A group of five people, three men and two women, are gathered around a workbench in a factory or workshop. They are looking at a tablet device held by one of the men. The background shows industrial machinery and equipment.

Update implementation process Reform Posting of Workers Directive

The implementation of the Reform Directive will have major consequences for the rules regarding transnational posting of employees.

We have discussed the reform of the Posting of Workers Directive 2018/957/EU (the "Reform Directive") several times in earlier Posting of Workers alerts. This directive was adopted by the European Parliament on 29 May 2018, and is a revision of the existing Posting of Workers Directive of 1996, raising the material protection level for posted workers.

The Reform Directive must be transposed into national law by national legislators ultimately by 30 July 2020. The implementation of the Reform Directive will have major consequences for the rules regarding transnational posting of employees. In this law alert we provide an update on the progress with regard to implementation in the respective EU/EEA Member States.

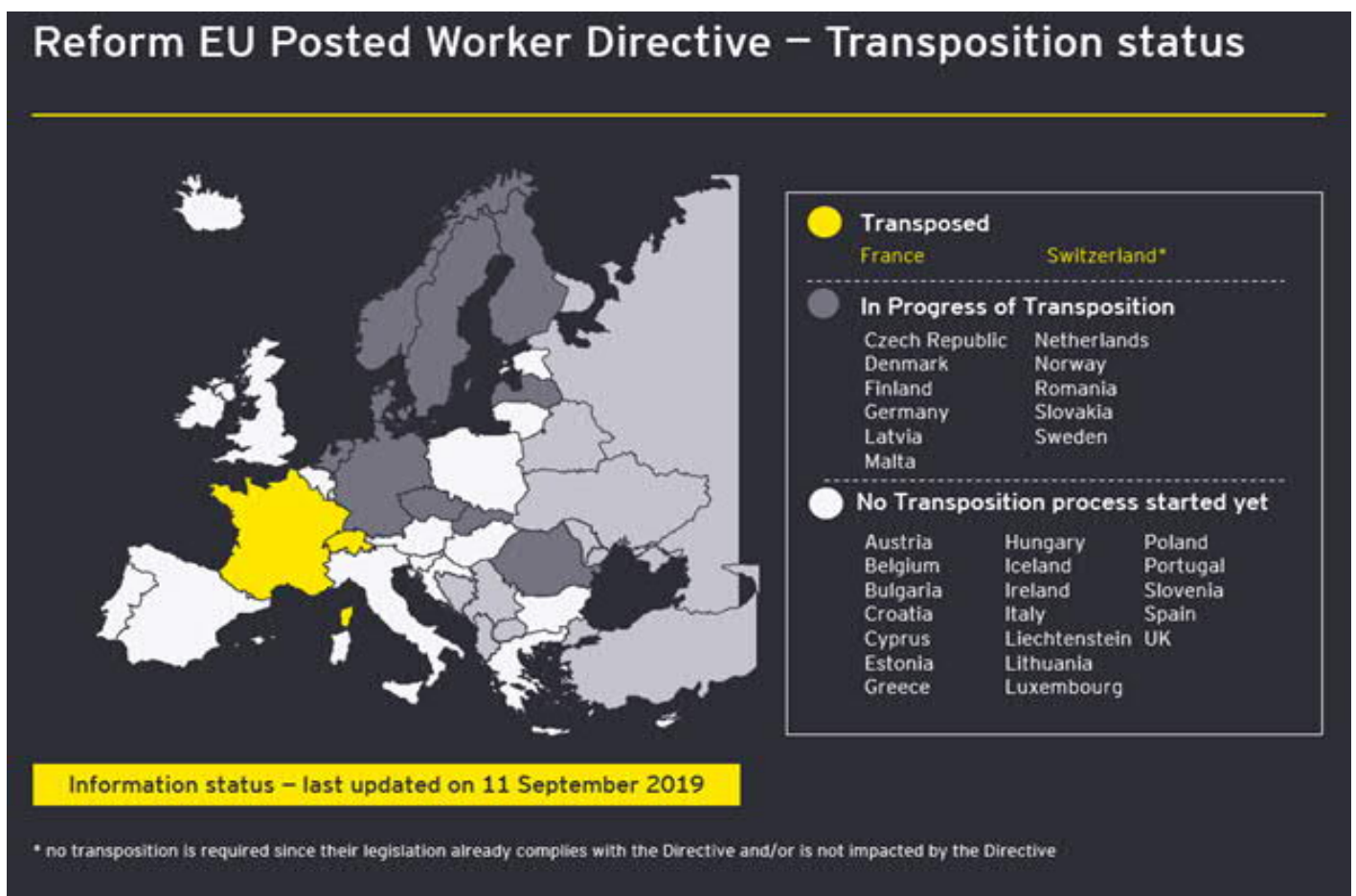
Objective and main elements revision

An important objective of the EU Posting of Workers legislation is to respect and protect the rights of posted workers while ensuring fair competition between companies. In order to ensure this objective the Posting of Workers Directive of 1996 provides posted workers with a number of basic terms and conditions of employment to be observed by the service provider in the country of employment, often referred to as the 'hard core' employment conditions. Subsequently, the Enforcement Directive of 2014 has been implemented to prevent abuse and circumvention of these rules by imposing various administrative obligations on the service provider, such as the reporting obligation.

With the revision of the Posting of Workers Directive, the EU Commission aims to address unfair practices and promote the principle of equal pay for equal work at the same work place. To achieve this aim, the EU Member States will have to transpose the Reform Directive into national legislation on 30 July 2020 at the latest.

Update implementation process

Our international EY Law network ensures that we keep abreast of the latest developments on the posted worker legislation across the whole of the EU/EEA. We know that the implementation process has already started in several EU/EEA Member States. This means that discussions are taking place in the national ministries about the specific consequences of the Reform Directive for national legislation, that draft bills have been published for consultation or that, in the case of France, the Reform Directive has already been implemented. In a number of other EU/EEA Member States, much is still unclear about the implementation process. Below you find a visual representation of the implementation process in the EU (last updated on 11 September 2019).




It is important for employers to realize that the Reform Directive gives EU Member States a margin of discretion concerning some aspects of the Reform Directive. As with various other aspects of the Posting of Workers regulatory landscape, it will therefore continue to be necessary to assess country-specific regulations to ensure compliance.

The most important elements of the Reform Directive for the EU/EEA Members States to implement include:


 Long-term posting

When the posting period surpasses the 12 month mark, all local employment terms and conditions of the host country will apply to the posted worker. An exception is made for conditions on the conclusion and termination of the employment contract (including non-competition clauses) and supplementary occupational retirement pension schemes. The French implementation bill has specified that this exception includes provisions like hiring and termination provisions, fixed-term employment contract provisions and transfer of employment contract provisions. Under strict conditions, employers can apply for a prolongation of this initial 12-month's period by maximally 6 months with the competent local authorities.

 Equal remuneration

The remuneration of posted workers should correspond with national laws and practices of the host country. The Posting of Workers Directive of 1996 limited this right to the minimum wage, but with the Reform Directive the equal remuneration right covers all components that fall under the national concept of remuneration. As this also applies for remuneration elements in universally binding collective labor agreements, posted workers in sectors with such agreements will essentially have a right to equal pay as national workers (in equal positions). Travel and accommodation expenses must be paid separately. Reimbursement of costs in connection with the posting is not part of the remuneration and must therefore be paid separately. Costs related to accommodation, travel and lodging have to be reimbursed to the employee separately.

In some countries, like Finland and the Netherlands, posted workers are already entitled to an extensive set of remuneration elements. Consequently, for workers posted to these countries there should, in principle, not change anything relating to their (equal) remuneration entitlement. In countries like Slovakia however, this extended right to equal pay means that, in addition to the standard salary, the posted worker will be entitled to an overtime bonus, a bank-holiday work bonus, a Saturday and Sunday work bonus, a night work bonus and other statutory wage components.

 Equal treatment of posted temporary agency workers

The existing equal treatment rule for national temporary agency workers will be mandatorily applicable to posted temporary agency workers. Posted temporary agency workers will be entitled to equal treatment on essential terms of employment as national employees of the hirer from day one of the posting. The difference between the posted temporary agency worker and the other types of posted workers therefore becomes larger as a result of this measure.

An interesting aspect of the Reform Directive is that, subject to certain conditions, Member States can also opt to declare hard core employment conditions from other than generally binding collective agreements applicable to posted workers. Previously, this was only possible in absence of a system for declaring collective agreements generally applicable. The Dutch legislator has used this opportunity to propose to allow certain collective agreements to be declared applicable by governmental decree. Taking this into consideration, as well as the fact that remuneration elements can also follow from collective agreements, assessing the applicability of collective labor agreements in the host country will become even more important following the implementation of the Reform Directive.

Conclusion and necessity to take action

There is a little more clarity about the state of affairs regarding the implementation of the Reform Directive, which has several far-reaching consequences for the regulatory landscape of the posting of workers. More and more EU/EEA Members States are starting the implementation process, but there are also several EU/EEA Member States in which the national legislator still has to commence the implementation process. We will of course keep you informed of any further progress.

Lastly, given the upcoming entry into force of the implementation of the Reform Directive it will be even more imperative to correctly “map” your international workers, as posted workers or workers who perform work across borders as part of their right of the freedom of movement of employees. In practice we deliberate a lot with our clients on this qualification matter, more particularly whether or not a business traveler qualifies as a posted worker or not. Incorrect qualifications as posted worker will lead to under- or over-registrations, but it may also lead to serious discussions as of 30 July 2020 with local authorities whether the now registered groups of international workers should then also be entitled to all rights of the Reform Directive, including the equal remuneration right. We are happy to further discuss this subject matter with you and to team-up to stay compliant. For more information about the Posting of workers regulatory landscape we proudly refer you to the following [animation](#).



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