RCS. However, from 2020 onwards, the formality has changed and has been implemented through a dedicated form.

As outlined in the legal study, several types of entities must register with the RBE,<sup>147</sup> with the notable exception of companies listed on the stock market. It is estimated that a total of about 5 million entities must register with the RBE.<sup>148</sup> At the end of 2021, approximately 70 to 80 per cent of the entities with this obligation had complied with the registration process.<sup>149</sup> The bulk of the registrations occurred between 2017 and 2018, as 1 April 2018 was the deadline for existing companies to perform this task when the register was created. This rate continues to increase with reminders from the courts' clerks and adjustments performed at the same time as other procedures. Interestingly, a specific reporting mechanism contributes to the improvement of this compliance rate over time. Indeed, entities that must access the RBE (i.e. to exploit the recorded data) are obliged to report potential gaps or mistakes that they may spot (such as the absence of an entry in the RBE, mistakes etc.) to the relevant commercial court. This procedure was set up in February 2020 and is available online.<sup>150</sup> The clerk signals the

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145 They are also managing the RCS.

146 See <https://www.inpi.fr/beneficiaires-effectifs>.

147 See section A – IV for legal references.

148 Estimate based on an interview with Infogreffe/the CNGTC.

149 An essential share of the non-compliant entities are Civil Real Estate Societies (Sociétés Civiles Immobilières), which are small-scale structures with usually limited activities. Moreover, several of their leaders/associates are already identified in the RCS.

150 See <http://www.registrebeneficiaireeffectifs.infogreffe.fr/>.

divergence on the documents that are consulted by the relevant parties, which is an incentive for companies to fulfil their obligations.

### 1. Standard process

The entities must carry out the RBE procedure when they are created and when their beneficial owners change. The process is the same for the creation and updating of the information. Concretely, companies have access to alternative procedures:

- A paper-based procedure (directly with the relevant commercial court). This non-digital procedure is far less common now, with a notable rise in the digital uptake with the COVID-19 crisis. However, it remains significant and important for digital inclusion motives. In practice, the forms are transmitted to the commercial courts, which then relay the information to Infogreffe to share the consolidated information in line with the legal framework.
- A digital procedure, via the Infogreffe website. It requires the creation of a dedicated account on the portal.<sup>151</sup> The obligation is performed, signed and paid directly on the website. The information is then distributed to the relevant commercial courts, which control and validate the application. The final information is then transmitted back to Infogreffe in order to share it in line with the legal framework.

The RBE obligation can also be fulfilled as an add-on to other administrative procedures (i.e. not on its own), especially those linked to the RCS.

The information to be provided is the same for all procedures, explicated through a dedicated form (M'BE form).<sup>152</sup> As listed in the legal study, the following information related to the beneficial owners must be reported:<sup>153</sup>

- name,
- date and place of birth,
- nationality,
- address of residence,<sup>154</sup>
- nature, terms and scope of control exercised over the corporate entity and

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151 Please note that several procedures can be performed on this portal, which is why many companies already have an account and will not have to create one specifically for the RBE.

152 See <https://www.infogreffe.fr/documents/20126/0/Formulaire+M%27BE+Soci%C3%A9t%C3%A9s.pdf>.

153 See section A.IV.4.

154 The full address is required, including the city, postal code, the building number, and street. See <https://www.infogreffe.fr/documents/20126/0/Formulaire+M%27BE+Soci%C3%A9t%C3%A9s.pdf>.

- the date on which the natural person(s) became the beneficial owner(s) of the corporate entity.

Several institutions (including Infogreffe/CNGTC but also the intermediaries supporting companies) propose guidelines to help stakeholders to identify their beneficial owners. Companies can perform this procedure on their own or through intermediaries, including law firms, accountants, administrative procedure specialists etc. No document is requested during the procedure. The declaration is signed by the legal representative of the company (or the attorney acting on their behalf if relevant; in this case, the ID of the attorney must be provided).

Upon receiving the request, the clerks perform checks (e.g. that the application was sent to the right court, completion of the form, control of coherence with other registries ...). The time to process the registration typically ranges from 1 to 5 days. By law, the clerks have 1 day to perform the check. In complex cases, i.e. where additional checks are required, the clerk can take a delay of 5 days to answer the application (the company must be informed that additional controls are being performed). In some cases, there are delays of up to 10 days.

## **2. Perceived burdens and compliance costs**

### **a) Measurable burdens and compliance costs**

Efforts by French companies to tackle the different steps to fulfil their obligations related to the transparency register are presented in the table below. According to the interviewees, there were no major variations in time spent in the average case, though smaller companies and complex stakeholders' structures are associated with higher burdens. The procedure can also be performed at the same time as others (e.g. changes in the RCS), which tends to mitigate the burden related to the RBE only.

In addition, a fee is set by the Ministry of the Economy and the Ministry of Justice. They are identical across the territory and revised regularly. Currently, the initial registration and a modification incur a fee.

Table 9: Compliance costs - France

Standard activity	Description	Median time spent in minutes	Costs in EUR	Fees in EUR
Registration on the Infogreffe portal	Creation of an account on the Infogreffe portal, which several companies may already have	10 <sup>155</sup> (5–20)	5.88 <sup>156</sup>	0/99 (yearly) <sup>157</sup>
Completion of the RBE form (M'RBE)	Completion of the online form related to the transparency register (upstream steps on the analysis of the situation, e.g., the identification of beneficial owners, can take more time)	10 (5–30)	5.88	21.41
Updating of the RBE form (M'RBE)	Update of the information in the case of changes in the beneficial owners; does not have to be performed if the situation does not change, and the procedure is the same as during the initial registration	10 (5–30)	5.88	43.35

The first two steps (first-time registration on Infogreffe and entering the data of the beneficial owners) must obviously be completed once per company.<sup>158</sup> It is not possible to anticipate the frequency of updating because it is not mandatory to check the registered data on a yearly basis (unlike in Italy or Austria). Indeed, updates are required only if the beneficial owners have changed during the period. Given the fact that this may vary strongly depending on the company and that there are no data available on updates only, the total volume cannot be estimated for this ultimate step.

The institutions managing the RBE estimate that approximately 5 million entities must complete the registration procedure to identify their beneficial owners. Considering this, a projection on the burdens affecting the companies can be made.

155 There are two types of Infogreffe accounts: a simple “member account” and a more advanced “subscriber account”. The member account provides basic access to Infogreffe and its features, while the subscriber account opens up additional services, such as payment and access benefits as well as business information. The member account can take up to 5 minutes to create, while the subscriber account requires more information (e.g. contract) and can take up to 20 minutes. There is no information available on the breakdown between these types of account, but we assume that – in terms of sheer numbers – the balance would lean towards the simple member accounts; hence the standard estimate of 10 minutes.

156 Based on the labour costs for professionals in France (35.25 EUR/hour).

157 The standard member account is free of charge. Please note that Infogreffe also offers a yearly plan for additional features at the cost of 99 EUR/year; see <https://www.infogreffe.fr/devenir-abonne-membre.html>.

158 If the company chooses the subscriber account, it must also pay 99 EUR per annum for its features. However, this choice would likely not be driven by the RBE requirements.



## b) Qualitative burdens

Several aspects can be distinguished regarding the burdens linked to the requirements for French companies.

The upstream step of identifying the beneficial owners is the most burdensome, especially in complex cases (i.e. when the shareholding structure is not simple). However, the CNGTC/ Infogreffe and intermediaries support companies in this endeavour, e.g. through the release of identification graphs.<sup>159</sup> As a consequence, Infogreffe (which manages the register) does not receive many requests regarding the realisation of the procedure per se.<sup>160</sup>

### **General perception of the procedure by companies**

French companies initially tended to perceive this obligation as an additional administrative burden without strong added value. This was the case especially during the launch period of the register, i.e. in 2018 and 2019. The situation was exacerbated by the fact that many companies had to comply with the obligation at the same time (2018 deadline for existing companies), with delays and the risk of sanction for non-compliant companies. This situation generated some stress and uncertainty for companies.

This negative perception has not fully receded. However, from 2020 onwards, the register has been more accepted and integrated into the “regular” administrative obligations of companies.

### **Privacy and security issues**

Another important issue of the register for companies has been linked to the fact that it contains sensitive information and is freely accessible (privacy concerns). This contrasts with the mainstream French company culture. Important pedagogical work has been performed by institutions and intermediaries to explain the relevance of the register, in particular to address fraud issues.

### **Specificities for some companies**

Companies do not form a homogenous group, which leads to implications for the transparency register. Indeed, the burden of this requirement is not falling to the same extent on all types of companies.

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*Free access to sensitive information contrasts with French company culture*

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159 See, for instance, <https://www.greffe-tc-bobigny.fr/modeles/divers/rbe-fiche-pratique-15-schemas.pdf>.

160 Demands tend to focus on the use of the register (e.g. access conditions).

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*Small companies  
perceive higher  
burden than  
large ones*

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Small companies usually find it more challenging than larger ones to deal with this obligation. Indeed, they do not have dedicated units to track the changes in this type of legislation and have greater difficulty in accessing the relevant information. Critically, when the requirement was introduced, small companies tended to fulfil it later than larger companies which could anticipate it more in advance. The issues faced by small companies are exacerbated in cases in which they do not benefit from the external support of a specialist (e.g. accountant, specialist in administrative procedures).

Moreover, this requirement may also pose challenges to companies with complex structures. In particular, companies with a parent company (especially when based in a foreign country) can experience difficulties in accessing the relevant information to complete the register entry. For instance, beneficial owners from foreign countries may be reluctant to provide their personal information to their French subsidiaries.

### **Heterogeneities depending on the location of the companies**

There is a uniform online portal in France (Infogreffe, alongside the paper-based procedure) allowing companies to fulfil the obligations of the transparency register. In the end, however, the procedure is processed and managed by local commercial courts, which receive the relevant data from Infogreffe.

This situation implies that there are heterogeneities in how the requests are processed across the territory. In some cases, it can lead to some problems for companies, in the form of uncertainties or delays. For instance, some courts have more resources than others for the transparency register and may also have different levels of knowledge (especially regarding complex company structure for beneficial owners).

### **3. Proposals to reduce burdens**

Interviewees suggested some pathways to improve the experience of companies with the transparency register's procedure in France.

#### **Improved communication and support**

Additional support could be provided to help companies identify their beneficial owners in the most complex situations (i.e. when the stakeholders' structure is not straightforward).

## Simplification of the RBE forms

The forms used to register/update the beneficial owners could also be simplified. In particular, some interviewees proposed that the percentage of control (by beneficial owner) could be removed to facilitate the process.<sup>161</sup>

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*Removal of some data to be discussed*

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## Future unique digital portal for business administrative procedures

There will be changes to the French business processes soon, with the creation of a unique digital entry point for the administrative procedures of companies (“guichet unique”), managed by the INPI. It will come into force in 2023 and include the RBE procedure. Some interviewees have raised the issue that this should be performed in a way that provides some benefits to companies, rather than a mere addition of another stratum for businesses.

## V. Germany

In Germany, the transparency register was launched in its earliest version on 27 June 2017 and has been enhanced constantly since then.<sup>162</sup> It is operated by the Bundesanzeiger Verlag. Since 1 August 2021, it has been mandatory for all companies and their beneficial owners to register their data on beneficial ownership in the transparency register, including companies that previously benefitted from a transitional arrangement, allowing them to use the existing registers (see chapter 4 “Wegfall der Mitteilungsfiktion”). Ending the transitional period, all companies must be registered in the transparency register by 31 December 2022 at the latest; depending on their legal form, some even earlier.<sup>163</sup> Due to the still evolving structure of the transparency register, the following observations should be considered preliminary. We expect the recent ECJ judgment<sup>164</sup> declaring Art. 30 para. 5 subpara. 1 lit. c of the AMLD4 – stipulating that anyone can access the information on the beneficial owner(s) contained in the register – invalid to have no impact on the administrative burdens related to the register. However, it might mitigate some of the reluctance of businesses to provide these data.

According to estimates by the Federal Office of Administration, approximately 2.3 million associations are subject to the notification obligation, if all legal entities under private law and all registered associations of persons as well as legal structures according to Section 21 AMLA (and in special cases foreign associations, e.g. in the case of real estate acquisitions)

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161 However, the objective of tackling fraud should be kept in mind when devising such simplifications.

162 See <https://www.transparenzregister.de/treg/de/ueberuns;jsessionid=62225629C53CBE25A59E9C7E7BDFE3F2.app21?0>.

163 If the company is a stock corporation, SE or partnership limited by shares, the registration had to be concluded by 31 March 2022; if it is a limited liability company [including an entrepreneurial company], cooperative, European cooperative or partnership, by 30 June 2022 (§ 59 GwG).

164 ECJ, Joined Cases C-37/20 and C-601/20, (Luxembourg Business Registers), Judgment of 22 November 2022, ECLI:EU:C:2022:912.

are added together. This was estimated based on the turnover tax statistics (advance returns). According to these, approximately

- 415,000 partnerships,
- 603,000 corporations and
- 620,000 registered associations

should potentially be included in the register. This would already amount to a total of 1.6 million legal entities subject to notification. Moreover, partnerships/corporations not subject to the VAT, foundations with legal capacity, registered cooperatives, legal structures according to § 21 GwG and foreign associations are to be added as well. As of 17 July 2022, approximately 1.07 million legal entities had notified their beneficial owners. Considering the size variation between the countries, the number of entities expected to submit data to the register is thus far lower in Germany than in the other countries.

## **1. Standard process**

The process to fulfil the formal requirements of the transparency register can be divided into three steps: creating a user account, entering the required data, and updating them if necessary.

Creating a user account is the first formal step to use the register. A verified user account is also mandatory for clients who seek to only browse the register and search for information without entering data on beneficial ownership of any kind. Required information for creating a user account comprises an e-mail address, forename and surname as well as contact details (phone number and mailing address).

Entering the data of the beneficial owner is the core purpose of the register and the main task for its clients. Before submission, the user assures that they are authorised or commissioned to provide the data for the legal entity. This is confirmed by placing a check mark in the corresponding query box. Separate proof in the form of an authorisation or similar is required but does not need to be presented.<sup>165</sup> The information required is described in the legal report in detail and comprises as of today (see chapter 4):

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<sup>165</sup> See [https://www.transparenzregister.de/treg/de/Technische\\_Fragen\\_und\\_Antworten\\_zu\\_den\\_Eintragungen\\_im\\_Transparenzregister.pdf;jsessionid=CED9401BDA13FEE938923C45CB2313D3.app21](https://www.transparenzregister.de/treg/de/Technische_Fragen_und_Antworten_zu_den_Eintragungen_im_Transparenzregister.pdf;jsessionid=CED9401BDA13FEE938923C45CB2313D3.app21).

- name,
- date of birth,
- place of residence,
- nationality<sup>166</sup> and
- the nature and scope of the beneficial interest.

Upon receiving the data, they are checked by the Bundesanzeiger Verlag for formal errors (e.g. typing errors). In the case of an unsuccessful verification, the user is informed (Unstimmigkeitsmeldung) and asked to correct the entries or provide additional information within a certain period.

Editing and updating existing data is also the responsibility of companies. This may occur if a beneficial owner changes their name (e.g. by marriage) or place of residence. Editing data is also necessary when the requirements are changed by the Bundesanzeiger Verlag (e.g. if optional requests become mandatory), even if the information in question did not change.

## **2. Perceived burdens and compliance costs**

### **a) Measurable burdens and compliance costs**

The estimated efforts to comply with the requirements of the transparency register are shown in the table below. In the interviews conducted, company representatives felt confident in estimating the respective regulatory burden. The inevitable variation in the data was smoothed using the median values so as not to give too much weight to outliers. In addition to the efforts of preparing and submitting the data, an annual fee is raised for each company registered.<sup>167</sup>

In addition, extracts are not free of charge. This also applies to printed extracts from data sets concerning one's own company.<sup>168</sup>

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166 The nationality of beneficial owners has only been required to be reported since the AMLD5, i.e. with effect of January 2020. In Germany, prior notifications need not be updated with the nationality of beneficial owners unless an update must be carried out for other reasons.

167 BGBl. I 2021, 4919.

168 One extract is billed at 1.65 EUR.

Table 10: Compliance costs – Germany

Standard activity	Description	Median time spent in minutes	Costs in EUR	Fees in EUR
User registration (once)	Creating a user account is mandatory to enter or edit data of any kind	30 (30–60)	18.80 <sup>169</sup>	–
Company registration (once)	Entering the required information on the beneficial owners	15 (15–45)	9.40	–
Editing data (recurring)	Updating the required information on the beneficial owners	17.5 (15–30)	10.96	22.8

The interviews conducted in this study showed that different classes of companies are affected differently by the requirements of the transparency register. Complying with the requirements of the transparency register might be a nuisance but fairly straightforward for smaller companies with non-complex ownership structures. For larger, privately held companies with more complex ownership structures (the typical “Familienunternehmen”), this is not the case, however. Large holding companies interviewed for the study had to create up to 600 entries to register all their subsidiaries (one entry per company). In most cases, these entries were centralised and handled in the mother company’s legal department, putting considerable strain on these departments. To meet these requirements, companies relied substantially on the services of external consultants, in particular for compiling the necessary information on the ownership structures. The burdens therefore solely affected the mother company. In return, for the subsidiaries registered by the mother company, no burdens were incurred. As such, a division of labour between the holding company and the subsidiary allows for a certain build-up of expertise and familiarisation with the regulation. The effort required per company, i.e. per legal entity, can nevertheless be safely assumed to be lower than for a stand-alone company.

b) Qualitative burdens

Besides the quantitative estimates of time and costs required for fulfilling the requirements of the transparency register, the process of complying with the transparency register has been described as particular burdensome for companies in Germany. However, this might also reflect the composition of our interview sample, which consisted mostly of privately held companies with rather complex company and ownership structures. Smaller companies interviewed for the A1 Certificate and the Posting of Workers Directive often had not considered the transparency register an issue and declined the request for interviews.

<sup>169</sup> Based on the labour costs for professionals in Germany (37.59 EUR/hour).

### **Compiling the necessary information to be reported**

Many of the companies interviewed reported substantial efforts being required in compiling the information on the ownership structures of their companies and subsidiaries. Some of them even used external legal advice at substantial costs to compile this information. As with the actual management of the entries in the register, this affects in particular larger, privately held companies, while small enterprises might find it easier to compile this information.

### **Unspecific requirements, ambiguous information, vague demands**

Companies complained that the requirements for a correct entry remained unclear for the larger part of the existence of the register. Directly following the launch of the transparency register, companies were left in confusion, especially in the early stages of implementation, as to what information should be provided, to which degree of detail and extent, e.g., when indicating the degree of ownership of the beneficial owners. Even though the Bundesanzeiger Verlag clarified via their frequently published FAQs most of the details as of today, an unquantifiable amount of effort had to be spent on correcting data sets and correspondence with the Bundesanzeiger Verlag. This observation reflects a double learning phase: neither businesses nor the Bundesanzeiger Verlag had experience in implementing the regulation, thus requiring constant clarification of the requirements and expectations.

### **Lack of consultation and inefficient communication**

This clarification and adjustment has been described as hampered by the communication arrangements, which were not well-suited to meet the demand for guidance and advice of the more complex cases in the early stages of the transparency register:

- E-mails are the preferred way of communication with the Bundesanzeiger Verlag. Direct telephone support by the responsible administrators is not offered, making the clarification of questions more cumbersome.
- Users are informed in the event of an incorrect entry into the register via e-mail. However, the precision and comprehensibility of the message in question varies. For example, users are not referred to simple typing mistakes and must check the entire data set manually for transgression.
- In administering the transparency register, the Bundesanzeiger Verlag assigns companies to specific clerks. When registering multiple subsidiaries as a mother company, they tend to be administered by different people, requiring redundant communication; synergies through centralised communication or a mutual adaption remain unused.

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*Beneficial owners  
concerned with data  
security and privacy*

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### **Privacy concerns**

Concerns about data security and privacy of prominent beneficial owners remain among the biggest obstacles. Especially owners of large family companies tend to avoid public attention and shield themselves and their personal surroundings as much as possible. A central register also listing the full name and the place of residency clearly counteracts this perspective. As a result, some interviewees stated that false information was entered, knowing that a complaint and a fine would be the consequences. It also came to the attention of the authors of this report that at least one lawsuit on this subject is pending. This, however, is to be seen less as an issue of administrative burdens but rather as a critique of the material content of the regulation, as the very purpose of the transparency register is to make ownership structures more transparent.

### **3. Proposals to reduce burdens**

A variety of proposals on how to reduce the burdens described above were given by the interviewees:

#### **Pool and centralise the data of the beneficial owners**

Each entry requires the data of the beneficial owners individually. If the same person is the beneficial owner of several companies, the same data must be entered for each posting. In addition, when editing posted data, each data set must be opened, edited, saved and closed individually despite the information in question being the same. This obstacle could be addressed by centralising the information on the beneficial owners within the transparency register: a single profile of each beneficial owner could be created (and edited on demand) and assigned to all relevant companies.

#### **Further specifying of details in the FAQs**

Although the FAQs by the Bundesanzeiger Verlag improved over time and closed all major information gaps for the clients of the register, some questions and details remain unclear. Especially for large holding and family companies, examples would be useful to depict their complex structures in the register properly.

#### **Communication via the mother company**

As shown above, subsidiaries are usually registered by their mother companies. Nevertheless, the Bundesanzeiger Verlag contacts the subsidiary in the case of an incorrect entry in the register ("Unstimmigkeitsmeldung"). The Unstimmigkeitsmeldung should be addressed to the client in charge of the entry, not the company.

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*Improvement of  
FAQs necessary*

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*Communication via  
one contact person  
preferred*

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## **(Re-)Introduction of the Mitteilungsfiktion**

Since the elimination of the Mitteilungsfiktion, companies must submit relevant information on their business (and beneficial ownership) to each register (Handelsregister and Transparenzregister) individually and manually, although the information considered is the very same. Until 1 August 2021, one posting in either of the two registers was sufficient. Consequently, companies need to invest additional resources to handle both registers.

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*Submission of  
information only  
once for all registers*

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The example of Austria shows that companies benefit greatly from transferring the data from an already established register to the transparency register. Both submitting and editing data is reduced to a minimum because only one registration is necessary to manage all data sets in the relevant register (see chapter III). This would be a specific case of applying the once-only principle to reduce the administrative burden caused by the register. Although the two scenarios differ technically (in Austria, the information is automatically synchronised; in Germany, one entry into a register replaces the duty to manage each register individually), the effect on the companies' efforts is the same: one registration in one of the registers is considered as sufficient and lowers the efforts to a minimum (see chapter 2).

## **VI. Italy**

In Italy, after the AMLD4 and AMLD5 had been transposed in national legislation by Legislative Decrees No 90/2017 and No 125/2019 respectively (see chapter 1), a lengthy process was initiated to establish the transparency register. The approval of a first version of the implementing regulation establishing the register (a ministerial decree by the Ministry of Economy and Finance) was blocked in March 2021 by the Council of State, the country's highest court in matters of administrative law, due to concerns related to privacy issues and insufficient clarity of the decree.<sup>170</sup> After revisions, Ministerial Decree No 55 by the Ministry of Economy and Finance entered into force in June 2022, setting out provisions on communication, access and consultation of data and information on the beneficial ownership of companies.

Based on the same decree, the transparency register will be established as an autonomous section of the existing Business Register, which includes information on approximately 6 million companies and is managed by the chambers of commerce with the support of their

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<sup>170</sup> Between the transposition of AMLD Directives into national legislation and the Council of State's decision, the following events took place: Legislative Decree No 125/2019, introducing modifications to Legislative Decree No 90/2017, was issued in October 2019 and entered into force in November 2019. Immediately after, in December 2019, the Ministry of Economy and Finance issued a draft version of the Ministerial Decree establishing the transparency register and launched an online consultation phase, lasting until February 2020. In January 2021, Italy's Data Protection Authority issued a positive opinion on the draft Ministerial Decree prepared by the Ministry. In February 2021, the Ministry transmitted the draft Ministerial Decree to the Council of State, accompanied by an Explanatory Note, the Regulatory Impact Assessment and the Technical-Legal Analysis. In March 2021, the Council of State decided to suspend the adoption of the Ministerial Decree.

IT company InfoCamere.<sup>171</sup> The operation phase of the transparency register is expected to begin in 2023. In March 2023, the register is still inoperative despite the fact that technical preparations have been finalised.<sup>172</sup>

Based on Ministerial Decree No 55/2022, the following actors have a duty to communicate the information on their beneficial ownership (see chapter 2):

- companies with legal personality (joint-stock companies, limited liability companies, cooperatives and limited partnerships for shares),
- private legal persons and
- trusts.

### 1. Standard process

The entities identified in the Ministerial Decree must provide the information on beneficial ownership based on a self-declaration, i.e. without submitting supporting documentation. The information must be provided within sixty days after the register becomes operational.

All changes in the composition of the beneficial ownership must also be communicated within thirty days after being in effect, and the data must be confirmed every twelve months (from the last communication or from the last change). Based on the Ministerial Decree, companies can confirm the information on beneficial ownership when they file their Annual Accounts.<sup>173</sup>

The information to be provided, indicated in Art. 4 of the Ministerial Decree, includes:

- identification data<sup>174</sup>,

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171 See <https://italianbusinessregister.it/>.

172 Based on Ministerial Decree No 55, four acts are expected to be issued before the transparency register's operation phase can begin. First, within thirty days after the entry into force of the Ministerial Decree (i.e. by July 2022), InfoCamere (the organisation managing the IT system behind the Business Register, on behalf of the Chambers of Commerce), is due to draft a technical document detailing the measures planned to ensure an appropriate level of security. This document shall be shared with the Italian Data Protection Authority for an opinion. Second, within sixty days after the entry into force of the Ministerial Decree (i.e. by August 2022), a Ministerial Decree by the Ministry of Economic Development shall be issued, detailing the administrative fees to be paid when transmitting or updating information on the beneficial owners. Third, a Managerial Decree of the Ministry of Economic Development must be issued by August 2022 as well, containing technical specifications on the electronic format of the information transmission. Finally, after the previous three acts have been finalised, the Ministry of Economic Development shall issue a Ministerial Decree stating the start of the operation phase. The first transmission of information is due within sixty days after the publication of this Ministerial Decree in Italy's Official Journal.

173 Each year, Italian companies approve their Annual Accounts within 120 or 180 days since the end of the financial year. Within 30 days since the date of approval, these documents are submitted to the Business Register. Annual Accounts consist of three separate elements: Balance Sheet, Income Statement and Additional Note.

174 The Decree does not specify what type of information identification data include.

- information on the criteria that determine the beneficial ownership of companies (ownership, control, management power) and
- information on the identification of potential parties having a counter-interest, i.e. beneficial owners who, due to exceptional circumstances, may be excluded from access to beneficial ownership information.

The data and information will be made available:

- as regards companies and private legal persons, in the Business Register's autonomous section on beneficial owners,
- as regards trusts, in a special section of the same Register, for a period of ten years from the date of the last communication of variation.

## **2. Perceived burdens and compliance costs**

### a) Measurable burdens and compliance costs

As the register is not in operation yet, no quantitative estimates concerning the time necessary to fill in the register can be provided. It is, however, noted that since the transparency register will be embedded within the existing Business Register (as a separate section), no additional registration of the company is expected to be required.

### b) Qualitative burdens

The topic of beneficial ownership is not new on companies' agendas in Italy. Since 2017, companies and trusts have been obliged to provide information on their beneficial ownership, based on Legislative Decree No 90/2017. The introduction of the transparency register is expected to require a transposition of information already collected into the new register.

Interview feedback points to a relatively low level of awareness among companies and to a general lack of information campaigns and support initiatives by business associations. It can be expected that some organisations, especially in the case of complex control chains, will be faced with challenges when the transparency register will be in operation. According to interviewees, the lack of awareness is also accompanied by a form of resistance from the affected beneficial owners, opposing the loss of anonymity.

Ultimately, some costs could be borne by those economic actors that have not yet put in place procedures to gather information on their beneficial owners, but in relation to the information collection itself, rather than due to its inclusion in the new transparency register. In principle, information on beneficial ownership should be already easily identifiable in the organisation's

accounting records; if not, it can typically be reconstructed by making requests for information to the mother company or other companies of the group.

Companies may also recur to law firms for gathering the information and ensuring the filling in of the register. According to interviewees, the involvement of legal experts is not per se necessary, but in numerous cases, companies prefer to recur to the “seal of quality” of external lawyers, be it out of an abundance of caution or to support requests for information made to other companies of the group, which may not receive such requests favourably.

Based on interview feedback, the impact of the introduction of the transparency register will be larger for companies with a complex ownership structure and chain of control. The impact is not expected to be different based on economic sectors. According to one interviewee, however, in the financial sector, fiduciary companies (which tend to have an interest in keeping the identity of their trustor secret) may be particularly challenged by the register. It was also mentioned that in the case of Italian entities having a mother company based in another EU Member State or the United States, no significant hurdles are expected. More challenges are foreseen especially in relation to three other countries instead: namely Switzerland (where the economic and legislative context traditionally does not show a high level of transparency), China (which is a partner of the EU, but at the same time an economic competitor and systemic rival) and Russia (due to the recent developments in international affairs).

Ministerial Decree No 55/2022 foresees the payment of an administrative fee each time information on beneficial ownership is communicated or confirmed. The level of these fees is not established yet and will be included in one of the pending implementing regulations expected for summer 2022. Based on administrative fees related to the current Business Register, as well as on interview feedback, they are expected to amount to 40 to 80 EUR. The access to the information will be subject to the payment of administrative fees as well.

No instances of gold plating have been found in the Ministerial Decree issued in 2022 compared to EU definitions and requirements, as confirmed by interviewed experts. However, companies listed on stock markets are not excluded from the notification duty, although the EU directive does not cover them.

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*Listed companies  
not excluded from  
notification duty*

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According to interviewees, the national system of Chambers of Commerce, which runs the Business Register, has a strong level of centralisation as well as long-standing experience in managing company data. The implementation of the register, once established, is therefore expected to be smoothly managed and to show no territorial variations across the country.

Regarding potential sanctions, ascertaining the violation of the obligation to communicate data and information on beneficial ownership will be a responsibility of the local Chamber of Commerce, which will in this case also impose the related administrative sanction, in line with the Italian Civil Code. Failure to communicate the necessary information will be punished with an administrative fine ranging between 103 and 1,032 EUR, reduced to a third if communication takes place within thirty days. In this regard, an interviewed expert noted that, more than the financial sanction, non-compliant companies will experience setbacks in their relationships with banks and public administrations, which are expected to increasingly refer to the information on beneficial ownership.

The communication of false data or information constitutes a criminal offence, punishable with a jail sentence between six months and three years.

### **3. Proposals to reduce burdens**

As the Italian transparency register is not operational, interviewed experts could not suggest proposals to reduce burden stemming from it.

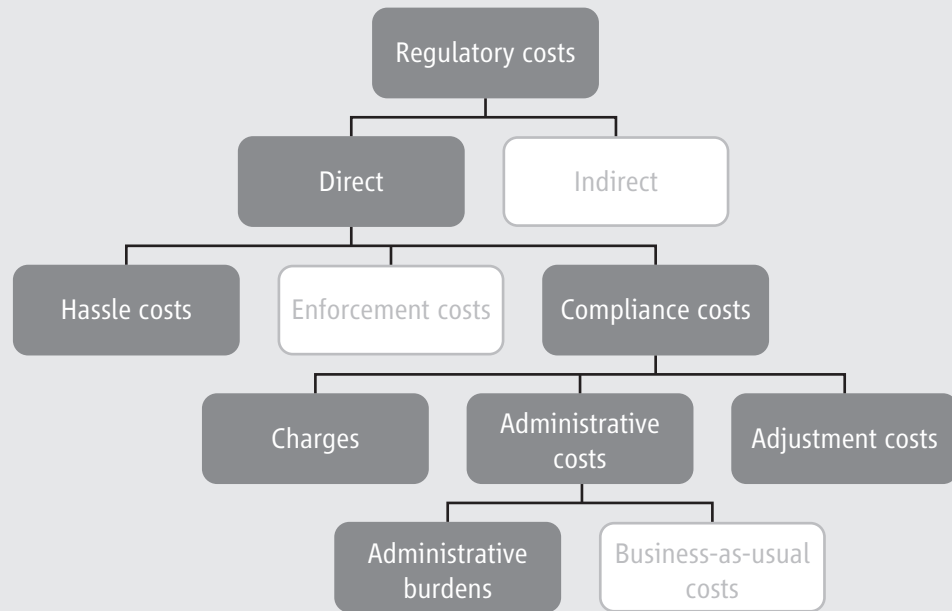
## **VII. Study approach**

### **1. Methodology**

The methodology is based on the concept of “compliance costs” used by the German Federal Government in its regulatory projects. Compared to the EU Standard Cost Model (EU-SCM), the concept of compliance costs is a more comprehensive measure of bureaucracy. In order 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 burden: costs arising from compliance with information obligations under legal regulation. For a comprehensive assessment of the regulatory burdens of the transparency register, the methodological approach must also 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 regulation, are not considered in any of the methodological approaches.



## Typology of costs<sup>175</sup>



**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, changes 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, such as monitoring, inspection and litigation. These costs are not included in the EU-SCM or in this assessment, as they are borne exclusively by public authorities.

<sup>175</sup> All definitions originate from the better regulation toolbox of the European Commission, available at [https://commission.europa.eu/system/files/2023-02/br\\_toolbox-nov\\_2021\\_en.pdf](https://commission.europa.eu/system/files/2023-02/br_toolbox-nov_2021_en.pdf) accessed 20.2.2023.

- **Compliance costs:** costs borne to comply with the provision of a regulation. For additional information, see below.

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

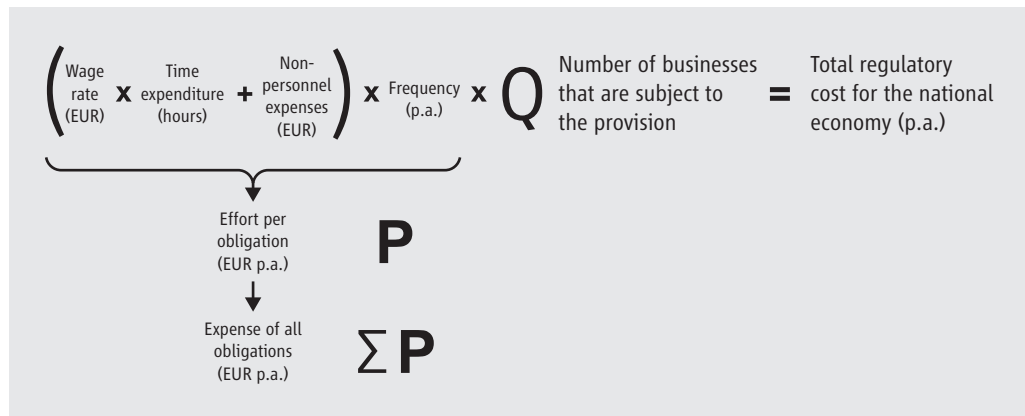
- **Adjustment costs:** the additional costs of complying with a new regulation. They include the expenses and investments that companies must bear in order to adapt to the requirements of a regulation.
- **Administrative costs:** these costs are incurred by companies for the administrative activities necessary to comply with the information obligations of a regulation. They consist of administrative costs and business-as-usual costs.
- **Charges:** such as fees, levies, and taxes related to the regulation.

a) Compliance costs

Compliance costs are measured at the company level. Rules and regulations force companies to meet certain targets or requirements, for example: applying for certificates, training to achieve a certain level of qualification or providing and sharing information (e.g. labels, applications, documentation). The tasks that companies perform to meet such requirements can be modelled in standard activities. To capture the compliance costs, the average time to perform all activities is 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). The results are values for an average company that can be extrapolated to the total economic costs of a Member State based on official statistics. In this study, only the compliance costs for the core activities for the transparency register are used for extrapolation to country level.

If a requirement only applies to companies exceeding a certain size or if, for example, small and medium-sized companies fulfil the requirements manually while large companies use an automatic procedure, different case groups can be formed. For the calculation of compliance costs, it is irrelevant whether the differentiation is based on a different design choice or a different underlying standard.

Figure 5: Calculation of regulatory costs



#### b) Labour costs

The total labour cost per hour is necessary to assess the time required to register and maintain the data in the transparency register on a financial basis. Information was collected on who carries out registration and maintenance (in terms of the type of job or positions in the companies). However, information on the salary of the employee could not be collected to a satisfying degree due to the sensitivity of such information.

To ensure that data on labour costs are coherent across the four countries studied, data from Eurostat were used instead.<sup>176</sup> While national sources would have provided more detailed information (e.g. in terms of economic sector or professional qualification), a database at the European level ensures that the figures cover the same elements and that common definitions are used. This aspect is particularly important as labour costs are dependent on national labour law, tax rules and national contractual arrangements. The use of labour costs makes it possible to overcome the problem of the varying distribution of social contributions paid by employers and employees between countries.

Data on labour costs in the four countries were collected as follows:

- “Professionals” was selected as the relevant job title for all four countries. Indeed, interviews with the stakeholders revealed that the level of qualification of workers involved in the transparency register tasks tends to be slightly higher than for other activities (see, for instance, the report on the A1 Certificates).<sup>177</sup>

<sup>176</sup> Please note that the data for Italy were not used to derive estimates since the register is not implemented in this country at the time of writing (August 2022).

<sup>177</sup> This methodological choice might lead to higher-than-actual estimates. As such, the labour costs identified in this study shall be interpreted as an upper bound estimate.



- Data on the gross hourly earnings of professionals by country was extracted from a Eurostat database. These data refer to companies in the industry, construction and services sectors with more than 10 employees. The most recent data available refer to 2018.
- Data on the share of non-wage labour costs over total labour costs were extracted from a second Eurostat database. These data also relate to companies in the industry, construction and services sectors.
- To calculate the total hourly labour costs of professionals, gross hourly earnings of professionals were divided by the share of wage-related labour costs.

The following table illustrates the results by country.

*Table 11: Calculation of hourly labour costs*

Country	Gross hourly earnings of professionals (2018) in EUR	Non-wage labour costs (% of total labour costs) (2018)	Wage-related labour costs (2018)	Hourly labour cost of professionals (2018) in EUR
Austria	24.80	27 %	73.30 %	33.83
France	23.65	33 %	67.10 %	35.25
Germany	29.17	22 %	77.60 %	37.59
Italy	24.28	29 %	71.50 %	33.96

The results show that the final hourly labour costs (which will be used in the country-specific chapters for national projections of costs) largely reflect the expected country ranking in terms of labour costs. The notable exception is Austria, which ranks low on this metric.

This dataset, based on a common source with common definitions, has clear advantages for comparative analysis. Nevertheless, some limitations need to be acknowledged:

- The weight of non-wage and wage-related labour costs can vary depending on the wage level. The use of a single generic share per country, such as the one extracted from Eurostat, may lead to an underestimation or overestimation of the final hourly labour cost. This could explain the discrepancy in the ranking, with Austria at a low level.
- Similarly, the disaggregation of labour costs can vary in each national context depending on the economic sector at hand.

Despite these caveats, the data represent the most accurate available approximation of labour costs relevant to this study.

c) Transposition into national law

Additional burdens and costs may result from the transposition of EU law into national law, which may lead to additional regulatory and reporting obligations for companies due to the transposition of national law.



### **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 or Directive (EU) 2018/1673 on combating money laundering through the transparency register, are the most common form of EU legal acts.

Regulations have general application and are directly effective without the need for transposition. Directives 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. Due to the transposition of EU law, the national provisions resulting from the same EU legislation may differ between EU Member States. Consequently, this transposition may lead to additional obligations (“gold plating”). The burdens associated with national transpositions are therefore of particular importance in the context of regulatory burden and are highlighted in this study. For the purpose of this study series, we identified for each area of regulation a common core of information required from all national systems and considered all information required beyond this common core as an indication of gold plating. In the case of the transparency register, we found only minor differences between countries and thus no evidence of gold plating.

## 2. Data collection

The information collected is based on standardised interviews with experts from Austria, France, Germany and Italy to gain insights into perceived regulatory burdens.

- In Austria, ten interviews were conducted. This sample includes companies' staff (4) who were responsible for submitting and updating data on beneficial ownership, experts from the chambers of commerce (4) as well as a consultant for the registration into the register (1). Although a considerable number of companies have been approached for additional interviews, several of them rejected the request and argued that working with the transparency register required only little to no effort.
- In France, six interviewees provided their insights on the national implementation of the register. The sample included the institutions managing the register and its administrative procedures (2), external specialists supporting companies with their administrative procedures (3, e.g. accountants or experts on legal formalities) and a business active in the edition sector (1). In particular, external experts provided feedback on a wide spectrum of companies facing the register's requirements (i.e. thousands of companies). The evidence was largely convergent across the interviewed stakeholders.
- 14 interviews were conducted in **Germany**, the majority with legal representatives from companies (11). In addition, an expert from the Chamber of Commerce and two lawyers were interviewed for legal assessment and plausibility checks (3). Due to the transitional periods for registration, various companies rejected the invitation to participate in an interview because they had not submitted their data on beneficial ownership yet. The Bundesanzeiger Verlag and Bundesverwaltungsamt provided written responses to the interview questionnaire.
- In **Italy**, where the transparency register is not yet operational, a total of four interviews were conducted. The sample includes a lawyer, a tax advisor, a representative from a business association and an expert from the Italian Revenue Agency (the public body responsible for collecting tax revenues, aiding taxpayers and carrying out inspections to counter tax evasion). The interviewees were asked to share their expertise on the issue of beneficial ownership of Italian companies as well as their expectations in terms of future implementation of the register and the foreseen burdens for the country's economic fabric. The four interviews were consistent in their assessment of the Italian situation, pending the actual implementation of the register.

Table 12: Interviews conducted per country

	Germany	Austria	Italy	France
Businesses	11	4	–	1
Chambers of Commerce	1	4	–	–
Consultancies	–	1	1	3
Other experts	2	-	3	2
Total	14	9	4	6

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