

Information on the posting of transport sector workers from the EEA and Switzerland

Labour law provisions

General information

In Austria, regulations intended to combat wage and social dumping in all sectors, including the transport sector, entered into effect as of 1 May 2011 and have been in force since then.

The previously applicable legal provisions were modified only slightly as of 1 January 2017. Those are laid down in the amendment to the Anti-Wage and Social Dumping Act (*Lohn- und Sozialdumping-Bekämpfungsgesetz, LSDB-G*) published in Federal Law Gazette I no. 44/2016.

The regulations governing the **notification of posting** workers to Austria and the requirement to **keep documents available** during the posting period were **amended** as of **1 June 2017** to make them significantly simpler and take into account the special conditions of transport services.

The information provided below refers to the posting **of employees** to Austria for the purpose of providing transport services. It does not cover temporary agency work (i.e. hiring out workers to third parties). Whether or not an individual is an employee is determined according to Austrian law.

This information refers equally to the carriage of goods and passengers. It is intended to supplement the general information provided under www.entsendeplattform.at

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

Posting of workers to Austria presupposes that the employee's **customary place of work is outside Austria**. It is immaterial whether any Austrian-based client exists; a case of posting may exist even without a client in Austria.

The transport sector comprises the **carriage of both persons and goods**. In particular, it includes the transport of tourists (especially by bus, ship) accompanied by a mobile tourist guide.

Cases of the posting of workers as defined in the LSD-BG exist particularly under the following work arrangements:

- **Cabotage** (where goods are loaded and unloaded in Austria)
- **Traffic terminating in Austria** (goods are loaded outside Austria and unloaded in Austria), including cases where the client is based outside Austria
- **Traffic** by non-Austrian companies **which originates in Austria** (goods are loaded in Austria and unloaded outside Austria), even for a client based outside Austria
- The items above **also apply** by analogy **to the carriage of passengers** (occasional service, regular service, also tourist trips in general which have their destination in Austria, including in particular trips by bus, taxi or hired car, ship or train)
- **Unladen journeys**
- Irregular or one-time transports also qualify as cases of posting.
- **Examples of cases of posting:**
 - Transport of skiers to Austria
 - A **tourist trip** through Austria that begins and ends in country A (i.e. **circular tour** of Austria).

No posting of workers as defined in the *LSD-BG* exists particularly in these cases:

- **Transit traffic** for the carriage of goods or persons:
Goods are not loaded or unloaded and passengers do not embark or disembark in Austria; in addition, traffic is not for the purpose of transporting goods or persons to Austria, rather the trip through Austria is necessary in order to reach the actual destination.

- **Exemption “carriage of goods on own account”**

The “carriage of goods on own account” pursuant to the *LSD-BG* includes certain cases of transport from and to Austria where the transport service is only a **secondary service** provided as part of a legal transaction (please refer to the examples below).

In a typical example a purchaser in Austria purchases a commodity abroad and the transport of this commodity to Austria is then carried out by the seller in one of its own vehicles and driven by a driver employed by the seller.

In this case, the “transport” service is only a secondary service to the purchase and is thus only of subordinate importance in relation to the free movement of goods and services; for this reason, such “transport services” are not governed by the *LSD-BG*.

If the commodity is, however, transported by a separate carrier different from the seller, the service provided is considered to be provided independently from the purchase and is thus subject to the *LSD-BG*.

Cases:

- The **vendor/lessor/producer/processor/owner** has delivered the goods, which have been sold/hired-out/produced or are to be processed, directly to Austria by the company’s workers using the company’s own (hired/leased) vehicles, where the carriage

of goods is an ancillary activity within the business as a whole. The maximum total vehicle weight is not relevant.

- The **buyer/lessee/processor/owner** has collected the goods, which have been bought/hired/processed or are to be processed, directly in Austria by the company's workers using the company's own (hired/leased) vehicles, where the carriage of goods is an ancillary activity within the business as a whole. The maximum total vehicle weight is not relevant.
- As part of transporting the company's own goods (own employees) between **places of business of one and the same company**, the goods (or employees) are delivered to or collected in Austria by the company's own employees, where the carriage of goods (or persons) is an ancillary activity within the business as a whole. The maximum total vehicle weight is not relevant.
- If goods are transported on a company's own account, this can be documented accordingly.
- Tourist trips (passenger transport) with destinations within Austria provided that:
 - the trip involves destinations that are outside Austria as well as outside the country in which the trip originates;
 - and no persons join or leave the trip in Austria.
- **Example of a case not involving posting:**

A tourist trip through Austria that begins in country A (e.g. Hungary) and ends in country B (e.g. Slovenia).
- **Explicit exemptions:**
 - Breakdown and roadside assistance services if the driver of the defective vehicle/the vehicle involved in an accident is a member of an automobile association or has breakdown cover and, according to the terms and conditions applicable, the car is required to be towed by a foreign breakdown assistance service provider.

It is not a case of posting either if a vehicle is towed on police orders.
If the driver directly commissions a breakdown assistance service provider of his choice with towing the vehicle, it may be a case of posting, depending on the exact circumstances;
 - Private bus trips organised by associations, if the bus is driven by a member of the association who is not paid for it;
 - Pick-up service for hotel guests by the hotel's own pick-up service;
 - Car transfers carried out by car dealers (seller of the car).
- **Exemptions in ship transportation:**

If a vessel only remains in an Austrian harbour during the winter months in which no transport services are provided, this is not considered a case of posting.
If a ship's crew only boards or leaves the vessel in Austria, while the actual transport services are provided abroad, this does not constitute a case of posting either.

What obligations apply to the employer?

- Compliance with the Austrian **minimum wage** as stipulated in the collective agreement
- **Notification** of posting (form available from www.bmf.gv.at)
- Keeping readily available and/or submitting **documents**:
 - Notification
 - Documents showing social insurance registration
 - Pay documents
 - Employment permit for employees with third-country citizenship

Compliance with the Austrian minimum wage as stipulated in the collective agreement:

- Workers in the **road haulage sector** (i.e. the carriage of goods using motorised vehicles) fall under the [collective agreement for the road haulage sector](#). With workers employed by companies that are active in the carriage of goods using only vehicles with a maximum permitted total weight of not more than 3,500 kilograms, the [collective agreement for the transport trade for small loads](#) needs to be observed.
- In the **passenger transport sector**, the [collective agreement for private bus companies](#) has to be observed. In the case of taxi companies, workers fall under the [collective agreement for passenger vehicle transport](#).
- In the shipping industry, the following collective agreement governs the working conditions for employees: <http://www.kollektivvertrag.at/kv/oesterreichische-schiffahrtsunternehmen-arb-ang>.

Where a company does not belong to either the passenger transport or road haulage sector but is **additionally active in transport as part of business activities in another sector**, company workers fall under the collective agreement applying to that sector.

It should be noted, however, that certain types of transport occurring in business activities are not considered to involve the posting of workers (refer to the section entitled “Definition of posting”).

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

The minimum wage defined in the collective agreement applies to the entire working time spent in Austria. For drivers working in the carriage of goods or passengers, working time comprises driving time, the time for performing other tasks (such as loading and unloading)

and times of readiness to work when drivers excluding breaks (for instance wait times while others load or unload goods).

Unladen journeys within Austria are also usually considered as working time that is subject to notification under the posting of workers scheme and for which the driver must be paid the wages stipulated in the **Austrian collective agreement**; examples include journeys back to the border after unloading in the case of terminating traffic and journeys to the loading point in the case of originating traffic, also in the case of cabotage).

Unladen transit journeys through Austria are **not** considered as working time that would be subject to notification under the posting of workers scheme and required to be paid in accordance with the Austrian collective agreement. When a transit journey is **interrupted or terminated** for the purpose of cabotage transports or to transport goods from Austria to another country, however, such carriage is indeed considered **working time that is subject to notification** under the posting of workers scheme and must be remunerated in accordance with the Austrian collective agreement. When a driver continues transit to leave Austrian territory after completing cabotage operations, this is not considered posting of a worker subject to notification.

Notification requirements:

General information on new requirements:

Notifications of cross-border posting to Austria relating to the transport sector are required

- in summary form for each 6-month period, regardless of the individual cases of posting.
- The ZKO-3 form (framework/collective notification) may no longer be used for the transport sector; the **“summary notification” is the only permitted form.**
- Notification information comprises primarily the employees expected to be posted to Austria and the licence plate numbers of the vehicles to be used.
- If other employees or vehicles than those listed in the notification are posted or used in the respective six-months period, this has to be notified to the authorities.
- Data as previously required, including information on the non-Austrian service provider, the place of employment in each case are no longer needed.

Notification has to be made **before starting work.**

With originating traffic and terminating traffic, drivers are considered to start working when they enter Austrian territory. In the case of cabotage operations, it is sufficient to provide notification before actually starting work (i.e. before driving to the loading point).

When carrying passengers, drivers are considered to start working when they enter Austrian territory.

Data stored from previously submitted notifications can be imported for new notifications. This can appreciably reduce the effort for completing the notification form.

Notifications for the transport sector which were submitted before 1 June 2017 and apply to periods thereafter remain effective; instead of another framework notification after the specified date, notification in accordance with the new provisions has to be made.

Transport notification: contents and form requirements:

Notifications on posting mobile employees in the transport sector has to be made **exclusively** pursuant to this section **for a period of six months** in each case and has to include **the following information:**

- **employer's name and address** and business licence or field of business; **VAT identification number**
- **name and address** of persons appointed to represent the employer in external matters
- unless the driver is the **contact person**: name and address of the contact person pursuant to Section 23 nominated from among the employees posted to Austria or of persons established in Austria and authorised to professionally represent the parties (Section 21 Para. 2 no. 4)
- names, addresses, birth dates, social security numbers and applicable social security institutions as well as the nationalities of the **workers who will probably work in Austria** in the given period
- **licence plate numbers** of the vehicles operated by the employees, including means of road/rail/water transport
- amount of **remuneration payable to the individual employee under Austrian law** and date of commencement of the employment relationship with the employer
- **type of work and deployment of the worker**, taking into account the applicable Austrian collective agreement
- the authority issuing the permit as well as the reference code, issue date and period of validity or a copy of the permit, provided that an **official permit** is required to **employ** the posted workers in the country where the employer is established
- the authority issuing the permit as well as the reference code, issue date and period of validity or a copy of the permit, provided that an **official permit is required** to employ the posted workers in the country where the employer is established

Retroactive changes of data (e.g. employee, licence plate number) shall be reported without delay.

Form:

The ZKO form is available on the website of the Austrian Federal Ministry of Finance (www.bmf.gv.at).

Keeping documents available and submitting documents:

The following documents have to be kept readily available and submitted after an inspection:

1. **A1 social security document** (in the language of the issuing country):
In the event that it is not possible to have the A1 document issued prior to the posting: an application for issue of the A1 certificate document along with other documents indicating that the employee is registered for social insurance when working in Austria (in German). This includes, for example, A1 documents which have already been issued to the employee that confirm social insurance registration.
The translation **need not be certified**.
2. **A copy of notification of posting:**
In some cases, for instance during cabotage operations, a copy of the registration document might not be able to be kept readily available in the vehicle due to scheduling or for technical reasons; in such cases the **transaction number** or **reference number** issued with registration should be kept available.
3. **Pay documents** that show at a minimum **the amount of remuneration due and actually paid out** to the employee **during the assignment in Austria**
The pay documents include:
 - Employment contract or written record of the content of the employment contract in accordance with Information Directive 91/533/EEC;
 - Payslip, proof of payment by the employer or bank transfer statements
 - Documents relating to pay categorisation (e.g. education or training and earlier employment periods, if stipulated in the collective agreement as being significant) and
 - Records of the hours worked for each posted employee

Pay documents must be available **in German or in German translation**. An English version or translation of the employment contract (or written record of the content of the employment contract in accordance with Information Directive 91/533/EEC) can also be kept available. The translation need not be certified.

Proof of wage payment or **bank transfer statements** can also be in the language of the country of issue (i.e. not in German) if an inspector is able to clearly recognise the pay period, the amount of remuneration and the pay recipient.

The **records of hours worked** can be recorded using the (analogue or digital) recording equipment customarily used in the transport sector, provided that the recordings indicate the hours worked that are required to be paid as specified in the Austrian collective

agreement. It should be noted in this regard that additional hours besides driving time may be required to be paid.

4. Where an employee is to be posted from an EU Member State but **is not a citizen of an EU Member State**, when carrying out cabotage operations that employee must keep available any **work permit** required for the posting country.
Where an employee who is a citizen of Croatia is to be posted from an EU Member State, when carrying out cabotage operations that employee must keep available any **work permit** required for the posting country.

Requirement to keep documents readily available and submit documents: for which employees, where and in what form?

- **General remarks:**

Pursuant to the new requirements, it is **mandatory** to keep readily available certain documents **exclusively** in the **vehicle**, while other documents have to be submitted to the authorities only in case of an inspection.

The documents are to be kept readily available for those employees **currently** carrying out transports in Austria.

The documents are required to be kept in the vehicle in which the employee is travelling and made available to inspection authorities.

Documents can be kept available either in **printed form** or as **readable electronic documents** (to be viewed on a display); in this case the technical devices have to be in the vehicle when entering Austrian territory.

If the information is not stored on the technical device itself (but on a server abroad, for example), access to these data must be possible during an inspection. In case such access is not possible, the documents will be considered not kept readily available. Unreadable electronic data, such as when stored on a USB flash drive, similarly do not meet requirements.

- **Which documents are definitely required to be kept available in the vehicle during the period of posting:**

- Copy of notification of posting
- Social insurance certificate A1 (or similar documents permitted instead)
- Employment contract/statement of terms and conditions (*Dienstzettel*)
- Records of hours worked:

Records of the hours worked have to be kept available in case of an inspection. In case of an on-site inspection, tax authorities are allowed to inspect the records of the hours worked of the 28 days preceding the day of the inspection.

- **Which documents have to be submitted to the authorities in case of an inspection?**

- Payslip, proof of payment by the employer or bank transfer statements
 - Documents relating to pay categorisation (e.g. education or training and earlier employment periods, if stipulated as significant in the collective agreement).
 - Records of the **hours worked** for each posted employee
Even if the records of the hours worked have already been inspected during the inspection, they have to be submitted to the tax authorities upon request.
- **How are documents to be submitted and which periods have to be covered?**
 - The documents listed above have to be **submitted to the tax authorities only upon specific request**, but need not be kept readily available. It is possible to only have the documents **translated** only after the authorities have requested them, but they still **have to be** submitted in time and in German language.
 - The documents have to be submitted **within a period of 14 calendar days** after the end of the calendar month of the inspection. If the pay documents are not submitted to the tax authorities within this period or are incomplete, this is deemed a failure to keep the pay documents readily available and the applicable sanctions will be imposed.
 - The pay documents will have to be submitted for the calendar month of the inspection of the employee and, if the employee worked in Austria in the month before, also for that month. The requirement for the pay documents to cover two calendar months was laid down because the notification period for the transport sector was extended to six months and the individual cases of posting do not have to be notified any more.