

Dear Sir or Madam,

regulations about minimum wage/notification of posted workers apply for foreign domiciled employers when sending/posting their employees to Germany. So for companies registered outside of Germany (meaning other EU countries AND ALSO non EU countries) if their workers are posted to Germany for transports or - as mostly in transport branch - only transit through Germany.

Following information needs to be submitted **by foreign transport operators** to Bundesfinanzdirektion West in Cologne before starting a transport operation on German territory (**by using form 033037 (mobil)**):

- Last name, first name and date of birth of the employee
- Start and estimated duration of the operation on German territory
- Address where documents are stored
- A confirmation certifying that, upon request, employers will provide the proof that the minimum wage was paid to the driver.

The notification is to be sent in writing and in German language. It can contain all operations for a period of up to 6 months no matter if they are here full time or only partly within this time frame.

So you can list the names of all your drivers for e.g. 01.01.2015-30.06.2015 and all transports between these dates will be covered.

You need to send it before the touch German ground. So if the first delivery is on Jan 2nd, you can send it a day before or even the same day before they enter Germany. You simply need to send it, there will be no reply/approval to the notification.

Modifications of planned transport operations do not need to be notified to German Customs once a first notification has been done.

Up to now we provide this form in German only.

If a driver from a foreign company enters Germany, he is entitled for a minimum wage according to the German law for the time frame he performs this activity in Germany.

The employer must record the start, end and duration of the hours worked on German territory at the latest 7 days after the transport operation is performed. In the transport branch (mobile activities only) there is the simplification of recording only the duration of the hours worked (without definite start and end).

The documentation about the working time, paid wage and so on can be stored in your company. In this case you have to sign on form 033037 (mobil) the second "Versicherung" additionally. You confirm with your signature that you provide the needed documents in your company in German language if requested by German customs authority.

The drivers do not need to carry any proof/document about minimum wage. But they need to carry their identity papers (ID-cards/passports).

More current information on minimum wage and the relevant form 033037 (mobil) - you can find it in the right sidebar - is available here (German only):

http://www.zoll.de/DE/Fachthemen/Arbeit/Meldungen-bei-Entsendung/meldungen-bei-entsendung_node.html#doc99746bodyText5

Regarding your further questions:

2. The **payment of the German minimum wage of 8,5€/hour concerns only the hours registered as driving time or also the hours registered as other activities** on the territory of Germany?

It covers the working time (driving plus other activities, but not breaks).

3. The calculation of the **payment of the German minimum wage of 8,5€/hour, includes also the daily allowance /per diem or only the wage from the labour contract?**

Questions about the minimum wage itself and how to calculate will be answered by the competent ministry:

- <http://www.bmas.de/EN/Home/home.html;jsessionid=992DF2F61E6EC168AAF5D2E0D952B74F>
- <http://www.der-mindestlohn-kommt.de/ml/DE/Startseite/start.html>

4. For a **business delegate of a Romanian company, who is in transit through Germany as a passenger (by air plane or by coach)**, could it be possible that the German Minimum wage law to be applied for the time spent by the respective delegate on the German territory?
If he's just a passenger (so a tourist) and he is not working on German territory (like the coach driver does for example while driving through Germany), no minimum wage would apply.

As far as this answer contains legal statements this information can - for legal reasons - only be given to the best of our knowledge and is non-binding.

Yours sincerely

Thieme

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