

## Posted Workers Directive

### Meet the challenge

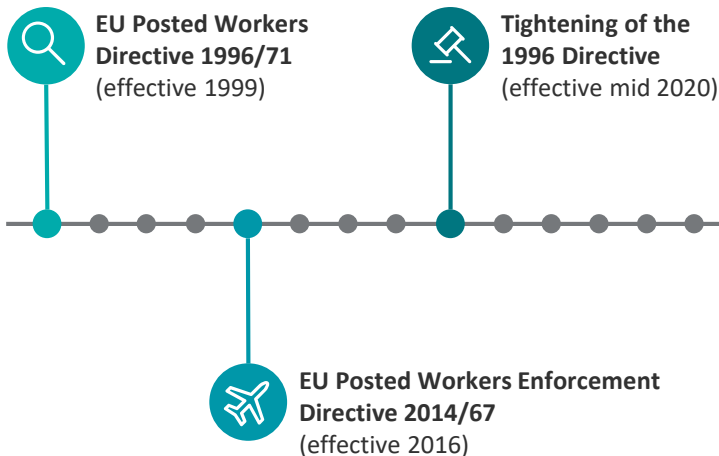
Employers today are faced with ever greater compliance challenges and associated risk exposures across Europe in respect of their international assignees and business travelers.

The legislation mandated by the Posted Workers Directive (PWD) has led to strict pre-travel notification requirements being imposed on employers. These rules create an obligation to increase their oversight and tracking of overseas trips, and retain a wide variety of employment documents for both business travelers and assignees. Employer compliance is being put under increasing scrutiny and penalties are being imposed for failure to comply.

The measures introduced across Europe to monitor cross border travel for the purpose of limiting the spread of Covid-19 are, in addition to the scrutiny mandated by the Directive, likely to create practical barriers to movement for some time to come.

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

#### Legal Background



#### 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 and Switzerland other than the state in which he or she normally works. Posted workers may be sent in the framework of cross-border provision of services, intra-company moves or temporary work. However, due to the varied approach to implementing these rules, notification requirements may be triggered for any "work-related presence". Depending on the destination Member State, third-country employees and employers may be captured within the Directive(s).

#### 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 Switzerland and to address a number of concerns such as 'social dumping' – the undermining of local labor markets by the use of cheaper foreign workers.

Under the 1996 PWD, Member States were 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 labor-intensive sectors led the EC to take action.

### Posted Workers Enforcement Directive (2016)

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

### Tightening of the 1996 Directive

New legislation, which came into effect July 2020, extends the 1996 Directive to promote the following:

- Equal pay for equal work done in the same place
- Full host country labor law to apply after 12 months
- Stricter rules for temporary work agencies

Not all countries have however transposed these requirements into national law as yet.



### Employer requirements: time for action

The 1996 Directive was mainly of concern just to employers of blue-collar workers in certain labor-intensive sectors such as agriculture and construction. The 2016 rules however extend compliance obligations to every sector, regardless of the posted workers' pay and conditions, forcing more employers to pay attention for the first time. Compliance is of the utmost importance, requiring employers to navigate jurisdictional complexities as well as implementing robust tracking processes and auditability of required documentation.

## 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 EEA countries and Switzerland 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 EEA countries can impose on companies posting workers. Each member state is implementing the rules to varying degrees, presenting further challenges for employers.



### Increased scope

Certain EEA countries have extended these sanctions to all overseas employees (not just EEA postings), meaning individuals previously not captured/monitored 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 requirement for a liaison person for labor 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 pay slips, 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 countries and Switzerland have levied very large fines where there is a breach of new notification requirements.


We are already seeing action taken by various EEA countries' 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 blacklist. In BENELUX countries, the authorities have agreed a joint initiative to intensify and collaborate on audits.

### What requirements have/ will the 2020 changes added to the current PWD rules?

#### Equal pay for equal work

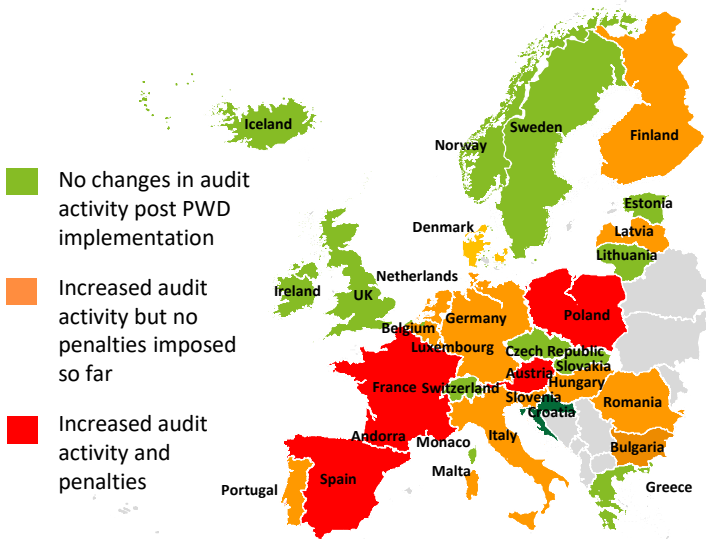
Implies that the remuneration of posted workers equals the same level of the salary of their local peers, including the same additional salary elements embedded in legislation and generally applicable collective agreements, such as bonuses or allowances. Previously, employers were only obliged to comply with the minimum wage.

#### Host country labor law to apply after 12 (or 18) months

 After 12 (or 18) months of assignment not only the core set, but the full mandatory labor law provisions of the host country will be applicable, excluding termination rules and occupational pensions.

### Audit activity map

As outlined above, we are seeing increased audit and enforcement activity in the market.



### Compliance Framework

A pan-European delivery model can help employers manage the administrative requirements of the PWD and assist in preventing sanctions resulting from non-compliance.

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

#### notification and representation requirements (in line with the 2016 directive)

#### Compliance with the Directive itself

### Flexible delivery model

Deloitte take a modular approach to delivery of PWD services, meaning that we can consume data from, for example, your existing travel provider(s), your HR and other internal databases. Our model is also adaptable depending on whether you're looking for a standalone PWD solution or one that supports your business traveler compliance more widely.

Rapid execution from the identification of travel through to the processing of notifications is critical. Deloitte's delivery model is technology enabled, including automation wherever possible, and underpinned by robust technical knowledge of the specific country PWD requirements. Immediate insight into the PWD notification requirements across your business travelers and assignees is available via intuitive dashboards.



## Design principles of our delivery model

In shaping the design of our solution, some fundamental requirements stood out and have underpinned our approach. These are:

**Employee experience:** a flexible process which enables employees to be involved in the compliance process only when required, and in a way that aligns to your vision for the program.

**Technology:** services should be underpinned by a comprehensive technology platform that can quickly determine the requirements for PWD. It can also have potential to cater for add-ons to reflect wider tax, social security, immigration and permanent establishment implications in relation to the travel.

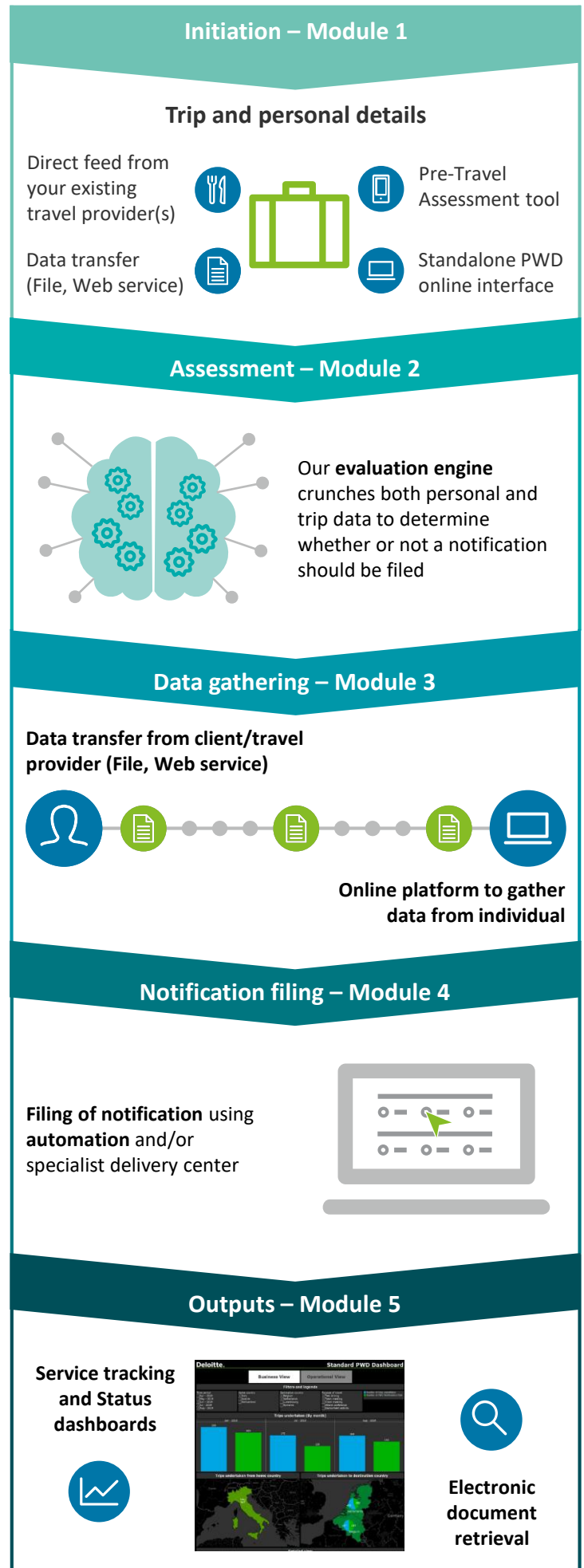
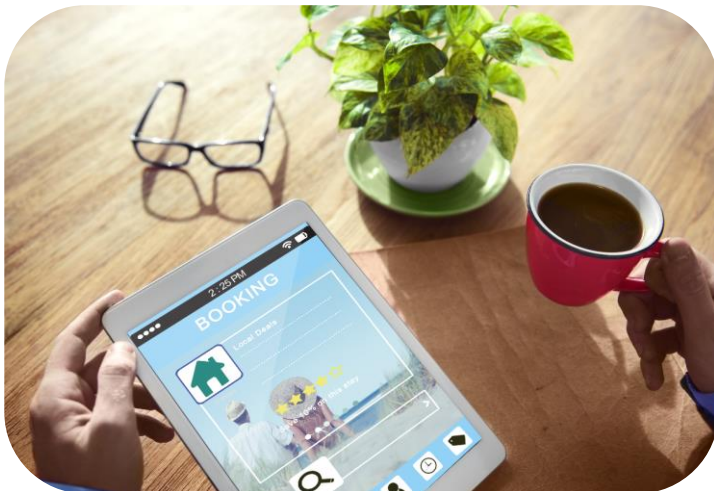
**Minimise data requests:** systems and processes that work together and support seamless, swift and accurate sharing of data from any source alongside accessible real-time reporting. A model which capitalizes on our experience working with many external travel providers and feeds into our aim that we will only collect the data we actually need in order to make the notification.

**Flexible approach to data gathering:** flexibility in how and from whom we receive trip/HR data. Adaptable implementation approach for new or existing clients whether seeking a standalone PWD offering or an addition to an existing Deloitte service engagement.

**Post-travel evolution:** visibility that extends beyond the immediate PWD tasks and enables you to prioritize other compliance improvements in immigration, tax, payroll and social security.

**Documents and reporting:** access to robust data and practical insights, as well as guidance with management of relevant documentation with additional support and assistance provided in the event of an enquiry or audit.

**Equal pay evaluation:** a model which looks to integrate the new European-wide rules on equal working conditions, and with further support on more complex labor law issues.



## Time for action

The compliance landscape under PWD is evolving rapidly. The extent of implementation of the Directive is substantially different in each EEA country as well as Switzerland, with some locations implementing almost no new regulations, while locations such as Austria have taken a much more compliance-heavy approach.

The increased scrutiny and onerous penalties have pushed to the fore the existing PWD requirements and mean employers should take care to ensure that they have processes and policies in place to adapt to this ever-evolving compliance environment.

Initial steps can include undertaking a potential exposure assessment of your mobile employees, to look at current traffic lanes and volumes to understand where risks lie.

Contact a member of our team to discuss how we can help.



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