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b-solutions

FINAL REPORT BY THE EXPERT

Advice Case: Speedy mutual recognition of qualifications for healthcare professionals

Advised Entity: European Grouping of Territorial Organisation Cerdanya Hospital EGTC, ES-FR

Expert: Transfrontier Operational Mission (MOT)

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This report is part of the European Commission's call for b-solutions projects, for which the Association of European Border Regions (AEBR) has been selected as the delegate. It consists in identifying different obstacles to cross-border development on a wider number of European borders, the legal, administrative and technical constraints underlying them, and the solutions adopted by both sides or that could be proposed. Each obstacle selected on a particular border is the subject of a dedicated analysis and report, which leads to a reflection on the relevance of the application of the draft European Cross-Border Mechanism (ECBM) regulation for its future resolution.

The obstacle addressed in this report concerns the difficulties of mutual recognition of diplomas in the context of the activities of the Cerdanya Cross-border Hospital, an establishment located in the Spanish municipality of Puigcerdà, in the north of the territory of the Generalitat de Catalunya. The practical and technical difficulties posed by this obstacle to the operation of the hospital will be presented, as will the legal and administrative framework that is the reference and the source of these difficulties, as well as the prospects for the evolution and improvement of this framework, to the benefit of the cross-border operation of the hospital.

I. Description of the Obstacle

The Cerdanya Hospital is to date the only example of a cross-border hospital in Europe. It is positioned within a French-Spanish living area of nearly 33,000 inhabitants (18,500 in Spain, 14,500 in France), and is developing a hybrid operating mode with the two health systems of France and Spain, to offer the same conditions of care to patients from both countries. In operation since 2010 and located in a mountainous area, it has made it possible to respond to the difficulties of access to healthcare for the inhabitants of this territory, for whom, for example, the nearest emergency and maternity service on the French side was located in Perpignan, an hour and a half by car from Puigcerdà.

With a staff of 250 people, including 70 doctors, 40% of the Hospital is financed by the Agence Régionale de Santé Occitanie, the remaining 60% being paid for by Catalan operators. However, of the 70 doctors working in the hospital, only 10% are French, and only one is full-time, the others operating under a service provision scheme.

It should also be noted that, depending on the services, the French population varies between 20 and 35% of the total population.

Two regimes for the practice of the medical profession in Europe have been transposed into French and Spanish law:

- The freedom of establishment system
- The system of the freedom to provide services



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The freedom of establishment regime concerns the permanent establishment of a doctor abroad to practise full-time, with the consequence that, in the case of a French doctor settling in Spain, he or she is no longer attached to the French Medical Association. This regime is therefore not adapted to cross-border exercise (source: ARS Occitanie), since it does not allow simultaneous exercise within two countries.

The system of the freedom to provide services is the one that refers to in the case of the Hôpital de Cerdagne. It consists of a temporary practice of medicine in another country of the European Union, without requiring registration with the foreign medical association, a single prior declaration or accreditation procedure being sufficient. A daily rate is adopted, in particular to remunerate the activities of French doctors within the Cerdanya Hospital.

While it allows French private doctors to be paid the same as that received by them in France, this system **is also synonymous with a significant turnover of healthcare staff**, with the corollary of the repetition of the procedures for the recognition of diplomas. It is therefore necessary that these steps be as brief as possible; however, as things stand at present, they can sometimes take more than 6 months. Their acceleration is therefore a strategic challenge for the very functioning of the hospital, whose cross-border nature and French funding are based on the presence of French healthcare staff.

If the situation is of a less urgent nature, this regime must also allow Spanish doctors to practice in France, as the French border territory known as "de Cerdagne Nord" is confronted with a significant medical desertification phenomenon. It is therefore a **question of mutual recognition of diplomas**.

In addition, **French SMUR ambulances and Catalan SEMs cannot intervene urgently on the other side of their border if the personnel who compose them (nurses and medical staff) are not recognised by the competent authorities in the territory in question.** The consequences of this blockage can thus be substantial and even vital in the event of a temporary lack of resources on a side of the border for victims in emergency situations, and for the provision of care that the hospital is able to provide them. Accelerating the recognition of diplomas is a second imperative for the health structure.

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

The mutual recognition of diplomas for a wider range of professions, including those relating to the medical world, **is established at European level by Directive 2005/36/EC and amended by Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013** on the recognition of professional qualifications. These two Directives allow, for a number of regulated professions, the mutual recognition by the Member States of professionals recognised and qualified in another Member State. They apply in particular to doctors and medical staff, in order to facilitate their free movement within the European single market.



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→ Case of the French recognition of a Spanish diploma

This first case deals with the possibility for a Spanish doctor to come and practice occasionally in France.

In this regard, article L1442-7 of the Public Health Code provides:

*"A doctor, dental practitioner or midwife who is a national of a State, a Member State of the European Union or a party to the Agreement on the European Economic Area, and who is established and legally pursues the activities of a doctor, dental practitioner or midwife in a State, Member State or party, **may perform in France, on a temporary and occasional basis, acts of his profession without being entered in the register of the corresponding medical association.***

The execution of these acts is subject to a prior declaration, which is accompanied by supporting documents, a list of which is established by order of the Minister of Health. The service provider shall attach a statement concerning the linguistic knowledge necessary for the performance of the service.»

With regard to the procedures for carrying out this prior declaration, regulatory article R4112-9 of the same code specifies: *"The declaration provided for in article L4112-7 shall be sent before the first provision of services to the **“Conseil national de l'ordre” of the profession concerned. (...)***

The temporary and occasional nature of the provision of services is assessed on a case-by-case basis, in particular according to its duration, frequency, periodicity and continuity. »

In short, a Spanish doctor wishing to practise in France under the freedom to provide services must make a prior declaration to the national medical association as a main step.

This can be done online on the website of the Order of Physicians, the decree of the Ministry of Health of 4 December 2017 provides that it must be accompanied by the following supporting documents, and provides details regarding their incorporation times:

- 1° A copy of an identity document valid on the date of filing of the declaration; if this document does not mention it, a document attesting to the nationality of the applicant;
- 2° A copy of the evidence of formal qualifications enabling the profession to be practised in the country of acquisition, as well as, for doctors and, where applicable, for dental surgeons and pharmacists, a copy of the evidence of specialist training;
- 3° A certificate **issued less than three months ago** by the competent authority of the State of establishment, a member of the European Union or a party to the Agreement on the European Economic Area, certifying that the person concerned is legally established in that State and that he is not subject, when the certificate is issued, to any prohibition, even temporary, to practice;
- 4° Where the evidence of formal qualifications has been issued by a third country and recognised in a Member State of the European Union or a party to the Agreement on the European Economic Area, other than France:



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a) Recognition of evidence of formal qualifications established by the authorities of the State which recognised such qualifications; for the profession of doctor, recognition must relate to basic evidence of formal qualifications and evidence of specialist training;

b) All relevant documents proving that he has practised the profession in that State for three years on a full-time or part-time basis for an equivalent total period;

- 5° Where applicable, a copy of the previous declaration and a copy of the previous declaration.

To these documents must be added the verification of the scope of the doctor's insurance to cover procedures performed in France under the conditions required in France (article 3 of the decree). These documents - apart from the copy of the identity document - must finally be written or translated into French by a sworn translator (Article 4).

The Council of the National Medical Association is then required to reply within one month, and without a reply from the latter, the service may be provided freely (Article R4112-9-1).

The doctor is registered on a specific list kept by the National Council, and is exempt from paying a contribution. Finally, the National Council must send the doctor, within a maximum period of 15 days, a receipt specifying his registration number, the discipline exercised by the doctor and the competent primary health insurance fund (Article R4112-9 of the Public Health Code)

It should be noted that in urgent cases, if the doctor is unable to make the declaration before the services are provided, the declaration may be made later within a maximum period of 15 days.

This declaration of provision of services is annual and may then be renewed if the doctor wishes to continue to practice on a temporary and occasional basis on French territory.

While Spanish doctors seem to be fully informed of the documents to be provided and contained in Article 2¹, **additional information should be provided on the obligations related to Articles 3 and 4** (insurance and sworn translation) in order to clear up certain misunderstandings and misunderstandings, which may have been observed during the mission.

→ Case of the Spanish recognition of a French diploma

This second case is applicable to French doctors wishing to exercise their activity within the framework of the freedom to provide services on Spanish territory, and in particular within the Cerdanya Hospital.

European Directive 2005/36/EC and amended by Directive 2013/55/EU of the European Parliament and of the Council of 20 November **2013 is incorporated into Spanish law by Real Decreto 581/2017, de 9 de junio**. It transposes in the same way the arrangements for the immediate and mutual recognition of diplomas in the case of the freedom to provide services.

¹ Following the study B-solutions 1 "When emergencies erase borders" and thanks to the administrative department of the Cerdanya Hospital



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Article 13 of the Decree provides that this declaration must be made to the competent Spanish authority with a list of supporting documents, namely :

- A document proving the nationality of the service provider
- A certificate proving that the person concerned is legally established in an EU Member State and that he/she is not subject, at the time of issue of the certificate, to any prohibition, even a temporary prohibition to practice, issued by the State of establishment
- Proof of professional qualifications
- A certificate proving the absence of temporary or permanent suspensions from practising the profession or criminal convictions in cases where this is required of professionals practising on national territory.
- A declaration of the person's linguistic knowledge, necessary for the exercise of the profession in Spain.

According to the same decree, **the Spanish authority competent in this matter is not the Medical Association (French situation) but the Ministry of Education and Vocational Training**, which ensures "the national coordination of the activities of the competent Spanish authorities" (Article 76 of the decree), is responsible for being "the assistance centre whose task it is to offer assistance to citizens and assistance centres of the other Member States" (Article 80), and must therefore be made the recipient of all the supporting documents

In practice, the legal department of the Cerdanya Hospital is responsible for facilitating and consolidating the supporting documents concerning the hospital's French doctors, in order to speed up the process. Once these documents have been sent, **the Cerdanya Hospital awaits the Ministry's reply, for which no deadline has been set and which may therefore vary.**

Finally, it is from the notification of the complete status of the file and the accreditation of the recognition of the diploma by the Ministry of Education that the service provider can register with the Catalan Medical Association in Girona and start its activity immediately.

Compared to the French situation, this procedure therefore involves an additional and not insignificant step given the constraints it indirectly generates.

Indeed, based on several practical and concrete cases, it was found that the Ministry's response time could vary from less than one month to more than 6 months, **leading in the latter case not only to uncertainty but also to potential disorganization of the Cerdanya Hospital, whose needs in medical professionals do not correspond to this temporality.**

In fact, such a situation does not seem to be linked in any way to any specific legal constraint or to a problem of application of the rule, but rather to a form of "**administrative slowness of processing**" in order to assess the complete and compliant status of the files.

➔ A framework not adapted to the specific case of the Cerdanya Hospital



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The cross-border nature of the Hospital means that it must operate on both sides of the border, both by taking care of patients from both sides of the border, by applying standards and operating rules adapted to the two healthcare systems in France and Spain, and by having medical professionals from both countries on its teams.

This is the case for the authorities responsible for ensuring the dual and binational nature of this structure financed by both parties, although this character entails significant obstacles and administrative difficulties on both sides.

One consequence of the freedom to provide services is that French doctors practising at the Hôpital de Cerdagne remain established in France, their activity being only temporary and occasional in Spain. The fact of settling in Spain would also generate other costs for these professionals, which would in particular be removed from the order of French doctors. The sustained rotation and the difficulty for the Hospital to consolidate its teams of medical staff are among the consequences of the application of the freedom to provide services regime, and the **effectiveness of immediate recognition of diplomas is thus a condition for the Hospital to maintain cross-border activity.**

While the procedure for the recognition of French diplomas by the Spanish authorities can be adapted and functional for generic cases of exercise of the freedom to provide services, it is important to formulate prospects for improvement to make it more predictable and immediate in the specific case of cross-border hospitals.

III. Description of a Possible Solution

Accelerating the recognition of diplomas, or more precisely **guaranteeing a limited period of time for such recognition**, is a challenge for the Cerdanya Hospital, particularly as regards the recruitment and consolidation of teams of French doctors, enabling them to exercise the freedom to provide services within a structure located on Spanish territory.

The accreditation procedure for these practitioners involves the central Spanish authorities. **The Ministry of Education and Vocational Training coordinates the competent authorities and collects the required supporting documents** (pursuant to Article 76 of Real Decreto 581/2017). It is from the moment when the conformity of his file is notified that the practitioner is then able to register with the Catalan order in order to be able to practice in Puigcerdà.

The potential solutions to speed up the recognition procedure thus **require an evolution of procedures at national level, and in this case to request a resolution through the Franco-Spanish Summit**².

² It should be noted that the last Franco-Spanish Summit took place on 20 February 2017.



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→ Acceleration perspective 1: introduce a non-response period after which the administrative recognition of the qualification is recorded for the practitioner

One of the most immediate prospects for accelerating the recognition of diplomas for the proper conduct of the activity of the Cerdanya Hospital **would be the adaptation to the margin of the Spanish procedural framework, with the introduction of a non-response period beyond which the accreditation of the practitioner by the Ministry of Education is deemed favourable.**

By incorporating the procedures in force on the French side and Article R4112-9-1 of the Public Health Code, which states: "*In the absence of a response from the National Council of the Order within the time limits set (...)[1 month], the provision of services may begin*", this formal adaptation of the legal framework, or to a lesser extent **its mere integration into the Ministry's internal procedural regulations**, would have a significant effect on accelerating the recognition of diplomas.

Two main consequences could result from this, to the benefit of the institution's operations:

- **The predictability of the time required for the recognition of diplomas** for the hospital, allowing it to adapt its recruitment and investments according to
- **Strengthening the attractiveness of the freedom to provide services regime**, with a clearer, more immediate and resource-saving accreditation procedure for doctors wishing to practise in Puigcerdà

For the Spanish Ministry of Education and Training, this perspective would have the advantage of ensuring that it has full control over the accreditation procedures of the freedom to provide services regime. The establishment of a time limit for processing declarations would also make it possible to prioritise the responses to be given, depending on the complete or incomplete status of the files.

→ Acceleration perspective 2: Introduce an exception specific to French doctors wishing to practise at the Cerdanya Hospital, by allowing the recognition of diplomas by the Girona Medical Association

A second perspective of acceleration involves the delegation of the recognition of diplomas for the exceptional case of the Cerdanya Cross-border Hospital, as a Franco-Spanish establishment, jointly run and managed by public operators located on both sides of the border.

As the coordinating body of the authorities responsible for the recognition of diplomas (Article 76 of Real Decreto 581/2017), **the Ministry of Education and Vocational Training could introduce an exceptional regime for the functions performed by the hospital, and delegate the exercise of this recognition to the Girona Medical Association.**

As a European grouping and public operator, the EGTC would thus be responsible, in line with its current tasks, for collecting all the supporting documents necessary for the exercise of the freedom to



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provide services, for French doctors made available to the hospital by the Agence Régionale de Santé Occitanie. Instead of forwarding it to the Ministry of Education, the Girona Medical Association, with which doctors must necessarily register in order to practise in Puigcerdà, would also be competent to recognise their qualifications, obtained and already accredited in France.

This proposal should be seen in the context of the exceptional nature of the Cerdanya Hospital, the only cross-border hospital in Europe, and would in no way be extended beyond this situation. Moreover, this exception would only apply to French doctors practising in a cross-border perimeter to be determined³.

A final possibility to speed up the procedures could be the secondment of an official from the Ministry of Education to the Cerdanya Hospital, so that he can certify directly on the spot the conformity of the files of French doctors.

IV. Pre-assessment of whether the case could be solved with the ECBM

The potential future European regulation to set up the European Cross-Border Mechanism (ECBM) is entirely appropriate in the case of speeding up the recognition of diplomas for hospitals.

This potential future regulation, drawn up by the European Commission, consists in "***applying, for a given Member State and with regard to a common cross-border region, the legal provisions of the neighbouring Member State when the application of its own legislation would constitute a legal obstacle to the implementation of a common project (which may concern an infrastructure element or a service of general economic interest).***"(Source: European Commission, proposal for a Regulation 2018/0198 (COD))

The establishment of the mechanism is thus linked to the implementation of a specific cross-border project, and **could constitute a relevant exception regime** for the case of the acceleration of the recognition of diplomas within the Cerdanya Cross-border Hospital. An application of French legislation, recognising diplomas acquired or certified in France and for the specific case of this hospital structure, would thus make it possible to validate directly and immediately the performance of the services provided by French doctors. **It also does not imply a loss of sovereignty for the Spanish State, since it remains the guarantor of the control and execution of the European ECBM mechanism.**

³ This scope could be that of the GHT Aude-Pyrénées, with which Hôpital de Cerdagne signed a partnership agreement in 2018 (see attached agreement + chapter "Other relevant aspects")



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V . Other Relevant Aspects

The issue of accelerating the recognition of diplomas for the Cerdanya Hospital raises other issues related to strengthening the attractiveness of the structure, and the development of new methods of cross-border cooperation for the recruitment of French doctors.

In particular, **adaptations may be necessary on the French side to promote the freedom of establishment of French doctors within the Cerdanya Hospital.** This system, which concerns a definitive exercise of the profession of doctor in another European Union country, must be questioned in the light of the particular situation of the Cerdanya Hospital, whose address is in Spain and whose activity straddles the two States. Indeed, **a French doctor who chooses to settle in Spain is struck off the list of French doctors, and can therefore no longer practice there** (in addition to the psychological effect of this striking off). According to the information provided to us, he must also undertake to work for 15 years in Spain if he wishes to obtain a full pension there. Finally, a final constraint lies in the predominance of employee status in Spain over that of liberal medicine in France, with the result that potentially lower salaries are paid.

Also, a **partnership agreement was concluded on 18 April 2018 between the EGTC Hôpital de Cerdagne and the Groupement Hospitalier de territoire Aude-Pyrénées**, an agreement that acknowledges the articulation and complementarity of the activity of the two structures in the territory. It refers in particular to cooperation for the intervention of emergency services on both sides (without this convention having any real legal scope to be able to resolve the obstacles attached to it), and to "*promote the participation of French health professionals, hospital or private, in the functioning of the activities of the Cerdanya Hospital.*" (Article 2).

More precisely, with regard to the personnel made available to the EGTC by the Perpignan hospital group, the agreement mentions the fact that "***the establishment supporting the GHT shall ensure that the personnel made available to the EGTC-HC are duly qualified to exercise their speciality in France and Spain, and that all the obligations necessary for the exercise of the profession have been fulfilled.***"(Article 8) **It could therefore be relevant to rely on this convention to facilitate the implementation of an exceptional regime for the Cerdanya Hospital**, which promotes the acceleration of the recognition of diplomas.

Finally, **the development of new medical technologies and more particularly the development of telemedicine are leading to a reexamination of the legal frameworks applicable between two countries neighbouring the European Union**, in particular as regards the equivalence of qualifications. What are the rules that apply to the practice of cross-border, and more broadly international, telemedicine? Is a doctor competent to diagnose a patient resident in another EU country, and what is his responsibility in the event of an error? Or, what intervention skills can the practitioner have during a remote consultation?

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