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TEMPLATE: FINAL REPORT BY THE EXPERT

- **Advice case title: Hiring of cross-border workers with two jobs**
- **Full official name of the advised entity: AECT- Hospital de Cerdanya / GECT-Hôpital de Cerdagne**
- **Name of the expert contracted for the advice case: Maria Garayo Maiztegui**
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I.-EXECUTIVE SUMMARY

Since it began operating, the Cerdanya hospital has faced significant administrative and legal difficulties in its day-to-day management, as the first European health establishment and without a bilateral legal instrument to regulate the specialities associated with the provision of health services in the border area.

The cross-border healthcare model requires professionals who are familiar with the culture of the two healthcare management models, French and Catalan. The hospital currently employs healthcare professionals who are subject to different social regimes and working conditions.

In a scenario of a shortage of healthcare professionals, and given the need for Cerdanya Hospital to recruit French professionals, this report responds to a triple objective: a) To identify the European regulation applicable to the social regime of healthcare professionals who carry out multi-activity in several European countries b) To identify the legal implications for Cerdanya Hospital, as an employer of a cross-border public health service, of that regulation of multi-activity and c) To identify those solutions aimed at simplifying and clarifying the management of the Hospital's human resources department.

II.- BACKGROUND

The Cerdanya Hospital is the first cross-border health centre in Europe, jointly managed by the public health services of Catalonia and France, through the Catalan Health Service and the Agence Régional de Santé Occitanie[1] .

From a legal perspective, the hospital is organised in a European Grouping of Territorial Cooperation (hereinafter EGTC)[2] domiciled in Cerdanya whose mission is to offer specialised health care in Alta Cerdanya (France) and Basse Cerdanya and Capcir (Catalonia)[3] , and to contribute to the development of a common territorial health project, incorporating professionals and establishments from both sides of the border. This legal entity is subject to European legislation[4] and Spanish legislation (state and autonomous)[5] .

Since it began operating, the Cerdanya Hospital (hereinafter referred to as the Hospital) has faced significant administrative and legal difficulties in its day-to-day management[6] . This is mainly due to two reasons: a) being the first European health establishment, without previous references and, b) not having a bilateral legal instrument that regulates the specialities associated with the provision of health services in the border territory. These specialities, moreover, are not regulated either by the EGTC convention or by other bilateral agreements[7] on health matters.

In this way, the difficulties encountered in day-to-day management have been resolved, thanks to the drive of the partners and the management in the search for solutions, in cooperation with the competent bodies.

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[1] Establishment registered with the French and Catalan health networks.

[2] Agreement on cross-border health cooperation and the constitution of the European grouping of territorial cooperation of 16 April 2010.

[3] Territory comprising 53 municipalities with a reference population of 33,000 inhabitants, which can reach 150,000 with the tourist population in high season.

4 Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European Grouping of Territorial Cooperation (EGTC), as amended by Regulation (EU) No 1302/2013 of the European Parliament and of the Council of 17 December 2013, as regards clarifying, simplifying and improving the establishment and operation of such groupings

5 The legal regime of the EGTC is defined in Article 2 of Regulation 1082/2006. See Royal Decree 23/2015 of 23 January 2015, adopting the measures necessary for the effective application of Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on the European Grouping of Territorial Cooperation (EGTC), as amended by Regulation (EU) No 1302/2013 of the European Parliament and of the Council of 17 December 2013, with regard to clarifying, simplifying and improving the creation and operation of such groupings. And the regional provisions applicable as a public sector entity of Catalonia.

[6] In matters related to birth registration, repatriation of the deceased, custody of detainees, homologation of diplomas, etc.

[7] In particular, the Framework Agreement on cross-border health cooperation between France and Spain signed on 27 June 2008 in Zaragoza, the Administrative Agreement between the Ministry of Health and Consumer Affairs of Spain and the Ministry of Health, Youth and Sports of France on the modalities of implementation of the Framework Agreement between the Kingdom of Spain and the French Republic on cross-border health cooperation, done in Angers on 9 September 2008.

Currently, the healthcare model defined by the hospital[8] requires professionals who are familiar with the culture of the two models of healthcare management, French and Catalan. And thus be able to respond to the expectations of resident citizens in terms of service provision.

The hospital currently provides services to healthcare professionals who are subject to different regimes and working conditions. On the one hand, professionals affiliated to the Spanish social security system and subject to the working conditions of the integrated health system of Catalonia[9] and, on the other hand, health professionals from the hospital in Perpignan, who, under a cooperation agreement, are placed at the disposal of the Hospital de Cerdanya[10] .

The hospital's management model to provide human capital coverage for the care model faces the following challenges:

a) On the one hand, to recruit healthcare professionals already practising in France on an employed or self-employed basis and who can, depending on the hospital, attend and monitor patients residing in France, if necessary, in the hospital and/or in the French part of the territory. For this purpose, the hospital has taken as a reference the European regulation of the exercise of multiple activities in several Member States.

b) To create attractive working conditions for the recruitment of French professionals. To this end, the hospital is working on a draft company labour agreement, which includes the specialities of the French agreements in the healthcare sector. In this way, the aim is to apply identical working conditions to all hospital employees and thus overcome the current disparities.

c) Manage the current shortage of health professionals in the Catalan and French health systems.

[8] Based on the promotion of the figure of the doctor responsible for the patient who, together with the manager, ensures the continuity of care on leaving the hospital, the complementarity of professionals in a global vision of the patient, the creation of medical services made up of external professionals and professionals with a double dependence on the establishment of origin and that of the service.

[9] Decree 196/2010 of 14 December 2010 on the integrated health system for public use in Catalonia. In labour matters, the Third Collective Labour Agreement for acute hospitals, primary care centres, social and health care centres and mental health care centres, which are agreed by the Catalan Health Service (SISCAT), applies.

[10] Partnership agreement between the European Grouping of Territorial Cooperation Hospital de Cerdanya and the Perpignan Hospital of 18 June 2014.

These circumstances in themselves highlight the complexity of the cross-border management of Cerdanya Hospital, especially considering its size and the human resources available. In this context, the hospital aspires to a legal instrument providing for a simplification of procedures or exceptions in order to facilitate the recruitment and management of professionals from both sides of the border for the proper and adequate functioning of health services in the territory of the EGTC.

III.- DESCRIPTION OF THE OBSTACLE WITH INDICATION OF THE LEGAL/ADMINISTRATIVE PROVISIONS CAUSING THE OBSTACLE

As a result of the various interviews and contacts with the Hospital's management team and employees, a number of obstacles have been identified, which are discussed below.

3.1.- The European social security regulation on people who carry out several activities in two Member States does not simplify the disparity between social security schemes.

Cerdanya Hospital strives to recruit the best staff in each case, in order to meet the needs of the needs of the Catalan and French population as a whole in terms of treatment and healthcare. This can be difficult when the professional[11], resides in France and, in addition, has another activity, principal or secondary, in French territory.

By way of introduction, it should be pointed out that the French model is organised around the figure of the health professional with independent status[12] , who is the point of reference for patients and acts as a link with other health professionals and structures. His or her remuneration depends on the number of acts he or she performs.

And on the other hand, salaried professionals working mainly in health establishments or hospitals. The latter professionals have the status of public servants but are not civil servants. They are subject to the rights and obligations of public service and their remuneration is unrelated to the number of acts performed. They may carry out a private ancillary independent activity, provided that this is not prohibited by the employment contract.

The European Union's competence in the field of social security, in accordance with the Treaties,[13] , covers the **coordination of national systems in order to guarantee the free movement of workers and to create a system that guarantees rights in terms of social benefits**.

Regulation (EC) No 883/2004 of 29 April 2004 on the coordination of social security systems and **Regulation (EC) No 987/2009** of 16 September 2009

[11] We use the term health professionals to refer primarily to medical doctors, regardless of whether they are general practitioners or specialists.
[12] They can sign a medical agreement with the social security that determines the fees to be charged to patients for medical procedures.
[13] Treaty establishing the European Community (Articles 42 and 308)

for the implementation[14] include provisions concerning the **branches of social security**, with **regard to social benefits**[15] and **social security schemes**[16] .

In line with the principle of applying a **single social security system**, Title II of Regulation 883/2004 lays down the rules applicable to the determination of the legislation applicable to the affiliation of persons pursuing activities in several Member States (hereinafter referred to as "multi-activity"). The main aspects can be summarised as follows:

- Community regulations apply to persons who carry out activities[17] as employed persons[18] and/or as self-employed persons in two or more States.

- The criterion for determining the law applicable to cases of provision of activity as a self-employed and/or employed person is the place where the person **carries out the substantial part of the activity**.

  Substantial part of the activity" means a quantitatively significant part of the total activities carried out for own account or for hire or reward, but does not necessarily include the major part of these activities.

  The **indicative criteria** applied to determine the State where the substantial part of the activity is exercised are: a) in the case of salaried activities, working time or remuneration, and b) in the case of self-employed activities, turnover, working time, number of services rendered or income.

  If an overall assessment results in a percentage of the above criteria of less than **25% of the working time or 25% of the remuneration, this** is considered to be an indicator that a substantial part of the activities is not carried out in the Member State.

[14] The provisions of the regulations replace the previous bilateral conventions and administrative social security agreements concluded between Member States (Article 8 Regulation 884/2004 and Article 8 Regulation 987/2009).

[15] Article 3(1) of Regulation 883/2004 covers a) sickness benefits; b) maternity and equivalent paternity benefits; c) invalidity benefits; d) old-age benefits; e) survivors' benefits; f) benefits in respect of accidents at work and occupational diseases; g) death grants; h) unemployment benefits; i) pre-retirement benefits; j) family benefits.

[16] It applies to general and special social security schemes, both contributory and non-contributory, as well as to schemes relating to the obligations of the employer or shipowner, subject to the exceptions set out in Annex XI of Regulation 883/2004.

[17]Persons who receive a cash benefit because of or as a consequence of their activity as an employed or self-employed person. Invalidity, old-age or survivors' pensions, pensions for accidents at work or occupational diseases, and cash sickness benefits of unlimited duration are excluded from the definition.

[18] Articles 1(a) and (b) of Regulation 883/2004 define employed or self-employed activity as "any activity or equivalent situation considered as such for the purposes of the social security legislation of the Member State in which the activity is pursued or the situation arises".

This assessment does not take into account marginal activities[19] .
The assessment of the substantial part of the activity, in order to determine the applicable legislation, is made taking into account the 12 calendar month period.

- A person who normally pursues an activity[20] **as an employed person** in two or more Member States[21] shall be subject:

    - (a) the legislation of the Member State of *residence*[22] , if it carries out a substantial part of its activity in that Member State,

    - (b) if he/she does not pursue a substantial part of his/her activity in the Member State of residence: (i) to the legislation of the Member State in which *the undertaking or employer* has its *seat or domicile*[23] , where the person is employed by only one undertaking or employer; or (ii) to the legislation of the Member State in which the undertakings or employers have their seat or domicile, where the person is employed by two or more undertakings or employers having their seat or domicile in only one Member State; or (iii) to the legislation of the Member State, other than the Member State of residence, (iii) to the legislation of the Member State, other than the Member State of residence, in which the undertaking or employer has its seat or domicile, where the person is employed by two or more undertakings or employers which have their seat or domicile in two Member States, one of which is the Member State of residence, or (iv) to the legislation of the Member State of residence, where the person is employed by two or more undertakings or employers, at least two of which have their seat or domicile in different Member States other than the Member State of residence.(Article 13(1))

  This would include French healthcare professionals who are already employed in hospitals or other healthcare establishments, provided that their employment contract does not exclude multi-activity.

[19] Marginal activities are defined as activities that are permanent but insignificant in terms of time and economic output. The indicator used is that they represent less than 5 % of the worker's regular working time and/or less than 5 % of the worker's total remuneration. The nature of the activities can also be an indicator of marginality, e.g. in the case of support activities, which cannot be performed independently or which are performed from home or for the benefit of the main activity.
[20] means a person who simultaneously or alternately pursues, for the same undertaking or employer or for several undertakings or employers, one or more different activities in two or more Member States (Article 14(5) Regulation 987/2009).
[21] Article 13(1) Regulation 883/2004
[22] The residence of a person is determined on the basis of several criteria such as: a) the duration and continuity of his or her presence on the territory of the Member States concerned and b) the personal situation of the person concerned.
[23] The seat or registered office where the fundamental decisions of the company are taken and where the functions of its central administration are carried out (Article 14(5a) Regulation 987/2009).

In order to determine the application of this case, it is necessary to take into account the State(s) in which the activity is to be carried out. If French professionals are going to practise indistinctly on both sides of the border, Article 13 would apply.

If they are going to carry out their activity only on French territory, then the application of the European regulation on contracts must be assessed.

- A person who normally pursues an activity **as a self-employed person** in two or more Member States[24] shall be subject to:

    - (a) the legislation of the Member State of *residence*, if he pursues a substantial part of his activity in that Member State,
    - (b) the law of the Member State in which the *centre of interest of its activities is located*[25] , if it is not resident in one of the Member States in which it carries on a substantial part of its activities

  This assumption would not apply to the recruitment of professionals governed by the hospital's labour law. However, it could possibly apply to the recruitment of French professionals under a service contract.
  It should be borne in mind that the contracting of services by the hospital, as a Catalan public sector entity[26] , is governed by public procurement regulations.[27]

- A person who normally pursues an activity as an **employed person and an activity as a self-employed person** in different Member States shall be subject to the legislation of the Member State in which he pursues an activity as an employed person.

  French freelancers, who are employed by the hospital, could fit into this category.

[24] A person who simultaneously or alternately pursues one or more different activities as a self-employed person, irrespective of their nature, in two or more Member States (Article 14(6) of Regulation 987/2009).
25 The "centre of interest" of the activities of a self-employed person is determined taking into account all aspects of his professional activities and, in particular, the place where the fixed and permanent seat of the activities of the person concerned is located, the habitual nature or duration of the activities pursued, the number of services rendered and the intention of the person concerned, as evidenced by all the circumstances.
[26] Law 40/2015, of 1 October, on the Legal Regime of the Public Sector.
[27] Law 9/2017, of 8 November, on Public Sector Contracts, transposing into Spanish law the Directives of the European Parliament and of the Council 2014/23/EU and 2014/24/EU of 26 February 2014.

If they are going to carry out their activity only on French territory, then the application of the European regulation on contracts must be assessed

- In the case of persons with the status of civil servants pursuing activities in more than one Member State, the legislation of the Member State to which the administration employing them is subject applies.

  According to Regulation 883/2004, a civil servant is "a person considered to be a civil servant or a person treated as such by the Member State to which the administration which employs him or her is subject". In this sense, this situation could arise if there were public servants among the health professionals, who are considered in French law as civil servants or persons treated as civil servants.

- **Applicable legislation, according** to Regulation 883/2004 (Article 1(l)) for each Member State, means laws, **regulations, statutory provisions and all other implementing measures concerning the branches of social security referred to in Article 3(1) .**[28]

  The scope of the law applicable to the person exercising the multi-activity is of particular relevance in order to delimit the obligations of the contracting companies which, according to the criteria of the regulation, result from the application of the law of the State other than that of their domicile. As we shall see below.

- Regulation 987/2009[29] establishes the **procedure** for determining, in each case, the applicable legislation. Thus, the person who is in a situation of multi-activity must notify, in advance, the designated institution of the country of residence, which will inform, in accordance with the cooperation mechanisms[30] , the States concerned, and determine the applicable legislation[31] . In Spain, the competent institution to declare the applicable legislation is the Social Security Treasury (provincial delegation) and in France, the Urssaf Caisse Nationale (service mobilité internationale).

  The competent institution informs the person concerned and, where appropriate, his or her employer(s) of the obligations laid down in that

28 This term excludes treaty provisions other than those which serve to establish an insurance obligation arising from laws or regulations or which, by decision of the public authorities, have become mandatory or have had their scope extended, provided that the State concerned makes a declaration to that effect, to be published in the Official Journal of the European Union.

29 Title II, Articles 14-21

30 Article 76 Regulation 883/2004.

31 It issues a certificate certifying the applicable legislation (A1). If there are differences over the interpretation or application of the provisions of the Regulation without a solution being found, the authorities concerned may refer the matter to the administrative commission, whose powers of interpretation, assistance and cooperation are set out in Article 71-72 of Regulation 883/2004. Access to the list of competent institutions Public Access Interface (europa.eu)

legislation and provides them with the necessary assistance in carrying out the formalities required by that legislation.

The certification of the applicable legislation is valid for 12 months, renewable annually, irrespective of the duration of the multi-activity.

The procedure[32] may be modified or a different procedure may be adopted by agreement of two or more States or their competent authorities, provided that the rights and obligations of the persons concerned are not adversely affected[33] .

- An employer whose registered office or place of business or activities is outside the competent Member State shall fulfil all the **obligations** laid down by the **legislation applicable to his employees, in** particular the obligation to pay the contributions[34] provided for by that legislation, as if his registered office or place of business were in the competent Member State.

  In other words, a **person who carries out a multi-activity is covered by the social security system of one of the States, as if he/she were carrying out all his/her activities in that State.**

In the case we are analysing, the complexity derives, from the hospital management perspective, from the **diversity of situations that can theoretically arise, taking into account the different affiliation regimes of French professionals**. This can be summarised as follows:

- Health professional resident and practising as a self-employed professional in France and as an employee in Spain. Application of Spanish legislation
- Health professional resident and practising as an employee in France and Spain. Application of the legislation of the State where the substantial part of the activity is carried out, France or Spain.
- Health professional resident and civil servant in France and practising as an employee in Spain. Application of French legislation
- Health professional resident and practising as an employed or self-employed person in France and carrying out marginal activities in Spain. Application of French legislation

In conclusion, **the application of the regulations on the coordination of**

[32] Article 9 Regulation 987/2009

[33] Agreements must be brought to the attention of the Administrative Commission and entered in Annex 1 to the Regulation.

[34] By agreement between an employee and an employer who does not have a place of business in the Member State whose legislation is applicable, the employee may fulfil, on behalf of the employer, the obligations relating to the payment of contributions.

social security systems allows the application of a single legislation to situations where activities are carried out in several States.

However, such an approach, in view of the different French health professional regimes, does not facilitate the management of a single recruitment model for the hospital. Rather, the effect may be the opposite.

3.2.- *The exemptions from Regulation 883/2006 do not provide answers adapted to the needs of the hospital's management model.*

Under Article 16 of Regulation 883/2004, the provisions of Article 13 on the determination of the law applicable to multi-activity in several Member States may be subject to **exceptions**[35] . These exceptions may benefit **persons or categories of persons**, and must be agreed by two or more Member States, by the competent authorities[36] of those Member States or by bodies designated by those authorities.

The regulations do not provide further detail on the scope and application of the exemptions, leaving room for discretion among competent authorities.

Exceptions can apply to individuals or categories of persons. Therefore, from the practical application of the regulations, they can be adopted through different legal tools (e.g. administrative decision, normative agreement, administrative agreement...).

Exceptions are provided for, so that certain situations can be considered which justify the application of other criteria to the determination of the applicable law.

Exceptions may also include procedural simplifications, but this cannot be the sole reason, as the primary consideration must be the interest of the person(s) concerned.

It is up to the person concerned, who exercises a multi-activity in two or more States, to apply for the derogation to the competent authority of the Member State whose legislation he or she is applying for or to the body designated by that authority. In other words, the **purpose of the request for derogation is to benefit from legislation other than that which, in principle, would correspond to the application of the criteria laid down in Regulation 883/2004.**

[35] These derogations may be granted in respect of the provisions contained in Articles 11 to 15(1) of Regulation 883/2004.
[36] In each Member State, the competent authorities shall be the Minister, Ministers or any other equivalent authority responsible for all or part of the Member State concerned for social security schemes.

In the case of exceptions to categories of persons, agreements have been adopted, recognising situations not foreseen in Regulation 883/2004. Thus, recently, the **Framework Agreement on regular cross-border telework** signed, among others, by Spain and France[37] , applies to those persons who habitually exercise a cross-border telework activity, i.e. those who have their residence in a signatory State and the registered office or the centre of activity of the company is located in another signatory State. The Agreement establishes as a criterion for determining the applicable law the employer's registered office or place of business, provided that the cross-border telework in the worker's State of residence accounts for less than 50% of the total working time.

Although the regulation does not define a time limit for the application of the exceptions, as a general rule, the maximum period is considered to be five years, taking into account the initial authorisation of one year and any extensions.

In the case of the Cerdanya Hospital, for example, the possibility of an agreement between France and Spain could be studied for the category of health professionals who work simultaneously in the public health services of both countries. This agreement would thus incorporate specific criteria for determining the applicable Spanish or French social security legislation for these situations.

In the light of these provisions, it can be considered that:

- The exceptions, by their very nature, have a **restrictive scope, and are applied, for the benefit of persons or categories of persons, on the basis of certain situations that justify the application of other criteria to the determination of the applicable law**.

- The exemptions that can be applied have a **maximum scope of 5 years and are requested by the persons concerned**, i.e. health professionals.

- **The regulations applicable to multi-activity in several States, including the exceptions, are neutral with respect to the Hospital's objective of reducing or simplifying the social security schemes of the hospital's employees**. Because, depending on the circumstances of each case, only one legislation, French or Spanish, is applicable.

[37] Effective from 1 July 2023

- **A possible new exception, for health professionals working in several public health services, would make it possible to apply criteria for determining the applicable legislation, according to the specificities of the sector. However, its application would refer, as now, to the application of French or Spanish legislation.**

3.3.-*The application of French legislation to the hospital in multi-activity situations.*

The main obstacle for the hospital as an employer, in cases where it is determined that French law applies to the affiliation of French professionals who are in a multi-activity situation, is not only limited to the payment of contributions in France, but also to the fulfilment of obligations under French law.
For the purposes of Regulation 883/2004, French legislation means laws, regulations, statutory provisions and all other implementing measures concerning the branches of social security listed in Article 3(1).

Thus, the hospital, which, as an EGTC, is a legal entity attached to the Catalan public sector, should be subject, as an employer, to legal provisions, the content, interpretation and application of which it does not know.

In this respect, the hospital, in its application, points to the disparities between the social security contributions of the French and Spanish social protection systems and how the derogations of Regulation 883/2004 could be applied in order to bring them into line,

On the issue of the disparities between social security contributions raised, it should be noted that, in accordance with the competences attributed to the European Union in the Treaties, Regulations 883/2004 and 987/2009 are responsible for coordinating national systems to ensure that people who move to another EU country do not lose their social security coverage and know at all times which national legislation applies to them.

According to the regulations, a person can only be subject to the social security legislation of one State, even if he/she carries out various activities in several States. He or she is therefore liable to pay social security contributions in that State only.

It is therefore up to national social security legislation to regulate the rights and obligations of members and the financing of existing schemes.[38] There

[38] See in Spain, Royal Legislative Decree 8/2015, of 30 October, approving the revised text of the General Social Security Act (BOE no. 261 of 31 October 2015) and Order PCM/74/2023, of 30 January, which develops the legal rules on social security contributions, unemployment, protection

are numerous comparative studies on the social security financing models of the Member States and the comparative impact on the level of social security contributions for employees and companies[39] .

Regarding the obligations of legal entities that do not have an establishment in France, but employ persons subject to French law, they are provided for by the Code de la securité sociale (article L 243-1-2), which establishes the **obligation to comply with the legal obligations of declaration and payment of contributions and social security contributions of legal or conventional origin for the employment of salaried persons** before the competent body. The employer may fulfil these obligations by appointing a representative in France who is responsible for the declaration and payment of the amounts due.

With regard to the legal obligations established by French law for non-established employers, the following are indicative:

- Register the company with "Services Firmes Etrangères[40] " in order for INSEE to assign it an identification number (SIRET) and open a contribution account.
- Declare intention to contract (DPAE procedure)[41]
- Subscription, for employees, to a supplementary pension scheme[42], supplementary health insurance[43] and membership of a provident fund[44] .
- Declaration and payment of contributions. They can be made using the simplified TFE (Titre Firme Etrangère) system, which allows automatic calculation of social security contributions and editing of employee pay slips.
- Proceed to the withholding at source and payment of income tax on the salaries (PAS) of the employees that are taxable in France[45]. For the determination of the place where the salaries are taxed, it is necessary to consider the Convention between the Kingdom of Spain and the French Republic for the avoidance of double

for termination of activity, the Wage Guarantee Fund and vocational training for the financial year 2023 ("B.O.E." 31 January). In France, Code de la sécurité sociale (articles D242-4, L136-1,5,8).

[39] Comparaison des contributions obligatoires aux systèmes sociaux en Europe, Institut pour l'innovation et économie sociale, 2017. La protection sociale en France et en Europe en 2021, DREES.

[40] Managed by Urssaf Alsace

[41] It serves to initiate the employee's rights, to benefit from exemptions and to satisfy requests for information from different administrations. It is carried out telematically via net-entreprises. Articles R1221-3 and 4 of the Code du travail.

[42] Joining Caisse Retraite Malakoff Humanis International

[43] Supplementary to the basic social security health insurance guarantees

[44] It complements the compulsory scheme in respect of death, disability, invalidity and dependency benefits. In this area, the provisions of collective agreements for the sector in France should be taken into account.

[45] The Non-Resident Tax Directorate (DINR) is responsible for managing the tax obligations of foreign companies without a permanent establishment in France, which do not have a tax representative. The employer must register in the tax area www.impots,gouv.fr

taxation and the prevention of tax evasion and avoidance in respect of income and wealth tax of 10 October 1995. [46]

The legal obligations, both social and fiscal, provided for in French law, can be performed directly by the non-resident employer or by a representative resident in France who will be personally responsible for the execution of the obligations.

In view of these provisions, it can be concluded:

-In cases of multi-activity where French legislation is applicable, in accordance with Regulations 883/2004 and 987/2009, the Cerdanya hospital should be subject to the social obligations provided for in that legislation, as an employer from another Member State without an establishment in France, which employs persons affiliated to a French social security scheme.

-The Cerdanya Hospital should also be subject to the tax obligations under French law, where the salaries it pays to employees are taxed in France in accordance with the provisions of the 1995 Convention between Spain and France on tax matters.

3.3.-European employment contracts, an additional variable to multi-activity.

One of the issues raised previously with regard to the criteria for determining the law applicable to multi-activity situations in various States has been the place of exercise of the activity by French professionals.

For example, the hospital may hire French professionals to work exclusively on French territory, e.g. to monitor patients residing in France.

This hypothesis is of great interest for the following reasons:

a) This would be a professional resident in France who works as an employee for two employers, one Spanish and one French. Or for one employer, in the case of French professionals working in France on a self-employed basis.
b) The French professional would carry out the activity on behalf of the hospital, exclusively in one State.
c) The French professional does not qualify as a worker temporarily

[46] Article 15 sets out the criteria for taxation of wages and similar remuneration from dependent work.

posted on behalf of an entity domiciled in Spain, within the meaning of Article 12(1) of Regulation 883/2004[47] and Article 14(1) of Regulation 987/2009 or Article 1 of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services.[48]

It follows from these elements that, for this particular situation, the provisions on displaced workers in Directive 96/71 and the exercise of multiple activities in several States in Regulations 883/2004 and 987/2009 on the coordination of social security systems would not be applicable.

This type of contract, due to its characteristics, refers to the provisions of **private international law** on contracts[49] and, in particular, to **Regulation (EC) No 593/2008 of 17 June 2008 on the law applicable to contractual obligations**. The purpose of this provision is to regulate situations involving a conflict of laws.

Thus, **European employment contracts**, i.e. between persons from different states, under Articles 3 and 8 fall within the scope of Regulation 593/2008.

The regulation allows the signatory parties to **choose the law applicable to the employment contract**. This choice must be made expressly or unequivocally from the terms of the contract or the circumstances of the case. The parties may designate the law applicable to the whole or only a part of the contract.

The limit on the free choice of law is that the contract **may not** result in the **employee being deprived of the protection afforded to him by the provisions of the law** which, in the absence of choice, **would have been applicable by virtue of** Article 8(2), (3) and (4), that is:

- The law of the place of the **usual** place of **performance of the** employment contract.
- Failing this, the law of the country in which the establishment employing the worker is located.
- If it is clear from the circumstances as a whole that the contract is

[47] A person who pursues an activity as an employed person in a Member State on behalf of an employer who normally carries out his activities there and who is posted by that employer to carry out work on his behalf in another Member State shall remain subject to the legislation of the first Member State, provided that the foreseeable duration of such work does not exceed twenty-four months and that such person is not sent to replace another person.

[48] The Directive applies to undertakings established in a Member State which, in the framework of the transnational provision of services, post workers, as referred to in paragraph 3, within the territory of a Member State.

[49] Rome Convention on the Law Applicable to Contractual Obligations of 19 June 1980

more closely connected[50] with a country other than the one indicated in the preceding paragraphs, the law of that other country shall apply (so-called exception clause).

This means that the hospital and the French health professional can enter into an employment contract subject to Spanish law even if the activity is carried out exclusively on French territory. However, the contract may not exclude the rules of French law, with regard to those **mandatory aspects of social protection, which are not covered, or are covered to a lesser extent, by Spanish law**.

The regulation also determines the material scope of the applicable law. Thus, in the employment contract, the **applicable law** will govern the following matters: a) interpretation; b) the performance of the obligations it generates; c) within the limits of the powers conferred on the court by its procedural law, the consequences of a total or partial breach of these obligations, including the assessment of damage insofar as it is governed by legal rules; d) the various modes of termination of obligations, as well as prescription and limitation based on the expiry of a time limit; e) the consequences of the nullity of the contract.

As regards the modalities of performance and the measures to be taken in the event of defective performance, the provisions of the **law of the country where the performance takes place shall apply**.

Finally, the provisions of the regulation apply without prejudice to the application of other Community provisions, which in specific matters, regulate the conflict-of-law rules applicable to contractual obligations. [51]

With regard to **jurisdiction and enforcement of judgments** on employment contracts, the provisions of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters apply. These provisions determine, in relation to employment contracts, the courts having jurisdiction over claims by employees and employers.

The differences between the above-mentioned regulations, whether on the coordination of social security systems or on the European employment contract, are obvious and serve different purposes.

[50] The Court of Justice of the EU in its decision of 12 September 2013, C-64/12, Schlecker has established a non-exhaustive list of criteria to be taken into account in order to justify the application of the exception clause in relation to employment contracts: the place of payment of taxes, the place of affiliation to social security and pension schemes, the currency of the salary and the working conditions.

[51] Article 23.

However, in practice, in cases where French law applies, the hospital, as an employer, is subject to the same social and tax obligations as described on pages 14-15. This is because the common element would be the employment of a person subject to a French affiliation scheme[52] by an employer without a permanent establishment in France.

3.4.- *Availability of limited resources to deal with the complexity of cross-border hospital management in an incomplete cooperation framework.*

The management of the hospital since its opening, according to contacts with the management team, resembles a daily obstacle course in which legal and administrative difficulties arise in various areas. This report shows this from the point of view of human resources management.

On this premise, we cannot lose sight of the fact that the Cerdenya hospital is located in a mountainous enclave in the Pyrenees, and that despite the services it offers and the integrating role it plays in the territory, its size, in terms of capacities and resources, is limited[53] .

This reality highlights the obstacle of managing the cross-border variable in the absence of a bilateral legal instrument that regulates the legal or administrative specialities that the proper functioning of the hospital may require.

This issue has recently been mentioned in the **Treaty of Friendship and Cooperation between the Kingdom of Spain and the French Republic of 19 January 2023**. Thus, Article 28.4 of Title VIII on health, labour and social affairs recognises, in health matters, the importance that both States attach to the proper functioning of the Cerdanya binational hospital and its capacity to bring together professionals from both countries in the same structure. And that, *if necessary,* they *will decide jointly with the local authorities concerned on the provisions and exceptions necessary for its proper functioning.*

This provision constitutes a sufficient legal basis for the conclusion of an agreement defining the particular specialisations, be it on the regulation of the multi-activity of the professionals or any other issue necessary for the proper functioning of the hospital.

With regard to multi-activity situations, we should remember that the application of exceptions is already provided for in Regulation 883/2004.

[52] Idem

[53] By way of indication: day and inpatient services, surgical block, multi-purpose outpatient clinics and out-of-hospital emergency and speciality services.

And that we must be cautious about their suitability with regard to the objective of simplifying the management or equalisation of affiliation schemes for French and Spanish professionals. This is because the derogations are applied for the benefit of insured persons, not employers.

In addition, in the field of cross-border cooperation, Article 30(5) of the Treaty also provides that, *if the Parties encounter differences in legislation which hinder the implementation of cross-border cooperation projects, they shall endeavour to work out an ad hoc legal solution, in accordance with their national systems of division of competences, to overcome this difficulty*.

This provision responds to the need, already raised in various areas of cross-border cooperation between France and Spain, to provide public law entities with the means to enter into cross-border agreements, either in specific sectoral areas or to facilitate cooperation between entities of a different legal nature, but with comparable competences according to national legislation.

On the other hand, another of the hospital's obstacles in managing the cross-border dimension is that its human resources cannot deploy specialised competencies in all the issues or topics it has to deal with.

It is therefore important for the hospital to equip itself with information tools to support the management teams, in addition to external professional support.

Thus, in relation to the subject of this study, it would be of interest for the hospital to have an updatable information tool for the management of human resources, on the social and fiscal implications of frontier workers, multi-activity, others... etc.

Even more so, when contacts with management and employees show that, as in other border environments, local residents experience the cross-border dimension on a daily basis, but are not always aware of the social, fiscal or administrative implications of taking up residence or contracting with a company on the other side of the border.

This type of tool[54] is common at different administrative levels and in particular with regard to the labour and taxation of frontier, posted or multi-activity workers[55] . However, in practice, this information does not

[54] Depending on the needs and target audience, they take on different formats: guides, websites, brochures, projects, studies, etc.

[55] Some examples, On social legislation: Practical guide on legislation applicable in the European Union, European Economic Area and Switzerland, European Commission; On taxation, Access Point European Area: Directorate-General for Public Governance (www.administracion.gob.es),

always reach people living and working in a border area.

On labour mobility: Project Estoc 2020 (support network of trade unions for cross-border mobility between Catalonia and Occitania), Guides "Living and working in Bidasoa Txingudi Cross-border workers" Txingudi Cross-border Consortium.

CONCLUSIONS

- Community Regulations 883/2004 and 987/2009 **establish the criteria for determining the legislation applicable to the affiliation of persons who carry out activities in several Member States. They also regulate the application of exceptions to these criteria for the benefit of persons or categories of persons**, subject to the agreement of the States, institutions or authorities of the social security systems.

- The **affiliation of French healthcare professionals contracted by the Hospital to practise in Catalonia, and who are already practising in France, may be subject to Spanish or French legislation in terms of their affiliation, according to the** different criteria and situations of regulations 883/2004 and 987/2009.

- The recruitment of French healthcare professionals to practise exclusively in France must comply with the provisions of Regulation **(EC) No 593/2008 of 17 June 2008 on the law applicable to contractual obligations,**

- **In cases of multi-activity or European recruitment of French healthcare professionals where French law is applicable, Cerdanya Hospital shall be subject to the social and/or tax obligations applicable to employers without an establishment.**

- The financing of social security schemes, and in particular the **regulation of social security contributions, is governed by national provisions. European competence, as regards the coordination of social security systems, is limited to guaranteeing a system of social benefits for persons exercising freedom of movement and establishment.**

IV.- DESCRIPTION OF POSSIBLE SOLUTION(S)

In this report, the obstacles identified during contacts with the hospital's management and staff, as well as the analysis of the regulatory provisions applicable to the recruitment of health professionals resident and practising in France, have been identified.

On the basis of these premises, solutions to mitigate these obstacles are identified below.

4.1.-*Legal and administrative* solutions

4.1.1.Define the scope and modalities of service provision by French professionals in the hospital's management model.

In view of the multiplicity of situations that can arise for the purposes of contracting, both in terms of the social regimes involved and the place of exercise of the activity, and the legal implications that this entails, it would be advisable to go more deeply into the service provision model in relation to French professionals. Such a definition would make it possible to define in detail the scope of the hospital's obligations and to make progress in the legal implementation of the model.

4.1.2. In the light of the conclusions of the previous section, to promote those aspects of administrative-legal scope that could be agreed in a bilateral agreement, on the basis of the provisions of the Treaty of Amity.

It should be borne in mind that the provisions or exceptions, from a legal point of view, have a restrictive scope, as opposed to the general rule, and that they respond to circumstances or situations that do not conform to the general rule but need to be resolved, in the present case, for the proper functioning of the hospital.

In this sense, progress could be made on a derogation to regulations 883/2004 and 987/2009 between France and Spain, defining the criteria for determining the legislation applicable to health professionals practising simultaneously in both public health systems and simplifying the administrative procedure between the competent authorities.

4.2.-Solutions of other nature

4.2.1.-Development of an information tool[56] on the social, labour and fiscal regime of health professionals, whether they are cross-border, multi-activity or of any other nature, at the Hospital.

The recruitment of resident and practising professionals in France will give rise to situations of uncertainty and/or legal complexity. For this reason, the hospital needs to have the necessary resources to approach this process with sufficient information for proper planning and management.

The incorporation of social and fiscal aspects, based on existing experiences, are necessary because they are closely related and have the greatest cross-border implications on a professional and personal level. Lastly, the incorporation of labour aspects, in particular the terms and conditions of the agreements, can serve as a support in the draft Hospital Labour Agreement.

This tool can take the form of a guide or manual to support the management of the hospital's human resources, including the following contents:

- Providing information and administrative-legal knowledge to the human resources department, enabling them to identify the scope of the hospital's obligations and implications, particularly with regard to French law. The deployment of a recruitment model must have this information at its disposal in order to make decisions on the most appropriate formulas.

- Facilitate the systematisation and integration of the administrative procedures associated with the recruitment of cross-border and/or multi-activity or anothers professionals, to be integrated into the ordinary management (e.g. competent body, forms, deadlines, etc.).

Informing and supporting border and/or multi-activity workers hired by the hospital about the obligations to which they are subject, on one or both sides of the border. The tool can be included in the welcome pack for employees as a differential and specific element of the hospital.

-Identify those aspects that constitute an obstacle to contracting in order to be able to present them and request the competent administrations to adopt ad hoc solutions.

[56]Based on comparative experiences, it can take the form of a guide or web application.

4.2.2.- To make progress on a model employment contract for French health professionals.

In the event that the management model for French professionals is articulated on the basis of the exclusive exercise of the activity in France, it would be advisable to work on a model contract that integrates the specialities required by French law in relation to the employer's obligations and the scope of the French employee's compulsory social protection.

4.2.3- Promote an active dialogue with the competent authorities of social security systems.

In terms of human resources management, the Tesoreria General de Seguridad Social and the URSSAF are two reference bodies for the recruitment of professionals. Both are involved in the procedure for determining the legislation in force, in the affiliation of employees and in the adoption of exceptions.

The dialogue and active interlocution is aimed at generating a dynamic of cooperation, access to information on the application, scope and methods of interpretation of the applicable rules, especially French legislation, as well as seeking solutions aimed at simplifying procedures.

4.2.4.-Appoint a representative in France to manage the social and tax obligations of employees whose membership is governed by French law.

This operational measure, which is common for private entities operating in different Member States, certainly entails a delegation of functions, but it also has advantages: Firstly, assistance with expertise in French social and tax law can be made available, avoiding incidents of legal non-compliance or the imposition of administrative sanctions. Secondly, it relieves the workload of the hospital's human resources.

IV.- A FULL LIST OF ALL LEGAL PROVISIONS RELEVANT TO THE CASE INDICATING THE PLACE AND DATE OF PUBLICATION OF THE LEGAL TEXTS WITH THE CORRECT CITATION[57] BOTH IN ORIGINAL LANGUAGE AND IN CASTELLANO.

- 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)

  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))

- 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 (Text with relevance for the EEA and for Switzerland) (OJ L 284, 30.10.2009, p. 1).

  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 (Text with EEA and Swiss relevance)

- REGULATION (EC) No 593/2008 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 17 June 2008 on the law applicable to contractual obligations (Rome I)

  REGULATION (EC) No 593/2008 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ L 177, 4.7.2008, p. 6)

[57] For reference, see the *b-solutions*: Solving Border Obstacles. A Compendium 2020-2021, p 160 - 175. Here is an example for an 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)*".

V.-OTHER ASPECTS RELEVANT TO THIS CASE IF RELEVANT

VI.- REFERENCES AND APPENDIX/APPENDICES IF ANY