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b-solutions

Annex I.a: FINAL REPORT BY THE EXPERT¹

Part of the report is also the information sheet on the advice case to be compiled by the advised entity to be submitted to the Association of European Border Regions (AEBR) attached to the report.

Advice case title:

Cross-border authorizations of tramway personnel

Full official name of the advised entity:

Province of Limburg (NL)

Name of the expert contracted for the advice case:

Martin Unfried (Report written with Pim Mertens)

Date: 16.4. 2021

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I. Description of the legal or administrative obstacle in the specific context

In order to boost sustainable transport in the Belgian province Limburg, the Spartacus plan has been developed. By investing in public transport by rail, traffic jams must be reduced and connectivity with neighbouring countries and provinces improved.² As part of the Belgian Spartacus plan, a new cross-border tramline will be realized between Hasselt (BE) and Maastricht (NL). This tramline will reduce the average trip by public transportation between the two cities from 70 minutes to approximately 30 minutes, greatly improving cross-border mobility. The tram route has 12 stops, of which 10 in Flanders and 2 in Maastricht, covering a total length of about 30 km, of which 27 km is located in Belgium and 3 km lies within Dutch national territory.

The project constitutes a cross-border collaboration between, from Belgian side, the Flemish government and transport company De Lijn and, from Dutch side, the Province of Limburg and the municipality for Maastricht. According to project plan the first ride is planned for 2023 and the line will be fully exploited by 2024, whereby the Belgian public transportation company De Lijn will operate both the Belgian and the Dutch part of the tramline for a period of 35 years. In preparation of this tram line, preliminary (legal) studies have been performed, also on the topic of the authorization and competences of the Belgian tramway personnel. In this respect, some issues regarding the legal authorizations of Belgian tramway personnel on the Dutch part of the tramway have been identified, mostly related to the enforcement of rules in and around tram platforms.³ On Dutch territory, the regulations and laws of the Netherlands are applicable. Therefore, De Lijn and its employees fall under Dutch law for the 3 km stretch of tramway in the Netherlands and Dutch law stipulate what competences and authorisation the Belgian tram personnel has. In this respect the *Wet Personenvervoer 2000* ('Passenger Transport Act 2000'; WPV 2000) is particularly important, as this Act formulates the applicable rules on the transport of passengers.

The WPV 2000 makes a distinction between two competencies of public transport personnel: supervising ('toezichhouden') of Article 87 and investigating/enforcing ('opsporing') of Article 89, where the latter one is more comprehensive in powers. The qualifying group overlap to a certain extent, but the scope of eligible personnel under Article 89 WPV 2000 is more limited. Following the preliminary legal study on this competencies, it is concluded that the Belgian tram personnel of De Lijn does not qualify under Article 89 WPV 2000 and therefore miss legal competences on the enforcement of rules on Dutch territory. As stated by the Province of Limburg, the Dutch tramway personnel do possess these competences. As a consequence an alternative solution has been found in order to further guarantee the safety of personnel and passengers on the Dutch stretch of the tramline. Solutions to the problem lead to a higher costs by hiring extra (Dutch) personnel in order to perform tasks related to the competences as described in Article 89. Arguing that these costs would not be

² Trammaastrichthasselt.eu, 'Spartacus: meer mobiliteit, meer kwaliteit', <https://www.trammaastrichthasselt.eu/wiewatwaarom/spartacus-meer-mobiliteit-meer-kwaliteit/>

³ As concluded from a preliminary legal study done by Dutch attorneys.



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incurred by a tramway project were it to be solely located in the territory of one state, this seems to amount to an obstacle in cross-border mobility.

II. Indication of the legal dispositions causing the obstacle

As mentioned earlier, the Passenger Transport Act 2000 (WPV 2000) plays a central role in the regulation of public passenger transport. The WPV 2000 is aimed at fostering the use of public transport and the improvement of the cost coverage ratio.⁴ It furthermore prescribes the rules and obligations of passengers and the rights concerning supervision and enforcement.⁵ The WPV 2000 is applicable on 'public transport'⁶, defined as 'timetabled passenger transport by car, bus, train, underground, tram or guided vehicle open to everyone'⁷ and thus covering all common ways of public transport including taxi and private coach transport. The WPV 2000 stipulates moreover that the Minister on national level is authorised for public transport by train, but for all other means of public transport, as mentioned in the WPV 2000, the provinces are authorised and can grant concessions.⁸ Therefore, in present case, the Province of Limburg is responsible for the granting the concession to De Lijn for the tramline on Dutch territory. However, the Province cannot decide upon the rules and regulations on passenger obligations and authorisation of persons for supervisory and enforcing tasks, neither decide upon questions with regard to the designation of authorized persons to trace criminal offenses related to the WPV 2000. This prescribed in the WPV 2000 itself, supplemented by the Decision WPV 2000 ('Besluit WPV 2000') and the ministerial competence to take decisions. It is thus based at the national level.

Regarding to the passengers obligations, Chapter IV WPV 2000 defines the rules to which users of public transport must adhere.

1. It is forbidden to make use of public transport or the associated facilities without a valid ticket (Article 70 (1));
2. It is forbidden to make use of a (invalidly) amended ticket, to misuse a ticket or to impede the checking of tickets (Article 71);
3. Everyone is forbidden to behave in public transport or in the immediate surrounding of a station, stop or other facility associated with public transport, such as steps, lifts and tunnels, in such a way that order, peace, safety or the smooth running of the business is, or may be, disturbed (Article 72). The phrasing of this Article makes clear that this is not only limited to the users of public transport, but applicable to all;
4. Each is obliged to follow the instructions regarding to order, peace, safety and the smooth running of the business, that have been clearly communicated (Article 73). Again the exact wording of this Article explicate that this obligation is applicable to all.

⁴ Memorie van Toelichting WPV 2000, *Kamerstukken II 1998-1999*, 26456, nr. 3.

⁵ Chapter IV ad VII of the WPV 2000.

⁶ Article 2 (1) WPV 2000.

⁷ Article 1 WPV 2000.

⁸ Article 20 (1) & (2) WPV 2000.



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On the basis of Article 74 WPV 2000, the Decree WPV 2000 further explains and define the listed obligations. Regarding to ticketing, the Decree stipulates that travellers are obligated to have a valid ticket before they enter public transport or even the part of the station or stop, where it is clearly stated by the carrier that a valid ticket is necessary.⁹ In case during a control a traveller refuses to, or is not able to, hand over a valid ticket, the carrier can advance the ticket price and even an additional fee.¹⁰ Next to valid tickets, a great emphasis is placed on safeguarding the order, peace, safety and the smooth running of business both in public transport as well as the facilities and places associated with it. What the exact meaning of 'order, peace, safety and the smooth running of business' is, is made more explicit by Article 52 and 53 of the Decree WPV 2000. It includes misuse of the facilities, obstruction of the operation and task performance, drunkenness, cause noise pollution, smoke in public transport or associated parts where it is forbidden, advertise or exploit services, be at a station or stop that is clearly closed or wander around inaccessible parts and cause hinder, danger, pollution or damage. A further elaboration of the instructions can be provided by the carrier by text or visual.

The enforcement of these behavioural rules is regulated in Chapter VII WPV 2000. As already outlined, regarding the enforcement a distinction is made between supervision and investigation/enforcement. Article 87 WPV 2000 authorises persons for the supervision on the compliance with the legal provisions. Article 89 WPV 2000 describes who is authorised for the detection of the offences laid down in this Act. Both supervisors as investigators have the authority to check tickets, request identification documents and in case of a violation of the behavioural rules, to withdraw the ticket and to deny the use of and access to the public transport, if necessary with 'strong arm'.¹¹ However, only investigators are authorized to deny persons the access to or remove persons, violating the behavioural rules, from a station, stop or another facility or location associated with public transport, if necessary with 'strong arm'.¹² Furthermore, a violation of the behavioural rules can constitute a criminal offence that, next to other enforcement officers, only investigators are competent to enforce.¹³

The Province of Limburg and City of Maastricht rightly state that Belgian conductors (or drivers) of De Lijn can act as supervisors and we follow this. Based on Article 87 (3) WPV 2000 the carrier can designate persons who are responsible for supervision. However, Belgian conductors/auditors/drivers cannot be investigators/enforcers in accordance with Article 89 WPV 2000, as it appears to be limited to officers designated by criminal laws. Although the wording of paragraph 2 of Article 89 of the WPV may offer some room for alternative solutions, namely the appointment of personnel with certain competences ("persons appointed jointly by decree of Our Minister and Our Minister of Justice"). The decisive question is, whether the legal restrictions with respect to Article 89 are a problem with respect to the security situation and creates the need for the occupation of extra personnel with corresponding costs.

⁹ Article 47 (1) Decree WPV 2000.

¹⁰ Article 48 (1) and (2) Decree WPV 2000.

¹¹ Article 92 and 98 (1) WPV 2000.

¹² Article 98 (2) WPV 2000.

¹³ As Article 89 WPV 2000 itself makes explicit.



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To understand the restrictions, it is helpful to look at ‘regular’ Dutch tram lines and the respective competences of staff. For instance in the case of tram services in The Hague, the BOA inspectors¹⁴ of the public transport company HTM have competences that involve, among other things, arresting and fining.¹⁵ They are even authorised to use force and are allowed to use handcuffs and a truncheon. According to the company HTM, their BOA inspectors do not use these weapons because their training and education have taught them how to deal with tense situations. In case of violations in bus or tram they can arrest persons and transport them to the police station.

In contrast, staff of De Lijn only have the competencies related to supervision. Therefore, they are authorised to check tickets, identification documents, and deny access to public transport in case of violation of a behavioural or house rule. In the event of an invalid, or absence of a, ticket, the ticket price, and any surcharges, may be imposed. However, in the event of a disagreement on a Dutch platform or other facility related to tram, the competencies of the staff of De Lijn are rather limited. As earlier elaborated, enforcement of the behavioural rules of Articles 72 to 74 WPV 2000 is only limited to investigators/enforcers. Therefore, for further escalation (stopping, enforcing and denying access) the Dutch BOA or police would have to be called in. Furthermore, no criminal prosecution can be brought by the staff of De Lijn. This would of course also clearly deviate from the competences that De Lijn supervisors have on Belgian territory. The Flemish Government's Decree of 14 May 2004 states that supervisors can impose administrative fines and confiscate tickets or reduction cards. Since 1 April 2007, De Lijn has not only been able to impose administrative fines on black-riders but also on people who cause nuisance. Based on the Royal Decree of 1 December 1975 (regarding the general regulations for the police of the road traffic), line inspectors can draw up an official report when they find violations of the road code. The line officers have access to the Belgian National Register and the register of vehicles via the Dispatching. This is necessary for the smooth exercise of the above competences. The Law of 10 April 1990 on special and private security stipulates that the line inspectors, under well-defined conditions, can arrest people who have committed a malpractice or crime. The company emphasises the fact that De Lijn explicitly chooses not to equip its line inspectors with handcuffs and pepper spray (even though the law provides for this possibility) since De Lijn considers customer-friendliness to be of paramount importance.¹⁶

Hence, the important legal question is how far the competences of the Belgian staff would deviate from a ‘regular’ Dutch situation. An addition there is a practical question from the side of the De Lijn

¹⁴ BOA stands for “buitengewoon opsporingsambtenaar”. The “special investigating officer” is an official with powers of investigation. This means, among other things, that he/she may investigate whether certain offences have been committed. They are allowed to arrest suspects, check a person's identity, draw up official reports and issue fines. See precise description on the information site of the Dutch Police, <https://www.politie.nl/themas/buitengewoon-opsporingsambtenaar.html>.

¹⁵ HTM, ‘BOA controleur’, <https://www.htm.nl/over-htm/sociale-veiligheid/boa-controleur>

¹⁶ See a detailed description of the competences of supervisors on the homepage of De Lijn, <https://www.delijn.be/nl/overdelijn/organisatie/zorgzaam-ondernemen/veiligheid/actieplan/pijlers/organisatorische-maatregelen/maatregelen-controle.html>, version 28 March 2021.



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how far the situation would deviate from a 'regular' Belgian situation. Both lead to the final question whether this had to be compensated by hiring extra staff on the Dutch side. In our opinion, even under the present legal conditions the scope of "supervision" of Belgian supervisors on the tram are quite extensive in terms of tasks and possibly sufficient in this case.

As previously elaborated, the WPV 2000 grants the Carrier/De Lijn the authority to appoint persons who are charged with supervising compliance with the provisions of Articles 70 up to and including 74 of the WPV 2000. These Articles relate to the supervision of compliance with certain obligations and rules for passengers who use the tram line operated by De Lijn and grant them some powers, such as controlling, confiscation of invalid tickets, denying access to public transport and imposing a fee for the travel costs and possible subcharges. As stated above, it is not possible for supervisors employed by De Lijn to use their enforcement and criminal-law powers and to enforce observed behaviour that falls under articles 70 to 74 of the 2000 the WPV 2000 outside the public transport on platforms or other associated facilities or places.

However, in view of the wording of the restrictions, the persons designated by the Carrier, have been given considerable room with respect to divergent situations which provides some room for interpretation. Our understanding is that De Lijn staff have sufficient powers as supervisors on the tram and on the platform for the relatively limited stretch on Dutch territory, meaning:

- demand identification documents;
- check tickets;
- control passengers on the compliance with behavioural rules in the tram;
- if applicable, impose the travel costs, including possible subcharges;
- if applicable, deny access to the trams, if necessary by 'strong arm'.

For any abuses on the two Dutch platforms or criminal prosecution, collaboration has to be sought with the Dutch authorities. The decisive question is whether the cross-border partners could find arrangements where despite the legal restrictions, practical solutions can be found to secure the security on the platforms without additional personnel. Given the other cross-border public transport options that are already available, such as the bus, that are facing the same legal provisions of WPV 2000 and the fact that no big issues have incurred, raise the assumption that these options fulfil.

III. Roadmap towards a possible solution of the obstacle with indication of the entities to be involved in the possible solution

In our view, there is only a legal problem if one is aiming at a situation where supervising staff on the Belgian tram has precisely the same competences as Dutch staff on a Dutch tram. If the partners of the cross-border project can live with certain restrictions on the side of the Belgian supervisory personnel there is no need for a new legal arrangement. On the other hand, there are only financial



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and practical problems if one is aiming at a situation where there is exclusive and additional supervision (with full enforcement competences) for the two stops of the tram on Dutch territory.

One important aspect to solve the problem could be the proportionality principle. Meaning that it would be not proportionate to hire extra staff with special investigation tasks for two tram stops in Maastricht. There is strong evidence that with respect to other cross-border public transport connections, solutions are found to avoid these extra costs that would constitute a clear disadvantage of cross-border services in comparison to national lines. The Dutch legislation (WPV 2000) applies to all types of public transport: train, tram, metro, bus. We would therefore also expect that this question of enforcement/supervision must also arise (or have arisen) in the case of cross-border bus transport by De Lijn or cross-border train transport by NMBS. One indication that there are good chances to solve the problem without extra costs are the practical arrangements elsewhere.

Practitioners in the Euroregion Meuse-Rhine have reported that the need for extra services for inspection are no particular problem with respect to other cross-border connections. The case of train connection is a bit different, since the operators aim at an exchange of supervision teams on the train in the vicinity of the border and there is often as a standard situation personnel from the national side at the train stations. More interesting for the tram situation are the multiple cross-border bus lines between the Netherland and Germany and the Netherlands and Belgium. The latter are certainly a case in point: as long as the tram Hasselt-Maastricht is not in operation, there is a regular bus connection operated by the same company (De Lijn) between the two cities with bus stops on the Dutch side, hence on the territory of the City of Maastricht. In this case, the Belgian bus, with a bus driver employed by De Lijn, stops at a number of different bus stops in the city of Maastricht. Also in this case, the bus driver can fulfil its competences on the bus as in the case of a national line. However, there is of course also no enforcing competence outside at the bus stop or authority for criminal prosecution. Meaning that the security and eventually enforcement needs in case of offences or criminal activities at a bus stop belong to the responsibility of the City of Maastricht and its BOAs, respectively the regular police forces. Also in this case, bus drivers have to call for the help of Dutch colleagues in case of an incidence. That leads to the question whether from a practical point the same arrangement could be found for the two tram stops on Dutch territory.

In the following, we will describe why a practical solutions could be at reach and what the different elements of such a solution could be.

1. The situation for an efficient cooperation between Belgian tram personnel and Dutch inspectors are even better than in the case of bus stops. In the first place, it is the modest number of two stops that are relevant for the arrangement.
2. As a second advantage, the second and final stop of the tram will be even located in close distance to the regular bus stop (around 100 m). Meaning that "normal" enforcement capacities have to be employed anyway by the municipality or the police at this particular location.



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A practical solution as in the case of bus stops would require as already mentioned a sort of agreement by the partners De Lijn as the operating company and the City of Maastricht/Province of Limburg on a tailor-made protocol for emergency cases with clear instructions for the tram drivers or other De Lijn supervision personnel. This protocol has to describe in detail the competences of Belgian personnel and instructions for cooperating with Dutch colleagues in the field of inspection. This is certainly necessary with respect to De Lijn supervisory personnel, as they are used to having more extensive powers (drawing up an official report, enforcement, criminal fining, confiscation) on Belgian territory and have to adapt to the specific Dutch situation. Furthermore, the gear that they are allowed to wear on the Belgian side, may not be applicable on the Dutch side as supervisor. For practical reasons, this should also lead to a memorandum of understanding of the partners involved, as well to a practical handbook for personnel, with all different important contacts and emergency numbers.

Given the fact, that the differences in inspection rights refers only to two stops of which one location should be already covered by Dutch personnel due to the bus stop close by, it seems to be not necessary to create the same situation as in the case of a national tram stop with national personnel. The full-fledged enforcement competencies on the side of Belgian personnel is regarded as not necessary. In conclusion, it is regarded as not proportionate to hire extra Dutch personnel on the side of the Municipality exclusively for the two stops, since the City of Maastricht already employs personnel that could be in charge of safeguarding the security of the two stops.

We also conclude that the extra costs could be avoided as mentioned by a protocol or a memorandum of understanding between the Belgian company De Lijn and the City of Maastricht with respect to the cooperation of the Belgian tram personnel and the BOAs of the municipality and police forces. In this protocol, the practical arrangements for communication, information and cooperation with respect to the two tram stops would be established. This could be additionally strengthened by joined meetings of the involved staff, in order to create personal contacts and establish cross-border networks. Joined training sessions, where the legal and practical perspectives from the two countries are exchanged could be also helpful. Joined cross border training sessions are successfully done in the field of fire brigades or ambulances services where differences in legal competences exist as well. Furthermore some aspects of the Benelux Union can be of relevance, as discussed later on.



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IV. Pre-assessment of whether the case could be solved with the European Cross-Border Mechanism

In its Communication from 2017 “Boosting growth and cohesion in EU border regions”, the European Commission proposed different instruments to overcome barriers to cross-border cooperation.¹⁷ In 2018, the Commission has presented a proposal for a “Regulation on a mechanism to resolve legal and administrative obstacles in a cross-border context” - the so called European cross-border mechanism (ECBM).¹⁸ Following earlier initiatives on financial support (INTERREG) and institutional obstacles (the European Grouping for Territorial Cooperation; EGTC) for cross-border cooperation, the next step would be to overcome the legal and administrative obstacles. In preparation for the ECBM, a study has been done to the legal and administrative obstacles in EU border regions.¹⁹ The study categorised the gathered obstacles into three types:

1. *EU-related legal obstacles*: caused by the specific status of an EU-border or by EU legislation (or the implementation thereof), where the EU has exclusive or shared competency;
2. *Member State-related legal obstacles*: caused by different national or regional laws, where the EU has no or only limited competence;
3. *Administrative obstacles*: caused by non-willingness, asymmetric cooperation or lack of horizontal coordination, or by different administrative cultures or languages.

The current case of cross-border competences of tram personnel belongs to the Member State-related legal obstacles. It is in the first place laid down by Dutch national legislation that supervisors with full-fledged enforcement competencies on platforms have to be: a) in (Dutch) government service or b) to be employed by a company based in the Netherlands. Hence, there is some evidence that a ECBM could be of help. The ECBM intention is: “to allow for the application in one Member State, with regard to a cross-border region, of the legal provisions from another Member State, where the application of the legal provisions of the former would constitute a legal obstacle hampering the implementation of a joint Project”.²⁰ The present case of the tramway between Hasselt and Maastricht and the authorisation of Belgian tram personnel under Dutch law seem to fit to the definition of ‘joint Project’ and ‘legal obstacle’. In this case the City of Maastricht (together with the Province of Limburg) could be regarded as “initiator” according to Article 8 of the Commission’s proposal for a ECBM. In accordance with Article 8 (b), the City of Maastricht could propose – since no appropriate cross-border legal provision exists - a request to a future cross-border focal point established under the framework of the ECBM. The question could be whether the Dutch competent legislative authority could accept the extended supervisory competences of the Belgian personnel laid down in Belgian law (with respect to Belgian territory) also on Dutch territory, namely with respect to the specific geographical area of

¹⁷ European Commission, Communication “Boosting growth and cohesion in EU border regions”, COM(2017) 534 final, p. 14.

¹⁸ Proposal for a Regulation of the European Parliament and of the on a mechanism to resolve legal and administrative obstacles in a cross-border context COM(2018) 373 final.

¹⁹ J. Pucher, T. Stumm & P. Schneidewind, *Easing legal and administrative obstacles in EU border regions*, Luxembourg: Publications Office of the European Union, 2017

²⁰ Article 1 of the proposed ECBM.



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the two platforms in Maastricht. The question then would be whether the Dutch government would be willing to lay down this derogation in a commitment or statement.

Hence, the case seems to fit into the profile of cases described in the Commission's proposal. It would be possible to describe the case according to Article 9 (1), namely (c) a justification for the area of application; (d) the foreseeable duration or, where duly justified, its unlimited duration; (e) a list of the competent committing authority or authorities; (f) a list of the competent transferring authority or authorities. The area of application could be defined as the two platforms of the tram stops. The duration would be linked to the operation of the tram. The committing authority would be the Dutch national government, who would give an assignment to Belgian tram personnel in accordance with Article 89 (2) WPV 2000. It would be also possible to fulfil the obligation under Article 9 (2), namely that the area of application shall be limited to the minimum necessary for the effective implementation of the joint project.

However, there is one aspect that is rather unclear. The ECBM could be only an option if the final adopted version of the ECBM would allow that the case would fall under the scope of the Regulation with respect to the nature of the competences. The current version of the proposal does not exclude specific areas of law, in fact the wording of Article 3 on the potential scope remains rather vague. In the first place, the project fulfils the requirements "infrastructure project" and a "service of general interest". Therefore, based on the current version, one could be of the opinion that the ECBM would in theory be applicable. However, the Commission probably did not have the intention that the ECBM would apply in 'delicate' areas (such as tax law or police matters). In the course of the first debates after the proposal was published, Member States have already expressed criticism in this respect (for instance Swedish Parliament in a reasoned opinion of June 22, 2018).²¹

Hence, it is likely that in the final version of a future ECBM any project related to police enforcement tasks could be explicitly excluded. The Maastricht case would be even in this case rather complex. The question refers not to the competences of regular police forces but to the competences of personnel of a public transport company (with certain enforcement tasks). In this case, even if police enforcement would be explicitly excluded by the Regulation, the specific question would be very much depend on the assessment of the Member States. This is only speculation, since we do not know the exact wording of a possible future ECBM Regulation. In our opinion, given the rather modest dimension of competences, it would be very positive if the case would fall under the scope of the final version.

It is important to emphasize, that we consider in this case that the ECBM is more a theoretical option than a real one, given the proportionality principle. As we argue, the most appropriate solution for the problem could be an agreement where the partners can live with less competences for the Belgian supervisors for the two stops. Any other legal solution would be too "heavy" for this rather "small" problem. So, the ECBM route would be hopefully not necessary.

²¹ See: Council of the European Union: Reasoned opinion on the application of the Principles of Subsidiarity and Proportionality by the Swedish Parliament, Interinstitutional File: 2018/0198 (COD).



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V. Other relevant aspects to this case

The Benelux Union

The proposed ECBM stipulates an 'opt out' option, to opt for another existing formal or informal structure that can solve the legal or administrative obstacle.²² Since this particular case covers the cross-border area between the Netherlands and Belgium, the Benelux Union could be such a structure. The Benelux Union might be relevant and could be another solution to the problem, regardless whether the ECBM will ever be adopted or not.

The Benelux Union institutionalises the cross-border cooperation between the Netherlands, Belgium and Luxembourg. As of 2008 a renewed Benelux Treaty was signed, establishing the Benelux Union. The main aims within this Treaty are the continuation and further development of the economic union, encompassing the objectives of the previous Treaty, as well as sustainable development, and cooperation in the field of justice and internal affairs.²³ To do so, the Benelux Union has four legal instruments for policymaking:

1. Decision²⁴ ('beschikking') in which one or more provisions of the Treaty are implemented. These are directly binding on the three parties;
2. Agreements ('overeenkomsten') that are legally binding, but needs to be adopted by each party in national policy;
3. Recommendations ('aanbevelingen') about the functioning of the Benelux. These have no legal binding effect, but are more a commitment between the parties;
4. Directives ('richtlijnen') to the Benelux Council and general-secretariat.

We had extensive talks to the Benelux Union in order to check whether there could be already today a similar acceptance of a certain deviation from Dutch legislation under the legislative framework of the Benelux. In other cases, where there are appropriate framework agreements (as in nature conservation) the Benelux offers the legal instrument "beschikking". In such a "beschikking" one can for instance agree bilaterally on the acceptance of certain standards from the neighbouring country for a specific cross-border industrial site. In the case of the tram, since there is no Benelux legislative framework on questions related to the competences of personnel in cross border public transport connections, such an instrument could be not used. However, that also means the Benelux Union could discuss whether such a framework agreement or framework treaty could have a positive impact to solve similar problems within the wider scope of cross-border public transport. Given the aims of the

²² Article 4 (2) of the ECBM.

²³ Article 2(2) of the Benelux Treaty.

²⁴ A relevant decision is that of the establishment of a Benelux Treaty on cross-border and interterritorial cooperation (M(2014)2).



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Benelux Union, amongst others to foster cross-border mobility and boost sustainable development, as well as cooperation in the field of justice, it can be of policy interest.

Finally, the already existing Agreement on administrative and criminal cooperation in the field of regulations related to the achievement of the objectives of the Benelux Economic Union²⁵ and the recently updated Benelux Treaty on police cooperation²⁶ can be of relevance to be aware of. Nonetheless it is an old agreement, the former contains provisions on the mutual recognition of official reports, mutual assistance on the prevention and control of criminal offences. The latter facilitates and fosters cross-border cooperation between the national police forces by exchanging information and data, joint actions or investigations and cross-border interventions.

VI. References and Appendix/Appendices if any (not applicable)

Date and signature

Maastricht, 16.4.2021

DOI 10.53252/BS2115

²⁵ Overeenkomst inzake de administratieve en strafrechtelijke samenwerking op het gebied van de regelingen die verband houden met de verwezenlijking van de doelstellingen van de Benelux Economische Unie, 1969, <https://wetten.overheid.nl/BWBV0004462/2008-11-01>

²⁶ Benelux, 'Versterkte grensoverschrijdende veiligheidssamenwerking met nieuwe politieverdrag', <https://benelux.int/nl/nieuws/versterkte-grensoverschrijdende-veiligheidssamenwerking-met-nieuw-benelux-politieverdrag>