



b-solutions: **Solving Border Obstacles.** A Compendium 2020-2021



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Preface European Commission

When explaining what cross-border legal and administrative obstacles are, I regularly use the analogy of two neighbours: If they live far apart, they do not interact, but they also do not have complaints about each other. While if they live close by, they tend to support each other, or ask for a cup of sugar when baking a cake, but at the same time they face challenges due to the differences in their habits, like loud music at night or a smoky fish barbecue at lunch time.

The Cross-Border Review in 2015 has clearly demonstrated this: the more border regions interact, the more they identify those small issues that hinder seamless interaction in cross-border regions. These are frequently due to incompatibilities amongst the two (or 3) applicable legal frameworks, or to the lack of administrative procedures that take into account the specificities that could potentially apply to a cross-border context.

The natural territory of someone living near a border should be comprised of the entire area around her or him, in all directions. No administrative lines should cut that territory into different parts within the European Union. But, in order to achieve this, to ensure that individuals and organisations can interact with nearby partners on the other side of the border, it is essential to solve those obstacles and prevent new ones from appearing.

With *b-solutions*, we have been working on this process for four years. In many cases, this opportunity has been the key driver for change and increasing cooperation in a specific domain and territory. But at the same time, one of the main achievements is probably the wealth of knowledge that has been built with this and other initiatives of the Border Focal Point team. Because in the end, what can be done centrally, coordinated at the European level, will always be just a drop in the ocean regarding the cross-border obstacles in Europe. The direct involvement of local, regional and national stakeholders will be key in order to ensure this seamlessness. Interreg may also provide strong support for territories to do this.

Looking at this and the previous *compendium*, I am very proud of the achievements. This was only possible with an enormous commitment from so many who are personally engaged in the development of border regions. Officials who, in their local or regional administrations, have put in the effort to present and follow up on the obstacle in their territory; experts who thoroughly worked on each case, showing the path towards targeted solutions; and so many others who have contributed to the initiative on its design, preparation and promotion. This is a clear illustration of one of our main messages: the success of cross-border cooperation depends on multilevel commitment and engagement at the local, regional, national and European levels.

I'd like to particularly thank the highly committed team within AEER, without whom all this work would not have been achieved.

This compendium shows what has been achieved, through a set of cases. So much more remains to be done. For most, this is not at all the end. Pathways for solutions have been identified. Now, further efforts are needed to ensure they will be implemented.

Ricardo Ferreira
Border Focal Point Coordinator

Preface Association of European Border Regions (AEBR)

Borders are often in the media lately. They became the centre of attention with the first waves of the COVID-19 pandemic, as the first measures taken by nation-states involved closing borders. But they had to be opened almost immediately because many essential services and value chains operate across borders in an increasingly interconnected Europe: many people cross the border regularly, even daily, to work in transport, food production, health and social care, etc. Suddenly, many policymakers “noticed” the existence of cross-border commuters, and cross-border cooperation became a priority in most agendas.

But borders are also the places where waves of human beings arrive while escaping from conflicts, seeking asylum or refuge, looking for a better future. Many of them have been swallowed by the waters of the Mediterranean, the cradle of our civilisation, while others are used as pawns to advance political or geostrategic interests, and the idea of building walls along those borders is seen as a solution.

But we understand borders from another perspective. The Association of European Border Regions has always focused on people who live in border regions, their needs and challenges. And we are very aware of the impact that any wall, whether physical or mental, has on their daily life.

We must re-build borders and transform them into meeting places where people exchange with one another and grow together. Boundaries must become bridges to fill the gaps that legal and administrative obstacles create in the socialisation and economic opportunities of citizens living in these regions. Indeed, cooperation should be the rule in border regions, not the exception, and all local and regional actors should be fully involved in collaboration with their neighbours.

During the last four years, *b-solutions* has shown how cross-border cooperation is a never-ending mission. Each time a problem is solved, new obstacles will show up. As long as we are not able to enjoy fully integrated cross-border areas, the asymmetric implementation of legal and administrative provisions on either side of the border will create additional obstacles to cross-border cooperation.

The *b-solutions* initiative aims to support the achievement of such spaces across dynamic, integrative and interactive borders, within and around the European Union, laying a solid foundation to build the European House and improving wellbeing for all citizens.



Martín Guillermo Ramírez
Secretary General of the AEBR

Introduction

For over 30 years, within the success story of the Interreg funding scheme, thousands of projects have been implemented in various fields to strengthen cohesion and cooperation across the European Union and beyond. However, cross-border cooperation is still hampered by many obstacles. As a consequence, citizens, businesses and local authorities in border regions often face difficulties in their daily lives. A public consultation launched by the European Commission in 2020 shows that legal or administrative hurdles are still a major source of limitation towards more connectivity between neighbouring regions in different countries¹.

In 2017, the European Commission (EC) and the Association of European Border Regions (AEBR) launched the *b-solutions*² initiative, specifically targeting legal and administrative obstacles that hinder cross-border cooperation. Designed as one of the actions included in the EC's Communication *Boosting growth and cohesion in EU border regions* (COM(2017)534)³, *b-solutions* aims to find sustainable solutions to overcome such obstacles.

In the four years of its implementation, *b-solutions* detected many barriers to cross-border cooperation through four calls for proposals, which identified current problems and obstacles across the European Union. 90 pilot projects were selected altogether, which received legal support to better understand the causes of such obstacles and to develop solutions to restore cross-border cooperation.

Thus, through this bottom-up approach, *b-solutions* gives a voice to administrative bodies and cross-border structures to bring their experience with these types of border obstacles to the forefront and to receive technical assistance from specialised experts. The advisers were identified through a dedicated call for expressions of interest and matched with the cases to provide a detailed analysis of the hurdles. Subsequently, they formulated detailed reports, containing roadmaps towards possible solutions⁴. Among the solutions suggested by the experts, reference is also made, where possible, to the potential impact of the European Cross-Border Mechanism (ECBM)⁵. Proposed by the European Commission in 2018 as an innovative legal tool to solve obstacles of a legal and administrative nature, the ECBM was still pending legislative approval while the reports were under preparation.

The first compendium was published in 2020 with the outcomes of the first two calls for proposals⁶, and the present volume showcases the lessons learnt from the experiences of local actors from border regions in 2020 and 2021, for a total of 47 cases.

1 European Commission, *Public consultation on overcoming cross-border obstacles 2020 – summary report*, 2021. Retrieved from: https://ec.europa.eu/regional_policy/sources/newsroom/consultation/consultation_border_2020.pdf.

2 Association of European Border Regions, *b-solutions*, <https://www.b-solutionsproject.com/>.

3 Communication from the Commission to the Council and the European Parliament, *Boosting growth and cohesion in EU border region*, COM(2017) 534 final. Retrieved from: https://ec.europa.eu/regional_policy/sources/docoffic/2014/boosting_growth/com_boosting_borders.pdf.

4 The analyses of the hindrances and the solutions suggested for each case reflect the opinion of the project promoter or of the legal expert, and do not represent the position of the European Commission or of AEBR.

5 Proposal for a Regulation of the European Parliament and of the Council on a mechanism to resolve legal and administrative obstacles in a cross-border context – COM(2018) 373 final, 29.5.2018.

6 Association of European Border Regions (AEBR), European Commission, *b-solutions: Solving Border Obstacles. A compendium of 43 Cases*, 2020, and Association of European Border Regions (AEBR), European Commission, *b-solutions: Solving Border Obstacles. A compendium of 43 Cases. Annex*, 2020.

The compendium includes summaries of the experts' reports produced in this context. As such, we aim to boost mutual learning and capacity-building of local, regional and national actors engaged in cross-border cooperation.

Direct links to the full expert reports are provided for each case, giving the reader the opportunity to broaden their knowledge on more detailed aspects of the different analyses.

Each case study is displayed in the same order, responding to multiple needs:

- Gain clarity on common obstacles;
- Inform about viable solutions;
- Raise awareness about the proposed ECBM.

The content is organised following the policy areas that the European Commission considers particularly relevant for the future of cross-border cooperation, and which are listed in the 2021 Report *EU Border Regions: Living laboratory of European integration*⁷: Institutional Cooperation, Cross-border Public Services, Education and Employment, and the European Green Deal.

To further support policymakers and cross-border cooperation actors in these fields, three additional publications providing technical analyses of all *b-solutions* cases have also been produced, addressing the European Green Deal⁸, Cross-border Public Services⁹ and Education and Employment¹⁰. Together with this compendium and the previous version, as well as an illustrated booklet presenting seven stories of border obstacles from the perspective of local citizens¹¹, these publications are available on the website of the *b-solutions* initiative.

7 Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *EU Border Regions: Living labs of European integration*, COM(2021) 393 final. Retrieved from: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=COM:2021:393:FIN&from=EN>.

8 Association of European Border Regions (AEBR), European Commission, *Border regions for the European Green Deal – Obstacles and solutions to cross-border cooperation in the EU*, 2021.

9 Association of European Border Regions (AEBR), European Commission, *More and better cross-border public services – Obstacles and solutions to cross-border cooperation in the EU*, 2021.

10 Association of European Border Regions (AEBR), European Commission, *Vibrant cross-border labour markets – Obstacles and solutions to cross-border cooperation in the EU*, 2021.

11 Association of European Border Regions (AEBR), European Commission, *Living in a cross-border region. Seven stories of obstacles to a more integrated Europe*, 2021.



Institutional Cooperation

Removal or simplification of the procedure to obtain the Car Circulation Guide for cross-border workers

ADVISED ENTITY

European Grouping of Territorial Cooperation - EGTC Galicia-Norte de Portugal, ES-PT

EXPERT(S)

Miguel Antunes Guimarães



THE CONTEXT

Cross-border workers residing along the border of northern Portugal and the autonomous region of Galicia in Spain often commute from their country of residence to work across the border. Most of these workers travel by car or carpooling, in the absence of a public transport network in that area that coincides with their work schedules. For those residing in Spain and who regularly drive to their place of work in Portugal, cross-border mobility is being hindered by having to obtain a mandatory circulation permit, the so-called Circulation Guide, before entering the neighbouring country, affecting thousands of citizens on a daily basis.

DESCRIPTION OF THE OBSTACLES

This issue not only represents a legislative barrier, but also an administrative one, since this bureaucratic procedure is hindering successful cross-border mobility.

- The mandatory circulation permit for foreign-registered cars **impedes the cross-border mobility** of Spanish residents who work in Portugal, even those with a Portuguese employment contract. The permit does not cost anything but must be obtained before crossing the border, otherwise the driver of the vehicle will face steep fines.
- This represents a significant **obstacle in terms of the procedures** for monitoring and imposing fines by the Portuguese authorities, since the Tax and Customs Authority in Portugal must handle the processing of fines that are largely related to the unauthorised circulation of Spanish vehicles.
- **Lack of clarity and information:** the procedure for obtaining the permit is not clear, is temporary in nature and must be renewed yearly. Many Spanish drivers who regularly travel to work in Portugal are unaware of the administrative requirement to obtain the circulation permit.
- **Language and practical barriers:** the permit can only be obtained online on the tax authority's website and is only available in Portuguese, which makes it inaccessible to many.
- **A lack of reciprocity:** Portuguese residents working in Spain do not need an equivalent document to use their vehicle on the other side of the border, revealing how this administrative obligation is not mutually applied.



LEGAL PROVISIONS

At the EU level: the main legal issue is the Portuguese national provision implementing **Council Directive (EEC) 83/182¹²**, in determining exemptions for cars of cross-border workers. The key point in the directive is the time limit imposed (maximum 6 months out of 12), which is not realistic in terms of Spanish citizens who work full time across the border in Portugal.

At the national level: the legal origin of the obstacle is a norm within the **Vehicle Tax Code of Portugal**, specifically **Article 34**, which addresses the situation in which vehicles are used by workers when travelling for work purposes. In this regard, Spanish cross-border workers may use their vehicles for more than 6 months out of every year, but once the permit is obtained it is only valid for one year.

OUTLINE OF POSSIBLE SOLUTIONS

- The process of finding a solution began with a series of meetings with the Portuguese and Spanish authorities directly responsible for monitoring and investigating the sanctioning proceedings related to permit issues, as well as with cross-border workers who are directly affected by this.
- The solution calls for an **amendment to Articles 34 and 39 of the Vehicle Tax Code**, so that the use of private vehicles by cross-border workers residing in Spain is regulated as vehicles for professional use. By doing this it will no longer be necessary to obtain a circulation permit. To this end, it is suggested that the Portuguese Government take the legislative initiative and propose this amendment in Parliament.

WHAT'S NEXT

- The EGTC Galicia-Norte de Portugal has sent the report to the **Regional Government of Galicia and the Regional Coordination and Development Commission of Norte**, that is addressing the amendment proposal by contacting the appropriate Ministry departments. In turn, the EGTC Galicia-Norte de Portugal will cooperate with the Commission and will be following up on this in order to reach a solution.
- The EGTC would also like to **draw the attention of the relevant European authorities** to the need to implement the proposed solution.



TO LEARN MORE



https://www.aebr.eu/wp-content/uploads/2021/11/Report_01.pdf

¹² Council Directive 83/182/EEC of 28 March 1983 on tax exemptions within the Community for certain means of transport temporarily imported into one Member State from another, Official Journal L 105, 23.4.1983, p. 59–63.

Problem analysis and possible solutions concerning access to enclaves

ADVISED ENTITY

Municipality of Baarle-Nassau, NL

EXPERT(S)

Hildegard Schneider, Martin Unfried, and Pim Mertens, Institute for Transnational and Euregional Cross-border Cooperation and Mobility (ITEM)



THE CONTEXT

Along the Dutch-Belgian border, the larger enclave of Baarle is comprised of a community of 22 Belgian and 8 Dutch sub-enclaves. Due to its unique geographic location and history, an enclave is typically surrounded by a neighbouring country, much like an island, and one cannot reach another enclave or the ‘mainland’ of their Member State without crossing the border through the territory of the neighbouring Member State. In this sense, **in enclaves, crossing the border is an inevitable yet essential part of daily life** for residents on both sides. In order to ensure the exercise of their sovereignty within their respective enclaves, the Netherlands and Belgium must **guarantee the right to transit within these special geographic areas for the free movement of people and goods**.

Along this line, when the national laws of the neighbouring countries differ, or unilateral measures are taken, it can have an impact on the enclaves within that territory. In view of the current COVID-19 crisis, as well as other examples of differing national measures taken, it has become clear that **the free movement of goods, services and people is being restricted in these areas**.

DESCRIPTION OF THE OBSTACLES

- In the enclave of Baarle, **citizens face restrictions due to national measures implemented in times of crisis**, which has become especially evident due to the COVID-19 pandemic. An example of such restrictions can be seen in the differing curfew times implemented in both Belgium and the Netherlands, leading to confusion about the rules and **further complicating border crossings** for residents in the enclave.
- **Internal border controls tend to negatively affect citizens for whom cross-border mobility is a crucial part of daily life**. In this sense, when COVID-19 restrictions were applied, citizens were “locked” in the enclave and could not leave due to the different curfew times.
- There is a **lack of clearly established rules regarding the right of access** in the enclave. There is no bilateral agreement in place between the two countries in this sense, having relied on ad-hoc agreements and unwritten customary procedures in the past in times of crisis.

LEGAL PROVISIONS

In light of the COVID-19 pandemic, several relevant legal provisions were identified:

- **Border controls:** the **Schengen Borders Code (SBC)**¹³ allows for restrictions in the face of foreseeable threats (Articles 26-27) and immediate threats (Article 28). The different measures taken by each country, such as mandatory quarantine, COVID testing requirements and other administrative requirements have **disproportionately affected enclaves** such as Baarle.
- **Council Recommendation (EU) 2020/1475**¹⁴ states that **internal border controls should be avoided**, especially considering the particular nature of border regions.

OUTLINE OF POSSIBLE SOLUTIONS

The Benelux Union offers a number of possible solutions:

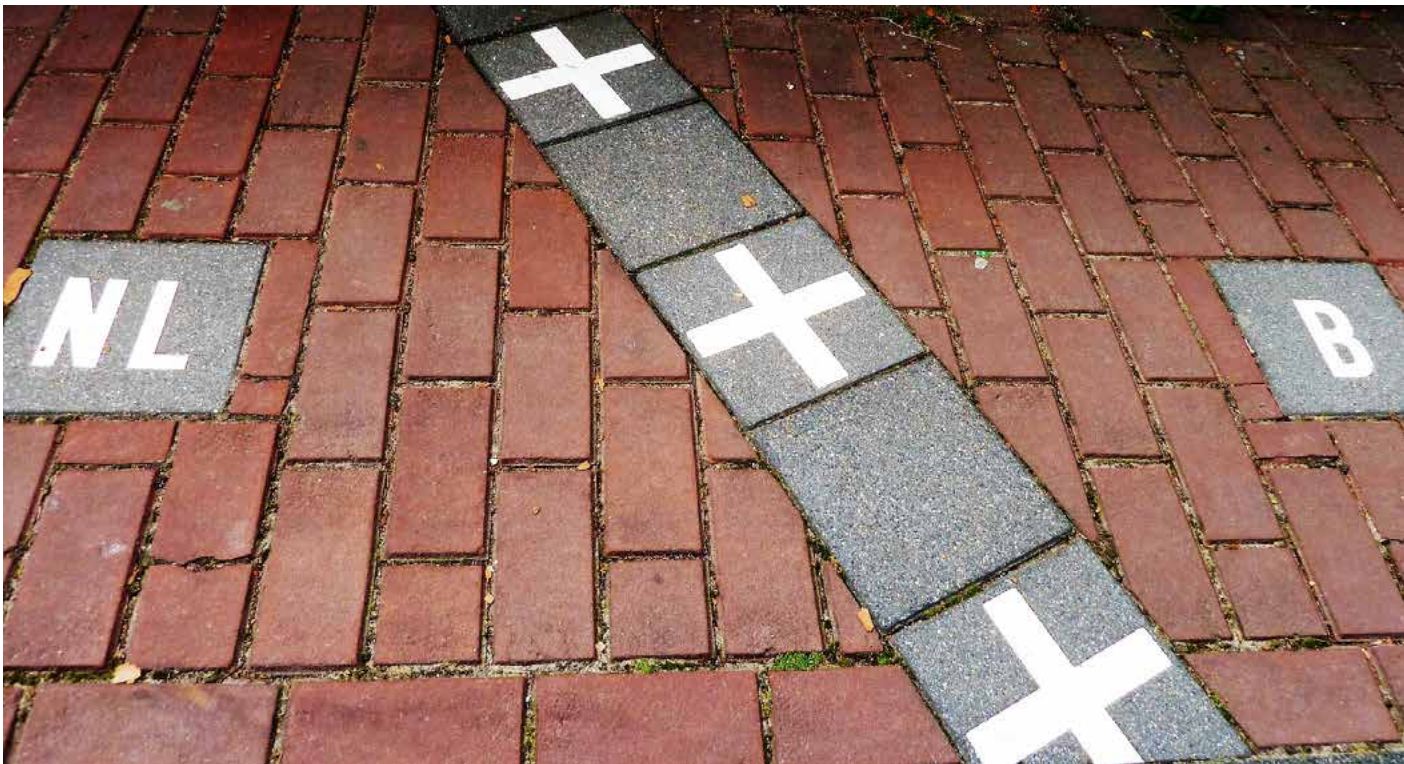
- the community of Baarle is **in the process of formalising cross-border cooperation** by establishing a Benelux Grouping for Territorial Cooperation (BGTS), the Benelux version of the European EGTCs;
- taking into account the existing legal framework for cross-border cooperation of enforcement authorities, such as the **Agreement on Administrative and Criminal Cooperation** of the **Benelux Economic Union**¹⁵, as well as the **Benelux Treaty on Police Cooperation**¹⁶. These **provide a legal framework for cross-border cooperation between enforcing authorities**, which could be applied to Baarle;
- a **bilateral agreement** between the Netherlands and Belgium, guaranteeing citizens the right to transit, and **recognising the enclave of Baarle Benelux Grouping for Territorial Cooperation (BGTS)** as one united geographical area. This agreement would follow the

example of the **Andorra-Catalonia Agreement of 8 February 2021**, in which national and regional communities identify the enclaves in the respective territories as a unified geographical element for the purpose of ensuring the free movement of citizens.

The **European Cross-Border Mechanism (ECBM)** could be applied in this case to resolve the legal issues, since there are currently no relevant cross-border legal provisions in place. **This mechanism would be helpful in resolving a wide range of obstacles** and, in addition, the establishment of a **Cross-Border Coordination Point** could serve as a **border focal point for identifying further obstacles and liaising**.

WHAT'S NEXT

The Municipality of Baarle will **share the recommendations with the Dutch Ministry of the Interior and Kingdom Relations** (*Ministerie van Binnenlandse Zaken en Koninkrijksrelaties*), since they possess the necessary authority to partially carry out the recommended actions.



TO LEARN MORE

- 13 Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), *Official Journal L 77*, 23.3.2016, p. 1–52.
- 14 Council Recommendation (EU) 2020/1475 of 13 October 2020 on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic, *Official Journal L 337*, 14.10.2020, p. 3–9.
- 15 Agreement on Administrative and Criminal Law Cooperation in Arrangements Related to Achieving the Objectives of the Benelux Economic Union (1969), available at: <https://wetten.overheid.nl/BWV0004462/2008-11-01>.
- 16 Treaty between the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands on police cooperation, 2018.



https://www.aebr.eu/wp-content/uploads/2021/11/Report_02.pdf

Spanish and Portuguese customs system compatibility in the EUROACE Euroregion

ADVISED ENTITY

Extremadura Avante, ES

EXPERT(S)

María González Pérez



THE CONTEXT

The entity Extremadura Avante has developed and enhanced the **Southwest European Logistics Platform (PLSWE)**, which also includes a freight railway terminal. **The success of the Platform project would have a significant impact on the industrial and commercial development of the EUROACE Euroregion**, comprised of the regions of Extremadura in Spain, Alentejo and Centro in Portugal. The flow of information in the logistics chain between the different countries is essential, which requires creating an electronic environment that is completely interoperable and harmonised.

In this regard, potential issues with coordination and compatibility between the customs administration of the two border countries were analysed, paying particular attention to digital customs procedures. Despite the fact that no obstacles were detected, several recommendations were made to **ensure the success of the project as a multimodal node for the international trade of goods**.

DESCRIPTION OF THE OBSTACLES

No legal or administrative obstacles were identified in this case. However, since the implementation of the platform is currently under way, **several measures can be taken in order to avoid potential problems** and therefore **foster the platform's successful application**. In this sense, one of the main objectives is to **create an international hub or logistics centre** in the Southwest European Logistics Platform.

Some of the areas identified that could be improved or enhanced include:

- **simplification** of the transit process, especially the administrative procedures;
- **digitisation** of the logistics platforms and systems;
- **improving interoperability** among the different systems;
- **streamlining** the customs process by making the procedures more agile and flexible.



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OUTLINE OF POSSIBLE SOLUTIONS

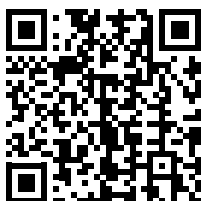
The following recommendations have been made to **ensure smooth coordination of the Southwest European Logistics Platform** at the cross-border customs office:

- it is essential to have the necessary **political support at all levels** (regional, national and international). At the international level, the Portuguese government and administration should be involved, along with the relevant European institutions and organisms. At the local level, regional and national support could be sought from the Extremadura regional government and the Spanish national government;
- in the PLSWE, compatibility is essential between the two digital platforms for multimodal logistics integration (SIMPLE in Spain and JUL in Portugal), to eventually **operate as a unified platform**. A new pilot project in this direction is the SIMPLE Platform (Simplification of Processes for a Logistic Enhancement). The Platform should be included in some of its initial experiences;
- the entities responsible for the various IT systems involved in the customs office should always remain in close contact, with the aim of **achieving interoperability between the systems and smooth coordination**.

WHAT'S NEXT

Extremadura Avante has been in contact with Extremadura's customs authority. It is essential to maintain and reinforce this contact with the **Regional Office of Customs of Extremadura** and the **Special Delegation of the State Tax Administration Agency**, in order to **make the Southwest European Logistics Platform a successful hub for trade with third countries**. The Platform will remain in contact with the other authorities responsible for goods entering or leaving customs in the region (Ministry of Health, Ministry of Agriculture, Fisheries and Food; Ministry of Industry, Commerce and Tourism), in addition to the customs authorities. **The success of the Southwest European Logistics Platform depends on both the public and private sectors**, so it is essential that they are involved from the very start. To this end, Extremadura Avante aims to contact as many companies and chambers of commerce as possible on both sides of the border to take their needs into account when designing the project.

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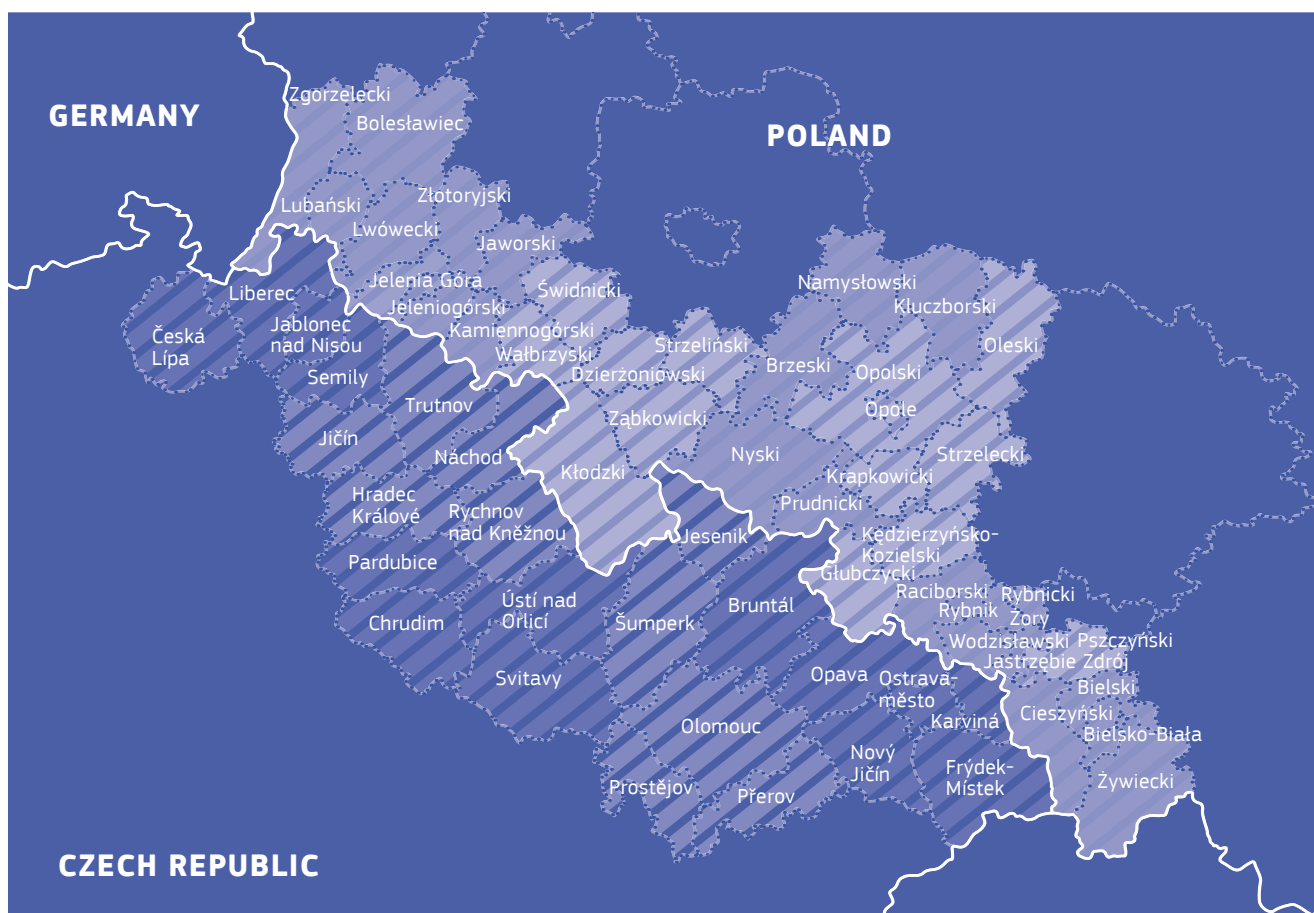
s4g – solutions for good

ADVISED ENTITY

Marshal's Office of Lower Silesia, PL

EXPERT(S)

Hynek Böhm



THE CONTEXT

In the province of Lower Silesia, in Poland, the Marshal's Office has been posting or seconding its employees to work at the Joint Secretariat in Olomouc, Czech Republic, on the basis of long-term international agreements, within the scope of implementing the Interreg programme Poland-Czech Republic. **Posting employees from the Marshal's Office to another institution in another Member State has been a necessity, yet poses a recurring challenge**, stemming from the **lack of clear national and EU-wide valid legislation on the posting and secondment of public servants**.

DESCRIPTION OF THE OBSTACLES

There is a **lack of clarity** on how to apply existing national and European rules to situations of long-term postings or secondments of local government employees to work in another Member State.

Since there is **no clear indication on the status of persons (employees of public entities) posted or seconded**, it therefore **raises doubts** concerning the applicable labour rights of the employee and the obligations of the employer(s).

LEGAL PROVISIONS

The terms and conditions of the posting or secondment of an employee in the European Union are laid out in several European regulations, however, they do not apply to public servants. The case of secondment or posting of public servants is regulated by private international law, more precisely under the general principles set out in **Regulation of the European Parliament and of the Council (EC) No. 593/2008 (Rome I)**¹⁷, on the law applicable to contractual obligations.

OUTLINE OF POSSIBLE SOLUTIONS

The challenge is to **develop a consistent model for the long-term posting or secondment** of Polish regional self-government administration employees to work at the Joint Secretariat in Olomouc, Czech Republic, to foster the implementation of Interreg programme. This will require **dialogue** and reaching **common agreements** among the programme institutions on both sides of the border.

To this end, the following solution was proposed:

- **secondment, in which the contract follows Regulation (EC) No 593/2008 (Rome I).**

The **application of the Regulation would help resolve the obstacle** and would not entail a major change for the existing employment contracts.

This process should also address the practical and operational aspects, such as choosing which country's law shall be applicable to the employment contract, the conditions of employment, and the applicable social security benefits and taxes, among others.

WHAT'S NEXT

The Marshal's Office of Lower Silesia will enter into **discussion** – based on the information and interpretations of the European and national laws gathered through this analysis – both internally and within the wider group, **including all interested parties/institutions involved** in the implementation of the Interreg programme. In particular, the two other provinces (*voivodeships*) on the Polish side (Opolskie and Slaskie) would be involved as well, since they also post employees to work at the Joint Secretariat of the Interreg programme. The human

resources department of the Marshal's Office will be consulted on an ongoing basis and will also be tasked with selecting and implementing the specific solutions proposed.



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TO LEARN MORE



17 Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), *Official Journal L 177*, 4.7.2008, p. 6–16.

https://www.aebr.eu/wp-content/uploads/2021/11/Report_04-.pdf

Setting up of a Special Economic Zone on the cross-border area Nova Gorica – Gorizia

ADVISED ENTITY

Regional Development Agency of Northern Primorska ltd. Nova Gorica, SI

EXPERT(S)

Boštjan Starc



RRA severne Primorske
Regijska razvojna agencija d.o.o. Nova Gorica
Regional development agency of northern primorska L.t.d. Nova Gorica





© Regional Development Agency of Northern Primorska

THE CONTEXT

The Regional Development Agency of Northern Primorska, together with the municipalities of the region, as well as with the neighbouring municipality of Gorizia and the Region Friuli Venezia Giulia in Italy, have proposed the idea of a cross-border **Special Economic Zone**. On the Italian-Slovenian border, the participating municipalities established a local EGTC, which could take on the role of managing a special economic zone. In this sense, this zone would not be located within national borders but would instead stretch across the border, not only **fostering cross-border cooperation but also regional economic development**. However, there are various **legal and practical hurdles** that must be overcome.

DESCRIPTION OF THE OBSTACLES

The main obstacles are of a legal nature, although there were also **administrative and regulatory barriers** detected. Primarily, the issue stems from the **different national laws on taxation**, combined with the European legal framework on State aid.

Firstly, the question arises whether the border free zone can be configured as a **customs free zone** in which companies can benefit from customs exemptions, or as a **Special Economic Zone**, which additionally provides for tax benefits.

Secondly, it is necessary to analyse whether a customs free zone would be **compatible with European law**.

In addition to the legal obstacles, **several practical barriers will have to be addressed**, mainly dealing with **defining the location, joint management of the area, customs control and operations**.

LEGAL PROVISIONS

- Regarding the first legal obstacle, **Article 107 of the Treaty on the Functioning of the European Union (TFEU)**¹⁸ stipulates that financial support granted through public resources that might give an economic advantage to certain companies and thus affect competition is, in principle, **incompatible with European law**. Therefore, **it is not possible to create a cross-border free zone providing for tax benefits**.
- As for the second legal obstacle, the following regulations must be taken into account: **Articles 243 to 249 of Regulation of the European Parliament and of the Council (EU) No. 952/2013**¹⁹, the **Treaty of Osimo of 1975**²⁰, which provides for an Agreement on the Development of Economic Cooperation between Italy and Slovenia, and **Article 108 of the Treaty of Association of the European Union with Slovenia of 1996**²¹, which allows special economic zones to be established, through an agreement between the two countries.

OUTLINE OF POSSIBLE SOLUTIONS

Solution to obstacle 1:

- according to **Article 107 of Treaty on the Functioning of the European Union** it is not possible to create a cross-border free zone providing for tax benefits. Therefore, the solution is **the creation of a customs-free zone**, which does not include tax incentives. In this case, the established companies can benefit from customs exemptions.

Solution to obstacle 2:

- **such a zone can indeed be established on the basis of the bilateral agreement between Italy and Slovenia**, based on the existing agreement between Slovenia and the EU.

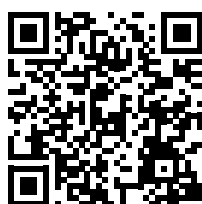
Political will: this initiative is feasible if there is **sufficient political commitment** from the Italian and Slovenian governments. The stage has already been set for a project of this magnitude, and both countries have demonstrated their commitment through the previous treaties and agreements.

The European Cross-Border Mechanism (ECBM) could be applied to **harmonise administrative and operational procedures** established in the customs-free zone in both countries, such as inspection methods, as well as to ensure mutual treatment regarding administrative formalities and control. In this regard, certain national regulations from one of the two countries may be waived in favour of applying the corresponding regulations of the other for this specific project.

WHAT'S NEXT

The Regional Development Agency of Northern Primorska plans to continue implementing the initiative and **involve all the relevant stakeholders** in the process of resolving the obstacle, in addition to **engaging both governments** in tackling the solutions.

TO LEARN MORE



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18 Consolidated version of the Treaty on the Functioning of the European Union *Official Journal C 326*, 26.10.2012, p. 47–390.

19 Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013, laying down the Union Customs Code, *Official Journal L 269*, 10.10.2013, p. 1–101.

20 Treaty between the Socialist Federal Republic of Yugoslavia and the Italian Republic on the delimitation of the frontier for the part not indicated as such in the Peace Treaty of 10 February 1947 (with annexes, exchanges of letters and final act). Signed at Osimo, Ancona, on 10 November 1975.

21 Europe Agreement establishing an association between the European Communities and their Member States, acting within the framework of the European Union, of the one part, and the Republic of Slovenia, of the other part, *Official Journal L 51*, 26.2.1999, p. 3–206.

Fa.Re. Facilitating recovery activities across the Italian-Slovenian border

ADVISED ENTITY

National Institute of Social Security (INPS), IT

EXPERT(S)

Mitja Ozbič



THE CONTEXT

This case concerns the recovery of social security contributions in another Member State and the perceived obstacles concerning the need to obtain an additional executive order in the requested State and/or another judicial order of execution in an internal recovery procedure. The obstacles identified are primarily derived from the **interpretation and/or lack of clarity on the application of the national law in relation to the European Regulations**. There are also several other **technical and regulation-related problems**, as well as the need to improve coordination between both the requesting and requested Member States regarding procedures to recover contributions.

DESCRIPTION OF THE OBSTACLES

The two main obstacles are of a legal nature:

1 **Article 79 of Regulation of the European Parliament and of the Council (EC) No 987/2009²² vs. Article 474 of the Italian Code of Civil Procedure:**

- with regard to the recognition of a foreign enforceable title attached to the debt recovery request, **Article 79(1) of the Regulation** stipulates that the instrument permitting enforcement of the claim is usually **directly recognised** in the requested Member State. However, according to **Article 79(2)**, the instrument permitting enforcement of the claim may be accepted as, supplemented with or replaced by a **national enforcement title** of the requested Member State;
- **article 474 of the Italian Code of Civil Procedure** defines the enforcement titles to which Italian law expressly gives enforceable effects. However, the enforceable titles ruled by the European Regulations are not included.

Therefore, the question is **whether the title attached to the request for recovery may be considered directly enforcing without the need to rule it as an injunction, applying the national law of the requested State**.

2 The second obstacle is due to a **lack of clarity on Article 85 of Regulation (EC) No. 987/2009**, which regulates the payment of the expenses for compensation recovery procedures. **Doubts have arisen concerning the distinction between internal and external costs**.

LEGAL PROVISIONS

Regulation of the European Parliament and of the Council (EC) No. 883/2004²³ contains provisions for the coordination of social security systems, and **Regulation of the European Parliament and of the Council (EC) No. 987/2009** lays down rules for the application of Regulation (EC) 883/2004. This case concerns Articles 79 and 85 of Regulation (EC) 987/2009 for the obligatory recovery of contributions.

OUTLINE OF POSSIBLE SOLUTIONS

- In terms of the first obstacle, guidelines on its interpretation are included in the preamble of the Regulation. It is clear that **the requested Member State does not have jurisdiction for a new executive instrument concerning the claim**.
- The second obstacle can be **resolved through a decision²⁴ of the Administrative Commission²⁵**, in which the main rule is that **mutual assistance shall be free of charge**.

In this context, liaison bodies for each border – **such as the Cross-Border Coordination Points** under the **European Cross-Border Mechanism (ECBM)** - could facilitate the coordination between the competent national authorities. Having such coordination focal points could be helpful even if the obstacles are not of a legal nature, but are due to problems with the interpretation or application of national laws with regard to European legislation.

WHAT'S NEXT

There are **three essential next steps** to be taken:

- 1 the National Institute of Social Security's central directorate would like to draw attention to an additional possible solution that entails the **inclusion in Regulations (EC) 883/2004 and (EC) 987/2009 of a provision introducing a unified executive title**, structured for all Member States in the same form. In light of this, the Institute intends to report to the Italian Ministry of Labour and Social Policies regarding potential subsequent initiatives at the European level, in terms of the opportunities that would arise from the inclusion of the above-mentioned provision;
- 2 the Institute will also inform the **responsible Italian authorities** that it is neither necessary nor possible to obtain a "new confirmation" of the enforceable act already existing in the requesting State or a new enforceable instrument, to ensure the effectiveness of the debt recovery process;
- 3 as Slovenia automatically recognises enforcement titles ruled by the European regulations, in the future, the Italian operators will proceed without the need to pre-establish an enforceable title.

Finally, the Institute's Regional Directorate of Friuli Venezia Giulia will internally organise the most suitable operating methods to implement the recommendations.



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- 22 Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems, *Official Journal L 284*, 30.10.2009, p. 1–42.
- 23 Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, *Official Journal L 166*, 30.4.2004, p. 1–123.
- 24 Decision No. R1 of 20 June 2013 concerning the interpretation of Article 85 of Regulation (EC) 987/2009, *Official Journal C 279*, 27.9.2013, p. 11–12.
- 25 The Administrative Commission is responsible for dealing with all administrative questions or questions of interpretation arising from the provisions of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009, see Article 72(a) of Regulation (EC) No 883/2004.

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Stimulating cross-border LEADER projects by creating a cross-border regulation and system

ADVISED ENTITY

Province of Oost-Vlaanderen - Euroregion Scheldemond, BE-NL

EXPERT(S)

Aranco Consultancy & Interim Management BV



THE CONTEXT

The LEADER grant programme, or “Links between activities for the development of the rural economy” is provided to partnerships between governments, entrepreneurs and social organisations or individuals in rural areas, with a focus on innovation within the agricultural sector, socio-economic development and sustainable management of rural areas. **The main goal is to engage and empower citizens and local organisations as partners rather than beneficiaries in finding solutions.** The region of Zeeuws-Vlaanderen in the Netherlands, and Grensregio Waasland and Meetjesland in the Flanders region of Belgium are LEADER recipients.

However, **in practice**, due to **different national application procedures** there have been **administrative challenges when applied in cross-border Dutch and Belgian projects.** LEADER programmes are designed on a **country-by-country basis** and are thus tailored to domestic rather than cross-border projects. Several solutions have been proposed to overcome these hurdles.

DESCRIPTION OF THE OBSTACLES

The obstacle stems from **administrative and procedural issues**, in which the **different national application procedures** are identified as the **main barriers to being able to apply cross-border projects within the LEADER programme.**

The following differences were observed in the national application procedures:

- different administrative systems for the application and follow-up of projects;
- timelines regarding the implementation of projects and the payment of subsidies;
- co-financing procedures; and
- decision-making and accountability.

LEGAL PROVISIONS

The problem statement formally relates to the following regulations:

- at the European level: **Regulation of the European Parliament and of the Council (EU) No 1305/2013** on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005²⁶;
- at the national level: **Decision of the Provincial Executive of Zeeland** to open the regulation implementation of LEADER projects and the **Implementation Plan for the East Flanders Countryside** that contains the policy framework for the province of East Flanders on the third Flemish Rural Development Programme (PDPO III) 2014-2020.



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OUTLINE OF POSSIBLE SOLUTIONS

- Long-term solution: **modify the LEADER scheme on an EU-wide level so that cross-border projects become an integral part of the programme**, similar to Interreg. However, this solution may not be entirely feasible at present, and requires further research and consideration.
- Short-term solution: **coordinate the local development strategies**, including the priority themes and operational matters, **so that cross-border projects can be implemented**. Despite the fact that the two sub-projects must be organised and implemented in parallel in both border regions, **this option is highly viable** if carried out in the next programming period.
- A third option is to **connect the smaller projects with the Interreg Flanders-Netherlands programme** in the form of an “umbrella project”, in which the local initiatives may make use of Interreg funds and benefit from a reduced administrative burden. Pending approval of the new Interreg programme, this could also be a highly feasible option.
- Fourth, **transfer the submission responsibility and accountability for cross-border LEADER projects to one managing authority**. This could be a viable solution but is contingent on further coordination at the national level.
- several **strategic approaches** were also identified as potential solutions:
 - **learn from best practices** in other regions that have implemented cross-border LEADER projects. In this sense, **guidelines drawing on lessons learned** could be created to be **shared with other regions**;
 - promote **information and knowledge sharing** between provinces, greater structured consultation at the provincial level, promote forums and events for both Dutch and Belgian Local Action Groups to share and exchange ideas, or design and implement a **pilot project**.

The **European Cross-Border Mechanism (ECBM)** would provide for transferring the submission responsibility and accountability for cross-border LEADER projects to the managing authority of only one Member State.

WHAT'S NEXT

The Province of Oost-Vlaanderen and the Euroregion Scheldemond are planning **several meetings with the LEADER groups in the region**, to evaluate the implementation of the proposed solutions.

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26 Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2000, *Official Journal L 347*, 20.12.2013, p. 487–548.

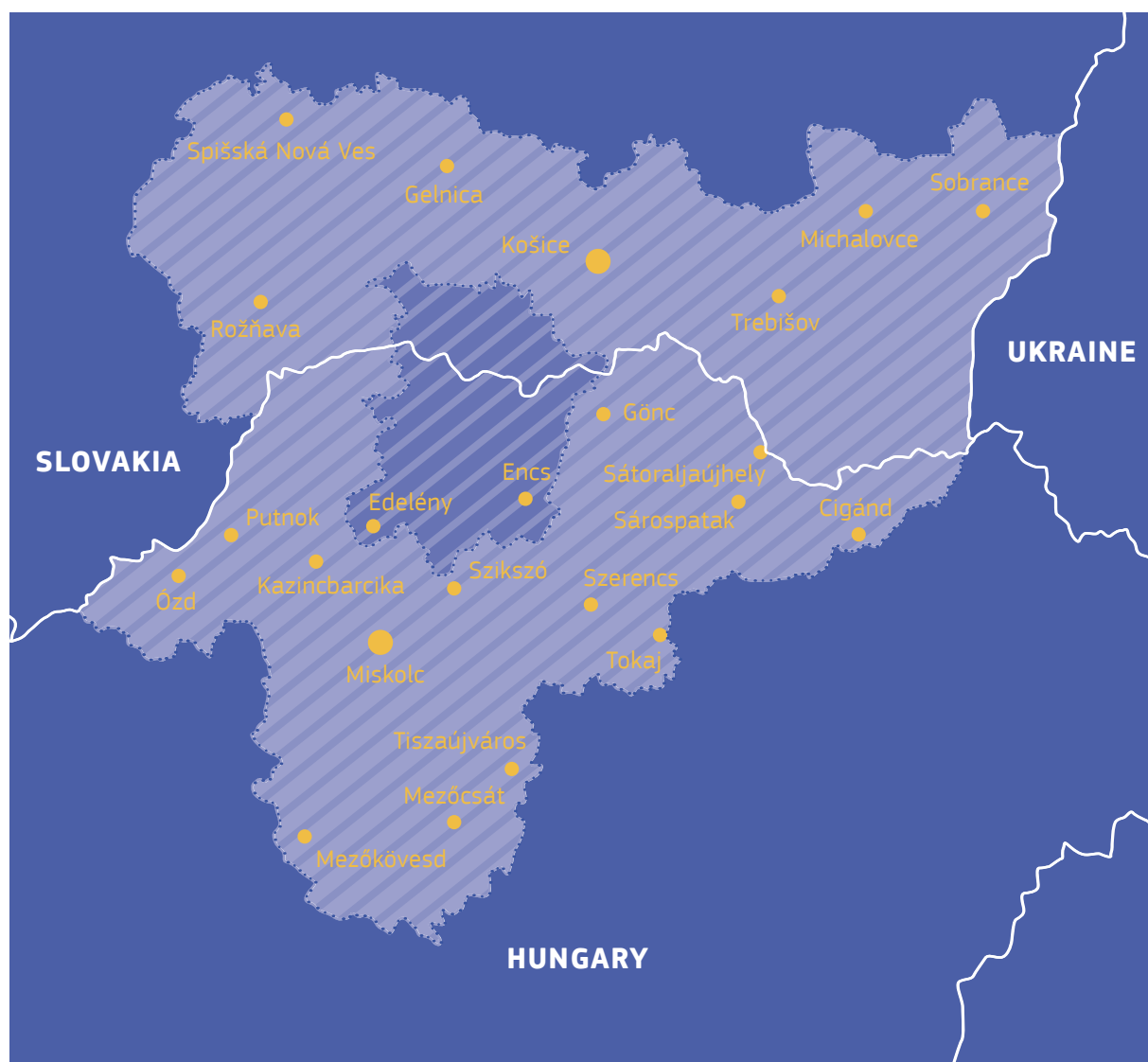
Legal status of a branch office of an EGTC in the partner country

ADVISED ENTITY

European Grouping of Territorial Cooperation - EGTC Via Carpatia, SK-HU

EXPERT(S)

Norbert Jankai, Central European Service for Cross-Border Initiatives (CESCI)



THE CONTEXT

Within the European Union, the European Groupings of Territorial Cooperation (EGTCs) are legal structures created to **promote cooperation**. In theory, these groupings may act on behalf of their members as independent legal entities on either side of the border. However, in practice, this is not always the case. The **EGTC Via Carpatia aims to strengthen cross-border cooperation between Slovakia and Hungary, yet faces certain challenges**. The recognition of an EGTC as an autonomous actor in the partner country is also a difficult process, since there are various **administrative hurdles** as well as **difficulties in obtaining funding**.

DESCRIPTION OF THE OBSTACLES

- The first obstacle lies in the fact that **there is not a comprehensive or consistent system of financial support for EGTCs** within the EU. Funding for these entities mostly comes from national resources, which **puts them at a disadvantage if funds are not available in the Member States**. In many cases, EGTCs will set up an independent legal entity on the side of the border where they are eligible for support, which can also have a negative effect regarding other aspects. The EGTC Via Carpatia has its registered office in Slovakia and includes a Hungarian member, but in order to receive funding from Hungary, it had to create a branch office or subsidiary in Hungary in the form of a non-profit entity.
- There is also a **lack of recognition or awareness of EGTCs as legal entities in the Member States**. Authorities in the countries are sometimes only partially aware of the EGTC's legal status, and it is not acknowledged in some regulations.
- Finally, a number of additional issues were found, such as **differences in national EGTC laws** concerning legal status (public vs. private), liability, economic activities, public procurement and operational problems.

LEGAL PROVISIONS

- At the European level: **the Regulation of the European Parliament and of the Council (EU) 1302/2013²⁷** establishes EGTCs as independent legal entities, in both countries where they are registered.
- At the national level: **an EGTC is considered an independent EU legal entity under Hungarian legislation**, in accordance with **Act LXXV of 2014 on the European Grouping of Territorial Cooperation** and several other legal provisions.
- On the other hand, the **EGTC subsidiaries operating in Hungary** are considered to be **non-profit limited liability companies**, according to the **Act V of 2006 on Public Company Information, Registration and Winding up Proceedings**.

OUTLINE OF POSSIBLE SOLUTIONS

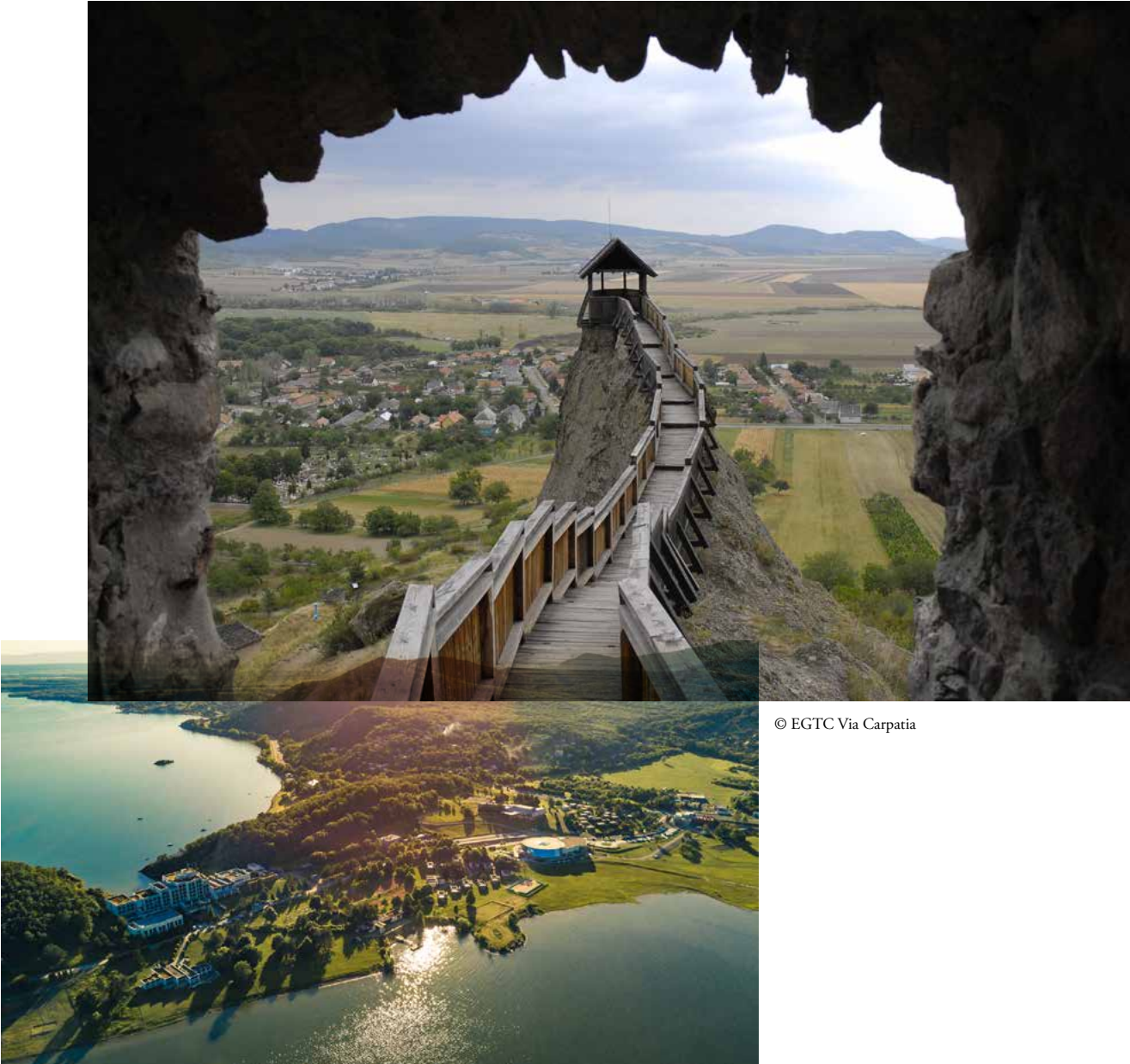
Upon further review of the obstacle, it is clear that **the issue lies not with any legal conflicts**, but rather with the **practical application of the legal provisions** for EGTCs.

In Hungary, a **new legislative amendment resolves the issue of having to establish a branch office** in the form of a non-profit entity²⁸. A **preparatory process of implementing the amendment** is thus under way and it will allow for EGTCs located outside of Hungary to be **eligible to receive national grants**.

Strategic cooperation through bilateral or multilateral **agreements** between Hungary and its neighbouring countries is recommended to **boost support for border regions**.

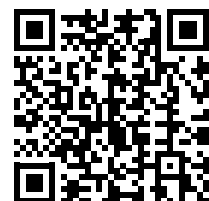
WHAT'S NEXT

In light of the ongoing legislative discussion, the EGTC Via Carpatia stresses the importance of conducting a **preliminary impact assessment** before implementing the new rules. The EGTC remains at the disposal of the authorities to resolve potential obstacles that may arise in the process.



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TO LEARN MORE



- 27 Regulation (EU) No 1302/2013 of the European Parliament and of the Council of 17 December 2013 amending Regulation (EC) No 1082/2006 on a European Grouping of Territorial Cooperation (EGTC) as regards the clarification, simplification and improvement of the establishment and functioning of such groupings, *Official Journal L 347*, 20.12.2013, p. 303–319.
- 28 Decree of the Ministry of Foreign Affairs and Trade No 4/2019, in the amended version of 6 February 2021.

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Cross-border Public Services

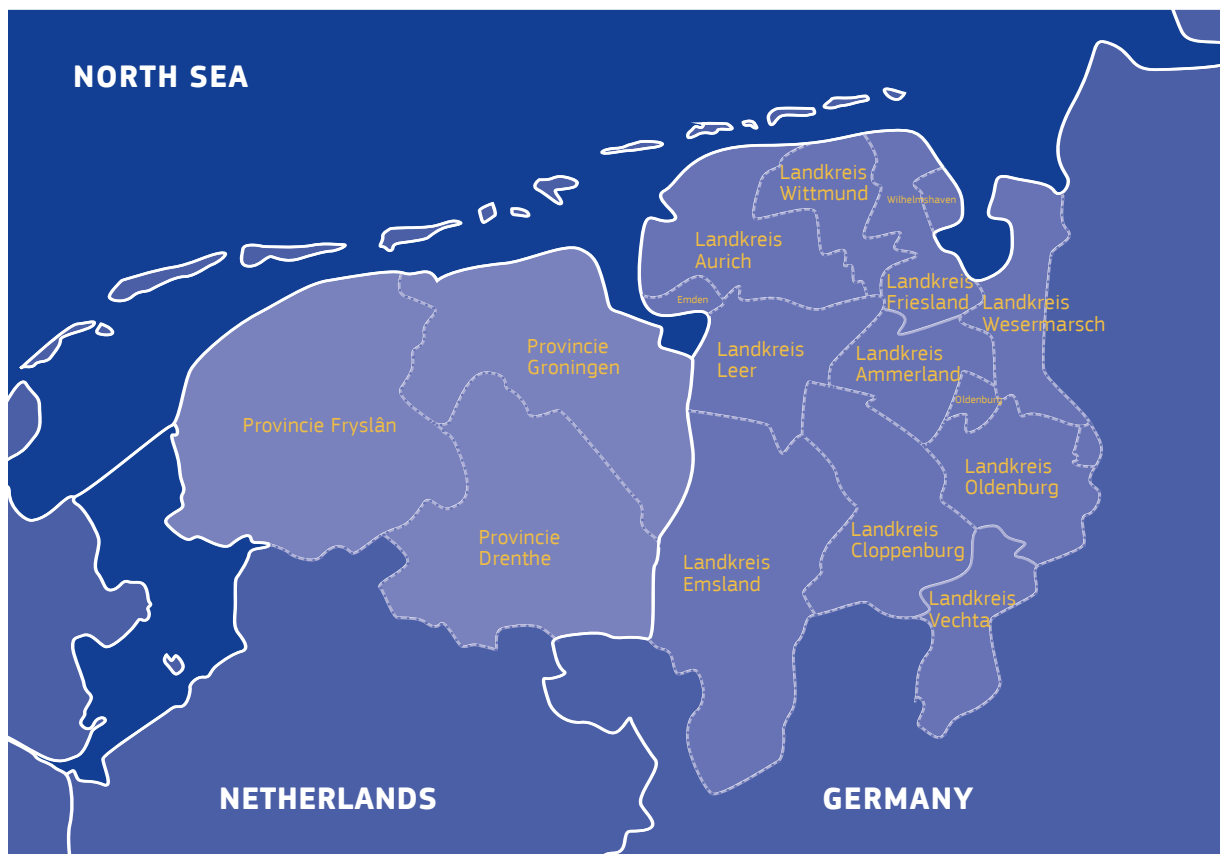
Transparent solutions in the border region for efficient treatment and reimbursement of medical expenses for Dutch and German patients

ADVISED ENTITY

Eems Dollard Region (EDR), NL-DE

EXPERT(S)

Anton Bouwmeister and Marlene Plaß



THE CONTEXT

Located on the border between the Netherlands and Germany, the Eems Dollard Region (EDR) is a Euroregion comprised of approximately 90 municipalities and rural districts. In this area, residents often travel to health facilities on the other side of the border for different services and treatments, if these are not available in their home country. Upon returning to their side of the border, they often face obstacles in obtaining reimbursement from their insurance companies.

DESCRIPTION OF THE OBSTACLES

Several obstacles were identified in this case, primarily stemming from administrative issues with the insurance companies in both countries. The main obstacle arises from a **lack of transparency and consistency in the reimbursement of cross-border healthcare costs**, as both German and Dutch insurance companies may choose not to cover such costs if incurred in the other country. An additional issue is **the lack of clarity regarding whether a patient must obtain prior authorisation** from their insurance company to pursue treatment across the border, with authorisation requirements varying, depending on the company and their specific policies. A third obstacle is the **incongruity between the national legislation and the practical application of the EU provisions** in both countries.

LEGAL PROVISIONS

- The general conditions for reimbursement of cross-border healthcare costs are regulated through **Directive of the European Parliament and of the Council 2011/24/EU**²⁹, yet the national insurance companies in both countries apply their own criteria when it comes to reimbursing patients, making the practical application of the Directive difficult to assess.
- In accordance with the aforementioned Directive 2011/24/EU, **the reimbursement of cross-border healthcare costs is typically not subject to prior authorisation**, except in specific cases, as set out in Article 8. On the other hand, **Regulation of the European Parliament and of the Council (EC) No 883/2004 (2004)**³⁰ applies to residents of one Member State who are also subject to legislation in another, and requires prior authorisation by the insurance company, which is relevant for cross-border residents.
- Finally, a part of paragraph 5 of § 13 of the Fifth German Code of Social Law (*Sozialgesetzbuch*) appears to be in conflict with Article 8 para. 2 (a) of the Directive 2011/24/EU, stating that reimbursement of care treatments requires prior authorisation of the insurance company, whereas the Dutch Healthcare Insurance Act (*Nederlandse Zorgverzekeringswet*) does not provide transparency in calculating reimbursement costs. The issue, however, is whether the EU provisions were correctly implemented into national legislation.



OUTLINE OF POSSIBLE SOLUTIONS

Potential solutions to ensure safe, high quality and efficient cross-border healthcare entail the establishment of clear cross-border agreements, along with smooth cooperation between German and Dutch healthcare institutions.

One approach involves **implementing a transparency mechanism**, as established in **Article 7 (6) of the Directive 2011/24/EU**. The transparent calculation of health treatment costs in each country should be available to patients in advance, so that they know they may only be insured up to the equivalent cost of treatment in their own country, which is standard practice. This way, the patient is fully informed of the costs they may have to pay out-of-pocket.

Two good practices were identified as **potential solutions that could be scaled up**:

- the expansion of an **already established, ongoing cross-border cooperation project** by Interreg, known as “CommonCare”³¹. This initiative between Dutch and German healthcare institutions in the Eems Dollard Region has developed a cross-border health treatment pathway for several medical areas, especially where there are shortages of certain specialists or treatments on one side of the border that can be fulfilled on the other side;
- **cooperation between insurance companies** in the Maas-Rhine Euregion, in the form of an “International Healthcare Card”. With this, patients can easily access healthcare across the border, and are provided with a price list and authorisation requirements. In addition to facilitating this crucial information to the patient, payments are processed directly by the healthcare institutions with the insurance companies, so patients do not have to deal with reimbursement in general. This practice would be **an excellent pilot solution to replicate** in the Eems Dollard Region, if feasible, and responds to the need for a transparency mechanism.

WHAT'S NEXT

Coordination between the healthcare providers and insurance companies at the local level is a necessary step. Following a meeting with several **public authorities** in the Eems Dollard Region, another will be held with the healthcare insurance companies to try to find a feasible solution for all parties involved.

TO LEARN MORE



29 Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare, *Official Journal L 88*, 4.4.2011, p. 45–65.

30 Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, *Official Journal L 166*, 30.4.2004, p. 1–123.

31 Interreg Deutschland-Niederlands, *Common Care Project*, <https://www.deutschland-nederland.eu/en/project/common-care/>, accessed on 03 November 2021.

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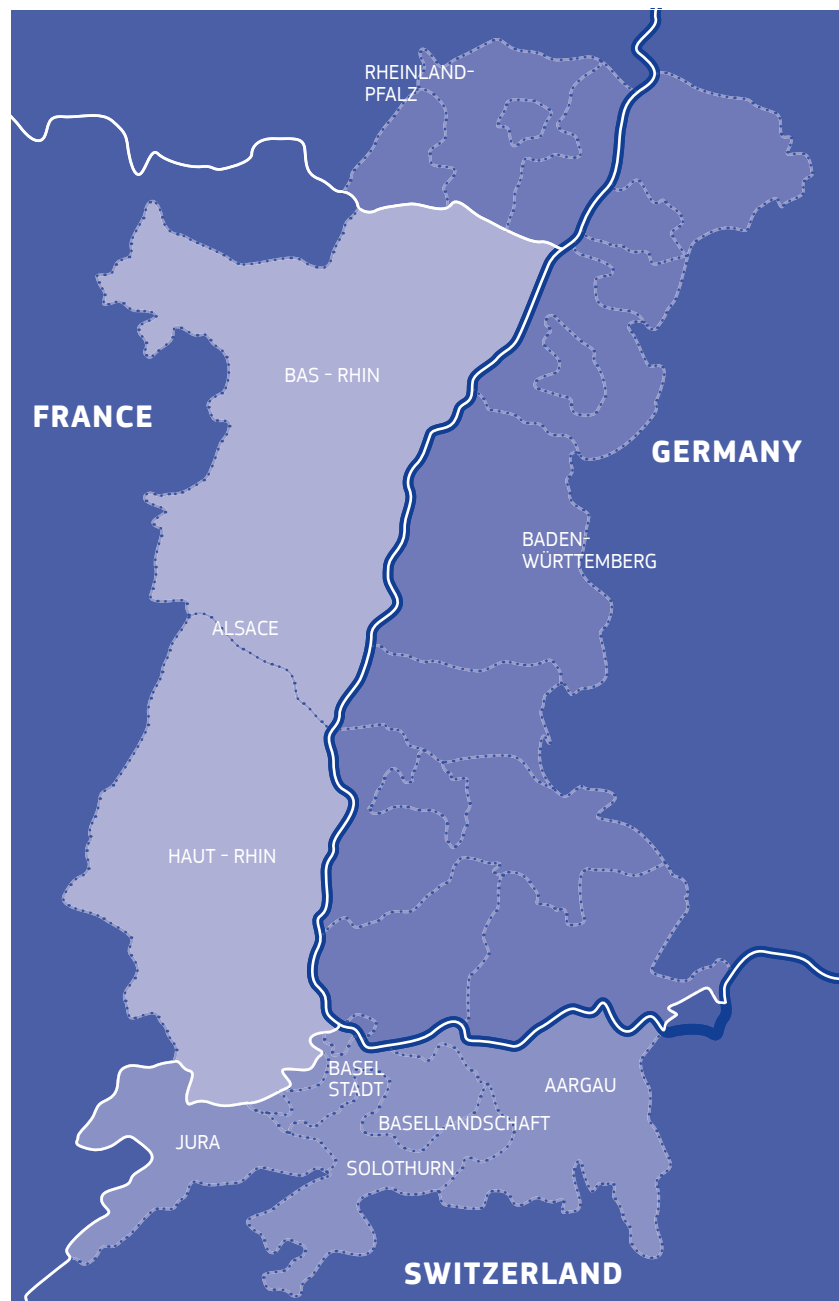
Facilitating health data accessibility to initiate cross-border public policies

ADVISED ENTITY

European Collectivity of Alsace, FR-DE-CH

EXPERT(S)

Michael Frey



THE CONTEXT

In the Upper Rhine border region between France, Germany and Switzerland, cross-border cooperation on healthcare and shared health services is a necessity but is often hindered by a variety of barriers. In this case, the main issue is a combination of several **highly complex, multidimensional legal and administrative differences** that vary greatly from country to country, which are preventing efficient coordination and data sharing. **An up to date and shared database of real-time medical information would be highly useful** for medical staff on both sides of the border, along with a **cross-border coordination mechanism to streamline public health care management**.

DESCRIPTION OF THE OBSTACLES

The main obstacle is four-fold, in terms of **unavailability, inaccessibility, incompatibility and confidentiality of data**:

- there are **varying types of relevant data** with regards to health infrastructure or patients' data. For the latter, the **General Data Protection Regulation (GDPR, 2016)**³² data protection law in the EU applies, but for infrastructure data there is a myriad of different legal frameworks that tend to hinder the smooth organisation and transfer of such data;
- the **different frameworks and ways of organising information in the health care system** of each Member State involved are dependent on the legal structure in the public health care sector, health authorities, social security system, different health service providers, etc.;
- **there are different regulation structures at the national levels** in the border countries, regarding the medical confidentiality and the question of **data ownership** and **rights of use of medical data**, which makes sharing data more complicated.

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LEGAL PROVISIONS

- In terms of personal data, the central legal framework is derived from **Article 8** of the **Charter of Fundamental Rights of the European Union**³³, therefore **any solution must comply with medical confidentiality** and the **General Data Protection Regulation (GDPR)**. Also, under the GDPR, **processing of patient data for the purpose of protecting public health is allowed** but requires a legal regulation by the member state.
- As EU Member States, France and Germany must apply the GDPR, whereas Switzerland as a third country is not part of the EU, and thus applies its own data protection law.
- The **Treaty of Aachen**³⁴ established between Germany and France enables each member state to entrust the territorial authorities and cross-border units, such as the Eurodistricts of the border regions, with the relevant competence to handle cross-border cooperation matters.

OUTLINE OF POSSIBLE SOLUTIONS

After conducting a comprehensive analysis of possible solutions on different legal levels, the following recommendations have been made:

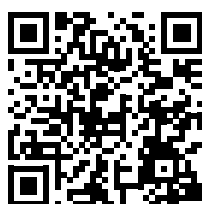
- in essence, an **efficient cross-border data management mechanism or authority** is what is needed to resolve this issue in order to streamline coordination, while still respecting the sovereignty and healthcare mandate of each Member State. This mechanism has the **potential to be a good practice and serve as a lesson learned, to be replicated** in other border areas or sectors:
 - it is compatible with the existing cooperation structure of the Upper Rhine region and can serve as an **internal coordination liaison with the different national systems**;
 - it would **enable the participation of all relevant actors** from the public health sector, according to their competences in the field;
 - it can play a key role in the cross-border control of the current COVID-19 pandemic and can be applied if other health emergency situations arise in the future.
- an **agreement** between France, Germany and Switzerland is thus recommended to **build on an existing coordination facility, rather than create a new one**. The recommendation would be TRISAN³⁵, created through an Interreg project, and which could be operated under the trinational supervision of the Health Working Group of the Upper Rhine Conference³⁶.

In addition, another possible solution would be the adaptation of the national legal provisions on data protection and public health in Germany and France in favour of cross-border public health coordination institutions.

WHAT'S NEXT

The European Collectivity of Alsace aims to **share this report with the Health Working Group of the Upper Rhine Conference**. However, in order to implement the solutions to facilitate health data accessibility at the cross-border, local or regional level, it will be necessary to have the **support and commitment of the Member States**.

TO LEARN MORE



https://www.aebr.eu/wp-content/uploads/2021/11/Report_10.pdf

32 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), *Official Journal L 119*, 4.5.2016, p. 1–88.

33 Charter of Fundamental Rights of the European Union, *Official Journal C 326*, 26.10.2012, p. 391–407.

34 Treaty between the Federal Republic of Germany and the French Republic on Franco-German Cooperation and Integration, Aachen, 22 January 2019.

35 Franco-German-Swiss Conference of the Upper Rhine, *Trisan - Trinational competence center for your health projects*, <https://www.trisan.org/english>.

36 Franco-German-Swiss Conference of the Upper Rhine, <https://www.oberheinkonferenz.org/de/services/english.html>.

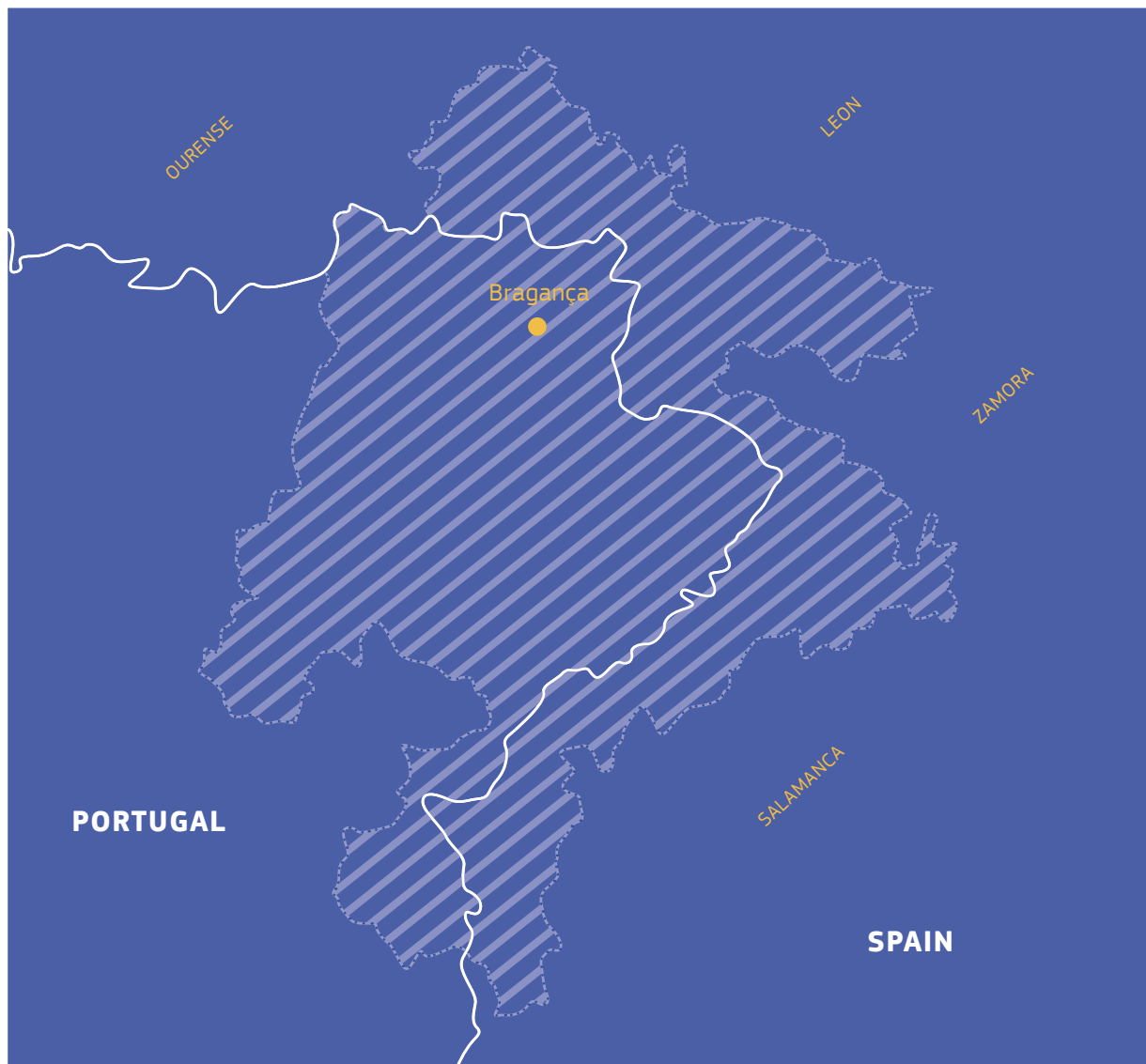
ZASNET – Meseta Ibérica Transboundary Tourist Observatory

ADVISED ENTITY

European Grouping of Territorial Cooperation – EGTC ZASNET, ES-PT

EXPERT(S)

José Paulo Queirós





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THE CONTEXT

Along the border of Spain and Portugal, sustainable tourism is a top priority for the Meseta Ibérica Transboundary Biosphere Reserve and the surrounding area, which consists of four natural parks and natural spaces. This transboundary biosphere reserve was officially designated as such by UNESCO, a distinguishing feature since it is one of 15 in the world. It was also recently designated as a Biosphere destination³⁷, one of the most important international sustainable tourism certifications. For this reason, the ZASNET EGTC has created a **Cross-Border Tourism Observatory** in order to manage, follow up on and monitor sustainability and tourism indicators in the region. However, in Spain and Portugal there are **operational discrepancies that have become obstacles**, preventing the smooth coordination of the observatory and stopping it from reaching its full potential.

DESCRIPTION OF THE OBSTACLES

There are two main obstacles regarding **operational and administrative difficulties**, primarily stemming from issues with the indicators and data collection:

- **administrative barriers:** while there is complete coverage in both countries regarding the structural indicators, the different authorities employ different approaches in collecting and producing statistical information. There are also some issues with data availability, which varies in each country, in addition to differences in scope. This leads to discrepancies in data collection and a lack of comparability, and constitutes an obstacle for the proper functioning of the observatory;
- **information / data collection barriers:** In terms of the sustainability indicators, there were specific information gaps identified. Specifically, there are a lack of data collection sources and limited availability of consolidated statistical information, thus requiring a significant effort from ZASNET.

OUTLINE OF POSSIBLE SOLUTIONS

It has become evident that in order to enhance this initiative, it is necessary to **consolidate and ensure smooth cooperation between the different entities**, with the assistance of a mechanism that guarantees this coordination over time. To this end, several different solutions have been proposed:

- **strengthening long-term, permanent cooperation between the relevant national authorities**, including national and local tourism agencies. To do so, an initial step involved identifying the relevant authorities to participate in the process. But first, it will be necessary to lay the foundations for their shared coordination;
- improving the **harmonisation of indicators and data collection/statistics**, and in particular **aligning the data collection methods** among the different entities. Such an exercise requires strong coordination between the authorities in charge of data collection on both sides of the border. For this, the statistical information collection instruments to measure the indicators requires an adjustment to **ensure consistency and close the information gaps**. It would also be advisable to consider the use of funds made available by the cross-border Interreg programme, in order to achieve the investment necessary to overcome the obstacle in terms of availability of statistical information;
- a third recommended action would be to hold a seminar involving the three cross-border biosphere reserves along the Portugal and Spain border, in order to **raise awareness of the issue** and also foster **institutional capacity building** on sustainable tourism monitoring and evaluation. In addition, the outcome of this seminar could be disseminated at both the national Spanish and Portuguese levels and at the EU level as a **good practice**.

WHAT'S NEXT

The aim of the EGTC ZASNET is to share the findings of the expert's report to **catch the attention of the competent Spanish and Portuguese authorities**, and involve them in the implementation of the proposed solutions.



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TO LEARN MORE



https://www.aebr.eu/wp-content/uploads/2021/11/Report_11.pdf

Cross border transport of medical goods per Unmanned Aerial Vehicle (a.k.a. “Drone”)

ADVISED ENTITY

City of Aachen, DE

EXPERT(S)

Anton Bouwmeister and Marlene Plaß



THE CONTEXT

In the Euregio Meuse-Rhine, cities such as Aachen and Heerlen are exploring the use of unmanned aerial vehicles, popularly known as “drones” for transport of medical goods. In particular, in terms of medical support and supplies or search-and-rescue missions, transport using drones offers **an easier, faster and more sustainable option**. However, at the time of the application of this case, there were several legal and administrative gaps that stood in the way of expanding this practice.

DESCRIPTION OF THE OBSTACLES

A number of legal and administrative obstacles were identified, mainly stemming from the fact that **at the time the case was presented, there were currently no national laws, legal or administrative procedures in place** in either of the countries involved to **regulate cross-border drone operations**.

The obstacle is two-fold. On the one hand, for the operation of drones there is a lack of legislation, and on the other hand, the **transport of medical goods is being hindered**, since the relevant legislation in both Germany and the Netherlands is particularly complex and unclear. The following are three key aspects of the obstacle:

- the obstacle involves at least two areas of law (medical law and aviation law);
- there are a **lack of unified European standards and policies, and regulations are fragmented**. However, the **EU legal framework on this issue was just recently introduced**, as indicated below in the ‘legal provisions’ section;
- many **legal and administrative regulations must be met** in order to receive a permit to operate drone flights for medical purposes, which causes **confusion regarding the applicable provisions**.



LEGAL PROVISIONS

As of December 31, 2020, a **unified European legal and administrative framework has been introduced** through regulations of the European Commission³⁸ and associated legislation³⁹. The goal of this framework is to **open the European market** for Remotely Piloted Aircraft Systems for the **civil use of drones**. This framework will be gradually developed and built upon, with **common European standards applied** and advised by the European Union Aviation Safety Agency.

At the Member State level, in the Netherlands the **Dutch Aviation Act** (*Luchtvaartwet –Tilte 6.5*) regulates the transport of hazardous materials by air.

In Germany, the **Aviation Act** (*Luftverkehrsgesetz*) applies, along with the liability clauses §§33-43 for damage to persons and goods outside the drone, and §§44-52 for damage on goods inside the drone.

OUTLINE OF POSSIBLE SOLUTIONS

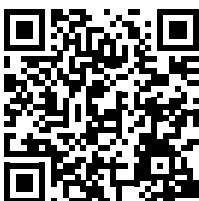
In order to explore the solutions, the expert helped guide the applicant through the legal provisions that could be applied, and the following **expert recommendations** were made:

- **in the short-term**, the applicants could apply for a project-based authorisation to operate the drones, based on the current legal and administrative framework;
- **in the long-term**, applying to obtain a Light UAS Operator Certificate (LUC), a certificate that grants the company of the operator the right to authorise all of its own drone flights;
- **the applicants can refer to the practical guide** “Easy Access Rules for Unmanned Aircraft Systems⁴⁰” published by the European Union Aviation Safety Agency (EASA), to consult the applicable legal and administrative framework;
- in addition, the experts provided the case with a **“ready-to-use” guide** on the provisions in Germany and the Netherlands that regulate the transport of radioactive material, blood, opiates and body material;
- the applicants are also advised to add experts to their team who are able to guide them through the legal framework, advise them on the risk assessment and help apply for the required permits.

WHAT’S NEXT

To solve the obstacle at hand, it is crucial that cities, developers (industry and research), end users (hospitals) and the relevant public institutions work closely together. Therefore, the City of Aachen will continue to **expand on this cooperation by involving all parties in the process**, to enable the first pilot operations between hospitals in Aachen and the neighbouring city of Heerlen.

TO LEARN MORE



https://www.aebr.eu/wp-content/uploads/2021/11/Report_12.pdf

38 Commission Delegated Regulation (EU) 2019/945 of 12 March 2019 on unmanned aircraft systems and on third-country operators of unmanned aircraft systems, *C/2019/1821, Official Journal L 152*, 11.6.2019, p. 1–40 and Commission Implementing Regulation (EU) 2019/947 of 24 May 2019 on the rules and procedures for the operation of unmanned aircraft *C/2019/3824, Official Journal L 152*, 11.6.2019, p. 45–71.

39 Commission Delegated Regulation (EU) 2020/1058 of 27 April 2020, amending Delegated Regulation (EU) 2019/945 as regards the introduction of two new unmanned aircraft systems classes, *C/2020/1991, Official Journal L 232*, 20.7.2020, p. 1–27. Commission Implementing Regulation (EU) 2020/639 of 12 May 2020 amending Implementing Regulation (EU) 2019/947 as regards standard scenarios for operations executed in or beyond the visual line of sight, *C/2020/2937, Official Journal L 150*, 13.5.2020, p. 1–31 and Commission Implementing Regulation (EU) 2020/746 of 4 June 2020, amending Implementing Regulation (EU) 2019/947 as regards postponing dates of application of certain measures in the context of the COVID-19 pandemic, *C/2020/3599, Official Journal L 176*, 5.6.2020, p. 13–14.

40 European Union Aviation Safety Agency, *Easy Access Rules for Unmanned Aircraft Systems*, 2021, <https://www.easa.europa.eu/document-library/easy-access-rules/easy-access-rules-unmanned-aircraft-systems-regulation-eu>.

Rolling stock approval to foster rail transport between France and Spain

ADVISED ENTITY

Region Nouvelle-Aquitaine, FR

EXPERT(S)

Maria Garayo Maiztegui



THE CONTEXT

The geographical scope of the “Rolling Stock” project is the Irún-Hendaye cross-border section between Spain and France. The project, led by the Region Nouvelle-Aquitaine in France, aims to build on the European rail system. Up until now, the project has been developed through four railway packages, in which the last two are more technical in scope, aiming to increase railway interoperability and safety, in addition to increasing coordination with national safety authorities, and standardising and simplifying authorisation procedures. The current objective for the Region Nouvelle-Aquitaine is to re-establish service in order for the rolling stock (railway vehicles) to run between the Hendaye (France) and Irún (Spain) stations, as it had previously operated prior to 2014. Yet **several administrative and legal hurdles must be overcome** to do this, such as the **lack of interoperability** between the different rail systems, or the **complex and costly organisational procedures** involved.

DESCRIPTION OF THE OBSTACLES

There were several administrative difficulties identified, stemming from the highly complex process required for such a project from a legal, technical and organisational standpoint.

- **The lack of a cooperation agreement between the national safety authorities is the main obstacle.** Until now, there has been no agreement on the consultation procedure for authorisation of vehicles between stations in cross-border sections, and as a result, authorisation is given on a case-by-case basis. This in turn discourages the request for authorisation.
- Regiolis⁴¹ vehicles are not currently authorised in the area of Irún, Spain, reflecting a **lack of alignment** between the Region and the railway undertaking.
- The Region Nouvelle-Aquitaine currently does not have the status of applicant to directly request authorisation of rolling stock, greatly **limiting its capacity** in this regard.

LEGAL PROVISIONS

It can be concluded that the authorisation of access of Regiolis vehicles to the Irún – Hendaye section is currently subject to the European legal framework.

Directive of the European Parliament and of the Council 2016/797⁴² and **Commission Implementing Regulation 2018/545⁴³** establish a specific regime for rolling stock operating between neighbouring Member States with similar networks. These regulations apply, in this case, when there is a lack of an established agreement or procedure.

OUTLINE OF POSSIBLE SOLUTIONS

- **A cooperation agreement is already being formulated:** the French and Spanish national safety authorities are currently working on an agreement on the consultation procedure for the authorisation of vehicles between stations in the cross-border sections. The aim is to **simplify authorisation procedures** in the general scheme for railways vehicles with cross-border operations.
- **Operational solution:** temporary arrangements have been made, and a **technical working group was set up** in order to address the issue, foster dialogue and improve coordination. The expected outcome is the formulation of a technical dossier detailing the technical aspects and procedures.
- Once the preparatory phase has concluded, two actions can be carried out: 1) the application for authorisation for Regiolis vehicles to operate in the Irún-Hendaye region, and 2) the application for a single safety certificate for that region to harmonise safety procedures.



WHAT'S NEXT

Following the experts' proposed solutions, the next step is to **establish a working group to formulate a plan and methodology**, with the following stakeholders: Nouvelle Aquitaine Region, *SNCF Voyageurs*, *SNCF Réseau*, *Agencia Estatal de Seguridad Ferroviaria (AESF)*, *Etablissement Public de Sécurité Ferroviaire (EPSF)* and *Administrador de Infraestructuras Ferroviarias (ADIF)*. There are two main aspects to address: on the one hand, the rolling stock authorisation application, and on the other hand, the safety certification application of the railway undertaking.

TO LEARN MORE



41 Type of Vehicles registered in the European Register of Authorised Types of Vehicles (ERATV) under the codes: B84500 and Z51500.

42 Directive (EU) 2016/797 of the European Parliament and of the Council of 11 May 2016 on the interoperability of the rail system within the European Union (Text with EEA relevance); *Official Journal L 138*, 26.5.2016, p. 44–101:

43 Commission Implementing Regulation (EU) 2018/545 of 4 April 2018, establishing practical arrangements for the railway vehicle authorisation and railway vehicle type authorisation process pursuant to Directive (EU) 2016/797 of the European Parliament and of the Council, *C/2018/1866*, *Official Journal L 90*, 6.4.2018, p. 66–104.

Introducing cross-border healthcare into regular operation

ADVISED ENTITY

Lower Austrian Health Agency – EU Affairs & Healthacross; AT

EXPERT(S)

Michael Frey



THE CONTEXT

Citizens in the border regions of Lower Austria and South Bohemia, in Czechia, often rely on both inpatient and outpatient care on the other side of the border if such services are not available where they live. However, they are faced with **reimbursement rates that vary dramatically between the two countries** for the same services provided. In this regard, the relevant stakeholders are aiming to build on an existing project-based collaboration in order to make this cooperation permanent, along with a comprehensive bilateral reimbursement arrangement on cross-border health care. The goal is to promote patient mobility in this border region, but certain obstacles are hindering this process.

DESCRIPTION OF THE OBSTACLES

The main obstacle to patient mobility in healthcare at the border is the **difference in framework conditions** to enjoy healthcare services in both countries. **Regulatory structures in the two countries are considerably different**, placing an administrative burden on patients and making reimbursement processes difficult to navigate.

LEGAL PROVISIONS

- At the European Union level, **Regulation of the European Parliament and of the Council (EC) No.883/2004⁴⁴** establishes general regulations for cross-border healthcare. It states that reimbursement is subject to the approval of the relevant health insurance institution – in this case, national healthcare – and that **two or more Member States and their relevant authorities may agree on other reimbursement procedures**.
- **In Austria:** in terms of reimbursement, the **Austrian Healthcare Law (ASVG)** allows patients to seek medical care across the border and be reimbursed up to 80% if the partners or facilities of the insurance provider are not used.
- **In the Czech Republic:** the **Czech Public Health Insurance Act (GÖKV)** allows healthcare costs incurred abroad to be reimbursed only up to the equivalent amount in the Czech Republic. This often means that if Czech citizens receive healthcare in Austria, for example, they will be reimbursed for much less.



© Initiative Healthacross



In having to apply for reimbursement themselves, the patients must assume the administrative burden. The patient must also pay the entire amount to the foreign healthcare provider up front.

OUTLINE OF POSSIBLE SOLUTIONS

The main objective is to **find a permanent solution for regulating the reimbursement of cross-border health care costs** for both outpatient and inpatient treatment, to make healthcare more accessible.

- The process began by evaluating the possibility of the two countries working together on this issue, within a legal or constitutional framework, to reach an **agreement on cross-border healthcare**.
- The **Healthacross Initiative**⁴⁵ was originally launched by the Lower Austrian Health and Social Fund (*NÖGUS*) and is now supported by the Health Agency of Lower Austria. This initiative is tasked with cooperation and information exchange to manage cross-border healthcare, and is the preferred mechanism through which to implement the solution.
- Signing a **Memorandum of Understanding (MoU)** would be an initial step towards a bilateral agreement on the integration of cross-border health services into regular regional health care operations.
- Another viable proposal is the **establishment of a reimbursement centre**, based on a **bilateral agreement under Article 35(3) of Regulation (EC) 883/2004**, using the current structure of the aforementioned Healthacross Initiative. This would involve arranging payments and settling reimbursement claims directly through a reimbursement centre for cross-border health services, effectively streamlining the administrative process and easing the burden for the patient.

Finally, since an additional potential solution for this case could also involve amending the Czech Public Health Insurance Act (*GÖKV*) to allow health insurance funds to conclude contracts for the provision of and payment for health care services with foreign health care providers, it would be possible to do so by applying the **European Cross-Border Mechanism (ECBM)** in the form of a statement or commitment procedure.

WHAT'S NEXT

The Lower Austrian Health Agency and the EU Affairs & Healthacross initiative will consider the establishment of a **reimbursement centre**, in the framework of **Interreg VI**, to continue the collaboration. They will also formulate a **Memorandum of Understanding** as a preliminary step in the process towards the solution.

TO LEARN MORE



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⁴⁴ Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (Text with relevance for the EEA and for Switzerland), *Official Journal L 166*, 30.4.2004, p. 1–123.

⁴⁵ Lower Austria State Health Agency, *Healthacross Initiative*, <https://www.healthacross.at/en/>.


Cross-border authorisations of tramway personnel

ADVISED ENTITY

Province of Limburg, NL

EXPERT(S)

Martin Unfried, Pim Mertens, Institute for Transnational and Euregional Cross-border Cooperation and Mobility (ITEM)

provincie limburg 





THE CONTEXT

A public transport project, a new cross-border tramline, has been planned along the Dutch-Flemish border, between the municipalities of Hasselt and Maastricht, to commence in 2023. With the **aim of boosting sustainable transport in the area**, the project involves **cross-border collaboration** between the Belgian national government, a transport company, the province of Limburg and the municipality of Maastricht in the Netherlands. The Belgian public transportation company De Lijn will operate both the Belgian and the Dutch sections of the tramline.

Public rail and tram transport is a major priority in this region, to reduce traffic jams and boost connectivity between the neighbouring countries. To this end, the tramline will greatly reduce the average travel time, **improving cross-border mobility**. However, an obstacle was identified regarding the legal authorisations of Belgian tramway personnel on the Dutch part of the tramline, which could have financial repercussions in the project.

DESCRIPTION OF THE OBSTACLES

- The main issue refers to the authority of Belgian tramway personnel on the Dutch part of the line. For smooth implementation of the project, it will be necessary to **resolve the issue of the authority granted to Belgian tram personnel when operating on the Dutch sections**, since their authority is currently limited to supervisory powers, rather than enforcement, under Dutch law.
- In order to resolve this **gap in enforcement** when Belgian personnel are working on the Dutch sections of the tram line, extra Dutch personnel who indeed have enforcement powers might have to be hired, leading to **unnecessary additional costs** for the tram's operations.

LEGAL PROVISIONS

In the Netherlands, the 2000 **Dutch Passenger Transport Act** (*Wet Personenvervoer*) differentiates between two types of authorisations that Belgian tram personnel have on Dutch territory: “supervising” on the one hand, and “enforcing” on the other hand, in which the latter designation has broader authority.

OUTLINE OF POSSIBLE SOLUTIONS

Since it has been established that the Belgian personnel have sufficient authority in their supervisory capacity, the question is **whether the cross-border partners could come to an arrangement** where despite the legal restrictions, **practical solutions may be found** to ensure security on the tram, without having to hire additional personnel on the Dutch side.

The following solutions were proposed:

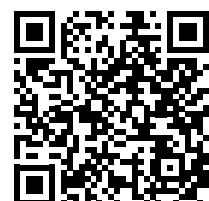
- a **protocol or a Memorandum of Understanding** between the Belgian company De Lijn and the City of Maastricht to **foster cooperation** between the Belgian tram personnel and the Dutch municipality and police forces. This way, extra costs could be avoided through **practical arrangements** for communication, information and cooperation regarding the two tram stops;
- in addition, **joint cross-border training sessions** could be considered;
- lastly, the **Benelux Union might be a relevant structure to consider**, as a cross-border entity fostering cooperation between the Netherlands, Belgium and Luxembourg through the **Benelux Treaty**. In this case, a framework agreement or treaty for the two countries could be created to **agree bilaterally on accepting certain regulations** from the neighbouring country for a specific cross-border purpose. This **could also be applied to similar issues** within the broader scope of cross-border public transport.

Additionally, the **European Cross-Border Mechanism (ECBM)** would be a useful tool to overcome the legal obstacles in this case, since there are currently no cross-border legal provisions that would enable this otherwise. Through this tool, if the Dutch authorities were to accept the competences of the Belgian personnel at the specific two Dutch platforms, **an agreement could be reached**.

WHAT'S NEXT

The next step that the Province of Limburg intends to undertake is to **discuss the proposed solutions** with their Belgian counterparts. After analysing the options, the best solution for the cross-border tramway between Hasselt and Maastricht will be selected and implemented.

TO LEARN MORE



https://www.aebr.eu/wp-content/uploads/2021/11/Report_15.pdf

Applying the GDPR and national legislation in cross-border public health cooperation

ADVISED ENTITY

Foundation euPrevent, NL-BE-DE

EXPERT(S)

Hildegard Schneider, Pim Mertens and Martin Unfried

(Institute for Transnational and Euregional Cross-border Cooperation and Mobility – ITEM)



THE CONTEXT

The **General Data Protection Regulation (GDPR, 2016)**⁴⁶ entered into force in 2018, with the aim of creating a harmonised framework for data processing in Europe, including health data. During the COVID-19 crisis, it became evident that **accurate data and effective data sharing is essential**, especially in this cross-border region between the Netherlands, Belgium and Germany. In practice, however, each Member State has implemented the Regulation differently into their national legal structures. In light of the pandemic and the corresponding data privacy concerns that have come with it, the Foundation euPrevent, a regional network that works to promote health, aims to **understand how the GDPR-related hurdles can be overcome in cross-border health projects and research**, and determine the applicable legal framework.

DESCRIPTION OF THE OBSTACLES

The main obstacle is that public health organisations and health authorities face **difficulties in aligning national GDPR legislation among Member States in the context of cross-border cooperation**. While conducting research involving blood samples to study the prevalence of COVID-19 antibodies, the following four obstacles were also identified:

- the **Ethics Review Committee** in the Netherlands could not get full approval for the research activities across the border, **facing barriers to approving studies or projects involving the data of individuals from different countries**;
- the **obligatory consent forms** for research participants in Germany had to remain in the country in order to be valid, preventing, for instance, blood samples from being directly transported between countries. **Each country involved also interprets the rules on informed consent in a different way**;
- **exchanging personal data among project partners was a challenge**, specifically regarding contact details that could not be exchanged across the border, as prohibited by national legislation;



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- uncertainty also arose regarding the **contract with the software company that processed the data of the research participants**: each country involved preferred to have their own contract, while the company insisted on having a single umbrella contract for everyone.

LEGAL PROVISIONS

- At the European level, **Article 9(2)** of the **General Data Protection Regulation (GDPR, 2016)** regulates the processing of personal health data. However, each Member State may interpret this differently, leading to an array of varying national legal frameworks.
- In **Article 14(5)(b)**, the **GDPR** leaves some room for exceptions when data is processed for scientific research purposes, as long as **Article 89(1)** safeguards are in place. However, Member States must include the exception in their national laws, which has not yet been done in many cases.
- Reference was made to the study “**Assessment of the EU Member States’ rules on health data in light of the GDPR**”⁴⁷ which includes an overview of the relevant national legislation of all Member States. For the purpose of this case, the country fiches of the Netherlands (p. 158), Belgium (p.5) and Germany (p.39) refer to the national legal structures and reveal the diverging frameworks.

OUTLINE OF POSSIBLE SOLUTIONS

- The recommended solution is to **harmonise procedures and national implementation of the relevant EU laws** that allow for cross-border cooperation in border regions, in terms of scientific and health studies and other projects with the limited use of personal data.
- Additionally, the Commission acknowledges the challenges of the diverging legislation, and supports **establishing Codes of Conduct (CoC) to help streamline the processing and sharing of personal data across borders**. The Commission will also provide input to future guidelines of the **European Data Protection Board (EDPB)**, which can issue guidance to the Member States.
- Codes of Conduct (CoC) can be powerful tools to foster collaborative research in the EU, provide greater clarity on the implementation of important concepts and terms, and facilitate cross-border processing of data. However, this solution entails a considerable amount of time and resources. In the meantime, further developments of the European Data Space are encouraged for health research.

Lastly, **the European Cross-border Mechanism (ECBM)** would be applicable in the form of a Commitment or Statement, in which the national implementation of the **GDPR** of one of the neighbouring country’s legal systems can be applied in another.

WHAT’S NEXT

The expert’s analysis demonstrated that the issue has to be tackled at the European level. In light of this, the euPrevent Foundation will support actions that aim to engage the European institutions and open a discussion on the problem of data sharing among healthcare institutions.

TO LEARN MORE



https://www.aebr.eu/wp-content/uploads/2021/11/Report_16.pdf

⁴⁶ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), *Official Journal L 119*, 4.5.2016, p. 1–88.

⁴⁷ EU Health Support Consortium (2021), *Assessment of the EU Member States’ rules on health data in the light of GDPR*. Available at: https://ec.europa.eu/health/ehealth/key_documents_en#anchor1.

Establishment of a single cross-border entrance for the European Archaeological Park at Bliesbruck-Reinheim

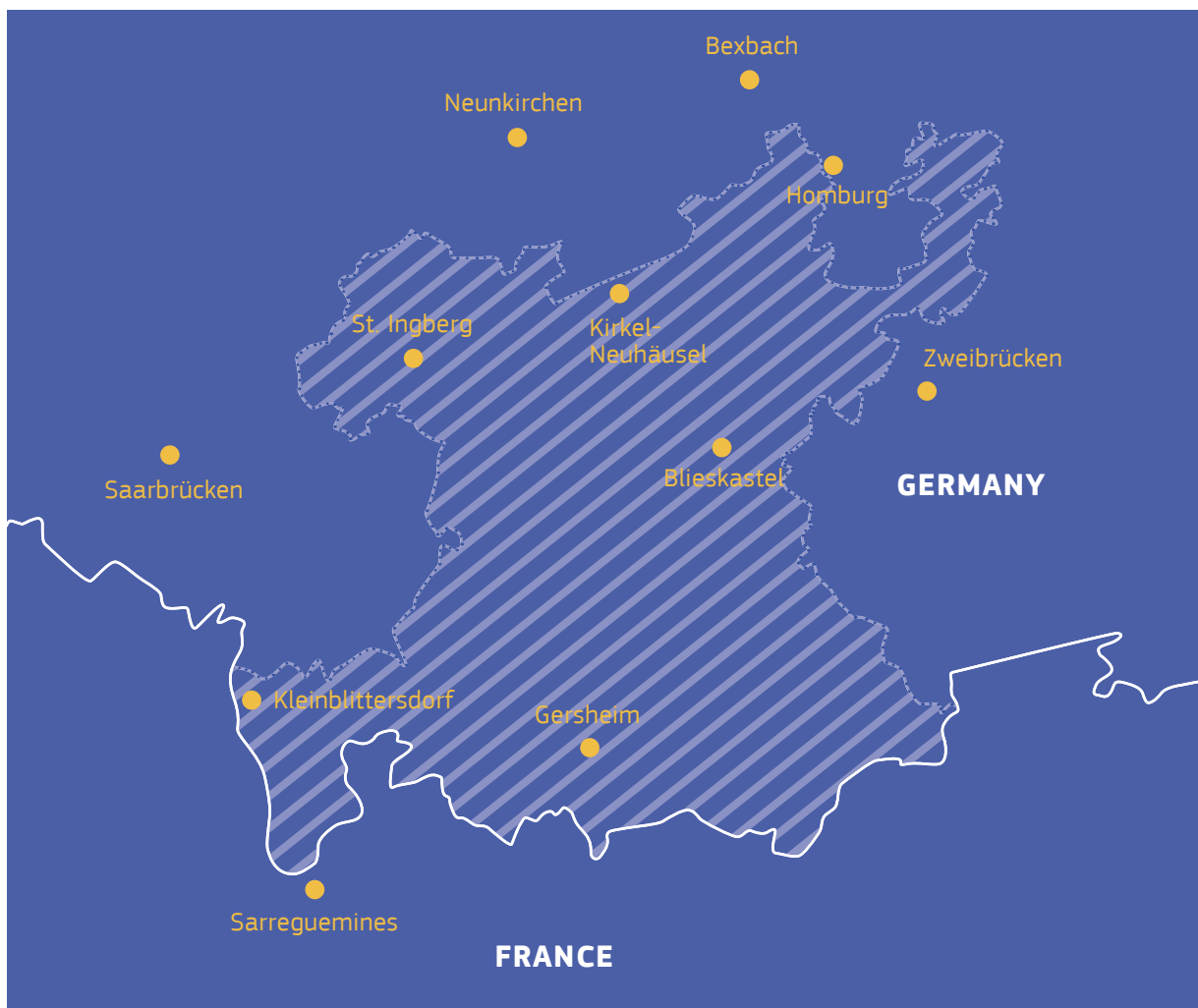
ADVISED ENTITY

Saarpfalz District, DE

EXPERT(S)

Michael Frey

PetiaTzvetanova, Mission Opérationnelle Transfrontalière (MOT)



THE CONTEXT

The Saarpfalz District and the Moselle Department the Stiftung Europäischer Kulturpark and the AQUIS GmbH aim to create a European Archaeological Park between the region of Bliesbruck in France and Reinheim in Germany. Looking to the future, they want to work together to establish a common legal framework and a single cross-border point of entry. The objective is two-fold:

1) adopt a specific legal structure for the cross-border archaeological park, and 2) create a joint entrance to the park between the two countries. To this end, it is necessary to **assess which standards, laws and regulations, as well as practical and operational aspects**, must be considered and applied in order to successfully bring this plan to life.

DESCRIPTION OF THE OBSTACLES

- The **different legal frameworks in France and Germany make it difficult to choose the best possible legal structure**. Various **potential legal barriers** were identified in the fields of social law, labour law and the applicable law for the recruitment of personnel.
- The **establishment of a joint entrance also involves various legal matters that must be addressed**, specifically in the fields of finance law, tax law, customs law, public procurement law, budget law, domiciliary right and security, etc.
- **Practical aspects of the park's day-to-day operations must be addressed**, such as park administration, staff management and employment benefits, visits and tours.
- Lastly, while not presented as an obstacle, the aim of Saarpfalz District and the Moselle Department is to **assess the possibilities provided by the existing Treaty of Aachen**⁴⁸.

LEGAL PROVISIONS

The choice of a legal structure is centered on **two key objectives in the short and long term**, based on the applicable national and European legal frameworks:

- in the short term, the creation of an association with legal personality under French law (**Articles 21 to 79 of the Local Civil Code**);
- in the long term, the **creation of an European Grouping of Territorial Cooperation (EGTC)** under **Regulation of the European Parliament and of the Council (EC) 1082/2006**⁴⁹ and **Regulation of the European Parliament and of the Council (EU) No 1302/2013**⁵⁰ or an **Local Grouping of Transboundary Cooperation (LGTC)** under the **Agreement of Karlsruhe (1996)**⁵¹, or other suitable legal forms could be envisaged.

Spring in the Biosphere Bliesgau
©Saarpfalz-Touristik



Le Rocher de Dabo, Moselle Department
© Guillaume Ramon

OUTLINE OF POSSIBLE SOLUTIONS

Upon analysing the different legal and practical barriers to overcome, the solutions are as follows:

- in the **short-term**, the solution involves the **creation of a registered cross-border association** under French local law. This would be a **temporary solution**, however, since an association for this purpose is somewhat limited in its scope and capacity;
- in the **long-term**, the **creation of an EGTC would give better visibility to the structure** on a European level. It also has the **benefit of being a binding structure of cross-border cooperation**, but the definitive form must fit be suitable first and foremost to the tasks of the park, so that other legal forms can also be considered;
- in addition, the **Treaty of Aachen (Article 13 para. 2)** may be used so that certain German sovereign regulations may be waived in favour of applying the corresponding French regulations on German territory within the park. This would only apply to **specific regulations that would help improve the park's operations and overcome practical obstacles**;
- regarding the joint entrance to the park, the domiciliary rights would be established on a private law basis, with the use of common general terms and conditions of access. There are also several possibilities for staff provisions from the German side to the French side, whether through direct hire or secondment, and in terms of employee taxation the French tax regulations would apply.

The obstacle could at least be partially resolved with the **European Cross-border Mechanism (ECBM)** in the context of a joint entrance between France and Germany, by applying the standards, laws and directives from one country to another for practical, operational purposes.

WHAT'S NEXT

The Saarpfalz District and the Moselle Department will initially **establish an association on a partnership basis**, and will discuss other suitable legal forms together at a later time. As to the possible application of the **Treaty of Aachen**, the resulting proposals will be delivered to the cross-border cooperation committee, where they will be discussed in detail.



A lighthouse project on the French and German side: the European Archaeological Parc Bliesbruck-Reinheim
© Michael Quiering – Saarpfalz-Kreis

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48 Treaty between the Federal Republic of Germany and the French Republic on Franco-German Cooperation and Integration, Aachen, 22 January 2019.

49 Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC), *Official Journal L 210*, 31.7.2006, p. 19–24.

50 Regulation (EU) No 1302/2013 of the European Parliament and of the Council of 17 December 2013 amending Regulation (EC) No 1082/2006 on a European grouping of territorial cooperation (EGTC) as regards the clarification, simplification and improvement of the establishment and functioning of such groupings, *Official Journal L 347*, 20.12.2013, p. 303–319.

51 Agreement concluded among Luxembourg, Germany, France and Switzerland (the last acting on behalf of the Soleure, Bâle-Ville, Bâle-Campagne, Argovie and Jura cantons) about international cooperation between territorial entities and local public authorities, signed on 23 January 1996.

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Opportunities to improve the cross-border provision of healthcare and related services

ADVISED ENTITY

Public institution Marijampole Hospital, LT

EXPERT(S)

Gintaras Skamaročius



THE CONTEXT

In the Lithuanian-Polish border region, **institutions dedicated to social assistance, emergency and health care aim to provide better quality services**, gain more potential customers and partners, and receive more funding for the provided services. The **residents in this border region also demand improved, more efficient and higher quality services**.

However, due to a number of factors, such as **population decline** and a **shortage of health service staff**, the **public health institutions are facing a decrease in funding and lack the necessary infrastructure**, and thus cannot provide all of the required services. In this sense, **closer cooperation between the two countries is necessary**, especially in the border region, in order to increase the exchange and volume of patients and services. This would allow for **reduced costs for both patients and institutions**, as well as the **improved quality and availability of services**.

DESCRIPTION OF THE OBSTACLES

The issue primarily stems from the **lack of provisions** on how local authorities, such as municipalities, can establish and finance social and medical care service across the border. Additionally, in border regions such as this, the **financial capacity** of municipalities is usually limited. Along these lines, the **uncertainty about reimbursement** and the **complexity of the exchange of patient data between countries** are just some of the obstacles that prevent both patients and healthcare institutions from being able to freely choose providers or recipients.

LEGAL PROVISIONS

Directive of the European Parliament and of the Council 2011/24/EU⁵² has been in force since April 2011 and was incorporated into the national laws of the Member States.

At the national level, Lithuania declared that the rights of patients from other EU countries are regulated by the **Order N. V-957 (2013)**⁵³ of the **Minister of Health**.

Similarly, Poland declared that such patients' rights are regulated through the **Act of the Parliament N. 2135 (2004)** on health care services financed with public funds⁵⁴.

OUTLINE OF POSSIBLE SOLUTIONS

To solve the obstacles identified, the solutions proposed involve a **bilateral agreement** between Polish and Lithuanian national authorities, which can be developed following the example of the 2019 Lithuanian-Latvian agreement on the cross-border provision of emergency services. To this end, three steps were recommended by the expert:

- first, regional hospitals and ambulance stations from both sides of the border should sign a **letter of intent** regarding mutual cooperation, followed by a corresponding **agreement** between the Lithuanian and Polish governments;
- second, **an agreement could be formulated between the Lithuanian and Polish governments**, providing for circumstances not discussed in the directive, and **granting the authorised institutions of both countries the power to implement the provisions of the agreement**. The two countries should work together for better coordination between their national health systems;
- lastly, **regional hospitals and ambulance stations could sign additional agreements** and annexes, if necessary. This could possibly include other relevant institutions of the neighbouring regions, in accordance with the intergovernmental agreement.

WHAT'S NEXT

The Marijampole Hospital will plan a **joint meeting with the representatives of the institutions involved** to discuss the submitted proposals and, in light of the proposed solution, a letter of intent or agreement on the proposed cooperation will be formulated.



© Public institution Marijampole hospital

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- 52 Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare, *Official Journal L 88*, 4.4.2011, p. 45–65.
- 53 Order N. V-957 of the Minister of Health of the Republic of Lithuania on the approval of the description of the procedure for the reimbursement of cross-border healthcare expenses, 15 October 2013, published in *TAR 2021-03-25*.
- 54 ACT of 27 August 2004 on health care services financed from public, *Journal of Laws of the Republic of Poland of 2004 No. 210*, item 2135.

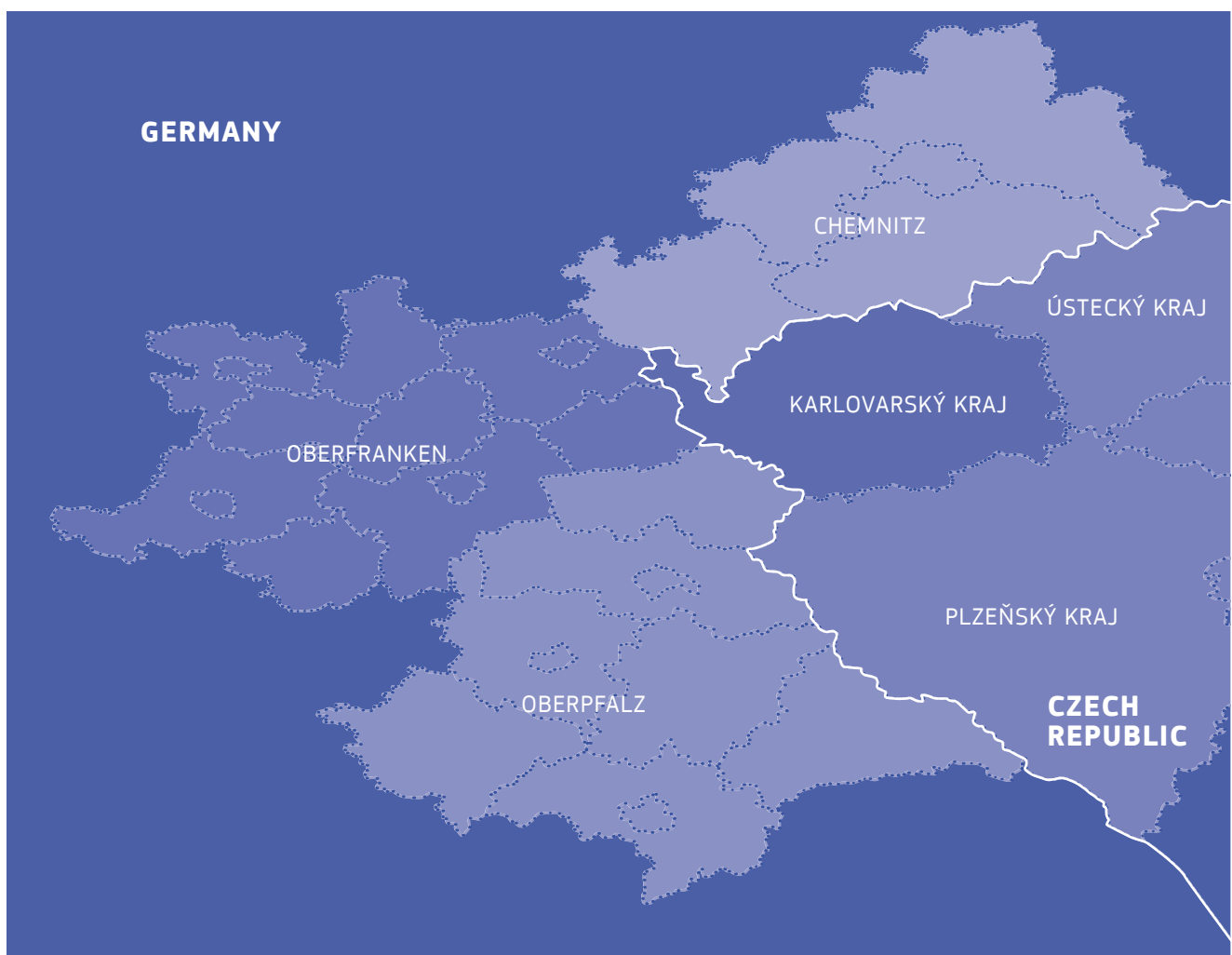
Cross-border health services, mountain rescue service and patient transfer

ADVISED ENTITY

Karlovy Vary Region, CZ

EXPERT(S)

Ondrej Dostal



THE CONTEXT

The border between the Karlovy Vary Region of Bohemia in the Czech Republic and Saxony and Bavaria in Germany is a mountainous area, popular for summer and winter sports activities. When it comes to emergency health care in the case of accidents, patients are transferred to Czech or German hospitals. While there is smooth communication between the hospitals on both sides of the border regarding the transfer of patients, **Czech legislation on health care reimbursement and emergency services is hindering the seamless coordination of cross-border health care provisions.**

DESCRIPTION OF THE OBSTACLES

The obstacle is twofold, caused primarily by **legal and administrative barriers.**

In terms of emergencies, patients are discouraged from receiving care in nearby Germany and must instead seek care in Czech facilities that are further away.

- An inter-state agreement between the two countries, **Framework Agreement 53/2014⁵⁵**, is in force but **emergency service operators cannot cross the border** without limitations, due to differences in the regulations on opiates and emergency vehicle warning lights, among other issues.

Regarding planned health care: the main obstacle is caused by the **insufficient transposition of Directive of the European Parliament and of the Council 2011/24/EU⁵⁶ into Czech legislation**, making reimbursement difficult for patients insured in the Czech Republic who seek planned treatment in Germany without prior consent. The problem is of a financial nature: the by-laws for calculating the reimbursements are difficult to use, since Czech hospitals and ambulatory providers are not funded on a clear case-by-case basis but via a complicated reimbursement mechanism.



LEGAL PROVISIONS

At the EU level, the aforementioned **Directive 2011/24/EU** and **Regulations of the European Parliament and of the Council (EC) 883/2004**⁵⁷ and **(EC) 987/2009**⁵⁸ govern cross-border healthcare, but there is insufficient transposition of these into Czech law.

At the national level, **Act 60/2014 Coll. of 22 April 2014**, which amends **Act 48/1998 Coll. on Public Health Insurance (ZVZP)**, is the relevant legislation for cross-border healthcare in the Czech Republic.

Regarding emergency health care services, a number of agreements are in force in the region beyond the **Framework Agreement of 18 July 2014**⁵⁹.

OUTLINE OF POSSIBLE SOLUTIONS

In terms of **emergency health care services**:

- an **amendment to Framework Agreement 53/2014** between the Czech Republic and Germany is necessary;
- a **working agreement was reached on a regional level** (Bavaria/Pilsen Region) regarding the transfer of patients, but the mutual cooperation principle should be included in the **Framework Agreement**;

In terms of **planned health care services** without prior consent:

- a long-term sustainable solution requires **broad reform** of health care reimbursement regulations;
- the by-laws on reimbursement are currently under evaluation by the **Czech Constitutional Court**;
- an **amendment of the Act 48/1997** comes into effect in 2022, effectively streamlining procedures for claiming reimbursement or refunds by creating revision committees.

The **European Cross-border Mechanism (ECBM)** would be a helpful tool to overcome the legal obstacles which arise from the **complex legislation and reimbursement by-laws** described above, for contexts of both urgent and planned health care services. This would allow a flexible and effective solution, especially for cases of insufficient access to care for citizens living in areas next to national borders.

WHAT'S NEXT

The Karlovy Vary Region will participate in **working groups at the Ministry of Health** to present the proposed solutions and will **cooperate with the neighbouring Saxony and Bavaria** in order to reach an agreement on the rights and regulations of emergency care providers.

Looking ahead, the regional government will also **promote amendments** that guarantee improved access to medical treatment in cross-border areas.

55 Framework Agreement between the Czech Republic and the Federal Republic of Germany on cross-border cooperation in the field of emergency medical services (18 July 2014).

56 Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare, *Official Journal L 88*, 4.4.2011, p. 45–65.

57 Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (Text with relevance for the EEA and for Switzerland), *Official Journal L 166*, 30.4.2004, p. 1–123.

58 Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (Text with relevance for the EEA and for Switzerland), *Official Journal L 284*, 30.10.2009, p. 1–42.

59 Agreement of 25 November 2015 between the Karlovy Vary Region, Ústí nad Labem Region and Liberec Region and the Free State of Saxony; and the Agreement of 3 October 2016 between the Karlovy Vary Region, Plzeň Region and South Bohemian Region and the Free State of Bavaria.

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Cross-border healthcare and the reimbursement of cross-border healthcare costs

ADVISED ENTITY

Province of Zeeland, NL

EXPERT(S)

Martin Unfried, Sander Kramer and Susanne Sivonen, Institute for Transnational and Euregional Cross-border Cooperation and Mobility (ITEM)



THE CONTEXT

Zeeuws-Vlaanderen is a Dutch region located on the border with Belgium. Access to healthcare is a challenge for the area's aging and dwindling population, often leading Belgian residents to seek care across the border, putting pressure on the healthcare system. When this happens, problems arise in connection with the reimbursement of costs for planned medical care in the Netherlands. The necessary permits from the Belgian health insurance company are not always granted to the patients. In turn, **access to healthcare for inhabitants of the border region is limited.**

DESCRIPTION OF THE OBSTACLES

- The heart of the issue is that **residents insured in Belgium are unable to receive reimbursements for their planned medical care in the Netherlands.** They are also denied the opportunity to obtain **prior authorisation** to access healthcare across the border and subsequently claim reimbursement.
- In addition, the **complex administrative procedures** result in a **lack of mutual cooperation** between the countries and insurance companies in this matter.

LEGAL PROVISIONS

- **Regulation of the European Parliament and of the Council 883/2004⁶⁰** and **Regulation of the European Parliament and of the Council 987/2009⁶¹** establish the rules on the coordination of social security and planned care.
- **Directive of the European Parliament and of the Council 2011/24⁶²** lays out the rules and conditions for cross-border healthcare and reimbursements. Based on the free movement of services, the Directive gives patients **the right to obtain care in another Member State without prior authorisation** from their insurance company. However, reimbursements for cross-border care may only be made up to the equivalent amount in the country of residence. Additionally, prior authorisation may be justified in certain circumstances.
- At the national level, the **Directive 2011/24/EU** has been transposed into Belgian national law, under **Royal Decree of 3 July 1996⁶³**.
- Upon evaluation of the legal texts, **the obstacle does not appear to be caused by a legal conflict**, but rather a **lack of coordination** between the administrative bodies and insurers of the territories.

OUTLINE OF POSSIBLE SOLUTIONS

- The first step involves the **simplification of the administrative process**, as well as **improving coordination between the countries at all levels, to avoid any administrative barriers** that might restrict patients' rights to seek healthcare in another Member State.
- A **bilateral agreement on the basis of Directive 2011/24/EU** between Belgian insurers and the Province of Zeeland is a potential solution. This would **allow for clarification of the existing rules** and the **automatic granting of prior authorisation**.
- Several existing cooperation agreements between Belgium and its neighbouring countries on healthcare cooperation are considered **best practices, to be replicated or adapted**:
 - the Integration Customized Care (*Integratie Zorg op Maat - IZOM*) scheme between Belgium and Germany, in which **patients obtained prior authorisation automatically when crossing the border** for general care, and services were billed through the health insurance fund.
 - The Organized Areas for Access to Cross-border Healthcare (*Zone organisée d'accès aux soins de santé transfrontaliers - ZOAST*) scheme, based on an agreement between Belgium and France, which **eliminated administrative and financial barriers to health care** for the **benefit of citizens of cross-border regions**.

WHAT'S NEXT

The Province of Zeeland, in cooperation with *ZorgSaam* - a local organisation providing healthcare in the Dutch region of Zeeuws-Vlaanderen - and other competent authorities, will **elaborate further on the proposed solutions and will work towards their implementation.**



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60 Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, *Official Journal L 166*, 30.4.2004, p. 1–123.

61 Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems, *Official Journal L 284*, 30.10.2009, p. 1–42.

62 Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare, *Official Journal L 88*, 4.4.2011, p. 45–65.

63 Royal Decree of 3 July 1996 implementing the Act on compulsory insurance for medical care and payments, coordinated on 14 July 1994.



Employment and Education

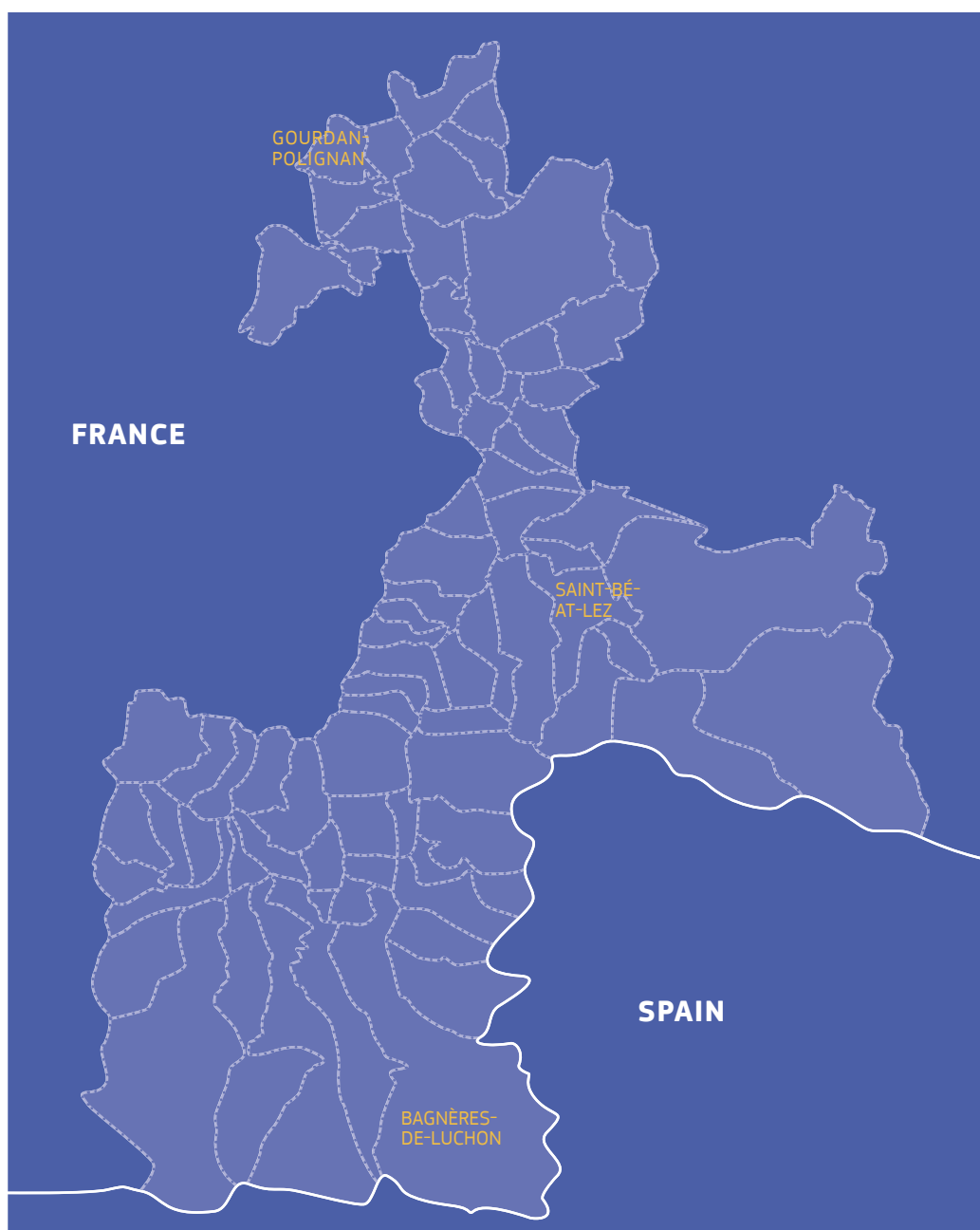
Financing cross-border pupils' education

ADVISED ENTITY

Community of Communes of the Haute Garonne's Pyrenees, FR

EXPERT(S)

Petia Tzvetanova and Thibault Devillard, Mission Opérationnelle Transfrontalière (MOT)





© AG Pyrene 31 Communauté de Communes Pyrénées Haut Garonnaises

THE CONTEXT

On the border between France and Spain, the Community of Communes of the Haute Garonne’s Pyrenees territory is located in the Haute-Garonne department of France, along the Garonne River and across from the Val d’Aran area of Catalonia in Spain. The linguistic and cultural ties between the two small territories are quite strong, given their geographical and historical proximity, as well as a shared language, which also highlights their interdependency and cross-border mobility. Schools and educational centres are to a great extent the foundation around which the local economy and daily life is centred, in which **access to schools is a crucial cross-border issue. The main problem is the lack of a framework agreement on funding for students from across the border**, as the current informal system of payments is not sustainable over time and not able to keep up with the growing rate of enrolment.

DESCRIPTION OF THE OBSTACLES

The obstacles in this case derive from the **absence of a framework agreement between the municipalities, exacerbated by the lack of funding in general at the local level**. In France, schools receive funding in accordance with the number of pupils they host, in which the local municipalities are responsible for primary school inscriptions. Even though some Spanish families have sent payments to the French commune where the school is located, these financial transfers are precarious, temporary and informal, which reflects the **need for a consolidated permanent solution**.

LEGAL PROVISIONS

Under **Article L212-8** of the **Education Code in France**, if a municipality does not have a public school, either because the school population is too small or when a school group has been formed with other neighbouring municipalities, the financial contribution is divided between the host municipality and the municipality of residence. However, there is currently no equivalent financial compensation mechanism between the French and Spanish municipalities, which highlights the need for a solution.

OUTLINE OF POSSIBLE SOLUTIONS

This case may be resolved through two solutions that foster **strengthened relationships and synergies between the school systems** and communities in this border area:

- a **cross-border institutional cooperation agreement** between the French and Spanish municipalities involved, regarding two different levels of education:
 - **primary schools**: children who live in another signatory municipality on the other side of the border may be enrolled in schools in the municipalities participating in the agreement. A reciprocal financial arrangement scheme would also be established between these municipalities, provided that Spanish authorities also authorise children from the French municipalities to enrol in Spanish primary schools;
 - **secondary schools**: an agreement should be established between the academic authorities (national education services on the French side, and authorities responsible for school enrolment on the Spanish side) for a reciprocal enrolment scheme.
- Given the cultural and linguistic proximity of the two sides of the border, **continue to promote cross-border school exchange projects and learning of regional and national languages**. Multilingualism and educational mobility are priorities of the EU, which entails funding for these types of educational arrangements. One such funding opportunity is the **Erasmus+ programme**⁶⁴, which includes support for **European cross-border school partnerships among its activities**, within the context of the European Union's Education and Training 2020⁶⁵ strategic framework.

WHAT'S NEXT

All the members of the Community who were consulted, as well as the municipalities and the stakeholders involved, were previously invited to a meeting for the study in order to collaborate, and the **cooperation agreement is expected to be signed**.

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⁶⁴ European Commission, *Erasmus +*, <https://erasmus-plus.ec.europa.eu/>

⁶⁵ European Commission, *Education and Training*, https://ec.europa.eu/education/policies/european-policy-cooperation/et2020-framework_en

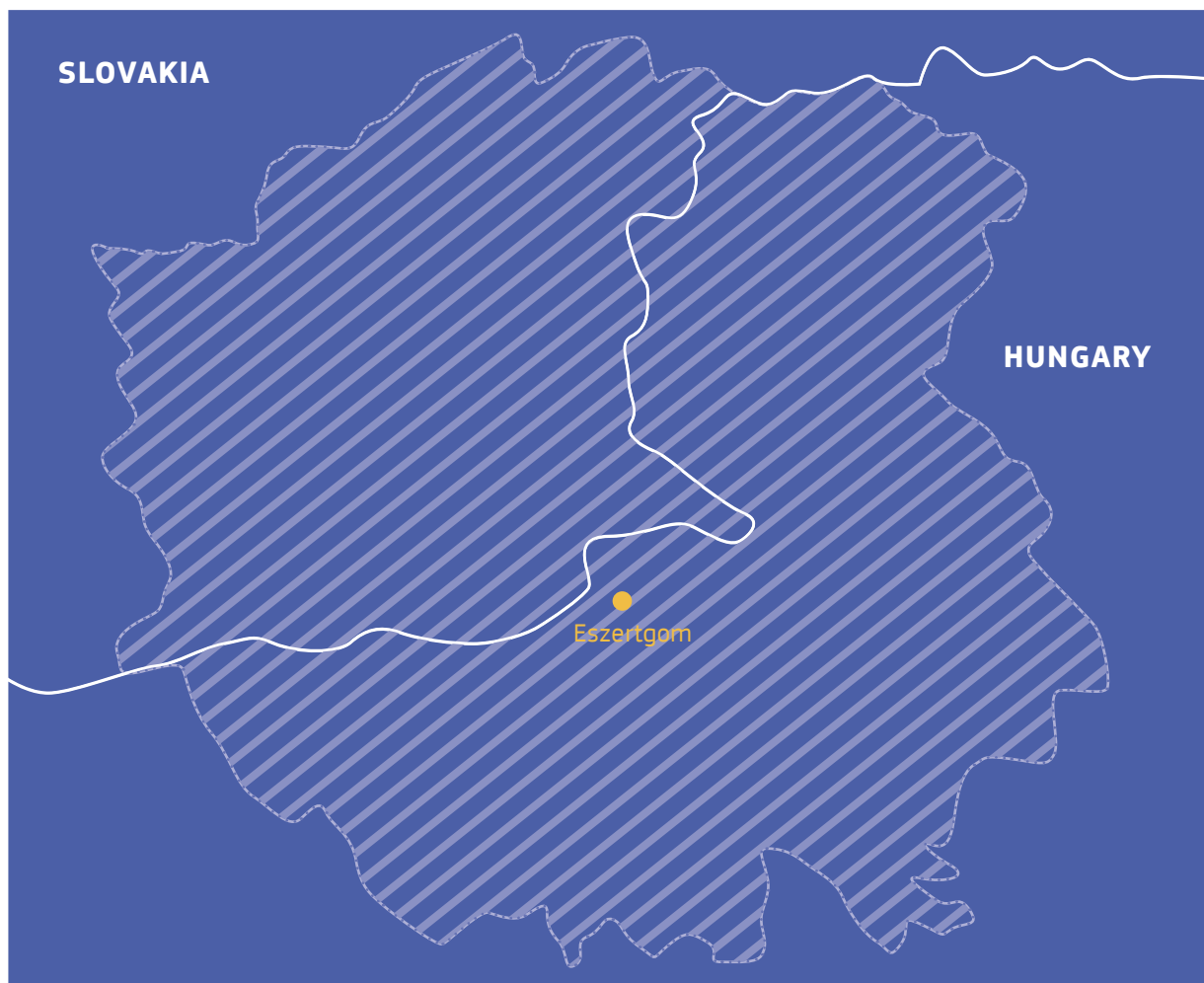
Cross-border staffing difficulties – ambiguous application of social and health insurance regulations

ADVISED ENTITY

European Grouping of Territorial Cooperation – EGTC Ister-Granum, HU-SK

EXPERT(S)

Norbert Jankai and Gyula Ocskay, Central European Service for Cross-Border Initiatives (CESCI)



THE CONTEXT

Citizens along the border of Hungary and Slovakia have enjoyed free movement between the two countries since 2004, in terms of crossing the border and mobility, as is the case in many other European countries and their respective border regions. However, those living in either Hungary or Slovakia and who commute to work in the neighbouring country often face **an array of administrative challenges**, primarily stemming from having to navigate the **two different social security systems** in each country. The lack of a clear procedure and guidelines that should be followed and applied equally in each country has posed a challenge to citizens' mobility and free movement between the Member States.

DESCRIPTION OF THE OBSTACLES

The main obstacle is that while the EU regulations on employment and social security responsibilities are quite straightforward, there is a **lack of knowledge and/or agreement between the countries on how to apply these in practice**, and even within each country.

Below are some of the **administrative hurdles**:

- the **lack of information** available regarding who is responsible for applying for the A1 certificate – the employer or the employee - as well as where and how to apply;
- a **significant time lapse** between the application and issuing of the A1 certificate, a form that states the country in which a worker is covered by social insurance, which may lead to possible fines for the employer because of the lengthy administrative procedure;
- **costly process**: assistance is required from accountants in both Member States for the different accounting procedures, taxation rules and social security systems. The process of revising and repaying social security contributions after receiving the A1 certificate is also costly;
- **wages affected**: employees may lose some of their wages depending on which social security system they must pay into, with no clear indication on how they will receive compensation, if any.

LEGAL PROVISIONS

According to the **Regulation of the European Parliament and of the Council (EC) 883/2004**⁶⁶, people who live in one country but work in another should be insured in only one Member State. However, they are not allowed to choose which country they will be insured in, since it is the authority in charge for social security in their country of residence who decides this. Employees in this situation must apply for the A1 certificate, indicating which country's social security laws apply to the employee, and which country's social insurance contributions should be paid by them and by their employer, and which must be submitted to the social security authority in their country of residence.

OUTLINE POSSIBLE SOLUTIONS

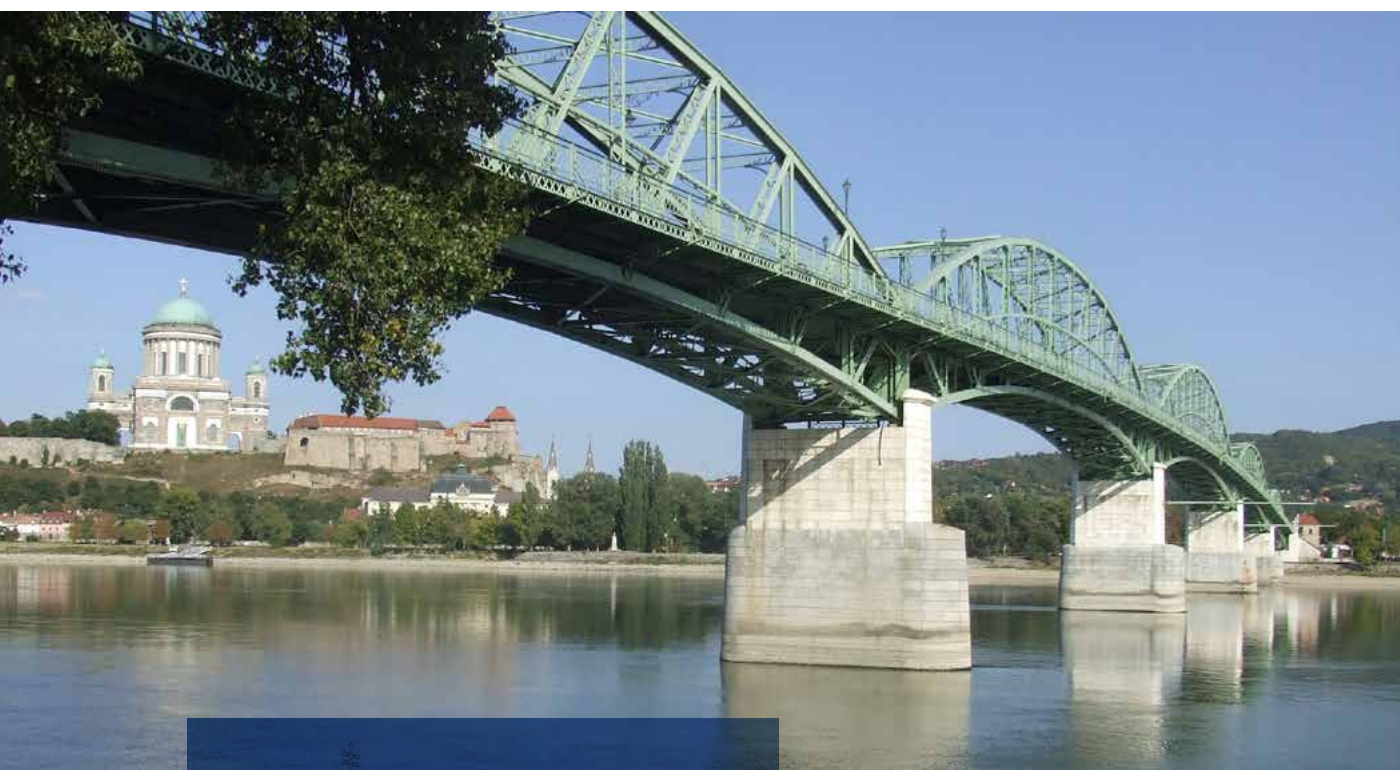
This issue was analysed through the lens of two case studies, involving two employees trying to navigate the administrative requirements of the social security systems. Both had similar employment and residence situations but encountered two different outcomes regarding the A1 certificate. This analysis helped demonstrate **the need for a coherent, agreed-upon solution**, with the following recommendations:

- in some cases, it is recommended to involve and inform the employer in the procedures;
- the new A1 certificate should be issued with a fast-tracked procedure to cut down on the time lag;
- the aforementioned Regulation (EC) 883/2004 could help provide a solution, allowing for actions such as **agreements between local authorities**, on the basis of **Article 72**. This may be a quicker solution to be able to respond efficiently to local issues;

- **agreements between the national authorities** directly involved, according to **Article 16** of Regulation (EC) 883/2004 and regarding the procedure for issuing the A1 certificate. For example, an agreement may be reached on deadlines for application or information sharing between entities. This may be a slower solution but provides a more organised and coherent structure;
- the establishment of national contact points would also play a mediator role to foster **continuous and effective communication** between the national authorities involved.

WHAT'S NEXT

The EGTC Ister-Granum intends to contact the responsible **national institutions** to share the findings of the experts' report and draw attention to the proposed solutions to move them forward. The EGTC will also **formulate an extract of the final report and a handbook guide** to share it with the stakeholders involved in the present case.



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TO LEARN MORE



66 Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, *Official Journal L 166*, 30.4.2004, p. 1–123

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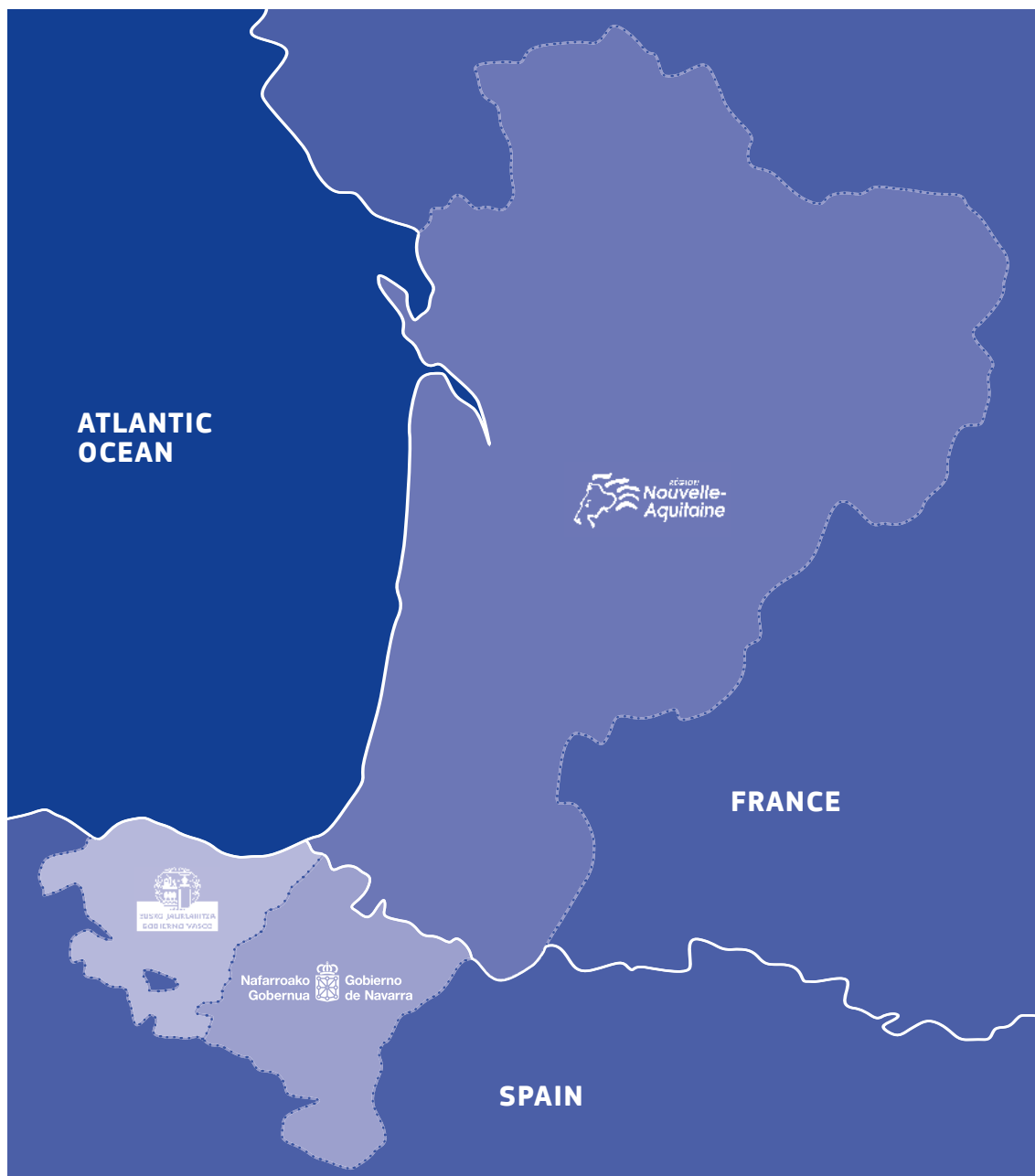
KOMPAR – Promoting employability in the health & social sector

ADVISED ENTITY

European Grouping of Territorial Cooperation – EGTC Euroregion Nouvelle-Aquitaine Euskadi Navarra, ES-FR

EXPERT(S)

Petia Tzvetanova, *Mission Opérationnelle Transfrontalière (MOT)*



THE CONTEXT

In this border region between Spain and France, professional mobility is an essential aspect of the area's economic development. However, there is a lack of alignment between Spanish and French regulations to recognise studies or professional competences, especially in the health and social services field. There is a real need for social services and integration professionals in the local labour market. The problem is that professional diplomas, qualifications and professional competences in these sectors that were obtained in one country are not recognised in the other, posing a challenge for students and workers seeking professional opportunities on the other side of the border, and thus ultimately hindering cross-border mobility.

DESCRIPTION OF THE OBSTACLE

Several administrative obstacles were identified:

- professional diplomas, qualifications and professional competences in the health and social services sectors obtained in one country are not recognised in the other;
- a **lack of standardised regulations** to facilitate the mutual recognition of diplomas;
- each professional must obtain formal and specific authorisation in each of the countries.

LEGAL PROVISIONS

On the one hand, the **national governments** - Ministries of Education and of Labour in Spain, and the Ministry of Social Affairs in France- are responsible for the official accreditation of diplomas. The main text that regulates these diplomas in France is the **Code of Social Action and Families of 1956**, while in Spain the diplomas are governed by **Royal Decree 1420/1991**, **Royal Decree 1394/2007** and **Royal Decree 1074/2012**.

On the other hand, the **local authorities** are responsible for accrediting skills and qualifications.

OUTLINE OF POSSIBLE SOLUTIONS

In terms of the validation of skills and qualifications, **the main objective is for the training centres to be authorised as cross-border actors** in the health and social services field, to **facilitate accreditation**.

- Role of the national authorities: the relevant national authorities can authorise or provide a framework of action for the training institutions to carry out the comparative accreditation work.
- Role of the local authorities: these entities are in charge of accrediting skills and qualifications.
- Role of the training centres: the centres should be given an official role in carrying out cross-border recognition of diplomas and/or competencies.

There are **three key pathways to a solution**:

- a **framework agreement** addressing the standardised accreditation and validation of studies, training or professional qualifications of the country of origin at the French-Spanish border. This would require the involvement of and coordination between both national and local authorities;
- **lobbying French and Spanish authorities** to extend their list of foreign diplomas; however, this would only be a temporary, partial solution for the specific diplomas;
- **developing joint local projects** that allow the training to be carried out in either country.

Finally, incorporating the automatic recognition of the neighbouring country's diplomas in the national legislation would be an additional solution to encourage educational and professional mobility in the fields mentioned above. In this sense, with the help of the **European Cross-border Mechanism (ECBM)**, the equivalent Spanish or French diploma or skills in the three areas could be recognised on a case-by-case basis.

WHAT'S NEXT

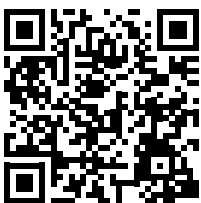
To date, there is no clear regulation by any of the administrations involved to facilitate the recognition or validation of studies or professions in these fields.

In this regard, the *b-solutions* case is seen as a pathway to the solution to continue working on actions that are already being carried out within the KOMPAR platform:

- **strengthening the KOMPAR network** of 11 vocational education and training centres, including mutual recognition of the training programmes, the exchange of good practices and development of joint activities on both sides of the border;
- **meetings with the relevant authorities** at the **local and national level** to continue working on bringing together professionals in the aforementioned fields in the cross-border region, with the objective of achieving a FR-ES framework agreement.



TO LEARN MORE



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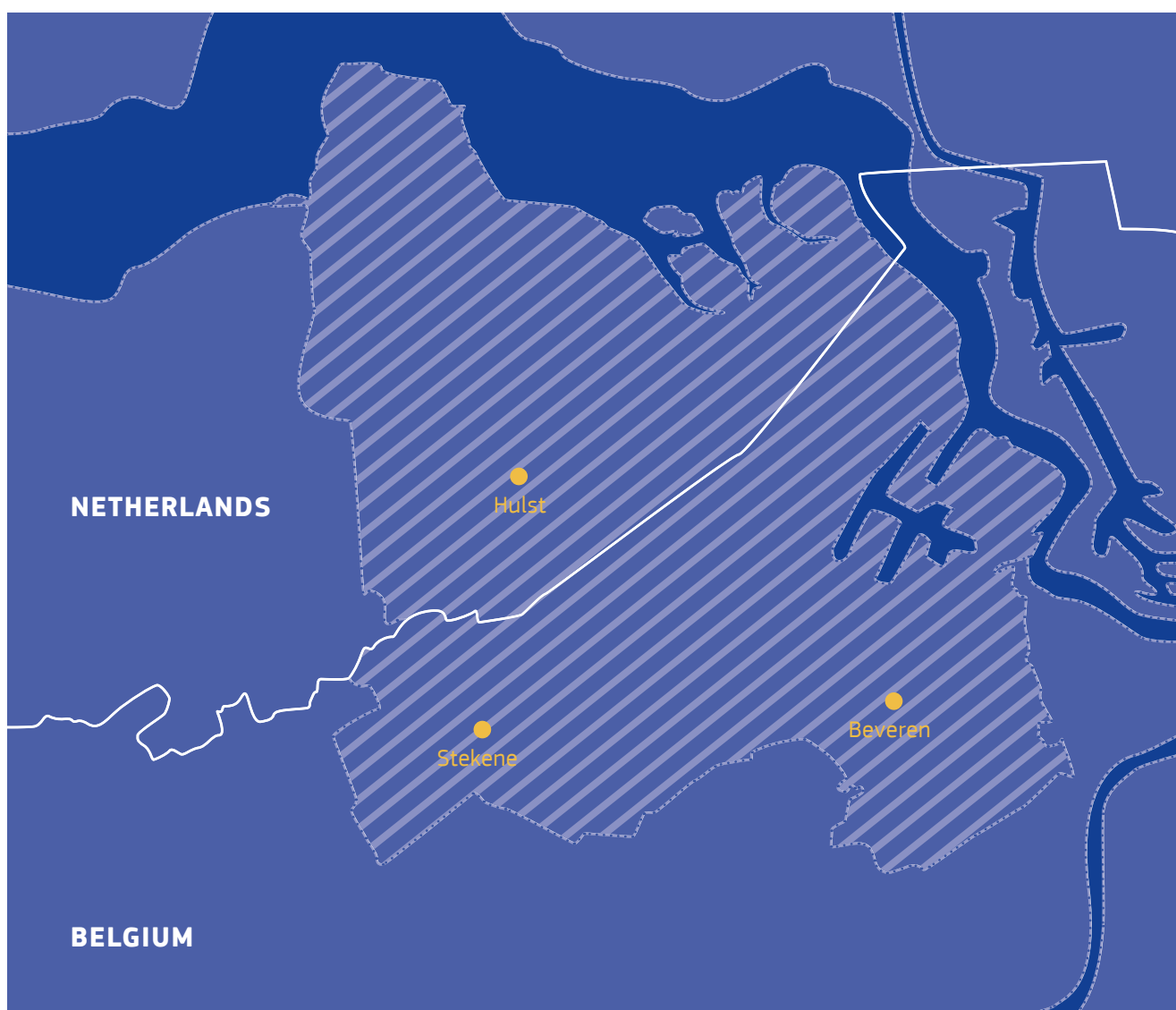
Making cross-border internships worthy

ADVISED ENTITY

European Grouping of Territorial Cooperation – EGTC Linieland van Waas en Hulst –
Euregio Scheldemond, NL-BE

EXPERT(S)

Anouk Bollen, Sander Kramer, Susanne Sivonen and Pim Mertens, Institute for Transnational and Euregional Cross-border Cooperation and Mobility (ITEM)





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THE CONTEXT

The EGTC Linieland van Waas en Hulst includes several municipalities across the Belgian-Dutch border. The border region where it is located has a low population density and is dealing with further population decline. In this sense, it is important to **give a boost to the labour market** in this area by maintaining and attracting skilled workers. Cross-border cooperation is essential in this case, and to this end, **enabling cross-border internships in the context of dual and vocational learning** was identified by the EGTC as **a key strategy to tackle employment and skilled labour issues**. However, students who cross the border to carry out internships often **face a significant regulatory hurdle** that may discourage them from participating in such training opportunities in another country, since it is not clear where they stand in terms of receiving social protection under EU law.

DESCRIPTION OF THE OBSTACLES

The root of the obstacle is that **cross-border student internships are handled differently** in the legal systems of each country, in which certain students are treated as employees, which may lead to a loss of some social security benefits and may negatively affect the students' remuneration.

There are two categories of students who receive "internship contracts":

- students of vocational training are considered students and therefore do not receive remuneration. Here, the legislation of their country of residence applies;
- students in dual learning, however, are considered employees and receive minimal remuneration, and are thus subject to the country of employment.

Despite the existence of a tax treaty between the two countries, there is **a lack of harmonisation** of tax regulations in cross-border situations. For students in cross-border internships, this depends on which designation rule is applicable in their case. However, the matter remains unclear.

LEGAL PROVISIONS

- **Regulation of the European Parliament and of the Council (EC) 883/2004**⁶⁷ and **Regulation of the European Parliament and of the Council (EC) 987/2009**⁶⁸ establish rules on the coordination of social security systems of the Member States. However, they are considered too ambiguous regarding student internships and does not provide clarity on the issue.
- The regulations mentioned above serve to lay the foundations for coordination rather than provide harmonisation, since it is up to the Member States to establish their respective conditions regarding social security benefits and employment.
- In particular, **Regulation (EC) 883/2004** is an obstacle that is preventing the smooth coordination of the internship system, by not taking into account the capacity of students and trainees who perform internships in a different Member State than their country of residence.

OUTLINE OF POSSIBLE SOLUTIONS

The solutions considered are as follows:

- an amendment to the **Regulation (EC) 883/2004** so that it addresses cross-border student internships and traineeships, by implementing rules comparable to those for posted workers;
- **a bilateral agreement** between the two countries, pursuant to **Article 16 of Regulation (EC) 883/2004**. This is **a broader solution that would have a greater impact** rather than on a case-by-case basis, in particular since it would then apply to the entire Dutch-Belgian border region;
- **improving the coordination of social policies** between the Netherlands and Belgium.

WHAT'S NEXT

The ITEM team is working on developing an **online guideline for cross-border internships**, in order to inform students, their parents and schools on common issues and obstacles, such as social security and taxes. In addition, the EGTC Linieland van Waas an Hulst plans to **promote the guideline and monitor how many people will make use of it**. Additionally, it will start a debate to overcome these issues and create an expert group to prepare the following steps towards the proposed solutions. The ECTG aims also to **discuss these obstacles at a higher level with Dutch and Belgian authorities**.

⁶⁷ Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (Text with relevance for the EEA and for Switzerland), *Official Journal L 166*, 30.4.2004, p. 1–123.

⁶⁸ Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (Text with relevance for the EEA and for Switzerland), *Official Journal L 284*, 30.10.2009, p. 1–42.

TO LEARN MORE



https://www.aebr.eu/wp-content/uploads/2021/11/Report_24.pdf

Elimination of barriers and 360° evaluation of the mobility of students from vulnerable groups in the higher education ecosystem of the Galicia-Norte de Portugal Euroregion

ADVISED ENTITY

Galicia-Norte de Portugal Euroregional Studies Center, ES-PT

EXPERT(S)

Maria Teresa González Ventín



THE CONTEXT

In the north of Portugal and the autonomous region of Galicia in Spain, the Galicia – Norte de Portugal Euroregional Studies Center is a non-profit entity comprised of various universities and local governments. The different actors involved share a **common objective of establishing synergies and complementarities** with one another, to build capacities in the universities of Galicia and the North of Portugal.

One of the main goals of this group of universities is to foster the participation of under-represented, disadvantaged or vulnerable groups within the university community through a joint project. **Academic mobility is essential in this region** in general, and even more so when it comes to promoting the inclusion of these groups.

DESCRIPTION OF THE OBSTACLES

Through an exercise to identify barriers, it became evident that there are very different **protocols** within each of the universities in this area. In addition, there is a **lack of coordination** between the diversity and mobility departments within the same university or among the different universities, which in turn is **hindering the cross-border mobility of vulnerable groups**.

The primary obstacle stems from **the lack of a standardised protocol** in terms of:

- differences in the characterisation of disability or functional diversity;
- managing the integration of vulnerable and differently-abled groups within the university community and academic mobility projects.

OUTLINE OF POSSIBLE SOLUTIONS

In order to overcome the obstacles involved it is recommended to proceed with the **formulation and implementation of a cross-border university “mobility protocol”** to be carried out by those spearheading any diversity or mobility projects in the different universities. This newly proposed protocol will include several components:

- the draft of a **coordination agreement**, in order to liaise between the different university departments and mobility programmes;
- **the creation of a (virtual) coordination office** to serve as a “one-stop-shop” and **facilitate cross-border university mobility**;
- in the future, all universities interested in joining and participating in this mobility project will be required sign the protocol.

To implement such a protocol, it will first be necessary to **identify the specific disabilities or disadvantaged groups** to be included, **indicate the type of support** and measures to be implemented, and **establish the rules**, procedures, rights and obligations in each case.

WHAT'S NEXT

The Galicia-Norte de Portugal Euroregional Studies Center will promote the **creation of a working group formed by** representatives of the institutions involved in this project in the area of inclusion, in order to **create a permanent framework of communication and coordination** for such mobility projects. As a result of these joint efforts, the next step is to create a **standard protocol** that is applicable to such situations, with the aim of ensuring better coverage of the particular needs of these individuals and groups when they study or work in a different institution or across the border.

Following the signing of the protocol, **a permanent structure** will be established (such as an online office) to process applications and **enable coordination** between the home and host universities.



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TO LEARN MORE



https://www.aebr.eu/wp-content/uploads/2021/11/Report_25.pdf

The problem of the children's sickness certificate for frontier workers working in Germany and residing in the Netherlands

ADVISED ENTITY

Euregio Rhein-Maas-Nord, NL-DE

EXPERT(S)

Sonja Adamsky



THE CONTEXT

The German social security system provides employees with a continued payment of wages if they are unable to work due to illness, which also applies to family members of the employees who become ill. These wage replacement benefits, which include the salary paid by the employer and benefits from the health insurance fund, also apply to parents while they care for their sick children. In border regions, however, children's sick pay is hardly ever made use of, particularly for those living in the Netherlands but working in Germany. In this case, several administrative and information-related barriers were observed that prevent cross-border workers from applying for such benefits.

DESCRIPTION OF THE OBSTACLES

There were three main barriers identified:

- an **administrative obstacle** with regard to the medical note that parents must obtain for their children. In the Netherlands, a medical note from the doctor that confirms the child's illness is not required for receiving children's sick pay, therefore doctors in the Netherlands generally do not issue one. **This makes proof of the illness difficult to demonstrate and further complicates the issue for Dutch residents who work in Germany;**
- **lack of knowledge or awareness of this benefit:** because of the difficulty faced in obtaining the children's sick note, along with the administrative hurdles involved, many workers are unaware that they are even entitled to such benefits;
- **difficulty in providing proof of illness:** parents must be able to prove to both their employers and the health care institution in charge of granting the benefits that their child is indeed "ill enough" for them to have to request time off from work.

LEGAL PROVISIONS

- At the European level, according to **Article 21 of Regulation of the European Parliament and of the Council (EC) 883/2004⁶⁹**, an employee living in the Netherlands but working in Germany is eligible to apply for time off for this purpose.
- In Germany, there are different legal stipulations for unpaid or paid time off from work for employees caring for sick children. These **legal provisions also apply to cross-border workers**, but only if they meet the criteria. They must either be enrolled in the statutory insurance policy, or their employment scheme must include such benefits.
 - **For unpaid time off:** if performing their work would be impossible for personal reasons, e.g., because they must care for a sick child, a medical note confirming the child's illness is necessary, according to **section 275(3) of the German Civil Code (BGB)**.
 - **For paid time off:** this is applied to work absences for a limited amount of time, according to **sections 616, 275(3) of the German Civil Code**.
 - According to **German Social Insurance Law (SGB)**, employees also have a right to absence under labour law, which also applies to cross-border commuters.

OUTLINE OF POSSIBLE SOLUTIONS

The following solutions are recommended:

- a **bilateral agreement between the competent social security bodies:** A comparable agreement already exists for the process of issuing incapacity certificates (on the basis of **Article 27 of Regulation of the European Parliament and of the Council (EC) 987/2009⁷⁰**, but children's sick pay does not fall within this scope. Therefore, **mutual assistance and cooperation is recommended** between the relevant entities in each country to address this topic;
- **granting Dutch pediatricians the authority to issue children's medical notes**, provided that they are not the child's primary care doctor, in order to avoid a conflict of interest. In this case, writing a sick note would be the responsibility of the public health physicians of the respective municipality, since they are authorised as independent examining physicians.



This way, a **cross-border worker from the Netherlands would be able to obtain the medical certificate required** to submit to their employer and insurer.

WHAT'S NEXT

The Euregio Rhein-Maas-Nord will continue to **raise awareness** on this topic through its communication channels, in order to inform employees and claimants about related issues. The Euregio also plans to raise awareness of the issue with the liaison bodies. Once feedback is provided, an evaluation will be made whether to raise the issue with the member municipalities. Based on the evaluation, the Euregio Rhein-Maas-Nord may **initiate dialogue with the other Euregions in order to pursue a joint solution.**



TO LEARN MORE



69 Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, *Official Journal L 166*, 30.4.2004, p. 1–123

70 Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009, laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems, *Official Journal L 284*, 30.10.2009, p. 1–42.

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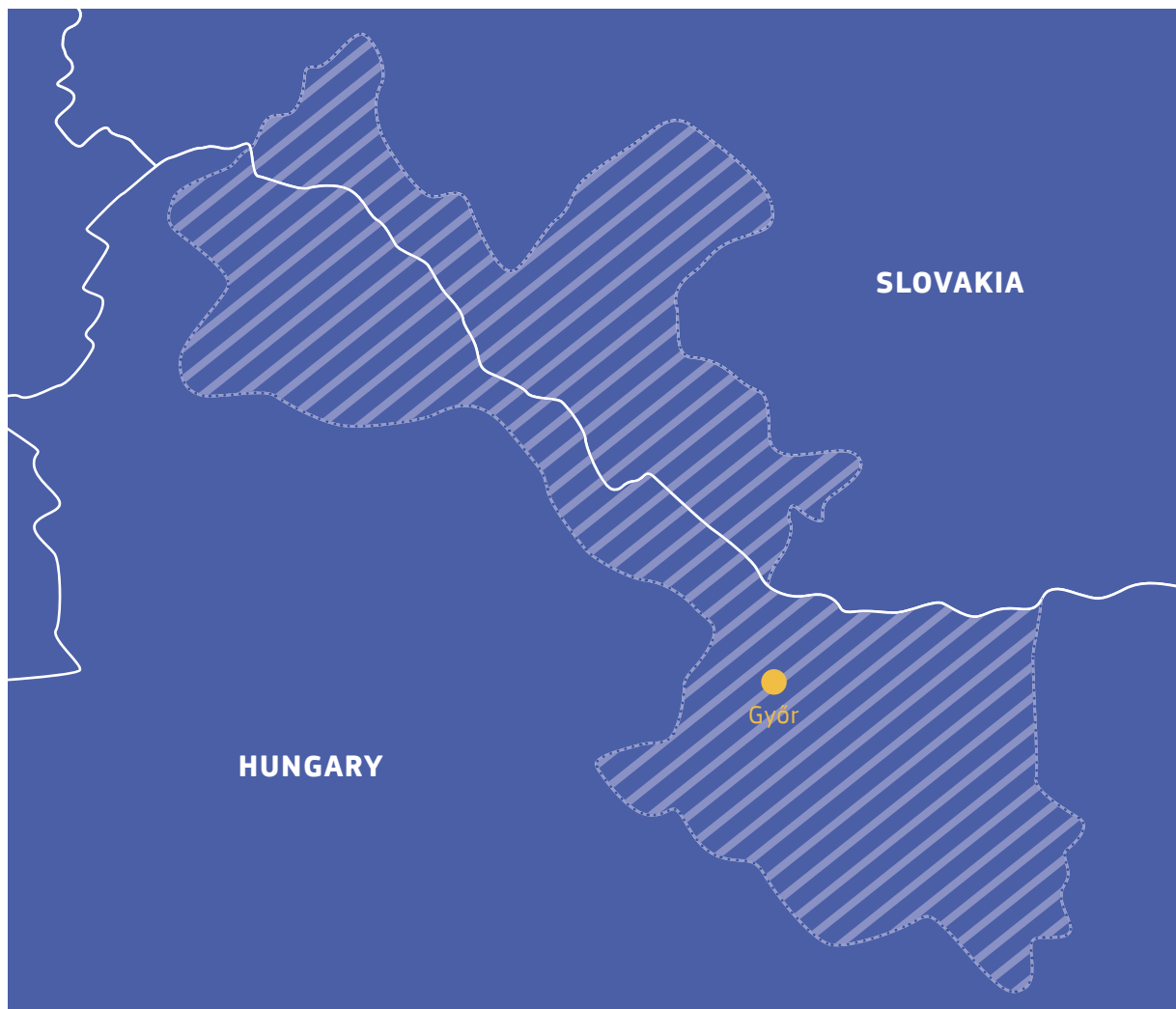
Coorcurity: facilitating the coordination of social security systems for cross-border workers and pensioners

ADVISED ENTITY

European Grouping of Territorial Cooperation – EGTC Arrabona Ltd, HU-SK

EXPERT(S)

Norbert Jankai and Gyula Ocskay, Central European Service for Cross-Border Initiatives (CESCI)



THE CONTEXT

Regulation of the European Parliament and of the Council (EC) No 883/2004⁷¹ establishes the essential provisions that govern the coordination of social security systems and freedom of movement when citizens relocate from one EU country to another. In this sense, cooperation between the different countries in terms of their national social security systems is in the general interest of the European Union and its citizens.

Along the Hungarian-Slovak frontier, nearly 20,000 people cross the border every day for work, and more than 2,000 people living in Slovakia are entitled to a pension in Hungary, with this number increasing every year. In this particular case, the process of transferring a worker's social security or pension from one country to another can be lengthy and often difficult.

There are differences in the eligibility conditions for benefits at the national level in each country, as well as general issues with coordination.

DESCRIPTION OF THE OBSTACLES

The obstacle essentially stems from issues that arise when applying the **EU social security law** in practice. EU citizens often relocate from one country to another or work in a different country than the one they reside in within the EU. In this regard, in theory, a worker in this situation is subject to the legislation of the Member State in which they carry out any economic activities. In practice, however, this is not always easy to do and requires smooth coordination by both countries involved.

A **lack of cooperation between national authorities** may arise when it comes to transferring the social security scheme or calculating the benefits, as each country uses different calculations. Nevertheless, **their cooperation is required**, as per the aforementioned Regulation.

In this sense, it is important to note that the insurance institutions of both Hungary and Slovakia have confirmed that they are making an effort to cooperate on this matter, and to this end, have even organised several yearly international pension consulting days.

OUTLINE OF POSSIBLE SOLUTIONS

Since the obstacle is due to a lack of practical cooperation between the competent authorities, the proposed solution is recommended on the basis of a **3-step process**:

- first, **analysing the current legal background** on social security transfers;
- then, **verifying their compliance with the EU rules** and the institutional and procedural background; and
- **identifying European best practices to potentially replicate** in this border region.

In the European Union, **three best practices were analysed** that could **serve as a model to follow**. These cross-border coordinating institutions in other Member States are operating in the field of social security and are leading the way on this issue:

- the **Center for European and International Social Security Liaisons (CLEISS)**: with strong national support, it acts as a coordinating body between French and foreign social security institutions to facilitate international mobility in cross-border issues of social security;
- the **Free Movement of Workers and Social Security Coordination (MoveS)**: a European project-based consortium of legal experts that coordinates the free movement and social security of employees, offering legal expertise and fostering knowledge sharing;
- the **European Alliance in Social Insurance and European Social Insurance Platform (ESIP)**: a strategic platform that includes more than 50 national social security organisations. It addresses a broad range of social security-related topics, operating as a platform, strategic network and forum.

Based on this analysis of best practices, a combination of these may be applied to the Hungarian-Slovakian context. The main recommendation is to **improve institutional cooperation, especially in cross-border cases**, in order to facilitate the transfer of social security and pensions from one Member State to another.

WHAT'S NEXT

The EGTC Arrabona will **inform the parties involved in the cross-border area of the current regulations and procedures** on pensions that were clarified by the analysis in the experts' report, with the aim of eliminating the disadvantages that might arise from the differences in the Member States' systems.



TO LEARN MORE



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71 Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, *Official Journal L 166*, 30.4.2004, p. 1–123.

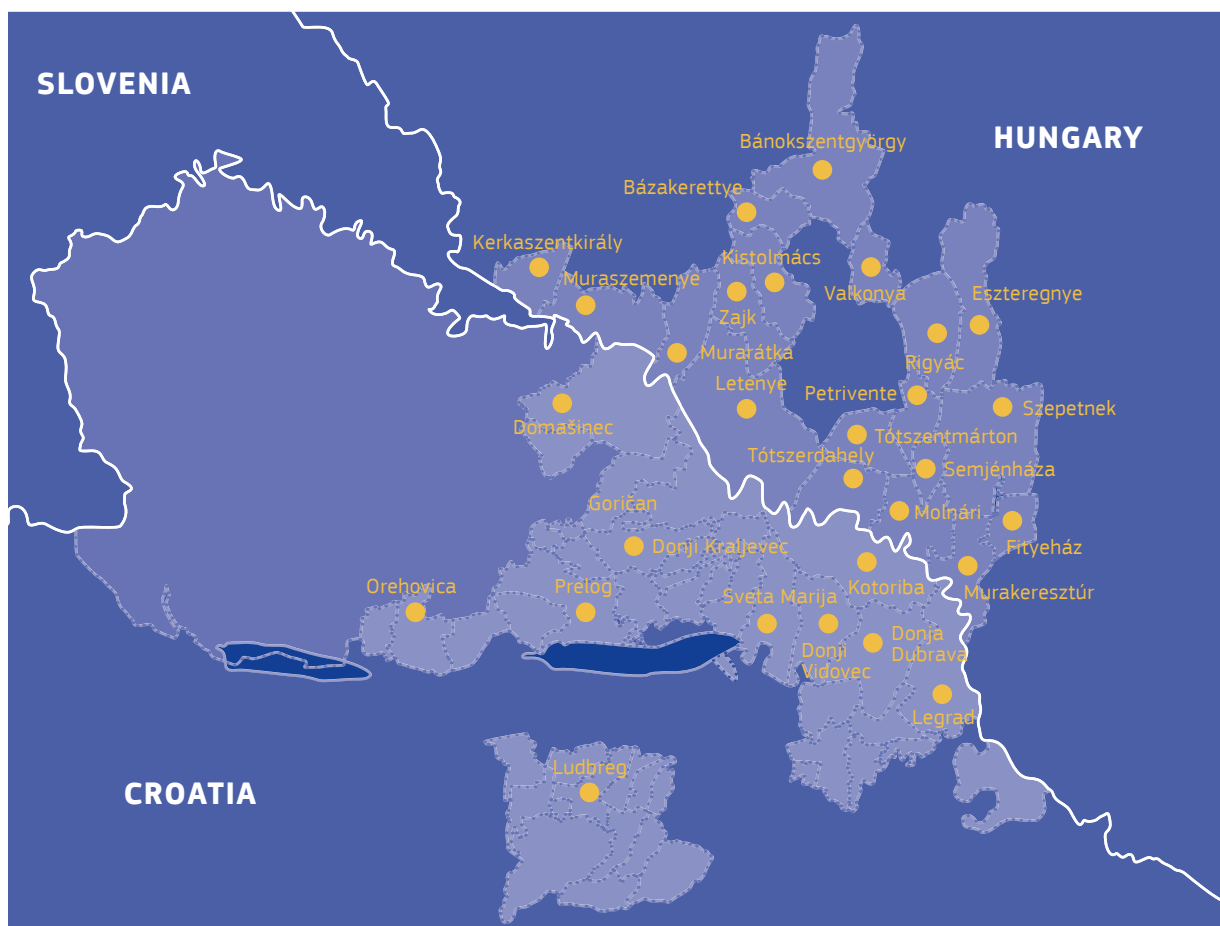
Tour guide practice and their activity on both sides of the Hungarian and Croatian border

ADVISED ENTITY

European Grouping of Territorial Cooperation – EGTC Mura Region, HU-HR

EXPERT(S)

Norbert Jankai and Gyula Ocskay, Central European Service for Cross-Border Initiatives (CESCI)



THE CONTEXT

The area along the Hungarian-Croatian border has a rich natural environment, where the **rivers are one of the region's most valuable resources**. In particular, the opportunities that kayak and canoe tours on the river provide in terms of ecotourism can be a **driving force for local sustainable economic development** on both sides of the border.

However, **the authorisation process for river tourism activities on the Mura River is complex**, due to its transboundary nature and the external Schengen border situation of the river. Additionally, the **lack of harmonised regulations** on river tourism between the two countries has made it difficult for tour operators. There is also a **lack of information and awareness of the different rules**.



© MURA REGION EGTC



DESCRIPTION OF THE OBSTACLE

The issue primarily stems from the **lack of a coordinated administrative and legal framework**.

- While these types of tourism activities are regulated in both Hungary and Croatia at the national level, the **regulations are neither harmonised nor coordinated**. The **national laws differ regarding the training system and authorisation procedures** for cross-border water tourism tour guides.
 - The training varies greatly, since there are different theoretical and practical training levels for tour guides in each country. The training procedures are similar, yet the duration of each course varies drastically; 300-400 hours in Hungary, compared to just 18 hours in Croatia.
 - Training certificates from one country are not automatically recognised in the other country.
- Another obstacle detected is **the need for greater awareness and information sharing regarding the different regulations**. It is unclear which national regulations would apply, for example, in the event of an accident on the river at the border, or which administrative and legal rules the guides should follow.
- **The procedure is highly bureaucratic**, involving several different authorities and permits. Adding to the complex administrative process is the **lack of coordination** between the national authorities.

LEGAL PROVISIONS

At the European level, **Directive of the European Parliament and of the Council (EC) 36/2005⁷²** establishes the European Qualifications Framework, which aims to harmonise the national qualification frameworks in different countries and to make them mutually recognisable. Both countries are members of the Framework, but the recognition of professional qualifications does not include the water tourism sector.

OUTLINE OF POSSIBLE SOLUTIONS⁷³

A number of recommendations were made, including some **practical solutions to develop a high-quality water tourism industry** in the border region. It is worth noting that there are already several initiatives under way.

- **Mutual recognition of certificates**, which could involve a list of professional trainings in the respective national legislation, so that certificates are automatically accepted as valid.
- Some of the practical solutions suggested are the following, to be **implemented through joint cooperation** among local authorities, professional organisations, local businesses and others:
 - implementing joint training courses;
 - fostering greater cooperation between the national authorities through regular meetings, workshops, etc.;
 - establishing a one-stop-shop solution for water hiking permits, law enforcement, nature conservation, water management, etc.;
 - issuing permanent rather than seasonal permits; and
 - improving the river tourism infrastructure and supporting local businesses.

WHAT'S NEXT

The conditions in the case of the Croatian and Hungarian training programmes and permits will continue to be rectified. The EGTC Mura Region is **organising and coordinating the required changes, in collaboration with the local authorities.**



TO LEARN MORE



72 Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, *Official Journal L 255*, 30.9.2005, p. 22–142.

73 It is important to note that the editors of the present publication believe that the **European Cross-border Mechanism (ECBM)** would also constitute a valid alternative solution to this obstacle. Thanks to this tool, indeed, the training prerequisites for the water tourism tour guide permit in Croatia could be incorporated into the national law of Hungary or vice versa, allowing for their mutual recognition.

Analysis of legislative borders in employment, especially in the agricultural field

ADVISED ENTITY

European Grouping of Territorial Cooperation – EGTC Gate to Europe, HU-RO

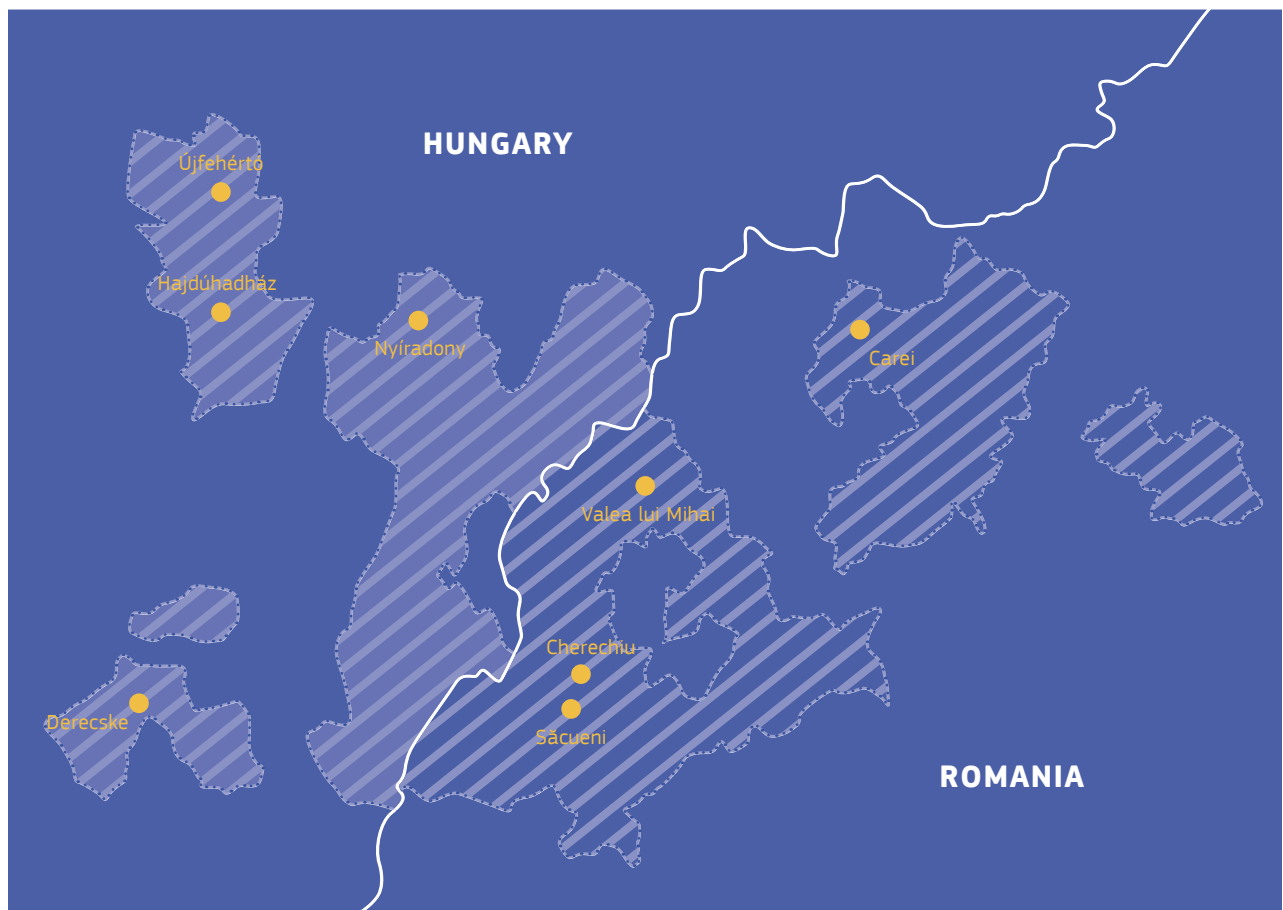
EXPERT(S)

Norbert Jankai and Gyula Ocskay, Central European Service for Cross-Border Initiatives (CESCI)



GATE TO EUROPE EGTC

Gate to Europe European Grouping of Territorial
Cooperation with Limited Liability



THE CONTEXT

The territory of the Gate to Europe EGTC is comprised of a total of 35 local authorities along the Romanian-Hungarian border, formed by small cities and villages, in which the local economy is highly dependent on the agriculture sector. The small-scale farmers and producers in this border area, who are primarily self-employed and work in agriculture full-time, face several difficulties when attempting to sell their goods (mainly fruit and vegetables) across the border. In general, this is due to various factors, such as a **lack of knowledge on the procedures to follow, language barriers, low production capacity, difficulty in accessing credit, and not being officially registered in the system**, among other issues. Here, the goal is to promote fairer access to local products without geographical constraints.

DESCRIPTION OF THE OBSTACLES

There were several administrative barriers identified:

- **obstacles in crossing the border to sell their goods:** there are different legal and administrative documents for each country, different permits are required, among others.
- **different national regulations** regarding the trade of local agricultural products and permits, with a territorial limitation of sales. Distinct regulations have been applied during COVID-19, since only producers in possession of a working permit are allowed to cross the border, making it difficult for those with self-employed status (especially informal) to produce such documents;
- **language barriers**, especially for Hungarian citizens. However, the Romanians in this territory also speak Hungarian as their mother tongue, allowing them to overcome this barrier;

LEGAL PROVISIONS

Currently, there are no standard European rules for the direct sale of small-scale foodstuff across the border, and at the national level, the specific requirements of each country sharply contrast. **This issue stems from the lack of harmonised procedures between the Member States that share a border.** Therefore, applying complex systems of legislation, which are essentially meant for larger producers, would be an administrative and financial burden for small-scale farmers with only minor cross-border sales.

OUTLINE OF POSSIBLE SOLUTIONS

The following solutions are part of a threefold strategy:

- **providing a comprehensive legislative and administrative analysis** on how to commercialise local produce across the border, based on the preparation of a Cross Border Index, using a complex questionnaire and data on selling agricultural products in the border area, and addressing areas such as taxes, legal requirements, etc.;
- **informational leaflets will be formulated** in both the Hungarian and Romanian languages, aimed at the farmers and producers to support them in selling across the border;
- **thematic workshops** and open markets with local products, with the opportunity for Romanian and Hungarian farmers to exchange ideas and knowledge on the barriers they face.

The initiative has a **high potential for replicability for other farmers and producers**, as a **good practice** that offers information on overcoming some of the main obstacles, as well as providing case studies obtained through interviews and real-life accounts of the situation. It also aims to **draw the attention of local and national policymakers to the issue.**

Another solution, among other recommendations, would be **simplified administrative procedures:** simplification and coordination regarding requirements for personal and electronic procedures between the border countries. This could also involve **setting up an information point or**

“one-stop-shop” at different border locations to assist producers in navigating the formalities and requirements.

In this case, the **European Cross-Border Mechanism (ECBM)** would be applicable in certain aspects of cross-border trade of local products. For example, it could facilitate the derogation of Romanian legislation to adopt the 40-kilometer rule of Hungary, that would allow local producers to be recognised as “local producers”, regardless of the national territory where their farmlands are located.

WHAT'S NEXT

A synthesis report of the study will be carried out in both the Romanian and Hungarian languages, and the EGTC Gate to Europe will share it with all its members (35 local authorities in total). The **local authorities will then be asked to disseminate the content of the proposed leaflets**. At the same time, further analysis of this topic is foreseen within the framework of an **institutional cross-border cooperation project**.

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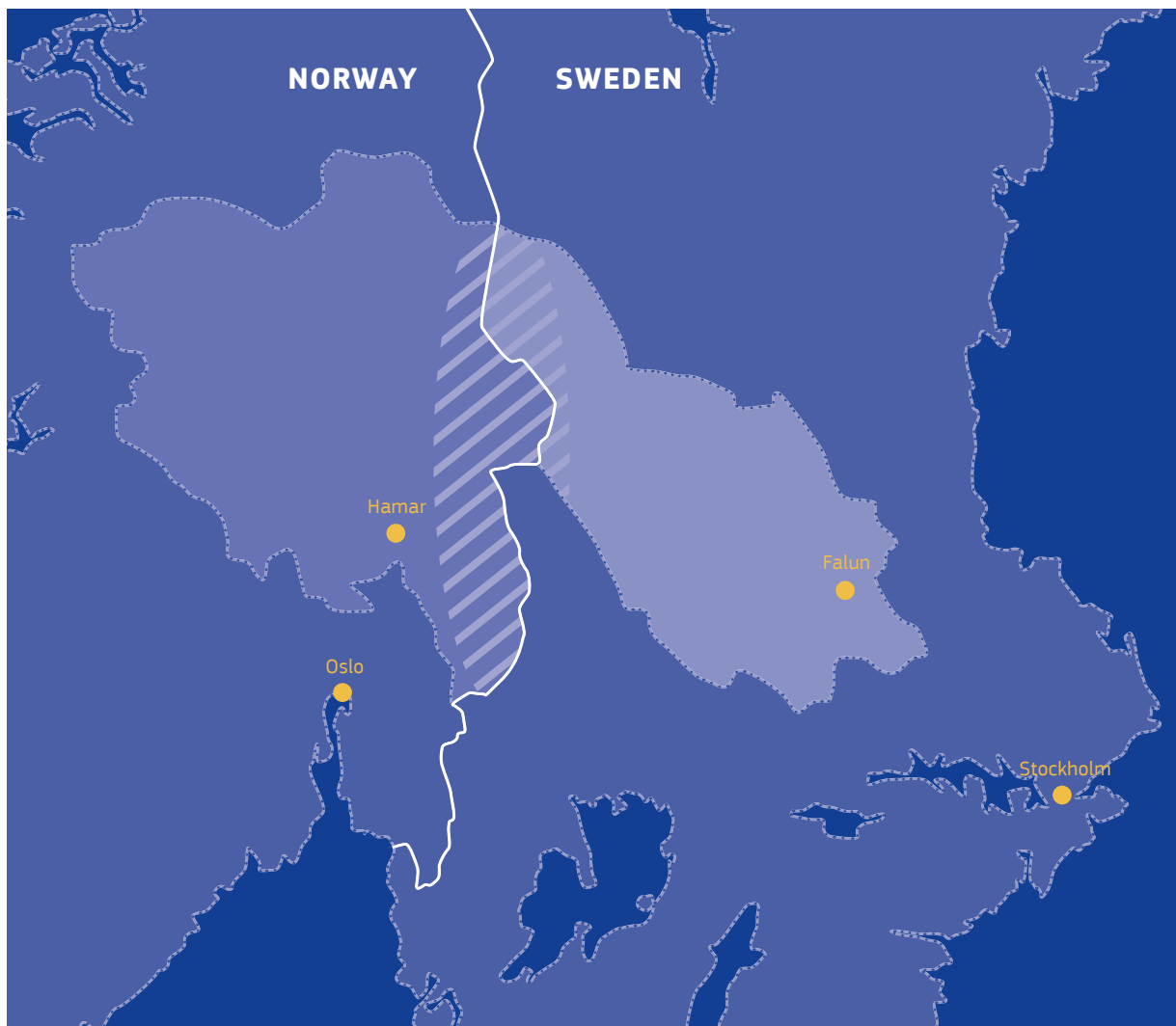
Cross-border vocational quality education

ADVISED ENTITY

County Administrative Board of Dalarna, SE

EXPERT(S)

Kjell Nilsson



THE CONTEXT

The Cross-border Committee Innlandet-Dalarna (CCID) is a cooperation body for regional and municipal authorities in the two border regions: Innlandet in Norway and Dalarna in Sweden. Both Innlandet and Dalarna are sparsely populated areas but are facing significant demographic changes. This demographic shift is unevenly distributed, however, since there is steady population growth in the urban areas, while the population in rural areas is declining.

There is a very real **risk of labour shortages in the key sectors due to a shrinking working-age population**, which would be a major setback to regional development in the area. In addition, there are a **lack of qualified and skilled workers in the key sectors**, such as healthcare and ski tourism.

According to both companies and municipal authorities in the border region, looking ahead, there is a need for specialised vocational training. **Offering education and skills training programmes to workers and students on both sides of the border would help the region's economic development.**

DESCRIPTION OF THE OBSTACLES

While demographic changes and a skilled labour force shortage are the main underlying issues, **the obstacle is primarily due to the different structures of the high school and vocational education systems** in Norway and Sweden, that leads to a lack of coordination.

While Sweden has a cohesive education system with incorporated internships, Norway has an alternating education between schooling with internships and an apprenticeship. **Harmonisation between the different systems would therefore be challenging.**

LEGAL PROVISIONS

The main obstacle is not of legal nature but originates in the difficult coordination between the two educational systems. However, there are several **legal provisions in place** that are worth mentioning as they **support the subsequent proposals for solutions**:

- both the **Education Acts of Norway** (*LOV-1998-07-17-61*) and **Sweden** (*SFS 2020:800*) already allow for the exchange of students;
- the **Nordic Agreement on the exchange of students** (*Utrikesdepartementet 2008*) has the aim of fostering **an educational community at upper secondary level** in the Nordic Region, including vocational education;
- the **Freedom of Movement Council**, of the **Nordic Council of Ministers**, has been given an increased mandate by the participating governments to tackle educational issues from a cross-border perspective;
- in addition, with a view to greater regional integration, the **Nordic the Nordic Council of Ministers' 2021–2024 Action Plan** is in place, which includes efforts to ensure that the Nordic countries' educational and professional qualifications are valid throughout the region.



OUTLINE OF POSSIBLE SOLUTIONS

Several solutions are proposed taking into account the **lessons learned from practical and positive experiences already in place** to demonstrate that vocational student exchanges are possible under the current circumstances. Indeed, it is worth noting that several practical solutions have already been found; for example, if Norwegian students carries out their apprenticeships with a Swedish employer, enrolling at a Norwegian school helps resolve the issue of the required certificates.

Next, the following **three work packages were proposed** to foster access to cross-border vocational training and education in the different sectors (ski tourism, hospitality, health care and elder care):

- 1 The development of a **new upper secondary education for snow technicians**:
 - **5 task forces should be set up to establish a 5-step action plan** to develop the new education, facilitated by the Cross-border Committee Innlandet-Dalarna. The steps are as follows: establishing a stakeholder group including choosing a school; the application for development of a new education programme; a needs assessment; development of a new curriculum including digitalisation; and a marketing plan including practical guidance on border obstacles. Applying to an Interreg or Erasmus programme is another option to seek additional funds;
- 2 **Retraining workers and promoting adult education**, in response to the need for skilled workers at northern Europe's largest ski resort. Seasonal employees and local youth could benefit from this;
- 3 **Recruiting youth for education programmes** within the healthcare and care sectors, to meet the need for skilled labour in these and other key sectors. **Encouraging cross-border mobility for students between the two countries is therefore a viable option.** It is also recommended that a **task force** be set up to with a **common strategy to boost interest in these professions and make them more attractive to young people.** To this end, the relevant actors who should be involved include representatives from the schools, national and local authorities, as well as relevant companies and trade unions in the region.

WHAT'S NEXT

The Cross-Border Committee Inlandet-Dalarna will include an initiative to start a **new educational programme for snow technicians and adult education**, as proposed in the roadmap in its action plan for 2022.

The Committee will also meet with stakeholders at the regional level and headmasters of vocational schools to discuss how to make existing vocational programmes more attractive to students on the other side of the border, within the sectors most in need of skilled workers.

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Cross-border mobility of jobseekers engaged in vocational training: centre and company accessibility

ADVISED ENTITY

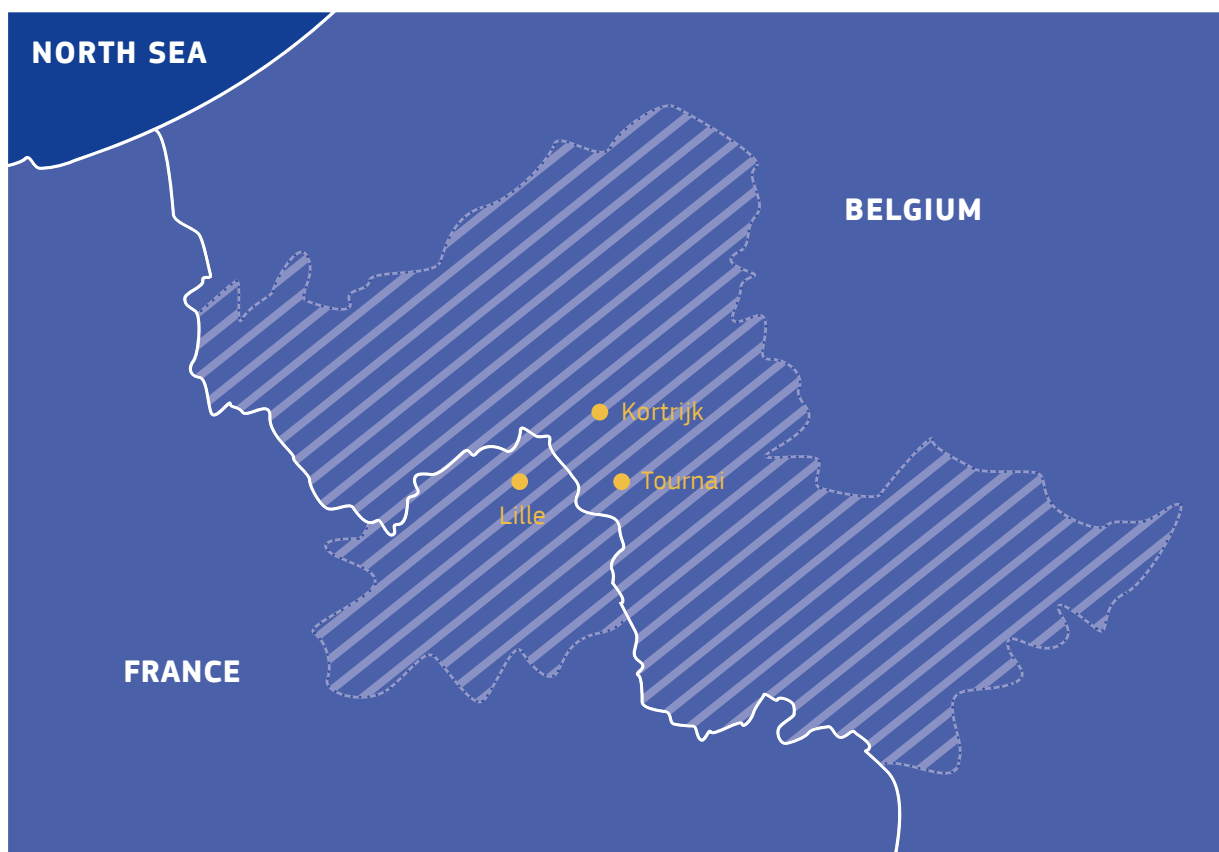
European Grouping of Territorial Cooperation - EGTC Eurometropolis Lille-Kortrijk-Tournai, FR-BE

EXPERT(S)

Petia Tzvetanova, *Mission Operationelle Transfrontalière* (MOT)

Arno Knoops, Aranco Consultancy & Interim Management BV

EUROMÉTROPOLE
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THE CONTEXT

In the border region in Wallonia, France and Flanders, Belgium, jobseekers must register with their public employment service in the respective countries. However, they cannot keep their unemployment benefits and social security coverage when they receive training across the border. In this regard, **there is no legal status for jobseekers enrolled in a training programme in the neighbouring country**. No long-term solution has been proposed, even though the obstacle was first detected by the Franco-Belgian parliamentary working group in 2007. To this end, several legal and operational solutions have been presented.

DESCRIPTION OF THE OBSTACLES

The legal obstacle is caused by certain provisions in the Belgian and French law, **preventing jobseekers from keeping their unemployment benefits and social security coverage while receiving training in a neighbouring country**. In this regard, registered jobseekers engaged in vocational training across the border do not have a designated legal status.

- **Administrative and operational difficulties** were also identified in terms of training. There are different costs and reimbursement modalities, and training contracts are not recognised in the other country.
- **Tax-related issues** were also detected, since the tax systems vary from country to country.

LEGAL PROVISIONS

The legal obstacle arises from a multitude of provisions on the French side of the border, while, in Belgium it is especially connected to the rules specified in the **Royal Decree on unemployment regulation of 5 November 1991**. Of particular relevance are the following Articles of “Chapter III Awarding conditions”:

- **n.56. § 1**: in order to receive benefits, an unemployed person must be available for the labor market;
- **n.58. § 1**: in order to receive benefits, an unemployed person must actively seek work and must remain registered as a jobseeker;
- **n.66**: in order to receive benefits, an unemployed person must have their principal residence registered in Belgium and must actually reside there.

It is worth noting, however, that there are exceptions defined that vary depending on where the jobseeker resides, the nature of the internship or training and the personal situation of the jobseeker.

OUTLINE OF POSSIBLE SOLUTIONS

- 1 **Formulation of a robust cross-border cooperation agreement** in order to:
 - **create a specific status for “jobseekers engaged in training”**;
 - **provide access to financial aid** on both sides of the border. For example, a French jobseeker could maintain their benefits while receiving training in Belgium, and vice versa;
 - **maintain social security coverage** for jobseekers receiving training in both countries;
 - **create a cross-border vocational training system** especially for jobseekers, with common training costs, contracts and the recognition of their legal status in the other country;
 - in dealing with taxes, **respect the principles of equal treatment and reciprocity** in the border region, which will require the involvement of the competent tax authorities.
- 2 **Establishing a cross-border virtual expertise centre** that:
 - acts as a **key information point** or back office to respond to questions and concerns from the entities involved;
 - **involves experts in the field**, forming a community of professionals;
 - acts as a facilitator to **coordinate supply and demand regarding internships and training**;

- carries out five key tasks: **coordination of the framework agreement, identifying problems, informing of solutions, advising on how to amend regulations, and generating knowledge.**

Operationally, in the long-term, the centre would eventually evolve into a type of “**one stop shop**”, potentially funded by **Interreg**, and could include **designated focal points** from each entity involved. It is envisaged that the centre would also directly assist jobseekers in terms of training and specific cross-border employment issues, and **could potentially be scaled up** over time.

Finally, the case as a whole could be resolved by the application of the **European Cross-Border Mechanism (ECBM)**. If the two states agree on a single status for job seekers engaged in cross-border training at the French-Belgian border, they could mutually recognise legal elements concerning this status from each of their systems.

WHAT'S NEXT

Based on the recommended solutions, **the Eurometropolis Lille-Kortrijk-Tournai will formulate clear proposals with all of the partners involved** in order to officially present them to the authorities. The entity plans to take the following steps to achieve this:

- incorporate the reflexions into the ongoing activities of the French-Belgian working group on cross-border employment;
- present the experts' conclusions to the Assembly of 4 October 2021 in order to **raise awareness within the different governance levels** and garner technical, legal and political support;
- **mobilise the partners** involved to work together on the proposed solutions and begin negotiations.



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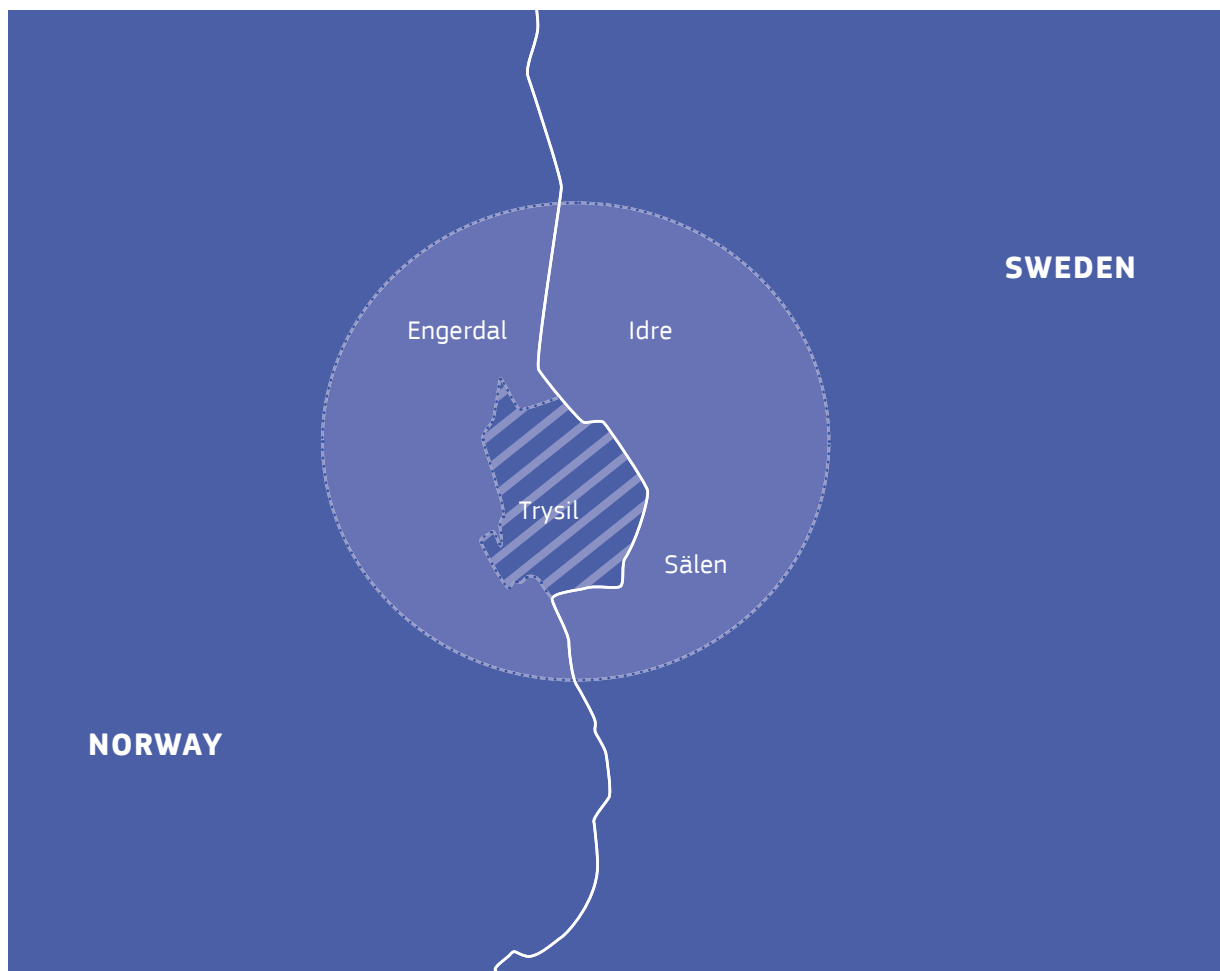
Cross-border riding and dog sled guided tours

ADVISED ENTITY

Municipality of Trysil, NO

EXPERT(S)

Jukka Teräs



THE CONTEXT

Trysil is a small municipality in Norway, bordered by Sweden and known for its winter activities, including dog sled tours and horseback riding. It also has the distinct feature of being situated on the border between an EU Member State (Sweden) and a non-EU country (Norway). **An obstacle has been identified in Trysil due to non-harmonised rules on the sanitary requirements for the transportation of animals (dogs and horses) across the border for commercial or tourism purposes.** This situation clearly has an **impact on the tourism sector in the area**, as these animals are mostly involved in cross-border tourism activities in the local nature parks. In this regard, it will be **necessary to foster increased coordination between the two countries** on this aspect, and **outline joint solutions.**

DESCRIPTION OF THE OBSTACLES

The obstacle primarily arises from **coordination challenges related to customs and veterinary requirements.** In this regard, **administrative and operational barriers** are also evident

- Specifically, the **lack of harmonised rules on animal transport** is due to both differing customs rules and veterinary requirements, which results in an additional **administrative burden** and **extra costs** for tourism operators. In addition, the process of crossing the border with animals is quite time-consuming and inefficient, since the process is not digitalised.
- Even though regulations for horses and dogs are relatively similar in Sweden and Norway, there are some differences, for example, in how the customs deposit sum for a horse is calculated.
- In terms of veterinary regulations, each border crossing made with these animals requires a **veterinary certificate** obtained within the previous 48 hours, confirming the health of the animal. This is often a problem for tour operators who do not have access to veterinary services before crossing the border with the animals.

OUTLINE OF POSSIBLE SOLUTIONS

Upon analysing the obstacles, **several steps were taken to find a solution**, including **identifying the actors involved**, **analysing good practices** in other places to tackle the obstacle, and studying the **feasibility of a joint cross-border initiative.**

Several **recommendations** have been made with regard to **procedural and operational issues:**

- **digitalisation of the procedures:** technological and digital solutions are highly recommended to **improve the practical aspects of the border crossing process with animals**, including digital apps and other digital solutions to minimise the time-consuming manual tasks;
- the implementation of a **joint cross-border initiative** with a set of **short-term and long-term measures** that will be **sustainable over time.** These include suggestions ranging from **improved communication and lobbying**, to **simplifying and streamlining the border crossing process;**
- **learn from best practices in other border regions** dealing with similar challenges, to apply and share these experiences. However, it will **be necessary to examine the feasibility of applying such lessons learned**, taking into account the local context, tax regulations and customs.

The **European Cross-border Mechanism (ECBM)** may be applicable for certain obstacles where the national rules differ, in this case, regarding veterinary requirements. This could entail waiving at least some of the certificate requirements for animals that are staying within the specific border region. In this regard, the veterinary regulations on both sides of the border would be mutually recognised⁷⁴.

WHAT'S NEXT

A **strategic short-term action plan** has been outlined to address the issue, with six steps that include **inviting stakeholders to a joint event** in the coming months to present the findings and discuss the case, **setting up a task force** or coordination group, **collecting more in-depth documentation** on the issue, and **formulating a communication plan**. The **proposed roadmap will be implemented by the Municipality of Trysil**, step by step, in coordination with the expert who has provided advice on the case.



© Andreas In Albon, Entrepreneur



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74 It should be noted that Norway is a non-EU Member State, and according to Article 4(3) of the proposed ECBM Regulation, this does not exclude third countries from its scope of application, therefore the fact that this is an EU/non-EU border region is not a hindrance to the potential application of the Mechanism.

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Simplification of the procedures for hiring and teleworking across the ES-PT border

ADVISED ENTITY

European Grouping of Territorial Cooperation - EGTC Galicia-Norte de Portugal, ES-PT

EXPERT(S)

María Teresa González Ventín



THE CONTEXT

Spanish and Portuguese residents, especially those living in the border region between these two countries, have enjoyed the freedom of movement guaranteed to all European citizens, including the right to live in one Member State but work in another. However, since the COVID-19 pandemic, new challenges have arisen that have upended the very way that we work today, highlighting the need for flexibility and adaptability in response to the restrictions, containment measures and frequent border closures. Remote work and the telework modality are gaining ground, which in theory would allow an employee to reside in one country and work in another.

In reality, however, the administrative procedures and formalities that the hiring entity must carry out for these types of workers in this border territory are usually so complex and time-consuming, that **hiring cross-border or remote employees is often difficult.**

DESCRIPTION OF THE OBSTACLES

The obstacles primarily arise due to a **lack of knowledge on how to interpret European legislation** and because of the **costly and lengthy administrative procedures** required to hire cross-border workers.

Two main obstacles were identified regarding uncertainties about the applicable law for employment contracts, taxation and social security benefits in two specific situations:

- residing in one country but working simultaneously in two countries;
- residing in one country and remotely working for a company located in another country.

LEGAL PROVISIONS

- **Obstacle 1:** working simultaneously in Spain and Portugal is covered under **Article 13 of Regulation of the European Parliament and of the Council 883/2004**⁷⁵, and **Articles 14 and 16 of Regulation of the European Parliament and of the Council 987/2009**⁷⁶.
- **Obstacle 2:** there is no legal disposition, as the current framework is not sufficiently developed to address these kinds of situations. The legal provisions applicable here are the same as for Obstacle 1; however, **the specifics of teleworking have not yet been addressed in the regulations.**

It should be noted that since the legislation covering telework is still being developed in the European Union, as well as in Spain and Portugal, the situation of workers' rights and obligations have yet to be determined.

OUTLINE OF POSSIBLE SOLUTIONS

The process of arriving at possible solutions involved analysing the labour, social security and tax regulations applicable in these specific cases. The following solutions aim to **simplify the difficult requirements and procedures** involved when hiring employees to work in two countries simultaneously, or when hiring an employee for remote work in a company not established in the employee's country of residence:

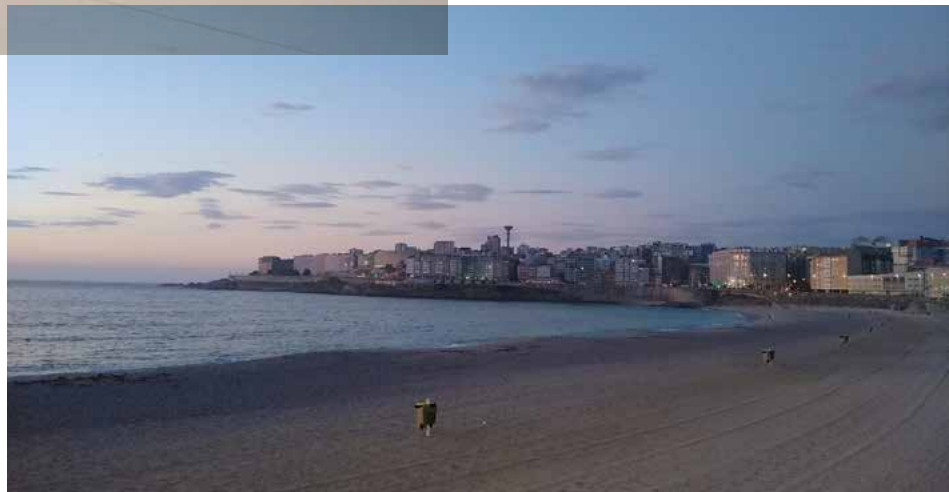
- the **formulation of a convention between the two Member States**, on the basis of **Article 8(2) and Article 9 of Regulation (EC) No 883/2004**, to agree on more **streamlined procedures and administrative arrangements**;
- on the basis of **Article 8(2) of Regulation (EC) No 883/2004**, **simplify the procedures** through a specific **bilateral agreement**, so that the interested parties - workers and employers - **only liaise with the administration in the country where the company is established**. Such an agreement should include provisions promoting **the telematic and electronic exchange of data and payments**;

- the **involvement of the European Labour Authority (ELA) in analysing and implementing the procedure** is deemed necessary to facilitate the elimination or mitigation of such obstacles;
- **the creation of ad-hoc working groups** at the EGTC Galicia-Norte de Portugal to work together with the national labour authorities and Social Security Administrations in each country.

WHAT'S NEXT

The EGTC Galicia-Norte organised a meeting with all the relevant stakeholders, in which the proposed solution was presented. The final report will then be forwarded to all the participants. **European Labour Authority (ELA)** representatives will present the report to the central ELA institution and to both the Spanish and Portuguese Governments in order to try to apply the proposed solution. In this regard, both central governments will be properly informed of this obstacle, since **the proposed solution falls under the jurisdiction of the national governments.**

Next, the EGTC will send the final report to its two partners: the Galicia and Norte de Portugal regional governments.



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75 Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, *Official Journal L 166*, 30.4.2004, p. 1–123.

76 Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems, *Official Journal L 284*, 30.10.2009, p. 1–42.

Corona pandemic and home office: consequences for the social security and taxation of cross-border workers

ADVISED ENTITY

Grenzinfopunkt Aachen-Eurode, DE-BE-NL

EXPERT(S)

Marjon Weerepas, Institute for Transnational and Euregional Cross-border Cooperation and Mobility (ITEM)



THE CONTEXT

Working from home has increased exponentially during the COVID-19 crisis, often as the only viable working option for many, and this trend is expected to continue even after the pandemic subsides. **Temporary measures were also put in place as a response by national governments to facilitate remote working during the pandemic.** However, once these measures are lifted, **the regulation of this type of work remains a challenge, and even more so for cross-border workers**, who must navigate the different labour regulations in each country.

The Euregio Meuse-Rhine is comprised of Belgium, the Netherlands and Germany, which have all taken various measures for cross-border employees in light of the COVID-19 crisis. Along this line, the question arises as to **whether the applicable European regulations will hinder the free movement of workers after the temporary measures expire**, and **whether the current temporary measures are suitable for supporting work from home in a cross-border context once the pandemic ends.**

DESCRIPTION OF THE OBSTACLES

Temporary measures were implemented to support cross-border workers during the pandemic, superseding the regular European rules on the coordination of social security systems and taxation. These new measures specifically aimed to **ease rules on tax liability and insurance obligations** but are largely **set to expire in the upcoming months.**

A major problem detected was the **inconsistency between the expiry dates of the different measures**, creating an additional **administrative burden** for both the employer and employees. In addition, a number of problems have become evident regarding social security contributions, health insurance, tax liabilities and loss of benefits.

Another obstacle is that the current tax treaties and European regulations do not provide for working from home. The question thus arises as to whether **working from home should be further defined, so that this modality can be properly included in the regulations.**

LEGAL PROVISIONS

The current European rules on social security and taxation, in particular **Regulation of the European Parliament and of the Council 883/2004⁷⁷** and **Regulation of the European Parliament and of the Council 987/2009⁷⁸**, only establish the general rules for social security and insurance obligations. The OECD Model Tax Convention provides a framework for bilateral tax treaties.

OUTLINE TO POSSIBLE SOLUTIONS

Upon analysis of the temporary measures and the more general provisions included in the EU framework, it was determined that **they are not an effective instrument in regulating cross-border work from home beyond the COVID-19 pandemic.** Therefore, several alternative recommendations were made:

- the introduction of a **uniform definition of “work from home”**;
- **synchronisation of social security and tax measures**: in order to prevent administrative obstacles, both tax liability and insurance exemptions should continue until 1 January 2022;
- further **assess the alignment of labour and social security laws** on the basis of the interpretation of the **European Court of Justice’s Paletta Judgements⁷⁹**;
- **formulation of a joint structural scheme for taxation and contribution** in connection with working from home, to be prepared by the **European Union Administrative Commission** and the **Organisation for Economic Co-operation and Development (OECD)**;



- consider **modifying the percentage of working time spent on one side of the border** or another in relation to **tax obligations**, based on **Article 8(2) and Article 16(1) of Regulation No 883/2004**.

It is worth noting that there are **several initiatives already under way to support this new working context** in cross-border areas, including **amendments to the relevant national and EU regulations**.

WHAT'S NEXT

Building upon the initial findings of this study, the Grenzinfopunkt is planning a **follow-up study** with the Euregio Meuse-Rhine, to ensure a **Euroregional approach** and obtain further insights. The Grenzinfopunkt will also organise several meetings with stakeholders and experts in the region and networks to continue to seek solutions to the issue.

- 77 Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, *Official Journal L 166*, 30.4.2004, p. 1–123.
- 78 Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems, *Official Journal L 284*, 30.10.2009, p. 1–42.
- 79 Judgment of the Court of 3 June 1992, Alberto Paletta and others v Brennet AG. Reference for a preliminary ruling: Arbeitsgericht Lörrach - Germany. Social security - Recognition of incapacity for work. Case C-45/90. *European Court Reports 1992 I-03423*.

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Mini-jobs cause big problems in a cross-border context

ADVISED ENTITY

Euregio Rhein-Maas-Nord, DE-NL

EXPERT(S)

Anton Bouwmeister and Marlene Plaß



THE CONTEXT

In the Euroregion Rhein-Maas-Nord at the German-Dutch border, “mini-jobs,” referring to employment on a smaller scale and up to a certain salary limit, have gained in popularity. This modality is popular along the entire border between the two countries, thanks to its flexibility and relative lack of bureaucratic requirements. However, a mini-job can also lead to significant financial disadvantages for cross-border employees, which can often dissuade Dutch citizens from pursuing this kind of employment contract in Germany.

DESCRIPTION OF THE OBSTACLES

Mini-job employees from the Netherlands can only be insured in Germany as per the current regulations, and in light of the above, **do not have access to certain types of social security coverage**, neither in their country of residence nor in the country where they are employed. This leads to a **variety of different obstacles**, such as:

- no longer accruing **pension insurance** in the Netherlands and having to purchase it in Germany;
- **financial burdens**: a family member who has a mini-job in Germany may no longer be insured in the Dutch family health insurance scheme, which is financially disadvantageous. To put this in perspective, having to pay 180 euro for health insurance in Germany when they only earn up to 450 euro with a mini-job salary is a significant financial burden;
- **students and pensioners are also negatively affected** by the situation.

LEGAL PROVISIONS

The obstacle is mainly caused by **inconsistences between the European legal framework and the German national provisions for social security matters**.

- European legal provisions involved: **Regulation of the European Parliament and of the Council 883/2004**⁸⁰ and **Regulation of the European Parliament and of the Council 987/2009**⁸¹ state that employees can only be insured in one country at a time, in the social security system of the country in which they work.
- Mini-jobs are considered a valid form of employment in Germany. Therefore, a cross-border employee from the Netherlands with a mini-job in Germany shall be subject to German social security legislation. However, due to this particular type of contract, they are exempt from compulsory insurance in 3 out of the 5 branches of social security (compulsory health insurance, long-term care and unemployment insurance, if they are solely employed through a mini-job).

OUTLINE OF POSSIBLE SOLUTIONS

- **Article 16 of Regulation 883/2004** allows for two Member States to provide **exceptions to certain categories of persons, through a common agreement**.
- In light of the above, an **ad-hoc agreement between the Dutch and German national insurances** is a potential solution, **on the basis of Article 16** (as has already been implemented in other Member States, namely Austria, Denmark and Luxembourg).
- The agreement between Germany and the Netherlands should include **three specific exceptions for the category of mini-job workers**: health insurance, pension insurance, and co-insurance for family members.
 - It should be noted that the most pressing issue is the **continuation of health care insurance in the Netherlands while pursuing a mini-job in Germany**.
- It is advisable to **continue informing current and prospective cross-border workers** of the specific impacts a mini-job might have in the different situations.
- Lastly, it is important to **continue to raise awareness about this matter**, taking into account aspects such as country of residence, exclusive employment with a mini-job, the combination of work with studies, pension and self-employment, as well as the effects on other family members.



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WHAT'S NEXT

The GrenzInfoPunkt in Gronau has prepared an **initial template with the different situations applying to mini-jobs**. The GrenzInfoPunkt in Mönchengaldbach will further elaborate on this and will also participate in the roundtable to present the *b-solutions* report and is also working on finding opportunities to expand on the analysis and implement the solutions proposed. In the meantime, the GrenzInfoPunkt in Aachen is planning a **roundtable meeting with experts from various health insurance companies and other important stakeholders**.



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80 Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, *Official Journal L 166*, 30.4.2004, p. 1–123.

81 Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems, *Official Journal L 284*, 30.10.2009, p. 1–42.

Cross-border cooperation on social benefits and access to social rights

ADVISED ENTITY

Atlantic Transpyrenees Conference, FR-ES

EXPERT(S)

Maria Garayo Maiztegui





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THE CONTEXT

The regional governments along the border between France and Spain have implemented social action policies to combat poverty and social exclusion, in the form of financial support. The assistance schemes are similar in that they **provide minimum income benefits to those at risk of social marginalisation**.

Mobility in the cross-border area is quite flexible between the regions of Navarre and the Basque Country (Spain) and the Pyrénées-Atlantiques (France). However, certain situations have arisen in which **the managing bodies in charge of social benefits were not informed of the beneficiaries receiving such income on the other side of the border**. In order to **boost mutual cooperation and prevent irregular situations**, these managing bodies created a **cross-border information exchange system** with a two-fold objective:

- 1 **reciprocal access to data** on the employment status and income of minimum income benefit recipients in the neighbouring country (including registration and deregistration);
- 2 the **identification of legal tools for cooperation** on a **sub-national level**.

DESCRIPTION OF THE OBSTACLES

The following **legal and administrative obstacles** were identified as impeding project implementation:

- **the lack of a common regulatory framework for minimum income benefits**. Although the European Union promotes a policy of combating poverty and social marginalisation, ultimately, social protection and minimum income benefits are a matter for each Member State to regulate;
- **in the absence of a European-level legal basis** for establishing a coordination and/or information system, **any formulation for the establishment of cross-border information systems between public entities falls within the regulatory scope of bilateral relations between them**. However, there is a lack of legal authorisation for the transfer of personal data between the Member States, since **national provisions limit the exchange of personal data** in the field of minimum income benefits.

LEGAL PROVISIONS

- On social benefits, **Regulation of the European Parliament and of the Council 883/2004**⁸² provides the general framework at the EU level, but does not contain provisions on minimum income benefits.
- At the European level, of the European Parliament and of the Council⁸³ is the reference regulatory framework for personal privacy protection of citizens.
- At the national level, in both Spain and France, the competent authorities – in this case, the Autonomous Regions and entities in charge of social security matters – are legally empowered to cross-check data and share it with other relevant authorities. However, they are **limited in their scope and ability to share certain data outside of their borders**.

OUTLINE OF POSSIBLE SOLUTIONS

Upon analysing the legal barriers, the following solutions have been proposed:

- as the current regulatory framework does not provide a legal basis for the exchange of data regarding minimum income benefits, a **new directive** on minimum income could be adopted, setting up a system of cooperation and exchange between competent authorities or by agreement of the competent national bodies; defining the scope, conditions and modalities applicable to data exchanges;
- **strategically update cooperation** on social assistance and minimum income benefits, including **an agreement** on the basis of the Bayonne Treaty in the field of social assistance, to create a **stable framework for cooperation in the cross-border territory** and, based on this, an **additional agreement** that could be concluded between the benefit managers for the **management of operational and/or financial aspects**;
- **create a cross-border working group** with two main objectives:
 - **design a legal mechanism for the coordination and collaboration** between the competent authorities, **drawing on good practices and other successful experiences**, aimed at **preventing social security fraud**;
 - a **bilateral administrative agreement** to set up a system of cross-border cooperation and data exchange in the field of social assistance and minimum income benefits.

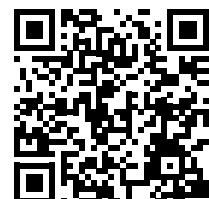
WHAT'S NEXT

The next step that the Atlantic Transpirenees Conference intends to undertake is to **reconvene the group of border stakeholders** engaged in actions to prevent social exclusion, and to **formulate a new working programme** based on the analysis carried out by the expert.

82 Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, *Official Journal L 166*, 30.4.2004, p. 1–123.

83 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance), *Official Journal L 119*, 4.5.2016, p. 1–88.

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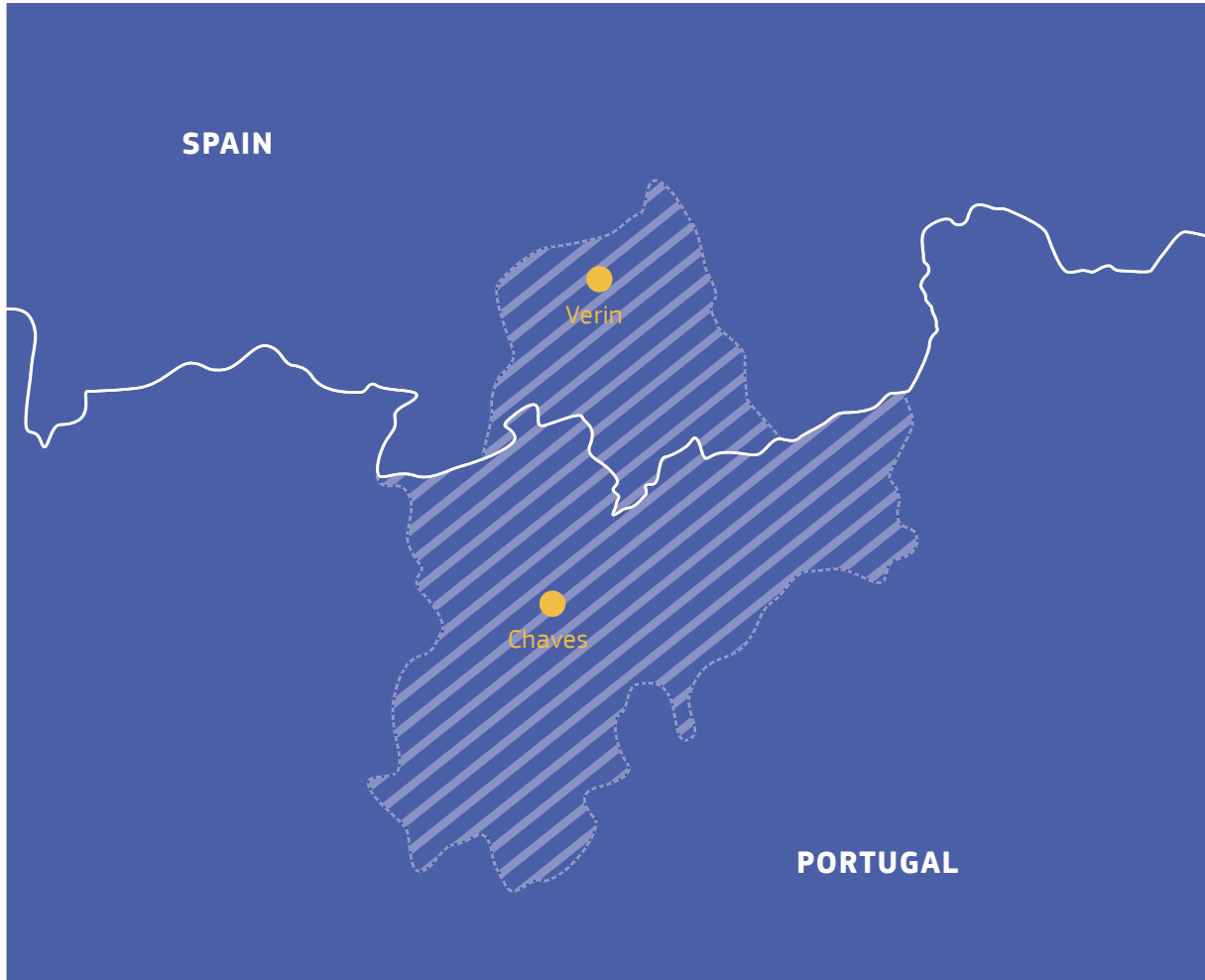
Cross-border nursing

ADVISED ENTITY

European Grouping of Territorial Cooperation – EGTC Eurocity Chaves-Verín, ES-PT

EXPERT(S)

María Teresa González Ventín





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THE CONTEXT

The Eurocity Chaves-Verín is comprised of the municipalities of Chaves in northern Portugal and Verín in southeast Galicia, Spain. For the citizens who live, study and work on both sides of the border, cross-border cooperation is essential. On the southern side of the Eurocity (Chaves, Portugal), there is a nursing school with several Spanish students enrolled every year, many of whom reside in Verín and cross the border every day to study.

In addition to **barriers such as lengthy administrative processes and a lack of information about which procedures to follow**, the issue stems from the regulation of the national body in Portugal regarding access for Spanish students who study nursing there and wish to return to Spain to work.

DESCRIPTION OF THE OBSTACLES

The **main obstacle** is of an **administrative** nature and is caused by a **lack of clarity in the interpretation of the regulation** in question.

Spanish students must obtain a **language certificate** from the Portuguese **Evaluation Committee of the Professional College of Nurses** (*Ordem dos Enfermeiros*) in order to ensure their diplomas are validated and be able to request its recognition in another Member State. According to the **Portuguese Regulation No.139/2019 on language communication test and language control procedure**, however, the certificate is only needed if there are “justified doubts” about the students’ knowledge of Portuguese. This leads to the following:

- **such verification hinders the procedure of issuing the professional certificate**, until a document is presented that demonstrates a C1 level of Portuguese;
- the obstacle thus arises if the authority presumes that there are “justified doubts” about proficiency.

Several other hurdles were identified, as a result of the main obstacle:

- **lack of information and awareness of the complex procedures** to officially recognise the diploma;
- **additional costs and fees** to obtain the above-mentioned language certificate;
- **long processing period** for the procedure to recognise their undergraduate degrees, based on **Directive of the European Parliament and of the Council 2005/36/EC**⁸⁴, which can last up to 6 months.

LEGAL PROVISIONS

In accordance with **Article 6 of Decree-Law no. 104/98, of 21 April**, in Portugal, practising nursing as a profession is contingent on obtaining a professional certificate, an official document issued by the Professional College of Nurses (*Ordem dos Enfermeiros*).

The **ambiguous requirement** in the **Portuguese Regulation No. 139/2019** is the cause of the obstacle related to the language certificate.

Therefore, the **subjective interpretation of the legal text** was identified as **one of the root causes of the issue**.

OUTLINE OF POSSIBLE SOLUTIONS

Based on the obstacles identified, the following solutions have been proposed:

- **amend the Regulation No. 139/2019**, either by eliminating the unclear expression “justified doubts” about the language proficiency, or request that the Professional College of Nurses include further explanation about such doubts;
- **clarify the procedure** to be followed for prospective Spanish nursing students in Portugal, from the moment they begin studying and throughout the entire training process, until obtaining employment in that field;
- request that **nursing schools certify the Portuguese language proficiency of their graduates**, in which graduates from such schools would be exempt from submitting proof of proficiency.

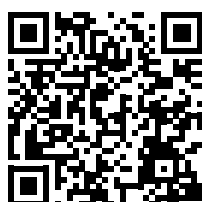
WHAT'S NEXT

The Eurocity Chaves-Verín will organise a presentation for all the stakeholders involved and **share the results**, to **bring visibility to the process**. The proposed **solutions will also be discussed with the Professional College of Nurses in Portugal** and the suggestions made by the expert and the options to implement them will also be assessed. The Eurocity Chaves-Verín aims to be a partner in this process, and will **share the relevant information** with the prospective nursing students in their cross-border information centre.



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84 Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (Text with EEA relevance), *Official Journal L 255*, 30.9.2005, p. 22–142.

Registering labour migrants in a cross-border context

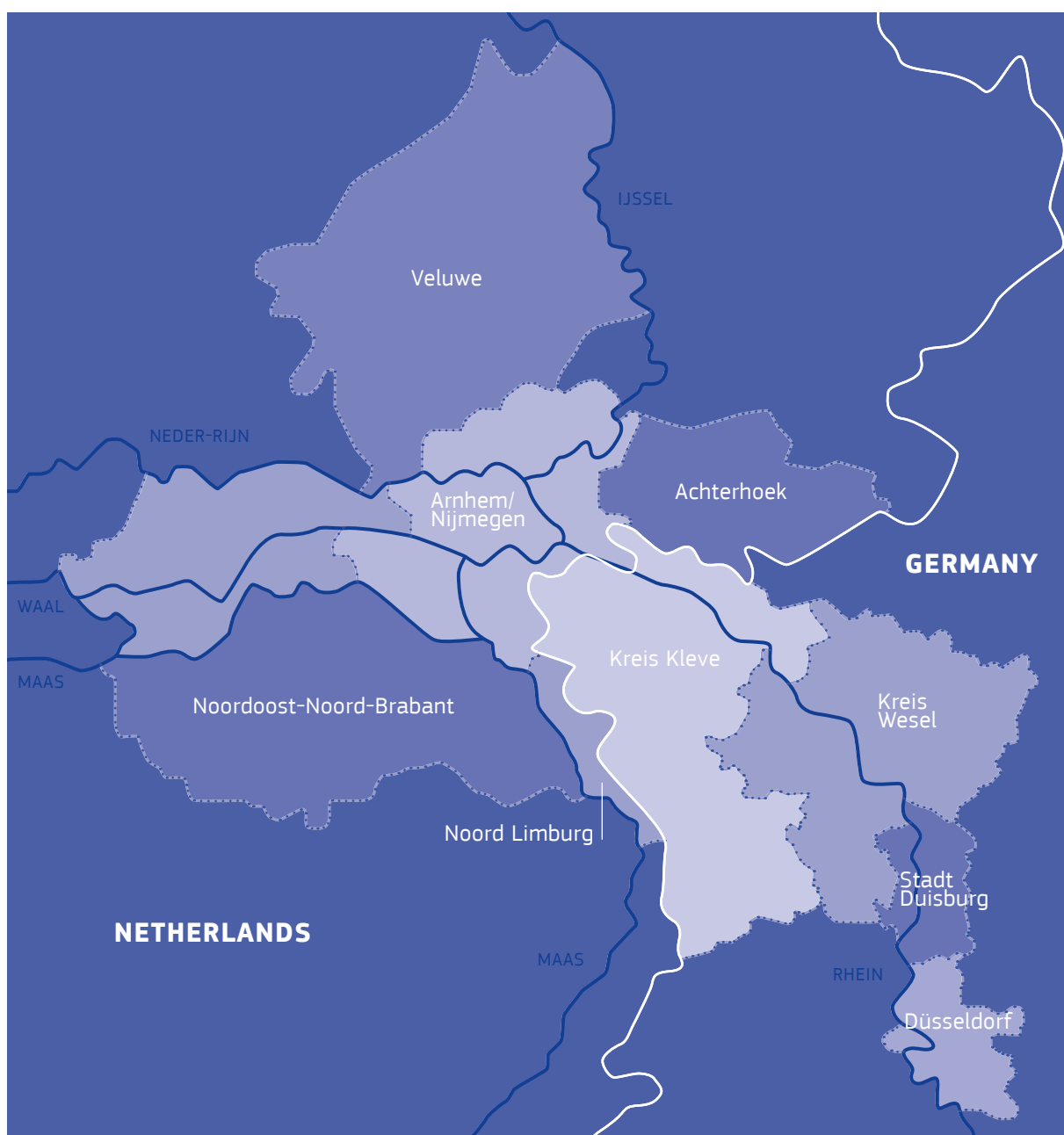
ADVISED ENTITY

Municipality of Emmerich am Rhein, DE

EXPERT(S)

Anton Bouwmeister and Marlene Plaß

STADT EMMERICH
AM RHEIN



THE CONTEXT

Along the Dutch-German border, many labour migrants reside on one side and work on the other. Being able to contact and locate them is therefore a challenge in the event of an emergency, as was especially evident during the COVID-19 pandemic. Providing government services or assistance and ensuring compliance with the measures and regulations is therefore complicated. Keeping track of such workers has become an obstacle for the national governments, whose registration systems are overwhelmed with outdated or incorrect data.

Improvements in registration for temporary and migrant workers would not only have a positive impact on their safety and precarious conditions, but would also lessen the burden on the national and local administrations. In this regard, **Dutch and German authorities must increase cooperation measures** in order to correctly **address and improve the situation of labour migrants**, particularly in the border region.

DESCRIPTION OF THE OBSTACLES

The main obstacle is the **lack of sufficient provisions within the two national frameworks** to ensure the **obligatory and systematic registration of temporary migrant workers**:

- **The registration process is complicated**, in which **legal rules tend to differ** on either side of the border.
- **'Loopholes'** within the rules have been detected, such as the lack of registration due to the short or temporary contracts of such workers, often for less than 6 months.

In addition, there is **an absence of cross-border coordination** between the two countries on this issue, especially when it comes to the **exchange of data on registration**.

LEGAL PROVISIONS

- On the European level, **Directive of the European Parliament and of the Council 2004/38/EC**⁸⁵ addresses workers' mobility and residence permits.
- In the Netherlands, the legal framework, in particular the **Basic Registration of Persons Act**⁸⁶ and the **Income Tax Act 2001**⁸⁷, regulates the procedures that both workers and employers should follow to register temporary workers so that they are identified in the system.
- In Germany, the **European and Federal Registration Act 2013**⁸⁸ governs the procedures required to register foreign citizens in the country.

OUTLINE OF POSSIBLE SOLUTIONS

Upon mapping out the different rules and regulations in both Germany and the Netherlands, it was also observed that a number of initiatives and solutions have been recommended or are already under way, including pilot projects and proposals to modify procedures.

Building on this, several recommendations have been made, with the **ultimate objective of coordinating measures on both sides of the border**, as well as **understanding each country's situation** and the need to **take action**:

- **amend Dutch legislation and registration procedures** to be able to **implement compulsory registration for migrant workers**, based on the phased plan initiated by the **State Secretary for Interior and Kingdom Relations of May 2021**;
- **modify provisions in Germany** on the basis of the model proposed for the Netherlands, to ensure that the **responsibility** for registering migrant workers is **shared between employers and municipalities**. In this case, the employer or temporary employment agency should be responsible for the relevant registration of all necessary data, including the actual residential address, in order to facilitate the exchange of registered data between the relevant authorities of each country;

- **provide migrant workers with adequate information** to encourage them to **register voluntarily**, as well as **create a system to exchange information** between the Dutch and German authorities.

WHAT'S NEXT

The Municipality of Emmerich am Rhein is aware that implementing the proposed solutions entails the necessary **involvement of the Dutch and German national authorities**. Therefore, it will commit to using the findings from the expert's report as a starting point to discuss the issue with the authorities in Den Haag, Düsseldorf and Berlin.



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TO LEARN MORE

85 Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, *Official Journal L 158*, 30.4.2004, p. 77–123.

86 Law of 3 July 2013, Stb. 2013, 315, laying down new rules for a basic registration of persons (Basic Registration of Persons Act), as last amended on 1 July 2020, Stb. 2020, 262.

87 Law of 11 May 2000, Stb. 2000, 215, as last amended 31.12.2020, Stcrt. 2020, 64406.

88 Act on the General Free Movement of the Citizens of the Union, enacted on 30 July 2004 (Federal Law Gazed I p. 1950, 1986) entered into force on: 1 January 2005, last amended by: Article 1 G of 12 November 2020 (Federal Law Gazed I p. 2416), entered into force: on 24 November 2020 (Article 7 G of 12 November 2020).



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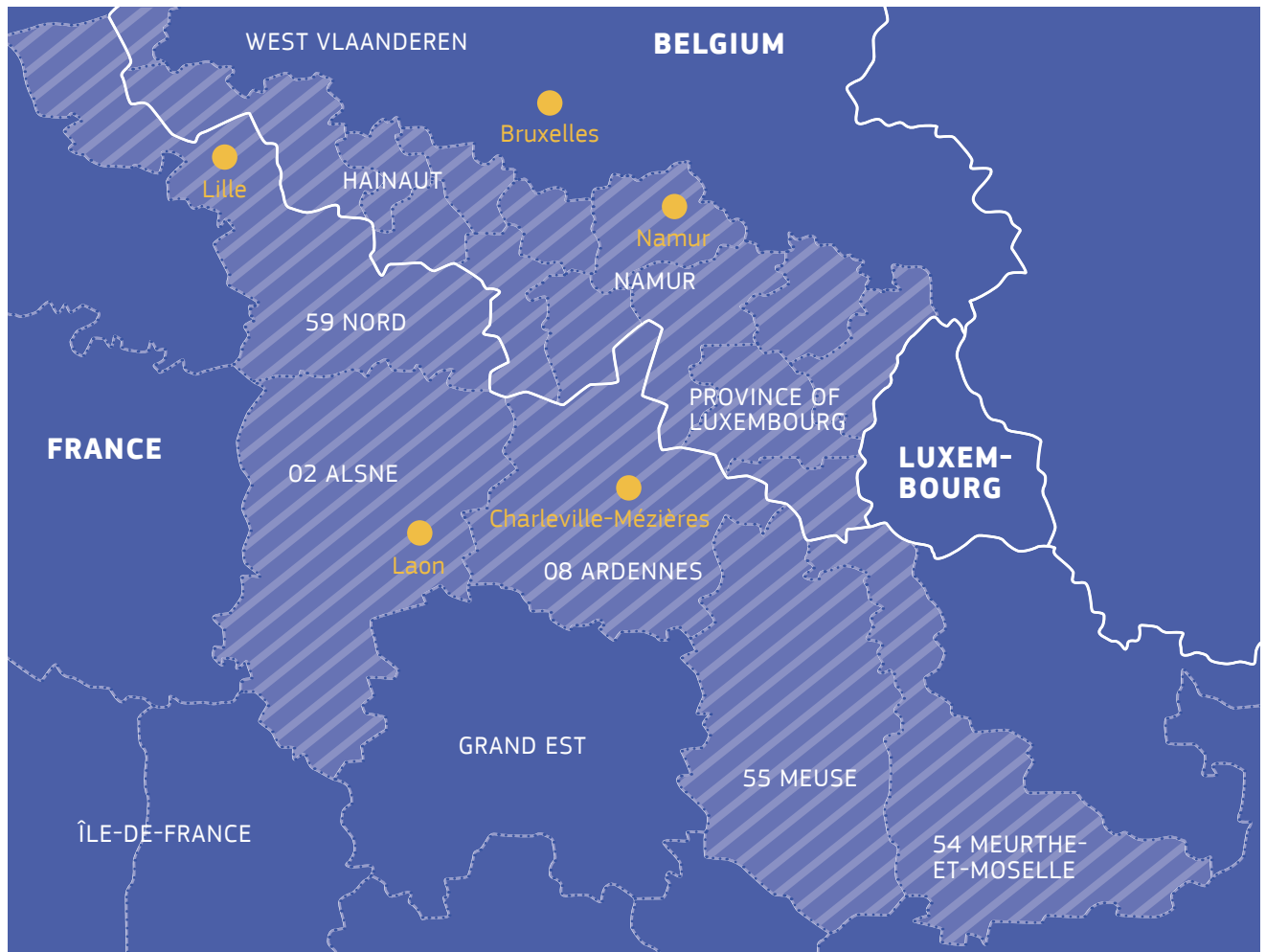
Towards simplified procedures for cross-border health professionals

ADVISED ENTITY

European Economic Interest Grouping - Franco-Belgian Health Observatory, FR-BE

EXPERT(S)

Pauline Pupier



THE CONTEXT

The **mobility of healthcare professionals across borders** is essential to the **free movement of workers** and the **provision of health care**. This is especially the case along the Franco-Belgian border, where **cooperation in the field of health is in fact increasing**, with several bilateral agreements in place that have led to an increase in cross-border patient mobility.

However, while patients enjoy greater mobility, this is not the case for healthcare professionals. The **different national registration procedures** and **complex administrative processes** are **hampering the swift recognition of diplomas** of health professionals from the neighbouring country.

DESCRIPTION OF THE OBSTACLES

The obstacle mainly stems from **burdensome administrative procedures** for the recognition of healthcare professionals' diplomas, which are often **complex and time-consuming**.

Currently, for the cross-border practice of medicine, **both national regulations apply** and therefore healthcare professionals must carry out **two different registration processes**.

Furthermore, the obstacle has an impact on **health care professionals who wish to work on both sides of the border**, as well as **professionals who need to work occasionally** within a project or for emergency reasons in the neighbouring country.

The main issues encountered by the requesting person or entity are: 1) **difficulties in finding the appropriate interlocutors**; 2) **difficulties in completing the files as required by the national procedures**; and 3) **problems with the recognition of highly specialised diplomas**.

LEGAL PROVISIONS

Directive of the European Parliament and of the Council 2005/36/EC⁸⁹ and **Directive of the European Parliament and of the Council 2013/55/EU⁹⁰** enable the mutual recognition of diplomas and qualifications by Member States. In addition, the **Treaty on the Functioning of the European Union (TFEU)⁹¹** outlines the “**principle of freedom to provide services and the principle of free establishment**” of health professionals who wish to work in another Member State. In this regard, the **complex and slow administrative procedures that originate from the French⁹² and Belgian⁹³ provisions in place** make it difficult to achieve such cooperation as envisaged in the European rules.

OUTLINE OF POSSIBLE SOLUTIONS

In light of the barriers observed, **recognising the registration of diplomas in the neighbouring State** would be the most recommended step towards a solution, together with the **simplification and streamlining** of the related procedures.

To do so, three initiatives have been proposed:

- a new **bilateral convention for the cross-border mobility of health professionals** under the 2005 Framework Health Agreement⁹⁴, to ensure a **more institutionalised practice** of diploma recognition between the two countries;
- pursuing the possibility to provide occasional and temporary provision of healthcare services, on the basis of **Articles 56-57 of the TFEU**. The request can be submitted to the competent authorities in both countries, and it takes only one month to issue approval. If no validation is officially received within one month, the request is considered successful by default;
- the creation of a **one-stop-shop** supported by an **Interreg project** to guide professionals and **provide cross-border clarification of procedures and points of contact**.

While the obstacle affects the entire border region, the **European Cross-border Mechanism (ECBM)** could be applied to allow for the **mutual recognition of diplomas within the legal frameworks of the two countries, in the form of a pilot project in one of the NUTS-3 regions** in that area.

WHAT'S NEXT

The Franco-Belgian Health Observatory plans to take the following steps:

- the report will be presented by the expert to the members of the Observatory, as well as a wider audience during its annual Cross-border Health Forum;
- the Observatory will present a note to the **competent authorities** with the analysis of the obstacle and the recommendations **to formulate a cooperation agreement** between France and Belgium, and will discuss with its members the proposal made by the expert to develop an Interreg project.



TO LEARN MORE



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- 89 Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, *Official Journal L 255*, 30.9.2005, p. 22–142.
- 90 Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013, amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation'), *Official Journal L 354*, 28.12.2013, p. 132–170.
- 91 Consolidated version of the Treaty on the Functioning of the European Union, *Official Journal C 326*, 26.10.2012, p. 47–390.
- 92 Public Health Code (Amended by Act No. 2017-86).
- 93 Coordinated Law of 10 May 2015 on the Exercise of Health Care Profession.
- 94 Framework Agreement between the Government of the French Republic and the Government of the Kingdom of Belgium on cross-border health cooperation, signed in Mouscron on 30 September 2005.



Green

Perceived border obstacles linked to wood construction

ADVISED ENTITY

Svinesund Committee, SE-NO

EXPERT(S)

Kjell Nilsson

Svinesundskommittén



THE CONTEXT

The construction sector and wood materials have been an essential part of life in both Norway and Sweden, as wood construction is a long-standing tradition in these Nordic countries. The Svinesund Committee is a cross-border cooperation entity operating on behalf of several municipalities and regions in both of these countries, in order to promote regional development and green growth in the area (among other issues) and in particular, encourage the use of wood in the construction sector. While there is a high level of interest in this issue, there are several obstacles that are hampering coordination in the wood construction sector between Nordic countries, and in particular, among these two neighbouring countries.



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DESCRIPTION OF THE OBSTACLES

The heart of the issue lies in the **differences in regulations and requirements in Nordic countries for construction products**, which tends to make trade and business opportunities more difficult across the border, and also hinders regional integration. This obstacle stems from the **lack of access to information on construction sector regulations and requirements for wood products**, in which the following three main barriers were identified:

- **informal:** there is a lack of information in general and limited access to essential information;
- **administrative:** the different administrative procedures are often confusing for those trying to do business across the border. It is difficult for them to find out which rules apply in the other country, regarding everything from transport, certificates, professional requirements to labour laws, and authorities in each country often interpret the rules differently;
- **mental:** working in silos. Informal networks of operations and companies have adapted to the situation and have found a way to work across the border, but this patchwork of varying operations and a different work culture in each country makes mutual coordination difficult.

LEGAL PROVISIONS

In terms of legal issues that might pose a challenge, **there are different building regulations and requirements for wood construction** in relation to planning and building legislation in Norway (*LOV-2008-06-27-71*) and Sweden (*PBL 2010:900*), respectively.

OUTLINE OF POSSIBLE SOLUTIONS

Unifying building regulations that are linked to planning and building legislation is a proposed solution, aiming for improved coordination between the relevant authorities and stakeholders. The overall objective is a standard set of **common guidelines** to apply in all Nordic countries in this sector, within the framework of the Nordic Council of Ministers.

The proposed solutions include **three work packages as a roadmap** towards a common market for wood construction:

- **5 task forces** to harmonise building regulations;
- an **information portal for SMEs** in all Nordic countries,
- and **4 pilot projects** tailored to assisting SMEs in Norway and Sweden.

Political will: since this issue is a priority for Nordic authorities, with the building and housing ministers aiming to promote “a strong and integrated construction market in the Nordic Region by working to remove barriers”⁹⁵, it requires sustained political backing and commitment.

In sum, the solutions should **combine a top-down process** to realign national regulations across the board **with a bottom-up process** through training for municipal authorities and small and medium-sized companies (SMEs). **Coordination to align the different areas**, such as technical requirements, regulations, etc., is highly recommended as the most optimal path forward to harmonise the process.

WHAT'S NEXT

This issue remains a priority for the Nordic Council of Ministers and their work continues in this regard. The Svinesund Committee aims to continue working on addressed border obstacles at the national level and across the other Nordic countries. In addition, the Committee has organised the webinar “**Business with Norway**” to attract a broader target group, **in collaboration with Swedish and Norwegian authorities, companies, the Norwegian-Swedish Chambers of Commerce, the Border Service Sweden-Norway and the Norwegian Consulate General.**

TO LEARN MORE



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⁹⁵ Statement from the Nordic building ministers' meeting on 29 May 2018, Stockholm, available at: Nordic co-operation, Nordic Council of Ministers and Nordic Council, <https://www.norden.org/sv/node/5057>.

Improvement of conditions for cross-border aerial forest fire control

ADVISED ENTITY

Directorate General for External Action, Regional Government of Extremadura, ES

EXPERT(S)

Carmen José López Rodríguez



THE CONTEXT

The border area between the Spanish region of Extremadura and Portugal is rich in flora and fauna and is home to several national parks and nature reserves. In recent years, however, the natural environment has been facing **severe threats** due to **climate change** and extreme weather. More specifically, recurrent **forest fires have been one of the greatest risks to this area**, amounting to personal and material damage in both countries and making this a truly critical issue that requires strong cross-border cooperation. However, several important barriers remain to achieve an agile response in the context of **emergency fire control operations**.

DESCRIPTION OF THE OBSTACLES

Two main obstacles were identified:

- **a lack of mutual recognition of the Special Operator Certificate⁹⁶** from one country in the neighbouring country. For example, if Portugal does not recognise the Spanish certificate, Spanish aviation crews cannot enter Portuguese territory to assist them;
- **language skill requirements for civil aviation crew:** the crew must either speak English or the respective national language (Spanish or Portuguese), which is a real obstacle since most crew members do not speak English sufficiently in order for this to be a common language for aerial communications.

LEGAL PROVISIONS

Operator Certificates: both countries certify the technical and professional capacities of aerial operators, but with varying administrative requirements and authorisations. In Spain, the **Royal Decree 750/2014, of September 5, 2014⁹⁷** regulates the Certificate of Special Air Operator (*COE*), while in Portugal, the **Decree-Lei No. 44/2013** provides for the issuance of the Air Work Operator Certificate (*COTA*).

Language requirements: the provisions regarding language for civil aviation are established in **Commission Regulation (EU) No 1178/2011⁹⁸**, requiring either English or the language commonly used for flight communications. Spain's **Royal Decree 750/2014 of September 5, 2014** declares that crew must speak either Spanish or English, while the **National Civil Aviation Institute** of Portugal states that they must speak Portuguese or English⁹⁹; thus posing a challenge for smooth and coordinated fire control operations.

OUTLINE OF POSSIBLE SOLUTIONS

The following recommended solutions aim to **reduce the administrative and bureaucratic barriers** that often hinder this essential emergency relief work:

- the **designation of an “Air Resources Coordinator”** with competence in the language of the other Member State. The coordinator role is already established within fire control operations and would have both aviation and firefighting experience, in addition to competence in both languages;
- **the creation of a single or unified command to manage emergencies** in the cross-border areas, to facilitate the on-site coordination of emergencies along the border and harmonise protocols for such operations;
- the **bilateral Protocol of Évora (1992)¹⁰⁰** and the **Additional Protocol of Valladolid (2018)¹⁰¹** already grant exceptions to the need for prior recognition of Special Operator Certificates for emergency relief operations, within a range of 25 km from the border.

The European Cross-border Mechanism (ECBM) would also potentially be applicable in order for the certificate of one country to be automatically recognised in the other. It could also enable expanding the territorial radius in which the aviation crew of the neighbouring country can assist in the emergency.

WHAT'S NEXT

The Regional Government of Extremadura intends to share the results of the analysis with Portuguese representatives. In addition, it will submit the proposal resulting from this report to the **organisations in charge of the above-mentioned regulations on aviation and emergency response.**



© Junta de Extremadura

- 96 A certificate required from air carriers to operate an aircraft.
- 97 Royal Decree 750/2014, of September 5, 2014, which regulates the aerial activities of fire fighting and search and rescue, and establishes the requirements regarding airworthiness and licenses for other aeronautical activities, the norms that regulate the activities are approved, firefighting and search and rescue areas, and those applicable in terms of airworthiness and flight personnel, customs, police, coast guard or other similar activities in Spanish territory.
- 98 Commission Regulation (EU) No 1178/2011 of 3 November 2011, laying down technical requirements and administrative procedures related to civil aviation aircrew pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council Text with EEA relevance, *Official Journal L 311*, 25.11.2011, p. 1–193.
- 99 Circular from the National Civil Aviation Institute of Portugal n. 01/06.
- 100 Protocol of Évora between the Kingdom of Spain and the Portuguese Republic, March 9, 1992.
- 101 Additional Protocol between the Kingdom of Spain and the Portuguese Republic on mutual aid in border areas, established in Valladolid on November 21, 2018.

TO LEARN MORE



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Minho River Nature 2000.

Boosting cross-border multi-level governance

ADVISED ENTITY

European Grouping of Territorial Cooperation - EGTC River Minho, ES-PT

EXPERT(S)

Miguel Antunes Guimarães



THE CONTEXT

The river Minho is a natural border between the north of Portugal and the region of Galicia in Spain, and is home to some of the designated **Natura 2000**¹⁰² areas, which are jointly managed by the two countries. Natura 2000 is the largest coordinated network of protected areas in the world, providing a haven to Europe's most valuable and threatened species and habitats. The cross-border territory of the river Minho includes ten "Natura 2000 Network" areas and five additional natural spaces with a rich biodiversity and environment.

However, it has been **difficult to achieve smooth cross-border cooperation in this region** in terms of management of these areas, for a number of reasons. In this sense, **greater integration and cooperation is necessary** in order to fully protect and promote these shared natural spaces.

DESCRIPTION OF THE OBSTACLES

- Portuguese and Spanish citizens on each side of the river Minho have been able to live in harmony, with a **shared way of life and mutual use of the river** and its resources. However, they are not able to enjoy the same **equality of access to the natural spaces**, due to **differences in the administration and management** of this area.
- There have been claims of **disproportionate treatment in access and authorisation** to carry out certain activities, for example, cultural events or even public works, which are allowed on one side of the river but not on the other.
- There is a **lack of coordination** between the managing institutions of the river Minho natural reserve, primarily stemming from a **difference in perspectives and approaches on both sides of the border** regarding the potential use of this natural resource.
- The **lack of common methodologies or procedures** for information sharing among the managing authorities was also identified as an obstacle.

LEGAL PROVISIONS

Under the **Council Directive 92/43/EEC**, known as **Habitats Directive**¹⁰³, the management plans of the river Minho as a Special Area of Conservation are underway in the region. While there is no legal obstacle regarding implementation of this Directive in the countries, there is, however, a **significant difference in the practical application of restrictive or prohibitive measures on each side of the river**.

OUTLINE OF POSSIBLE SOLUTIONS

The process of finding a solution began by holding meetings with various authorities and stakeholders, either directly or indirectly involved in managing the border areas belonging to the river Minho Natura 2000 Network, in order to share their insights, concerns and recommendations to solve the obstacle.

In response to the need to implement a set of actions in order to foster the coordinated management of this nature area, the following solutions were proposed:

- **concluding a protocol** under the **Treaty of Valencia**¹⁰⁴, **to establish a cross-border cooperation body** without legal personality in the form of a **working community**, through which the river Minho nature reserve shall be managed by the two respective local entities;
- in fact, a cooperation structure similar to the proposed structure above is already in place: **the Galicia-Norte de Portugal Working Community (GNP)**. It is therefore recommended to harness this structure and apply it to this particular case of cross-border cooperation. This would **enable coordination, cooperation and sharing of relevant information**, which would be of great added value to the environmental management of the entire area;
- a **forum for monitoring and discussion** among the various actors involved should be set up, for which the EGTC River Minho is the recommended entity to perform such a task;

- a **good practice** was observed in another sector that could **potentially be replicated** in this case: cooperation for fisheries, which was resolved through a bilateral agreement.

WHAT'S NEXT

The EGTC Rio Minho will promote an **annual forum for discussion** with entities associated with the central, regional and local administrations of Portugal and Spain, to **compare practices, ideas and strategies**, and further **define the common objectives** of the entire territory of the River Minho. In addition, periodic meetings will be held between technicians and experts from the **Nature Conservation and Forestry Institute (ICNF)** in Portugal and the **Regional Government of Galicia**. The aim is to **share relevant information, harmonise criteria** for the application of restrictive measures, **foster coordination** to carry out complementary actions, and **promote environmental policies** stemming from the Natura 2000 framework.



© River Minho EGTC

TO LEARN MORE



https://www.aebr.eu/wp-content/uploads/2021/11/Report_42.pdf

- 102 European Commission, Environment – Natura 2000, https://ec.europa.eu/environment/nature/natura2000/index_en.htm.
- 103 Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, *Official Journal L 206*, 22.7.1992, p. 7–50.
- 104 Bilateral Treaty between the Kingdom of Spain and the Portuguese Republic on cross-border cooperation between territorial entities and instances signed in Valencia on December 3, 2002, and entered into force on January 30, 2004.

Cross-border emergencies team

ADVISED ENTITY

European Grouping of Territorial Cooperation – EGTC Eurocity Chaves-Verín, ES-PT

EXPERT(S)

Carmen José López Rodríguez



THE CONTEXT

The EGTC Eurocity Chaves-Verín is a group of territorial entities located along the border of the autonomous region of Galicia, in Spain and northern Portugal. Due to its location and environment, the region often faces natural disasters on a yearly basis, such as floods and forest fires. Cross-border cooperation is therefore essential when conducting emergency operations in this area, highlighting the need for a well-structured alert and response system at the local level.

DESCRIPTION OF THE OBSTACLES

- **Issues in radio communication** among emergency teams from each country, since Portugal and Spain each use different radio frequencies. There is currently no international provision that requires the emergency teams to use the same radio frequency.
- **Insurance-related concerns** for emergency workers or firefighters in the event of injuries or accidents during cross-border emergency operations.
- **Lack of information sharing** between emergency teams in the case of wildfires, flood risks or other environmental emergencies. For example, there is a **gap in the existing emergency response protocol** between Spain and Portugal, highlighting the need to create a coordinated flood risk alert when floods are detected on either side of the border.

LEGAL PROVISIONS

- In terms of communication issues, at the EU level, the Trans European Trunked Radio (TETRA) system requires each country to use certain radio frequencies for cross-border emergency services. However, in practice, each respective country uses its own designated radio communications and frequency settings, which hinders emergency coordination via radio.
- Concerning insurance for emergency workers, **Regulation of the European Parliament and of the Council (EC) 883/2004**¹⁰⁵ ensures already equal treatment with regard to receiving health care when working in another Member State.
- In terms of information sharing, **Directive of the European Parliament and of the Council (EC) 2003/4**¹⁰⁶ and the **Aarhus Convention**¹⁰⁷ provide general rules for information sharing among countries with regard to environmental information.

OUTLINE OF POSSIBLE SOLUTIONS

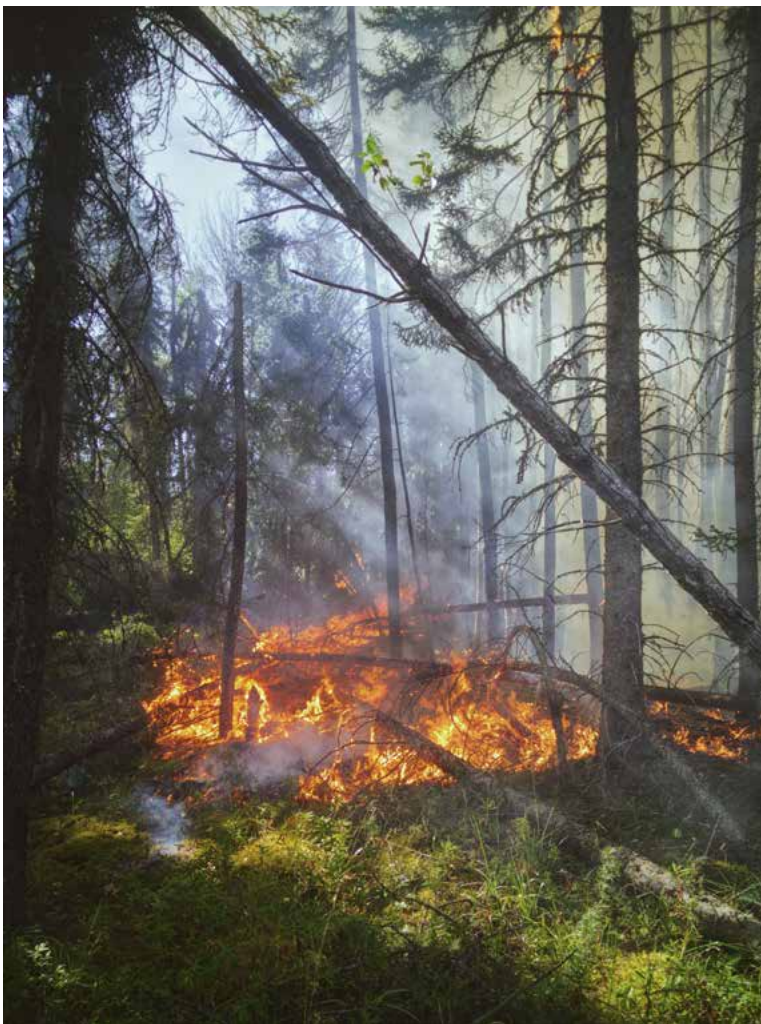
After analysing the three main obstacles, it was determined that only the lack of information sharing was caused by a regulatory issue. The following recommendations were made:

- to tackle the issue of information sharing, a **bilateral agreement or protocol** is recommended to **establish a common procedure** for risks and natural disasters, specifically:
 - establishing alerts for flood risks as soon as they are identified;
 - the provision of periodic information about fire risk maps.
- In terms of the different radio frequencies, several recommendations were made:
 - **establish a common mechanism or protocol**;
 - **designate a cross-border coordination entity or liaison officer** who manages communication between the emergency teams of the two countries;
 - **create a single or unified command for radio communications to improve the management and coordination of emergencies in cross-border areas**. A single operational command would **help improve the harmonisation of protocols** in emergencies.

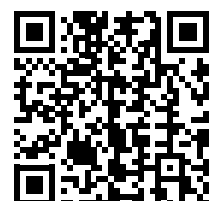
WHAT'S NEXT

The EGTC Eurocity Chaves-Verín organised a presentation for all the stakeholders involved in this process, in which the legal expert presented the obstacles and conclusions of the report.

- Radio communication: it was concluded that only the **national governments** have the authority to tackle this obstacle. Nevertheless, there are different options that can be implemented at the regional level. The **working group** created for this purpose will continue working on this matter.
- Insurance: local and regional emergency **team managers were informed of their social security and insurance rights** as emergency workers across the border. They will share this information with their teams and work will continue with this group to ensure the information is understood.
- Information sharing: this obstacle will be resolved at the local level with a **protocol** that the **mayors** of the municipalities of Chaves and Verín will sign. This commitment was made during the meeting, and work will be carried out with this group to design the protocol.



TO LEARN MORE



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- 105 Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, *Official Journal L 166*, 30.4.2004, p. 1–123.
- 106 Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC, *Official Journal L 41*, 14.2.2003, p. 26–32.
- 107 United Nations Economic Commission for Europe (UNECE), Convention on access to information, public participation in decision-making and access to justice in environmental matters, Aarhus, 25 June 1998.

Cross-border obstacles on transport and use of manure

ADVISED ENTITY

Province of West-Vlaanderen - Euroregion Scheldemond, NL-BE

EXPERT(S)

Emilie Snauwaert and Isabelle Vermander, United Experts DLV





THE CONTEXT

Both Belgium and the Netherlands are facing a surplus of nitrogen and phosphates as a result of intensive livestock farming, with potential damages to the natural environment. Intensive animal farming has led, in particular, to **an excess of manure in some of regions in the cross-border area**, while, the neighbouring territories are faced with a lack of such material. Because of this, an exchange to balance the supply and demand between the two countries would be beneficial. However, there are difficulties in the **transport and use of this product**, which is also **hindered by differences in national and local legislation**.

DESCRIPTION OF THE OBSTACLES

The **bottlenecks in the transport of manure** between West Flanders and the Netherlands are primarily **caused by issues in the legal frameworks**, in particular due to the overlapping of different legislative levels. Additionally, the **differences observed in the statutes** of the Belgian Flanders and the Netherlands pose barriers to importing and exporting biological and chemical waste and products.

Additionally, the different status of discharge water in Belgian Flanders and the Netherlands presents barriers to importing and exporting this product. Finally, the exchange of manure is complicated by **complex administrative obligations**, for example, three different transport documents – European, Dutch and Belgian forms – must be filled out for a single transport.

LEGAL PROVISIONS

At the EU level: **Regulation of the European Parliament and of the Council (EC) 1069/2009**¹⁰⁸ and **Regulation of the European Parliament and of the Council (EC) No 2003/2003**¹⁰⁹ establish the health requirements for animal by-products not intended for human consumption.

Regulation (EC) 1069/2009 regulates the export of processed and unprocessed manure, which indicates that only processed manure products with the relevant hygienisation processes may be exported, and only upon specific approval. The export of unprocessed manure other than poultry or horse manure is also restricted by European law.

At the national level: in Belgium, the **Fertilisers Decree** (*Mestdecreet*) specifies the obligations for the production, processing and storage of manure and fertilisers.

In the Netherlands, the **Fertilisers Act** (*Meststoffenwet*) establishes rules on the production, trading and use of fertilisers.

OUTLINE OF POSSIBLE SOLUTIONS

Several solutions were proposed to modify the definition of manure processing, with a greater focus on the end product rather than its origin:

- **aligning the various legal requirements** and **simplifying the administrative procedures** is an essential first step, providing greater clarity for the actors involved in these processes;
- second, **creating an EU-wide transport monitoring system** would be highly beneficial;
- third, a **bilateral agreement** to recognise sampling and analysis obligations from other Member States is suggested;
- fourth, the possibility to **expand the existing bilateral agreement on cattle and pig manure** between the Netherlands and Flanders to include other manure products;
- lastly, discharge water could be included in the relevant European legislation, for example by creating a **European statute**.

The **European Cross-Border Mechanism (ECBM)** could also be applied to resolve the obstacles arising from the conflicting national regulations. A good example is provided by the local **Nitroman Interreg project**, which is investigating the conversion of the raw manure into mineral fertilisers. The difficulties that arise regarding the exchange of products between the two countries could be addressed through this mechanism, and the application of one Member State's regulations in the other.

WHAT'S NEXT

The Province of West-Vlaanderen and the Euroregion Scheldemond, together with other local partners, have **initiated discussions as an initial step in the process of implementing the solutions**, and the report was explained to representatives of various entities involved. The next step is to delve into the solutions with the **relevant stakeholders**.

TO LEARN MORE



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108 Regulation (EC) No 1069/2009 of the European Parliament and of the Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002 (Animal by-products Regulation), *Official Journal L 300*, 14.11.2009, p. 1–33.

109 Regulation (EC) No 2003/2003 of the European Parliament and of the Council of 13 October 2003 relating to fertilisers (Text with EEA relevance), *Official Journal L 304*, 21.11.2003, p. 1–194. The present Regulation will be replaced in 2022 by Regulation (EU) 2019/1009 of the European Parliament and of the Council of 5 June 2019 laying down rules on the making available on the market of EU fertilising products and amending Regulations (EC) No 1069/2009 and (EC) No 1107/2009 and repealing Regulation (EC) No 2003/2003, PE/76/2018/REV/1, *Official Journal L 170*, 25.6.2019, p. 1–114.

GO2GO Cross-border bike sharing (GO2GO BIKE)

ADVISED ENTITY

European Grouping of Territorial Cooperation - EGTC GO, IT-SI

EXPERT(S)

Petra Kukanja



THE CONTEXT

Sustainable urban mobility has been gaining attention in the border region between Italy and Slovenia. Implementing a convenient **cross-border cycling infrastructure** will serve as a catalyst for change towards sustainable mobility and will be especially relevant, given that in 2025, the local grouping of cities Nova Gorica (Slovenia) and Gorizia (Italy) will be the first cross-border European Capital of Culture.

The two border cities have agreed to **integrate their urban mobility strategies and create a collective bike sharing system**. The current challenge, however, is to **resolve the issues posed by currently having two separate systems with two different service providers**.

DESCRIPTION OF THE OBSTACLES

The obstacles preventing the effective implementation of the project are primarily due to the presence of **regulatory and administrative differences** between Italy and Slovenia.

- **Obstacle 1:** the main obstacle is that the two bike sharing systems are completely different and significantly incompatible. To this end, **a new operator must be selected through public procurement**, and to do so, it is necessary to **first determine which law is applicable**.
- **Obstacle 2:** it must be determined whether the operator, who currently manages the system on the Slovenian side, **could be hired through “direct assignment”** to operate the Italian side as well.
- **Obstacle 3:** important regulatory and procedural aspects related to **taxation and potential revenues** must be addressed.

LEGAL PROVISIONS

- **Obstacle 1:** the EGTC GO must identify the operator to provide the bike sharing service, through a **public tender procedure**. In this case, **Italian law shall be applied**, on the basis of **Directive of the European Parliament and of the Council 2014/24/EU¹¹⁰**, **Convention of the EGTC¹¹¹** and **Regulation of the European Parliament and of the Council (EC) 1082/2006¹¹²**. The tender should be implemented on the basis of **Italian Legislative Decree 50/2016¹¹³**, which governs public contracts.
- **Obstacle 2:** the integration of the bike sharing systems across the border involves the selection of the operator via “direct assignment,” for which **Italian Legislative Decree 50/2016**, the **EGTC GO internal regulation on contracting¹¹⁴** and **Convention** shall apply.
- **Obstacle 3:** additional legal questions to be addressed include practical contract-related issues, primarily concerning the application of VAT, the payment of services and management of revenues. Relevant to this are the **laws regulating public bodies** in the two countries.

OUTLINE OF POSSIBLE SOLUTIONS

In order to **foster the interoperability of the two systems**, it is necessary to **reformulate the entire approach** to the bike sharing network.

- In the short term, the EGTC GO will implement the Italian section and will subsequently carry out its integration with the Slovenian side. To do so, an **agreement should be signed by the EGTC GO and the municipalities involved**.
- It was determined that **the EGTC is indeed qualified to manage the bike sharing system** in the long term, on the basis of **Regulation (EC) no. 1082/2006** and the **EGTC Convention**. This involves **implementing a single harmonised administrative and regulatory framework** to eliminate some of the administrative and practical barriers.
- Practical solutions were proposed to overcome the issue of managing VAT and revenues, along with a detailed list of technical contract-related aspects to take into account, and procurement options to decide on.

Finally, the **European Cross-Border Mechanism (ECBM)** would be partially applicable for this case, to help **address some of the issues the EGTC regularly faces** in light of the differing requirements in the two countries. Specifically, the **measures of Article 12(4) of the ECBM could provide a possible solution concerning the applicable law in public tender procedures.**

WHAT'S NEXT

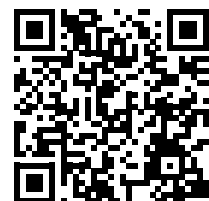
The following activities are planned in order to follow up on the implementation:

- the EGTC GO and the two municipalities will discuss the integrated bike sharing system, for which a **draft agreement prepared** by the expert will provide the framework;
- the EGTC will also consider **European funding** in order to scale up the bike sharing system and create synergies with other cross-border regions.



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TO LEARN MORE



- 110 Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC Text with EEA relevance, *Official Journal L 94*, 28.3.2014, p. 65–242.
- 111 EGTC GO, *Objective and Documentation – Convenzione e Statuto/Konvencija in Statut*, <https://euro-go.eu/en/chi-siamo/obiettivi-e-documentazione/>.
- 112 Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC), *Official Journal L 210*, 31.7.2006, p. 19–24.
- 113 Legislative Decree 18 April 2016, n. 50, Code of public contracts, *Official Gazette No. 91* of 19 April 2016.

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Cross-border renewable energy exchange

ADVISED ENTITY

Municipality of Winterswijk, NL

EXPERT(S)

Matthias Lang, Sophie Dingenen, Piet-Hein Eijssen, Tobias Büscher and Matteo Stainer, Bird & Bird LLP



THE CONTEXT

Both the Netherlands and Germany have undertaken initiatives to meet the 2015 Paris Agreement¹¹⁵, in which renewable energy is the key to sustainable change. However, the **national grid plans are not aligned, which hinders the exchange of renewable energy between the countries**. This is especially evident in the border region, which could greatly benefit from such an exchange and could perhaps accelerate the achievement of the Paris Agreement and the **European Green Deal**¹¹⁶ climate objectives. There are various opportunities for balancing supply and demand for electricity from renewable energies on a decentralised level and across borders. However, certain **legal and coordination obstacles will have to be tackled first**.

DESCRIPTION OF THE OBSTACLES

Several **legal obstacles** were identified:

- under the **Dutch 1998 Electricity Act**, the decentralised and cross-border exchange of electricity through the distribution system is not permitted;
- subsidy schemes for a direct connection between German energy sources and the Dutch electricity grid cannot be applied due to the **lack of a relevant formal agreement** between the countries.

In addition, **one of the main obstacles is the limited capacity of the power grids** in each country. Congestion occurs when the supply of electricity from renewable energy sources on the grid exceeds customer demand. When this occurs, grid operators on either side of the border are unable to provide electricity to other parts of the country.

This could be avoided by **implementing projects for a decentralised cross-border exchange of renewable energy**.

LEGAL PROVISIONS

In the Netherlands: first, under the **Dutch 1998 Electricity Act (DEA)**, the decentralised and cross-border exchange of electricity through the distribution system is not permitted. Second, national subsidy schemes, such as the **Renewable Energy Production Incentive Scheme (SDE++)**, based on the **Sustainable Energy Production (Stimulation) Decree**¹¹⁷, a direct connection cannot be established between the two countries until they conclude a specific agreement. Third, **Article 55b(1)** of the **Stimulation Decree** allows for an extension to projects in other Member States, if they have agreed on joint cooperation on the basis of **Directive of the European Parliament and of the Council (EU) 2018/2001**¹¹⁸. However, this Directive has not yet been transposed into Dutch legislation.

In Germany: the existing regulatory framework on grid charges and the national support scheme for renewable energies are also considered as an obstacle. **Article 5** of the **German Renewable Energy Sources Act (Erneuerbare-Energien-Gesetz, EEG 2021)**, indeed allows for cross-border projects, only if there is agreement between Member States under **Directive (EU) 2018/2001**. To date, no such agreement exists with the Netherlands.

OUTLINE OF POSSIBLE SOLUTIONS

- **Signing a bilateral agreement between the Dutch and German governments** on the basis of **Article 7** of **Directive of the European Parliament and of the Council 2009/28/EC**¹¹⁹ and/or **Article 9** of the aforementioned **Directive 2018/2001** to **cooperate regarding specific renewable energy projects**.
 - In the meantime, both countries already signed a **Joint Declaration of Intent** for cooperation on energy. The next step would be to **establish working groups** and design several **pilot projects**.



- **Establishing Citizen Energy Communities (CEC)** on the basis of **Directive of the European Parliament and of the Council (EU) 2019/944**¹²⁰:
 - however, while the Directive allows CECs to operate a distribution system, the current Draft Dutch Energy Act (DEA) in the Netherlands does not.
- A **political initiative** is needed to **change the existing system** in which transmission system operators (TSOs) manage the cross-border energy exchange, and to **amend the legal framework**.
- Lastly, the **Interreg SEREH project**¹²¹ can serve as a **best practice for potential replication**, to promote the exchange of energy across the border and linkages between the regional energy systems.

WHAT'S NEXT

The Municipality of Winterswijk will discuss the results of the research with their German neighbours across the border and analyse how to start a common project to investigate how to implement the roadmap towards a possible solution proposed by the experts.

TO LEARN MORE



https://www.aebr.eu/wp-content/uploads/2021/11/Report_46.pdf

- 114 EGTC GO, General Acts – *Regulation on contracting*, *Determinazione dd. 16/2/2018*, <https://trasparenza.euro-go.eu/en/disposizioni-generalilatti-generalil>.
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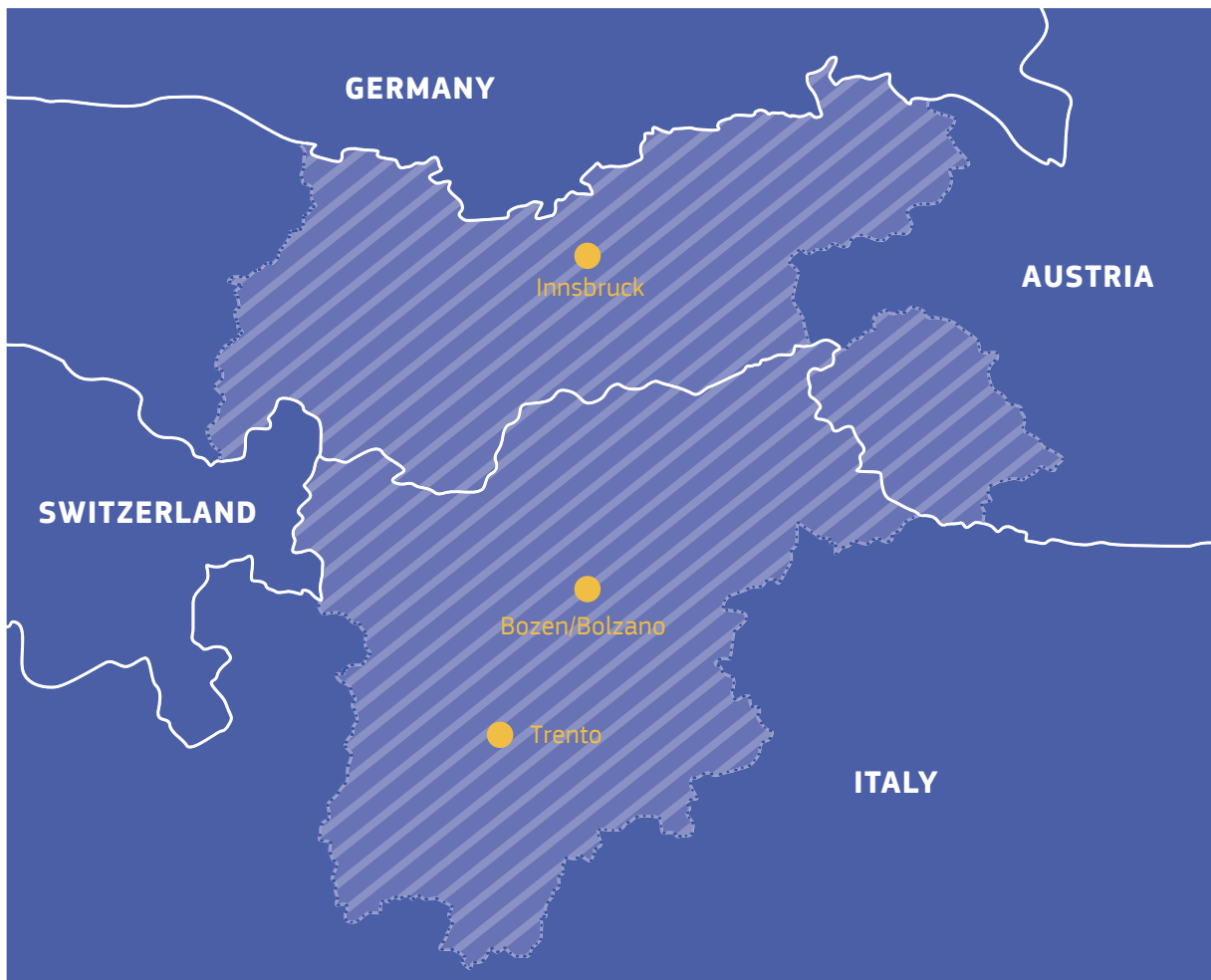
On safe legal ground - cross-border cooperation in disaster response

ADVISED ENTITY

European Grouping of Territorial Cooperation – EGTC European Region Tyrol-South Tyrol-Trentino, IT-AT

EXPERT(S)

Peter Bußjäger



THE CONTEXT

Cross-border cooperation is essential in the area of disaster management, especially in Alpine regions, and often requires a rapid and targeted response. Natural disasters often occur beyond national boundaries, and for the European Grouping of Territorial Cooperation European Region Tyrol-South Tyrol-Trentino, this is all too familiar. An obstacle arises when the governing bodies in these regions are confronted with **different legal regulations in the management of cross-border activities or emergency services**, where **cooperation is not always as efficient**, due to various **legal and operational uncertainties**.

DESCRIPTION OF THE OBSTACLES

- There is a **lack of strategic cross-border management for rapid disaster response**, which has led to operational difficulties and ambiguities in certain aspects. In particular, it is not clear which regulations apply when emergency teams must cross the border.
- **No international treaty is in force**, which means there are no enforcement measures. Therefore, the existing **cooperation is carried out informally** and largely depends on the commitment of both countries to cooperate on cross-border emergency issues. For example, **the chain of command is not regulated**, and there are **technical problems in communication** between the border countries.
- It is not clear which **social security coverage** applies in the event of an accident, resulting in a **lack of awareness and doubts for rescue and disaster workers**.

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LEGAL PROVISIONS

The different competences for disaster prevention and control in Italy and Austria are as follows:

- in Austria, responsibility for disaster prevention duties lie with the federal government, whereas the municipalities are primarily responsible for disaster control, with the provincial or state governments stepping in to assist if required;
- in Italy, because of the region's autonomous status, the Province of Bolzano in South Tyrol is responsible for measures of disaster prevention and emergency assistance, according to Article 8(13) of the **Decree of the President of the Republic n. 670 (1972)**¹²². The State may take control of disaster relief activities if necessary;
- in Italy, the **Civil Protection Code**¹²³ establishes regulations for cross-border assistance in disaster situations, while Austria does not have such regulations.

OUTLINE OF POSSIBLE SOLUTIONS

Harmonisation of the different rules and regulations is highly recommended, as well as the **adaptation of the legal framework**. A **coordinated approach** is also needed.

To this end, **three potential solutions** were proposed:

- drafting of a **disaster relief agreement between Austria and Italy**. Such an agreement could regulate both those aspects that are under the competence of the Member States and the autonomous provinces;
- the **formulation of an inter-state treaty between Tyrol and South Tyrol**, which would be binding under international law;
- **the autonomous adaptation of legal bases** through a coordinated approach. This would include **cross-border stipulations in the respective national provisions**.

WHAT'S NEXT

The EGTC European Region Tyrol-South Tyrol-Trentino created a **working group to resolve the cross-border obstacle**. The **next step is to prepare a draft EGTC agreement** for cross-border cooperation in disaster response management. Several group meetings have been scheduled and will take place in the upcoming months.

Following approval of the draft agreement, talks will then need to be initiated at the State level. In May 2021, the EGTC region also approved the **“Euregio Civil Protection” as a Euregio project** in the EGTC's working programme 2021, with a **specific budget that can be used for relevant actions to resolve the obstacles**.

Finally, the group will also discuss **the need for further amendments to the legislation** of the Italian member regions, and will **determine the corresponding legislative path** to achieve this.

TO LEARN MORE



122 Decree of the President of the Republic 31 August 1972, n. 670 on the approval of the consolidated text of the constitutional laws concerning the special statute for Trentino-Alto Adige, *Official Gazette n. 301*, November 20, 1972.

123 Legislative Decree no.1 of 2 January 2018: Civil Protection Code, *Official Gazette* no. 17, January 22, 2018.

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Key findings

Forty-seven cases of legal and administrative obstacles to cross-border cooperation have been collected by *b-solutions* in the period 2020-21. Forty-three further obstacles were selected through the first two calls for proposals, launched in 2018 and 2019, for a total of ninety cases in four years. These serve as a testimony to the difficulties that European citizens and local and regional authorities in border regions face when they interact with a neighbouring region, accessing territories beyond national boundaries.

Various stakeholders from European border regions took part in the calls for proposals launched in 2020 and 2021. These included eight regional governments and their administrative bodies; twenty-three cross-border structures, such as European Groupings of Territorial Cooperation (EGTCs), registered cross-border associations and Euroregions; five municipalities; seven provincial governments; three groupings of local actors, one public hospital and one network of public universities.

The selected cases are located in twenty countries, along eighteen borders, and thus represent the majority of EU Member States.

The results of *b-solutions* demonstrate how legal and administrative obstacles hinder various aspects of life in different areas. Over 50% of the cases involve access to public services – especially to health care and local mobility. Cooperation between institutions and authorities from neighbouring regions is particularly complex and makes the implementation of joint initiatives difficult to achieve – for example, the switch to more sustainable electricity grids, or the application to programmes for local development.

The cases collected through *b-solutions* also demonstrate that solutions to these obstacles are possible, and that there are a variety of possibilities to overcome them. Solutions sometimes require changes to the applicable law, while in other cases, cross-border cooperation actions can be triggered or restored with practical adjustments.

In this sense, possible solutions to ease interactions in a cross-border context include:

- adjusting applicable legal frameworks in favour of cross-border interactions;
- harmonising administrative practices in a number of areas;
- strengthening cross-border cooperation by formally recognising it;
- supporting actors in applying the existing law more effectively,
- involving more actors in cross-border cooperation practices.

Making legal frameworks at all levels – European, national and sub-national – more adaptable to cross-border realities is of key importance for border regions. Law should be conceived by taking into consideration the need to interact with other legal provisions in certain contexts, such as along European borders. To do so, the solutions proposed in *b-solutions* that focus on law are particularly relevant in this context because they help raise awareness of the viable possibilities for a long-term impact on cross-border interactions.

b-solutions has shown that solutions aiming to change the current legislation can introduce amendments via:

- agreements among the local actors involved in the issue at hand;
- revision of the legal provision in one or all of the Member States involved, acting at the national or sub-national level;
- bilateral agreements that prompt exceptions or additions to the regular national legal framework of both countries involved;
- modification of the European law.

The knowledge gained through *b-solutions* also indicates that other solutions are helpful in solving obstacles that hinder cross-border cooperation. This is especially true when such hurdles originate in diverging administrative procedures or are due to a lack of knowledge. In this regard, the reports by the experts include a number of solutions to achieve more effective cross-border cooperation. These are:

- establishing cross-border bodies and entities, including in the form of European Groupings of Territorial Cooperation (EGTC);
- raising awareness and increasing the knowledge of the applicable legal framework;
- preparing practical guides for the many stakeholders involved in a specific project;
- co-managing and coordinating actions between the various actors participating in a given project;
- adopting common protocols or Memoranda of Understanding;
- organising joint trainings;
- using available funds such as Interreg.

From a global perspective, of all the solutions offered by the experts involved in the initiative, some lessons can be learnt to boost cross-border cooperation. Among these, it appears that the following three aspects are a necessary condition for any of these measures to be successful:

- adopting a collaborative and inclusive approach based on dialogue;
- political support from authorities at all levels; and
- involvement of all competent actors interested, going beyond the sole involvement of cross-border structures.

The solutions proposed by the experts involved in *b-solutions* refer to a wide range of obstacles detected in different fields of policymaking. However, it is evident that the majority of the cases require the involvement of national authorities in order to implement the solution suggested. Yet, one can imagine the length of such processes to finally solve the obstacle under scrutiny if both national authorities must be involved. Because of this challenge, experts often offered multiple solutions: a short-term one, involving practical measures which could be implemented by the actors directly involved, and a long-term one to make the solution more sustainable over time.

In many cases, changing the applicable law is in fact indicated as the final step of a long-term process, as most of the solutions devised are multi-layered, combining legal and administrative solutions for what we refer to as ‘cross-cutting solutions’. In this sense, the actors involved may consider practical actions that can enhance collaboration in the existing legal framework first. They may then aim to obtain amendments to the laws at a later stage.

For these processes to be successful, and for the solutions to be sustainable and achievable, additional lessons learnt from *b-solutions* demonstrate that it is essential for the stakeholders involved to gain sound knowledge of the context in which the obstacle arises. Only with thorough research and evidence-based analysis can solutions be devised. In this sense, access to accurate information is key.

It is worth noting that these findings are fully aligned with the learnings outlined in the first compendium, published by AEBR and the European Commission in 2020¹²⁴.

Additional information was obtained throughout 2020 and 2021. The European Commission and AEBR have produced three additional publications with the knowledge acquired by analysing the findings of the ninety cases collected throughout the four years of implementation of *b-solutions*. These focus on specific policy areas: the European Green Deal, Cross-border Public Services and Education and Employment¹²⁵.

A DEDICATED LOOK AT THE PROPOSED EUROPEAN CROSS-BORDER MECHANISM

The body of knowledge gathered through the *b-solutions* initiative also served as a test bed to determine the impact of the proposed European Cross-Border Mechanism (ECBM)¹²⁶. Proposed by the European Commission in 2018, the ECBM would establish a legal mechanism to facilitate the resolution of legal and administrative obstacles to cross-border cooperation.

Experts were asked to assess the potential impact of the ECBM on each specific case to gain information on this instrument, since the proposal was undergoing legislative approval at the time. This knowledge is still deemed as relevant for a deeper understanding of actions to be taken in support of resolving legal obstacles.

The ECBM is designed as a tool to benefit local stakeholders in the event that a project is stalled because of diverging laws or administrative practices on the two sides of the border. If the proposed Regulation were to be adopted by the EU legislature, it would provide Member States with an additional instrument to facilitate the implementation of joint cross-border projects. Where the building of a joint infrastructure or providing services of general economic interest across borders is hampered, the mechanism would set in motion a solution to be implemented.

The analysis of reports submitted by the legal experts in the cases presented in this compendium shows the positive benefits of the proposed ECBM for resolving cross-border obstacles. For 38% of the cases, the experts expressed the view that the ECBM would be a useful tool to overcome the cross-border obstacles they had identified in their reports. What these cases have in common is that the obstacle arises due to differing national legislation or administrative practices in the neighbouring Member States.

The experts particularly emphasise the complementary nature of the ECBM as beneficial. In fact, the mechanism is designed to be an additional tool to overcome cross-border obstacles, which broadens the possibilities for border stakeholders in the search for tailor-made solutions to the problems in question. In some cases, the ECBM was regarded as generally applicable, but not the best option for the specific cross-border obstacle, as other possible solutions seemed more feasible. These cases seem to have two elements in common: either close institutional cooperation already exists, or a bilateral agreement is already in place. This shows that if a pragmatic solution can be found on a practical level without the need to change the underlying legislation or if a legal framework already exists and can be easily amended, the actors involved might prefer to adopt these solutions, which allows for quicker implementation.

Some experts particularly highlighted the overall usefulness of the so-called Cross-border Cooperation Points (CCP), to be established under the European Cross Border Mechanism

124 Association of European Border Regions (AEBR), European Commission, *b-solutions: Solving Border Obstacles. A Compendium of 43 Cases*, 2020.

125 These publications will be publicly available on AEBR's website www.aebr.eu.

126 Proposal for a Regulation of the European Parliament and of the Council on a mechanism to resolve legal and administrative obstacles in a cross-border context – COM(2018) 373 final, 29.5.2018.

proposal. These would liaise between all the competent authorities in their Member State and their counterparts in the neighbouring Member State. CCPs could provide institutional support for complex cross-border issues, for example, where the interpretation of national regulations proves difficult or where a multitude of authorities or entities from both sides of the border are involved. Generally, CCPs could help organise coordination activities, such as building and maintaining databases with relevant information, or serving as information points for border stakeholders and citizens by gathering expert knowledge about the legal systems of the bordering Member States.

The analysis of the reports shows that, with these aspects to be taken into consideration and improved, it is important to recognise the support that an instrument like the ECBM, proposed by the European Commission, could provide to local and regional authorities. As demonstrated by the many cases collected within the *b-solutions* initiative, cross-border cooperation projects are frequently hindered by diverging laws in the Member States concerned, which is why actions to support them are urgent.

CALL FOR MORE AND BETTER CROSS-BORDER COOPERATION

Another finding of the third and fourth call of the *b-solutions* initiative is that policymakers continue to play an important role in the process of improving cross-border cooperation. The previous compendium¹²⁷ already provided detailed policy recommendations drawn from the lessons learnt from implementing cross-border actions, with a clear reference to the competent policymakers. At the same time, in its latest report *EU Border Regions*, the European Commission points out the needs of border regions and the areas for actions to enhance cross-border cooperation. The findings outlined in the present compendium once more highlight which conditions need to be fulfilled in order to implement policies in border regions.

To provide administrative bodies and cross-border structures with technical support to analyse and potentially overcome cross-border obstacles, AEBC and the European Commission call for the following actions:

- Increase opportunities for capacity building for local stakeholders to intensify cross-border cooperation;
- Facilitate effective multi-level engagement and a stronger involvement of national authorities;
- Optimise the use of the legal, financial and technical tools – such as *b-solutions* - provided by the European Union to actors engaged in cross-border cooperation activities;
- Achieve greater sensitivity to cross-border cooperation issues at all policymaking levels.

Border regions are dynamic, rich and culturally vivid places, but due to the convergence of different legal and administrative systems at the border, they face many complex obstacles. To be able to reach their full potential, they need to be supported with tailor-made actions that enhance cross-border cooperation. This way, they can contribute to making Europe a more integrated and better functioning place to live for the benefit of all its citizens.

127 See note 124, pp. 54-56.

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Citizens living in European border regions still face many obstacles when they cooperate with their neighbours. To ease cross-boundary interactions, the *b-solutions* initiative offers practitioners the possibility to test new, alternative and sustainable solutions to remove legal and administrative obstacles along the EU internal land borders. Actors and practitioners at the regional, national and European level can find insights and inspiration in this volume to improve cross-border cooperation in their territories.

Following the first compendium and its annex, which the Association of European Border Regions (AEBR) and the European Commission released in 2020, the present volume provides detailed information on each of the 47 cases of obstacles selected in 2020 and 2021, indicating potential solutions and including features and relevant information about the territories, the cross-border entities involved in the initiative and the legal and administrative provisions under analysis.

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