

No. 295/05.02.2015

**GERMAN FEDERAL MINISTRY OF LABOUR AND SOCIAL AFFAIRS**  
**Mrs. Andrea NAHLES - Federal Minister**

***Ref.: clarifications on the application of German regulation on minim wage to Romanian road transport operators***

Dear Mrs. Nahles,

On behalf of the National Union of Road Hauliers from Romania (UNTRR) - employers' professional organization which promotes nationally and internationally the interests of Romanian transport companies performing road transport of passengers and goods,

May we address to you with the kind request for urgent clarifications **on the application of German regulation on minim wage to Romanian road transport companies.**

As the German law of minimum wage is enforced since the beginning of this year, the Romanian road transport companies affiliated to our association can be controlled anytime by German customs and asked to provide documents to prove the payment of German minimum wage, according to the notification form 033037 (mobil) which they had to send to German customs.

Consequently, we need your institution's advise on the calculation of minimum wage and the needed documents to prove payment of minimum wage according to German law - MiLoG, but also taking in to account the Romanian labor legislation which is also applicable to Romanian road transport operators and drivers when performing international road transport operations on the German territory.

**1. Concerning the calculation of hourly minimum wage of a Romanian driver performing international transport operations on German territory**

First, we would like to mention that in Romania, there is a monthly wage established for the duration of a calendar month (as a rule), and not an hourly wage as provided by German legislation. Also, please take into consideration the fact that the Romanian law concerning the establishing of the minimum wage refers to a monthly minimum wage. Consequently, taking into account the variation in the number of effective working days each month - even in the case of a normal working program, please note that the resulting calculation of the hourly wage will vary from a month to another.





**Secondly, we would like to clarify that as part of the of the *minimum wage* for a Romanian driver, there are also other elements to be considered, like the *daily allowances paid for the international transport operations performed abroad*:**

According to the latest information available from German Customs: "*Allowances or supplements paid by the employer are considered to be elements of the minimum wage if their payment does not change the proportion between a worker's performance on the one hand and the remuneration they receive for that performance on the other.*" To our understanding, according to the Romanian legislation the daily allowance paid to the Romanian drivers can be considered to be such a supplement.

According to Romanian legislation: the daily allowance (per diem) which is usually paid to Romanian drivers has the nature of a "benefit" for working outside home place as stipulated by Art. 44 Para. 2 from Romanian Labor Code: this daily allowance/benefit is paid in addition to the amounts covering the expenses for transport and accommodation and it is usually meant to compensate the disadvantages of working outside home place and the removal of the employees from their usual environment. This is the reason why, according to Romanian Governmental Decision no.518/1995<sup>1</sup> this daily allowance varies significantly depending on the state in which the employee is sent for fulfilling temporary activities specific to their work – like international transport operations, in case of Romanian drivers. Also, the amount of the daily allowance for working outside their home place, but in the country of origin is different from the amount of the daily allowance when working abroad. Please take into consideration that this daily allowance is an employee's right under the Romanian law that is granted under similar conditions as the daily allowance for posted workers.

Applying the provisions of Romanian labor legislation concerning daily allowance in the field of road transport and in particular to the international transport operations performed by Romanian drivers on the territory of Germany:

- For any international transport operation performed by a Romanian driver on German territory, he receives a fixed daily amount, negotiated by social partners and paid for every day spent abroad, with the purpose to compensate additional costs of living when being outside home country and the removal of the driver from his usual environment.
- In a recent ruling the European Court of Justice stated that the daily allowance intended to ensure the social protection of the workers concerned, making up for the disadvantages entailed by the posting as a result of the workers being removed from their usual environment is to be considered as part of the minimum wage. As stated the daily allowance is granted to the drivers under similar conditions as the daily allowance for posted workers.
- The daily allowance has always been granted and it is mentioned in the individual labor contracts or in collective agreements or in other documents at the level of each employer.
- There are also legal provisions concerning the possibility of granting this amount, as the express provision of the employee's right to benefit of this allowance.

**In conclusion, considering that:**

- The daily allowance is paid to Romanian drivers in addition to the amounts covering the costs of the delegation (transport and accommodation costs)
  - And in this way it can't be considered a compensation for expenses, nor a posting allowance (under Romanian legislation drivers performing transport activities for their employers outside the country are not posted workers), but it is granted with a similar purpose as the daily allowance for posted workers

---

<sup>1</sup> Romanian Governmental Decision no.518/1995 concerning certain rights and obligations of Romanian personnel sent abroad for fulfilling temporary missions



- as well as the fact that the amount of this daily allowance is negotiated and paid according to the agreement between Romanian company and its employed drivers, representing employees' right for compensation of living costs differences when working in other places than their home country and the removal of the drivers from their usual environment
  - and in this way, it has the same purpose as the allowance that can be taken in to account as element of minimum wage according to German Customs - identified as "difference between the wage in home country and the minimum wage due in Germany, the country of posting" ([http://www.zoll.de/EN/Businesses/Work/Foreign-domiciled-employers-posting/Minimum-conditions-of-employment/Minimum-pay-pursuant-Minimum-Wage-Act/minimum-pay-pursuant-minimum-wage-act\\_node.html#doc531690bodyText6](http://www.zoll.de/EN/Businesses/Work/Foreign-domiciled-employers-posting/Minimum-conditions-of-employment/Minimum-pay-pursuant-Minimum-Wage-Act/minimum-pay-pursuant-minimum-wage-act_node.html#doc531690bodyText6))

**We kindly ask you to clarify if the daily allowance paid to Romanian drivers for performing an international transport operation on the territory of Germany is going to be considered as an element of the minimum wage in case of a control from German customs, according to MiLoG.**

## **2. Concerning the documents needed to prove the payment of German minimum wage**

By sending the required notification form 033037 (mobil) to German customs, a Romanian road transport company has to confirm with its manager's signature that he provides the needed documents to prove the payment of German minimum wage, translated in German language if requested by German customs authority.

**We kindly ask you to clarify which are the needed documents to be requested by German customs from a Romanian road transport company in order to prove the payment of German minimum hourly wage to his Romanian driver, considering the elements of the minimum wage for a Romanian driver. Please take into consideration the fact that the documents requested under Romanian law for proving the payment of an employee's wage can be different from the ones German law recognizes.**

May we underline that your urgent clarifications will enable our association to provide Romanian road transport companies with the necessary accurate information in order to comply with the law of German minimum wage, in order to fully comply with your demands and to avoid the high German fines.

Given the complexity of this problem, we kindly ask you to accept a **meeting with an UNTRR delegation, in order to clarify the situation of Romanian road transport companies, having to comply with both Romanian, German and European legislation** when operating international transports of goods and passengers on the territory of your country.

Expressing our trust in receiving urgent clarifications on the application of German minimum wage to Romanian road transport companies, we are looking forward to receiving your reply and we assure you of our highest consideration,

**Yours faithfully,**

**Secretary General  
Radu DINESCU**

