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on the cross-border posting of employees
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The English version has been machine-translated
and the content has been checked by the authors.

Imprint

Publisher

Institut für Mittelstandsforschung Bonn
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IfM-Materialien No. 299

ISSN 2193-1852 (Internet)

ISSN 2193-1844 (Print)

Bonn, May 2023

The IfM Bonn is a foundation under
private law.

Gefördert durch:



Bundesministerium
für Wirtschaft
und Klimaschutz

aufgrund eines Beschlusses
des Deutschen Bundestages

Ministerium für Wirtschaft,
Industrie, Klimaschutz und Energie
des Landes Nordrhein-Westfalen



Influence of administrative burdens on the cross-border posting of employees by SMEs in border regions

Einfluss bürokratischer Hürden auf die grenzüberschreitende Arbeitnehmerentsendung von KMU in Grenzregionen

Michael Holz, Annette Icks

IfM-Materialien No. 299

Abstract

Based on interviews with companies and experts, the study examines the extent to which administrative requirements hinder or prevent the cross-border provision of services by German and Dutch SMEs in selected border regions. The respondents see a great need for improvement especially with regard to the lack of harmonisation of posting regulations and procedures in the individual EU Member States. Facilitations for short-term postings and those done at short notice are also very often considered necessary. A significant proportion of SMEs in both Germany and the Netherlands do not comply with individual regulations in order to limit the high administrative burden to a – from their point of view – proportionate level.

JEL: D73, F2, K2, L5, L8, M16

Keywords: *Posting of workers, administrative burdens, EU, trade in services, SMEs*

Zusammenfassung

Auf der Grundlage von Fachgesprächen mit Unternehmerinnen und Unternehmern sowie Expertinnen und Experten untersucht die Studie, inwieweit bürokratische Erfordernisse die grenzüberschreitende Erbringung von Dienstleistungen von deutschen und niederländischen KMU in ausgewählten Grenzregionen be- bzw. verhindern. Großen Verbesserungsbedarf sehen die Befragten insbesondere im Hinblick auf die fehlende Harmonisierung der Entsendevorschriften und -verfahren in den einzelnen EU-Mitgliedstaaten. Auch Erleichterungen bei kurzen bzw. kurzfristigen Entsendungen werden sehr häufig als notwendig erachtet. Ein nicht unerheblicher Teil der KMU in Deutschland und den Niederlanden befolgt einzelne Vorschriften nicht, um den hohen Bürokratieaufwand auf ein – aus ihrer Sicht – verhältnismäßiges Niveau zu begrenzen.

Schlagwörter: *Arbeitnehmerentsendung, Bürokratie, EU, Dienstleistungsverkehr, KMU*

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Executive summary

Under the EU's freedom to provide services, companies can post workers to other EU Member States for a limited period of time. However, in order to prevent social dumping and poor working conditions, posting companies have to comply with various administrative requirements, depending on the respective regulations in each target country. Based on interviews with companies and experts, this study analyses the extent to which these requirements hinder or prevent the cross-border posting of workers by German SMEs to France, Austria and the Netherlands as well as by Dutch SMEs to Germany.

Regulation is supported in principle

The vast majority of respondents in all study regions support the basic intentions of regulating the posting of workers in the EU. Due to more extensive special regulations, the administrative burden is perceived as significantly higher for France in particular, but also for Austria, than for the Netherlands.

High burdens due to lack of harmonisation

The lack of harmonisation of national posting rules and procedures in the EU is identified by all respondents as the biggest burden. But also the frequency of the required notifications is often referred to as a major administrative burden. In particular with regard to short-term postings and those done at short notice, the bureaucracy is considered disproportionate, resulting in some of the companies stopping postings altogether or significantly reducing them. In the opinion of the entrepreneurs, more flexibility would be desirable here.

Different factors influence the perception and handling of administrative requirements

The administrative burden is perceived differently depending on the size of the company. In addition, the type of the services provided, the frequency of orders, the use of support services, the turnover share of the foreign markets concerned as well as the autonomy of assessment and action which companies allow themselves in dealing with the administrative requirements also play a role.

Companies partially practice “autonomous bureaucracy reduction”

Unlike the fully legally compliant companies, some enterprises deliberately do not comply with individual regulations in order to reduce the (aggregated) administrative burden to a — from their point of view — proportionate level. This often concerns operational, “downstream” administrative requirements such as calculating the comparative wage entitlements of employees in the target country, translating and keeping documents and carrying out change notifications. However, these are predominantly companies that recognise the key protected interests and rights of posted workers.

Dutch companies and experts assess the German posting system positively

The Dutch respondents are very positive about the risk-based approach of the German law on the posting of workers. Accordingly, the administrative requirements are largely limited to certain economic sectors with increased “damage potential”. Overall, the Dutch respondents count the German posting system among those with a relatively low intensity of burdens.

Risk-based approaches preferred

In contrast to conventional “one-size-fits-all” approaches, risk-based approaches can strike a new balance of trust and control, as they balance the key protected rights of posted workers with proportionate and differentiated administrative requirements. This must also be done with due regard to the risks posed by a small group of “black sheep” which fraudulently engage in “posting”. Nevertheless, it is recommended that improvements be made in the area of information and procedural infrastructure, the harmonisation of national requirements and the reduction of the compliance burden.

1 Introduction

The European Single Market, which was formally launched in January 1993, is one of the key achievements of European integration. Through the harmonisation of regulations and the abolition of market entry and trade barriers, the Single Market opens up a wide range of welfare gains and benefits for economic actors and households. The main pillars of the European Single Market are the four so-called fundamental freedoms – free movement of goods, free movement of persons (including free movement of workers and freedom of establishment), freedom to provide services, and free movement of capital and payments. An important component of all fundamental freedoms is the prohibition of discrimination. According to this, nationals or goods of other EU Member States may not be treated less favourably than domestic ones.

Under the freedom to provide services, providers of industrial, commercial, craft and freelance services have free access to the services markets of all EU Member States. In contrast to the freedom of establishment, service providers retain their lawful establishment in the original Member State and only temporarily provide their services in another EU country. Where domestic workers are temporarily posted to another EU country for the cross-border provision of services, specific posting regulations of both the EU and the respective destination country apply with regard to working and employment conditions.

These are designed to ensure the protection of the rights and working conditions of posted workers across the EU and to guarantee a level playing field. In accordance with the case law of the European Court of Justice, the posting rules can thus limit the freedom to provide services in order to achieve a legitimate objective such as the protection of workers. However, the posting rules are at the same time bound by the requirement of proportionality. The measures in question must be suitable for achieving the intended protection objectives and must not go beyond what is necessary to achieve the goal (cf. European Commission 2019).

Compliance with the posting regulations, the implementation of the necessary administrative reporting procedures and the provision of the required documents during the work assignment abroad entail considerable administrative burdens for the posting companies. The resulting increase in transaction costs may, under certain conditions, significantly impede or restrict the cross-border provision of services – especially by small and medium-sized enterprises (SMEs). The revised Posting of Workers Directive to be implemented by the EU Member

States by July 2020 also significantly increased administrative burdens, inter alia, by extending the protection rights of posted workers (cf. Chapter 3).

In addition, in the context of the cross-border provision of services, companies must comply with a large number of rules from other areas of law in addition to the law on the posting of workers and, as a consequence, labour law. These include, inter alia, provisions from social security law (especially in connection with the so-called A1 certificate),¹ trade law (e.g., additional (qualification) certificates in the craft or construction trades), occupational health and safety law, contract law, liability law and tax law (VAT).

In contrast to the export of goods, cross-border services and employee postings within the EU are relatively complex and entail significantly higher administrative burdens. Given the (potentially) very broad subject matter, the present study focuses on:

- Posting of workers under service contracts (cf. Chapter 3),
- administrative requirements arising from posting or employment law and neighbouring areas of law that are closely related to the posting and are often settled together in practice (social security law and trade law),
- traditional SMEs as posting companies with in principle good will to comply with the rules (i.e., no focused consideration of so-called "black sheep" which fraudulently infringe the basic protection rights of posted workers).²

Even if German companies may not, in practice, be the primary addressee of the posting regulations due to the comparatively high level of wages and social security in Germany, it is to be expected that the administrative burden for the cross-border provision of services will once again increase noticeably as a result of the extended administrative obligations. The administrative burden can be particularly detrimental to SMEs and the border regions concerned. In contrast

¹ All posted workers must carry an A1 certificate during the posting, which proves that they remain socially insured in the country of origin and therefore do not have to pay social security contributions in the destination country. The obligation to carry an A1 certificate does not derive from the law on posting but from Regulation (EC) 883/2004 on the coordination of social security systems.

² Also not in focus are special constellations with increased "damage potential" with regard to wage and social dumping, e.g., postings within the framework of comprehensive value chains with many subcontractors from different countries. Wagner (2015) uses the construction industry in Germany to illustrate how fraudulent actors in such constellations circumvent the applicable working and employment conditions to the detriment of posted workers.

to large enterprises, SMEs often serve regional markets to a greater extent. In border regions, these also include the market on the other side of the border. This can also have negative consequences for border regions, for example with regard to regional integration, internationalisation activities and disenchantment with politics and bureaucracy.

This study aims to examine the impact of administrative barriers on the temporary posting of workers and, related to this, on the cross-border provision of services by SMEs. The effects of the regulation are analysed from a German perspective for three border regions with different levels of bureaucracy (in descending order: Germany-France, Germany-Austria and Germany-Netherlands). As part of an international project extension, the research questions are also analysed from a Dutch perspective. This part of the study therefore deals with the administrative burdens Dutch companies face when posting employees to Germany.

By comparing the two perspectives, similarities and differences with regard to the impact of burdens as well as additional indications for policy recommendations can be identified. Since the Netherlands is commonly known for pragmatism in economic policy, the consideration of the Netherlands in both parts of the study can provide valuable insights for our research questions.

2 Procedure / research methodology

2.1 Investigation of the administrative burdens for German SMEs in three selected border regions

In order to investigate the economic and social policy background and to determine the nature and extent of administrative burdens associated with the posting of workers, we first conducted a comprehensive literature and document analysis. On this basis, we developed a semi-structured interview guideline for our subsequent interviews with experts and companies. The interviews served as a central source of information to specify and evaluate the effects of administrative posting regulations on SMEs and border regions.

The requirements that employers must meet in connection with the posting of workers vary greatly from one EU Member State to another. In order to cover a wide range of different systems of postings regulations, we have selected the three border regions Germany-France, Germany-Austria and Germany-Netherlands, each with a different level of administrative burdens, on the basis of preliminary research.

In the three border regions, we interviewed experts based in Germany from chambers of crafts, chambers of industry and commerce, business associations and business development institutions about their assessments resulting from their practical work. For a more general perspective, we also conducted interviews with representatives of trade unions, Germany Trade and Invest - Gesellschaft für Außenwirtschaft und Standortmarketing mbH (GTAI) and consumer protection organisations. Companies from various sectors in the three border regions provided us with valuable assessments from their business practice by reporting on their experiences with posting their employees to neighbouring countries and the administrative effort involved.

In order to gain a better understanding of the reporting burden involved in the posting of workers, we additionally conducted – assisted by business chamber experts – a simulated notification procedure on the French SIPSI reporting portal.

In total, we conducted expert interviews in Germany with

- five chambers of crafts,
- three chambers of commerce and industry,
- one business association,

- one business development institution,
- one trade union,
- Germany Trade and Invest (GTAI) – Gesellschaft für Außenwirtschaft und Standortmarketing mbH,
- one consumer protection organisation.

In addition, we also conducted interviews with a total of ten companies from the mechanical and plant engineering sector (5) and the construction sector (5) in the three border regions. The employment size of the companies varied between 23 and over 4,000 employees. Five companies are small enterprises (with up to 49 employees), another four companies are medium-sized enterprises (50 to 499 employees), while one participating company with more than 4,000 employees belongs to the group of large enterprises.

2.2 Project extension to analyse the administrative burdens for Dutch companies when posting employees to Germany

During the ongoing project work, the content of the project was expanded within the framework of an external third-party funded order – for the Dutch Ministry of Economic Affairs. Within this additional part of the study, selected Dutch companies as well as experts were to be interviewed about their assessments of the administrative burdens for Dutch companies when posting workers to Germany, analogous to the German survey. The aim was again to determine the nature and extent of the administrative burdens and their consequences for the companies concerned and the border region.

For this purpose, we also conducted semi-structured interviews with a total of three Dutch companies as well as with two Dutch business associations and one Dutch trade union. The three companies are SMEs from the sectors of mechanical and plant engineering, services and trade. The interviews were analysed qualitatively (cf. Chapter 7) and feed into the overall study, especially with regard to the derivation of policy recommendations.

3 Legal background: The EU Posting of Workers Directive and its reforms at a glance

EU law on posting is fundamentally laid down in the Directive on the posting of workers in the framework of the provision of services. This was first adopted in 1996 (Directive 96/71/EC) and revised in 2018 by way of an Amending Directive (EU 2018/957). The provisions of the amending directive were to be transposed by the EU Member States into national laws, regulations and administrative provisions by 30 July 2020. A key objective was to rebalance, on the one hand, the promotion of the freedom to provide services and the guarantee of a level playing field, and on the other hand, the protection of the rights of posted workers. Overall, posted workers should thus be better protected against wage and social dumping. The essential guiding principle is "equal pay for equal work in the same place" (cf. Nowak 2022).

In 2014, the EU also adopted an Enforcement Directive (2014/67/EU) to improve the practical application and enforcement of the posting rules. The directive included measures in several areas, including: posting companies' access to information; prevention of circumvention of the applicable rules; controls and monitoring; joint liability in subcontracting chains; and exchange of information among Member States. The enforcement directive should thus ensure (improved) compliance with Directive 96/71/EC without imposing unnecessary administrative burdens on service providers. All measures introduced by this directive should be justified and proportionate so as not to create additional administrative burdens, not limit the employment potential of small and medium-sized enterprises and at the same time protect posted workers (cf. recitals (4) and (5) of the enforcement directive).

The subject matter of the posting legislation is the temporary posting of workers for the cross-border provision of services in another EU Member State, whereby a basic distinction is being made between three different constellations (cf. Article 1 (3) of the Posting of Workers Directive 96/71/EC):

- a) Posting under a service contract concluded with a customer/client in another EU Member State for whom the services are intended; or
- b) Posting to an establishment or to an undertaking owned by the group in another EU Member State ("intra-group posting"); or
- c) Posting by a temporary employment agency that posts a worker to a user undertaking established or operating in another Member State ("temporary agency posting").

Posted workers continue to be employed by the posting company beyond the period of posting. In principle, they therefore continue to be subject to the law applicable to their employment contract, which in most cases is the law of their Member State of origin. However, to protect against wage and social dumping during a posting, the (revised) Posting of Workers Directive contains some key working and employment conditions that posting companies must guarantee for their posted workers for the duration of the posting. Posting companies must therefore compare the relevant working and employment conditions in their own country with those in the destination country. If the terms and conditions in the destination country are more favourable for the posted workers than in the country of origin, the companies must implement the rules of the destination country and thus put their workers (at least) on an equal footing with those in the destination country.³ Thereby all rules have to be observed that are laid down in the destination country by legal or administrative provisions and / or collective agreements declared to be generally binding.

Since 30 July 2020, according to Article 1 (2) of the amending directive, posting companies must guarantee equal treatment of their posted workers with workers in the destination country with regard to the following working and employment conditions, insofar as these are more favourable than in the posting company's country of origin:

- a) Maximum work periods and minimum rest periods;
- b) Minimum paid annual leave;
- c) Remuneration⁴ including overtime rates; this does not apply to supplementary occupational retirement pension schemes;
- d) Conditions of hiring-out of workers, in particular the supply of workers by temporary employment undertakings;
- e) Health, safety and hygiene at work;

³ If, on the other hand, the working and employment conditions in the country of origin are more favourable, posting companies are of course not allowed to deviate from them to the detriment of the employees.

⁴ The original Directive 96/71/EC granted posted workers only entitlement to general minimum wage rates in the destination country. Under the amending directive, posted workers now have much broader entitlements to all components of remuneration (e.g., special collectively agreed minimum wages, allowances, holiday pay, etc.) which apply by law or by collective agreements declared to be generally binding in the country of destination.

- f) Protective measures with regard to the terms and conditions of employment of pregnant women and women who have recently given birth, of children and of young people;
- g) Equality of treatment between men and women and other provisions of non-discrimination;
- h) Conditions of workers' accommodation where provided by the employer to workers away from their regular place of work;
- i) Allowances or reimbursement of expenditure to cover travel, board and lodging expenses for workers away from home for professional reasons.

Overall, this means that companies that temporarily post workers to other EU Member States face a relatively high level of bureaucracy simply in terms of comparing working and employment conditions. They have to identify the multitude of relevant regulations in the destination country, understand their content, compare them with those of their own country and then correctly apply them to their own posting cases.⁵ Due to the lack of harmonisation of national regulations, the effort is multiplied for companies that post to several EU countries.

⁵ According to Article 5 of the implementing directive and Article 1 (2) of the amending directive, EU Member States are obliged to publish the necessary information, including the various remuneration components, without undue delay and in a transparent, accurate and up-to-date manner on a single official national website. In practice, however, there is still need for improvement in many EU countries, especially with regard to the provision of information on the collective agreements (cf. ZDH 2021).

4 Posting-related administrative requirements in the three study countries

The administrative burden on posting companies does not only result from activities related to the above-mentioned comparison of working and employment conditions. Administrative burdens also arise from the administrative requirements and control measures imposed by destination countries to ensure compliance with the obligations resulting from the Posting of Workers Directive and the enforcement directive. In principle, EU Member States may only take measures that are necessary to ensure effective monitoring of compliance and that are justified and proportionate in accordance with Union law.

For these purposes, Member States may impose, among others, the following administrative measures according to Article 9 of the Enforcement Directive 2014/67/EU:

- a) the obligation of the posting enterprise to make a simple declaration ("posting declaration") to the responsible national competent authorities of the country of destination at the latest at the commencement of the service provision, which contains the relevant information necessary in order to allow factual controls at the workplace;
- b) the obligation to keep or make available and / or retain in paper or electronic form certain documents (e.g., employment contracts, payslips, time-sheets, proof of payment of wages) during the period of posting in the country of destination;
- c) the obligation to deliver the documents referred to under point b) within a reasonable period of time after the posting, at the request of the authorities of the country of destination;
- d) the obligation to provide a translation of the documents referred to under point b) into the official language of the country of destination or into another language accepted by the country of destination;
- e) the obligation to designate a contact to liaise with the competent authorities in the country of destination who will send out and receive documents and / or notices as required.

However, it is at the discretion of each EU Member States to decide which measures are actually taken and how they are specifically designed. Since the EU countries have enacted different, non-harmonised administrative requirements and control measures, the administrative burden is multiplied for posting

companies that post workers to several EU countries.⁶ As a result, companies posting workers to different countries have to comply each time with different administrative requirements and go through different procedures.

4.1 A1 certificate

When posting to all three study countries (i.e., France, Austria and the Netherlands), companies must generally first apply for an A1 certificate – in accordance with Art. 12 of Regulation (EC) 883/2004 on the coordination of social security systems, in conjunction with the Implementing Regulation (EC) No. 987/2009 issued on this subject. The A1 certificate is proof that the posted employee temporarily working abroad remains subject to the social security system of the country of origin and therefore does not have to pay social contributions to the social security funds abroad. An A1 certificate for work assignments in Europe must be applied for electronically, either via a certified payroll programme or the sv.net application.

4.2 Notification of posting before commencement of work

In addition to the A1 certificate, it is also necessary to comply with the notification requirements of the country to which workers are posted. Directive 2014/67/EU requires, for example, the reporting of information on the service provider, the company receiving the service and the planned start and duration of the posting. In addition to this basic information, the countries considered have various additional requirements. For example, in the Netherlands, a person must be registered who is responsible for the payment of wages. Austria requires a certificate of competence for regulated trades. In France, companies operating in building construction and civil engineering must additionally apply for a professional identification card ("Carte BTP") which is intended to facilitate inspections on construction sites. The card must be applied – for each posted worker and for the duration of one posting only – from the Union des Caisses de France via an online platform (cf. HWK Saarland/HWK Trier 2022).

In all three countries considered, the posting notification must be made electronically via a digital reporting portal or an online form. In France, this is done via

⁶ Overview A1 in the annex provides an overview of the requirements that companies must observe when posting to France, Austria and the Netherlands. A detailed description of the posting requirements for the above-mentioned countries can be found, for example, in Matthes (2023), Holzbauer (2021) and Pick (2021).

the SIPSI reporting portal⁷ and is possible in different languages. In Austria, the notification must be made via the online form ZKO 3.⁸ In the Netherlands, the notification comprises three steps: In the first step, the Dutch customer must inform the foreign service provider about the duty to declare the employees to be posted. In the second step, the foreign posting company submits the notification via the corresponding online portal.⁹ The notification can be submitted in Dutch, English or German. In the last step, the Dutch customer checks the notification. The notification process is only completed after a successful check.

In all three countries, the notification must be made anew for each person to be posted and for each new work assignment. In France and the Netherlands, data already entered for previous notifications can be retrieved for new ones, which simplifies the reporting process (cf. ZDH 2021). Companies that regularly operate in France can agree with the regional supervisory authority to provide evidence and comply with all posting obligations for up to one year and thus reduce the effort of individual notifications (cf. GTAI 2020). In the Netherlands, an annual notification is sufficient in exceptional cases for micro-enterprises with up to nine employees if the location of the company is less than 100 kilometres away from the Dutch border. However, this does not apply to companies in the construction industry, including crafts. In Austria there is the possibility of simplified notifications for certain individual cases, for example, in the case of recurring postings within one service contract (cf. BUAK/BMAW 2023). In general, however – despite these (few) exceptions – the frequency of the reports to be made places a considerable administrative burden on companies.

4.3 Keeping required documents ready at the place of work

In addition to reporting various information prior to the start of the posting, the posted persons must keep a number of documents ready during their work assignment abroad and present them to the control authorities upon request. In principle, this is possible in all three countries in both paper and electronic form. The documents in all three countries include, for example, the A1 certificate, the

⁷ Available at: <https://www.sipsi.travail.gouv.fr/auth/login> (Ministère du Travail, du Plein Emploi et de l'Insertion 2023).

⁸ Available at: <https://www4.formularservice.gv.at/formularserver/user/formular.aspx?pid=fe66cedb506e495c94b3e826701443e5&pn=B461f73088ab946fe9bd1d1cce573d81a> (Financial Police - Central Coordination Unit 2023).

⁹ Available at: <https://meldloket.postedworkers.nl/runtime> (Ministerie van Sociale Zaken en Werkgelegenheid 2023).

employment contract, documentation of daily working hours and receipts for remuneration. In addition, other documents may be required depending on the country. For example, companies in France must take out compulsory insurance to cover clients' warranty claims for certain work on buildings ("Assurance RC décennale"), while in Austria detailed information on the wage classification of posted workers must be kept available. In France, all documents must be available in French, which can lead to considerable effort for posting companies.

Furthermore, in all three countries, a contact person – e.g., one of the posted workers – must be appointed as an available liaison for the authorities in the event of inspections and who may send and receive documents if necessary. In France, the contact person must also speak French. In Austria, the contact person can also be a chartered accountant established in Austria, a lawyer or a notary.

4.4 Penalties for non-compliance

In all three countries considered, the competent inspection authorities may impose fines for violations of the notification obligation and other requirements under the law on posting. The amount of the fines varies considerably between the countries. However, the laws in question often stipulate only standard rates or maximum values, from which the authorities can deviate in individual cases by exercising their discretion.

If companies fail to comply with the French posting obligations (e.g., the notification obligation before starting work; appointing a representative; and applying for the professional identification card), the French inspection authorities can impose fines of € 4,000 per posted person and per infringement (for a first offence) and up to € 8,000 for a repeat offence within two years per employee and per infringement. The maximum fine is € 500,000 (cf. Ministère du Travail, du Plein Emploi et de l'Insertion 2020). The same sanctions can be imposed on the contracting principal.

In the Netherlands, a violation of the notification obligation can be punished with a fine of between € 1,500 and € 4,500, depending on the size of the company. If required documents are not available at the place of work, fines of up to € 8,000 may be incurred. If Dutch clients do not comply with their audit obligations, they can also be fined between € 750 and € 1,500 (cf. Ministerie van Sociale Zaken en Werkgelegenheid 2023a).

Significant fines may also be imposed in Austria. Posting companies that do not comply with the reporting requirements or do not have the required documents ready can be required to pay fines of up to € 20,000 and in repeated cases up to € 40,000. Acts of obstruction in connection with wage inspections may be punished with fines of up to € 40,000. If the inspection authorities determine that a posting enterprise underpays its workers, they can impose fines of up to € 250,000, depending on the amount of remuneration withheld (cf. WKO 2023).

5 Burden effects for the companies

5.1 Development of bureaucracy over time

We asked both companies and experts how they assess the current level of administrative burdens related to the posting of workers compared to previous years. Almost all respondents – regardless of whether they were experts or companies – perceived an overall increase in administrative burdens: more so for postings to France and Austria than for those to the Netherlands. However, in addition to various factors that contributed to the overall increase, there were also relief measures that reduced the administrative burden in some areas.

Although the origins of the EU Posting of Workers Directive date back to 1996, for many years the posting-related administrative requirements had relatively little practical significance for many German companies and were often unknown to them. In addition, the posting notifications, insofar as they were required, could not often be strictly checked by the authorities in the destination country, as they were often only incomplete and submitted in paper form.

"Five or six years ago, this was not really a big issue. The border didn't exist then in terms of posting bureaucracy. Companies simply sent employees across the border to work on orders. There wasn't much awareness of that at all." (Expert)

*"This posting directive probably existed on paper.
But no one knew exactly what they had to do." (Enterprise)*

*"For the Netherlands, the principle of self-reliance applied until 2020.
This meant that companies had to take responsibility for ensuring that they meet all the requirements. There was no obligation to make notifications and there was not as much control as there is today." (Exp.)*

A first important reason for the increase in administrative burdens in recent years was that some EU Member States – such as France and Austria – adopted new restrictive national posting regulations relatively quickly after the EU Enforcement Directive came into force (in France the "Loi Macron" from 2015 and in Austria the Act to Fight Wage and Social Dumping (LSD-BG) amended in 2015). The legislative amendments aimed to tighten the content of national posting regulations and also included more stringent control and sanction options. France and Austria were among the first EU countries to make digital reporting portals mandatory instead of the previous paper-based reporting of postings. This led to challenges in practical handling for companies, especially during the

transitional period. In addition, the digital recording of the posting notification makes the companies more visible and thus also more controllable: control authorities can check the completeness and correctness of the notification documents more easily than before – e.g., with the help of mandatory fields. The compulsory completeness and increased visibility thus facilitate the protection of workers' rights, but also increase the administrative burden on companies.

"From 2015 onwards, the electronic notification came with mandatory fields.

If you don't fill in the mandatory fields, it is practically as if you did not submit a notification and you are liable to prosecution.

France was maybe the first country in the EU to implement that." (Exp.)

In Austria, too, companies perceived the posting regulations as more obligatory with the switch to electronic notification procedures. In contrast, the Netherlands, which is more pragmatic in terms of economic policy, was one of the last EU countries to introduce a digital reporting obligation.

As expected, from the point of view of both experts and companies, the amending directive to be implemented by 2020 has also contributed to an increase in administrative burdens. The expansion of the working and employment conditions to be guaranteed by the posting companies has markedly increased the effort involved in preparing and carrying out the comparative calculations.

"The amendment of the Posting of Workers Directive has had one of the greatest burdening effects: to impose this on companies and to say that you now have to comply with the provisions of the collective agreements, the wage structure and the collectively agreed minimum wage, and no longer just with the general minimum wage."

(Exp.)

The Covid-19 pandemic has also acted as an amplifier in some border regions. Confronted with tightened border controls, many posting companies have asked information from business chambers and business associations about the procedures and documents necessary to cross the border in compliance with the law. For the first time, some companies have thus developed an awareness of the existence of posting regulations or have complied with them to a greater extent than before.

"Due to the (Covid-19-related) border controls, some companies have become more aware and have asked themselves:

'What do we have to do in terms of bureaucracy anyway?'" (Exp.)

Another reason that companies are now increasingly complying with the administrative requirements and perceive this as a higher burden relates to the tightened controls and high penalties for infringements – in particular when posting to Austria. Especially among well-connected Mittelstand (craft) enterprises, word gets around quickly. But the extensive information and awareness-raising activities of the business chambers and business associations have also contributed to (potential) posting companies developing a greater awareness of the nature and scope of the administrative requirements (and at the same time being put in a position to meet them).

Among the important factors that have partially brought about a reduction in the administrative burden are the many diverse activities of the business chambers and other stakeholders in the border regions, which often work in co-operation with their counterparts on the other side of the border towards a gradual improvement and reduction of administrative burdens. Due to their extensive efforts, they are able to achieve smaller and larger "successes" time and again. These include, for example, improving the practicability of the digital reporting portals and working towards facilitations and exemptions under posting law that are implemented by the policy makers in the destination country (e.g., for so-called "own-account services" in France; for short postings of less than 48 hours in Austria or for postings by micro-enterprises located close to the border with the Netherlands). Although the regional actors are often characterised by great commitment, detailed expertise and innovative ideas, they alone cannot achieve a fundamental breakthrough and a substantial reduction of administrative burdens. For this, they are ultimately dependent – also in their self-assessment – on the action of policy makers at EU or Member State level, who have the relevant decision-making and implementation competences.

5.2 Burden intensity of the administrative sub-steps of the posting of workers

The explanations on the legal background of the cross-border posting of workers in Chapter 3 already made it clear that posting companies are confronted with various administrative requirements. These can contribute to the perceived administrative burden to varying degrees and may indicate a need for economic policy action.

We asked both the experts and the companies to assess how burdensome they perceive the individual steps of the posting of workers. During their assessment, the respondents could each assign a numerical value on a scale from 0 (not at

all burdensome) to 10 (very burdensome). On the basis of these evaluations, we determined a ranking of the process steps with regard to their burden intensity, separately for the two survey groups (experts and companies), in order to be able to identify differences and similarities in their assessments.

5.2.1 Assessments of the experts

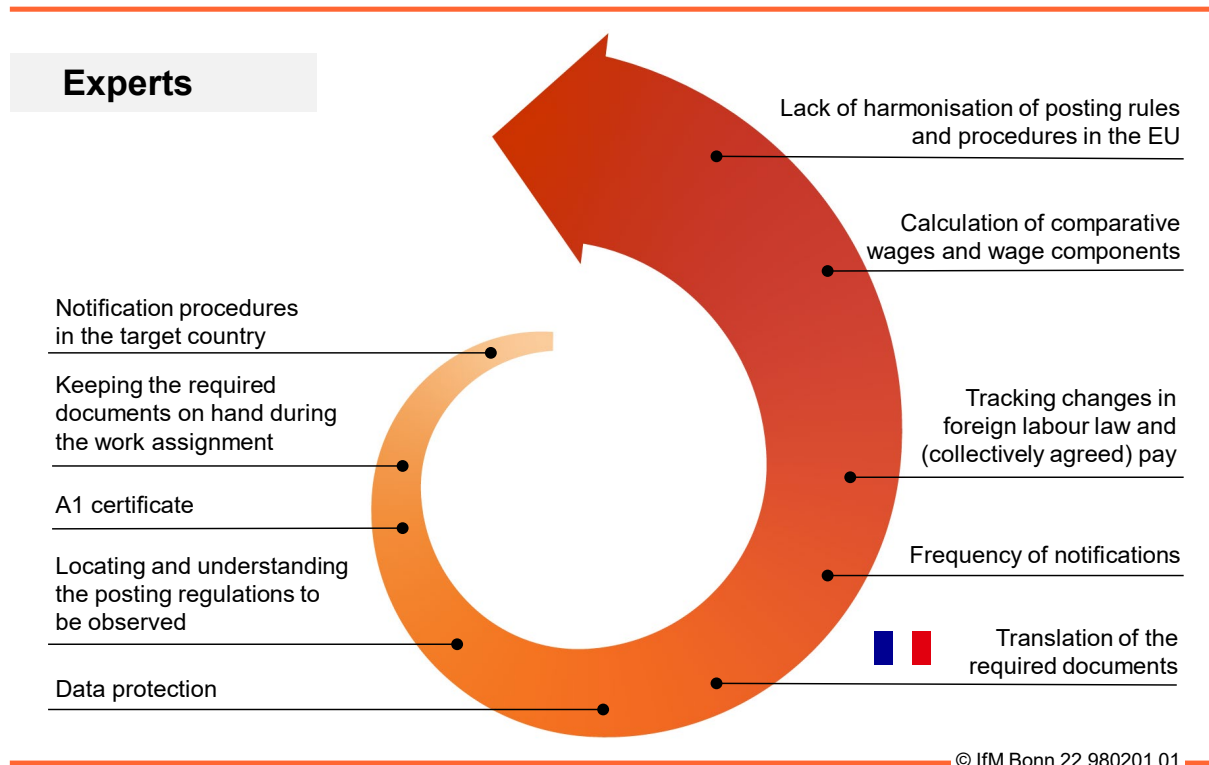
The experts consider the lack of harmonisation of posting rules and procedures in the EU as particularly burdensome. Almost all respondents rate the burden intensity with a score between 8 and 10. This mainly reflects the fact that companies who post workers to different EU countries are confronted with a considerable additional burden resulting from the sometimes very different legal requirements and procedures (cf. Figure 1).

*“Each country has come up with its own solution,
the amount of information it wants to have,
the documents that need to be kept on site.” (Exp.)*

Calculating the comparative entitlements of posted workers in the destination countries is also seen as challenging, especially since the revised EU posting directive came into force in 2020. The experts gave us a vivid description of the difficulties companies face in finding and applying the different (collectively agreed) wage schemes; especially since there are often different sets of rules for the individual regions within a country. Furthermore, occupations are often structured and classified differently than in Germany.

*“There are more than 200 collective agreements in France.
French companies already can't cope with that. It's all in French.” (Exp.)*

Figure 1: Assessment of the burden intensity from the experts' point of view



Source: Own representation.

Furthermore, in France, for example, foreign companies cannot use digital support tools to find the right collective agreements as these are only open to French enterprises with a specific company number. In the Netherlands, collective agreements are also difficult to find and usually only available in Dutch. In addition, craft occupations, for example, are defined and grouped differently than in Germany.

“Crafts in the Netherlands are not the same as crafts here. In part, these are completely different collective agreements and wage groups, also because there are no journeymen and master craftsmen there. It's all infinitely complicated.” (Exp.)

In Austria, there is no language problem, but in addition to the correct application of the collective agreements, specific wage components must be taken into account that are not customary in Germany (e.g., altitude allowance, dirt allowance or the age of the employee). In addition, the same employee must sometimes be classified differently depending on the specific activity he or she performs during the posting.

“If, for example, the same employee carries out electrical installation work during one assignment, and metal construction work during a second, then two different time-

consuming comparative calculations would have to be made for the same employee (one for the classification as an installer and the other for a metalworker).” (Exp.)

Keeping abreast of any changes in the working and employment conditions in the destination country is judged by the experts, especially with regard to France and the Netherlands, to be very time-consuming and – without legal assistance – in principle impossible.

According to the experts, the frequency of the required notifications is associated with a high burden intensity in all three border regions. Companies that post (changing) employees frequently and only for short periods of time are particularly negatively affected.

“If employees regularly travel to the Netherlands, then in case of doubt you have to make a posting declaration every time. That is very time-consuming.” (Exp.)

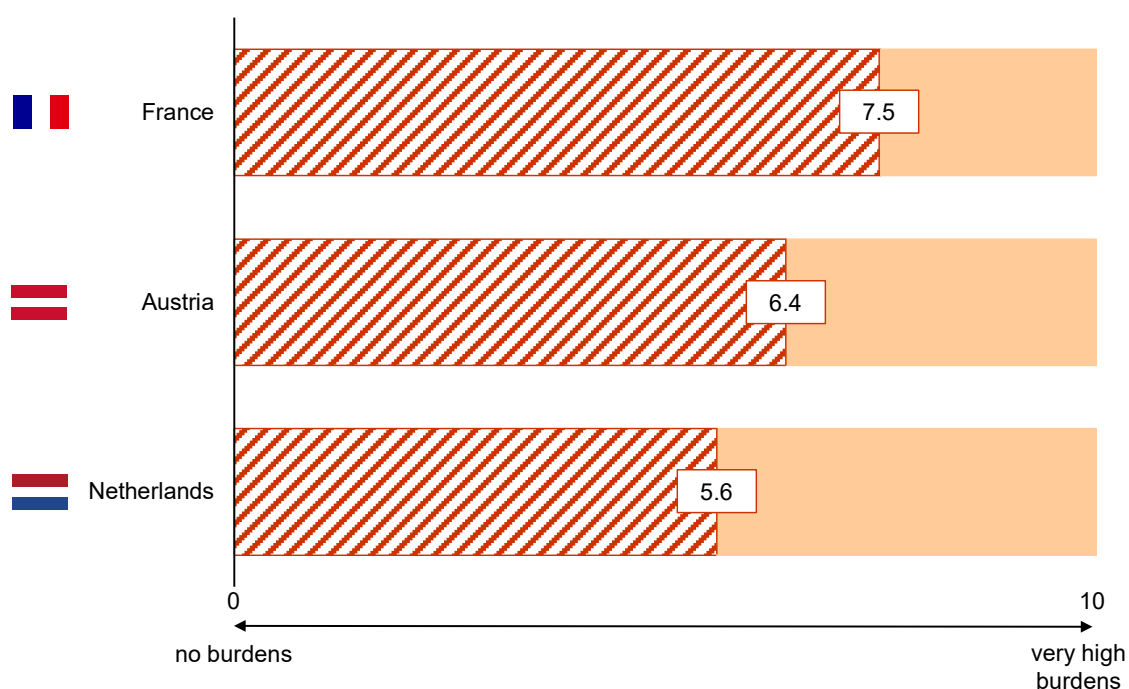
“I cannot say: ‘I have two orders next week, and probably two more next month. I’ll summarise those in advance’.” (Exp.)

In particular, the experts from the border region with Austria attribute an above-average burden intensity to keeping the required documents on hand during the work assignment. They report that in Austria there are comparatively strict controls to ensure that all the necessary documents and supporting proofs are available. While in France and the Netherlands, missing documents can often be submitted later, this is often not the case in Austria.

If one forms an average value of the burden intensity from the assessments of the experts for each target country (cf. Figure 2), it can be seen that the respondents rated the administrative duties in France as the most burdensome (average value of 7.5), followed by Austria (6.4) and the Netherlands (5.6). In fact, almost all respondents – even though they may specialize in other countries – shared the view that employee postings to France are associated with particularly high administrative burdens. The Netherlands, on the other hand, is often perceived as a country with a more pragmatic orientation – with the exception of the complicated collective agreement system.

“The pragmatism of the Dutch is that they say: ‘We don’t want to complicate it too much’.” (Exp.)

Figure 2: Average burden intensity by destination country – assessment from the experts' point of view



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Source: Own representation.

According to the respondents, the relatively high average burden intensity in France is due, inter alia, to some specific extra requirements. These include the need to translate the supporting documents to be kept on site into French, to appoint a French-speaking contact person and, in the construction industry, to repeatedly apply for a professional identification card ("Carte BTP") for each posted employee, which – in contrast to French companies – is only valid for a single (cross-border) work assignment. Furthermore, finding and applying the labour and posting regulations to be observed are also considered as particularly complicated. Many of the respondents also perceive overall a rather protectionist attitude in the underlying French policy, which is illustrated, e.g., by the small number of exceptions enshrined in the law and the fact that facilitations that have been promised for a long time have still not been implemented. Nevertheless, the interviewees are of the opinion that this defensive attitude is not directed against Germany, as the working and employment conditions are very similar in both countries.

"In France, once you cross the country border, whatever you do there, it has to be reported." (Ent.)

“The French want to protect their market. As far as Germany and France are concerned, you could scrap the Posting of Workers Directive. We are practically on the same level. Germany is not the target of the French government.” (Exp.)

5.2.2 Assessments of the companies

Like the experts, the companies surveyed criticise above all the lack of harmonisation (cf. Figure 3). Not only small, but also medium-sized and larger companies feel overwhelmed by the multitude of different posting rules and procedures in the EU Member States. Almost every company surveyed rates this aspect with a “10”, i.e. with the highest burden intensity.

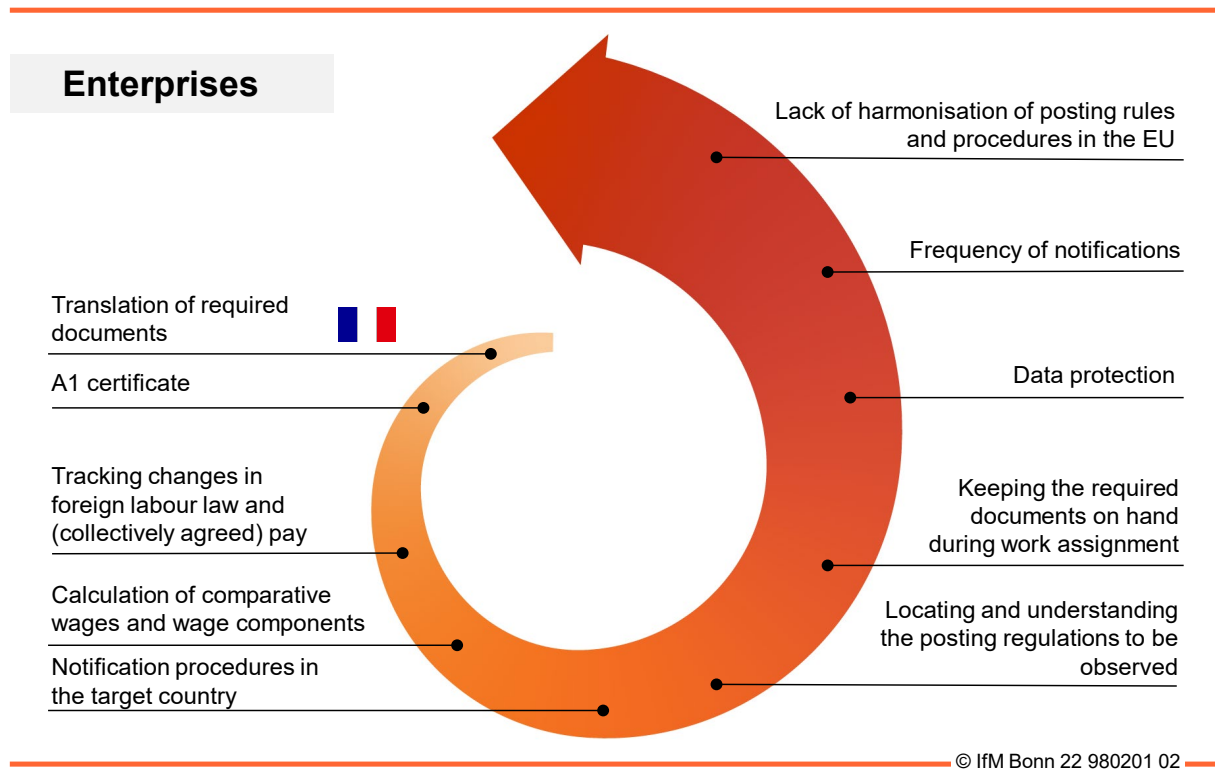
“Overall, very arduous. On the whole, I have quite a good insight for Austria and Switzerland. But when it comes to Slovakia or Romania, you simply have no idea anymore.” (Ent.)

“10 points, actually 100. I wonder, we are in the EU, we have the European Single Market and yet... (The burden) is not in any relation.” (Ent.)

High burdens for companies in all border regions also result from the frequency of required notifications. The fact that, in general, a new notification procedure has to be carried out again and again for each service and for each posted worker is a major nuisance for companies, especially in the case of postings of short duration. Also burdensome are the frequent notifications of changes, for example in the case of illness of posted workers or changes in the duration of the posting due to weather conditions.

“If the employee is sick in the morning, you must immediately remember to sign him out at the coordination office. You always have to think about it every day: ‘Do I have to report something or not?’” (Ent.)

Figure 3: Assessment of the burden intensity from the companies' point of view



Source: Own representation.

Especially in the border region with Austria, but also in the border region with France, companies complain about the scope of documents that have to be kept available and the difficulties in ensuring the protection of the personal data of posted workers (such as payrolls, employment contracts, bank transfer vouchers). They express incredulity that so much sensitive personal data has to be kept available at the work site – mostly in a paper envelope. This is also in stark contrast to the requirements of the General Data Protection Regulation (GDPR). Personal records cannot be properly stored in a company car or toolbox. Going even further, some companies also question the entry of personal data into the national reporting portals. The extent to which these are reliable in terms of data protection cannot be verified and, above all, employees do not know where their data will be passed on.

"That's quite a few pages. It's easily 25, 30 pages (per employee)." (Ent.)

"The issue of data protection is completely undermined. Normally, I would always have to get permission from the employee first." (Ent.)

“Why do I have to provide a copy of the notification in paper form again? And why do I have to give the documents to people who may not be authorised to have the data?”

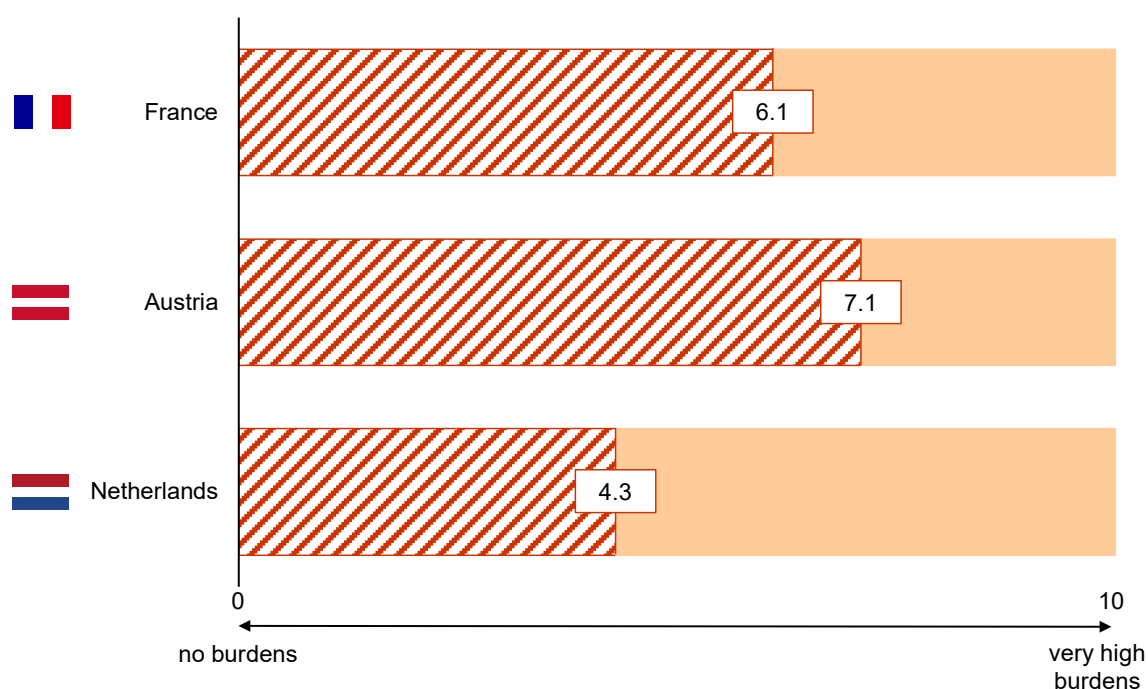
(Ent.)

It is striking that companies in the border region with the Netherlands attach significantly less burden intensity to data protection and the scope of the documents to be kept. Here, companies often seem to limit themselves pragmatically to some key documents such as the notification certificate and A1 certificate, and to provide further documents only on request, especially since the inspectors are considered to be accommodating in this respect.

“We only do A1 and notification certificate. Rest on request.” (Ent.)

For information purposes, Figure 4 shows, analogous to Chapter 5.5.1, the average burden intensity by destination country from the perspective of the interviewed companies. In this case, however, the comparison of the absolute values has a somewhat limited significance, as the characteristics of the companies are quite different in some areas. The high average value for Austria, for example, is influenced by the fact that one company had already discontinued its posting activities at the time of the interview due to the high administrative burden. In contrast, one of the companies operating in France uses the support services of a professional service provider, which means that the actual administrative burden is lower in some areas.

Figure 4: Average burden intensity by destination country – assessment from the companies' point of view



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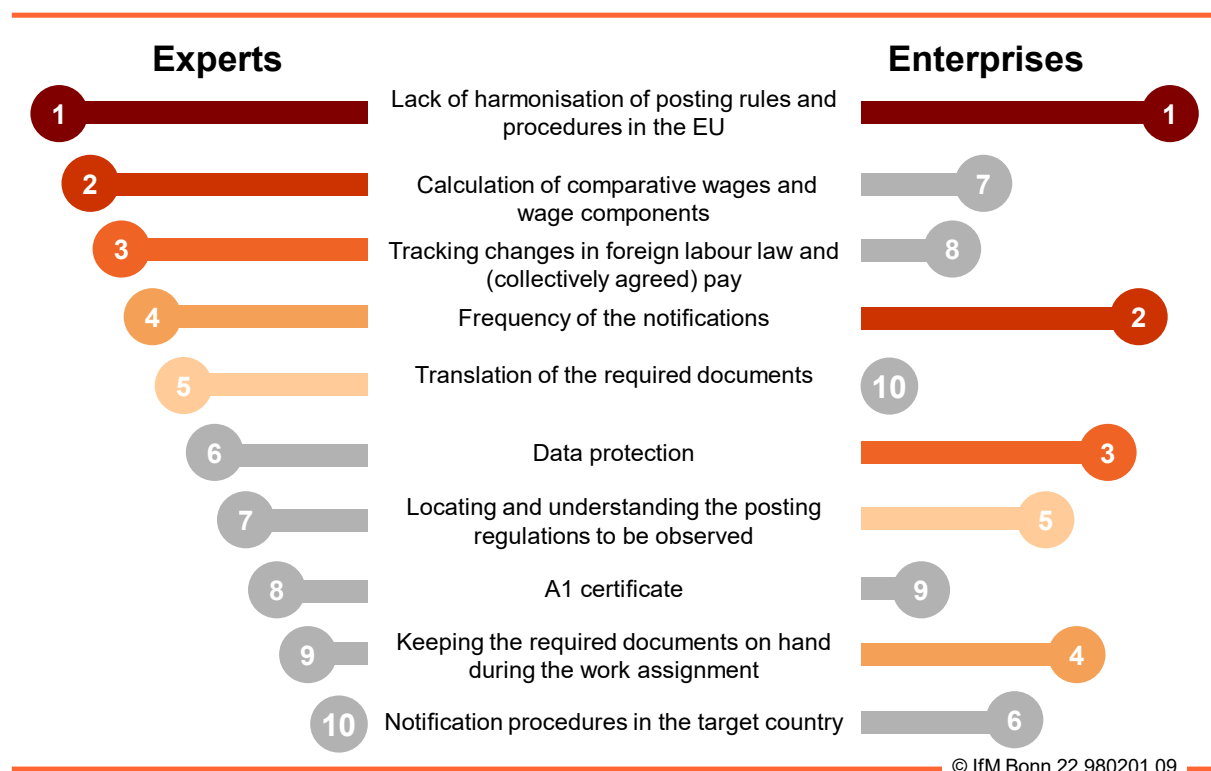
Source: Own representation.

5.2.3 Comparison of the assessments of experts and companies

In the following, we compare the previously presented assessments of the experts with those of the companies. It should be noted that the experts tend to take a higher-level perspective in their assessments. They have the multitude of different companies in their respective areas of responsibility in mind and therefore make more generalised statements. In contrast, the assessments of the interviewed companies are primarily based on their concrete experiences, which are strongly influenced by the respective company specifics (cf. Chapter 5.4).

Furthermore, when assessing the burden intensity, the experts predominantly assume that the companies act in full compliance with the law. In contrast, the companies often assess the burden taking into account only partial compliance with all regulations, which is not uncommon in practice. By comparing the assessments of both survey groups, we gain evidence of the administrative sub-steps where the corporate practice deviates particularly strongly from the applicable legal situation. For this reason, we arrange the individual sub-steps in the comparison according to their (decreasing) importance from the experts' point of view.

Figure 5: Burden intensity of posting – comparison of experts and companies



Source: Own representation.

A comparison of the assessments shows not only similarities but also some significant differences (cf. Figure 5). First of all, both groups agree that the greatest burdens result from the lack of harmonisation of posting rules and procedures in the EU. Urgent policy action is needed here in order to free companies from excessive bureaucracy. The same applies in a similar way to burdens resulting from the frequency of the required notifications.

Experts also agree with the companies that they assess the burden intensity of the (technical) administrative procedures as comparatively low. Both the application for the A1 certificate and the digital notification procedures in the destination country are relatively easy to handle once a certain routine has been established.

“Notification procedures are annoying, time-consuming (in the aggregate), but ultimately doable with some gained experience and prior advice.” (Ent.)

“I am always happy when a notification has to be done to the Netherlands. It is always quick. I would say: only ten minutes per notification.” (Ent.)

Nevertheless, the aggregated time requirement caused by the frequency of the notifications is a burden. Furthermore, companies are also confronted from time

to time with special constellations (e.g., in the case of cross-border commuters in the context of the A1 certificate), which require greater information and clarification. In the case of postings to France, the application for the "Carte BTP" is also considered to be very burdensome. Displeasure is also caused by the unequal treatment compared to French companies – which is also seen as a violation of the EU's principle of non-discrimination.

There are striking differences between the two groups of respondents with regard to "calculating of comparative entitlements", "keeping up to date with possible legal and procedural changes" and – with regard to France – "translating the required documents". However, the differences in assessment do not stem from companies actually considering the respective sub-steps as significantly less burdensome, but rather from the fact that they do not follow them or only partially follow them (so that the effective burden intensity is correspondingly lower).

As a main reason for this "autonomous bureaucracy reduction" (cf. Holz et al. 2019), the companies mention the high implementation costs and the disproportionate nature of the administrative requirements. The companies complain that, for example, carrying out comparative calculations is extremely time-consuming. If they carried out such calculations, they would usually find out that due to the high level of working and employment conditions in Germany they would not have to make any adjustments, e.g., to the wages they pay. Thus, the high calculation efforts generally do not have any practical consequences. In view of scarce entrepreneurial resources and the general high burden of bureaucracy, many companies therefore take a pragmatic approach: they do without the comparative calculations or only carry them out roughly, for the first posting or in unclear cases (e.g., when posting trainees or auxiliary staff).

"Researching, translating and applying the French collective agreements is an effort that is unmanageable. Especially since our employees earn at least the same or more than the French collective wages in 99.9 % of the cases." (Ent.)

"We have never done that, to compare the individual salaries. You can't do that. If we did it, it would be a heavy burden, 9-10." (Ent.)

"My common sense tells me that this directive is not about a mechanical engineer who earns € 23 an hour here. And he is not requested because he is cheaper, but because he is a specialist." (Ent.)

Furthermore, companies often also refrain from elaborate comparative calculations because their experience shows that the control authorities generally check the completeness of important documents such as A1 and notification certificates, payrolls etc., but do not themselves carry out a detailed check of the correct (collectively agreed) remuneration.

As mentioned above, companies often show a pragmatic approach – oriented at proportionality – in other areas as well:

"We just hope that we are well positioned with the information or with the level of knowledge that we currently have. There are so many other topics where you have to be up to date. So, we neglect this a bit." (Ent.)

"We don't do that (French translations of required documents). Only on request. Otherwise, we could have everything translated into 30 languages. Our business association also advised us against it at the time." (Ent.)

"For Austria, I would have to provide the current pay slip, the last three months and also timesheets. We don't do that. I'll take my chances. It's a conscious decision." (Ent.)

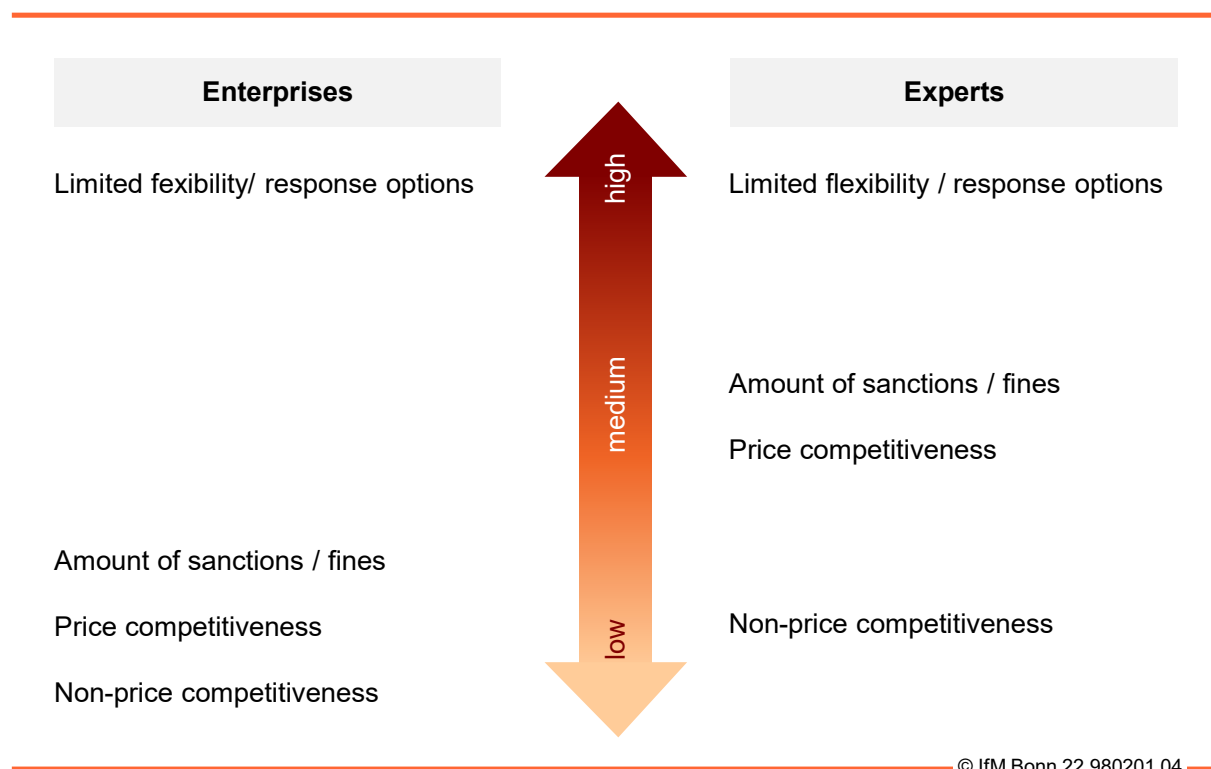
5.3 Burden impacts on business activity

The experts and companies were also asked to what extent the posting requirements have an impact on the companies' business activities (cf. Figure 6). According to the assessment of both groups, negative effects of bureaucracy arise primarily with regard to the restriction of entrepreneurial flexibility. This is particularly critical, as a significant competitive advantage of small and medium-sized enterprises is based precisely on their high reaction and adjustment speed. Spontaneous postings, e.g., in the event of a repair at the customer's site required at short notice, are hardly possible for companies if they want to comply with all the necessary rules and procedures.

"If you do it correctly, then we are limited in our flexibility. For us, service often means troubleshooting, and that often requires flexibility, and that may be thwarted." (Ent.)

"With our small size, we have to be dynamic and fast. If there is an emergency at a customer, we sometimes think: do we put the switch on the whole posting or do we do it the small unofficial way and not report it at all, which would not be correct." (Ent.)

Figure 6: Burden effects on business activities



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Source: Own representation.

However, several impressive companies, especially from the mechanical engineering sector, told us that even in the case of short-term postings they make an effort to at least apply for the A1 and notification certificates and send them to their employees' mobile phones before they cross the border when they are already on their way to the customer. Experienced companies that are quite pragmatic in other areas, but are basically "good-willed", have often developed internal checklists and well-established routines to provide their employees with at least the two above-mentioned certificates or proof that they have applied for them.

"It can happen that the employee drives off immediately in the event of an emergency. In the meantime, we prepare the documents and send them to his mobile phone (before he crosses the border). That's quite a strain, because we don't have unlimited staff available." (Ent.)

There is a consensus among almost all companies, however, that in the case of important (emergency) assignments, customer needs have priority in case of doubt. But there are also companies for which short-term assignments are not of major importance and which are therefore not significantly restricted in their

flexibility by the posting bureaucracy, e.g., painting companies with longer order lead times.

The other (potential) effects "controls / sanctions / fines", impairment of "price" or "non-price competitiveness" are less important, with the experts generally attaching greater importance to these aspects than the companies. This again shows that the experts tend to take a higher-level, generalised perspective. In contrast, the statements made by the companies we interviewed are less representative of the totality of all companies in this regard, as all but one of them continue to carry out postings ("survivor bias"). Because of this, it can be assumed that they tend to perceive the discussed negative effects of the posting regulations as less drastic.

Financial risks resulting from controls and sanctions can also affect companies providing cross-border services. In particular, companies that take a pragmatic approach in some areas sometimes feel as if they are under a sword of Damocles considering the potential high fines. Although the fines are quite high in France and the Netherlands, according to the companies, only relatively few controls are carried out there – and if they are, it is mainly in the construction industry and other sectors with an increased potential for fraud. Even when controls are carried out, the French and Dutch inspectors are perceived as ready to talk.

"The French are not so strict about that. They say, well, if there's a control, you have at least 14 days to deliver (missing documents)." (Ent.)

"The Dutch are very willing to talk if you say: 'I can provide this' if some of the documents are not immediately available. The inspectors are always very pragmatic. Unless you step on their toes, then they are anything but pragmatic and enforce their regulations relatively strongly." (Exp.)

In contrast, the control authorities in Austria seem to be comparatively less cooperative, according to both experts and companies. They would control relatively frequently and strictly, especially in the construction sector. With regard to mechanical and plant engineering, interviewees from all three border regions pointed out that companies from Germany were generally inspected significantly less often than, for example, companies from Eastern European countries.

*"Let me put it this way: a German machine builder who assembles a machine in Lorraine. No control authority will think that we're undercutting the minimum wage."
(Ent.)*

The efforts required to meet the administrative obligations gives rise to costs that may reduce the price competitiveness of German posting companies compared to companies in the destination country. The extent to which this is actually the case depends on various factors and can vary from company to company (cf. chapter 5.4). For the majority of the companies we interviewed, the impairment of price competitiveness does not play a significant role; among other things, because their competitive advantages are based more on high quality and high customer benefits. The price is often not the decisive criterion.

From their broader perspective, which encompasses a large number of different (posting) companies, experts – especially in the German-French border region – point out that there are quite a number of (smaller) companies in their region whose price competitiveness has indeed been negatively affected and which therefore have discontinued their cross-border services or have not taken them up in the first place.

*"If up to 50 % of the craftsmen and small businesses cease doing business in France, you can say:
(the impairment of price competitiveness) has played a big role." (Exp.)*

Non-price competitiveness may also be impaired by the administrative burden; for example, if companies are restricted in the flexible provision of services to customers. However, since the majority of companies find ways to deal with the impairment of flexibility, experts and companies do not see significant negative effects in this area.

5.4 Factors influencing the perceived administrative burden

The extent to which a company perceives the administrative requirements associated with the posting of workers as burdensome depends on the interaction of many different influencing factors in the individual case. The influencing factors presented here are not always clearly distinguishable and are in part mutually dependent.

- Influencing factor: Company size

Even though an A1 certificate must be requested for each posted employee and workers must then be registered on the foreign reporting portals, small companies face relatively higher burdens than large enterprises.

"A plant manufacturer with 100 employees has someone in a (specialised) department who does these things for him. But we have only 23 employees.

I work on a major construction site in Austria this year and maybe on one in Spain next year. Then we start all over again." (Ent.)

Bureaucracy ties up financial and personal resources. Since the effort required to fulfil administrative obligations is often of a fixed-cost nature, the burden is higher in smaller companies because it has to be distributed over smaller production volumes (cf. Icks/Weicht 2023). It can also be assumed that larger companies have their own departments dealing with postings. The employees working there have the necessary expertise, which they update regularly. In addition, they usually have a larger order volume, which relativises the efforts and costs associated with posting. In smaller companies, it is often the managing director who deals with this task. This in turn reduces the time, the company management can invest in the original entrepreneurial activities. In addition, due to the often small number of assignments, further administrative costs such as search and information costs are more significant for small companies than for large companies.

- Influencing factor: Frequency of orders

The frequency and regularity with which companies send their employees abroad plays a major role.

"I know what I have to do when I have 20 postings a week.... But it gets more complicated when I don't have regular postings. For example, the last posting was three months ago. How was it? Are there updates? Do I have to change anything?" (Ent.)

In particular, posting for the first time or resuming posting after a long period of abstinence leads to great uncertainty among companies as to which regulations they must comply with. The more frequently they operate across borders, the more confident they are in dealing with them. Especially for small companies that carry out fewer assignments, dealing with the issue of posting is always a challenge.

"When I think of this administrative monster, it is in fact very difficult. It's not profitable to go to Austria for just one assignment. It requires too many efforts. If you were there all the time and had follow-up orders, then maybe it would pay off.

But for individual orders it's too costly." (Ent.)

- Influencing factor: Economic sector

Also relevant is the industry in which the company operates. If it is an economic sector that has frequently attracted attention for misconduct, such as the construction or meat industry, stricter conditions apply here than in sectors that were rather inconspicuous in the past. In addition, they are usually exempt from bureaucracy-reducing exceptions. Additional administrative burdens can also result from the specific occupational group. For example, technical professions such as electricians often have to meet more complex (trade law) requirements than other occupational groups.

The companies' service portfolio also plays a role. For companies that offer specific products and services with unique characteristics, cross-border work assignments will be more profitable than for companies operating in markets with fierce price competition. For example, it is easier to pass on bureaucracy costs to customers/clients in the case of specific, high-quality services than in the case of rather standardised services, e.g., in the construction industry.

"We produce very high-priced machines, more in the seven-figure range. Our after-market department prices that in somewhere. They have a fixed price and then they just add some € 1,000 or so. That doesn't stand out in the total sum." (Ent.)

- Influencing factor: Experience

With the duration of the posting activities, companies develop a routine that facilitates the implementation of the administrative requirements.

"After a certain time, you actually know what you have to do." (Ent.)

The experiential knowledge that grows with the frequency and regularity of postings also makes it easier to decide whether and to what extent companies comply with the administrative requirements. How do the companies assess the probability of being inspected? Is it necessary to have all the required documents already when crossing the border, or does the company know that the documents can also be submitted later in the event of an inspection?

"That is also the experience you can gain over the years. You realise what is being controlled, what is important, what matters and where can the company itself also reduce the workload a bit." (Exp.)

- Influencing factor: Decision-making autonomy

To varying degrees, the companies allow themselves a certain amount of leeway in assessing and complying with the administrative requirements. Some of the companies act in strict compliance with the law and, in case of doubt, tend to discontinue their posting activities when confronted with heavy administrative burdens. Other companies, in contrast, take a more pragmatic approach and fulfil the obligations only to an extent that they consider appropriate and proportionate by weighing up costs and benefits.

"I must honestly say: the whole repair takes four hours, so I can't do extensive research on collective wages. I always have to look a bit at costs and benefits. So, once in a while I have to say: 'We do this now (the informal way)'." (Ent.)

This approach can also be observed in many companies in other (thematic) fields of bureaucracy. Enterprises often practise so-called "autonomous bureaucracy reduction" when they perceive the administrative burdens of rules and legal regulations as disproportionate and unreasonable (cf. Holz et al. 2019).

- Influencing factor: Supporting organisations

Chambers of crafts, chambers of industry and commerce, business associations and business development agencies support the posting companies, inter alia, through information events, advice and the provision of information on their respective websites. For example, the chambers frequently offer basic advice on the general requirements that companies must fulfil when posting workers. More detailed questions can be discussed through individual consultations. For example, if required, companies can get to know the practicalities of the SIPSI reporting portal and the application of the Carte BTP by going through the procedures jointly with specialised staff from business chambers.

Some chambers also offer support for the complex comparative wage calculations. Other chambers act as a one-stop shop for the posting of workers. Here, all services concerning this issue are bundled in one department. Likewise, companies can inform themselves about the legal requirements for the provision of

cross-border services on electronic information platforms, such as the Bavarian Service Compass.¹⁰

The companies surveyed are aware of these offers and are very glad to take advantage of them.

"Without the support of the craft chamber, this would be even more difficult. The advice from the chamber is very helpful for our company." (Ent.)

¹⁰ Available at: <https://international.bihk.de/laenderinformationen/dienstleistungskompass.html>

6 Consequences of the administrative burden

6.1 Reaction patterns of the companies

The ways in which companies react to administrative requirements are very diverse and not clearly determined. They result from the interaction of the various influencing factors mentioned above, which are developed differently in each company. Based on the conducted interviews, the following briefly outlines the fundamental ways in which companies respond. This is done with the exclusion of the fraudulent "black sheep", which are not directly the subject of this study.

Despite extensive information and awareness-raising campaigns by business chambers and business associations, there is still a group of (smaller) companies that have no knowledge of the posting regulations and procedures and therefore do not observe them when sending workers across borders.

"There are certainly a number of companies that are still not thinking about this at all, perhaps they still don't know about it and accordingly do not report anything."

(Exp.)

"Some companies call and say they have heard that now something has to be done in France. But something has to be done there for already seven years. So, despite all our campaigns in the press etc., when they have an order and are inspected, they are quite surprised." (Exp.)

For other companies located in the immediate vicinity of the border, the border is virtually non-existent in their perception – not least as a result of the European Single Market and the free movement of persons ("Schengen Agreement"). Whether a service is provided in Cologne or Venlo or in Bad Reichenhall or Salzburg, for example, makes no difference to these companies and is normal daily business (which in itself speaks for the success and great importance of cross-border regional integration in the EU). Another group of companies is vaguely aware that there are posting rules, but they do not care about them and continue to send employees across the border informally, as they have always done.

"Some companies say: 'We've been doing this for the last ten years. Nothing ever happened.' – That's what companies do; has always been like that."

(Exp.)

On the frequency of non-compliance with the posting rules due to ignorance or “negligence”, the experts were unable to provide precise information. However, it can be assumed that there is a non-negligible number of such companies.

According to the interviewees, the vast majority of companies that are familiar with the posting regulations support the fundamental objective of the Posting of Workers Directive to avoid wage and social dumping and to ensure fair working conditions for posted workers.

"Most companies understand that it is really about preventing wage dumping, exploitation and so on. They also basically agree with all these regulations, that healthy wages are paid and the like. Because that also makes them more competitive."

(Exp.)

"We are in the EU. We want to prevent undeclared work. Everyone should earn the same in the same place. That's all very well, but with all this bureaucracy, they're actually doing more harm than good." (Ent.)

For companies that are aware of the posting regulations, two different ways of reacting can basically be distinguished: discontinuing or greatly reducing posting activities, and (largely) complying with the rules or a pragmatic “coming to terms”.

The first reaction mode – discontinuation or strong reduction – is chosen if the administrative burden is prohibitively high from the perspective of the companies concerned and has exceeded the "threshold to inadequacy" (cf. Holz et al. 2019). This may mean that it is no longer economic for the company to post workers for cross-border service provision – for example, because the order volume is too low in relation to the administrative costs and thus only generates low or no profit contributions. Furthermore, a (far-reaching) discontinuation can also occur because the opportunity costs of the company resources to be used are too high – for example, because lucrative orders can be served domestically with less bureaucracy. Finally, more "psychological costs" and resentment may also play a significant role in the discontinuation or sharp reduction. Some entrepreneurs simply have no desire to operate across borders under conditions that are perceived as adverse and business-unfriendly.

"(Posting) is not only too cumbersome and expensive.

They also don't want to work like that anymore. They don't want to do it." (Exp.)

"I always used to report several employees for the construction site. And if one of them dropped out, it didn't matter. Now, when there is a change of employees or a construction stop, I have to report the employees anew. That was about the time when we disengaged." (Ent.)

"The deterrent effect of these (administrative requirements) as a whole, that you just say: 'Okay, then we won't do it.'" (Exp.)

Particularly in the German-French border region, according to the assessment of our interviewees, a considerable proportion of companies seem to be reacting to the administrative burden by discontinuing or reducing the posting of employees. This is also confirmed by several surveys conducted in the region. For example, a survey conducted by the Chamber of Commerce and Industry (IHK) Südlicher Oberrhein in 2022 showed that 10% of the participating companies are thinking about discontinuing their French business; 30% want to reduce it (cf. IHK Südlicher Oberrhein 2023). Similar results are also provided by an ongoing survey by the Chamber of Crafts (HWK) Pfalz (2023).

However, there is also a large group of companies that ultimately do not reduce the scope of their cross-border postings and services. What proportion of companies – among them – (can) behave fully and permanently compliant with the law is debatable.

"Through the acquisition of an order in France, the topic of posting has now been discussed for the first time in our company. And of course, we want to do it well. Then we got in touch with the Chamber of Crafts, that gives us great support." (Ent.)

"The majority of companies want to do everything right. They all don't want any trouble. And then there are also very active companies that do everything and secure themselves three or four times. There is a very large number who don't want to do anything wrong, who also don't want to cut social benefits." (Exp.)

"I would like to know a company that does it all and does it 100%." (Ent.)

Another subgroup, which also does not reduce the posting of workers, comes to terms with the administrative requirements in one way or another. For these companies, cross-border business is too important to be deterred by what they see as often disproportionate administrative requirements.

"We are not reducing our services. We are practically reducing our costs and efforts through creative solutions in all directions." (Ent.)

*"We now have an attractive order request from France.
We don't want to say no, just because of the bureaucracy." (Ent.)*

The adaptation and coping strategies of these enterprises often include various forms of "autonomous bureaucracy reduction" (cf. Chapter 5.2.3), (semi-) legal circumvention activities and also completely legal evasion measures. Above all, the pragmatic handling of administrative requirements and selective compliance seems to be comparatively widespread in all three border regions. Many companies that support the basic intention of the Posting of Workers Directive and also have good will to fulfil the rules do not see themselves in a position to fully comply with them with justifiable, appropriate efforts and also doubt the necessity of some of the administrative obligations. In their view, efforts and benefits are often out of proportion, for example when the same administrative effort is required for two hours of repair work abroad as for a two-week posting. They feel almost pressured to make their own comparison between target and applied means and to weigh up the costs and benefits, which do not (yet) exist in this form in the underlying legal norms.

*"We have obtained much information and advice from our Chamber of Crafts.
We keep doing these seminars, we keep track of news (legal changes),
we are registered in the Austrian service register. We do all that.
But at some point, I draw a line and say: 'This just goes too far.'" (Ent.)*

Depending on the specific constellation or concrete posting case, different approaches may come into play, whereby the companies often carry out risk assessments.

*"We decided three years ago: How do we deal with this issue?
In some countries, we take the risk and don't report our postings,
but we certainly wouldn't do that in Switzerland and in France." (Ent.)*

The legal circumvention and evasion activities¹¹ of the posting companies are also quite complex and include, for example:

- Establishment of a subsidiary in the target country,
- Co-operation with specialised service providers in the target country,

¹¹ In this context, one entrepreneur pointed to an aspect that has received little attention so far. Due to tightly timed family obligations, employees would be increasingly critical of postings and longer absences from home. For this reason, companies would also have to look for measures that can partially replace the posting of employees.

- Training and qualification measures for employees of the client company in the target country so that they can carry out the service independently,
- Co-operation with freelance service providers from Germany who provide services on the company's behalf in the target country,
- Services in the target country are only provided by the entrepreneur (with no obligation to notify),
- Increased use of digitalisation to replace physical services (remote maintenance, predictive maintenance, digital services, etc.).

The widespread pragmatic way in which companies deal with the administrative requirements and the search for evasive and circumventing measures indicate, according to many interviewees, that there is a greater need for revision with regard to the design of the administrative requirements. Not only one entrepreneur would like to see

"...a solution where everyone can behave in accordance with the law and does not have to come up with any evasion strategies." (Ent.)

6.2 Consequences for (potential) clients and customers

Especially in the German-French border region, customers and clients are feeling the increasing withdrawal of German companies. For French consumers living in the border region with Germany, it is now extremely difficult to find craftsmen on the German side of the Rhine who are willing to offer their services across the border (cf. Zentrum für Europäischen Verbraucherschutz e. V. 2020).

"French customers already complained three years ago (before the Covid-19 crisis) that German craftsmen could no longer be commissioned." (Exp.)

Despite the high level of economic interdependence in the German-Austrian border region, a decline in cross-border business activities is also sometimes felt in Austria in certain sectors or regions. Overall, however, this seems to be less pronounced than in the German-French border region. There are also partly different perceptions among the interviewed experts – depending on their regional and sectoral responsibility.

"There is a tangible concern. Companies with a good order situation are turning down orders because of the high additional administrative costs in Austria." (Exp.)

"In the Upper Bavaria/Tyrol region, regulations are not the big stumbling block. Someone who receives an order from Austria can and will accept it. Well organised companies can manage it." (Exp.)

For the German-Dutch border region, our interlocutors had hardly any concrete evidence for possible negative effects of the administrative regulations on customers and clients. Nevertheless, there may be restrictions in some areas because many (craft) companies in this border region currently have a high order backlog and at the same time suffer from a lack of skilled workers and material shortages. As a result, in some cases there may be longer waiting times or even refusals to respond to customer enquiries. However, bureaucracy does not play a central role in this.

"The companies that worked in the Netherlands before the notification requirement, are still working there. However, the need for foreign construction sites is somewhat lower at the moment anyway." (Exp.)

6.3 Consequences for the border region and the internal market

The administrative barriers in the area of cross-border posting of workers can have (negative) consequences that go well beyond the effects on individual companies described above. In which areas and to what extent they occur depends largely on how the administrative regulations and procedures in the respective border regions or EU Member States are designed and how companies react to them.

From our interviews, we have derived significant consequences in the three areas of "internationalisation", "EU Single Market / regional cross-border integration" and "rule of law" which we briefly outline in the following.

In the area of "internationalisation", the regulation of the posting of workers limits the economic potential of cross-border trade in services in the EU. This has experienced a strong expansion over the past decades – not least due to the technological progress that increases the tradability of services (cf. Breinlich 2018). Above all, geographical proximity also favours the cross-border exchange of services (cf. Head/Mayer 2014). While obstacles to trade in goods have been successively reduced in the EU, barriers to trade in services have tended to be built up over time, so that there is still great potential for further welfare gains here (cf. Felbermayr et al. 2018). A revised design of the posting of workers regulations can also make important contributions to tapping this potential.

In their current form, the administrative burdens related to the posting of workers also limit the economic internationalisation potential in border regions. The export of goods and services to the neighbouring border region is often the first

step in the internationalisation process of companies. The border regions therefore also have a "springboard function" for internationalisation (cf. Kranzusch/Holz 2013). This is not insignificantly impaired by the high level of bureaucracy involved in the posting of workers. Newcomers who want to offer services across the border for the first time are especially confronted with a relatively high market entry barrier. It is not uncommon for such companies to go through a lengthy process of weighing up whether they really want to take on the additional administrative burdens. There is a risk that some of these (potentially) high-growth companies will be held back in their development process due to these market entry barriers.

"At the beginning, I also thought: 'Do you want to deal with all this extra trouble? But then I also said: 'Enschede is such a big city just outside the door and you basically cannot stay away from this big market.' It's good that we made a positive decision back then, because it has become a self-sustaining success story." (Ent.)

Furthermore, a curtailment of the (regional) internationalisation potential also results from the fact that companies that have ceased their posting activities due to the administrative burdens are confronted with high (re-)entry barriers in the event of their resumption.

"The barriers to re-entry are certainly high. You have to rebuild your customer and supplier base; see if the legal regulations have changed, etc. That would require a considerable amount of information." (Ent.)

Negative consequences in the area of "EU Single Market / regional cross-border integration" relate, inter alia, to regional economic co-operation and the perception of the EU. In the minds of many people – including entrepreneurs – the European Union and the European Single Market are generally associated with the idea of freedom of movement, cross-border co-operation and the joint development of innovation and diversity potential. This contrasts with the increasing administrative burdens on the posting of workers, which are frequently regarded as disproportionate. These obstacles are often perceived as a step backwards in the integration process. For many companies and regional stakeholders, they send a negative signal that cross-border services, co-operation and exchange may in the end not really be desirable.

"The colleagues from Strasbourg want to build a platform to promote co-operation between German and French companies. This law on posting stops this development." (Exp.)

"We have to work together, travel from one country to another, hold meetings, do assembly work, do research and development. We need that. That's what drives the region forward. And we don't need such administrative obstacles there." (Exp.)

"A substantial simplification. That would also convey a different image of the EU. The EU is always promoted as a single economic area, and yes, it's ok for goods. But we see considerable dissatisfaction in numerous conversations." (Exp.)

Businesses cannot understand why, in a single internal market, each Member State has adopted different rules and procedures and why no visible, targeted harmonisation efforts are being made by the European Commission.

"The companies all say: 'We have the EU, we are in a harmonised market. Why is everything so complicated?' If you could simplify it, it would greatly increase the appreciation of the EU". (Exp.)

Atmospheric tensions that put a strain on cross-border co-operation can also arise when a majority of companies in one part of the border region believe that they are confronted with higher administrative burdens, stricter controls and penalties when crossing the border than their counterparts from the other side of the border. This aspect was mentioned several times by entrepreneurs from the German-French and German-Austrian border regions, for example.

"I don't know if it's just as difficult the other way round from Austria to Germany. I always have the feeling that the Austrians control more than they do here. I feel that many more companies now come over from Austria to us than vice versa." (Ent.)

Negative consequences in the area of "rule of law" may be less obvious at first glance. For the EU Member States as free constitutional states based on the rule of law, it should not be a permanent state of affairs that over a longer period of time a large proportion of companies, even though they have good will, are unable to comply with administrative regulations (with appropriate efforts) or judge them to be unrealistic and nonsensical. Responsible companies that make important contributions to society in many other areas (cf. Schleppehorst et al. 2022) want to be able to act in accordance with the applicable legal situation and not be pushed into circumvention and evasion. The mood of many companies is currently often characterised by feelings of being overwhelmed, discontent, and disappointment. Not least in order to counteract the disenchantment

with politics and bureaucracy, significant simplifications are necessary in the opinion of our interlocutors.

The design of the posting regulations and procedures takes place in a complex field of tension where considerations of economic and social policy meet. Here important legal and protective interests such as the protection of working and employment conditions and the access to the EU services market must be weighed against each other. Consensually defined goals can be achieved by different means, each associated with different levels of administrative burdens. This weighing process should also include, *inter alia*, the consequences outlined above.

7 Administrative burden of posting workers to Germany from a Dutch perspective

7.1 Posting-related administrative requirements

Dutch companies that post an employee to Germany or another EU country generally have to apply domestically for an A1 certificate ("A1-verklaring voor sociale verzekeringspremies aanvragen") – irrespective of the posting-related reporting obligation. In practice, this is often issued not only for one posting, but for a longer period of validity. The application is made via the online platform of the Social Insurance Agency for Dutch National Insurance (SVB; Sociale Verzekerings bank). In addition to personal data of the assigned employees, information on social insurance and a copy of a valid identity card are required.

Furthermore, the posting-related regulations and reporting requirements in Germany must also be fulfilled. Information on this and the necessary forms can be found on the German customs information portal in German and in English.¹² In order to safeguard equal and appropriate working conditions, posting companies must, depending on the sector, fulfil requirements in accordance with the Posted Workers Act (AEntG), the Minimum Wage Act (MiLoG), and the Act on Temporary Agency Work (AÜG). Employees posted to Germany must be paid at least the statutory minimum wage applicable there.¹³ In addition, they are entitled to further wage components such as special collectively agreed minimum wages, allowances and holiday pay, insofar as these are prescribed by law or in generally binding collective agreements.

The scope of the reporting obligations depends on the respective economic sector. In accordance with a risk-based approach ("targeted approach"), the reporting obligation under the Posted Workers Act is limited to companies from certain sectors of the economy that are considered to be more risky.¹⁴ A reporting obligation may also arise from the Minimum Wage Act for companies from certain sectors listed in Article 2a of the Act to Combat Undeclared Work and Unlawful

¹² Available at: https://www.zoll.de/DE/Fachthemen/Arbeit/Anmeldungen-bei-Entsendung/Anmeldung/anmeldung_node.html (Zoll 2023).

¹³ Since 1 October 2022, the statutory minimum wage amounts to €12 gross per hour worked.

¹⁴ E.g., mainstream construction, meat industry, electrician's trades but also care services as well as education and training services. Zoll (2023) contains a complete list of the sectors concerned.

Employment (SchwarzArbG).¹⁵ As a further relief for the sectors subject to reporting under the Minimum Wage Act, employees whose regular gross monthly remuneration for the last twelve full months exceeds the sum of € 2,784 are exempt from the reporting obligation (cf. Article 1 (1) of the Ordinance on Minimum Wage Documentation Obligations (MiLoDokV)). Companies for which there is no reporting obligation under both the Posted Workers Act and the Minimum Wage Act are thus (largely) relieved from posting bureaucracy.

Companies in the listed sectors with obligatory notification must report their employees posted to Germany using the digital reporting portal Minimum Wage.¹⁶ The declaration can be made in German, English or French. For six other languages, there are filling-in aids, but not for Dutch. The declaration must contain, inter alia, biographical data of the posted employee and the person responsible as well as information on the sector, start, duration and place of employment in Germany (cf. Zoll 2023). The declaration must be accompanied by an assurance in which the posting company declares that it complies with the minimum working conditions in accordance with the AEntG or MiLoG. If the posting company carries out activities in Germany that belong to a craft requiring authorisation, it must also submit a written service notification to the locally competent Chamber of Crafts as proof of qualification. This is valid for one year throughout Germany.

Violations of (formal) posting-related regulations can be punished as administrative offences with fines of up to € 30,000. For breaches of essential terms and conditions of employment, fines of up to € 500,000 may be imposed. Fines of more than € 200 will be entered in the central business register (“Gewerbezentralregister”). Companies that have been fined at least € 2,500 may be temporarily excluded from participating in competitive bidding for public supply, construction or service contracts (cf. Zoll 2023a).

7.2 Development of bureaucracy over time

The risk-based approach of German posting law has contributed significantly to the fact that Dutch companies – insofar as they do not belong to certain risk

¹⁵ These include, for example, setting up and dismantling trade fairs and exhibitions, building industry, meat industry, catering and hotel business, industrial cleaning, logistics industry, and the private security sector. Zoll (2023) contains a complete listing of the industries concerned.

¹⁶ Available at: <https://www.meldeportal-mindestlohn.de> (Zoll 2023b).

sectors – have been largely relieved of administrative burdens in the context of posting of workers.

For the remaining posting companies, the required administrative burden has gradually increased over time in the view of the Dutch respondents, although various individual measures have also provided partial relief.

For a long time, many Dutch companies were only little aware of the posting-related requirements and the rules were not strictly enforced by the German authorities either.

"Burdens have increased since 2015. Until then we had no notification. We never did notifications before." (Exp.)

"Several years ago, it was only an A1. That was enough. And we didn't have to use a portal. Now it has increased, not only for Germany, but also for the other countries." (Ent.)

"Rules have always been in place, but they were poorly enforced." (Exp.)

On the one hand, the mandatory use of the digital reporting portal has increased the administrative burden for companies subject to the reporting obligation, as the higher degree of formalisation requires the entry of more extensive and complete information. On the other hand, digital administrative procedures are generally viewed positively by Dutch companies, not least because they are used to a higher degree of administrative digitalisation in their home country.

"It became (both) more formalized and easier because of the electronic system. Now, you are supposed to answer all the fields. Before, you made the notification on paper and maybe you completed some of the points and left out others." (Exp.)

"In 2015, we started with fax notification. They had to send the notification through fax. That was strange. I think a lot has improved since then." (Exp.)

With the reform of the EU Posting of Workers Directive to be implemented by the end of July 2020, the requirements for Dutch posting companies became more stringent. The expansion of the working and employment conditions to be guaranteed by companies increased the complexity of posting workers, which is difficult for many (smaller) companies to keep track of. As a result, in particular, smaller Dutch companies now frequently seek assistance from advisory institutions.

"There are some smaller companies who think it's way too complex and they use a specific advisor or an intermediate who helps them with that kind of stuff". (Exp.)

In contrast, other experts are of the opinion that although some regulations have been added after the reform of the posting law, the perceived increased burden rather stems from the greater attention paid to the implementation of the rules.

"Since the revision of the posting of workers directive there aren't a lot more extra rules in place. We simply pay more attention to enforcing them." (Exp.)

A reduction in "operational" bureaucracy was achieved for many companies by making the German reporting portal more user-friendly over time. For example, posting companies can now easily use data already entered before for subsequent notifications.

"You can retrieve employee data you had put in the portal before. Translations are better, frequently asked questions... So, it really became better." (Exp.)

Overall, in the opinion of the Dutch experts and companies, the German posting system is currently one of those with a relatively low burden intensity in a European comparison.

"Compared to other EU-countries, posting bureaucracy in Germany is acceptable." (Ent.)

7.3 Burden intensity of the administrative sub-steps of the posting of workers

Dutch companies that intend to post workers to Germany (and other EU Member States) and are obliged to notify must go through various steps that are associated with varying degrees of administrative burdens. In our semi-structured interviews, we asked both the Dutch experts and the companies to rate the burden intensity of the necessary sub-steps in their respective economic sector. For the assessment, we provided again a scale from 0 (not at all burdensome) to 10 (very burdensome). In the following, we present the survey results separately for experts and companies. The results provide indications of the areas where economic policy action is primarily needed.

7.3.1 Assessments of the Dutch experts

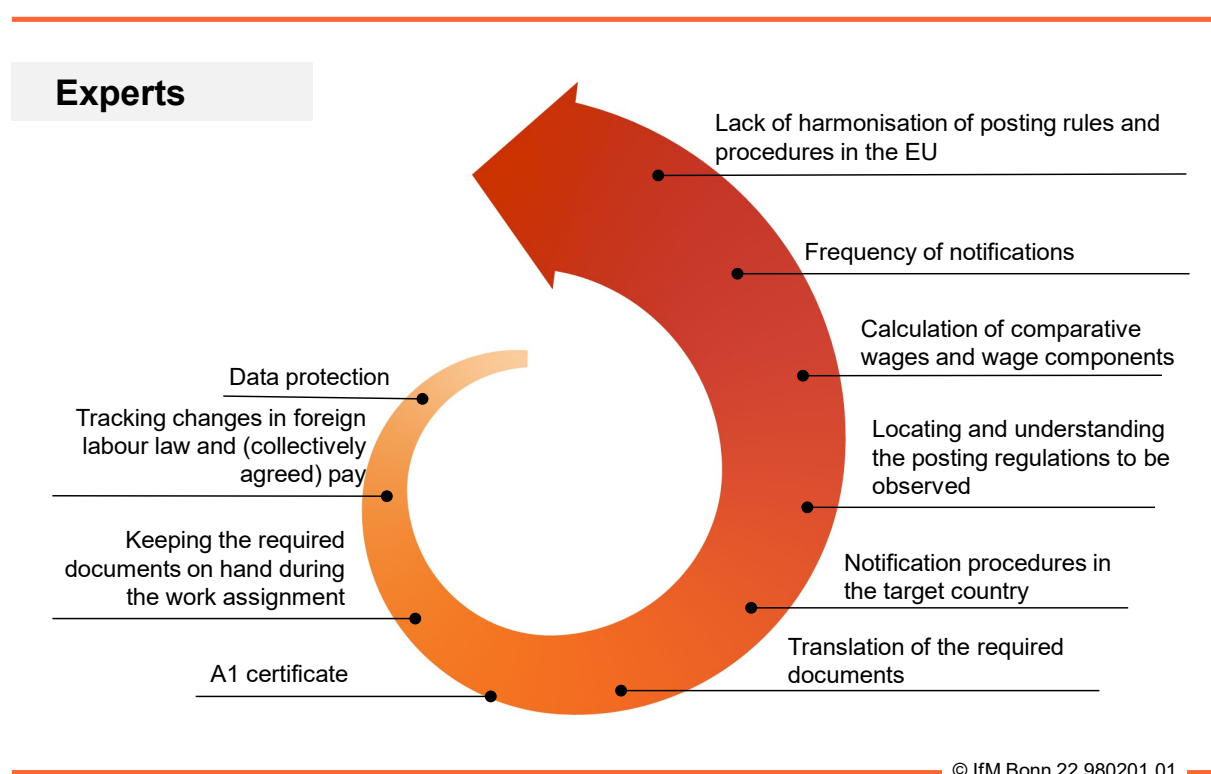
First of all, it should be noted that the representatives from business associations assess the German risk-based approach – from a company perspective –

as very positive. The targeted approach limits the notification obligations in the context of posting of workers to companies from certain economic sectors that are considered to be risky. Companies that do not belong to this defined circle are thus (largely) relieved of administrative requirements.

*"It's good in the German system, that you only target sectors that are high risk."
(Exp.)*

The expert assessments of the burden intensity presented below therefore refer to companies that are not exempt from the reporting obligations. For these companies, four specific sub-steps are associated with particularly high administrative burdens (between 9.75 and 7.75), while the other sub-steps only have medium or rather negligible burden effects (cf. Figure 7).

Figure 7: Assessment of the burden intensity in Germany from the point of view of the Dutch experts



Source: Own representation.

According to the experts, the greatest burden comes from the lack of harmonisation of posting rules and procedures in the EU. Companies that post workers to several EU countries are confronted with increased bureaucracy due to the great diversity of regulations and procedures, which ties up a great deal of financial, time and human resources and takes them away from the actual

business activity. The business experts see a great need for economic policy action in this area. The goal must be to relieve companies of unnecessary bureaucracy on the one hand and on the other hand to release the advantages of the European Single Market and the freedom to provide services to a greater extent.

*"Every EU Member State has its own system and its own procedure.
It could be so much easier." (Exp.)*

A high administrative burden also results from the frequency of the required notifications. If, for example, employees are posted several times within a project – with time interruptions – each time a new notification would have to be made. Similarly, changes in the posted persons (e.g., due to illness) or the duration of the posting (e.g., longer or shorter work assignments) – frequently occurring in the company practice – would have to be reported separately with a new notification. For some companies, this may mean that a member of the HR department spends one or two days a week alone preparing and carrying out posting notifications.

"They have to do it for every project, again and again and again." (Exp.)

Particular criticism is levelled at the high reporting burden for short-term postings, which also have to be reported individually and in full extent. Belgium is cited as a positive example in this context. There under certain conditions only one declaration is required at the beginning of the year for various short-term postings of up to eight days during the year.

"You can just do one notification and say: 'I'll be working in Belgium for the coming year on several locations: don't know when, don't know why, but I'll be working there with my employees.' And then you're done for the whole year." (Exp.)

According to the business experts, the calculation of the comparative entitlements of posted workers is also very burdensome. If posting companies wanted to calculate the comparative entitlements of their posted employees in Germany with regard to salary, allowances, holiday entitlements etc. in accordance with the (legal) norms, this would simply not be possible with reasonable effort. Even proven industry experts are confronted with great difficulties here. Moreover, there are hardly any significant differences in pay and working conditions between the Netherlands and Germany. If companies nevertheless carry out a

comparative calculation, they often limit themselves to two or three selected components such as standard salary, working hours and travel allowance.

"Trying to compare this, is really difficult. Well, it's what the law says.

So, there's a lack of compliance here." (Exp.)

In addition, finding and understanding the posting regulations to be observed also involves high administrative burdens. The burden is particularly high for companies that deal with the posting regulations of the respective destination country for the first time. Once companies have built up a certain level of experience over time and then carry out postings regularly, the corresponding effort decreases. The burden can also be reduced by making use of advisory and information services provided by business associations. Furthermore, in the Netherlands, SMEs in particular seem to consult private business consultants relatively often for support and advice on the posting of workers.

"For companies themselves, it's very difficult. So, that's why they want to use an adviser who really knows this and can help them to understand." (Exp.)

The practical implementation of the mandatory notifications in Germany usually requires a manageable effort. Companies that are familiar with the functioning of the German reporting portal only need about 10 to 15 minutes per notification. In contrast, for many companies, the procedure for the recognition of professional qualifications in certain crafts – requiring specific authorisation – is more difficult, as there is no corresponding system in the Netherlands.

Furthermore, difficulties related to reporting procedures sometimes arise when posting companies – as is often the case in the Netherlands – work together with solo self-employed persons ("*Zelfstandige zonder personeel*", ZZP-er) in work assignments. This form of business co-operation is difficult to map in the German notification system and therefore causes greater administrative burdens in these cases.

"The team composed of own employees and different (external) entrepreneurs all working together doesn't fit in the German system.

So, the paperwork for those ZZP-ers is really difficult." (Exp.)

7.3.2 Assessments of the Dutch companies

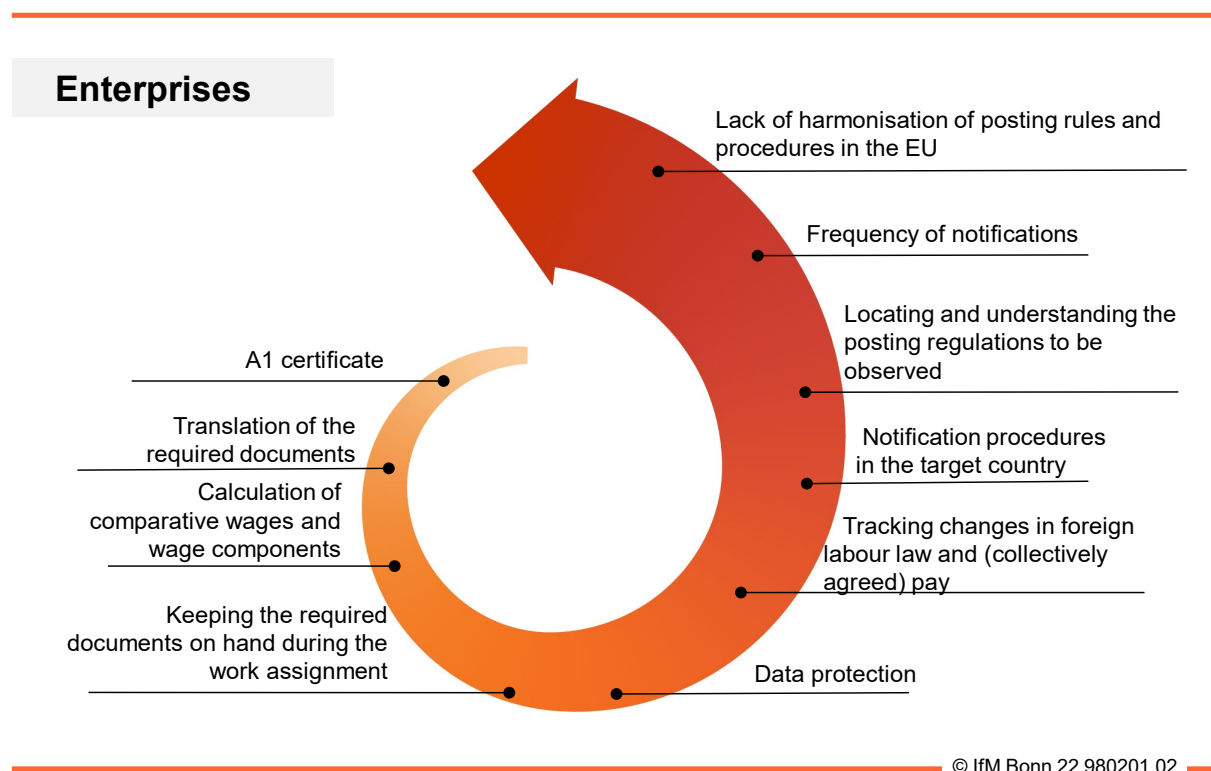
The Dutch companies identify three sub-steps that are associated with particularly high administrative burdens (between 9.33 and 6.83) (cf. Figure 8). These

are also identical in terms of content and sequence with those previously mentioned by the experts.

Hence, the lack of harmonisation of posting rules and procedures in the EU causes the greatest administrative burdens, especially for those companies that post workers to many different EU countries.

"That's the main issue. We are always talking about one Europe and one happy family, but we have a chaos in rules." (Ent.)

Figure 8: Assessment of the burden intensity in Germany from the point of view of the Dutch companies



Source: Own representation.

The companies are also critical of the frequency of the notifications, as it is very time-consuming to constantly keep track of and check whether they have to make new notifications or modify existing ones. Problems arise not only when new notifications have to be made for many shorter postings, but also when, within a longer (construction) project, new declarations have to be made repeatedly for the posted workers for the individual deployment phases, even though the underlying facts relevant to the posting have not or only slightly changed.

"I'm actually just busy checking, if there's anything else I need to report." (Ent.)

Also from the companies' point of view, a great deal of bureaucracy is involved in finding and understanding the posting regulations. This is due, inter alia, to the fact that the subject areas relevant to posting (collective bargaining systems, social security, labour law) are often structured very differently in Germany and the Netherlands. Besides, terms are defined differently, and German federalism complicates things further.

When calculating the comparative entitlements of their posted workers, companies often take a pragmatic approach. They assume that the differences to the wage and working conditions in Germany are small. Due to the shortage of skilled workers also in the Netherlands, they usually pay (significantly) above collectively agreed wages. Even without a detailed comparison of the specific wage levels, allowances, etc., companies often implicitly assume that there is no need for extra payments or benefits – and thus no need to prove this at great expense.

"The systems are completely different. You cannot compare it. It is very time consuming. So, well, we don't calculate it." (Ent.)

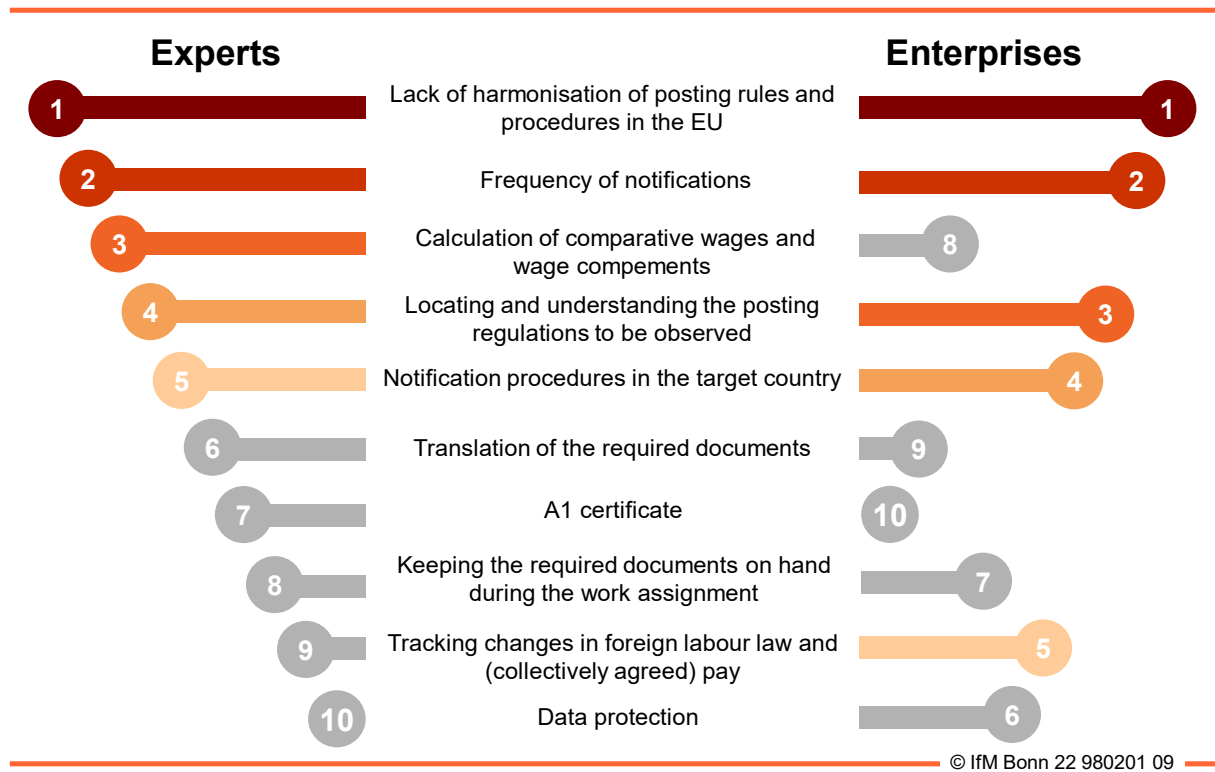
7.3.3 Comparison of the assessments of Dutch experts and companies

A comparison of the assessments of experts and companies shows that there is essentially a great deal of agreement between the two groups on the most important administrative burdens in the posting process (cf. Figure 9). Economic policy makers at EU and national level thus receive clear indications that improvements should be sought in particular in the areas of "harmonisation of posting rules and procedures in the EU", "frequency of notifications" and "locating and understanding the posting regulations to be observed".

The same applies in a similar way to the calculation of the comparative entitlements, although companies rate the burden intensity in this sub-step significantly lower. However, the differences in assessment result primarily from the fact that companies often do not act in full compliance with the law. Due to the required excessively high efforts and the resulting low practical consequences, companies often do not carry out the comparative calculations at all or only cursorily. As a result, the actual burden intensity is strongly reduced. For reasons of preserving the rule of law and legal conformity, however, the divergence between legal requirements and actual business practice should not be a permanent state of affairs. It is important to find ways and solutions that achieve the regulatory goal of preventing social dumping and inadequate working conditions

at a reasonable cost, without placing excessive burdens on companies that clearly do not have a great “potential for damage”.

Figure 9: Burden intensity of posting to Germany – comparison of Dutch experts and companies



Source: Own representation.

With regard to the remaining sub-steps, there are only gradual differences in assessment between experts and companies. In addition, these are of relatively little practical relevance, as the burden intensity is assessed as comparatively low by both groups.

The requirement to translate the necessary posting documents into German tends to be associated with greater burdens by the experts – again based on the legal requirements – than by the companies. The latter often handle this requirement pragmatically, e.g., by translating only part of the documents, using online translation services or using standardised documents with recurring content. The administrative burden related to translation is naturally higher for companies that serve a large number of target countries with different languages.

In contrast to the common practice in Germany, where companies usually have to apply for a new A1 certificate for each posting, most Dutch companies benefit

from the possibility of obtaining an A1 certificate for a longer period of one to two years.

"We have to do this once a year for all people. It takes us half a day to fix that. But then it's fixed and we are free for one year." (Ent.)

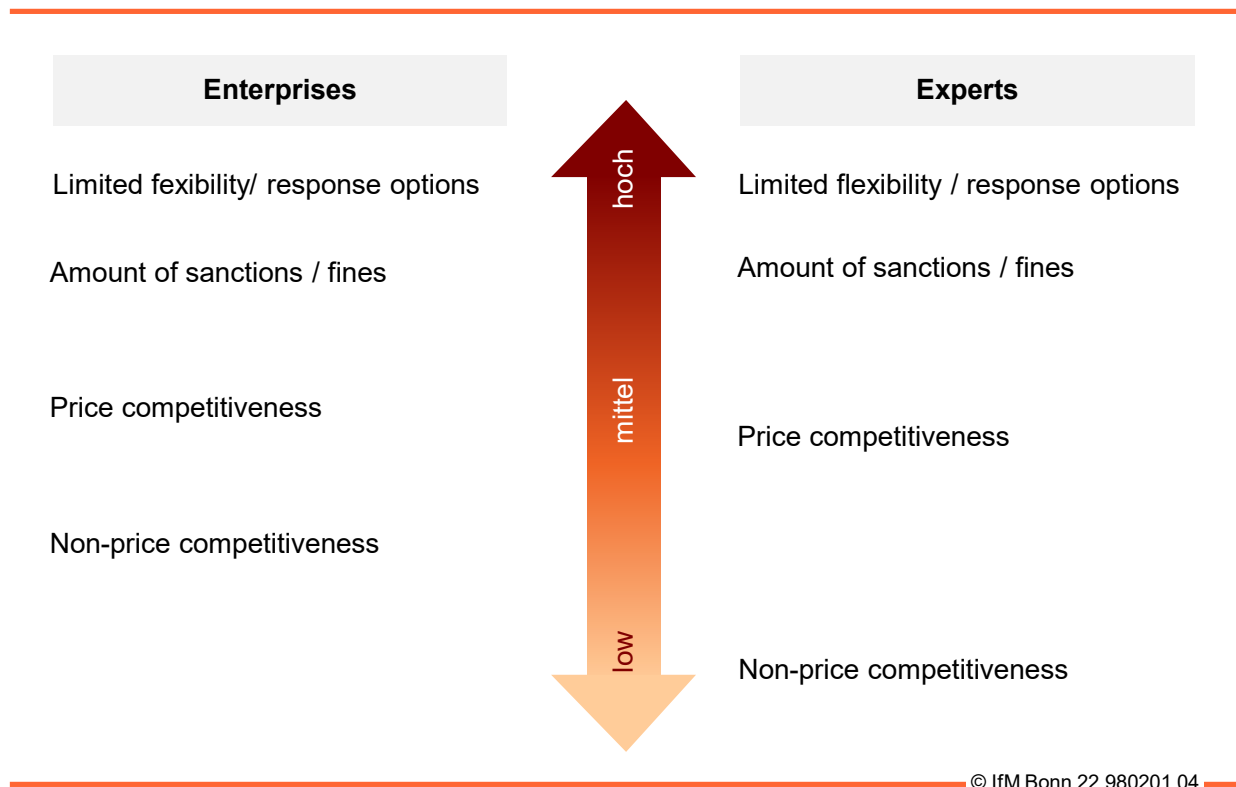
For both experts and companies, the administrative burdens of keeping the necessary documents during the work assignment and guaranteeing data protection do not play a central role. According to information from both groups, it is widespread practice that posting companies transfer important, person-specific documents (such as wage and salary statements, payment receipts, employment contracts, working time records) to the mobile phone of the posted workers or use special apps that provide access to these documents. If some of the documents are not available or not available in time, the companies often want to (and can) submit them later in consultation with the control authorities. This again reflects the basically pragmatic approach of many Dutch companies.

"We try to do as much as asked. We deliver the paycheck, the A1 declaration. We have the labour contract in German. We have it all and they can show it digitally. If still something is missing, then we can have the discussion." (Ent.)

7.4 Burden impacts on business activity

The various administrative requirements related to the posting of workers are not only associated with internal burdens by tying up scarce time, financial and personnel resources, but can also have a negative impact on the business activities and competitiveness of companies. The extent of these more external burdens is influenced, among other things, by the specifics of the sector and the company. These include, for example, the ability to plan and the lead time of service assignments abroad, the order amount, the frequency of the assignments and the number of target countries. The burdens on business activity can therefore vary from sector to sector and from company to company.

Figure 10: Burden effects on the business activities of Dutch companies



Source: Own representation.

The assessments of the Dutch business experts and companies on the effects of the posting bureaucracy on business activities are almost identical (cf. Figure 10). Both groups agree that the biggest negative effect is the limited flexibility. If, for example, companies are commissioned at short notice by a customer in Germany (e.g., to prepare a trade fair participation) or if machine builders have to fix a defect in a delivered machine, the companies do not always have enough time to make the necessary notifications and to compile and translate the required documents.

"The projects are always planned in a short period of time. So, sometimes you cannot make the notifications for all employees you are posting." (Exp.)

"The flexibility is simply not given when I have to help the customer quickly. Very important topic." (Ent.)

Due to limited flexibility, companies are caught in a conflict between striving to meet administrative requirements on the one hand and the expectations and contractual obligations to the clients, on the other hand, who need a quick response. This conflict is usually resolved in such a way that companies give

priority to a quick and flexible response to customer requirements. The main reason for this is to avoid significant economic consequences, such as supply chain disruptions and contractual penalties.

"We will send our employees anyway. We cannot say to a client: 'The portal is not working or we have not received permission or notification'. That's not an option for us." (Ent.)

"Our clients are producing day and night. If they cannot deliver, they have penalties to pay to their customers. So, we have to go." (Ent.)

Usually, the administrative requirements are then at least initiated and followed up as quickly as possible. Sometimes, however, companies have to wait a long time for a response from the authorities.

"Sometimes the authorities are not in time, and we don't have yet an answer. Then, we go to the customer and have the notification with us that we did apply for that." (Ent.)

Both groups also assess the financial risk related to possible fines for violations of the posting regulations as very high. This is especially true in cases where companies have to react in a flexible way to customer requirements and cannot meet all administrative requirements in time. In certain (emergency) situations, even companies that attach great importance to legally compliant behaviour have to take a risk out of economic necessity and cannot fulfil all administrative requirements in time.

"We have to deal with it and take a calculated risk in thinking of the customer and keeping in mind that we try to do the administrative requirements." (Ent.)

"It is not that we don't want to meet the requirements. But sometimes we have to take that risk." (Ent.)

A financial risk can also arise from the large variety of legal provisions and procedures that have to be observed. This is especially true for companies that post workers to many EU countries. Even companies that strive to meet the administrative requirements in the best possible way are not always sure that they actually know all the relevant regulations and procedures.

*"I know several procedures of course, but do we know them all?
Procedures can change and how do we know that there are changes?
So, you always have a risk." (Ent.)*

Since Germany is a very important foreign market for many Dutch companies and the penalties for violating the posting regulations are considered to be relatively high, the companies often take a calculated risk. This means that they often comply with the reporting obligation – as far as time permits – but take a pragmatic and effort-reducing approach to the "operational" downstream administrative requirements – such as translations, keeping documents, calculating comparative entitlements, notifications of changes.

*"I would treat this differently from country to country. There are countries where I would have little stomach ache if I said: Come on, we won't do it because I don't think anything will happen. And there are other countries where I say:
Better not. Let's do our homework first." (Ent.)*

In comparison to the negative effects of posting bureaucracy on flexibility and financial risk, the experts and companies estimate the effects on the price and non-price competitiveness of companies to be significantly lower. However, the former is comparatively more affected than the latter.

For companies that, e.g., manufacture, install and repair high-quality and expensive machinery and equipment, the administrative burden is not so significant. Price competitiveness is thus affected only relatively little or not at all. Moreover, for specialised manufacturers, price aspects often play only a subordinate role compared to quality, customer benefits or service.

*"When you compare the bureaucracy costs to the total amount of the project,
then it's not so high." (Ent.)*

"Quality and skills are more important." (Exp.)

However, the situation is different for companies that offer more standardised goods and services, where the price is therefore an important purchasing criterion. Often, the costs of bureaucracy are not included in the price of the service or product, because otherwise they would reduce price competitiveness. Also for companies that post a large number of employees every year and where the administrative costs add up accordingly, there can be a negative effect on price competitiveness in the aggregation – especially in comparison to domestic companies in the target country. However, the current inflation has a partially

relieving effect. In its wake, many other cost items and input factors have risen in price even more strongly in relative terms – and equally for all competitors.

"We have to be competitive. So, if we have a lot of this stuff burdening us, it will go off our profit. We cannot put everything to the customer because then we'll lose him. That's also why I plead for a simple system." (Ent.)

"Our pricing is more affected by increased prices for input goods and diesel". (Ent.)

Both groups agree that the reduction of non-price competitiveness – as a potential consequence of administrative burdens impeding product-related services – does not play an important role in actual business practice. As already described above, companies deal pragmatically with the flexibility restrictions resulting from bureaucracy by giving priority to customer requirements in special emergency situations. Therefore, in practice, there is often no significant restriction of non-price competitiveness.

7.5 Factors influencing the perceived administrative burden

The administrative burdens emanating from the posting regulations and procedures are perceived differently by companies and lead to different reactions. During our discussions with business experts and companies, we were able to identify various key influencing factors.

Since Dutch companies are subject to similar logics of action and economic constraints in their dealings with the posting bureaucracy as German companies are, the influencing factors are also very similar. The main determinants are briefly described below with illustrative quotations. It should be noted that the influencing factors are often mutually dependent and therefore cannot always be clearly distinguished from one another.

- Influencing factor: Company size

The size of the enterprise is closely linked to the amount of time, financial and human resources available. Larger companies generally have greater resources and are thus better placed to fulfil the administrative requirements and bear the administrative burdens.

"Especially small companies find this really hard. I would say 40 employees or more, then it becomes easier because then you have employees dedicated to this." (Exp.)

- Influencing factor: Frequency of orders

Companies that frequently provide cross-border services and post a larger number of – sometimes changing – employees are confronted with higher burdens than companies that make few postings.

"If you have 450 events abroad per year, times 2 to 20 posted people each. It's serious business." (Ent.)

- Influencing factor: Number of target countries

Since posting rules and the corresponding reporting procedures are not harmonised in the individual EU Member States, administrative burdens for posting companies increase with the number of countries to which they post.

"We have eight or nine countries (where we post employees to) and eight or nine different rules. This is lot of work." (Ent.)

- Influencing factor: Experience

On the other hand, a higher frequency of postings also creates positive learning effects. With increasing experience, companies find it easier to comply with administrative requirements, although changes in legislation and procedures often require an update of knowledge. Nevertheless, companies usually encounter the largest administrative burdens when they deal with the topic for the first time.

"Larger enterprises that handle postings more frequently, have more expertise and a dedicated HR department find it easier." (Ent.)

- Influencing factor: Turnover share of the foreign market

If a foreign market, such as Germany, is very important for posting companies and they generate a significant part of their total turnover there, this exerts pressure on companies to arrange and come to terms with the posting bureaucracy. Thus, for these companies a complete stop or large-scale cessation of the cross-border provision of services are not relevant options for action.

"The German market is very important for us. We have to deal with it. Otherwise, we have to do some other business, selling cookies in Holland or something." (Ent.)

- Influencing factor: Order situation on the domestic market

Companies that perceive a high administrative burden and for which the German market is economically not so important are more likely to refrain from posting and cross-border services, the better the order situation is on the domestic market. If the domestic economy deteriorates, postings can become more attractive again.

"They have got lots of domestic orders. That's why they focus on the Netherlands. They know how it works, what they have to do, what the laws are." (Exp.)

- Influencing factor: Economic sector / price of individual orders

Furthermore, the administrative burden and the reaction of companies to it is influenced to a large extent by the economic sector and the type of products and services offered. If companies sell high-priced machinery and equipment and offer cross-border services in this context, administrative costs only account for a relatively small share of the total price. They are then not decisive for the purchase and can often be passed on to the buyer more easily. In contrast, administrative burdens play a much more important role for companies that offer rather low-priced, standardised services and are subject to higher price competition. In these cases, administrative costs account for a much higher share of the total price and can therefore make cross-border service provision unprofitable more quickly.

"The bureaucracy costs are not so high in relation to the price of our machines. Otherwise, it would be a real burden." (Ent.)

However, even for manufacturers of high-priced machinery and equipment there is a (reasonable) burden limit which they do not want to surpass; especially if the administrative burden in the country concerned is considered to be very high, complex and non-transparent. If this self-set burden limit is exceeded, the companies play through various options – bilateral negotiations with the competent authorities, alternative forms of service delivery (e.g., by way of co-operation with companies in the target country) up to the discontinuation or reduction of the postings.

"We are now aiming for projects in 2023 in Switzerland, and we are thinking about having a discussion with the authorities in front, because if we do it in a normal way, it is not bearable." (Ent.)

- Influencing factor: Decision-making autonomy

A significant factor influencing the perception and handling of the posting bureaucracy is the degree of autonomy of assessment and action that enterprises concede to themselves. Companies often support the basic intention of the Posting of Workers Directive, but they see individual "operational" implementation regulations and procedures as excessively burdensome; especially if the companies post workers to several countries. Under the pressure to continue serving important foreign markets and to reduce the administrative burden to an appropriate level, some of these companies allow themselves autonomy in deciding how to deal pragmatically with the administrative requirements. Other companies that attach great importance to permanently complying with the law, that have little experience with the details of the regulations and for which foreign markets may not be as important, will not grant themselves this decision-making autonomy and, in case of doubt, will refrain from providing cross-border services.

*"You cannot do everything that is demanded from you on paper.
It's not proportional. You have to be pragmatic." (Ent.)*

- Influencing factor: Supporting organisations

The perceived administrative burden can be significantly reduced if companies make use of support and advisory services provided by business associations, business consultants, etc.

*"If you're a member of our association,
then we've got all the information for you." (Exp.)*

7.6 Consequences of the administrative burden

7.6.1 Reaction patterns of the Dutch companies

The response of Dutch companies to the administrative burdens associated with posting is determined to a large extent by the specific nature of the factors influencing companies' perception of bureaucracy (cf. chapter 7.5). In this context, a basic distinction must be made between two groups of enterprises that both basically have good will and want to act in accordance with the law.

First, there is a larger group of companies that relatively often process well-paid orders in Germany and for which the German market is therefore of great

importance and has a relatively high turnover share. Although these companies regard bureaucracy as a nuisance and sometimes try to reduce the burden to an appropriate level through "autonomous bureaucracy reduction", they do not allow bureaucracy to thwart profitable business opportunities in Germany. For these companies, the reduction of cross-border services or their complete or extensive cessation are not options for action.

*"The projects in Germany are very important for us.
So, we do not stop or reduce them. (Ent.)"*

*"We take it as it is. Bureaucracy is not a criterion for us to say:
'We're going to stop this completely'." (Ent.)"*

On the other hand, there is another group of companies that do reduce their posting activities significantly, stop them completely or do not start them in the first place. These companies are often characterised by their small size, and they process orders in Germany relatively rarely. The share of (potential) orders from Germany in total company turnover is relatively low. Moreover, since the individual orders are often rather low-paid – and of short duration, e.g., in the case of craft services – the administrative costs associated with the posting are particularly significant and make the processing of orders unprofitable.

*"If it's just one small assignment you're doing and then you have to do
all the paperwork, then you rather choose not to." (Exp.)"*

These companies often mention not only the administrative burdens resulting from posting law as an important reason for refraining from cross-border service provision, but also those resulting from other areas of law, such as tax, environmental and working time law. The overall legal complexity, difficult comprehensibility and lack of transparency discourage many companies from posting. If the order situation in the Dutch domestic market is very good – as this is currently the case, – these companies prefer to limit their business activities to familiar (legal or regulatory) terrain, where they can better assess the costs and risks.

"Posting is complex, but all the other laws are also complex. And that's why companies say: we don't want to get involved in this complex situation. So, they focus on the Netherlands where there's a lot of work to do." (Exp.)"

Similar to their German counterparts, Dutch companies that continue to post employees often react to the administrative burden with various forms of partial non-compliance, evasion or circumvention of the regulations. A main reason for

this "autonomous bureaucracy reduction" is the lack of proportionality of many rules; especially for postings of short duration.

"It's not proportionate. That's the complete essence from all these questions." (Ent.)

"If we post workers abroad for half a year, then I understand we have to do something. But for two, three days or one week, that's a waste of time and money." (Ent.)

At the same time, companies support the basic intention of the posting regulations and sometimes also benefit from them, e.g., by being protected from fraudulent low-cost providers. However, the legitimate objectives of the directive should be achieved with reasonable effort.

"I always emphasise that it's not the legislation itself that we have a problem with. But it should be proportionate." (Exp.)

"The main issue is: Keep it simple." (Ent.)

"They are protecting their own workers. We understand that, but we are not underpaying our people, so there's no reason to overregulate us." (Ent.)

Under the current posting regulations, even companies with good will often see no other option than to act pragmatically and to weigh up independently the extent to which they (can) fulfil the posting regulations with still reasonable effort.

"We have nothing to hide, and we try to do it as good as possible. We know that we have done our best to do it correctly and that's the important issue, I think." (Ent.)

With regard to Germany, pragmatic non-compliance with posting regulations seems to relate more to "subordinate" areas such as the incomplete translation of required documents, the (extensive) omission of comparative calculations of wage and working conditions or the omission of change notifications (e.g., in the event of a change in the duration of the work assignments). In contrast, the complete omission of posting notifications in Germany seems to be a less frequent option for Dutch posting companies. The German market is often too important for companies as to run a high risk of penalties. Moreover, if inspections are carried out by the German authorities, they are often perceived as strict.

"For Germany, a lot of our members do the notification, because they are working there a lot of times and the fines and the chances of being inspected are high." (Exp.)

The more extensive non-compliance with posting regulations, such as the complete omission of posting declarations, seems – if it occurs at all – to be practised more in other countries that are not as economically important for the companies and that are characterised by rather low control activities and penalties. This (partial) non-compliance in some countries is usually not an expression of a fraudulent attitude, but rather a means to an end in order to reduce the overall administrative burden to a tolerable level, which spans several countries and is considered disproportionate in its current form.

Another part of the companies do not report postings in Germany (and in other countries) due to ignorance of the legal requirements. However, due to continuous information activities, this group of companies seems to become increasingly smaller.

*"Especially new companies, sometimes don't do the notification.
But it's more due to a lack of knowledge." (Exp.)*

In addition, current technological and organisational trends also exert an influence on the posting activities of Dutch companies. The reduction of administrative burdens associated with posting is not always the most important motive for these changes. Nevertheless, it is worth paying attention to these trends with regard to future changes in posting and posting regulations.

The ongoing digitalisation can increasingly replace some of the postings by digital solutions. Maintenance and repair work, for example, will be carried out more frequently by digital remote control. Business meetings and joint project work will be done via video conferences. In both cases, companies are not only relieved of administrative work, but also save on travel costs and travel time.

*"In the areas where digital solutions are possible,
postings will decrease." (Ent.)*

Furthermore, there are indications that the nature of (intra-corporate) postings will also change. In the past, employees were often posted continuously for a long period (e.g., two years) to a foreign subsidiary. According to current trends, hybrid solutions will increasingly establish themselves, i.e., alternating shorter periods at the head office and abroad. The posting regulations should be adapted accordingly, e.g., by allowing such forms of posting to be reported only once and not separately for each period of deployment.

Especially in the upper management of multinational companies, employees are increasingly not posted to foreign subsidiaries, but are employed on the basis of so-called split contracts. This means that they have a responsibility and a contract at several companies, so that the need for postings is eliminated. On the one hand, companies can thus avoid the posting bureaucracy, but on the other hand they must comply with the various labour and social security regulations in the countries concerned. The bottom line is that often no immediate bureaucracy relief can be achieved this way, but only a shift to other areas of law.

7.6.2 Consequences for (potential) customers and clients

The interviews showed that some of the companies are not significantly affected by the posting bureaucracy in their order processing in Germany. Another group of companies, however, does not accept orders from German customers (any longer). In this latter case, there could theoretically be negative consequences for German clients provided that they cannot find an adequate replacement for the services they have lost.

In order to be able to evaluate the consequences for (potential) customers and clients in Germany in more concrete terms, special empirical investigations are needed, such as those carried out in the German-French border region.

The Dutch experts and companies, however, were not able to identify concrete indications of large-scale negative consequences for (potential) customers and clients in Germany. So, one can assume that the (potential) negative effects are rather limited.

7.6.3 Consequences for the border region and the internal market

The above mentioned considerations regarding the consequences for (potential) customers and clients also apply in a similar way to the border region. The majority of the experts and companies cannot identify serious negative effects on business activities in the Dutch-German border region at the present time.

A large proportion of Dutch and German companies seem to have come to terms with the posting bureaucracy to such an extent that their business activities are not significantly affected. Potential negative effects that could result from the withdrawal of (especially) smaller companies from cross-border trade in services seem to remain (still) below the perception threshold – also due to the lack of corresponding empirical surveys.

"I don't think there are noticeable effects right now on the border region". (Exp.)

"I don't see an impact on the border region as such." (Ent.)

"Everybody manages because we have to do so.

But yes, it could be much easier." (Ent.)

Within the Dutch business community, posting bureaucracy does not seem to be an issue that is causing widespread concern at present. Nevertheless, from time to time, individual, particularly affected companies turn to government institutions (especially the Ministry of Social Affairs and Employment) to point out the need for relief – especially with regard to the harmonisation of procedures and regulations.

"We had an exchange with our government about this topic. That it would be easier, if we didn't have to do all this kind of stuff, but we never heard of them again." (Ent.)

7.7 Comparison of the assessments from the Netherlands and Germany

The majority of companies in both countries are conscientious and want to act in accordance with the law. In principle, they support the intention of the Posting of Workers Directive, but criticise the associated administrative burden. Enterprises often have to provide a lot of resources to meet the administrative requirements, which are then no longer available for the actual business activities. Small enterprises see their flexibility – a special feature of SMEs – and their economic profitability especially hampered by the administrative requirements. The more the administrative burden grows over time, the more the disproportionality of the legal requirements also increases in their view – with the possible consequence that some of the (smaller) companies reduce or completely abandon cross-border activities.

Both the Dutch and the German interviewees assess the burden intensity in relation to the respective neighbouring country as comparatively low. Both groups consider the posting requirements in other EU countries as significantly more burdensome. Similarly, on both sides of the German-Dutch border region there are currently hardly any signs of an adverse effect on the economic climate or the internal market.

For Dutch and German companies, the following applies equally: If the administrative requirements are assessed as disproportionate, some of the companies take a pragmatic approach to implementing the regulations. The extent to which

this happens depends on the interplay of various influencing factors, such as the importance of the foreign market in question, the number of foreign markets served, and the extent of entrepreneurial decision-making autonomy exercised.

Although it can be assumed that most companies act in accordance with the law and (want to) implement the directives, there is also a small group of companies in both countries that deliberately disregard the posting regulations and fraudulently violate essential protection rights of the Posting of Workers Directive. To curb activities with an increased potential for damage or fraud while at the same time reducing the burden on companies with a low-risk profile, the interviewees plead for the implementation of a risk-based approach, i.e., for the target group-specific and risk-adjusted design of posting regulations.

All respondents from both countries complain about the lack of harmonisation of posting requirements. The different regulations in the various EU Member States create a very large burden. Hence, the harmonisation of posting regulations has the highest priority for the respondents in both countries. Frequently pointed out is also the great need for simplification in the case of short and short-term postings and to reduce the frequency of notifications.

Differences in the Dutch-German comparison can be seen in the fact that Dutch companies tend to consult private business consultants more often, while German companies tend to make higher use of the extensive information and advisory services provided by the chambers of crafts and the chambers of industry and commerce. With regard to data protection, the Dutch interviewees point more frequently to the preservation of data protection in central (EU-wide) digital solutions, while for the German respondents data protection plays more of a role in the retention of records and documents during the provision of services across the border.

Finally, another difference in the Dutch-German comparison is that the Dutch interviewees more frequently mentioned what they saw as a lack of trust in companies on the part of policy makers as a major reason for the high density of regulations.

8 Policy recommendations

With the reform of the Posting of Workers Directive in 2018, the administrative requirements for posting workers to other EU Member States to provide services were tightened further. Although regional actors in cross-border working groups often develop innovative proposals for solutions to noticeably reduce the administrative burden, there is still a lack of fundamental – preferably EU-wide – improvements and appropriate harmonisation of the posting requirements. Both in the interviews with the experts, but above all with the companies, a lack of understanding for the high administrative burden on posting companies in a uniform EU Single Market became clear. Based on the criticism and suggestions for improvement from the interviewees, we have developed policy recommendations in four areas:

- I. Recommendations on the general orientation of national and EU economic policies in the context of the reform of the posting of workers
- II. Recommendations for the reconfiguration and streamlining of the information and process infrastructure
- III. Recommendations for further standardisation and harmonisation of the legal norms and administrative procedures
- IV. Recommendations for the reduction of compliance costs

I. Recommendations on the general orientation of national and EU economic policies in the context of the reform of the posting of workers

National and EU policy makers should demonstrate more serious political will than before and make targeted efforts to implement appropriate measures to effectively simplify the system. This would also help to increase the confidence of businesses and citizens in the EU's rule-making competence and release scarce business resources. Despite all criticism from companies and experts, they are not interested in abolishing the Posting of Workers Directive. They are aware that the protection of posted workers must be safeguarded. At the same time, they want the access to the European Single Market for the provision of cross-border services to be as unbureaucratic as possible.

The design of measures in this tense area of economic and social policy requires a difficult balancing act: A new (risk-adjusted) balance must be found between trust and control, between the fight against social dumping and the freedom to provide services in the EU. Since new regulations are always associated with a certain degree of uncertainty as to how they will actually work in practice, new

regulations and policy approaches should be regularly evaluated and, if necessary, re-adjusted. For this purpose, a suitable statistical data base should be created, such as that already available in France.

In the border regions, there are already numerous initiatives at regional level that develop innovative ideas for (EU-wide) bureaucracy reduction to facilitate the posting of workers. However, they are not able to implement these ideas due to a lack of competence. All the experts we interviewed agree that a fundamental EU-wide improvement and harmonisation can only be achieved through joint action by national and EU policy makers. To this end, the responsible ministries at the national level should cooperate even more closely with regional actors and working groups, take up their wealth of experience and their creative idea potential and bring this into policy making at the EU level by way of a "bottom-up approach". A suitable starting point for this is the Single Market Enforcement Task Force (SMET), which was set up in 2020 to achieve a coordinated and rapid dismantling of internal market barriers and which, inter alia, explicitly deals with the dismantling of administrative hurdles in the area of posting of workers (cf. European Commission 2023).

II. Recommendations for the reconfiguration and streamlining of the information and process infrastructure

Currently, there is a lot of uncertainty among companies as to where all the information relevant to posting can be obtained: What requirements do companies have to observe and what options or exceptions are there? Where can the relevant procedures be completed? The associated search costs place a burden on companies. To reduce these transaction costs and increase user-friendliness, it is advisable to make all relevant information available in one place, in comprehensible language, easy to find, uniformly structured and up-to-date. The framework for this already exists, as the European Council and the European Parliament decided in 2018 to create a single access point to the EU administration with the Single Digital Gateway (SDG) regulation (cf. BMI 2023). It should fulfil a funnel function that directs companies to the relevant information depending on the specific question or concern they have (e.g., to the information platform Your Europe). Here, the generally applicable regulations and the resulting requirements should be mapped in several languages and in an up-to-date manner.

In addition, the Single Digital Gateway should also lead companies to the relevant reporting portals: i.e., currently to the respective national reporting portals or, alternatively, to an EU-wide uniform reporting portal that is yet to be developed and that can also replace the national reporting portals in the long term.¹⁷ Ideally, the technical coupling to the digital IT systems of the posting companies should already be considered when designing the reporting portal. Media breaks and multiple entries by posting companies can be avoided if the companies' payroll and accounting systems can be linked to the respective reporting portal. This has high practical relevance and great potential for relieving the administrative burden on companies. The user account on the reporting portal should include functions that make it easy to upload documents such as employment contracts, payrolls or social security certificates. They would then be centrally accessible during inspections. It would also be helpful to create a tool (e.g., an app) that allows posting companies to make short-term changes to existing posting notifications (e.g., changed posting duration or changes to the persons to be posted).

In order to increase the acceptance of central digital solutions, companies should be informed about the extent to which the control authorities of other countries can access personal and company-related data and to which specific control authorities this applies. This should also be presented in a transparent manner on the national information pages related to the posting of workers.

III. Recommendations for further standardisation and harmonisation of the legal norms and administrative procedures

The considerable differences between the EU Member States in terms of legal bases, document requirements, forms, and national reporting portals produce a great lack of transparency and high administrative burdens on companies. A harmonisation of posting requirements and procedures was identified almost universally by all respondents as an urgent policy objective.

Complete harmonisation must currently be considered as not realistic. However, a graduated regulation is conceivable. For example, three to five different bureaucracy levels could be defined: Within each level, countries with comparable

¹⁷ For transport services between EU Member States, an EU-wide uniform reporting portal ("IMI") already exists since the beginning of February 2022. The previous national reporting procedures and portals are no longer permitted (cf. European Commission 2023a).

administrative requirements would be grouped together. This would reduce the number of different requirements to a more manageable level. Another proposal is to standardise the reporting forms and the information they request. This would facilitate processing and promote error-free, complete data entry. A reduction in bureaucracy could also come from the clarification and standardisation of important terms such as the demarcation of sectors in the craft trades or the demarcation of the craft trades from the construction industry.

Furthermore, in some EU Member States, the translation of many documents into the national language is required. In view of the relatively well-functioning online translation tools which could be made available to control authorities, translation requirements could be waived, which would significantly reduce efforts and costs for the companies concerned. At the same time, this would – in a sub-area of the posting of workers – exemplarily convert the companies' obligation to provide information into an obligation to collect information on the part of the state authorities. Alternatively, facilitation could also be achieved if all EU Member States considered a translation into English as sufficient.

An ideal solution, which was preferred by almost all respondents, is the creation of an EU-wide reporting portal to which the required information and documents can be uploaded and to which the control authorities are given specific access rights in compliance with important data protection requirements.

IV. Recommendations for the reduction of compliance costs

In addition to aligning national posting requirements, the SMET Task Force aims to keep the posting process as simple and straightforward as possible. There are a number of ways to reduce bureaucracy in this sense. While the EU Member States have so far proceeded predominantly according to the principle of "same posting rules for all companies" ("one-size-fits-all"), a (partial) change in thinking is now taking place. Instead of imposing administrative obligations on all companies equally – although only a relatively small number of "black sheep" fraudulently disregard the regulations – a more risk-based or targeted approach is increasingly being discussed today. In Germany, for example, only those companies are subject to the full posting requirements that belong to one of the listed economic sectors with an increased risk propensity.¹⁸ Such a risk-based approach can make a significant contribution to reducing bureaucracy by allowing

¹⁸ The list of economic sectors can be found at Zoll (2023).

companies in sectors with limited damage and risk potential to benefit from relief or extensive exemption from administrative obligations.

EU Member States that do not wish to implement a risk-based approach can nevertheless contribute to reducing posting bureaucracy with selected measures:

- Facilitations for postings of short duration and at short notice

Especially in the case of emergency situations, it is difficult to apply for the required documents in time. Hence, in the case of product-related services such as maintenance or repair, it would be helpful if they were exempt from the reporting obligation or if there was at least the possibility to submit the documents later. This should also apply to short business trips, meetings, sales talks, or contract-related services, since there is usually no violation of working and employment conditions and no risk of social dumping. The 8-day rule implemented by some EU Member States which under certain conditions exempts short postings from reporting obligations can also be a relief for companies.

It should also be considered whether all records and documents have to be kept or whether it is not sufficient to show the documents only on demand (digitally or physically). In Austria, for example, for short assignments of less than 48 hours, it is sufficient to keep only the employment contract and working time records without having to carry further documents such as wage payment slips and wage records. This regulation can be a relief especially for companies located close to the border.

A graduated quota solution (similar to that in Switzerland) could also be applied to ease the administrative burden for postings of short duration. This would mean that administrative requirements and documentation obligations would increase with the duration of the postings. The underlying rationale is that – other things being equal – the potential damage of fraudulent postings tends to increase with the postings' duration.

- Enabling longer-term posting arrangements

The large number of recurring individual notifications places a particular burden on companies. Framework or collective notifications that combine several postings over a longer period of time could have a facilitating effect. It would be conceivable to submit an annual or semi-annual notification that does not only refer to one contractor or one place of deployment.

The proposal of a prequalification to be issued by specific institutions such as the business chambers provoked a somewhat more controversial discussion. The basic idea is that companies could be exempted from certain reporting obligations, e.g., for one year, if they can prove legally compliant posting activities in the past and / or have successfully undergone a specific prequalification examination. However, many complex questions would have to be clarified in this context, e.g., who carries out the prequalification, on which legal basis and based on which concrete criteria and evidence?

- Reduction of the notification frequency for longer projects

Companies in certain sectors (e.g., in plant construction) often work on long-term customer orders during which the employees have to be posted to the customer several times with interruptions. For each of these postings, a new notification must be submitted, although the underlying posting-relevant facts do not change or change only insignificantly. In order to reduce the administrative burden, it should be examined to what extent the number of notifications could be reduced in these cases – e.g., by introducing a single detailed notification at the beginning of the project and, if necessary, only short notifications for the following assignments during the project.¹⁹

- Enabling longer postings of cross-border workers to their home region (modification of the 183-day rule)

Dutch companies located in the border region often employ German workers who continue to live in Germany. Since the company headquarter is located near the border, it is common for Dutch companies to send their German employees to work on service contracts with customers in Germany; not least for language reasons in customer communication. In this constellation, however, the German employees can usually only be deployed in Germany for 183 days without having to make time-consuming changes under social security law. Companies confronted with this problem suggest facilitations so that changes of

¹⁹ Alternatively, it could also be considered whether the notification system could be partially changed from project-related to person-related notifications. Instead of reporting each individual posting again and again, the employees eligible for postings could be reported at the beginning of the year with all the necessary documents. Project-specific postings which arise during the year could then be reported to the competent authorities only very briefly, if necessary.

the social security status of their posted employees will not be necessary. The same applies vice versa to German companies with Dutch employees.

- Facilitations in the context of the A1 certificate

Although the application for the A1 certificate usually does not demand major efforts from the companies, the burden may strongly increase in line with the frequency of the necessary applications. In this respect, applying for a longer-term A1 certificate, as is common practice in the Netherlands, could significantly reduce the administrative burden. In addition, the conditions for the A1 certificate should be standardised and simplified. A fundamental simplification could also be achieved by making the A1 certificate in its current form completely redundant and replacing it with new digital tools. In this way, the administrative burden could be transformed from an obligation on companies to provide information ("*Bringschuld*" or the obligation to provide) to an obligation on the state authorities to collect the necessary information themselves ("*Holschuld*" or the obligation to collect/fetch). It is conceivable, for example, to introduce a European social security number and to allow the control authorities in the destination country limited access to the national social security databases. With a simple query, the social security status of posted workers could thus be ascertained (e.g., by means of a green light ("person concerned is registered and insured in the national social security") and a red light ("... not insured.")). Alternatively, one could also consider equipping the existing national health insurance cards with an additional chip or QR code that provides information on the social security status and the employer and could be shown during inspections.

- Wage level of posted workers

Austrian posting legislation defines a salary threshold level above which companies no longer have to submit a notification because no special need for the protection of these posted workers is assumed. However, the minimum gross salary level is currently very high at approx. € 6,800. Alternatively, one could also consider defining three different wage groups (e.g., for auxiliary workers, skilled workers and master craftsmen) for selected economic sectors. The respective wage groups could also include the various wage components that differ from one Member State to another. This could significantly simplify the comparative calculation of wages and wage components, which is perceived as very burdensome by many posting companies.

- Border region / Geographical proximity

In order to promote the cross-border provision of services, facilitations could be implemented for companies located close to the border. Inspiration could come, from example, from a Dutch legal provision. According to this rule, micro-enterprises whose headquarter is less than 100 kilometres away from the border to the Netherlands and which process orders with a duration of up to one week in the Netherlands – under certain conditions – no longer have to submit individual notifications for each work assignment. In this case, an annual notification is sufficient.

- Orders from private customers / De minimis scheme

Likewise, it would be worth considering abolishing the notification requirement for private customer orders and applying it only to orders from commercial businesses and public procurement sectors. As an alternative, contracts up to a certain amount could also be exempted from the notification requirement (de minimis provisions).

- Company size

Since small companies are generally more burdened by the administrative posting requirements due to their greater resource scarcity, exemptions from the reporting obligation could be granted under certain conditions up to a certain maximum company size.

- Consideration of flexible forms of co-operation in the reporting portals

Not least due to technological change and increasing flexibility requirements, the corporate world is becoming more and more differentiated and new forms of shorter or longer-term business co-operation and value creation networks are emerging. The reporting portals should therefore be adapted in such a way that they can take into account and map these different forms of business co-operation. At the same time, however, it must be ensured that these forms of co-operation are not misused to facilitate non-transparent structures and fraud.

- Use of already existing control mechanisms (Once-only approach)

Most EU Member States already have a variety of (formal and informal) control mechanisms (tax audit, CSR Directive, supply chain due diligence law, etc.) that assess the reliability, legal compliance, and social responsibility of companies.

Enterprises partly perceive the posting bureaucracy as another control mechanism to additionally prove their righteousness. They suggest examining the extent to which existing control mechanisms can instead be used to prove their integrity in the context of the posting of workers. In this way, the administrative burden could be significantly reduced.

Not all the measures proposed here – which partly overlap in content – are equally suitable for all types of companies. The corporate reality is too heterogeneous for this. Overall, the above-mentioned measures primarily address SMEs and family enterprises that guarantee the key protection rights of the Posting of Workers Directive. However, for the (small) group of companies that deliberately circumvent the posting rules with fraudulent intent, controls are useful and necessary, not only to protect the workers concerned, but also to maintain fair competition for the large group of companies acting responsibly.

9 Conclusion

In all our interviews it became clear that the interlocutors basically support the intention of the Posting of Workers Directive. They also assume that the majority of companies are willing to implement it. Many active posting companies are fully compliant with the rules, while some enterprises give up their cross-border activities because they do not see themselves in a position to act fully in compliance with the rules. Other companies, which also basically possess good will, behave only partially in accordance with the law, because they consider the posting requirements to be disproportionately burdensome. They then decide pragmatically in individual cases to what extent they implement the administrative requirements. Nevertheless, there are also "black sheep" that deliberately circumvent the requirements of the Posting of Workers Directive, engage in social dumping, and offer their workers significantly worse working and employment conditions than in the respective destination country.

Overview 1: Typology of posting companies

<p>Fully compliant companies</p> <ul style="list-style-type: none"> • Active posting companies • Companies that have discontinued or not even started posting activities
<p>Pragmatic companies</p> <ul style="list-style-type: none"> • Active posting companies <ul style="list-style-type: none"> ○ Companies with basically "good will" to fulfil the administrative requirements ○ Partially legally compliant posting activities ○ to the extent that companies consider the required administrative effort – in their own assessment (also under risk aspects) – to be (still) proportionate ○ nevertheless: they advocate and guarantee the key protection rights of the Posting of Workers Directive
<p>Black sheep</p> <ul style="list-style-type: none"> • Illegal "posting" activities • Fraudulent intent (i.e., no fundamental "good will") • Certain constellations with high "damage potential", e.g. <ul style="list-style-type: none"> ○ Temporary employment agencies ○ Multi-layered, non-transparent value creation networks ○ Labour intensive activities ○ Relatively low (formal) qualification level ○ Workers from countries with comparatively low salary levels ○ Bogus self-employment (inter alia mediated by temporary employment agencies)

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Source: Own representation.

The Posting of Workers Directive and its transposition into national law are characterised by a "one-size-fits-all" approach in most EU Member States. As a consequence, this leads to a multitude of different national regulations that have to be fulfilled by all posting companies equally and without regard to their concrete "damage potential". A large proportion of the companies surveyed feel that the posting law is too strongly characterised by state control and disproportionality and would like to see more trust and regulations with a sense of proportion. Excessive control and a lack of (risk-based) proportionality may set in motion a "vicious circle" that is detrimental to all parties involved, by causing and – over time – reinforcing precisely those behaviours and reactions that they actually want to prevent.

For the design of the posting regulations, an approach should therefore be chosen that focuses more on the risky companies and relieves those companies from administrative burdens that guarantee the key protection rights of the Posting of Workers Directive ("targeted approach"). To this end, economic policy, in co-operation with expert third parties – including the branch-specific social partners, who often have specialised know-how and experience in this area – should identify the constellations with high "damage potential" and develop suitable (administrative) measures that effectively prevent these illegal "posting activities".

A reduction of the bureaucracy burden could also be achieved in principle by examining in which areas the administrative obligations can be redistributed between companies and state authorities. Until now, the fulfilment of administrative obligations and the provision of data and documents has largely been the responsibility of companies. It would be conceivable – as highlighted in some parts of the study – to convert the companies' obligation to provide information into a partial obligation of the state authorities to collect it themselves, for example by the control authorities making greater use of existing data sources and digital instruments.

Particularly for the protection of workers employed in more risky companies, the improved (mandatory) provision of information for the companies and especially for the workers can also be an effective means. To this end, for example, national information websites, which primarily address (potential) posting companies with their content, could increasingly provide additional information for posted workers. In certain high-risk sectors or network constellations, posting companies could also be required to provide their workers with detailed information on their rights and the working and employment conditions to be

guaranteed before the posting. In extensive company networks, this can also mean that the clients or customers may be involved to a greater extent in the examination and responsibility for the working and employment conditions.

The measures proposed here can be understood as a modular system. It is illusory to believe that complete harmonisation across all EU Member States is possible. National particular interests are too different for that. Nevertheless, more pan-European thinking should be applied to the field of posting of workers – in the sense of a responsible reduction of bureaucracy, so that the European Single Market does not reach its limits precisely in the border regions. A tangible, sustainable reduction of the administrative burden could thus release economic potential and promote the appreciation of the European Single Market and the EU, while maintaining and guaranteeing key working and employment conditions.

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Appendix

Overview A1: Legal requirements for posting in the four study countries

Measures that can be taken under Directive 2014/67/EU	Germany	France	Netherlands	Austria
Official website	https://www.zoll.de/DE/Fachthe-men/Arbeit/arbeit_node.html	https://travail-emploi.gouv.fr/droit-du-travail/detachement-des-salaries/	https://www.postedworkers.nl/	www.entsendeplattform.at
<p>Posting notification prior to commencement of work: Shall contain information about:</p> <ul style="list-style-type: none"> • Service providers • Number of posted workers • Planned duration and start of the posting • Place of work • Type of service 	<p>Risk-based approach: Posting notification only required in certain risk-prone sectors</p> <p>For employees with regular monthly wages < € 2,784, registration under the Minimum Wage Act is required in certain industries</p> <p>Electronic reporting via online portal: https://www.meldeportal-mindestlohn.de</p> <p>Language: German, English, French</p> <p>Additional information, e.g., declaration of compliance with minimum working conditions, proof of qualification (for trades subject to licensing in Germany)</p>	<p>Electronic notification via SIPSI internet portal required: https://www.sipsi.travail.gouv.fr</p> <p>Language: French, German, English, Italian, Spanish</p> <p>Additional information, e.g., on place of accommodation, modalities of payment of work-related expenses</p> <p>For workers in building construction and civil engineering:</p> <p>Additional professional identification card ("Carte BTP") required (must be applied for separately at the Union des Caisses de France via an online platform)</p>	<p>Electronic reporting via online portal required: https://meldloket.postedworkers.nl/runtime/</p> <p>Language: Dutch, German, English</p> <p>Special feature: The Dutch client must check the notification.</p> <p>Additional information, e.g., on economic sector, person responsible for paying the wages</p>	<p>Electronic reporting via online form ZKO 3 required for postings: https://www4.formularservice.gv.at</p> <p>Language: German, English, as well as nine other languages</p> <p>Additional information, e.g., on type of activity, certificate of competence (if trade is regulated in Austria)</p>
<p>Keeping documents ready at the place of work</p> <p>How? Paper or electronic form</p> <p>In which language? E.g., official language of the host Member State.</p> <p>Where? In an accessible and clearly specified place</p> <p>What? Employment contract, pay slips, documentation of daily working time, evidence of payment of remuneration</p>	<p>How? Paper or electronic form</p> <p>In which language? German</p> <p>Where? In Germany; at the request of the inspection authority also at the place of work.</p> <p>What? As proposed in Directive 2014/67/EU inspection authority may request further documentation</p>	<p>How? Paper or electronic form</p> <p>In which language? French</p> <p>Where? Safekeeping within the national territory (place of work, or in case of material impossibility, any other place accessible to the representative) - At the place of service provision in French.</p> <p>What: In addition to what is proposed in Directive 2014/67/EU e.g.: Proof of medical examination, designation of applicable sectoral collective agreement, financial guarantee.</p>	<p>How? Paper or electronic form</p> <p>In which language? Dutch, English, German</p> <p>Where? At the workplace or digitally</p> <p>What? As proposed in Directive 2014/67/EU</p>	<p>How? Paper or electronic form</p> <p>In which language? German (or English)</p> <p>Where? Place of work / contact person outside the place of work / branch of office; subsidiary or parent company in Austria; location must be specified in notification</p> <p>What: In addition to what is proposed in Directive 2014/67/EU, e.g., copy of the notification, wage classification.</p>

Continued Overview A1: Posting of workers requirements in the four study countries

Measures that can be taken under Directive 2014/67/EU	Germany	France	Netherlands	Austria
Appointment of a contact person / liaison (should send and receive documents if required)	Yes, must be present in Germany	Yes, must be present in France and speak the French language	Yes, must be on site in the Netherlands	Yes, permitted are, e.g., posted employees, chartered accountants, lawyers, notaries.
Frequency of notifications	Notification for each posted worker and each work assignment Exceptions to the obligation to report (e.g., initial assembly or installation work; excluding construction work) Data from previous notifications can be retrieved for new notification	Notification for each posted worker and each work assignment Data from previous notifications can be retrieved for new notification	Notification for each posted worker and each work assignment. Annual notification possible in exceptional cases (e.g., for micro-enterprises with 1-9 employees located close to the border; but not in the construction industry) Data from previous notifications can be retrieved for new notification	Notification must be submitted for each new work assignment with a new client. Changes in the notification must be reported immediately (e.g., changes in working hours or place of work). Simplified notification: in certain cases, a single declaration for several recurrent postings is sufficient
Penalties to be expected for non-compliance (not regulated in Directive 2014/67/EU)	In case of violation of notification obligation/ missing documents: fine up to € 30,000. In case of violation of specific working conditions: fine up to € 500,000	In the event of a breach of the notification / designation of a contact person / submission of documents: € 4,000 per employee and per violation (€ 8,000 in case of repetition within two years). Total cap: € 500,000	In the event of a breach of the notification obligation: € 1,500 to € 4,500 (depending on the size of the company) Required documents not available at the place of work: € 8,000 Duty to inform not fulfilled: 6.000 € Notification not checked: € 750 to € 1,500 In individual cases, increase by 50 %, reduction by 25, 50, 75 % possible	Violation of the notification obligation or missing documents: up to € 20,000, in case of a repeated offence up to € 40,000. Thwarting of wage controls: up to € 40,000. In the event of underpayment of posted workers: up to € 250,000, depending on the amount of remuneration withheld.

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Source: Own representation.

We would like to thank all experts and companies who shared their expertise and experiences with us and thus vividly described the administrative challenges involved in the posting of workers. They provided us with valuable background information that was essential to prepare this report.

- Germany Trade & Invest (GTAI): Marcelina Nowak, Karl-Martin Fischer
- Chamber of Crafts Düsseldorf
- Chamber of Crafts for Munich and Upper Bavaria: Barbara Peinel, Dietmar Schneider
- Chamber of Crafts Lower Bavaria-Upper Palatinate (Regensburg): Katharina Wierer
- Chamber of Crafts of the Pfalz: Elke Wickerath
- Chamber of Crafts of the Saarland: Sabrina Rütter
- IG Bau Aachen District Association
- Chamber of Industry and Commerce Mittlerer Niederrhein
- Chamber of Industry and Commerce for Munich and Upper Bavaria
- Chamber of Industry and Commerce Southern Upper Rhine: Frédéric Carrière
- Bad Tölz-Wolfratshausen District Office - Economic Development: Andreas Roß
- Wirtschaftsverband Industrieller Unternehmen Baden (wvib): Alexander Rohrer
- Centre for European Consumer Protection (ZEV)

For the Netherlands:

- CLC-VECTA, Centrum voor Live Communication: Dineke Philipse
- Federatie Nederlandse Vakbeweging (FNV): Ellen Hoeijenbos
- Royal Bouwend Nederland: Jaap van de Burgt

The participating companies are not mentioned in order to protect their anonymity.