

## SUMMARY

# **ECJ 30 April 2020, Case C-815/18 (Federatie Nederlandse Vakbeweging), Posting of workers and expatriates, Collective agreements**

***FNV - v- VandenBosch Transporten BV, Van den Bosch Transporte GmbH, Silo-Tank Kft, Dutch case***

### **Summary**

How to determine the applicable law in cross-border transport situations? Is Directive 96/71/EC still relevant in view of the recent *Dobersberger* judgement? A-G Bobek considered these questions at length in his opinion.

### **Questions**

(1) Must Directive [96/71] be interpreted as meaning that it also applies to a worker who works as a driver in international road transport and thus carries out his work in more than one Member State?

(2)(a) If the answer to Question 1 is in the affirmative, what criterion or considerations should be used to determine whether a worker working as a driver in international road transport is posted “to the territory of a Member State” as referred to in Article 1(1) and (3) of [Directive 96/71], and whether that worker “for a limited period, carries out his work in the territory of a Member State other than the State in which he normally works” as referred to in Article 2(1) of [Directive 96/71]?

(2)(b) When answering question 2(a), should any significance be attached to the fact that the undertaking posting the worker referred to in question 2(a) is affiliated — for example, in a group of companies — to the undertaking to which that worker is posted and, if so, what

should that significance be?

(2)(c) If the work undertaken by the worker referred to in question 2(a) relates partly to cabotage transport — that is to say: transport carried out exclusively in the territory of a Member State other than that in which that worker habitually works — will that worker then in any case for that part of his work, be considered to be working temporarily in the territory of the first Member State? If so, does a lower limit apply in that regard, for example, in the form of a minimum period per month in which that cabotage transport takes place?

(3)(a) If the answer to Question 1 is in the affirmative, how should the term “collective agreements ... which have been declared universally applicable”, as referred to in Article 3(1) and the first subparagraph of Article 3(8) of [Directive 96/71], be interpreted? Is that an autonomous concept of European Union law and is it therefore sufficient that the conditions laid down in the first subparagraph of Article 3(8) of the [Directive 96/71] have for practical purposes been met, or do those provisions also require that the collective labour agreement was declared universally applicable on the basis of national law?

(3)(b) If a collective labour agreement cannot be regarded as a universally applicable collective labour agreement within the meaning of Article 3(1) and the first subparagraph of Article 3(8) of the [Directive 96/71], does Article 56 TFEU preclude an undertaking which is established in a Member State and which posts a worker to the territory of another Member State from being obliged by contractual means to comply with the provisions of such a collective labour agreement which is in force in the latter Member State?’

## **Conclusion**

I suggest that the Court reply to Hoge Raad der Nederlanden (Supreme Court of the Netherlands) as follows:

(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 must be interpreted as meaning that it also applies to a worker who works as a driver in the road transport sector and who is posted, within the meaning of that directive, to the territory of a Member State other than the Member State in which he or she normally works.

(2)(a) The concept of ‘a worker who, for a limited period, carries out his work in the territory of a Member State other than the State in which he normally works’ within the meaning of Article 2(1) of Directive 96/71 must be understood as a worker who has a sufficient connection

with such a territory. Whether such a sufficient connection exists must be determined by reference to all relevant indicia, to be considered together, such as the location of the person to whom the services at issue are addressed, the place where the transport operations are organised and the drivers receive their assignments and to which they return after the completion of their work.

(2)(b) Affiliation between the undertakings involved in a given posting, taken together with all other relevant indicia, may potentially matter for the overall consideration of whether the situation of posting has occurred. It is, however, not in itself decisive.

(2)(c) Cabotage is covered by the scope of Directive 96/71. The application of Directive 96/71 to cabotage is not subject to any minimum rules concerning the length of the cabotage operation in the host Member State.

(3) Article 3(1) of Directive 96/71 is to be interpreted as meaning that the question whether a collective agreement has been declared universally applicable must be determined by reference to the applicable national law.

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**Creator:** European Court of Justice (ECJ)

**Verdict at:** 2020-04-30

**Case number:** C-815/18