



Press and Information

Court of Justice of the European Union

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Judgment in Case C-815/18

Federatie Nederlandse Vakbeweging v Van den Bosch Transporten BV and Others

The directive concerning the posting of workers in the framework of the provision of services is applicable to the transnational provision of services in the road transport sector

Workers coming from Germany and Hungary were employed as drivers under charter contracts for international transport operations, concluded between a transport undertaking with offices in Erp (Netherlands), Van den Bosch Transporten BV, and two sister companies, one governed by German law and the other by Hungarian law, owned by the same group, to which the drivers were linked. As a rule, during the period concerned, the charter operations started in Erp and the journeys ended there, but most of the transport operations carried out under the charter contracts at issue took place outside the territory of the Netherlands. Van den Bosch Transporten, as member of the Netherlands Association for Goods Transport, was covered by the collective labour agreement applicable to that sector ('the "Goods Transport" CLA'), concluded between that association and the Federatie Nederlandse Vakbeweging (Netherlands Federation of Trade Unions; 'the FNV'). A second collective labour agreement, applicable *inter alia* to the professional goods transport by road sector, and the provisions of which were essentially identical to those of the 'Goods Transport' CLA, had been declared universally applicable, unlike the first collective labour agreement. However, under national law, undertakings covered by the 'Goods Transport' CLA were exempt from that second agreement, provided they complied with the first one.

According to the FNV, when Van den Bosch Transporten used drivers coming from Germany and Hungary, it had to apply to them the basic conditions of employment under the 'Goods Transport' CLA, in their capacity as posted workers within the meaning of the Posted Workers Directive.¹ Since the basic conditions of employment stipulated in that agreement were not applied to those drivers, the FNV brought an action against those three transport undertakings, which was upheld at first instance by interim judgment. However, that judgment was set aside on appeal. The appeal court held, *inter alia*, that the charter operations at issue fell outside the scope of the Posted Workers Directive, as the only matters covered by that directive were charter operations carried out, at least primarily, 'in the territory' of another Member State.

It is against that background that, on appeal by the FNV, the Hoge Raad der Nederlanden (Supreme Court, Netherlands) referred to the Court for a preliminary ruling a series of questions relating essentially to the conditions on which it may be concluded that workers are posted 'to the territory of a Member State' in the international road transport sector.

Findings of the Court

The Court, sitting as the Grand Chamber, states first of all that the Posted Workers Directive is applicable to the transnational provision of services in the road transport sector. That directive applies, as a rule, to any transnational provision of services involving the posting of workers, irrespective of the economic sector concerned, and, unlike a classic liberalisation instrument, it pursues a series of objectives relating to the need to promote the transnational provision of

¹ Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ 1997 L 18, p. 1).

services while ensuring fair competition and guaranteeing respect for the rights of workers. The fact that the legal basis of that directive does not include provisions relating to transport cannot therefore exclude from its scope the transnational provision of services in the sector of road transport activities, in particular goods transport.

As regards, next, the status of posted workers of the drivers concerned, the Court recalls that, in order for a worker to be regarded as being posted 'to the territory of a Member State', the performance of his or her work must have a sufficient connection with that territory. The existence of such a connection is determined in the context of an overall assessment of factors such as the nature of the activities carried out by the worker concerned in that territory, the degree of connection between the worker's activities and the territory of each Member State in which the worker operates, and the proportion represented by those activities in the entire transport service.

In particular, the fact that a driver working in international road transport, who has been hired out by an undertaking established in one Member State to an undertaking established in another Member State, receives the instructions relating to his or her tasks, starts or finishes them at the place of business of that second undertaking is not sufficient in itself to consider that that driver has been posted to the territory of that other Member State for the purposes of the Posted Workers Directive, provided that the performance of that driver's work does not have a sufficient connection with that territory on the basis of other factors.

The Court also states that the existence of a group affiliation between undertakings that are parties to a contract for the hiring-out of workers does not, as such, determine the degree of connection between the performance of the work and the territory of a Member State to which those workers are sent. Therefore, the existence of such a group affiliation is not relevant in order to determine whether there has been a posting of workers.

As regards the specific case of cabotage operations, to which the Posted Workers Directive applies as stated in the Regulation on international road haulage,² the Court notes that those transport operations take place entirely within the territory of the host Member State, which permits the inference that the performance of the driver's work in the course of such operations has a sufficient connection with that territory. The duration of cabotage operations is irrelevant when determining whether there has been such a posting, without prejudice to the possibility available to Member States under that directive not to apply certain provisions of the directive, in particular as regards minimum rates of pay, when the length of the posting does not exceed one month.

Lastly, the Court recalls that, where workers are posted, Member States must, under that directive, ensure that the undertakings concerned guarantee workers posted to their territory a certain number of terms and conditions of employment laid down, *inter alia*, by collective agreements which have been declared universally applicable, namely those which must be observed by all undertakings in the geographical area and in the profession or industry concerned. The question of whether a collective agreement has been declared universally applicable must be assessed by reference to the applicable national law. The Court states, however, that that definition also covers a collective labour agreement which has not been declared universally applicable, but compliance with which is a precondition, for undertakings covered by it, for exemption from another collective labour agreement which, for its part, has been declared universally applicable and the provisions of which are essentially identical to those of that other collective labour agreement.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

² Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market (OJ 2009 L 300, p. 72).

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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