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How will the revision of the Posted Workers Directive impact your assignments?



Introduction

With this brochure, Deloitte intends to keep you updated on the recent revision of the Posted Workers Directive.

The topic of posted workers (i.e. “assignees”, “seconded workers”) and the Posted Workers Directive has always been under the attention, but has recently become an extremely hot topic covered by all media. The information published in the press is however not always fully accurate or complete and may lead to confusion on the impact for employers and employees. Through this brochure, Deloitte will clarify the state of affairs and share all relevant updates on the subject.

You will find an overview of the current EU Posted Workers Directive as well as an assessment of its revision.

Stay tuned for future updates.

Current EU legislation on Posted Workers

Posted Workers Directive: host state's "core set of labour law" applies

When assigning employees within the EU, the [Posted Workers Directive](#) ("PWD") obliges employers to comply with a "core set" of labour law provisions in the host country during the assignment period.

This hard core consists of national laws and collective agreements regarding:

- Minimum wage,
- Working time,
- Vacation,
- Health and safety,
- Conditions of hiring out workers,
- Protective measures for pregnant women or women with young children,
- Equal treatment between men and women,
- Other local public policy provisions.

Employees (regardless whether the employees are assigned from an EU or non-EU country) assigned to Belgium are subject to the Belgian terms and conditions of employment that are sanctioned by criminal law. In practice, this means that almost the entire Belgian labour legislation (termination rules excluded), including all generally binding collective agreements, is applicable to assigned employees as of day one of their assignment to Belgium.



Posted Workers Enforcement Directive: better monitoring of employers' compliance

Since many EU countries continued to struggle in enforcing those minimum employment standards and non-compliance led to unfair competition, action was taken at European level in 2014 with the adoption of the Posted Workers [Enforcement Directive](#). The latter aims to improve local compliance with the core set of labour law, through general enforcement measures and specific new employer's obligations. The latter mainly concern prior notifications of posting, the appointment of a liaison person for the authorities and the keeping of social documents.

In Belgium, this was implemented through:

- Introduction of criteria to better define genuine postings;
- The obligation for foreign employers to keep specific social documents available (e.g. employment agreement, payslips, and time-sheets);
- There are however some exemptions to this obligation (based on the length and/or the nature of the activity) for a 12-month period. The employees of the international transport sector (cabotage operations on the Belgian territory excluded), the employees seconded to Belgium for the initial assembly and / or first installation of a property as well as specialized technicians are nevertheless not covered by these exemptions.
- The obligation for foreign employers to appoint a contact person with whom Belgian authorities can liaise (since October 1, 2017, the name of the liaison person has to be mentioned in the Limosa declaration);
- A specific joint liability regarding payment of remuneration in construction sector;
- Specific sanctions against violations of the above rules.

Revision of the Posted Workers Directive: “equal pay for equal work”

EU Commissioner Thyssen proposed to revise the PWD in order to ensure a level playing field between foreign and local employers in the host country. On 21 June 2018, the EU adopted a new directive revising the Posted Workers Directive of 1996.

The aim of the revision is to facilitate the free movement of services whilst ensuring fair competition and respect for the rights of posted workers. More specifically, the revision aims at ensuring fair wages and a level playing field in the host country between posting and local companies whilst also maintaining the free movement of services.



The essence of this revision is:

- the principle of “equal pay for equal work” between posted and local employees;
- the full application of the host country’s mandatory labour law for assignments exceeding 12 months (extendable to 18 months on the basis of a motivated notification) with the exception of termination rules and supplementary occupational pension schemes;
- the application of universally applicable collective agreements to posted workers across all sectors;
- the equal treatment of temporary agency workers and local workers.

What is the impact for employers?

The revision of the PWD will have an impact for employers assigning employees to the European Economic Area, i.a. depending on the host country concerned.

No impact for social security

We draw your attention to the fact that the revision of the PWD does not have any impact on the EU social security coordination rules provided for by EU Regulation 883/2004. Based on its provisions, an employee remains covered by the home social security scheme during a period of maximum 5 years (with A1 form as proof). This remains unchanged.

Equal pay for equal work

The principle “equal pay for equal work” implies that the remuneration of assigned workers should be at the same level of the salary of his local peers, including the same additional salary elements such as bonuses or allowances. At the moment, an employer is only obliged to comply with the minimum wage.

At the moment it is still unclear what “equal pay” exactly will mean. Based on our analysis of the changes, “equal pay” does not imply that a posted worker is entitled to an identical salary and benefits package as his local colleagues (cf. group insurance, hospitalization, company car, lunch allowances, etc.). Equal pay rather refers to the wage scales and specific allowances applicable due to local legislation or generally binding collective agreements. For some countries, this is nevertheless a substantial change compared to the current obligation to comply with the minimum wage level. In the documents that are published today the following elements are mentioned: seniority, 13th

month, Christmas bonus, allowance for bad weather, mobility allowance, pay supplement for special works, allowance for wear of tools, allowance for difficult work, meal vouchers or other type of vouchers, etc.

It will be up to the member states to specify in a transparent way the different elements of how remuneration is composed on their territory. Generally speaking, the core set-requirement to comply with the “minimum wage” has been changed to the core set-requirement to comply with the “remuneration” rules of the host country.

For employees assigned to Belgium, there will be no substantial changes. Considering that Belgium has already implemented the Posted Workers Directive in a very broad sense by determining almost the entire Belgian labour law as applicable to posted workers, the revision will have a minimal impact.



Full application of the host country's mandatory labour law after 12 months

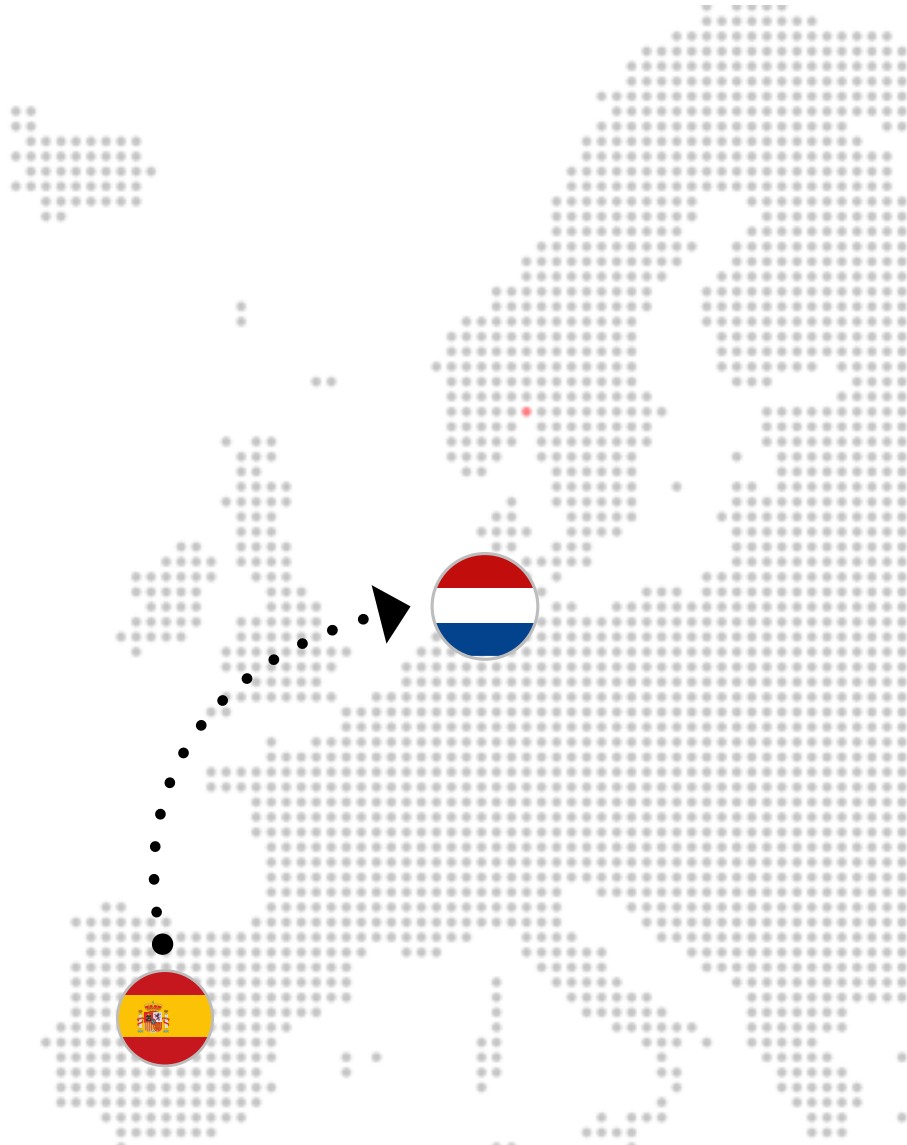
After 12 (or 18) months of assignment not only the core set, but the full mandatory labour law provisions of the host country will be applicable with the exception of the termination rules and supplementary occupational retirement pension schemes.

Also here, the impact for assignees to Belgium will be considerably low, as in principle almost the entire Belgian labour law applies. For assignments to other countries, the impact can be substantial as we can see in the next example

Example – Assignment to the Netherlands

Currently, as of the first day of assignment to the Netherlands, the mandatory core terms of Dutch employment law will be applicable. These (Dutch) employment terms include, amongst others, maximum working hours (general ground rule: max 12 hours per shift; max 60 hours per week), minimum wage (EUR 1,578 gross as of 1 January 2018), minimum holiday allowance (a gross payment of a minimum of 8% of the annual salary) minimum number of holidays (20, based on fulltime employment). These employment terms or conditions can also be included in (universally binding) collective labour agreements.

Under the future rules, in the first 12 (or 18) month-period, the remuneration to be paid to a posted worker in the Netherlands might be higher than the current entitlement to merely the minimum wage and minimum holiday allowance (cf. paragraph above). If the specific minimum wage scale and certain specific allowances (such as an overtime allowance, seniority allowance, etc.) are included in a (universally binding) collective labour agreement, the minimum wage scale, overtime allowance and seniority allowance will already have to be paid to the employee.



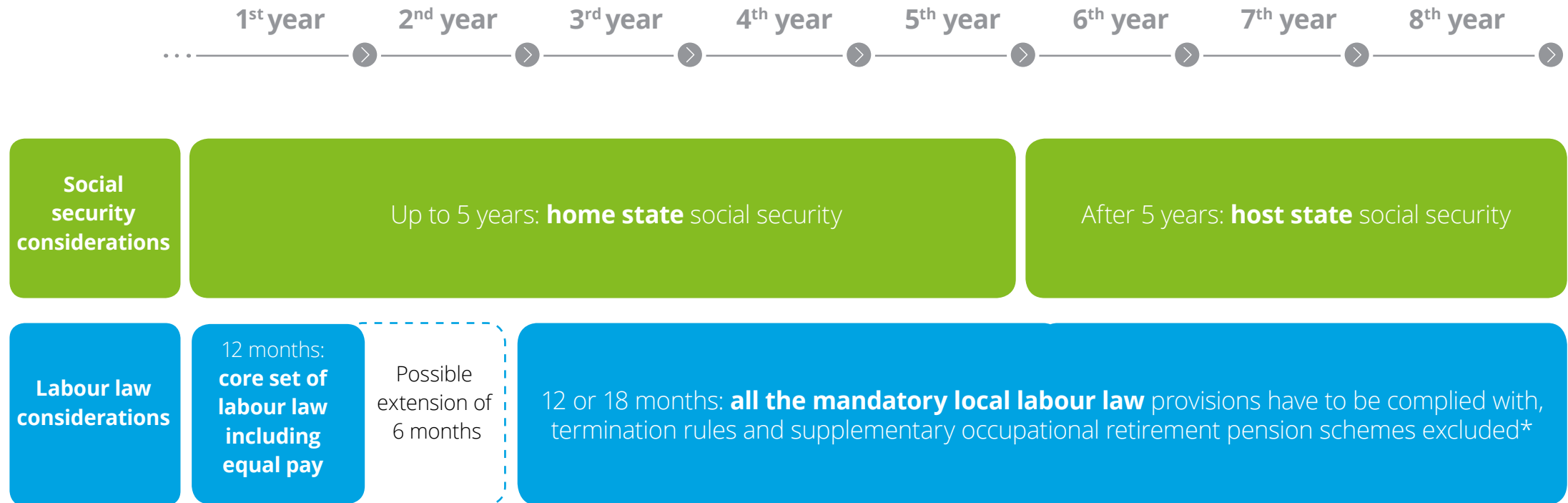
An example: A Spanish engineer (of 55 years old) is assigned to the Netherlands for a period of one year. A (universally binding) collective labour agreement is applicable with the following relevant rules included:

- the relevant wage scale minimum for his job is EUR 1,800 (including holiday allowance);
- an overtime allowance that in a given month amounts to EUR 100;
- a seniority allowance that in a given month amounts to EUR 250.

In the current situation, the Spanish engineer is entitled to the relevant wage scale minimum (in total: EUR 1,800). In the future situation, he would also be entitled to an overtime and seniority allowance and, therefore, his salary would amount to EUR 2,150.

After the 12 (or 18) month-period, all of the mandatory Dutch labour law provisions will have to be complied with. This can include for instance leave regulations: for example, the Spanish engineer might be entitled to specific age-related leave. Premiums for research & developments funds might also have to be paid by the sending employer. Please note that the Dutch dismissal laws are in principle excluded.

Assignment timeline



*Do note that if the contractually chosen labour law is more beneficial to the employee, this will continue to be applicable.



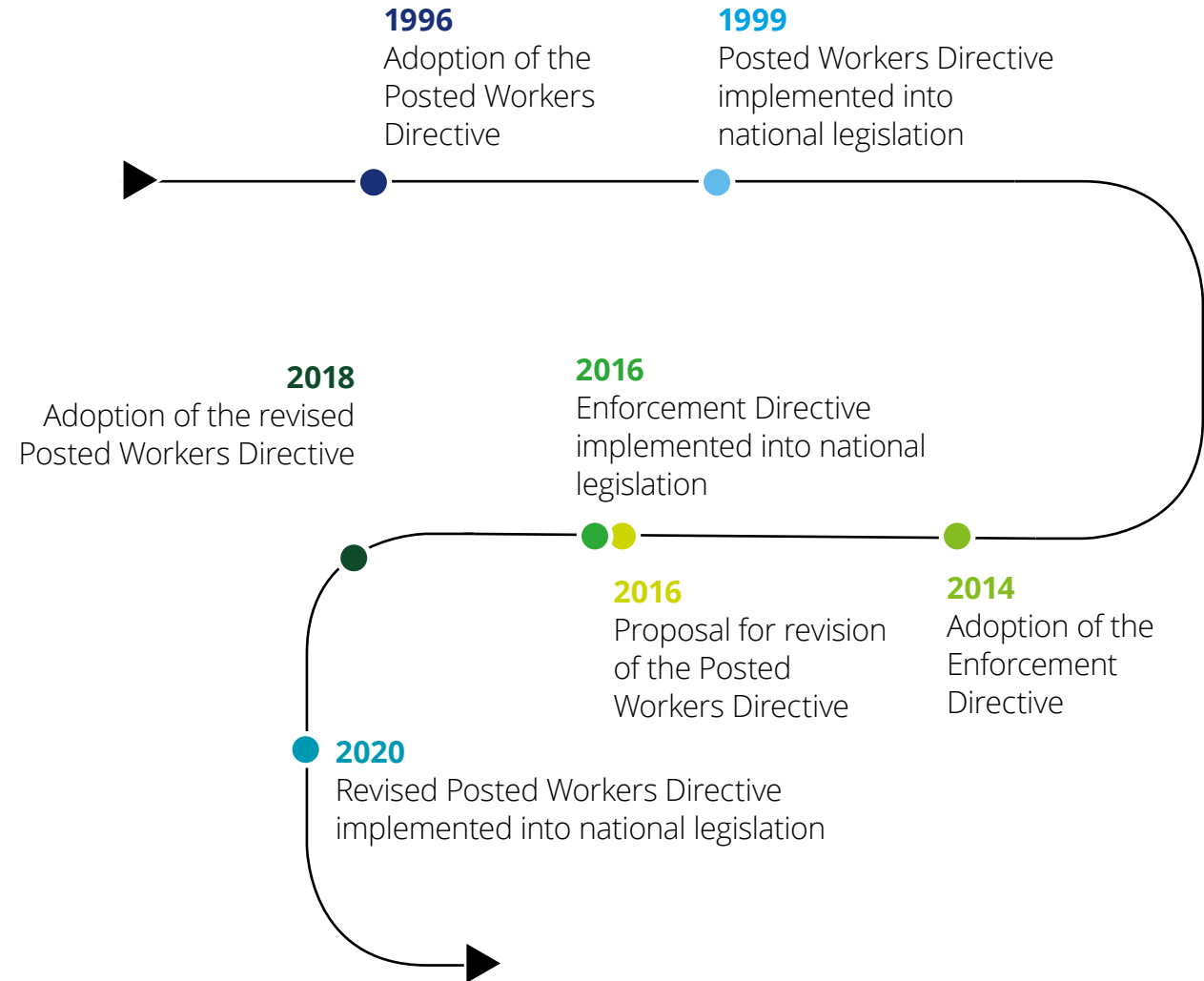
Other PWD related employers obligations

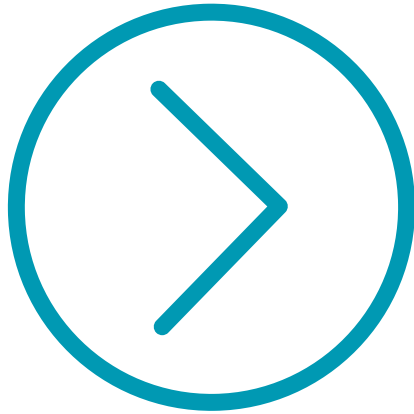
In a move to further guarantee that the rights and working conditions of employees are protected throughout the EU, employers today face greater obligations and liabilities in most Member States with respect to their international assignees and business travelers.

Since the implementation of the Posted Workers Enforcement Directive, strict compliance requirements are being imposed on employers, such as the prior notifications of posting, retention of social documents, appointment of a liaison person for the authorities, etc. These new employer obligations are increasingly under the spotlight, with greater scrutiny and strict penalties being imposed for failures with compliance.

We can refer you to our [Posted Workers Directive Webtile](#) for a more comprehensive analysis.

Policy Timeline





Way forward

The transposition and application of the revised directive is currently foreseen 2 years after the entry into force.

This new legislation will consequently be implemented throughout the EU as of 2020.

Deloitte will continue to closely monitor the ongoing legislative process as well as the related developments and keep you posted of any update in that regard.

Deloitte's recommendation is to take advantage of the implementation period of 2 years to:

- Define a strategy on how to tackle the PWD topic within the company or group of companies
- Follow-up on the national implementation in countries where you have assignees and assess the revised rules' impact on remuneration policies for assignees in various sectors and professions
- Assess the impact of the reduced secondment period from a labour law point of view on assignment policies
- Have a 360° view on the PWD impact for assignees and business travelers (host country legal compliance, registrations, liaison persons, social documents, ...), considering the policy framework is getting stricter in the near future

Key Contacts

If you have any questions concerning the items on this website, please contact your labour and social security law team at our Deloitte office in Belgium:



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