

SUMMARY

ECJ 1 December 2020, Case C-815/18 (Federatie Nederlandse Vakbeweging), Applicable Law, Posting of Workers and Expatriates

***Federatie Nederlandse Vakbeweging - v - Van den Bosch Transporten
BV, Van den Bosch Transporte GmbH, Silo-Tank Kft, Dutch case***

Summary

Posting of Workers: Directive 96/71/EC applies to the road transport sector. A worker is posted if his/her work has a sufficient connection with the host country. The ECJ's summary of the case is available on: https://curia.europa.eu/jcms/jcms/p1_3345527/en/.

Questions

Must Directive 96/71 be interpreted as applying to the transnational provision of services in the road transport sector?

Under which conditions is a worker working as a driver in international road transport under a charter contract between the undertaking which employs that worker, established in one Member State, and an undertaking operating in another Member State considered to be a worker posted to the territory of a Member State, for the purposes of Article 1(1) and (3) and Article 2(1) of Directive 96/71?

Must Article 1(1) and (3) and Article 2(1) of Directive 96/71 be interpreted as meaning that the existence of a group affiliation between undertakings that are parties to a contract for the hiring-out of workers is relevant in order to determine whether there has been a posting of workers?

Must Article 1(1) and (3) and Article 2(1) of Directive 96/71 be interpreted as meaning that a worker working as a driver in the road transport sector, who, under a charter contract between

the undertaking which employs that driver, established in one Member State, and an undertaking located in another Member State, carries out cabotage operations in the territory of a Member State other than the Member State in which he or she normally works, may be regarded as being posted to the territory of the Member State in which those operations are carried out and, if so, whether there is, in that regard, a minimum threshold regarding the length of those operations?

Is Article 3(1) and (8) of Directive 96/71 to be interpreted as meaning that the question of whether a collective agreement has been declared universally applicable must be assessed by reference to the applicable national law?

Ruling

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 applying to the transnational provision of services in the road transport sector. Article 1(1) and (3) and Article 2(1) of Directive 96/71 must be interpreted as meaning that a worker working as a driver in the international road transport sector under a charter contract between the undertaking which employs that worker, established in one Member State, and an undertaking located in a Member State other than that in which the person concerned normally works is a worker posted to the territory of a Member State for the purposes of those provisions, where the performance of that person's work has a sufficient connection with that territory for the limited period at issue. 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.

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 related 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 Directive 96/71, provided that the performance of that driver's work does not have a sufficient connection with that territory on the basis of other factors.

Article 1(1) and (3) and Article 2(1) of Directive 96/71 must be interpreted as meaning that the existence of a group affiliation between undertakings that are parties to a contract for the hiring-out of workers is not, as such, relevant in order to determine whether there has been a posting of workers.

Article 1(1) and (3) and Article 2(1) of Directive 96/71 must be interpreted as meaning that a worker working as a driver in the road transport sector, who, under a charter contract between the undertaking which employs that worker, established in one Member State, and an undertaking located in another Member State, carries out cabotage operations in the territory of a Member State other than the Member State in which he or she normally works, must, as a rule, be regarded as being posted to the territory of the Member State in which those operations are carried out. The duration of cabotage operations is irrelevant when determining whether there has been such a posting, without prejudice to the possible application of Article 3(3) of that directive.

Article 3(1) and (8) of Directive 96/71 must be interpreted as meaning that the question of whether a collective agreement has been declared universally applicable must be assessed by reference to the applicable national law. 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, falls within the definition referred to in Article 3(1) and (8) of Directive 96/71.

Creator: European Court of Justice (ECJ)

Verdict at: 2020-12-01

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