

Article 9.-

European Justice requires that displaced professional drivers receive the salaries of the country where they provide their services.

The Court of Justice of the European Union, through a ruling issued prior to the entry into force of Directive 1057/2020, has confirmed the application of European Directive 96/71, on the posting of workers, also to drivers by road that carry out international transport and cabotage services. Consequently, this ruling requires displaced professional drivers to receive the existing salary regulation in the country where they provide their services.

The ruling has its origin in the lawsuit filed by a Dutch drivers' union against a German-Hungarian transport company, whose drivers provided services in Dutch territory; and which, according to the Court of Justice of the European Union, applies, in principle, to any transnational service provision that involves the posting of workers, regardless of the economic sector in question, with the aim of combining the provision of transnational services with fair competition and respecting workers' rights.

The Court of Justice confirms the principle according to which a worker can be considered posted to the territory of a host Member State if the performance of his work has a sufficient link with that territory. This circumstance is determined after a global assessment of a series of elements such as: the nature of the activities carried out by the worker in question in the host State, the degree of intensity of the link between the activities carried out by that worker with the territory of the host State itself, as well as, in the case of drivers, for the part that these activities represent in the overall transport service.

In this way, the European Court of Justice considers that this connection of a driver with a foreign country to which he travels occurs, for example, when loading or unloading goods or maintaining or cleaning vehicles. This link with the host country cannot be considered present in transit transport, but it is present in international or cabotage transport.

In this sense, the duration of transport is irrelevant for assessing the existence of a posting, without prejudice to the possibility for Member States to stop applying certain provisions of the Posting Directive; specifically, with regard to minimum wages when the duration of the posting does not exceed a certain period. [This occurs, for example, in Spain where this regulation cannot be applied if the service performed lasts less than eight days].

Finally, the Court recalls that, in the event of posting of workers, the Member States must ensure that the companies concerned guarantee, for workers posted in their territory, a series of employment conditions established, in particular, by collective

agreements. declared of general application, that is, those that They must be respected by all companies located in the territorial area and in the professional category in question.