

Information on the posting of workers in the transport sector / haulage sector from the EU, the EEA and Switzerland

Labour law provisions

General information

The regulations intended to combat wage and social dumping apply to all industries and therefore **also to the transport sector**.

This information relates to the **posting of workers** by employers/companies registered in an EU Member State, an EEA State or the Swiss Confederation **to Austria** to provide transport services.

It does not cover temporary agency work (i.e. hiring out workers to third parties). This information also does not cover postings to a branch or a company belonging to a group of companies in Austria.

Worker status is determined in accordance with Austrian law.

The regulations on **notification of a posting** to Austria and the requirement to **keep documents available** during the posting as well as the **provision** of documents can be found in the Anti-Wage and Social Dumping Act (*Lohn- und Sozialdumping-Bekämpfungsgesetz, LSD-BG*).

This information relates to both **the carriage of goods** and **the carriage of passengers**. It supplements the general information on the home page www.entsendeplattform.at

This information is dated 1 December 2021. **It does not include the special provisions of 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**, which are applicable from 2 February 2022. Separate information will be prepared for the special provisions of Directive (EU) 2020/1057.

Definition of posting – what types of work arrangements are involved?

A posting to Austria is subject to the requirement that the worker's **customary place of work** is **not in Austria**.

A posting to Austria exists if there is a **sufficient connection** to Austria, which requires a general assessment of all factors.

When doing so, it must be taken into account that, in accordance with the judgment of the Court of Justice of the European Union of 1 December 2020 in Case C-815/18, a sufficient connection **does not** exist if the driver **only** carries out cross-border transport operations for goods transport **from the Member State where the transport undertaking is established to the territory** of another Member State **or vice versa** (see paragraphs 42 et seq. and in particular paragraph 49).

The following arrangements in particular are postings for the purposes of the LSD-BG:

- **Cabotage** (loading and unloading are done in Austria).
- **Terminating traffic** from a foreign country to Austria (loading is done outside Austria, unloading is done in Austria; including for a client outside Austria), **provided there is a sufficient connection to Austria** (see the information on the lack of a sufficient connection above).

If there is not a sufficient connection to Austria, the **terminating transport** to Austria is **not a posting** for the purposes of the LSD-BG.

- **Originating traffic** from Austria to a foreign country by non-Austrian companies (loading is done in Austria, unloading is done outside Austria; including for a client outside Austria), **provided there is a sufficient connection to Austria**.

The **above remarks** apply in respect of a 'sufficient connection'.

- The above points **also apply to the carriage of passengers** (occasional carriage, regular traffic – particularly by bus, taxi/rental car, waterborne vessel or rail).
- **Unladen journeys** that have a **sufficient connection** to Austria (see the information on the collectively agreed minimum wage below with respect to unladen journeys).
- **Irregular or one-off transport** can also constitute a posting.

The following in particular are not postings for the purposes of the LSD-BG:

- **Terminating traffic and originating traffic** if a **sufficient connection** does **not** exist (see above with respect to a sufficient connection).
- **Transit** in the carriage of goods and the carriage of passengers:
neither the loading nor unloading of goods, and neither the commencement nor the termination of a passenger journey is in Austria; furthermore, the purpose of the transport is not to carry goods or passengers to Austria; instead, the journey through Austria is necessary to reach the actual destination.
- **Exception of 'own-account transport':**

the concept of 'own-account transport' for the purposes of the LSD-BG includes certain transport from and to Austria, in respect of which the transport service is solely an **incidental service** within the context of a legal transaction (see the cases referred to in this regard).

A typical example is the purchase of a product in a foreign country by a buyer in Austria and the transport of this product by the seller using its own truck and driven by a driver employed by the seller.

In this case, the 'transport' service is merely incidental to the purchase and, with regard to the two fundamental freedoms of the free movement of goods and the freedom to provide services, it only plays a minor role, and it should not therefore be taken into account in respect of the LSD-BG.

Cases:

- The **seller/lessor/manufacturer/processor/owner** delivers the goods that have been sold / been leased / been manufactured / are to be processed to Austria using its workers with its own (hired/leased) vehicles, and the carriage of goods constitutes an ancillary activity within the framework of its company as a whole. The maximum authorised weight of the vehicle is irrelevant.
- The **buyer/lessee/processor/owner** collects the goods that have been purchased / leased / are to be processed / have been processed from Austria using its workers with its own (hired/leased) vehicles, and the carriage of goods constitutes an ancillary activity within the framework of its company as a whole. The maximum authorised weight of the vehicle is irrelevant.
- In the course of transport **between permanent establishments of the same company**, own goods (own workers) are supplied (carried) to Austria or collected from Austria by its own workers, and the carriage of goods (carriage of passengers) constitutes an ancillary activity within the framework of the company as a whole. The maximum authorised weight of the vehicle is irrelevant.
- Such own-account transport can be documented accordingly.
- Since 1 September 2021, the LSD-BG has expressly stated that the following activities do not constitute posting:
 - **The delivery of goods by the seller's or the lessor's posted workers** and the **collection** of goods by the buyer's or the lessee's posted workers.
 - Activities that are essential for **putting into service and using the goods supplied** and that are carried out by the seller's or the lessor's posted workers with **minimal time effort**.
- **Individual exceptions:**

- Recovery and breakdown service journeys, if the driver of the damaged vehicle / the vehicle involved in an accident is a member of an automobile association or has accident and breakdown cover and the recovery has to be carried out by the foreign recovery service.

There is also no posting if the order to carry out the recovery service is given by the police.

- Private coach journeys by associations, if the members of the association are driving the coach without payment.
- Pick-up service for hotel guests provided by the hotel's own pick-up service.
- Transfers by a car dealerships (the seller of the vehicle).

- **Exceptions for waterborne transport:**

There is no posting to Austria if a vessel only remains in an Austrian harbour during the winter months without any transport services being provided.

There is also no posting if the crew only boards or disembarks from the vessel in Austria but the actual transport services are carried out abroad, not in Austria.

What obligations do employers have?

- Complying with the Austrian collectively agreed **minimum wage**
- **Notification** of the posting using the special [online form for the transport](#)
- Keeping available and/or providing **documents**:
 - notification;
 - documents regarding registration for social security;
 - pay documents;
 - an employment permit, if the worker is a citizen of a third country.

Compliance with the Austrian collectively agreed minimum wage

- In the **road haulage sector** (i.e. the carriage of goods using motor vehicles), the [collective agreement for the road haulage industry](#) applies to workers. For workers of companies that carry goods exclusively using vehicles with a maximum authorised total weight not exceeding 3 500 kg, the [collective agreement for the small transport industry](#) must be observed.
- In the **passenger transport sector**, the [collective agreement for private bus companies](#) must be observed. If the company is a taxi company, the [collective agreement for the passenger transport sector](#) by car applies to workers.

- In the [waterborne transport industry](#), the following collective agreement applies to workers:

For a company that does not belong to the passenger transport or road haulage sector but that **also carries out transport as part of its business activities in another sector**, the applicable collective agreement for that industry usually applies.

However, it should be noted that certain forms of transport within the context of a business activity are **not postings** (see the section ‘**Definition of posting**’).

All collective agreements can be found at www.kollektivvertrag.at.

The minimum wage defined in the collective agreement applies to all **hours worked** in Austria. For drivers, hours worked within the context of goods transport and passenger transport includes driving time, time spent carrying out other work (such as loading/unloading) and the time spent on standby duty without breaks (such as waiting time during loading/unloading by others).

Unladen journeys within Austria may also constitute notifiable hours worked within the context of a posting (in the case of posting-related terminating traffic¹, for example, after unloading back to the border or, in the case of posting-related originating transport², the journey to the loading site or, in the case of cabotage, the journey), for which the **wages stipulated in the Austrian collective agreement** must be paid.

Unladen journeys through Austria within the context of **transit** do **not** constitute notifiable hours worked that must be remunerated in accordance with the Austrian collective agreement. If transit due to cabotage or posting-related transport from Austria³ to a foreign country **is interrupted or terminated**, this transport service still constitutes **notifiable hours worked** within the context of a posting, for which the wages stipulated in the Austrian collective agreement must be paid. Resuming transit following cabotage to leave Austrian territory is not a posting subject to notification.

Notification requirements

General information on notification in the transport sector (Section 19(7) LSD-BG):

- Notification should be done using the special [online form for the transport](#) .
- Notification is provided in summary form for 6 months (and is therefore independent of a specific posting).

¹ if there is a posting on the basis of a sufficient connection to Austria.

² if there is a posting on the basis of a sufficient connection to Austria.

³ if there is a posting on the basis of a sufficient connection to Austria.

- Among other things, it must list the workers who are expected to be deployed in Austria in this period and the official number plates of the vehicles used.
- For any changes in the details provided in the notification, such as additional workers or vehicles, a special [online form for an amendment notification](#) is available.

Notification must be provided **before work begins**.

In the case of posting-related **terminating traffic**⁴ and posting-related **originating traffic**⁵, work commences upon entry into Austrian territory. In the case of **cabotage**, notification before the actual work commences (before the journey to the loading site) is sufficient.

In the case of posting-related **passenger transport**⁶, work commences upon entry into Austrian territory.

Data that has been saved in connection with old notifications can be imported into new notifications. This can significantly reduce the effort involved in completing the notification form.

Transport notification – content and format

Notifications of the posting of mobile workers in the transport sector must contain the **following details**:

- the employer's **name, address** and business authorisation or line of business, **VAT identification number**;
- the **name and address** of the persons appointed to represent the employer in external matters;
- unless the driver of the vehicle is the **contact person**, the name and address of the contact person from among the persons based in Austria authorised to represent the parties professionally;
- the names, addresses, dates of birth, social security numbers and competent social security institutions as well as the citizenship of the **workers expected to work in Austria** in the notification period;
- the **official licence plates** of the vehicles used by the workers, i.e. the means of road/rail/waterborne transport;
- the amount of the **remuneration payable to the individual worker in accordance with Austrian legal regulations** and the beginning of their employment contract with the employer;

⁴ if there is a posting on the basis of a sufficient connection to Austria.

⁵ if there is a posting on the basis of a sufficient connection to Austria.

⁶ if there is a posting on the basis of a sufficient connection to Austria.

- the **nature of the activity and deployment of the worker** taking account of the applicable Austrian collective agreement;
- if an **official permit** for the **employment** of the posted workers is required in the state where the employer has its registered office, the issuing authority, reference number, date of issue and the period of validity, or a copy of the permit;
- if the posted workers **require a residence permit** in the state where the employer has its registered office, the issuing authority and the reference number, the date of issue and the period of validity, or a copy of the permit.

Subsequent amendments (e.g.: workers, licence plates) to the details must be notified immediately (see the special online form above).

Availability/provision of documents

The following documents must be kept available or provided following an inspection:

1. **Social security document A1** (in the **relevant language**)
If it was not possible to obtain the issue of certificate A1 before the posting or assignment: The application for issue of certificate A1 and other documents from which it can be determined that the worker is registered for social security at the time of their activities in Austria (in German or English; a translation does **not have to be certified**). This also includes documents such as previously issued A1 certificates for the worker that confirm their social security registration.
2. **A copy of the notification of the posting**
If the copy of the notification cannot be kept available in the vehicle for time-related or technical reasons – for example, when carrying out cabotage – the **transaction number / reference number** received when providing the notification must be kept available.
3. **Pay documents**, which must always state **what remuneration is owed and actually paid out to the workers during employment in Austria**.
Pay documents include:
 - the employment contract or written record of the content of the employment contract within the meaning of Information Directive 91/533/EEC;
 - payslips, proof of wage payments by the employer or bank transfer statements;
 - documents regarding classification in the wage grid (e.g. training and previous employment periods if these are considered relevant under the collective agreement); and
 - records of the hours worked of each posted worker.

The **pay documents** must be provided in **German or English or with a translation**. Translations do not have to be certified.

The **records of hours worked** can be compiled using the standard monitoring tools in the transport sector (both analogue and digital), provided that the hours worked to be remunerated in accordance with the Austrian collective agreement are clear. It should be borne in mind that periods other than driving time may also be remunerated.

4. In the event that the worker is to be posted from an employer/company registered in an EU Member State, an EEA State or the Swiss Confederation but does **not hold citizenship** of an EU Member State, an EEA State or the Swiss Confederation themselves, the **work permit** of the posting state must be kept available in the case of **cabotage**, provided that one is required in the posting state.

For which workers, where and in what format must the documents be kept available and/or provided?

- **General remarks:**

According to the rules, it is **mandatory**, on the one hand, for certain documents to be kept available **exclusively** in the **vehicle**; on the other hand, other documents only have to be provided to the authorities in the event of an inspection.

The documents must be kept available by those workers who are **currently** carrying out transport work in Austria.

The documents must be kept available in the vehicle for the worker therein and provided to the inspection authorities.

They may be kept in either **printed form** or in a **readable electronic format** (on a display); in this case, the technical equipment must already be located within the vehicle upon entry into Austrian territory.

If the data is not stored on the technical equipment itself (but on a server in another country, for example), it must be possible to access this data at the time of the inspection. If such access is not possible, the documents are considered to be unavailable. Unreadable electronic data, such as that on a USB stick, is insufficient.

- **What documents must be kept available in the vehicle during the posting?**

- A copy of the notification of the posting
- Social security document A1 (or permitted substitute documents)
- Employment contract / statement of terms and conditions
- Records of hours worked, including, where applicable, in accordance with Article 36 of Regulation (EU) No 165/2014 on tachographs in road transport

- **What documents must be provided to the authorities during an inspection?**

- Payslips, proof of wage payments by the employer or bank transfer statements
- Documents regarding classification in the wage grid (e.g. training and previous employment periods if these are considered relevant under the collective agreement)
- Records of the **hours worked** of each posted worker:

Even if the records of hours worked have already been examined during the inspection, they must still be provided to the Anti-Fraud Office on request.

- **How and for which period must the documents be provided?**

- The documents mentioned above **only have to be provided on request by the Anti-Fraud Office**. They do not have to be kept available, however (exception: records of hours worked, which must also be kept available). It is sufficient to only have the documents translated after they have been requested; they must still be provided in good time, however.
- The documents must be provided **within 14 calendar days** of the end of the calendar month in which the inspection was carried out. If the pay documents are not received by the Anti-Fraud Office by this deadline or if they are not received in full, this is considered a failure to provide the pay documents and will be sanctioned accordingly.
- The **period** for which documents must be provided covers that calendar month in which an inspection of the worker was carried out as well as the previous month, if the worker was working in Austria.