



GMS Flash Alert

Employment Law

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European Union – International Road Transport and Posted Worker Directive

Recently, the European Court of Justice (ECJ) handed down its judgment in the case *Van den Bosch Transporten BV and Others C- 815/18*.¹ The ECJ clarified that drivers working in international road transport are subject to the EU Directive on posting of workers.²

WHY THIS MATTERS

The EU Directive for posted workers that sets out rules in respect of which country is competent for terms and conditions for employment applies to any trans-national provision of services irrespective of the economic sector. In this case, the EU member state where the lorry drivers are posted must make sure that the transport undertakings concerned guarantee those lorry drivers posted to their territory a number of terms and conditions of employment laid down, *inter alia*, by collective bargaining agreements which have been declared universally applicable.

Failure to apply terms and conditions for employment correctly in the home and the host countries is a failure to comply with labour law and can lead to severe sanctions and financial fines.

ECJ Ruling in More Detail

Description of the Case

The case concerns three different transport undertakings which have the same shareholder. The undertakings are registered, respectively, in the Netherlands, Germany, and Hungary. The Dutch undertaking concluded a number of charter contracts with both the German and Hungarian undertakings for the international transport of goods.

The German and Hungarian undertakings employed lorry drivers to carry out those contracts. Most of the shifts of the

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lorry drivers started and ended in Erp, the seat of the Dutch undertaking in the Netherlands, while most of the transport operations took place outside the Netherlands.

The Dutch federation of trade unions brought an action against all three undertakings, claiming that the lorry drivers were posted to the Netherlands and were posted workers in the context of the EU Directive on posting of workers. For this reason, the basic conditions of employment under the Dutch collective labour agreement for the transport of goods should have been applied.

Highlights from the ECJ Ruling

The ECJ ruling clarified a number of details concerning lorry drivers in international transport and the concept of posted workers in the EU Directive on posting of workers:

- Even though the legal basis of the Directive does not include provisions that relate to international transport, lorry drivers cannot be excluded from the scope of the trans-national provision of services laid out in the Directive.
- Lorry drivers in the international transport sector working under a charter agreement between the employer in one EU member state and an undertaking in another EU member state where the lorry driver works habitually are posted workers.
- The lorry driver must have a sufficient connection with the host country and this connection is determined by assessing the following elements:
 - the degree of intensity of the link between the lorry driver's activities and the EU member state in which the driver is working;
 - the nature of the driver's activities and the EU member state where the driver is working; and
 - what proportion of the driver's activities makes up the transport service as a whole in the host country.
- The existence of a group of undertakings which are parties to the contract for the posting of workers is not, as such, relevant for the purposes of assessing the existence of a posting of workers.
- A lorry driver who in the context of a contract of employment between the undertaking employing him/her, is established in an EU member state, and an undertaking situated in another EU member state, carries out cabotage operations in the territory of an EU member state other than the member state in whose territory he/she habitually works must be regarded as posted in the territory of the EU member state in which such operations are carried out. The duration of the cabotage transport operation has no relevance in assessing the existence of such a posting.

The terms and conditions of employment for posted workers in the host country are laid out in the universally-applicable collective bargaining agreements, namely those agreements that must be observed by all undertakings in the geographical area and in the profession or industry concerned. However, the Court states that the definition covers a collective labour agreement which has not been declared "universally applicable" when a precondition of such agreement is an exemption from another universally-applicable agreement and the provision of such agreement are essentially identical to those of that other collective agreement.

MEIJBURG & CO. NOTE

The EU Directive on posting of workers applies irrespective of the undertaking's economic sector.

It is important for employers to properly assess the application of the EU Directive on posting of workers in their business sector and their business organisation.

The objective of the Directive is to protect the posted workers and help ensure the application of certain terms and conditions for employment in the host country. The Directive aims overall to reduce the gap in the employment terms and conditions between local workers and posted workers and thereby promote a more level playing field in the EU labour market.

With these objectives, any failure to comply with the Directive and employment law in the host country is a serious offense that can lead to significant sanctions, financial fines, and reputational damage. Each EU member state determines sanctions and financial fines for non-compliance with the EU Directive and local employment law.

FOOTNOTES:

1 For the full judgement: [Case C-815/18 Federatie Nederlandse Vakbeweging v Van den Bosch Transporten BV and Others](#).

2 The case concerns the application of the "old" [EU Directive on posting of workers no 96/71/EC](#). Since this Directive, the EU adopted the sector-specific rules for road transport in [EU Directive 2020/1057/EU](#).

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Contact us

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