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IRU Position on the EU Mobility Package – recommendations relating to the lex specialis on posting of workers in road passenger transport

IRU recommendations to European legislators on the Commission proposal for a lex specialis on posting of workers in road transport – application to passenger transport.

I. GENERAL

IRU recommends specific derogations from posting of workers rules for road passenger transport services.

Coach transport services are a different type of activity than road freight transport services. International coach services and cabotage operations function in a different way, are governed by separate market access rules (Regulation (EC) No 1073/2009) and the sector is not subject to the same competitive and social pressure as exists in the road freight transport sector. Coach transport operators are however affected by existing national posting of workers rules to the same extent as road freight transport companies, whereas these measures were initially designed to address problems occurring in the road freight transport sector only. In particular, the administrative burden attached to these national measures can constitute an obstacle to the provision of international coach services in the EU.

IRU considers that road passenger transport companies should not be affected by measures that primarily aim at addressing problems occurring in the road freight transport sector. IRU therefore requests that specific derogations for the passenger transport sector are introduced in the European Commission proposal.

II. TYPES OF SERVICES TO BE EXEMPT FROM THE POSTING OF WORKERS RULES

1. Regular coach transport services

International scheduled coach services are organised in a similar way to international high-speed train services. Coach companies operating these services are typically established in either the Member State of departure or arrival. The operation of these services is subject to specific authorisation procedures which require the agreement of the Member States of departure and arrival. Cabotage operations must also be authorised and can take place only in the framework of an international service. It is typically a requirement for companies operating national regular services to be established in the Member State of operation.

All such regular services do not cause any competitive or social friction in the EU road passenger transport market and should therefore be exempt from the posting of workers rules.

2. Occasional coach transport services

International coach tours (“closed-door tours”) typically start and end in the same Member State, with the coach company and a pre-constituted group of tourists residing in this very Member State. Even though operations include overnight stays and several stops within host Member States, they are legally considered as one single international transport service. Stops within the host Member States are legally defined as “local excursions” (Article 13 of Regulation (EC) No 1073/2009) as part of the international transport service, and not cabotage operations. The incoming and/or outgoing international transfer of the pre-constituted group to the host Member State can take place via other modes of transport, under the same transport contract, without changing the legal nature of the transport operation¹.

International coach tours, including fly-and-drive multimodal travel models do not cause any competitive or social friction in the EU road passenger transport market and should therefore be exempt from the posting of workers rules.

III. TYPES OF SERVICES THAT MAY BE SUBJECT TO THE POSTING OF WORKERS RULES

Pure cabotage operations in the framework of an occasional service, which have no link to any incoming or outgoing international transport service, are currently permitted as long as they are “temporary” (Article 1.4 of Regulation (EC) No 1073/2009). Member States are in charge of defining and enforcing what can be considered as temporary. In order to avoid potential abuses of the notion of “temporary” cabotage, IRU considers that Member States may decide to apply posting of workers rules only to drivers carrying out such cabotage operations.

IV. IRU PROPOSAL

IRU considers it important that the *lex specialis* distinguishes between road passenger transport services that correspond to fair and traditionally accepted travel practices on the one hand and the unjustified permanent presence of foreign drivers and coach operators on the national territory of a Member State on the other. IRU suggests that article 2.2 of the proposal specifies which road passenger transport services should benefit from a full exemption and which may be subject to the posting of workers rules.

Article 2.2 of the proposal should reflect that a number of operations are fully exempt from the posting of workers rules. This includes all international and domestic regular services, all international occasional services, including local excursions and “fly-and-drive” type multi-modal travel models.

Member States may however decide to apply the posting of workers rules to drivers carrying out cabotage operations in the framework of an occasional service, as long as they are not local excursions taking place in the framework of an international occasional service or an international fly-and-drive multimodal travel.

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¹ Fly-and-drive multi-modal travel models: involves a pre-constituted group of travellers residing in country A being transported by a non-road mode to country B. On arrival in country B, a coach operator from country A will pick them up and carry them on local excursions within country B for the length of their stay.