

## GUIDE ON RULES APPLICABLE TO THE POSTING OF WORKERS

A guide on posting rules stemming from the Order on the conditions regarding cabotage, the initial or final road legs of combined transport operations and non-bilateral international operations and the European Parliament and Council Directive (EU) 2020/1057 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 enforcements requirements and Regulation (EU) No 1024/2012.

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## Introduction

Directive (EU) 2020/1057<sup>1</sup> (also referred to as “the Directive”) lays down specific rules with respect to Directive 96/71/EC<sup>2</sup> and to Directive 2014/67/EU<sup>3</sup>, both of which are legislative acts concerning the posting of workers in the framework of the provision of services. The rules are described in Order no. 169 of the 27<sup>th</sup> of January 2022 on conditions concerning cabotage, the initial or final road legs of combined transport operations and non-bilateral international transport operations (in the following referred to as the Order).

The rules on the posting of workers are applicable to road haulage companies (“operators”) established in an EU Member State when drivers employed by the said operator are posted in another EU Member State. It should be noted that due to a special agreement, the posting rules apply to the entire Great Britain and to drivers employed by an operator established in Great Britain.

The Directive distinguishes between different types of transport operations to which rules on posting should apply and those to which posting rules should not apply. The general criterion for such distinction is the degree of connection with the territory of the host Member State<sup>4</sup>.

More specifically, it follows from the Directive that drivers undertaking transport operations in Member States other than the Member State where the employer of the driver has its establishment are posted when performing cabotage with goods or passengers and the roadside of combined transport operations and non-bilateral international transport operations<sup>5</sup>.

This guide provides an overview of the rules with respect to the field of posting and is primarily aimed at road haulage companies (“operators”). The examples are meant to provide foreign companies with a clear idea as to the commencement and ending of the posting period.

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<sup>1</sup> 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 traffic sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012.

<sup>2</sup> Directive 96/71/EC of the European Parliament and the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services.

<sup>3</sup> Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System.

<sup>4</sup> Recital 9 of the Directive: “Balanced sector specific rules on posting should be based on the essence of a sufficient connection link between the driver and the service provided, and the territory of a host Member State.”

<sup>5</sup> Defined in recitals 12 and 13 of the Directive as “non-bilateral international transport operations”.

## Types of transport operations

The guide provides a description of when the driver shall be regarded as posted when carrying out one of the below transport operations:

**Bilateral international transport operation<sup>6</sup>**  
**Non-bilateral international transport operation<sup>7</sup>**  
**Cabotage<sup>8</sup>**  
**Transit<sup>9</sup>**  
**Unladen journey<sup>10</sup>**  
**Combined transport operation<sup>11</sup>**  
**Driving operation in third countries**

### Definitions:

**The Member State of establishment:** *The Member State in which the operator is established.<sup>12</sup>*

**The host Member State:** *The Member State to which the operator posts its drivers.*

**Additional exempt transport operations:** *Non-bilateral international transport operations (driving operations in third countries) carried out in connection to a bilateral international transport operation. Additional transport operations are exempted from the posting rules; the decisive factor for whether a transport should be regarded an additional exempt transport operation or a pure non-bilateral international transport operation (the latter being subject to the posting rules) is whether the non-bilateral transport operation is undertaken in the context of the overall bilateral transport operation of goods to/from the country of establishment.*

## Documentation requirements

### Prior to the posting, the operator shall:<sup>13</sup>

- Complete and submit a posting declaration using the multilingual public interface connection to the Internal Market Information System (IMI): <https://www.postingdeclaration.eu/landing>

<sup>6</sup> Bilateral international transport operations are exempted from the posting rules, cf. *paragraph 1 of the Order and Article 1(3) of Directive (EU) 2020/1057*

<sup>7</sup> Non-bilateral international transport operations are defined in paragraph 2(i) of the Order and are solely exempted from the posting rules when undertaken as additional activities in the context of a bilateral international transport operation, cf. paragraph 1, cf. paragraphs 3 and 4 and Articles 3 and 4 of Directive (EU) 2020/1057.

<sup>8</sup> Cabotage is subject to the posting rules and to the rules on minimum hourly remuneration cf. *paragraphs 1(i) and paragraph 9(1)(i) of the Order and Article 1(7) of Directive (EU) 2020/1057.*

<sup>9</sup> Transit is not subject to the posting rules, cf. paragraph 1 of the Order and Article 1(5) of *Directive (EU) 2020/1057.*

<sup>10</sup> Unladen journeys are subject to the posting rules when they can be connected to transport operations subject to the posting rules, cf. *Article 2(2)(d) of Regulation (EU) 1072/2009.*

<sup>11</sup> The initial or final road leg of combined transport is subject to the posting rules, cf. paragraph 1(6) of Directive (EU) 2020/1057.

<sup>12</sup> Defined in Article 2(8) of *Regulation (EC) 1071/2009.*

<sup>13</sup> Paragraph 5 of the Order and Article 1(11)(a) of Directive (EU) 2020/1057

- The posting declaration shall be submitted *at the latest* at the commencement of the posting.

**The contents of the posting declaration: <sup>14</sup>**

- 1) The identity of the operator, including the number of the Community license, if any.
- 2) Contact details relating to a contact manager or other contact persons in the Member State of establishment whom the Danish Transport Authority may contact and who can send out and receive documents or notices.
- 3) The identity of the driver, the address of the residence and the number of his/her driving license.
- 4) The start date of the driver's contract of employment and the law applicable to it.
- 5) The envisaged start and end date of the posting.
- 6) The number plates of the motor vehicles.
- 7) Information indicating whether the transport operations are carriage of goods, carriage of passengers, international transport operations or cabotage.

**During the posting, the operator shall ensure that the driver: <sup>15</sup>**

- Has at his/her disposal and can present a paper copy of the posting declaration.
- Has at his/her disposal and can present documentation that the transport operations are taking place in Denmark, for instance an electronic consignment note (e-CMR).
- Can present the tachograph records (in particular, the country symbols of the Member States in which the driver has carried out one of the transport operations covered).

**After the posting, following request of the Danish Road Traffic Authority, the operator shall:**

- Submit documentation that the transport operations are taking place in Denmark.
- Submit tachograph records, (in particular, the country symbols of the Member States in which the driver has carried out one of the transport operations covered).
- Submit documentation relating to the remuneration of the driver in respect of the posting period.
- Submit a copy of the driver's employment contract in respect of the posting period.
- Submit time-sheet copies relating to the driver's work in respect of his/her posting period.
- Submit proof of payment of the driver's remuneration in respect of the posting period.
- *The documentation above shall be submitted no later than 8 weeks following the request of the Danish Road Transport Authority.*

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<sup>14</sup> Paragraph 5(2) of the Order and Article 1(11)(a)i -vii), Directive (EU) 2020/1057

<sup>15</sup> Paragraph 6 of the Order and article 1(11)(b) i) -iii) of Directive (EU) 2020/1057

## Bilateral international transport operations

**What are bilateral international transport operations?** Bilateral international transport operations are transports carried out from the Member State of establishment to the territory of another Member State or a third country or from another Member State of establishment or third country and back to the Member State of establishment.

### **Scenario: Two bilateral international transport operations**

**Series of events:** A driver employed by an operator established in Hamburg (DE) drives a full truck of fruit from Hamburg (DE) to Esbjerg (DK). In Esbjerg, the driver unloads all the fruit. Then, for the return journey, the driver loads a truck of meat and returns to Hamburg (DE) where the truck is unloaded.

**Characterisation of the transport operations:** The driver carried out a transport operation from the Member State of establishment (DE) to another Member State (DK). Subsequently, the driver carried out a return journey to the Member State of establishment (DK). Thus, the driver carried out two separate bilateral transport operations.

**Conclusion:** Bilateral international transport operations are exempted from the posting rules. *In this scenario, the driver was not posted.*

## Non-bilateral international transport operations

**What are non-bilateral international transport operations?** Non-bilateral international transport operations are also known as *cross-trade activities* and are defined as carriage of goods between two host Member States, none of which being the operator Member State of establishment.

### **Scenario 1: Non-bilateral international transport operations between two bilateral international transport operations**

**Series of events:** A driver employed by an operator established in Hamburg (DE) drives a full truck of fruit from Hamburg to Esbjerg (DK). In Esbjerg (DK), the driver unloads the fruit. Then, the truck is loaded with meat and driven to Malmö (SE) where the meat is unloaded. In Malmö (SE), the truck is loaded with milk and returned to Hamburg (DE). In Hamburg (DE), the milk is unloaded. During the drive back to Hamburg, the driver passes through Denmark.

**Characterisation of the transport operations:** The driver has carried out two bilateral international transport operations and one non-bilateral international transport operation. The first bilateral international transport operation was from Hamburg (DE) to Esbjerg (DK).

Subsequently, a non-bilateral international transport operation from Esbjerg to Malmö is commenced as the transport operation is an international transport operation from one host Member State (DK) to another host Member State (SE), and none of these is the Member State of establishment.

The last bilateral transport operation begins in Malmö (SE) and ends in Hamburg (DE). As part of the driver's last bilateral transport operation, the driver carries out one transit journey, as he/she drives through Denmark in connection with the bilateral transport operation during which no loading or unloading takes place.

**Conclusion:** Bilateral international transport operations are exempted from the posting rules. Hence, the driver is posted in Denmark following the unloading of the fruit and the commencement of the next transport operation. The driver is posted until the border between Denmark and Sweden. From the Swedish border, the driver is posted in Sweden until the unloading of the meat in Malmö (SE). From Malmö (SE) and until the Swedish border, the driver is not regarded as posted since his/her bilateral transport operation has commenced. Transit driving is also exempted from the posting rules and, thus, the driver is not posted during his/her transit through Denmark.

### **Scenario 2: Non-bilateral international transport operations and an unladen journey between two bilateral international transport operations**

**Series of events:** A driver employed by an operator established in Hamburg (DE) drives a full truckload of fruit from Hamburg to Esbjerg (DK). In Esbjerg (DK), the driver unloads the fruit. Subsequently, the driver continues to Horsens (DK) with an empty truck. In Horsens (DK), the truck is loaded with meat and driven to Malmö (SE). In Malmö, all the meat is unloaded, and the truck is subsequently loaded with milk. The milk is then driven to Hamburg and unloaded. During the return journey to Hamburg (DE), the driver passes through Denmark (DK).

**Characterisation of the transport operations:** The driver has carried out two bilateral international transport operations, one empty return operation (unladen journey) and one non-bilateral international transport operation (a third country transport operation). The first bilateral international transport took place from Hamburg to Esbjerg. Subsequently, the driver carries out an unladen journey between Esbjerg and Horsens. In Horsens, the non-bilateral international operation bound for Sweden (SE) is commenced. Seeing that neither Denmark nor Sweden is the Member State of establishment, the said transport operation is a third country driving (cross-trade) operation. The driver performs the next bilateral international transport operation from Malmö to Hamburg.

**Conclusion:** Bilateral international transport operations are exempted from the posting rules. As the first bilateral international transport operation is terminated in Esbjerg, the subsequent empty drive between Esbjerg and Horsens connected to the non-bilateral international transport operation. Thus, the driver is posted in Denmark upon unloading of the fruit and until the commencement of the next transport operation. The posting to Denmark will last until the driver reaches the border between Denmark and Sweden. Afterwards, the driver is posted in Sweden from the border and until the unloading of the meat in Malmö. Following the unloading of the meat in Malmö and until the driver reaches the border between Denmark and Sweden, the driver is not posted in Denmark since his/her bilateral transport operation has commenced. When a driver passes through Denmark in transit, he/she is exempted from the posting rules and, thus, the driver is not posted in Denmark while crossing Denmark during the return journey back to Hamburg.

### **Scenario 3: A non-bilateral international transport operation between a bilateral international transport operation and one unladen journey**

**Series of events:** A driver employed by an operator established in Hamburg (DE) drives a full truckload of fruit from Hamburg to Esbjerg (DK) where the fruit is unloaded. In Esbjerg (DK), the truck is loaded with meat and driven to Malmö and unloaded. From Malmö (SE), the driver returns to Hamburg with an empty load (unladen journey).

**Characterisation of the transport operations:** The driver has performed one bilateral international transport operation, one non-bilateral international operation and one unladen journey. The first bilateral international transport operation is carried out from Hamburg to Esbjerg. Then, the non-bilateral international transport from Esbjerg to Malmö is commenced. The unladen journey takes place from Malmö to Hamburg on the return journey back to the Member State of establishment and is, therefore, connected to the previous non-bilateral transport operation from Esbjerg to Malmö.

**Conclusion:** Bilateral international transport operations are exempted from the posting rules. The driver is posted in Denmark following the unloading in Esbjerg since the commencement of the next journey has begun. The posting in Denmark lasts until the border is reached. From the border, the driver is posted in Sweden until the unloading of the meat has taken place in Malmö. It should be noted that following the unloading in Malmö, the driver is no longer posted in Sweden. An unladen journey made in continuation of a cabotage transport operation or a non-bilateral international transport operation is not subject to the posting rules when the unladen journey is a return journey to the Member State of establishment. Transit journeys are exempted from the posting rules and, thus, the driver is not posted either while in transit through Denmark on his/her way back to Hamburg.

#### **Scenario 4: Two bilateral international transport operations followed by two non-bilateral international transport operations**

**Series of events:** A driver employed by an operator established in Warsaw (PL) drives half a truck load of fruit from Warsaw to Malmö (SE). Along the route, the driver makes a stop in Hamburg (DE) and loads the other half of the truck with meat to continue to Esbjerg (DK) where he unloads (the meat). From Esbjerg (DK), the driver continues to Malmö with the fruit which is unloaded. In Malmö (SE), the truck is reloaded with meat of which half of the load is unloaded in Esbjerg (DK). The rest of the meat is driven back to Poland (PL) by the driver.

**Characterisation of the transport operations:** The driver has performed one bilateral international transport operation followed by one additional activity (a non-bilateral international transport operation). Subsequently, the driver has ended his journeys with yet another one additional activity (non-bilateral international transport operation), which also contained an additional activity (a non-bilateral international transport operation). The first bilateral international journey took place from Poland to Malmö (the fruit) with one additional activity from Hamburg to Esbjerg (the meat). The second additional activity (a non-bilateral international transport operation) starts out from Malmö to Esbjerg (the meat) and is terminated with a bilateral international journey from Malmö to Poland.

**Conclusion:** Bilateral international transport operations are exempted from the posting rules. Furthermore, non-bilateral international transport operations are exempted from the posting rules when the said operations are performed in the context of a bilateral international journey and solely to a limited extent. For instance, this applies to a maximum of one unload and/or load activity in the Member States crossed by the driver. *Consequently, in the scenario indicated, the driver was not posted.*

#### **Scenario 5: Two bilateral international transport operations followed by two non-bilateral international transport operations**

**Series of events:** A driver employed by an operator established in Warsaw (PL) drives a half-loaded truck with fruit from Warsaw (PL) to Malmö (SE). Along the route to Malmö, the driver makes a stop in Hamburg (DE), where the other half of the truck is loaded with meat to be driven to Esbjerg (DK). In Esbjerg (DK), the meat is unloaded. The driver loads the other half of the truck with milk. From Esbjerg (DK), the driver continues to Malmö (SE) where both the fruit and the milk are unloaded. In Malmö, the driver loads the truck with meat of which half is unloaded in Esbjerg. The remaining part of the meat is driven home to Poland by the driver.

### Characterisation of the transport journeys:

On the outward journey, the driver undertook:

- One bilateral international transport operation (the fruit, Poland to Malmö) containing one additional activity (meat, Hamburg to Esbjerg) and
- One non-bilateral international transport operation (the milk, Esbjerg to Malmö) \*

On the return journey, the driver undertook:

- Yet another bilateral international transport operation (the meat, Malmö to Poland) containing one additional activity (the meat, Malmö to Esbjerg) \*\*

\*The non-bilateral international transport operation, which is not subject to the additional activity exemption, was from Esbjerg to Malmö (the milk).

\*\*The other bilateral international transport operation was the return journey from Malmö to Poland, (the meat) containing one non-bilateral international transport operation (additional activity) from Malmö to Esbjerg.

**Conclusion:** Bilateral international transport operations are exempted from the posting rules. Furthermore, non-bilateral international transport operations are exempted from the posting rules when undertaken in the context of a bilateral international transport operation and to a limited extent. The driver may perform a maximum of one loading and/or unloading activity in the Member States that he/she crosses. Since the driver performed one of his/her (exempt) additional activities on the route from Hamburg to Esbjerg, the driver is posted in Denmark from the moment of the commencement of the journey to Malmö as the milk is unloaded (a non-bilateral international transport operation). Due to the last-mentioned activity (the milk) also being undertaken, the number of additional activities on the outward journey exceeded the numbers allowed.

In addition, and until the unloading of the milk and fruit is completed, the driver is posted in Sweden as the border between Denmark and Sweden has been crossed. The driver is posted in Sweden until the unloading of the milk and the fruit. Following the unloading, the driver is no longer posted in Sweden despite of his/her presence on Swedish territory. This is owing to the commencement of the bilateral transport operation when the meat is unloaded. Subsequently, the driver undertakes one additional activity which is also exempted from the posting rules.

### **Scenario 6: A non-bilateral international transport operation and a subsequent unladen return journey to the Member State of establishment**

**Series of events:** A driver employed by an operator established in Hamburg (DE) drives a full-loaded fruit truck to Esbjerg (DK). In Esbjerg (DK), all the fruit is unloaded, and the truck is subsequently loaded with meat and driven to Malmö (SE). In Malmö (SE), the driver unloads the meat. From Malmö (SE), the driver undertakes an unladen return journey to Hamburg (DE) to commence a second bilateral transport operation from Hamburg to Denmark.

**Characterisation of the transport operations:** The driver has undertaken a bilateral international transport operation from Hamburg to Esbjerg. Afterwards, the driver undertakes a non-bilateral international transport operation from Esbjerg to Malmö. From Malmö, the driver undertakes an unladen return journey to Hamburg.

**Conclusion:** Bilateral international transport operations are exempted from the posting rules. From the moment of the unloading in Esbjerg of the fruit and until the commencement of the next transport operation, the driver is posted in Denmark. The driver is posted in Denmark until he/she reaches the border between Denmark and Sweden. Following the crossing of the border between Denmark and

Sweden, the driver is posted in Sweden until the unloading of the meat has been undertaken in Malmö. Unladen journeys undertaken in continuation of cabotage, or a non-bilateral international transport operation are not covered by the posting rules provided that the unladen journey is a return journey back to the Member State of establishment.

## Cabotage

**What is cabotage?** Cabotage is a national transport operation carried out for hire or reward for a limited period of time within the territory of the Community.  
***It should be noted that drivers must receive remuneration in accordance with the minimum hourly rate when the transport operation is cabotage.***

### **Scenario: Two bilateral international transport operations and cabotage**

**Series of events:** A driver employed by an operator established in Hamburg (DE) drives a full-loaded fruit truck from Hamburg (DE) to Esbjerg and unloads the fruit. In Esbjerg (DK), the truck is loaded with meat which is unloaded in Aarhus (DK). In Aarhus (DK), the truck is loaded with milk and driven back to Hamburg (DE).

**Characterisation of the transport operations:** The driver has undertaken one bilateral transport operation from Hamburg to Esbjerg. The subsequent transport operation - from Esbjerg to Aarhus - is cabotage since this journey is a national transport operation in Denmark. Subsequently, the driver has undertaken yet another bilateral transport operation from Aarhus and back to Hamburg.

**Conclusion:** Bilateral international transport operations are exempt from the posting rules. Since cabotage is covered by the posting rules, the driver is posted in Denmark from the commencement of the journey to Aarhus. The posting period ends as soon as the last bilateral transport operation from Aarhus to Hamburg begins (loading of milk).

## Transit

**What is transit?** Transit is characterised by the territories whether it is Member States or not, which the driver crosses in the context of bilateral and non-bilateral international transport operations. No loading and/or unloading activities are performed by the driver while in transit.

### **Scenario 1: A bilateral international transport operation followed by a non-bilateral international transport operation and a transit journey**

**Series of events:** A driver employed by an operator established in Warsaw (PL) drives a full-loaded fruit truck from Warsaw to Hamburg (DE). In Hamburg (DE), all the fruit is unloaded, and the truck is subsequently loaded with meat and driven to Esbjerg (DK) to be unloaded. Following the unloading, the driver undertakes an unladen return journey to Poland (PL).

**Characteristic of the transport operations:** The driver has performed one bilateral international transport operation from Poland to Hamburg. Subsequently, the driver performs a non-bilateral international transport operation from Hamburg to Esbjerg. Finally, an unladen journey back to Poland also included a transit journey through Germany.

**Conclusion:** Bilateral international transport operations are exempted from the posting rules. From the moment of the unloading of the fruit in Hamburg and until the commencement of the next transport operation, the driver is posted in Denmark until the crossing of the border between Denmark and Germany. When the driver has crossed the border between Germany and Denmark, the driver is posted in Denmark until he/she reaches Esbjerg. Unladen journeys undertaken in continuation of cabotage, or a non-bilateral international transport operation are not covered by the posting rules when the unladen journey is a return journey back to the Member State of establishment. For this reason, following the unloading of the meat in Esbjerg, the driver is no longer posted in Denmark. Nor is the driver posted in Germany on his way back to this country, as the said journey is a transit journey, which is not covered by the posting rules.

## Unladen journeys

**What is an unladen journey?** Unladen journeys are empty journeys made in the context of either a bilateral transport operation, a non-bilateral international transport operation or cabotage. Empty journeys differ from transit journeys in that unladen journeys are connected to either the previous or the subsequent transport operation. *It should be noted that an empty journey followed by cabotage, or a non-bilateral international transport operation followed by a journey back to the Member State of establishment will always be exempted from the posting rules.*

**Tomkørsel** Hvad er tomkørsel? Tomkørsel er kørsel uden last i forbindelse med enten en

### **Scenario 1: A bilateral international transport operation followed by an unladen journey**

**Series of events:** A driver employed by an operator established in Hamburg (DE) drives a full-loaded fruit truck from Hamburg to Esbjerg (DK). In Esbjerg (DK), the fruit is unloaded. The driver then undertakes an unladen journey back to Hamburg (DE).

**Characterisation of the transport operations:** The driver has undertaken one bilateral international transport operation from Hamburg to Esbjerg followed by an unladen journey from Esbjerg to Hamburg.

**Conclusion:** Bilateral international transport operations are exempted from the posting rules. If a bilateral international transport operation is followed by an unladen journey back to the Member State of establishment, the connection to the bilateral international transport operation will also constitute an exemption to the posting rules. *Consequently, in the scenario indicated, the driver was not posted.*

### **Scenario 2: Two bilateral international transport operations, one cabotage and one unladen journey**

**Series of events:** A driver employed by an operator established in Hamburg (DE) drives a fruit truck from Hamburg to Esbjerg (DK) where the fruit is unloaded. Subsequently, the driver undertakes an unladen journey from Esbjerg (DK) to Aalborg (DK). In Aalborg, the truck is loaded with meat and driven

to Copenhagen (DK). In Copenhagen (DK), the meat is unloaded. The driver then makes an unladen journey from Copenhagen (DK) to Padborg (DK) where the truck is loaded with milk to be driven back to Hamburg.

**Characteristic of the transport operations:** The driver has performed one bilateral transport operation from Hamburg to Esbjerg. Subsequently, the driver undertakes an unladen journey from Esbjerg to Aalborg. The driver then undertakes one cabotage from Aalborg to Copenhagen followed by yet another unladen journey from Copenhagen to Padborg. The driver finishes his journeys with a bilateral international transport operation from Padborg to Hamburg.

**Conclusion:** Bilateral international transport operations are exempted from the posting rules. Unladen journeys are not in themselves exempted from the rules but assessed in the context of the previous or the subsequent journey made. The empty drive between Esbjerg and Aalborg is undertaken in the context of the subsequent cabotage journey and, thus, the driver is posted from the moment of the commencement of the unladen journey and **not** from the moment of the completion of the first bilateral transport operation (the fruit). Therefore, the posting to Denmark finishes in Copenhagen. Since the unladen journey from Copenhagen to Padborg is connected to the subsequent bilateral journey from Padborg to Hamburg, the first-mentioned is also exempted from the posting rules.

### **Scenario 3: One unladen journey and a non-bilateral international transport operation between two bilateral transport operations**

**Series of events:** A driver employed by an operator established in Hamburg (DE) drives a full truck of fruit from Hamburg to Esbjerg (DK). In Esbjerg (DK), the driver unloads the fruit refilling the truck with meat. From Esbjerg (DK), the truck is driven to Malmö (SE) and the meat is unloaded. From Malmö (SE), the driver continues to Helsinki (FI) driving an empty truck. In Helsinki (FI), the truck is loaded with sportswear. During the driver's return journey back to Hamburg (DE), he/she drives through Sweden and Denmark. In Hamburg (DE), the goods (sportswear) are unloaded.

**Characterisation of the transport operations:** The driver has undertaken one bilateral transport operation from Hamburg to Esbjerg followed by a non-bilateral international transport operation from Esbjerg to Malmö. The latter is followed by an unladen journey from Malmö to Helsinki. The driver finishes his journeys with a bilateral international transport operation from Helsinki to Hamburg and passes through Sweden and Denmark on the way home.

**Conclusion:** Bilateral international transport operations are exempted from the posting rules. From the moment of the unloading of the fruit in Esbjerg and the subsequent commencement of the next journey and until the driver reaches the border between Denmark and Sweden, the driver is posted in Denmark. From the moment of the crossing of the border between Denmark and Sweden, the driver is posted in Sweden until he/she reaches Malmö where the meat is unloaded. Unladen journeys are not in themselves exempted from the posting rules but assessed in the context of their connection with the previous or the subsequent transport operation. Since the previous transport operation has been terminated, the unladen journey is linked to the subsequent transport operation, which is a bilateral international transport operation from Helsinki to Hamburg. Thus, the unladen journey to the border between Sweden and Finland is exempted from the posting rules. The driver is not posted in Sweden or Denmark during the way home as the said journey is a transit journey which is not subject to the posting rules.

### **Scenario 4: A bilateral international transport operation followed by an unladen journey and a non-bilateral international transport operation**

**Series of events:** A driver employed by an operator established in Hamburg (DE) drives a full-loaded fruit truck from Hamburg (DE) to Esbjerg (DK) where the fruit is unloaded. From Esbjerg (DK), the driver

continues towards Helsinki (FI) with an empty truck (unladen journey). On the way to Helsinki (FI), the driver passes through Sweden to load the truck with sportswear. The driver subsequently continues towards Malmö (SE). In Malmö (SE), the driver unloads the sportswear.

**Characteristic of the transport operations:** The driver has undertaken one bilateral transport operation from Hamburg to Esbjerg. Subsequently, the driver performs an empty drive (unladen journey) crossing the border between Denmark and Sweden, continuing through Sweden. The driver finishes his journeys completing a non-bilateral international transport operation from Helsinki to Malmö.

**Conclusion:** Bilateral international transport operations are exempted from the posting rules. Unladen journeys are not in themselves exempted from the rules but assessed in the context of their connection with the previous or the subsequent transport operation. Since the bilateral international transport operation has been terminated (the fruit), the unladen journey shall be connected to the subsequent non-bilateral international transport operation. However, the non-bilateral international transport operation between Finland and Sweden has no connection to Denmark. Consequently, the driver is not posted in Denmark from Esbjerg and to the border between Denmark and Sweden.

Neither is the driver posted in Sweden in connection with the drive through Sweden as the said drive is a transit journey. The driver is posted in Finland following the crossing of the border between Sweden and Finland. Until the driver leaves Finnish territory, he/she is posted in Finland. Furthermore, the driver is posted in Sweden following the crossing of the border between Finland and Sweden. If the driver returns to Hamburg from Malmö with an empty truck (unladen journey), the driver's posting period ends in Malmö upon unloading of the sportswear.

#### **Scenario 5: Unladen journeys between cabotage journeys**

**Series of events:** A driver employed by an operator established in Hamburg (DE) drives a full-loaded fruit truck from Hamburg (DE) to Esbjerg (DK). In Esbjerg (DK), all the fruit is unloaded. From Esbjerg (DK), the driver continues towards Horsens (DK) with an empty truck (unladen journey). In Horsens (DK), the truck is loaded with meat which is transported to Aarhus (DK) and unloaded by the driver. From Aarhus, the driver undertakes an unladen journey to Aalborg where the truck is loaded with milk. From Aalborg (DK), the driver brings the milk to Malmö (SE).

**Characterisation of the transport operations:** The driver has undertaken one bilateral transport operation from Hamburg to Esbjerg followed by an unladen journey between Esbjerg and Horsens. The subsequent drive is a cabotage journey from Horsens to Aarhus which is followed by an unladen journey from Aarhus to Aalborg. In Aalborg, the driver commences his non-bilateral international transport operation towards Sweden.

**Conclusion:** Bilateral international transport operations are exempted from the posting rules. Unladen journeys are not in themselves exempted from the rules but assessed in the context of their connection to the previous or the subsequent transport operation. As the previous journey has been terminated (the fruit), the unladen journey is connected to the subsequent cabotage journey (the meat), which is subject to the posting rules. The next unladen journey from Aarhus to Aalborg is linked with the subsequent non-bilateral international transport operation. Consequently, the driver is posted in Denmark from the moment the unloading of the fruit in Esbjerg has taken place and until the driver reaches the border between Denmark and Sweden. Furthermore, the driver is posted in Sweden from the moment of the crossing of the border between Denmark and Sweden.

#### **Scenario 6: Unladen journeys with rest time between cabotage journeys**

**Series of events:** Monday morning, a driver employed by an operator established in Hamburg (DE) drives a full-loaded fruit truck from Hamburg (DE) to Esbjerg (DK) where the driver unloads all the fruit. In Esbjerg, the driver rests for two days in a row. Wednesday morning, the driver has a cabotage journey from Aalborg to Copenhagen. Therefore, the driver undertakes a journey from Esbjerg to Aalborg. Upon arrival in Aalborg, the truck is loaded with cheese. Subsequently, the driver undertakes a journey from Aalborg to Copenhagen where the cheese is unloaded. Then, the driver undertakes an unladen journey back to Hamburg.

**Characterisation of the transport operations:** The driver has undertaken one bilateral transport operation from Hamburg to Esbjerg (fruit) followed by a rest and subsequently an unladen journey from Esbjerg to Aalborg. Then, the driver performs one cabotage journey between Aalborg and Copenhagen (the cheese). The transport operations are terminated by the driver carrying out an unladen return journey back to the Member State of establishment.

**Conclusion:** Bilateral international transport operations are exempted from the posting rules. Unladen journeys are not in themselves exempted from the rules but assessed in the context of their connection with the previous or the subsequent transport operation. Since the bilateral transport operation has been terminated, the unladen journey shall be connected to the subsequent cabotage between Aalborg and Esbjerg. The driver is not posted in Denmark until Wednesday morning, once the unladen journey to Aalborg begins. *This is owing to the fruit from the bilateral transport has already been unloaded, it is vital to note that during the days of the rest in Denmark, the driver shall not be regarded as posted.* . The driver is posted in Denmark until the unloading of the cheese in Copenhagen. An unladen journey undertaken in continuation of cabotage or a non-bilateral international transport operation is not subject to the posting rules provided that the unladen journey is a return journey back to the Member State of establishment.

## Combined transport operations

A combined transport operation is defined as the transport of goods between Member States by road as regards the initial or the final road leg whereas railway, inland waterway or the sea is used for the remaining leg when the latter exceeds 100 km as the crow flies.

### **Scenario 1: A combined transport operation as a bilateral international transport operation**

**Series of events:** A driver employed by an operator established in Hamburg (DE) drives a full-loaded fruit truck from Hamburg (DE) to Esbjerg (DK) and unloads the fruit. From Esbjerg (DK), the driver undertakes an unladen transport operation to Aarhus Port (DK). At Aarhus Port (DK), the driver collects a semi-trailer. The semi-trailer had arrived by ferry and was loaded with goods from England. The driver returns to Hamburg bringing the semi-trailer with him/her.

**Characterisation of the transport operations:** The driver has undertaken two bilateral international transport operations and an unladen journey between the two international operations. The first bilateral international transport operation took place from Hamburg to Esbjerg (fruit). The said operation was followed by an unladen journey from Esbjerg to Aarhus Port. The last bilateral international transport took place from Aarhus Port to Hamburg.

**Conclusion:** Bilateral international transport operations are exempted from the posting rules. Unladen journeys are not in themselves exempted from the rules but assessed in the context of their connection to the previous or the subsequent transport operation.

Since the bilateral transport operation was terminated in Esbjerg, the unladen journey shall be connected to the subsequent combined transport operation from Aarhus Port to Hamburg. Combined transport operations are exempted from the posting rules provided that the road legs in themselves are composed of bilateral transport operations. *Consequently, in the scenario indicated, the driver was not posted.*

### **Scenario 2: A bilateral international transport operation followed by a combined transport operation and cabotage**

**Series of events:** A driver employed by an operator established in Hamburg (DE) drives a full-loaded fruit truck from Hamburg (DE) to Esbjerg (DK) and unloads the fruit. At Esbjerg Port (DK), the driver collects a semi-trailer. The semi-trailer had arrived by ferry and was loaded with goods from England. The driver transports the semi-trailer to Kolding (DK). In Kolding (DK), the semi-trailer is loaded with meat. The meat is transported to Padborg (DK) by the driver. From Padborg (DK), the driver returns to Hamburg with an empty truck (unladen journey).

**Characterisation of the transport operations:** The driver has undertaken one bilateral international transport operation from Hamburg to Esbjerg (the fruit) followed by a combined transport operation from Esbjerg to Kolding (the semi-trailer), one cabotage journey from Kolding to Padborg (the meat) and one unladen journey from Padborg and back to Hamburg.

**Conclusion:** Bilateral international transport operations are exempted from the posting rules. The initial or final road legs of a combined transport operation is subject to the posting rules providing that the loading and the unloading take place in the same Member State. Consequently, the driver is posted in Denmark from the moment the semi-trailer has been clasped and the transport operation bound for Kolding has begun. The driver is posted until the onloading of the meat in Padborg as the transport operation from Kolding to Padborg is cabotage. An unladen journey undertaken in continuation of cabotage or a non-bilateral international transport operation is exempted from the posting rules provided that the unladen journey is a drive back to the Member State of establishment.

## **Transport operations in third countries (non-Member States)**

A driver employed by an operator established in a Member State undertaking transport operations in third countries are subject to the laws of the countries in question as regards posting to the said countries. The driver is subject to the posting rules stemming from the Directive once he/she resumes the driving activity on the territory of a Member State, no matter from where the goods transported by the driver come from, including third countries.

### **Scenario 1: A bilateral international transport operation followed by a non-bilateral international transport operation and an unladen journey**

**Series of events:** A driver employed by an operator established in Denmark drives a full-loaded truck with lamps from Herning (DK) to Zurich (CH) where the driver unloads the lamps. In Zurich (CH), the

truck is loaded with chocolate which is subsequently transported to Hamburg (DE) by the driver. In Hamburg (DE), the chocolate is unloaded. Then, the driver returns to Hamburg from Herning driving an empty truck (unladen journey).

**Characterisation of the transport operations:** The driver has undertaken one bilateral operation followed by one non-bilateral transport operation and an unladen journey. The first bilateral international transport operation takes place from Herning to Zurich. In Zurich, the driver commences his bilateral international transport operation bound for Hamburg (the chocolate) and, subsequently, he returns home carrying out an unladen journey from Hamburg to Herning.

**Conclusion:** Bilateral international transport operations are exempted from the posting rules, including bilateral international transport operations to third countries<sup>16</sup>. The posting rules stemming from Directive (EU) 2020/1057 do not apply to Switzerland or other EEA countries. Since Switzerland is a third country (a non-EU Member State), the driver cannot submit a posting declaration via IMI to the Swiss authorities. Non-bilateral international transport operations are subject to the posting rules and, therefore, the driver is posted in Germany as he crosses the border between Switzerland and Germany<sup>17</sup>. Unladen journeys are not in themselves exempted from the rules but assessed in the context of their connection with the previous or the subsequent transport operation. An unladen journey followed by cabotage or a non-bilateral transport operation is not subject to the posting rules provided that the unladen journey is a return journey back to the Member State of establishment. Consequently, from the moment the chocolate is unloaded in Hamburg, the driver is no longer posted.

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<sup>16</sup> Article 1 (3) of Directive (EU) 2020/1057

<sup>17</sup> The posting rules stemming from Directive (EU) 2020/1057 solely apply to drivers employed by operators established in an EU Member State and the UK.