BDA
GERMAN EMPLOYERS

Omnibus and beyond: Proposals for burden reduction at EU level (December 2024)

Type of burden: Reporting burden			
Regulation / Directive	**Burden / costs of existing law**	**Proposal**	**Impact of the proposal**
Corporate Sustainability Reporting Directive ((EU) 2022/2464) (CSRD), Delegated Act (EU) 2023/2772 on European Sustainability Reporting Standards (ESRS)	Costs: - **Estimated costs in Germany**: annual compliance costs at **EUR 1.58 billion**; one-off compliance costs at **EUR 846 million** for the introduction of the new reporting requirements. - **Not included in cost estimation: indirect expense** incurred by non-reporting companies (**cascade effect/trickle-down effect:** providing information to contractual partners who are required to provide sustainability reports). Burden: - **Legal and practical discrepancies**: While the	Comprehensive revision of ESRS to facilitate CSRD's correct implementation: - Complete **withdrawal of the delegated act** in its present form. - **Review standards** according to Art. 29b para 1 subpara 5 of CSRD. - Suggest **proportionate ESRS** focusing solely on the factors **explicitly mentioned in CSRD.**	- New ESRS would be in line with Art. 290 TFEU and ensure compliance with the "**non-essential elements"-principle** regarding delegated acts. - New ESRS would **minimise complexity** and provide clear, legally certain rules that companies can easily navigate. - **Companies can provide information** that is "understandable, relevant, verifiable, comparable and represented in a faithful manner" as requested in Art. 29b para 2 of CSRD.

	CSRD identifies (Art. 29b para 2 lit b) only **24** social and human rights factors for reporting obligations, **ESRS** (delegated act) introduces approximately **400** data points on social standards across roughly 100 pages. - **Reporting obligations in ESRS, which are not foreseen in CSRD:** accommodation of employees [ESRS S1, para 2c iii)], social security (ESRS S1-11), improvement of the general living situation [ESRS S1-5, para 44 b)]. - **Double reporting and overlaps with Art. 9 of Pay Transparency Directive (PTD):** CSRD/ESRS and PTD include an obligation to report on gender pay gaps and total remuneration. ESRS S1-16 and the corresponding Application Requirement 101 (b) include a list of relevant remuneration components that the companies must report on; it is unclear whether this also applies to PTD.		

Pay Transparency Directive ((EU) 2023/970) (PTD)	Burden - **Unclear definitions in conjunction with CSRD and ESRS:** Unclear whether definitions of "pay" (Art. 3 para 1 of PTD, Art. 29b para 2 lit b of CSRD, and ESRS S1-16) and "engaging with workers' representatives" (Art. 9 para 6 of PTD, Art. 19a para 5 of CSRD, ESRS S1-2) are aligned. - **Unclear obligations in conjunction with ESRS:** Application Requirement 101 (b) of ESRS S1 includes a list of relevant remuneration components on which companies must report; however, it is unclear whether this also applies to PTD. - **Inconsistent thresholds in CSRD and PTD:** CSRD in conjunction with Art. 3 of Accounting Directive foresees a threshold of 250 employees, whereas PTD lays down a lower threshold of 100 employees (Art. 9 para 4). - **Inconsistent reporting frequencies in PTD and**	Significant revision of the directive aligning the scope and reporting content with the CSRD: - **Ensure interoperable definitions and concepts across relevant EU legislation:** 'pay', 'engagement with workers' representatives'. - **Introduce an exemption from reporting obligations** for companies that demonstrate application of or adherence to **collective bargaining agreements**. - **Raise the employee threshold for reporting requirements of Art. 9 PTD**: Set a new limit of more than 500 employees. - **Align the reporting frequencies** and clarify the exact **reporting period.** - **Harmonise Article 9 para 1 lit a with ESRS S1-16** to prevent redundancy. - **Simplify the granular reporting requirements of Article 9 para 1 lit b) - g)** to align with or not exceed CSRD requirements.	- **Enhanced clarity and consistency** across applicable EU legislation. - **Facilitates compliance** through legal certainty. - **Alleviates reporting burden** for small enterprises. - **No duplication and overlaps**, less workload for companies.

	CSRD: For companies with more than 250 employees, Art. 5 of CSRD foresees **annual reporting starting 2026,** while PTD does so **from 2027 onwards** (Art. 9 para 2); smaller companies are asked to report **every 3 years** (Art. 9 paras 3 and 4 PTD). - **Uncertainty about the reporting period (Art. 9 PTD) and reporting content (Art. 10 PTD):** unclear whether the smaller companies' reports must encompass the data from the last three years or if it should focus solely on the previous year.		
Taxonomy Regulation ((EU) 2019/2088)	Burden: - **No uniform mechanism to prove or assess compliance with the minimum social safeguards;** however, companies within the scope are obliged to implement the minimum social minimum safeguards set out in Art. 3 and 18 in order to claim their economic activities as taxonomy compliant.	Revision / partial deletion: - **Removal of the set provisions** that impose social minimum safeguards on companies.	- Creates **legal certainty**. - **Reduces compliance burden**. - Allows to **focus more resources on outcome** than reporting on processes.

Type of burden: Administrative burden			
Regulation / Directive	**Burden / costs of existing law**	**Proposal**	**Impact of the proposal**

Regulation on Coordination of Social Security Systems ((EC) 883/2004), Regulation laying down the procedure for implementing (EC) 883/2004 ((EC) 987/2009)	Costs:
	
	- **Total annual economic costs** according to a study:
	  o Austria: EUR 660.000
	  o France: EUR 830.000
	  o Italy: EUR 1.660.000
	  o Germany: EUR 16.720.000
	
	Burden:
	
	- **Disproportionate procedure:** The effort involved in applying for and issuing the A1 certificate is disproportionate to the planned activity, particularly in case of short-term posting or deployments at short notice or in case of assignments without provision of services.
	
	- **Strain on company resources:** The preparation of the A1 certificate can generally take up to 20 minutes per employee and posting. The issuance can take between 3 -5 days and sometimes even longer, depending on the Member State.
		Revision of 883-regulation:
		
		- **Provide exemptions from the need to apply for an A1 certificate** to all business trips, brief and short-term and spontaneous postings (Art. 15, Reg. 987/2009).
		- To prevent abuse, **sectoral derogations** from the exemption should be allowed, for example in the construction sector.
		
		Digitalise and streamline procedures:
		
		- **Simplify the exchange of social security data** across the EU by digitalisation.
		- **Implement digital tools** like EESSI, ESSPASS and the EU-ID-Wallet and other instruments as soon as possible.
		
		Merge all relevant legislation:
		
		- **Abolish legislative separation:** merge A1 notification and posting of workers notifications within the
			- **Reduces administrative burden** on employers and workers when dealing with assignments abroad.
			- **Facilitates EU labour mobility** and thus ensures a functioning EU Single Market.
			- **Simplifies the exchange of information** on social security data between national authorities through digital tools.

		EU-ID-Wallet or other instruments.	
Posting of workers notification in Enforcement Directive (2014/67/EU)	Costs: according to a study - **Average processing time for posting notification per posted worker:** f. ex. 66 minutes in Austria, 80 minutes in France, 66 minutes in Germany and 71 minutes in Italy. - **Additionally: time needed for legal research**, f. ex. at least 360 minutes for France in case of reoccurring posting and up to 1,200 minutes for first posting to France. - **Additional costs**, such as translation of documents. Burden: - **Complexity caused by different national posting notification requirements (open list):** Art. 9 allows to introduce further obligations than those listed in Art. 9 para 1, which results in a high level of different obligations amongst Member States.	Comprehensive revision, introducing one harmonised EU-wide notification system: - **Introduce an EU-wide IMI-based digital single notification system (eDeclaration)**, similar to posting notification in road transport sector. - **Obligatory participation** for all Member States. - **Fully harmonise the list of information/documents (closed maximum list)** to be provided in the posting notification by revising Art. 9, combined with the possibility to reduce the amount of data points / documents at national level. - **Limit the closed list in Art. 9** only to what is proportionate and necessary, similar to the proposal on eDeclaration. - **Accept documents in other languages:** as soon as reliable translation tools are available, revise Art. 9 para 1 lit d and remove obligation to translate documents into national language.	- Significantly **reduces the administrative burden** on companies. - Enhances **cooperation between national administrations**. - Contributes to **better enforcement of rules**. - Ensures a functioning **Single Market for services**.

	- **Separate national posting notification systems:** Member States have their own notification systems, an EU-wide single digital notification system exists only for road transport sector. - **Extensive documentation and translation requirements:** Many Member States require additional documents to be submitted, in most cases documents are accepted only in national language.	<u>Merge all relevant legislation:</u> - **Abolish legislative separation:** merge A1 notification and posting of workers notifications within the EU-ID-Wallet or other instruments.	
Administrative burden in Pay Transparency Directive ((EU) 2023/970) (PTD)	<u>Burden:</u> - **Redundant information requirement for companies that are bound to or apply collective agreements:** Criteria for pay progression (Art. 6) are listed in collective agreements. - **Disproportionate right to information requirement for companies applying or adhering to collective agreements (Art. 7 para 1):** collective agreements guarantee that identical or comparable tasks are classified in the same pay	<u>Revision: Provide exemptions for companies that are bound or apply collective agreement:</u> - **Exemption from the information requirement** (Art. 6) on the pay progression by allowing to make a simple reference to the section in the collective agreement containing the information. - **Limit access to the right to information** strictly to the agreed pay group. - **Restrict information provision to cover only the current collective agreement**; an exception may	- **Enhanced clarity and consistency** across applicable EU legislation. - **Facilitates compliance** through legal certainty. - **No duplication** and limited burden. - Safeguards **data protection**.

	category and compensated equally, irrespective of the individual or gender. - **Potential risk of unproportionate use of right of information**: Art. 7 does not specify any timeframe, presumably allowing employees to assert claims for information repeatedly. - **Uncertainty on Wage Disparity Evaluations (Art. 10):** If a wage disparity exceeding 5% is identified in the initial year but corrected in the following year, it is unclear if the obligation to conduct pay evaluations with the employee representative body is no longer applicable. - **Inconsistency with GDPR requirements:** Art. 12 does not adequately protect against the risk of individualisation of the pay data that must be disclosed mandatorily.	occur if there is a pay scale adjustment, like a promotion. <u>Other issues to be addressed by a legal revision:</u> - **Introduce a limit on frequences of employees' information requests (Art. 7)**: a minimum waiting period of one year before allowing another request for information to employees. - **Introduce a minimum number of comparative employees (data protection)**, allowing each Member State to decide that number. For example, the German Pay Transparency Law requires at least six employees of the opposite sex for comparison.	
Other types of burden			
Regulation / Directive	**Burden / costs of existing law**	**Proposal**	**Impact of the proposal**
Corporate Sustainability Due Diligence Directive ((EU) 2024/1760) (CS3D)	<u>Burden:</u> - **Wide personal scope (Art. 2) leads to unintended**	<u>Targeted revision:</u> - **Reduce the personal scope in Art. 2** starting at 5.000 employees.	- Focus on those companies that **can be expected to take comprehensive measures**.

	consequences: low threshold covers also companies without the necessary means to comply with the extensive obligations of the directive. - **Wide material scope (Art. 3 lit g) extremely challenging to implement:** the comprehensive definition of "chain of activities" covers also those parts of supply chains that a company cannot control or oversee because it has no direct customer relations with the supplier in question. - **Vague due diligence obligations (Art. 8 – 12):** expected measures taken by a company are legally vaguely formulated, meaning that a company has no legal security in fulfilling them. - **A vague annex adds to legal uncertainty:** The annex contains a mere listing of individually protected goods (**36 different international agreements**) but does not offer any indication to the	- **Redefine the material scope Art. 3 lit g** with the sole focus on those parts of a supply chain that can be monitored and addressed legally by companies (e.g. direct or first tier suppliers). - **Introduce legally secure and manageable due diligence obligations** (Art. 8 – 12) by laying down clear and undisputable measures that companies can fulfil in practice. - **Shorten and clarify the annex** so that it clearly lays down the duties and individual protected goods. - **Introduce a pareto principle:** Identify top causes that need to be addressed to resolve majority of issues. - **Delete the provision for an independent civil liability claim** (Art. 29) and fall back on the existing civil law according to which companies can already be held liable for damages they caused or contributed to.	- Have **legal certainty** of the measures the companies are expected to take. - **Making it possible** for companies **to act in accordance** with the directive. - Utilisation of existing member states law and **avoidance of duplicate structures**.

	possible obligations arising from these agreements. - **Unnecessary double structure:** The independent claim for civil liability in Art. 29 creates a parallel structure to civil law. This may lead to an unwanted and harmful extension of civil liability and fosters even more the legal uncertainty.		
European Works Councils Directive (proposal COM/2024/14 final) (EWC)	Situation: - About **1.000 EWCs** exist in the EU, based on **individual agreements and practices.** Burden: - **The new definition of "transnational" and extension of competences leads to legal and practical complications** (Art. 1 paras 1 and 4): the proposed changes risk overburdening the companies' structures and make it difficult to differentiate with the competences of national employee representation bodies. There would be a risk of conflicting opinions between the EWC	Withdraw or amend the proposed directive: - **Keep the previous definition of "transnational"** (Art. 1 para 1): No extension of competences of the EWC. - **Delete several requirements for the information and consultation procedure** (new Art. 9) that hinder necessary and unavoidable company decisions, such as too detailed disclosure of information, mandatory prior procedure and obligatory written reaction for the company management. - **Keep the "grandfathering clause"** for existing agreements as in the previous revision of 2009.	- **Avoid conflict** with the competences of national employee representation bodies. - Company decisions, especially in an international context, continue to retain the **necessary spontaneity and flexibility**. - **Mutually agreed and well-functioning EWC agreements** and their successful working methods are protected and respected. - The EWC procedure **can continue to adapt** to the respective company and not vice versa.

	and national employee representation bodies. - **The detailed requirements of the information and consultation procedure (new Art. 9)** will complicate and even impede rapid decision-making in companies. - **Existing agreements not protected:** The weak grandfathering of Art. 14a does not sufficiently respect existing EWC agreements and forces them to change nearly every existing agreement.	- **Safeguard existing agreements:** Amendments to existing agreements may only be made by mutual agreement.	
Traineeships Directive (proposal COM/2024/132)	<u>Situation:</u> - In Germany, there are many **different forms of vocational education and training**, each **sector** with their own regulations. - E.g. every year there are **130.000 students** in integrated degree programmes. <u>Burden:</u> - **The extensive scope of Art. 1 and 2 covers all types of**	<u>Withdraw or amend the proposed directive:</u> - **Clearly define the scope in Art. 1 and 2 to only include voluntary traineeships** and exclude vocational training or mandatory traineeship as part of studies or education. - **Keep freedom to provide traineeships:** The directive's principle of equal treatment (Art. 3) must not indirectly regulate the conditions of traineeships. - **Allow only targeted investigations in Art. 4:**	- **Ensures provision of traineeships**. - Maintaining traineeship as an **effective labour market** instrument in times of (skilled) labour shortage.

	“traineeship situations”: This includes also mandatory traineeships as part of studies or vocational training (already adequately regulated), which creates an unnecessary double structure. - **Unintended consequences of equal treatment (Art. 3):** The requirement of equal treatment of trainees and regular employees make individually tailored traineeships impossible and legally uncertain – exacerbated by unpredictable CJEU judgments, potentially creating a wider scope than anticipated. - **Broad-based official investigations** (**Art. 4)** create an environment of mistrust and risk leading to bureaucratic burden. - **The information and publication requirements (Art. 5)** complicate the provision of traineeships and make it extremely unattractive to offer traineeships.	Official investigations must be based on well-founded reasons. - **Limit the administrative obligations** (Art. 5) for companies in case of investigation to a minimum; there should be no obligation for companies to disclose information in the advertisement for traineeships. - **Enhance legal certainty in Art. 4:** The reference to "Union law" should be removed from Article 4 to prevent legal uncertainties, as this matter falls under the competence of Member States.	

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As Germany's central employer association, BDA coordinates the social and economic interests of the entire German business community. We work at national, European and international level for the interests of one million companies which employ 30,5 million workers, networked with BDA through voluntary membership of national sectoral and regional federations.

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