L.N. 299 of 2022

AUTHORITY FOR TRANSPORT IN MALTA ACT (CAP. 499)

Posting of Drivers in Malta Regulations, 2022

IN EXERCISE of the powers conferred by article 43 of the Authority for Transport in Malta Act, the Minister responsible for transport, after consultation with the Authority for Transport in Malta, has made the following regulations:-

Citation.

1. The title of these regulations is the Posting of Drivers in Malta Regulations, 2022.

Scope.

2. (1) The scope of these regulations is to partially transpose 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, by establishing industry specific rules.

S.L. 452.82.

(2) These regulations shall prevail notwithstanding any other regulations established under the Posting of Workers in Malta Regulations.

S.L. 452.82.

(3) These regulations shall apply to drivers employed by transport operators established in other Member States of the European Union or third countries which apply the transnational measure referred to in regulation 3(1)(a) of the Posting of Workers in Malta Regulations.

Interpretation.

3. In these regulations, unless the context otherwise requires:

Cap. 499.

"Act" means the Authority for Transport in Malta Act;

"Authority" means the Authority for Transport in Malta as established by of article 5 of the Act;

"authorised inspecting officer" means a Police officer, a community officer or an officer of the Authority;

"cabotage operations" means national carriage for hire or reward carried out on a temporary basis in a host Member State;

"Commission" means the European Commission;

"competent authority in Malta" means the Department responsible for employment and industrial relations as established by the Employment and Industrial Relations Act;

Cap. 452.

"Directive (EU) 2020/1057" means 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;

"Internal Market Information System" or "IMI" means the software application developed by the Commission in cooperation with the Member States, in order to assist Member States with the practical implementation of information exchange requirements laid down in Union acts by providing a centralised communication mechanism to facilitate cross-border exchange of information and mutual assistance, as established in Regulation (EU) 1024/2012;

"Member State" means a Member State of the European Union or of the European Economic Area and the European Free Trade Area;

"posted driver" means a driver 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 and shall include a driver performing cabotage operations;

"posted worker" shall have the same meaning as that attributed to it in the Posting of Workers in Malta Regulations;

S.L. 452.82.

"Regulation (EC) No 561/2006" means Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85;

"Regulation (EC) No 1072/2009" means Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market;

"Regulation (EC) No 1073/2009" means Regulation (EC) No 1073/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international market for coach and bus services, and amending Regulation

(EC) No 561/2006;

"Regulation (EU) No 1024/2012" means Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC (the IMI Regulation);

"Regulation (EU) No 165/2014" means Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport;

"remuneration" means all the constituent elements of remuneration rendered mandatory by the Employment and Industrial Relations Act, orders or regulations made thereunder; Cap. 452.

"sending party" means a transport operator which is established in a different Member State other than Malta;

"transport operator" means a person, whether natural or legal, who is authorised by the competent authority in another Member State to carry out passenger transport services and, or carriage of goods by road, as the case may be, and shall include self-employed drivers.

(2) Subject to the provisions of sub-regulation (1), terms and expressions used in these regulations shall, unless the context otherwise requires, have the same meaning assigned to them in the Act Cap. 499. or in the Employment and Industrial Relations Act Cap. 452. or any regulations made thereunder.

4. These regulations shall apply to the extent that the sending parties referred to in the preceding regulation send posted drivers in Malta on their account and under their direction, under a contract concluded between the sending party and the party for whom the services are intended, provided that there is an employment relationship between the sending party and the driver during the period of posting: Applicability.

Provided that such a posting shall be considered to be ending when the driver leaves Malta in the performance of the international carriage of goods or passengers. The period of posting shall not be cumulated with previous periods of posting in the context

of such international operations performed by the same driver or by another replacing driver.

Exemption regarding bilateral transport operations in respect of goods. S.L. 452.82.

5. (1) A driver shall not be considered to be a posted worker for the purpose of these regulations and for the purpose of the Posting of Workers in Malta Regulations when performing bilateral transport operations in respect of goods:

Provided that for the purpose of these regulations, a bilateral transport operation in respect of goods means the movement of goods, based on a transport contract, from the Member State of establishment, to another Member State or to a third country, or from another Member State or a third country to the Member State of establishment.

(2) Drivers performing bilateral transport operations in respect of goods shall be further exempted where the driver performs one activity of loading and, or unloading in the Member States or third countries that the driver crosses, provided that the driver does not load goods and unload them in the same Member State.

(3) Where a bilateral transport operation starting from the Member State of establishment during which no additional activity was performed is followed by a bilateral transport operation to the Member State of establishment, the exemption for additional activities set out in the preceding sub-regulation shall apply to a maximum of two additional activities of loading and, or unloading, under the same conditions set out in the preceding sub-regulation.

(4) The exemptions set out in the sub-regulations (2) and (3) shall apply only until the 19th of August 2024. After the 19th of August 2024, the exemptions for additional activities set out in the sub-regulations (2) and (3), shall apply solely to drivers using vehicles fitted with smart tachographs, as stipulated in the Motor Vehicles (Weights, Dimensions and Equipment) Regulations. S.L.65.21.

Exemption regarding bilateral transport operations in respect of passengers. S.L.452.82.

6. (1) A driver shall not be considered to be a posted worker for the purpose of these regulations and of the Posting of Workers in Malta Regulations, when performing bilateral transport operations in respect of passengers:

Provided that for the purpose of these regulations, a bilateral transport operation in international occasional or regular carriage of passengers means when a driver performs any of the following operations:

(a) picks up passengers in the Member State of establishment and sets them down in another Member State or a

third country;

(b) picks up passengers in a Member State or a third country and sets them down in the Member State of establishment; or

(c) picks up and sets down passengers in the Member State of establishment for the purpose of carrying out local excursions in another Member State or a third country, in accordance with Regulation (EC) No 1073/2009.

(2) Bilateral transport operations in respect of passengers shall be further exempted where in addition to performing a bilateral transport operation, the driver picks up passengers once and, or sets down passengers once in Member States or third countries that the driver crosses, provided that the driver does not offer passenger transport services between two locations within the Member State crossed. The same shall apply to the return journey.

(3) The exemption in the preceding sub-regulation shall apply only until the 19th of August 2024. After the 19th of August 2024, the exemption shall apply solely to drivers using vehicles fitted with smart tachographs, as stipulated in the Motor Vehicles (Weights, Dimensions and Equipment) Regulations. S.L. 65.21.

7. A driver shall further not be considered to be a posted worker for the purpose of these regulations and the Posting of Workers in Malta Regulations when: Further exemptions. S.L. 452.82.

(a) the driver transits through the territory of Malta without loading or unloading freight and without picking up or setting down passengers;

(b) performing the initial or final road leg of a combined transport operation, if the road leg on its own consists of a bilateral transport operation.

8. (1) Notwithstanding any additional administrative requirements and control measures stipulated under the Posting of Workers in Malta Regulations it shall be the duty of the transport operator posting the driver to Malta to notify the competent authority in Malta of the intention to post a driver to Malta prior to the date of posting of the driver, at the latest at the commencement of the posting, using a multilingual standard form of the public interface connected to the Internal Market Information System (IMI), which notification shall contain the relevant information necessary in order to allow factual controls at the workplace. This notification shall include: Administrative requirements and control measures. S.L. 452.82.

(a) the identity of the transport operator, at least in the form of the number of the Community licence where this number is available;

(b) the contact details of a transport manager or other contact person in the Member State of establishment to liaise with the competent authority in Malta and to send out and receive documents or notices;

(c) the identity, the address of the residence and the number of the driving licence of the driver;

(d) the start date of the driver's contract of employment, and the law applicable to it;

(e) the envisaged start and end date of the posting;

(f) the number plates of the motor vehicles;

(g) whether the transport services performed are carriage of goods, carriage of passengers, international carriage or cabotage operations.

(2) It shall be the duty of the transport operator to keep the posting declarations referred to in the preceding sub-regulation up to date in the public interface connected to IMI.

(3) It shall be the duty of the transport operator posting the driver to Malta to ensure that the driver has at his disposal in paper or electronic form and it shall be the duty of the driver to keep and make available when so requested at the roadside or quayside:

(a) a copy of the posting declaration submitted by means of IMI;

(b) evidence of the transport operations taking place in Malta, such as an electronic consignment note (e-CMR) or evidence referred to in Article 8(3) of Regulation (EC) No 1072/2009;

(c) the tachograph records and in particular the country symbols of the Member State in which the driver was present when carrying out international road transport operations or cabotage operations, in accordance with registration and record-keeping requirements under Regulations (EC) No 561/2006 and (EU) No 165/2014.

(4) The competent authority in Malta, the Authority and, or

any authorised inspecting officer, may request for a posted driver to make available, during a roadside or quayside check, in paper or electronic form, the evidence of the relevant international carriages, such as an electronic consignment note (e-CMR) or evidence referred to in Article 8(3) of Regulation (EC) No 1072/2009, and tachograph records, for the purpose of ascertaining if the driver is a posted driver under these regulations:

Provided that it shall be the responsibility of the competent authority in Malta, assisted by the Authority and any authorised inspecting officer, to determine if the driver is a posted driver under these regulations.

(5) It shall be the duty of the transport operator posting the driver to Malta to send, by means of the public interface connected to the Internal Market Information System (IMI), after the period of posting, at the direct request of the competent authority in Malta, copies of documents referred to in paragraphs (b) and (c) of sub-regulation (3), and documentation relating to the remuneration of the driver in respect of the period of posting, the employment contract or an equivalent document, time-sheets relating to the driver's work, and proof of payments:

Provided that the transport operator shall send the documentation by means of the public interface connected to IMI no later than eight (8) weeks from the date of the request. If the transport operator fails to submit the requested documentation within that time period, the competent authority in Malta may request, by means of IMI, the assistance of the competent authorities of the Member State of establishment, in accordance with regulation 7 of the Posting of Workers in Malta Regulations. When such a request for mutual assistance is made, the competent authorities of the Member State of establishment of the transport operator shall have access to the posting declaration and other relevant information submitted by the transport operator by means of the public interface connected to IMI: S.L.452.82.

Provided further that the competent authorities of the Member State of establishment shall ensure that they provide the requested documentation to the competent authority in Malta by means of IMI within twenty-five (25) working days from the day of the request for mutual assistance.

9. The competent authority in Malta shall ensure that terms and conditions of employment applicable to the posting of drivers are made available in an accessible and transparent way to transport operators from other Member States and to posted drivers in Malta. Accessibility of regulations.

Enforcement and offences.

10. (1) The competent authority in Malta shall be responsible for the enforcement of these regulations and shall be assisted by the Authority and any authorised inspecting officer.

(2) Any person or transport operator who fails to comply with or contravenes any of the provisions contained in these regulations, shall be guilty of an offence under these regulations and shall be liable to the enforcement procedures and penalties laid down in the Posting of Workers in Malta Regulations.

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(3) Any consignor, freight forwarder or passenger transport operator, contractor or sub-contractor who knew, or who ought to have known, that the transport services commissioned by such consignor, freight forwarder, passenger transport operator, contractor or sub-contractor involved infringements of one of the provisions contained in these regulations, or who fails to comply with any of the provisions contained in these regulations, shall be guilty of an offence under these regulations and shall be liable to the enforcement procedures and penalties laid down in the Posting of Workers in Malta Regulations.

S.L.452.82.

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