

Article 12.-

Is it necessary to apply the rules of movement in a traffic situation?

The concept of transit is characterized by the fact that the driver passes through the Member State without loading or unloading goods. The classification as transit of the driver's presence in a Member State, therefore, does not affect stops, for example, for reasons of hygiene, refueling, taking breaks or rest. This means that the rules on movement do not apply to the traffic situation.

We are going to illustrate this situation with an example taken from the *Questions and Answers Guide on the posting of drivers*, published by the Directorate General of Land Transport, dependent on the DG Mobility and Transport of the European Commission:

Assumption: transit + bilateral operation + cross-border operation + transit

A driver employed by a company established in Portugal (PT) loads a full truck with merchandise in Lisbon (PT) and transports it to Madrid (ES). There, the driver reloads the entire truck with goods, which he then transports to Dortmund (DE). Once the merchandise is unloaded in Dortmund, it returns to Lisbon (PT) with the empty truck.

Conclusion: The driver carries out a bilateral operation from PT to ES, a cross-border operation from ES to DE and an empty trip from DE back to PT. The driver is not considered to be traveling to ES during the part of the trip in which the bilateral operation is carried out. The driver begins to be deployed to ES after the bilateral operation ends (unloading of merchandise in Madrid) and when he begins to drive to the loading point where he loads the merchandise for the cross-border operation from ES to DE. The trip to ES ends when the driver leaves Spanish territory. Likewise, the driver is considered to be traveling to DE from the moment he enters German territory until he leaves it at the end of the cross-border operation in DE. The driver is not considered to be traveling to DE during the empty journey back to PT, once the cross-border operation is completed. The driver is also not considered to have traveled to FR or BE, because he only transits through the territories of those countries when carrying out the cross-border operation.

This information is complemented by the following question: *Is empty travel the same as "transit"?*

The answer of the European Commission is no: That a transit situation is always exempt from the application of the rules on movement, while an empty movement It is exempt as long as it is carried out in connection with a bilateral operation, but is not exempt when it is carried out in connection with cabotage or a non-bilateral international operation to which the rules on movement (cross-border) apply.

In principle, the movement ends with the unloading of the goods transported within the framework of the operation to which the rules on movement apply (i.e. cabotage or cross-border operation). The classification of the next empty run as a run or as exempt from the application of the run rules depends on whether or not the new operation, which starts that run on empty, is subject to the run rules. In this context, it is important to note that the driver is not considered displaced when, once the merchandise has been unloaded within the framework of the operation to which the rules on displacement apply, he carries out an empty trip back to his State. establishment member.