

Posted Workers Directive

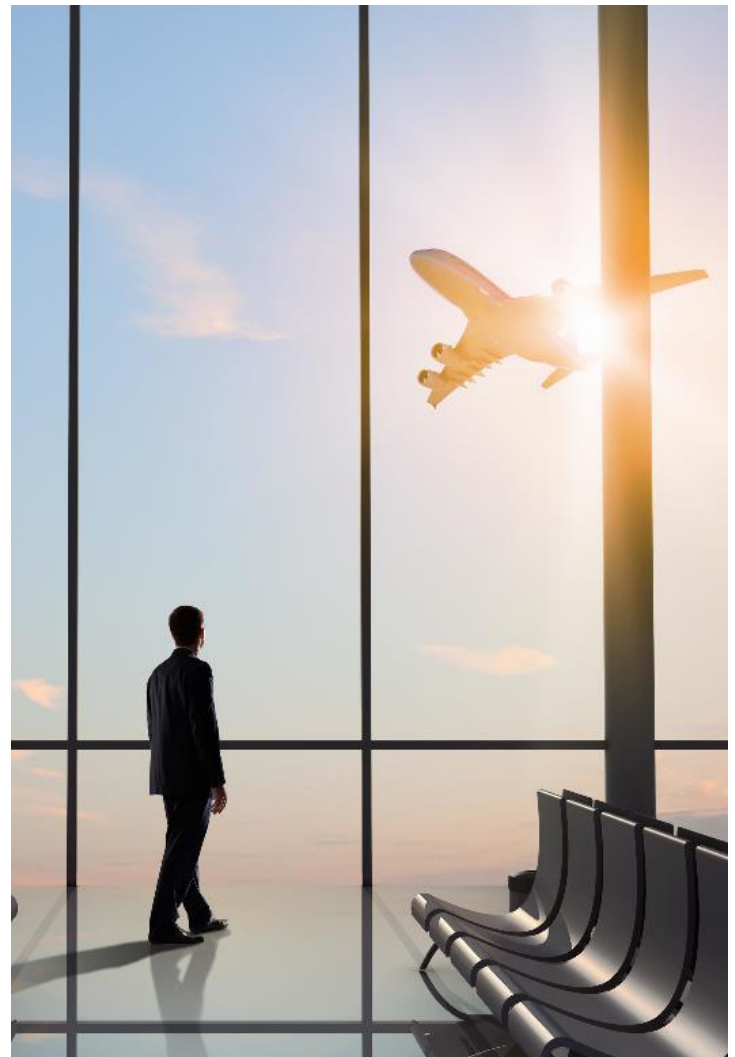
Time for action

Overview

Employers today are faced with ever greater compliance challenges and financial risks across Europe in respect of their international assignees and business travellers.

The legislation mandated by the **Posted Workers Directive** has led to strict registration requirements being imposed on employers, which creates an obligation to increase their oversight and tracking of overseas trips, and retain a wide variety of employment documents for both business travellers and assignees. These employer obligations are being put under increasing scrutiny and penalties are being imposed for compliance failures.

This publication provides context to the Posted Workers Directive requirements, and gives a flavour of the ways in which Deloitte can support you.



What is a 'posted worker'?

A posted worker is a worker who, for a limited period, carries out his or her work in an EEA member state other than the state in which he or she normally works. Posted workers may be sent in the framework of subcontracting, intra-company moves or temporary work. However, due to the varied approach to implementing these rules, registration requirements can be triggered for any "work-related presence".

The continued growth of short term mobility has created significant compliance challenges at a national level.



Legal Background Posted Workers Directive (1996)

The objective of the 1996 Posted Workers Directive (96/71/EC) was to guarantee that the rights and working conditions of posted employees are protected throughout the EEA and to address a number of concerns such as 'social dumping' – the undermining of local labour markets by the use of cheaper foreign workers.

Under the PWD, Member States are obliged to guarantee to posted workers certain minimum terms and conditions of employment that are received by local workers in the host country. These include minimum wages, working time and paid leave.

A rise in abusive and fraudulent practices, particularly in certain labour intensive sectors led the EC to take action. Questions were raised as to whether or not the PWD provided a sufficiently strong legal framework for ensuring sufficient protection of posted workers in all sectors.

Posted Workers Enforcement Directive (2016)

In 2014, the EU adopted an Enforcement Directive to further strengthen the protection of posted workers and stop circumvention of the rules. This has triggered the introduction of different new compliance requirements for employers across the EEA.

Upcoming revisions to the rules (2020)

Effective mid-2020, a new regulation will take effect which extends the 1996 directive to promote the following:

- Equal pay for equal work
- Host country labour law to apply after 12 months
- Stricter rules for temporary work agencies.



Employer requirements: time for action

The 1996 Directive was mainly of concern just to employers of blue-collar workers in certain labour intensive sectors such as agriculture and construction. The 2016 rules however extend compliance obligations to every mobile employee and every employer, regardless of the posted workers' pay and conditions, forcing more employers to pay attention for the first time. Combined with a much stronger enforcement approach from the EU, and strict penalties/sanctions for failure, now is the time for employers to focus on their responsibilities:



How has the PWD led to more vigorous enforcement, and what are the business challenges?



Better information exchange between authorities

The Directive sets out requirements for information exchange, inspections and mutual assistance between Member States and their respective authorities when identifying breaches and enforcing rights.



Cross-border enforcement of financial administrative penalties

The Directive has created a better system for penalties to be notified and recovered across borders within the EEA.



Monitoring and compliance

The Directive sets out what information requirements individual Member States can impose on companies posting workers. Each member state is implementing the rules to varying degrees, presenting further challenges for employers.



Increased scope

Certain Member States have extended these sanctions to all overseas visitors (not just EEA postings), meaning individuals previously not captured/monitored will now require attention.



Prior notification

Most EU Member States now impose an obligation for foreign employers to report postings before the first day of work.

This creates new challenges for HR in terms of tracking cross-border workers who may travel 'under the radar' and who hadn't previously required tax, social security or immigration support.



Liaison person

The new requirement for a liaison person for labour inspections has created practical challenges for those businesses sending travelers into locations where they have no physical presence.



Retention of social documents

An obligation on employers to keep copies of employment documents (such as payslips, employment contracts and work schedules). These may also need to be translated into the official language(s) of the host country and to be retained for a certain period.



What if employers fail to act?

Failure to comply with PWD requirements can lead to fines for both the sending and receiving companies. The measures also empower trade unions and other parties to lodge complaints and to take legal and/or administrative action against the employers of posted workers, if their rights are not respected.

A number of EEA states have levied very large fines where there is a breach of new registration requirements.



Enforcement in practice

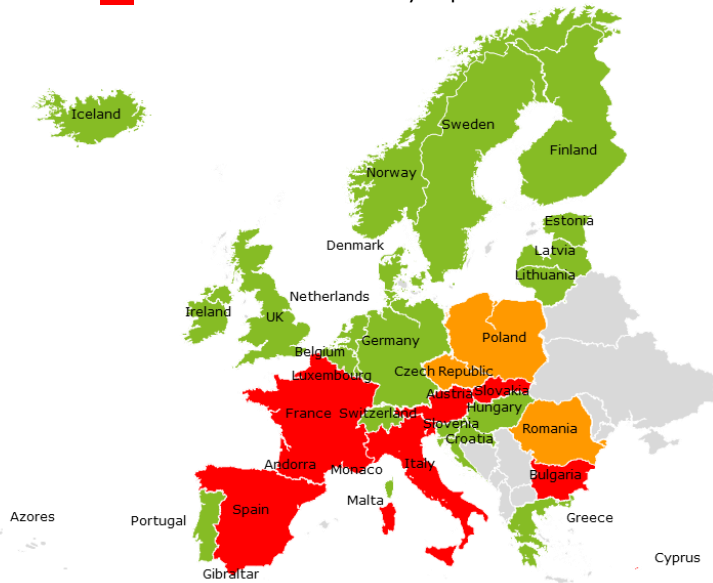
We are already seeing action taken by various EU authorities. In **Germany**, companies are being warned that they will lose the right to operate in the country following a failure to make the relevant notification. We are also seeing authorities in **Switzerland** levying penalties and threatening to 'name and shame' and black list. In **BENELUX** countries, the authorities have agreed a joint initiative to intensify and collaborate on audits.



Audit activity map

As outlined on the previous page, we are seeing increased audit and enforcement activity in the market.

- No changes in audit activity post PWED implementation
- Increased audit activity but no penalties imposed so far
- Increased audit activity & penalties



Compliance Framework

Our pan-European delivery model will help employers manage the administrative requirements of the PWD and prevent sanctions resulting from non-compliance.

The new rules effectively present a two-stage process for employers. The first, and arguably more challenging aspect, are the registration requirements. The second is ensuring on-going compliance with the PWD itself.



Registration and representation requirements

- Tracking and management of the notification and extension requirements, in accordance with local country processes in all 28 EU Member States.
- Acting where possible, as a representative with the local labour authorities on your behalf.
- Providing businesses with insights into their mobility challenges and risks beyond PWD.

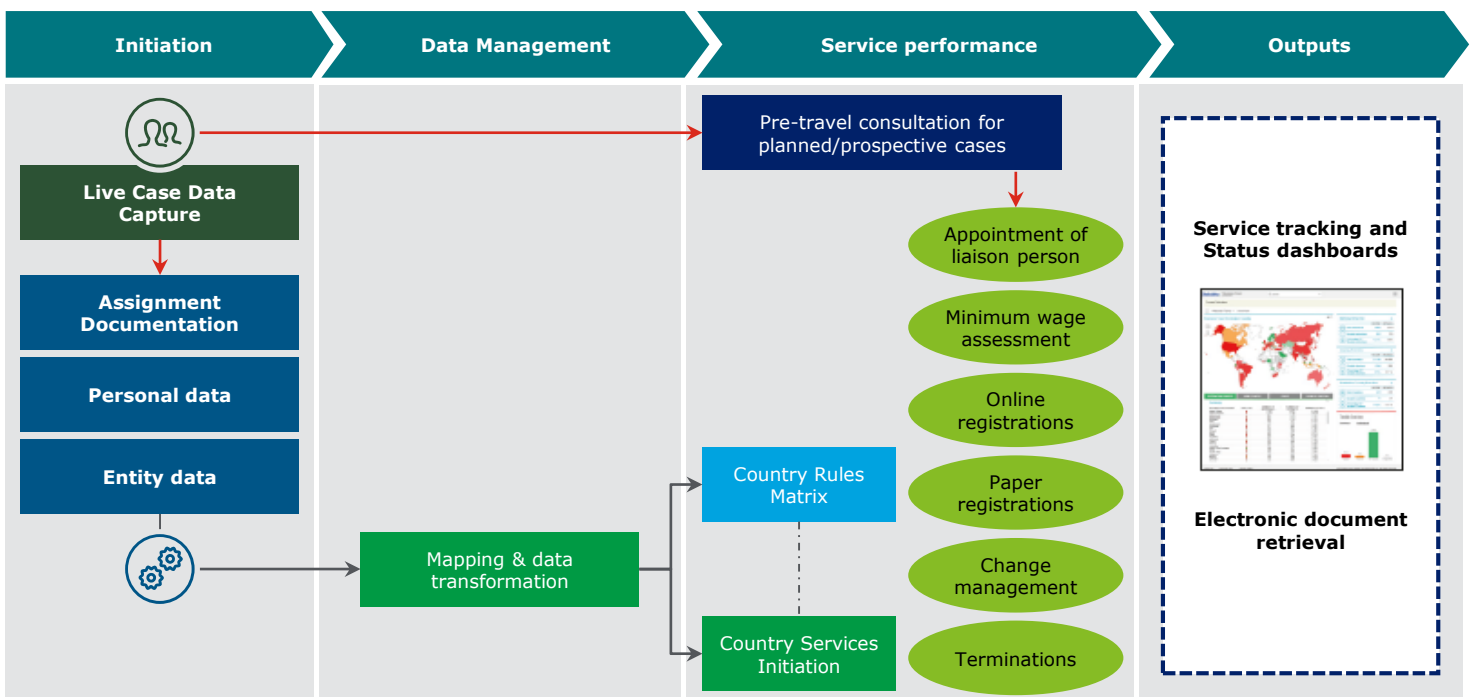


Compliance with the Directive itself

- Reviewing compliance with minimum wage legislation, as well as other employment conditions such as working time, paid leave or health and safety rules.
- Support through labour inspections.

Operational Model

Rapid execution from the identification of travel through to the processing of registrations is critical. Our delivery model is technology focused, underpinned by robust technical knowledge of the specific country registration requirements, and our intuitive dashboards allow for transparent reporting. Below is an overview of our delivery model which can be tailored to client-specific needs.



Summary

The compliance landscape under PWD is evolving rapidly. The extent of implementation of the Directive is substantially different in each EU member state, with some locations such as Germany and the UK implementing almost no new regulations, while locations such as Austria have taken a much more compliance-heavy approach.

The increased scrutiny and onerous penalties that mean now is the time to ensure that your organisation has processes and policies in place in order to adapt to this new compliance environment.



Contacts



Renaat Van den Eeckhaut
Partner
Global Employer Services
Tel: +41 58 279 6986
Mob: +41 79 578 41 60
Email: rhvandeneeckhaut@deloitte.ch



Harry Verougstraete
Senior Manager
Global Employer Services
Tel: +41 58 279 6813
Mob: +41 79 850 71 55
Email: haverougstraete@deloitte.ch

Deloitte.

This publication has been written in general terms and we recommend that you obtain professional advice before acting or refraining from action on any of the contents of this publication. Deloitte AG accepts no liability for any loss occasioned to any person acting or refraining from action as a result of any material in this publication.

Deloitte AG is an affiliate of Deloitte NSE LLP, a member firm of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"). DTTL and each of its member firms are legally separate and independent entities. DTTL and Deloitte NSE LLP do not provide services to clients. Please see www.deloitte.com/ch/about to learn more about our global network of member firms.

Deloitte AG is an audit firm recognised and supervised by the Federal Audit Oversight Authority (FAOA) and the Swiss Financial Market Supervisory Authority (FINMA).