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TEMPLATE: FINAL REPORT BY THE EXPERT

Advice case title: Healthcare for cross-border commuters

Full official name of the advised entity: Junta de Extremadura

Name of the expert contracted for the advice case: Amparo Montán

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Table of content:

[1] For reference, see the *b-solutions*: Solving Border Obstacles. A Compendium 2020-2021, p 160 – 175. Here is an example for a EU regulation "*Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), OJ L 77, 23.3.2016, p. 1-52*". Here is an example for a national law: "*Act on the General Free Movement of Citizens of the Union (Freedom of Movement Act/EU),enacted on 30 July 2004 (Federal Law Gazette I, p. 1950, 1986), entered into force on 1 January 2005, last amended by Art. 4 G of 9 July 2021 (Federal Law Gazette I, p. 2467)".*

I. Executive summary

The present case study refers to one administrative obstacle that could block the effective free movement of workers at the cross-border area between Spain and Portugal. The case was identified between regions Alentejo and Extremadura.

As in every border and territory of the EU, cross-border workers have the right to healthcare in both the country of work and the country of residence. Form S1 is the means for coordination between the social security administrations in the two countries. However, this coordination still takes time. In our case study, the renewal of S1 form needs coordination of the two authorities and leaves a time gap of about two weeks in which the cross-border workers and their families would have no regular health coverage.

Both the Spanish and Portuguese social security authorities have been working to bridge that time gap and ensure continuity of healthcare for cross-border workers.

An interim solution was found and it puts an effective remedy to the situation, but could be complemented with other measures. In the particular context of the Spanish-Portuguese border, bilateral agreements apply and healthcare is one of the fields of action. This could be seized as an opportunity to reinforce cross-border health coverage. In addition, awareness raising campaigns among the cross-border workers and employers are needed for a more effective delivery of healthcare and social benefits in the cross-border area.

The described administrative obstacle refers directly to the key role played by the coordination of Social Security systems in the EU, and especially at the border areas. It also highlights the importance to take further steps in the transition to a more comprehensive digitalisation of the coordination between administrations, which is particularly needed in cross-border areas where the countries at stake have different territorial systems.

II. Description of the obstacle with indication of the legal/administrative provisions causing the obstacle

The identified obstacle refers to the provision of healthcare to cross-border workers. In particular, it refers to the case of Spanish or Portuguese citizens who work in Portugal but live permanently in Spain. In particular, the case was reported between regions Alentejo and Extremadura. This situation could also apply to other EU citizens living and working in the cross-border area, and even to non-EU citizens legally residing and working in the EU and considered cross-border workers.

As stated in article 17 of Regulation 883/2004[2], *an insured person or members of his/her family who reside in a Member State other than the competent Member State shall receive in the Member State of residence benefits in kind provided, on behalf of the competent institution, by the institution of the place of residence, in accordance with the provisions of the legislation it applies, as though they were insured under the*

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

said legislation.

Besides, article 18 of regulation 883/2004 foresees that *unless otherwise provided for by paragraph 2, the insured person and the members of his/her family referred to in Article 17 shall also be entitled to benefits in kind while staying in the competent Member State. The benefits in kind shall be provided by the competent institution and at its own expense, in accordance with the provisions of the legislation it applies, as though the persons concerned resided in that Member State.*

Therefore, a cross-border worker may receive healthcare both in the country of work and in the country of residence. Cross-border workers are often insured in the country where they work and that is where they are entitled to healthcare. However, they have the option of also being covered by the health system in the country of residence by requesting an S1 form (the former E 106 document) from the insurance organization in the country where they work. In our particular case, the S1 form certifies the bearer's right to receive health benefits in Spain under the insurance State (Portugal), under the same conditions as those insured in Spain.

In our case study, the difficulty lies in the expiration of the form, since it has a maximum validity of 12 months and renewal cannot be requested until it expires. Once it expires, the worker must request the renewal through the Spanish Social Security website. The problem is that the process from applying to reinstating health coverage usually takes from 15 to 30 days. During this time gap (15-30 days), the applicant cross-border worker does not have health coverage. This means that, during these days, he or she or their families cannot go to the family doctor if they are sick, they do not have access to medicines and they can miss appointments for operations or with a specialist doctor if they are unfortunate enough to coincide with those days.

As an alternative, these persons could receive healthcare and pay for the service. The reimbursement for this payment is foreseen, but in many cases the need to pay for the service leads to financial disruption or the risk of non-reimbursement. They could also opt for a private health insurance.

This situation may lead to a significant restriction of access to healthcare for Spanish cross-border workers, since for a few weeks a year they do not have access to public healthcare.

This entire situation implies a significant barrier to the free movement of cross-border workers.

In addition to this administrative issue, the low awareness of the rights of cross-border workers as regards social security leads to additional barriers to the free movement of workers. As an example, the city of Badajoz is the one with the highest number of cross-border workers and the one with the lowest rate of S1 applications in the territory. Low awareness and lack of information needs to be addressed among cross-border workers, citizens and businesses.

The EU administrative context

The issue identified in this case study is very much linked to the coordination of social security systems, as well as the transition to coordination in a fully digital environment.

The EU lies on the principle of coordination of national social security systems. The social security protection in each country continues to be national, but the coordination of all national systems is needed to perform the free movement of workers stated in article 48 of the Treaty of the Functioning of the European Union (TFEU). Therefore, such coordination makes part of the principle of free movement of persons. Coordination avoids that several national legislations could be in conflict if applied to the same person or situation[3].

Under the previous legal framework[4], the instruments used to exchange information between the different national social security systems were the so-called European forms, which contained all the information necessary to determine and justify the right to social security benefits. Based on Regulation No 883/2004, a Network for Electronic Exchange of Information on social security matters (EESSI) was established. This Network, together with structured electronic forms, called SED (Structured Electronic Document) and portable documents (the S forms, among other), are the tools that facilitate compliance with the principle of collaboration[5]. Computer exchange speeds up decision-making regarding the quantification and payment of social security benefits, in addition to making both verification and data collection more efficient[6].

Our case study refers to this particular process of information exchange between the national social security systems in Spain and Portugal.

The **Administrative Commission** for the Coordination of Social Security Systems is foreseen in Title IV of Regulation 883/2004. The Administrative Commission is a body attached to the European Commission and counts on representatives from each of the Member States. It deals with administrative issues and questions of interpretation regarding the rules on social security coordination, and it encourages Member States to work together on social security coordination issues.

Among other, the Administrative Commission takes decisions on the details of the EESSI and the portable documents.

In September 2023 a further step towards digitalization was taken. The European Commission issued a new Communication on digitalization in social security

[3] Domínguez Martín, Mónica, ‚La coordinación de los sistemas de seguridad social y el desplazamiento de trabajadores en la Unión Europea: derecho aplicable, tutela y colaboración administrativa', July 2020. Available only in Spanish at: https://laadministracionaldia.inap.es/noticia.asp?id=1510852

[4] Reference to *Council Regulation (EEC) No 1408/71 of 14 June 1971*and related legislation, which was replaced by *Regulation (EC) No 883/2004 of the European Parliament and of the Council*

[5] Please see also article 4 of *Regulation (EC) 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems*, *OJ L 284, 30.10.2009, p. 1–42*

[6] Domínguez Martín, Mónica, ‚La coordinación de los sistemas de seguridad social y el desplazamiento de trabajadores en la Unión Europea: derecho aplicable, tutela y colaboración administrativa', July 2020. Available at: https://laadministracionaldia.inap.es/noticia.asp?id=1510852

coordination: facilitating free movement in the Single Market[7]. This Communication contributes to the EU's efforts to accelerate Europe's digital transition and promote a human-centric approach to digitalization.

Among other measures, the Communication reinforces further digitalization to improve the exchange of information and cooperation between institutions, via better interoperability, automatation and data sharing.

The **Communication on digitalization in social security coordination** also highlights that several cross-sectoral EU initiatives supporting the development of cross-border digital public services provide solid foundations for further digitalization in the area of social security coordination. In particular, the proposed **Interoperable Europe Act** will set up a coordination framework for public administrations across the EU, to agree on common interoperability solutions and help increase their reuse when designing cross-border public services.

The Network for Electronic Exchange of Information on social security matters (EESSI) started in 2008 and since its launch in 2019, EESSI enables a faster, more efficient and more accurate handling of cases in the social security areas and branches covered by EU coordination rules. The system standardises the information exchange and improves the efficiency of social security processes and administrative cooperation between countries and their social security institutions, without affecting any of the specific features of basic social security national systems. However, the Communication recognizes that the progress of this digital solution is slow.

Only 13 countries are able to exchange electronically in all social security sectors and with all institutions: BG, DK, EE, FR, CY, LV, HU, MT, PT, SE and IS, NO and UK. Until the system is complete in all countries, alternative ways of communication need to be used outside the system for the processes in question. It obliges the 13 countries that have already implemented EESSI fully to maintain parallel, paper-based processes for transactions with the countries that are not yet ready.

Besides the reinforcement of EESSI, the Communication also underlines the importance of the European Social Security Pass (ESSPASS) pilot project, to explore a digital solution for verifying people's social security entitlement documents in other EU countries (i.e. portable documents, including the European Health Insurance Card (EHIC). This should make it easier for people to exercise their social security rights when travelling, moving, and working in another Member State, while reducing the risk of fraud and error. ESSPASS would help people travelling or moving to another EU country or companies doing business abroad to interact digitally with social security institutions and other public bodies, such as labour inspectorates and healthcare providers, whenever needed. The pilot will be finalized by 2025, and it is expected that the political and financial commitment by Member States will continue.

ESSPASS would complement the EHIC by making it possible for social security

[7] *COM(2023) 501 final*, available at https://ec.europa.eu/social/main.jsp?langId=en&catId=1544&furtherNews=yes&newsId=10658

institutions, labour inspectorates and healthcare providers to check in real-time whether the documents are valid, or changes have occurred.

The Communication recognizes that all Member States are exploring ways to streamline processes and enable more efficient delivery of services, even if progress remains uneven across Europe and across the different national social security sectors. It is in this context that our case takes place.

The context at the Spanish-Portuguese border

At the Spanish-Portuguese border, additional bilateral agreements apply that foster cross-border coordination of administrations and public services.

The long-lasting bilateral relationships between Spain and Portugal has led to a number of agreements that foster cooperation on social security matters. As a overall framework, a Treaty on Friendship and Cooperation between Spain and Portugal[8] was signed in October 2021 and confirms the deep relationships between the two countries. It replaces a previous Treaty signed in November 1977 and confirms the bilateral commitment to cross-border cooperation.

In this context, the Framework Agreement between Spain and Portugal on cross-border cooperation in healthcare[9] was signed in 2010 and had four objectives, as stated in article 1:

- Ensure a better access to quality healthcare for the cross-border population
- Guarantee continuity of healthcare for those populations
- Optimize the organization of healthcare
- Promote complementarity of knowledge and good practice

As a follow up of the Treaty, a Memorandum of Understanding on cross-border healthcare was signed in 2018.

Besides the particular legislation referred to healthcare, other horizontal agreements have been reached at the border. A Common Strategy for Cross-Border Development[10] was signed in 2020. In the Strategy, a number of cross-border issues are tackled:

- guarantee of equal opportunities on both sides of the border

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[8] *Treaty on Friednship and Cooperation between Spain and Portugal, signed in Trujillo the 28 October 2021, State Official Journal no. 92, of 18 April 2023, p. 54349 a 54356*

[9] „*Framework Agreement between the Kingdom of Spain and the Portuguese Republic on Cross-border Cooperation in Healthcare, State Official Journal No 89 of 13 April 2010, p. 32900 to 32906*"

[10] The Strategy is available at https://www.miteco.gob.es/content/dam/miteco/es/reto-demografico/temas/cooperacion-transfronteriza/documentoecdt_es_finalseptiembre2020_tcm30-517763.pdf
English version:
https://www.miteco.gob.es/content/dam/miteco/es/reto-demografico/temas/cooperacion-transfronteriza/documentoecdt_es_finalseptiembre2020-es-en-r-c_tcm30-524267.pdf

- ensure the performance of basic services
- facilitate the cross-border interaction
- foster new economic and entrepreneurial activities
- fight depopulation in border territories

To reach those objectives, several fields of action are particularly relevant for our case study: cross-border mobility, better digital connectivity, and the coordination on basic services (education, health, social services).

As regards healthcare, the creation of a **common health identity card** is foreseen in the Strategy and a **common administrative portal** will be created. These tools will lead to increased cooperation and coordination in the provision of healthcare, also in emergency situations. The aim is to guarantee effectiveness in the provision of healthcare, and also efficiency.

Another output of this bilateral process has been the dissemination of a **Practical Guide for Cross-border Workers**[11], issued in 2022. It is targeted to cross-border workers and their employers and it highlights the rights and services that these workers are entitled to. A particular section deals with the steps that are needed to register cross-border workers in the Spanish or the Portuguese Social Security systems.

In the Practical Guide, the particular case in this report is considered: the cross-border worker who lives in Spain and works in Portugal and the need to fill in the S1 form.

In addition to the purely bilateral relations, the Spain-Portuguese border benefits as well from 3 established cross-border partnerships of the EURES Network. Extremadura-Alentejo is one of the 3 cross-border partnerships and it usually provides information on cross-border labour and also on social security coordination[12].

[11] The Spanish version of the Practical Guide is available at:
https://www.lamoncloa.gob.es/serviciosdeprensa/notasprensa/trabajo14/Documents/2022/041122-Guia_Trabajo_Transfronterizo_Portugal_Espana.pdf
The Portuguese version is available at:
https://www.portugal.gov.pt/download-ficheiros/ficheiro.aspx?v=%3D%3DBQAAAB%2BLCAAAAAAABAAzNDYxsAQA08LcGwUAAAA%3D

[12] https://extremaduratrabaja.juntaex.es/descargar.php?modulo=documentos&file=656

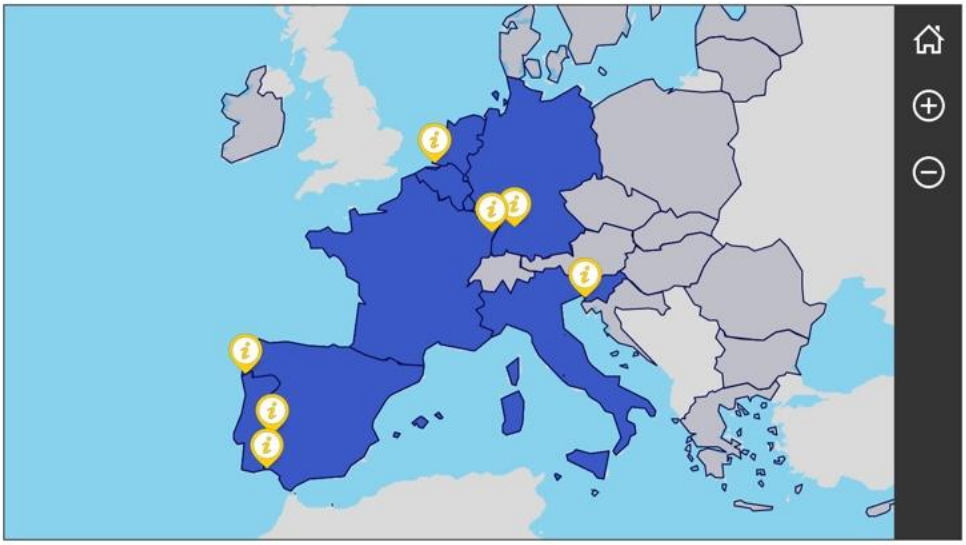

Figure 1 Source: European Commission website. Map of the cross-border EURES

III. Description of possible solution(s)

The identified obstacle to cross-border mobility of workers was discussed in details in a meeting held on July 3 2023 between the Junta de Extremadura (Rosa Balas, Ana Atanet and Montaña Hernández) and the National Institute of Social Security-Provincial Directorate of Badajoz (Antonio Puerto, María Fernanda Trejo and Elena María Piriz), it was discussed both the obstacle detected and the solution found by the Social Security Badajoz Provincial Directorate (INSS, hereinafter).

The INSS recently found a way to bridge the time gap of 15/20 days between the expiration of the S1 form and the receipt of the new form. The S1 form may be requested before the expiration of the previous one. However, the effects of the new form only occur when the old one expires.

The duration of the S1 form is determined by the Member States. Decision No S6[13] of the Administrative Commission for the Coordination of Social Security Systems leaves it up to the competent Member State to decide on the validity period of S1. Its article 2 refers directly to the legislation of the competent Member State.

Under the previous system, the E106 form details in Decision 202 of 15 March 2005, the national authorities had 3 possible options for validity:

- either the form was valid for 1 year
- or it was valid until the previous one expires
- or if it was valid until another moment (and a blank space was left).

In our case, the Portuguese authorities have foreseen that the S1 validity period is one

[13] Decision No S6 of 22 December 2009 concerning the registration in the Member State of residence under Article 24 of regulation (EC) No 987/2009 and the compilation oft he inventories provided for in Article 64(4) of Regulation (EC) No 987/2009, 27 April 2010

year.

In order to grant a new S1 replacing an old one, both social security systems need to be in contact. So far, the time gap of 15/20 days was due to communication delays between the Portuguese and Spanish authorities.

The solution found by the Spanish INSS consists of sending the documentation to its Portuguese counterpart before the S1 expires, so that there is enough time for the response to be received. In this way, the documentation from Portugal is in the hands of the INSS before it expires, and the INSS can insert it into the ASIA application as soon as the previous S1 expires. The ASIA application is the Spanish project to manage international healthcare, and it is being adapted to EESSI. ASIA does not allow entering data before expiration of the previous form.

Even in cases where there is a time lapse between the expiration of the S1 and the receipt of the new one, the effects are retroactive. In the event that the worker had to pay for the health service in accordance with Regulation 883/2004, this would be reimbursed. Therefore, there would be no coverage gap even though the worker would need to advance the cost.

Besides the solution found, additional improvements could be considered, especially in the context of launching the future cross-border health identity card. The card could reserve some place to indicate the expiration date of the S1 form. If the health identity card could be linked to a mobile application, this type of alerts could be foreseen.

Also, when agreeing on the future cross-border health identity card, the national authorities could consider the possibility to align the validity date of the S1 form to the duration of the employment contract.

Further dissemination of the solution is needed along the Spanish-Portuguese border. Several communication actions have taken place in the past to raise awareness on cross-border mobility and all the particular requirements on the Spanish-Portuguese border. For example, the Interreg POCTEP programme together with Eurobec and ADRAL (Regional Development Agency of Alentejo) organised a conference in 2021, and included infographics with the main requirements for cross-border [14].

In addition, the Spanish Ministry for Labour and Social Affairs is working on a project to draft the 'Cross-Border Worker Statute'. Within the framework of this project, the exchange of good practices could be promoted, especially with Andalusia, Castilla y León and Galicia.

Dissemination among citizens and businesses is key, but also dissemination among experts. Opportunities like the seminar organised by the MoveS network the 9 October 2023 in Coimbra[15] could also be the occasion to raise the issue and give visibility to these obstacles.

[14] https://www.cm-elvas.pt/wp-content/uploads/2021/06/Monofolha-ES.pdf
[15] https://ec.europa.eu/social/main.jsp?langId=en&catId=1098&eventsId=2139&furtherEvents=yes

IV. Full list of all legal provisions relevant to the case

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

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

Regulation (EC) No 631/2004 of the European Parliament and of the Council of 31 March 2004 amending Council Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, and Council Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71, in respect of the alignment of rights and the simplification of procedures, OJ *L 100 , 06/04/2004 P. 0001 – 0005*

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

Decision No S6 of 22 December 2009 concerning the registration in the Member State of residence under Article 24 of Regulation (EC) No 987/2009 and the compilation of the inventories provided for in Article 64(4) of Regulation (EC) No 987/2009, OJ C 106 p. 6 and 7

Tratado de Amistad y Cooperación entre el Reino de España y la República Portuguesa (Treaty on Friendship and Cooperation between Spain and Portugal), signed in Trujillo the 28 October 2021, Spain Official Journal no. 92, of 18 April 2023, p. 54349 a 54356

Acuerdo Marco entre el Reino de España y la república Portuguesa sobre Cooperación Sanitaria Transfronteriza, hecho ad referendum en Zamora el 22 de enero de 2009 (Framework Agreement on cross-border healthcare between Spain and Portugal, signed the 22 January 2009

Communication on digitalization in social security coordination: facilitating free movement in the Single Market, COM(2023) 501 final

Proposal for a Regulation of the European Parliament and of the Council laying down measures for a high level of public sector interoperability across the Union (Interoperable Europe Act), COM(2022) 720 final

V. Other relevant aspects to this case

Besides the need to have a continuous health coverage for cross-border workers, there are other aspects that are related to the low rate of S1 applications in the cross-border area around the city of Badajoz. The low rate of S1 applications goes in hand with the

low rate of administrative reporting of the place of residence by cross-border workers.

Solving these situations is mainly in the hands of the workers, their employers and the citizens themselves. Therefore awareness raising on the administrative and legal effects of not reporting the place of residence is needed.

Awareness raising on the need to be correctly registered by cross-border workers, citizens and their families would contribute to increased efficiency of the social security systems, and would discard illegal situations.

On the side of the citizens, a strong communication campaign could inform them about their cross-border rights. This campaign could generate confidence so that the citizen follows the registration and notification requirements.

The campaign could consist of information sessions for citizens, for self-employed persons and for companies, with applicable cases. Both Spanish and Portuguese authorities should be involved, as well as the different bodies, including the Social Security Treasury.

A decalogue of cross-border situations could be drawn up that can be transferred to other similar regions.

The main situations identified by INSS are the following:

1. The lack of notification by citizens working on the other side of the border

In some cases, the INSS has observed that there are Spaniards residing in Spain and working in Portugal who have not notified the new employment contract in Portugal. In these cases, their health care continues to be paid by the Spanish State, whereas it should be paid by the Portuguese State through the S1 form.

There are cases of Portuguese citizens residing in Spain with similar situations.

These situations must be resolved to avoid the double insurance prohibited by the Regulation[16].

There are also cases of people who work and contribute both in Spain and in Portugal. In those cases, the double contribution is lost following the one national legislation principle[17] and the negative effect is on the side of the worker.

2. The lack of registration when a person moves to the other side of the border.

In some cases, there is a right to non-contributory benefits that are not received for not being correctly registered. In other cases, there are people who receive double benefits because they are (illegally) registered in the two countries.

[16] Article 11.1 of Regulation No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems

[17] Article 11.1 of Regulation No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems

Also, there are babies born in Spain to Portuguese parents and are registered in both Spain and Portugal. The problem arises as the name order is recorded differently[18]. In these cases, for both the Spanish and Portuguese systems, they are two different persons and could open the door to duplicate rights, which is prohibited by law.

VI. References

Related articles:

- Domínguez Martín, Mónica, ‚La coordinación de los sistemas de seguridad social y el desplazamiento de trabajadores en la Unión Europea: derecho aplicable, tutela y colaboración administrativa', July 2020. Available only in Spanish at: https://laadministracionaldia.inap.es/noticia.asp?id=1510852
- Marchena Galán, Sara, ‚La cooperación sanitaria transfronteriza: Del marco comunitario a los acuerdos transfronterizos entre Extremadura y Portugal', article in *Extremadura-Portugal. Una guía para la cooperación transfronteriza*, Junta de Extremadura, Dirección General de Acción Exterior, Gabinete de Iniciativas Transfronterizas

Strategies and other reference documents:

- Common Strategy for Cross-Border Development between Spain and Portugal: https://www.miteco.gob.es/content/dam/miteco/es/reto-demografico/temas/cooperacion-transfronteriza/documentoecdt_es_finalseptiembre2020-es-en-r-c_tcm30-524267.pdf
- Practical Guide for Cross-Border workers: https://www.lamoncloa.gob.es/serviciosdeprensa/notasprensa/trabajo14/Documents/2022/041122-Guia_Trabajo_Transfronterizo_Portugal_Espana.pdf
- European Commission, ‚The relationship between the Regulations on the coordination of social security systems and the Directive on the application of patients' rights in cross-border healthcare', January 2023
- Administrative Commission, ‚Practical Guide on the applicable legislation in the European Union (EU), the European Economic Area (EEA) and Switzerland', December 2013
- European Parliament, ‚Coordination of Social Security Systems in Europe', IP/A/EMPL/2017-03, November 2017
- International Labour Organization, ‚Coordination of Social Security Systems in the European Union. An explanatory report on EC Regulation No. 883/2004 and its Implementing Regulation No. 987/2009 ', 2010

[18] Every citizen has two family names in Spain and Portugal. However, the first family name is considered a priority in Spain, whereas the priority is given to the second in Portugal. This usually leads to confusions, and it can lead to different identities of the same person.