

LOCAL EXCURSIONS AS PART OF CLOSE-DOOR TOURS MUST NOT BE SUBJECT TO POSTING IN ANY MEMBER STATES

Background

DG MOVE of the European Commission is currently working on a set of scenarios, to define which passenger transport services by bus and coach might be subject to posting and which not. According to the provisions of Directive 2020/1057 (*Lex specialis*) international occasional passenger transport services in which passengers are picked up and set down in the Member State of establishment for the purpose of carrying out local excursions in another Member State or a third country, shall be exempt from posting.

According to the provisions of Article 13 paragraph of Regulation (EC) No 1073/2009, *“Within the framework of an international occasional service, a carrier may carry out occasional services (local excursions) in a Member State other than that in which it is established. Such services shall be intended for non-resident passengers previously carried by the same carrier on one of the international services mentioned in the first paragraph and shall be carried out with the same vehicle or another vehicle from the same carrier or group of carriers”*.

The EC draft interpretation

In its draft interpretation (see scenario below), the EC services consider that local excursion(s) within a close-door tour are exempt from posting only in one (the first) host Member State. According to the EC, all subsequent local excursions shall be subject to posting. The EC comes to this conclusion by interpreting the wording *“a carrier may carry out occasional services (local excursions) in a Member State other than that in which it is established”* as exempting the local excursions in only one (“a” = one) Member State.

Scenario: occasional round trip with local excursions in different host countries

A driver employed by a company established in Romania carries out a close-door round trip for a pre-constituted group through different EU Member States, including local excursions in those MS, starting from and ending in Bucharest (RO). The group is unchanged throughout the trip and the transport operation is accompanied by a journey form, which is the control document for this type of transports.



The industry interpretation

According to the industry, in line with the decades-long interpretation of Article 13 of Regulation 1073, the wording “a Member State” must be interpreted as “any Member State” and not as “one Member State”, which corresponds also to the intention of the legislator, confirmed during numerous industry meetings during the adoption process.







The industry reasoning is also supported by the nature of the close-door tours, whose almost exclusive objective is to organise sightseeing visits (=local excursions) during the close-door service in other Member States. Without local excursions, close-door tours would not exist as a service.

In addition, the bilateral nature of the service is confirmed by the fact that the service starts and ends in the country of establishment of the operator, without any completion with similar service providers from other Member States in which the local excursion is provided. In fact, if this were to be the case, the bilateral nature of the operation would be compromised.

The bilateral nature of the service is further confirmed by the control document (the journey form, see below), which explicitly states the place of departure and the place of destination, under its item 6, whilst local excursions are entered into the form, before the service starts.

INTERNATIONAL OCCASIONAL SERVICES and CABOTAGE OPERATIONS IN THE FORM OF OCCASIONAL SERVICES

(Each item, if necessary, can be supplemented on a separate sheet)

1	 <input type="text"/> Place, date and signature of the carrier			
2	 Carrier and, where appropriate, subcontractor or group of carriers	1. 2. 3.			
3	  Name of driver(s)	1. 2. 3.			
4	Organisation or person responsible for the occasional service	1. 3. 2. 4.			
5	Type of service	<input type="checkbox"/> International occasional service <input type="checkbox"/> Cabotage operation in the form of occasional service <input type="checkbox"/> Cabotage operations in the form of special regular services — monthly statement Month Year			
6	Place of departure of service: Country:				
	Place of destination of service: Country:				
7	Journey	Route/Daily stages and/or passenger pick-up or set-down points	 number of passengers	 empty (mark with an X)	Planned km
	Dates	from to			
8	Connection points, if any, with another carrier in the same group	Number of passengers set down	Final destination of the passengers set down	Carrier picking up the passengers	
Local excursions					
9	Date	Planned km	Place of departure	Place of excursion	No of passengers
Unforeseen changes					
10				