Regulatory Compliance with Limited Enforceability: Evidence from Privacy Policies

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DIGITS

Privacy Policies More Readable, But Still Hard to Understand

By Elizabeth Dwoskin Follow
Updated Dec. 30, 2015 3:32 pm ET

Opinion | **THE PRIVACY PROJECT**

We Read 150 Privacy Policies. They Were an Incomprehensible Disaster.
By Kevin Litman-Navarro

Internet

⊙ This article is more than **9 years old**

I read all the small print on the internet and it made me want to die

2

GDPR: An Update of EU Data Regulation

- In 2018, the GDPR (General Data Protection Regulation) fundamentally transformed the legal requirements of privacy policies
- One of the (many) goals (going back to earlier consumer protection agenda):
  - Enhance **transparency** and accountability
- **The goal:** give users accessible information on a firm's use of their data

1. **Art. 13–14 GDPR:** Disclose what data is collected, how, by whom

2. **Art. 12(1) GDPR:** *"concise, transparent, intelligible and easily accessible form, using clear and plain language"*

This Paper Asks:

How do firms respond to the GDPR's transparency principle and its **asymmetric enforceability**.

How does the stringency of enforcement of the rules affect their compliance decisions?

- We expect budget-constrained regulators to focus on the "easy rules"
  - objective disclosure
  - but not: vague/subjective readability
- Rational firms respond by complying with more disclosure, not with better readability
- **In the paper:** A theory model with three predictions for a firm's GDPR response

Longer privacy policies that are not necessarily more readable.

Firms expecting more attention from the regulator (scrutiny) draft more readable privacy policies compared to firms that do not; but disclosure is not affected.

Firms with better-funded regulators draft more readable privacy policies than firms with more constrained regulators; under sufficiently high compliance costs, firms may lower disclosure.

Data: Privacy Policies Matched with Firm-Level Information

- Privacy policies of **German** firms with at least one observation in . . .
  - *before* GDPR: 2014–Q2 2018
  - *after* GDPR: Q2 2018–2021
- Unbalanced quarterly panel:
  - **585,329 privacy policies**
  - posted by **75,683 firms**
- From the . . .

- **Firm-level** information
  - Mannheim Enterprise Panel
  - Firm size + industry information
- **UK enforcement data**
  - Information Commissioner's Office
  - 3-digit industry level (2012 through Q2 2018)
- **State** government websites
  - Budget and staffing information for German state data protection authorities
  - Scaled by state-level # of firms

How Do We Measure Regulatory Compliance?

Disclosure
standard NLP approach

- disclosure volume
- words in paragraphs that are likely to contain Art. 13/14 specific content
  → **topic-weighted word count**

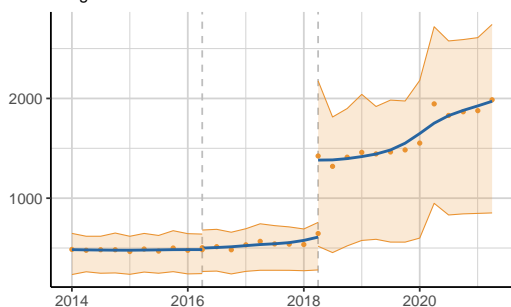- Measure is more disclosure-focused than a simple word count

Readability
linguists' toolbox

- German version of the **Flesch Reading Ease Score**
  – Amstad (1978)
  – because of its **regulatory history**

- **Läsbarhetsindex (LIW)**
  – Björnsson (1968)
  – because it **best predicts** 4,000 pairwise text comparisons
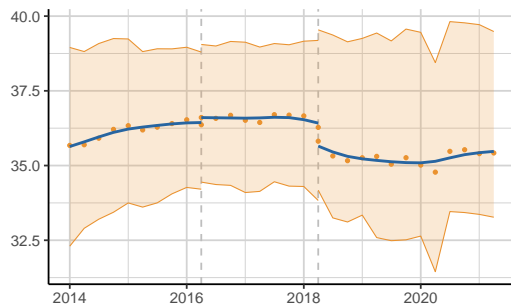
Compliance: Just the Data

Weighted words

German FRE

disclosure increases by 80%
(incl. year FE, firm FE, additional controls)

readability decreases by 4%
(incl. year FE, firm FE, additional controls)

very sensitive to the used metric though!

Is readability compliance dead?

No!

→ **Exposure** to the regulation

→ **Scrutiny** by the regulator

→ **Capacity** of the regulator

Exposed Firms → Better Readability Compliance

Approach:

- Firms with lower pre-GDPR disclosure or readability are more exposed

- → treatment-intensity diff-in-diff

Result:

- More exposure induces better readability compliance

- Low-readability firms: increase; high-readability firms: decrease

	Disclosure	Readability
Dep. variable (in log):	**Weighted words**	**German FRE**
High disclosure	0.4507***	
	(0.0075)	
Low disclosure	1.144***	
	(0.0092)	
High readability		-0.1095***
		(0.0021)
Low readability		0.0196***
		(0.0021)
# Firm FE	64,609	64,606
R^2	0.805	0.645
Observations	409,527	409,433

Targeted Firms → Better Readability Compliance

Approach:

- Pre-GDPR enforcement actions of UK data regulator
- → Industry-level enforcement index

Result:

- More scrutiny induces better readability compliance
- Smaller decrease in readability in high-enforcement industries
- Minimal effect on disclosure (as expected)

Dep. variable (in log):	Disclosure **Weighted words**	Readability **German FRE**
No enforcement	0.7918***	-0.0450***
	(0.0189)	(0.0047)
Low enforcement	0.7964***	-0.0428***
	(0.0096)	(0.0025)
Medium enforcement	0.7504***	-0.0481***
	(0.0105)	(0.0027)
High enforcement	0.7767***	-0.0321***
	(0.0117)	(0.0028)
# Firm FE	63,749	63,746
R^2	0.782	0.624
Observations	403,452	403,358

Funding for Data Regulators

- In Germany, 16 (+2) state data protection authorities regulate firms in their respective jurisdictions

- **Same rules, different enforcers**

- Each state regulator has its own budget
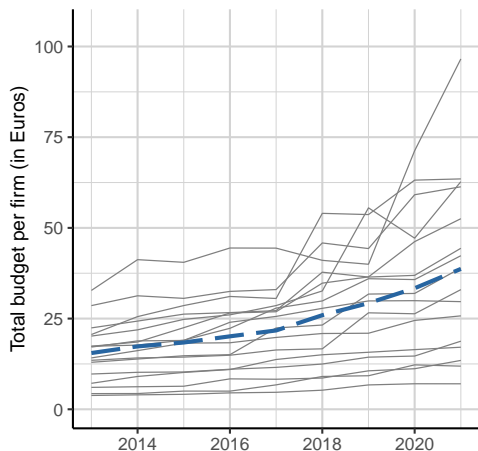 - variation across states

44 €
38 €
31 €
25 €
18 €
11 €
5 €
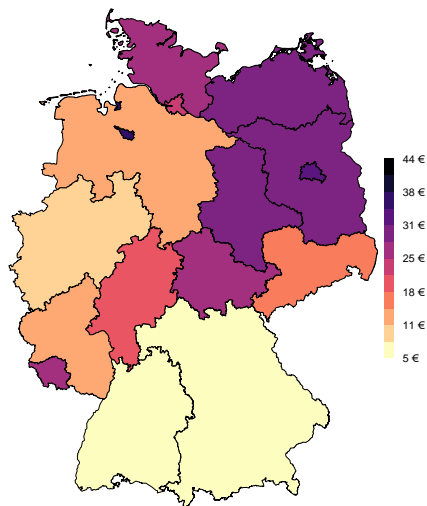
Funding for Data Regulators

- In Germany, 16 (+2) state data protection authorities regulate firms in their respective jurisdictions

- **Same rules, different enforcers**

- Each state regulator has its own budget
  - variation across states
  - variation over time

More Funding → Better Readability Compliance

Approach:

- State-level regulator budget
- → state-level variation of enforcement capacity

Result:

- Better readability compliance in better-funded states
- Higher budget → weaker decrease/larger increase in readability
- Minimal (negative?) effect on disclosure (as expected)

Dep. variable (in log):	Disclosure	Readability
	Weighted words	**German FRE**
Panel (a): Total Budget Per Firm		
× Budget (lagged)	-0.0006	0.0002*
	(0.0005)	(0.0001)
Panel (b): Employees Per Firm		
× Staff (lagged)	-0.0575	0.0219*
	(0.0428)	(0.0112)

Summary

- Firms write a lot more and also disclose more of the things they are supposed to

- Privacy policies are (on average) just as incomprehensive as before

- **BUT**: the rules are **effective**
  - those behind caught up
  - firms did respond to more stringent regulation
  - regulators' funding matters, too

. . . the readability requirement is here to stay!

- GDPR (2018)
    - *"concise, transparent, intelligible and easily accessible form, using clear and plain language"*
- Platform-to-Business Regulation (2019)
    - *"plain and intelligible language"*
- Digital Services Act (2022)
    - *"clear, plain, intelligible, user-friendly and unambiguous language"*
- Platform Workers Directive (proposal version) (2023)
    - *"concise, transparent, intelligible and easily accessible form, using clear and plain language"*
- . . . and a growing list of U.S. states introducing new legislation

ZEW

Thank you!

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