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b-solutions

FINAL REPORT BY THE EXPERT

Advice Case: European solution for a vignette for air pollution control

Advised Entity: European Grouping of Territorial Cooperation Eurodistrict Strasbourg-Ortenau EGTC,

FR-DE

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I. Description of the Obstacle

Different national transposition of EU-directives (so called “Clean air directives” 2008/50/EC, Dir. 96/62/EC, Dir. 1999/30/EC) into internal law forcing citizens to have different/multiple air quality vignettes.

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

In Germany, environmental zones (Umweltzonen) are set up in the clean air plans (Luftreinhaltepläne), which have their legal base in § 47 BImSchG (national law), transposing the European clean-air-directives. In Baden-Württemberg competent administrative authorities for setting up the clean air plans are the Regierungspräsidien (§ 6 (2) ImSchZuVO).

In these environmental zones, local authorities are allowed to establish permanent traffic restriction zones on the legal base of § 40 (1) BImSchG, with the possibility of exceptions for less emitting vehicles (§ 40 (3) BImSchG) according to the German regulation on less emitting vehicles (35. BImSchVO), which is the legal base for the introduction of the environmental vignettes (Feinstaubplaketten) that are required to enter these environmental zones.

In the Upper-Rhine Region there are clean air plans with environmental zones in Karlsruhe¹ and Freiburg².

§ 40 (2) BImSchG is the equivalent legal base for temporary traffic bans when the pollutant limits given by the directive 2008/50/EC and transposed in the 39. BImSchV are exceeded.

Because of the inefficient transposition of these EU Clean Air directives, different administrative courts in Germany stated that these directives have now direct effect and can serve – under respect of the principle of proportionality – as a legal basis for temporary bans of diesel vehicles.³ This is actually the case in different German cities, e. g. in Stuttgart.

In France, there are also permanent “traffic restriction zones” (zone à circulation restreinte, called ZCR⁴) which correspond in the purpose to the German environmental zones. Their legal base is Art. L 223-4-1 Code général des collectivités. The competence for the establishment of these zones is given to the municipality/the major. To enter in these zones, generally similar to the German system, the municipality can define that vehicles need a Crit’Air environmental vignette of a defined category (e.g. Crit’Air 3).

¹ Luftreinhalteplan Regierungsbezirk Karlsruhe: <https://rp.baden-wuerttemberg.de/rpk/Abt5/Ref541/Seiten/Luftreinhalteplaene.aspx>; Umweltzone Karlsruhe: https://www.karlsruhe.de/b3/natur_und_umwelt/umweltschutz/luft/umweltzonen/HF_sections/content/ZZmgoOrZPaLX2M/Karte%20Umweltzone%20trennscharf.pdf.

² Luftreinhalteplan Freiburg: https://rp.baden-wuerttemberg.de/rpf/Abt5/Ref541/Luftreinhaltung/Documents/Luftreinhalteplan_Freiburg_15022019.pdf; Umweltzone Freiburg:

https://www.freiburg.de/pb/site/Freiburg/get/params_E911087234/334578/Plan_UZ_2019.pdf.

³ <https://www.bundestag.de/resource/blob/577398/108ac9c86036408f4c16b089d28bf050/wd-7-238-18-pdf-data.pdf> <https://www.bundestag.de/resource/blob/577398/108ac9c86036408f4c16b089d28bf050/wd-7-238-18-pdf-data.pdf>.

⁴ Art. 48 du Loi n° 2015-992 du 17 août 2015 relative à la transition énergétique pour la croissance verte (1) [https://www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=F0E8DEBCBC08979AACF517438E1B636A.tplgfr36s_2?idArticle=JORFARTI000031044915&categorieLien=id&cidTexte=JORFTEXT000031044385&dateTexte=. D_écret n°2016-847 du 28 juin 2016 relatif aux zones à circulation restreinte.](https://www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=F0E8DEBCBC08979AACF517438E1B636A.tplgfr36s_2?idArticle=JORFARTI000031044915&categorieLien=id&cidTexte=JORFTEXT000031044385&dateTexte=.D_écret_n°2016-847_du_28_juin_2016_relatif_aux_zones_à_circulation_restreinte.)



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But the German environmental vignette and the French Crit'Air vignette are not congruent (due to their introduction in 2008 the German vignettes “end” at Euro 4 – so that all Euro 5 and 6 vehicles have the same (green) vignette, whilst in France the Crit'Air vignettes are much more differentiated criteria in the Euro 5 and 6 categories (also to the focus on NOx while the German vignettes rather concentrated on particulate matter). This difference makes it difficult to define exceptions for vehicles with the respective vignette of the other country (at least for example, as soon as in a French environmental zone, also diesel driven cars with Euro 4 should be excluded. In the inverse case, defining the equivalent Crit'Air categories for the German vignettes would be possible). Consequently, the barriers of access to the vignettes and the lack of comprehension/information on the systems in the neighbor country hinder the free movement of citizens and services.⁵

In the situation of air pollution peak certain vehicles can be (on the base of the Crit'Air-criteria established in Art. R 318-2 code de la route⁶) temporarily banned in a predefined local perimeter (Art. L 223-1 Code de l'environnement)⁷, which can cover even the whole surface of a department. Competent authority is the prefect. In the Upper-Rhine Region there is a prefectural order concerning the territory of the Eurométropole de Strasbourg.⁸

III. Description of a Possible Solution

Two general solutions seem possible: A solution on a European level or a solution on a bi- or multinational level.

1. Solution on a European level:

A solution on a European level should consist in a new or revised directive establishing a common vignette system, strictly based on the Euro-emission-norms or an obligation to establish a mutual-recognition system. Alternatively, the directive should oblige the member states to develop a common system for an automatic control system on the base of the number plates of the vehicles. This alternative will lead to different difficult questions, especially on a common database and data protection law. Probably the EUCARIS-System could be a functional database. In all cases a legal base will be needed.

On this base member states and their local authorities could develop differential measures.

⁵ See comparison : https://www.cec-zev.eu/fileadmin/user_upload/cec-zev/banner/themes_conso/vehicules/Tableau_comparatif_DE.pdf (29.07.2019)

⁶ And the Arrêté du 21 juin 2016 établissant la nomenclature des véhicules classés en fonction de leur niveau d'émission de polluants atmosphériques en application de l'article R. 318-2 du code de la route (<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000032749723&categorieLien=id>). See also Arrêté du 29 juin 2016 [relatif aux modalités de délivrance et d'apposition des certificats qualité de l'air](#) ; Décret du 5 mai 2017 [définissant les sanctions en cas non apposition du certificat \(article 4 définit les montants des contraventions\)](#)

⁷ Arrêté du 7 avril 2016 relatif au déclenchement des procédures préfectorales en cas d'épisodes de pollution de l'air ambiant ; <https://www.legifrance.gouv.fr/eli/arrete/2016/4/7/DEV1603792A/jo>; Arrêté du 26 août 2016 modifiant l'arrêté du 7 avril 2016 relatif au déclenchement des procédures préfectorales en cas d'épisodes de pollution de l'air ambiant https://www.legifrance.gouv.fr/jo_pdf.do?id=JORFTEXT000033069766.

⁸ Strasbourg Arrêté du préfet de Bas-Rhin (http://www.grand-est.developpement-durable.gouv.fr/IMG/pdf/20171031_ap_et_annexes.pdf); Arrêté inter préfectoral encadrant les pics de pollution http://www.grand-est.developpement-durable.gouv.fr/IMG/pdf/20170524_grand_est_aipmu_signe.pdf.



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Competent entity is the European Commission, GD Environment. The actual “fitness check”⁹ of the clean air directives could be a good moment to introduce the results of this procedure.

2. Solutions on the bi- or multinational level:

a) Development of a common/ equivalent vignette system between the member states interested in (e.g. Czech Republic, Germany). Competent entities are the interested member states.

b) Bi-national France-Germany: modification of the national legal framework in the spirit of the Aachen treaty with an exception clause for a nationwide mutual recognition or at least for (cross) border regions; e.g. exception or experimental clause for the Grand-Est-region and the Länder Baden-Württemberg, Rheinland-Pfalz and the Saarland. These exception causes could either aim a mutual recognition of vignettes or vehicles matriculated in a foreign country without vignette but fulfilling the criteria.

Any solution introducing a specific vignette for this region will lead probably to a big financial and administrative effort and would create new borders in the member states.

Alternatively a voluntary information platform recognized by the willing member states could be a solution, on which the citizens could fill in their cars for helping them to be identified with their emission class in the neighbour country to avoid contraventions, but this solution will be complicated to control.

Actually the member states seem to be either not willing to access this situation or they did not even see the cross border relevance of this problem.

Competent entities are the governments of the member states, typically the Ministries of Environment and/or Transport.

3. Intermediate solutions on the cross border level

Several intermediate solutions could be useful.

a) Mutual recognition of vignettes

Therefore a legal base in the national laws above will be necessary. This could be in the German-French situation – in the spirit of the treaty of Aachen - a specific cross border exception in the different local regulations (e.g. in the Upper-Rhine-region the prefectural order establishing the ZPA of Strasbourg, Art. 5) or in the Luftreinhaltepläne of Freiburg and Karlsruhe.

This solution invokes the principle of legal equality because it creates an inequality between French and German cars which can be probably justified with the fundamental freedoms, because it is a domestic discrimination. The Environmental Ministries of the Land Baden-Württemberg¹⁰ and of the Federal Republic of Germany¹¹ judge that this solution is not possible because of the too different vignette systems. Nevertheless, the equivalent Crit’Air classes can be determined for the German environmental zones and in France, this is possible concerning passenger cars as long as the required category does not exclude most recent vehicles. Therefore, one approach could be looking for a solution for the mutual recognition only for passenger cars in a first step and looking for a solution concerning trucks later on.

⁹ https://ec.europa.eu/environment/air/index_en.htm.

¹⁰ Answer to the Question submitted by the Upper-Rhine Council (Annex).

¹¹ Answer to the Question submitted by the Upper-Rhine Council (Annex).

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In temporary aspects, local authorities could use the obligatory update delays of their clean air plans with environmental zones to add a cross border exception.

The following graphs¹² show the differences:

Véhicules légers et VUL		Diesel		Essence	
Norme Euro	Mise en service	Crit'air	Plaque DE	Crit'air	Plaque DE
Euro 1	01/01/93	/	/	/	
Euro 2	01/07/96				
Euro 3	01/01/01				
Euro 4	01/01/06				
Euro 5	01/01/11				
Euro 6b	01/09/15				
Euro 6c	01/09/18				

Poids lourds		Diesel		Essence	
Norme Euro	Mise en service	Crit'air	Plaque DE	Crit'air	Plaque DE
Euro 0	01/10/90	/	/	/	/
Euro 1	01/10/93	/	/	/	
Euro 2	01/10/96	/		/	
Euro 3	01/10/01				
Euro 4	01/10/06				
Euro 5	01/10/09				
Euro 6	01/10/14				

In German law, the 35. BImSchV determines in § 2 (1) generally, that only vehicles flagged with the corresponding environmental vignettes determined in annex 1, are excluded from the different traffic bans. Neither in this norm, nor in the corresponding annex 1, nor in the exceptions clause in § 2 (3) exceptions for cars matriculated in foreign countries are mentioned.

¹² Established by the DREAL (2019).



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Only § 6 determines as a special case the classification of cars matriculated in foreign countries, but no rule on foreign environmental vignettes.

Probably this could be seen as a regulatory gap which could be filled by a mutual recognition of corresponding vignettes of another member state. Legal background on this interpretation could be a restrictive interpretation to make this German regulation conform to European primary law, due to fact, that these obligations could be seen as a hindering factor to the free movement of goods, services or workers.¹³ Furthermore, as the French vignette can only be bought via internet and be payed via credit card, the access to these vignettes is not granted for people not having internet or credit cards.

As the French system seems to be yet stricter, German cities could on the base mentioned above more easily set French Crit'Air vignettes as equivalent in their local regulations than inversely. In the German environmental zones Crit'Air 1to 3 could be accepted as equivalent to the German Euro 4-vignette.

In France the mutual recognition could be based on the principle of the most similar German vignette, which has to be fixed in an annually annex, which has to be actualized according to the technical and legal development in France and Germany. For the actual situation in Strasbourg, German Euro 4-vignettes for cars could be considered (at least till 2025, probable Diesel-ban) as equivalent to Crit'Air 3. As the City of Strasbourg has already excluded Crit'Air 3 vehicles in the case of pollution peaks (decided in September 2019), this solution will not help anymore at least in case of pollution peaks.

b) Obligation or voluntary self-commitment to the (professional) car sellers

Another intermediate solution could consider obligations or negotiations with the car manufacturers or car sellers to give or to put on the car at least the vignette of the buyer's country PLUS at least one more according to the choice of the buyer. In the border regions this could be the neighbour countries.

c) Adoption of a foreign national solution in the border region of another member state

In the German-French border-region this could be done by using Crit'Air vignettes in the environmental zones of border cities in Germany (Karlsruhe, Freiburg). There is an example in the Geneva region where the French Crit'Air is going to be applied in Switzerland during temporally traffic bans¹⁴.

As the French system seems to be yet stricter, German cities could more easily set French Crit'Air vignettes as equivalent in their local regulations than inversely.

The mutual recognition in France could be based on the principle of the most similar German vignette, which has to be fixed in an annually annex, which has to be actualized according to the technical and legal development in France and Germany. In the current context, this seems to be difficult to handle and leads to an enormous administrative burden.

So we suggest rather the adoption of the French system in the German part of the region than the adoption of the German system in the French part of the region.

¹³ A violation of the fundamental freedoms established by the TFEU seems to be rather implausible due to the low price of the vignettes.

¹⁴ <http://www.grand-geneve.org/concretement/pactair>.



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This kind of solution seems to be possible considering international public law. § 6 (2) of the 35. BImSchV sets a legal presumption, if a vehicle matriculated in a foreign county is not able to prove conformity – probably this conformity can be proven with the equivalent Crit-Air vignette.

d) Development of a common environmental zone in the Upper-Rhine-Region or at least in the Kehl-Strasbourg urban area (e.g. Geneva, Pact'air¹⁵)

This solution would be an optimal solution to guarantee clean air in this region. Again this solution seems to be difficult to handle and leads to an enormous administrative burden.

e) Respect of the principle of proportionality and exercise of discretion in case of checks enforcing the zones of low emissions; e.g. first time contravention a simple warning/caution

This solution uses in priority pedagogic measures. The difficulty consists in the fact that simple warnings lead generally not to an official process introduction, therefore a second time contravention could never be proven.

f) Better Information

Generally useful will be public and confident information on a European level, which is linked with the official national websites. That site should be better structured and better actualized than Urbanaccessregulation.eu. Also, information at the entrance to the territories with driving restrictions that are situated next to the border should be given in both languages (and in English).

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

The problem could generally be solved with the ECBM¹⁶.

There is no other cross border mechanism applicable, except for the French-German Cross Border Cooperation Institutions, as the Upper-Rhine Conference and the Franco-German-Swiss Intergovernmental commission.¹⁷ These institutions tented already to solve the problem. Possible solutions were not pursued by the member states governments.

Though, with the ECBM a binding solution based on this analysis could be found, but there is still no clarity if the ECBM will get into force as foreseen in the draft versions. And even then, the ECBM will not help for the EU-Swiss cross-border situations.

V. Other Relevant Aspects to this Case

Other relevant practical issues to this case are:

1. Different systems to control the environmental vignettes and data protection law

Actually in Germany the rights to access environmental zones were usually controlled via traffic checks. In Germany the Bundestag modified in March 2019 the Straßenverkehrsgesetz to allow automatic traffic checks (§ 35 (1) Nr. 18, § 36 (2i), § 63 c StVG)¹⁸. In this modification no cross border clause was included, which leads to the result that data protection law actually not allows to transmit these data to French or other European authorities.

¹⁵ <http://www.grand-geneve.org/concretement/pactair>.

¹⁶ [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2018/0198\(COD\)&l=en](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2018/0198(COD)&l=en).

¹⁷ <https://www.conference-rhin-sup.org/fr/services/english.html>.

¹⁸ <http://dip21.bundestag.de/dip21/btd/19/063/1906334.pdf>.



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In France there are actually only automatic checks of speed violations or traffic lights violations. Since September 19 2019 also the possession of a valid assurance can be controlled automatically. An automatic control of vignettes is actually not possible, but a draft version of a corresponding law available.¹⁹ In the impact assessment, there are no cross border implications mentioned (except the pursue of violations)²⁰.

2. Obligation for car rental agencies to furnish the needed vignettes

Car rental agencies could be obliged to put the required vignettes on their cars.

3. General exception for E-vehicles

A general exception for E-vehicles could be easily established on a cross-border, bi-national or European level, due to their special licence plates.

VI. References and Appendix/Appendices if any

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¹⁹

<https://www.legifrance.gouv.fr/affichLoiPreparation.do?idDocument=JORFDOLE000037646678&type=general&typeLoi=proj&legislature=15> .

²⁰

<https://www.legifrance.gouv.fr/affichLoiPreparation.do?idDocument=JORFDOLE000037646678&type=general&typeLoi=proj&legislature=15>, p. 407.