

Pre-closure letter for a multiple complaint on an alleged breach by Germany of EU rules on the freedom to provide road transport services, as established by secondary legislation in the field of transport (*posting of drivers and minimum wage rules*) – CPLT(2015)00227

In 2015, the European Commission received a large number of complaints relating to the German law on a general minimum wage⁽¹⁾ and its application to drivers of road transport companies established in other Member States. These complaints were registered under the reference CPLT(2015)00227 (previously CHAP(2015)00227)⁽²⁾. The Commission has acknowledged receipt of the complaints by publishing a notice on 13 March 2015⁽³⁾.

The complaints alleged that the German national legislation in force at the time (Law regulating a general minimum wage⁽⁴⁾ as well as related legislation such as the law on the posting of workers⁽⁵⁾, the labour leasing law⁽⁶⁾, and the corresponding implementing legislation) breached the EU legislation in force at the time.

The complaints raised the question about when workers in transport are to be considered as “posted” in the sense of 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⁽⁷⁾. The complaints were followed-up in the context of infringement procedure INFR(2015)2100 for failure of Germany to comply with Union law⁽⁸⁾. A letter of formal notice in the case was sent to Germany on 19 May 2015 and an additional letter of formal notice on 17 June 2016.

Since then, the legislative framework for posting of drivers in road transport has changed.

On 1 August 2020, Directive (EU) 2020/1057⁹ (hereafter the ‘Directive’), laying down specific rules for posting drivers in the road transport sector entered into force. It details

(1) *Gesetz zur Regelung eines allgemeinen Mindestlohns („Mindestlohngesetz“)* of 11 August 2014 (BGBl. I S. 1348).

(2) Due to a change in the Commission’s internal system for the registration of complaints, the prefix in the reference numbers has changed (from CHAP to CPLT). This does not however affect the complaint in any way.

(3) EUR-Lex - 52015XC0313(02) - EN - EUR-Lex (europa.eu).

(4) See footnote 1.

(5) *Gesetz über zwingende Arbeitsbedingungen für grenzüberschreitend entsandte und für regelmäßig im Inland beschäftigte Arbeitnehmer und Arbeitnehmerinnen („Arbeitnehmer-Entsendegesetz“)* (BGBl. I S. 227).

(6) *Gesetz zur Regelung der Arbeitnehmerüberlassung („Arbeitnehmerüberlassungsgesetz“)* (BGBl. I S. 1393).

(7) OJ L 18, 21.1.1997, p. 1.

(8) Failure to comply with the Treaty principles on freedom to provide services, free movement of goods and principle of necessity and proportionality, as well as with Directive 96/71/EC, Directive 2014/67/EU, Directive 2012/34/EU, Regulations (EC) N° 1071/2009, 1072/2009 and 1073/2009, Regulation (EC) N° 1356/96, Regulation (EEC) N° 3921/91, Regulation (EC) N° 1008/2008, Regulation (EC) N° 593/2008, and Decision N° 357/2009.

(9) Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020 laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012 (OJ L 249, 31.7.2020, p. 49).

when a driver in the road transport sector is to be considered as posted and when not, which is essential in order to determine which are the applicable rules on their remuneration. Member States were required to transpose this Directive into national law by 2 February 2022.

Germany declared full transposition of the Directive on 10 July 2023. As the main legal act transposing the Directive, Germany notified the Law regulating the posting of drivers in the road transport sector and the cross-border enforcement of the posting law ⁽¹⁰⁾. With this specific law, laws relating to posting and minimum wage were amended (in particular, the law on the posting of workers, the minimum wage act, the labour leasing law, the act to combat undeclared work, the ordinance on reporting minimum wage and the ordinance on documentation of minimum wage ⁽¹¹⁾).

The Commission services have carried out a preliminary assessment of the notified German provisions transposing the provisions of Directive (EU) 2020/1057 specifying the different posting situations as well as the rules relating to the registration, documentation and control measures. They have provisionally concluded that the German provisions seem to be in line with the Directive.

Following the described changes in the EU legislation on the posting of workers in road transport and the positive results of the preliminary assessment of the transposition measures notified by Germany, the Commission services do not plan to propose that the Commission continue infringement procedure INFR(2015)2100.

The Commission services would also like to inform complainants that the Commission systematically investigates whether directives have been correctly transposed into Member States' legislation. The Commission's services are currently carrying out a detailed assessment of whether Directive (EU) 2020/1057 has been correctly transposed into the national law of all Member States.

Furthermore, by the end of 2025, "the Commission should evaluate the impact of the application and of the enforcement of the rules for the posting of workers on the road transport sector and submit a report on the results of that evaluation to the European Parliament and to the Council, together, where appropriate, with a legislative proposal." ⁽¹²⁾

The Commission therefore wishes to inform complainants that it intends to close the complaints registered under number CPLT(2015)00227. Should the complainants have any new information that might be relevant for the re-assessment of this case, they are invited to submit this new information to the European Commission (MOVE-C1-SECRETARIAT@ec.europa.eu) within four weeks from the publication of this notice. If no new information is received within four weeks, or if the new information received does not lead to a different conclusion, the Commission may close the complaints.

⁽¹⁰⁾ *Gesetz zur Regelung der Entsendung von Kraftfahrern und Kraftfahrerinnen im Straßenverkehrssektor und zur grenzüberschreitenden Durchsetzung des Entsenderechts vom 28 Juni 2023*, BGBl I of 30 June 2023, No. 172.

⁽¹¹⁾ *Arbeitnehmerentsendegesetz, Mindestlohngesetz, Arbeitnehmerüberlassungsgesetz, Schwarzarbeitsbekämpfungsgesetz, Mindestlohnmeldeverordnung, Mindestlohndokumentationspflichtenverordnung*, see BGBl I of 30 June 2023, No. 172.

⁽¹²⁾ Recital (41) of Directive (EU) 2020/1057, see also its Article 7 (1).