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FINAL REPORT BY THE EXPERT

Advice Case: Trilateral bridge in Euroregion Neisse-Nisa-Nysa

Advised Entity: Euroregion Nisa, CZ-DE-PL

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Author wishes to express his gratitude to all consulted experts and institutions.



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I. Description of the Obstacle

The construction of a common bridge at the Trojmezí point began to be discussed as early as 2004 on the eve of the accession of the Czech Republic and Poland to the EU. On that occasion a wooden bridge was built above Oldřichovský brook near Hrádek, which connected the Czech and Polish sides. It was planned that it would be replaced within two years by a new (trilateral) bridge that would connect all three countries. Symbolically, its three branches from each country should merge in the middle of the Neisse river. However, its construction has not yet begun.

The bottom-up initiative was firstly held by the municipalities of the so called “small triangle”, created by municipalities of Zittau (DE), Bogatynia (PL) and Hrádek nad Nisou (CZ). Due to the high expenses of the bridge, which exceeded the financial possibilities of those municipalities, the (Polish) Lower Silesian Voivodship took over the idea/ownership over the initiative and delegated it on its Railway and Road Authority. In 2015, the initial project conception was elaborated.

The idea to construct a trilateral bridge to increase tourism has according to the current principle project leaders, Lower Silesian Railway and Road Authority, double importance: it will be a functional element, as the bridge is about to serve to its purpose as a tourism infrastructure element. It should also become a monument celebrating cross-border cooperation, which will contribute to further softening of barrier function of the border.

The enlarged partnership, co-ordinated by the Lower Silesian Railway and Road Authority, agreed upon the design of the bridge and outsourced the civic engineers to design the technical solution of the bridge. The process of the elaboration of this technical documentation took several phases. The first draft of the solution failed to be feasible due to complicated geology of the territory, therefore the technical solution was based upon the technology of the suspended footbridge. The intersection of the all three borders creates the central place/axis of the footbridge.

It had to overcome the necessity to design such shape of the footbridge, which would not be placed on or over the existing border stones. This caused the changed shape of the footbridge –the “Mercedes sign” overshadowed some border stones and was changed to the current “Y” sign. This changed the static of the whole construction and brought along the need to recalculate the technical solution and repeat the geological research of the territory. The budget also increased dramatically.

There are two major obstacles connected to the idea of this footbridge, financial and administrative. The footbridge construction will be rather expensive – the experts envisaged the budget exceeding 4,1 million Euros. The partners of the initiative are not able/willing to finance the entire construction costs from their own budgets and decided to apply for an



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INTERREG subsidy with an ambition to get some 85% of the subsidy – the project partners plan to finance the outstanding 15 % from their own sources.

The high budget is accompanied by the administrative obstacle. For the construction of the bridge it is necessary to obtain construction permit from all three countries, where the footbridge will stand. Obtaining that permit presents the principle project-related obstacle.

The partners decided to ask for the external financing of the project with the INTERREG programme Saxony – Poland, as this programme allows for partial implementation of individual projects also outside of the programme area, in this case the Czech Republic. In 2018, the project was submitted, but it failed to be financed. The programme monitoring committee based its refusal upon following arguments:

- The ratio of planned expenditure to expected benefits is highly unfavourable: The applicant applies for 18.92% of the allocation of priority axis I (4.1 million out of 21.7 million ERDF), with a small contribution to the achievement of the program indicator. This makes project economically questionable.
- Long project implementation period (36 months) combined with a high share of activity costs infrastructure (over 92%) constitutes a high risk in the context of the entire program implementation.
- In addition, there are doubts about the project's technical readiness for implementation (none necessary documents and permits). More concretely, programme controllers asked for the guarantee that the Czech authorities responsible for allowing/ construction works would authorize the investment in their territory. The project partners were not able to guarantee that/furnish the programme JTS with such proof.

The principle administrative/legal objective is in the need to obtain the sets of three individual national construction permits for one piece of cross-border infrastructure – the trilateral foot- and bicycle bridge. This is even more complicated by the fact that procedures leading towards construction permission differ in all three countries substantially and the recognition of professional qualification of civic engineers is in practice lacking, at least on the Czech side of this trilateral context, as the Saxon authorities declared their willingness to accept the technical solution proposed by the Polish engineers. The Czech chamber of authorized engineers and technicians active in construction refused to authorize the Polish colleague, respectively invited her/him to undergo the administrative “nostrification” procedure including the language test, which is lengthy. This appeared impossible for the Polish civic engineering company, which refused to do that.



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Other problems are rather of technical nature: one of them is connected with the existing gas pipeline, which must be newly secured or re-directed. The logistics during the construction itself will be complicated too, as the German authorities refused to allow using local roads on the German side of the border during the construction. However, these issues are less pressing and more likely to be solved.

Despite the initial failure, all partners decided to keep on their co-operation and declared their will to re-submit a project at a next suitable occasion. This occasion will only come as of new 2021 – 2027 programming period. However, all partners must until that time re-think their approach towards obtaining all relevant permits, including Czech ones.

II. Indication of the Legal/Administrative Dispositions causing the Obstacle

There is one principle and another complementary legal/administrative obstacles:

The principle administrative/legal objective is in the need to obtain the sets of three individual national construction permits for one piece of cross-border infrastructure – the trilateral foot-and bicycle bridge.

This is even more complicated by the complementary obstacles: procedures leading towards construction permission differ in all three countries substantially and the recognition of professional qualification of civic engineers is in practice lacking, at least on the Czech side of this trilateral context, as the Saxon authorities declared their willingness to accept the technical solution proposed by the Polish engineers.

The mix of these obstacles and the high budget led to rejecting the project application in Polish-Saxon INTERREG programme. The investment projects must be accompanied by the technical documentation and the proof of previous communication with authorities permitting construction works in the places affected by the investment/construction sites. According to information obtained in the interviews, partners originally foresaw that the technical documentation will be prepared by a consortium/mixed team of Polish, Czech and German construction engineers.

This did not entirely happen – the technical documentation was supplied by a company consortium “PBW Inzynieria” and “Mosty Wroclaw”, composed only from Polish specialists. The absence of team members certified to conduct civic engineering in Czechia caused the failure to overcome problematic recognition of (Polish civil construction) qualifications at least in Czech context, as the Polish professionals have missed the authorization necessary to project construction works in the Czech Republic. As the project partners failed to furnish programme Joint Technical Secretariat (JTS) with a proof that Czech authorities will permit the footbridge construction, the monitoring committee based its refusal of this project also on



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this lacking documentation based its refusal of the projects. .The situation in Saxony was different – the German authorities pre-agreed on the investment.

As mentioned in the initial chapter, all partners decided to keep on their co-operation and declared their will to re-submit a in a new 2021 – 2027 programming period. To do this successfully, the following obstacles should be solved:

The proposed European Cross-Border Mechanism (ECBM) would fix the issue of having three (Polish, German and Czech) construction permissions. However, according to the current state of legislative preparations it will very likely not be in place in the next programming period, or at least at its beginning, when the allocation on the next INTERREG Polish-Saxon programme will be unspent and the chances to get such project financed are generally higher. Therefore the partners should use the time until the new programme launch and focus on eliminating the impact of the need to have three separated permissions.

Given the evaluation of failed project and opinions of some local stakeholders, the footbridge should be re-designed, as its current draft is too expensive and probably not necessary for the local context. Therefore, the new technical documentation should be elaborated.

The present Czech Guideline on the recognition of professional qualifications of established persons in the civic construction and on the verification of professional qualifications of visiting persons is based on Act No. 18/2004 Coll., concerning the recognition of professional qualifications and other capacities of nationals of EU Member States and certain nationals of other countries, and on Act No. 360/1992 Coll., on the pursuit of the chartered architect profession and the chartered engineer and technician active in construction profession (hereafter referred to as the “Authorisations Act”).

It regulates the procedure adopted by the Czech Chamber of Chartered Engineers and Technicians Active in Construction (hereinafter referred to as the “Chamber”) when recognising or verifying the professional qualifications of the persons listed in Section 1(2) of the Recognition Act where such persons intend to engage in selected construction-related activities within the territory of the Czech Republic pursuant to Section 158 of Act No. 183/2006 Coll., Construction Act.

In order to engage in the selected activities in the territory of the Czech Republic, it is necessary to apply to the Chamber for recognition of professional qualification and for enrolment in the list of registered persons or notify the pursuit of the selected activities (visiting persons, Section 30a(4) of the Act).

In practice this means that member of Polish technicians ‘team needs to ask the Czech Chamber to verify her/his professional qualification. The Czech Chamber decides to grant to the applicant an opportunity to demonstrate their knowledge of any missing theoretical and practical areas by either of the two compensatory mechanisms below. An applicant who seeks recognition of their professional qualification as an established person may choose between a differential exam and an adaptation period. Applicants applying for registration as visiting



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persons only have the option of taking the differential exam. This exam is held in the Czech or Slovak language and involves also knowledge of the Czech construction legislation. This is a major obstacle, which is very hard to overcome and makes it very difficult.

Another alternative is not much easier and is far more time-consuming: The applicant completes a 2-year professional training programme under the supervision of a guarantor, an authorised person approved by the Chamber. The decision on the recognition of the applicant's professional qualification and their registration shall be based on a written assessment prepared by the guarantor on the course of the adaptation period.

The above mentioned situation corresponds with the wording of Professional Qualifications Directive, further PQD (Directive 2005/36/EC). PQD is a tool to facilitate the recognition of diplomas, as such it does not deal with the regulation of professions. PQD was adopted in 2005 and was fully transposed in all Member States in 2010. It describes a general system applied to all professions for which training requirements have not been harmonised. Professionals wishing to become established in another Member State, send an application for the recognition of their qualifications to the competent authorities of that Member State. Applications are examined on a case-by-case basis, taking into consideration the duration and content of training with the purpose of determining whether there are substantial differences with the requirements in the host Member State. Compensation measures, like an aptitude test or an adaptation period, can be imposed in case of substantial differences (Sneijder, De Haan, 2017).

III. Description of a Possible Solution

It seems that the solution, which would most likely lead towards actual construction of the footbridge, shall be more complex. It is quite likely that the project will be re-submitted: All partners decided to keep on their co-operation and declared their will to re-submit a project at a next suitable occasion. This occasion will be only in the framework of a new 2021 – 2027 programming period.

There are at least **following two ways how to get the footbridge constructed: The first way would mean to stick to the already elaborated documentation.** This would mean that the member of the civic engineers' team would have to undergo the certification process with the Czech of Chartered Engineers and Technicians Active in Construction according to the procedures described in Chapter II of this report. The recognition of her/his professional qualification would probably open the way towards authorizing the footbridge construction plan with the relevant Czech authorities. This complies with the existing Czech legislation, but it would prolong the whole process, as the Polish member of civic construction team would have to undergo the 2 years of adaptation period (in fact this should not be a problem, as the



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first calls in the INTERREG 202-2027 will not take place so soon). Another option is in employing professional from Czechia, who is already with the Czech Chamber.

However this first way may be too expensive for the INTERREG financing also in the new programming period, as its cost-efficiency might be questioned, as stated in the justification explaining the reasons which led towards refusal of this project. The high risk of repeated project refusal thus stays. Therefore, all partners should maintain ongoing communication with the programme managing authority and submit their project in the very first calls of 2021 – 2027 period to have higher chance.

The second possible way invites all partners to re-think their approach towards the bridge and think about the **new, cheaper version of the footbridge**. Given the limited financial possibilities of all partners, even a cheaper version of the footbridge shall be financed from the INTERREG programme. This calls for preparing all necessary technical documentation and obtaining all relevant permits, including Czech ones, in a due time. The newly elaborated technical documentation including all necessary permits will be a key part of the project obligatory enclosures. The possible administrative solution of the obstacle seems to be rather straightforward: the team of civic engineers should be enlarged and the Czech and German team or consortium members should be invited aboard – as it was agreed by all project partners at the earlier phases of this project (and as it did not happen in the end). The internationalisation of the team of project technicians and including Czech and German members seems to comply better with the partnership principle and deepens the cross-border co-operation. This should help to obtain all necessary construction permits. Leadership of the Lower Silesia should not be questioned, as their commitment seems to be strong and they are provided with the necessary sources. It might be relevant to change the supplier of the technical documentation in favour of a more international consortium experienced in proposing “lighter” constructions – but the partners should find their own way towards agreeing upon that.

IV. Pre-Assessment of whether the Case could be solved with the European Cross-Border Mechanism

It seems that the ideal solution would be in application of the ECBM, if it is approved. Reasons for this are simple: The project is functional as one entity and it cannot be separated in three individual subprojects. Extending the Polish construction legislation on the Czech and German part of trilateral region would ease the pre-construction engineering works substantially, an administrative obstacle linked with the cross-border recognition of qualifications would become less relevant.

In practice, the one-stop-shop where the single construction permit is issued would present a great help. The lead-partner responsible for the construction would contact the relevant



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authority responsible for authorizing construction works in own Member State. This authority would then communicate with its counterparts in other two involved countries.

V. Other Relevant Aspects to this Case

Cross-border planning is a completely different story in comparison to the investments in one country, as it asks for the high level of mutual trust between all partners, which seems to be somewhat challenged. Despite the procedures leading towards constructing this trilateral infrastructure are complicated, these complications can be overcome – although the ECBM would be the most suitable mechanism to fix all the administrative obstacles. The current disagreement among all partners constitutes stalemate situation: it seems that both Czech and German parts think that the current solution with its budget largely exceeds desirable construction – they believe that cheaper lighter footbridge would be sufficient to serve as a monument celebrating cross-border co-operation as well as a functional piece of cross-border infrastructure. This opinion is also shared by the Managing Authority of Polish-Saxon INTERREG programme, which considered the ratio of planned expenditure (4,1 million EURO) to expected benefits as highly unfavourable.

It seems that Lower Silesian Roads and Railways Authority is the ideal partner in consortium financially capable to ask for such a high subsidy. Their approach might however be somewhat biased by the fact that they are used to construct complex expensive solutions – probably unnecessary in the context of Polish-Czech-German border.

For the DSDiK representatives this complication just makes the whole task even more interesting and challenging, which is underlined by the attractive topic. It can be extremely demanding to change the supplier of technical documentation, but internationalization of civic engineers' team might be the best option.

The similar, though bilateral project of footbridge in Cieszyn/Český Těšín, avoided the problem of non-recognition of Polish construction professionals in Czechia. The lead-partner of the project came from the Czech side of the border and Polish construction allowing authorities accepted the documentation provided by Czech engineers. Previous projects showed that Polish construction legislation could be interpreted in more “cross-border friendly way” and Polish authorities can act flexibly. Similar approach would however probably fail in the Trojzemí context, as the Czech project partner is not in a position to act as a leader.

The project preparation had also unexpected and somewhat amusing added value, as it helped to identify the precise borderline between Germany and Poland.

As the whole process lasts more than 15 years now and the bridge has not been constructed yet, it might be worth to conclude trilateral intergovernmental one-purpose agreement to



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make this happen. Involving national level could be of a major help also for the technical process of construction authorization.

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VI. References

Act No. 18/2004 Coll., concerning the recognition of professional qualifications and other capacities of nationals of EU Member States and certain nationals of other countries

Act No. 360/1992 Coll., on the pursuit of the chartered architect profession and the chartered engineer and technician active in construction profession

Act No. 183/2006 Coll., Construction Act

Decision on the project PLSN.01.01.00-02-0130/18 „Construction of a tourist walking route on the tripoint of the borders of Poland, the Czech Republic and Germany with accompanying infrastructure" (Decyzja w sprawie projektu PLSN.01.01.00-02-0130/18 „Budowa turystycznej ścieżki pieszorowerowej na trójstyku granic Polski, Czech i Niemiec wraz z infrastrukturą towarzyszącą”), available from <https://pl.plsn.eu/documents/19524/22807/Protok%C3%B3%C5%82+z+KM+Le%C5%9Bna.pdf/6978a56c-3c92-4807-9037-7fb87355a3c9> , accessed 19 October 2019.

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Sneijder, J., De Haan, L. (2017) Easing legal and administrative obstacles in EU border regions: Case Study Labour mobility Obstacles in the recognition of professional qualifications. Available from: https://ec.europa.eu/regional_policy/sources/docgener/studies/pdf/obstacle_border/9_labour_mobility_be-de-fr-lux.pdf , accessed 20 October 2019.

List of consulted entities:

Euroregion Nisa-Nysa-Neisse

The Czech chamber of authorized engineers and technicians active in construction

Lower Silesian Railway and Road Authority

Municipality Hrádek nad Nisou

Ministry of Regional Development of the Czech Republic

Joint Technical Secretariat of INTERREG PL-SN

Euroregion Glacensis

Euroregion Tesin/Cieszyn Silesia