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FINAL REPORT BY THE EXPERT

Advice case title: Health service

Full official name of the advised entity: Municipality of Elvas on behalf of EUROBEC (Ayuntamiento de Badajoz, Município de Elvas and Município de Campo Maior)

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I. Executive summary

Restoring the complementarity among the health units of Elvas-Portoalegre, Badajoz and Campo Maior is one of the main concerns of EUROBEC.

Complementarity in this Portuguese-Spanish cross-border area covers three aspects:

- patient mobility, in particular the equal access of Portuguese citizens to Badajoz Hospital as compared to Spaniards
- actual coordination of facilities on both sides of the border, with a view to ensure efficiency in providing health services
- mobility of health professionals

The three aspects are fully interlinked. Patient mobility is the main and most visible concern by EUROBEC, the involved stakeholders and the citizens. But it needs to be complemented with the more technical mechanisms on the coordination among health authorities and the mobility of health professionals across the border.

Currently, patient mobility is a reality to some extent. Badajoz Public Hospital is the biggest health facility in the EUROBEC area, and it treats all emergencies irrespective of the patient's nationality. The administrative requirements are dealt with as a second step. However, this cross-border territory needs a stable solution to provide other types of treatments and allow patients and their families have access to specialized quality healthcare close to their homes. Restoring the complementarity of all health units in EUROBEC will also lead to a more efficient healthcare system, where local resources (in terms of staff, facilities and health transport) will be optimized.

Directive 2011/24/EU on the application of patients' rights in cross-border healthcare is a key legal provision in this context. This Directive incorporates a number of solutions as a response to the EU's objective of achieving a high level of health protection. However, the Directive itself is aware of the particular features of border territories and the need to reach further bilateral agreements between the competent authorities and bodies across the border. Concepts such as efficiency of the healthcare provision, joint planning, mutual recognition or adaptation of procedures, interoperability of the national information and communication technology systems, and mobility of health professionals are mentioned by the Directive and could be the object of bilateral agreements.

Based on the above, the proposed solution is to agree on a Protocol or several Protocols to cover all technical aspects not yet solved by the Directive and the rest of applicable legislation.

As an overall conclusion, the existing legal framework needs further development in order to remove the remaining obstacles to reach an efficient coordination of the health units in the cross-border area. The next step is now how to proceed with this further development. The Interreg cross-border POCTEP Programme offers two ways to develop the legal framework, and these possibilities could be considered by EUROBEC.

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

Context

The Eurocity Elvas-Badajoz was set up in 2015, and it enlarged to Campo Maior in 2015. It is known as EUROBEC. This cooperation agreement aims at the design, management and sharing of services, equipment and facilities among the three cities, the development of experiences and projects of cross-border cooperation of common interest with community financing in the area of economy, social services and culture, to promote cooperation and the creation of companies and to improve conditions for attracting companies and investments[1].

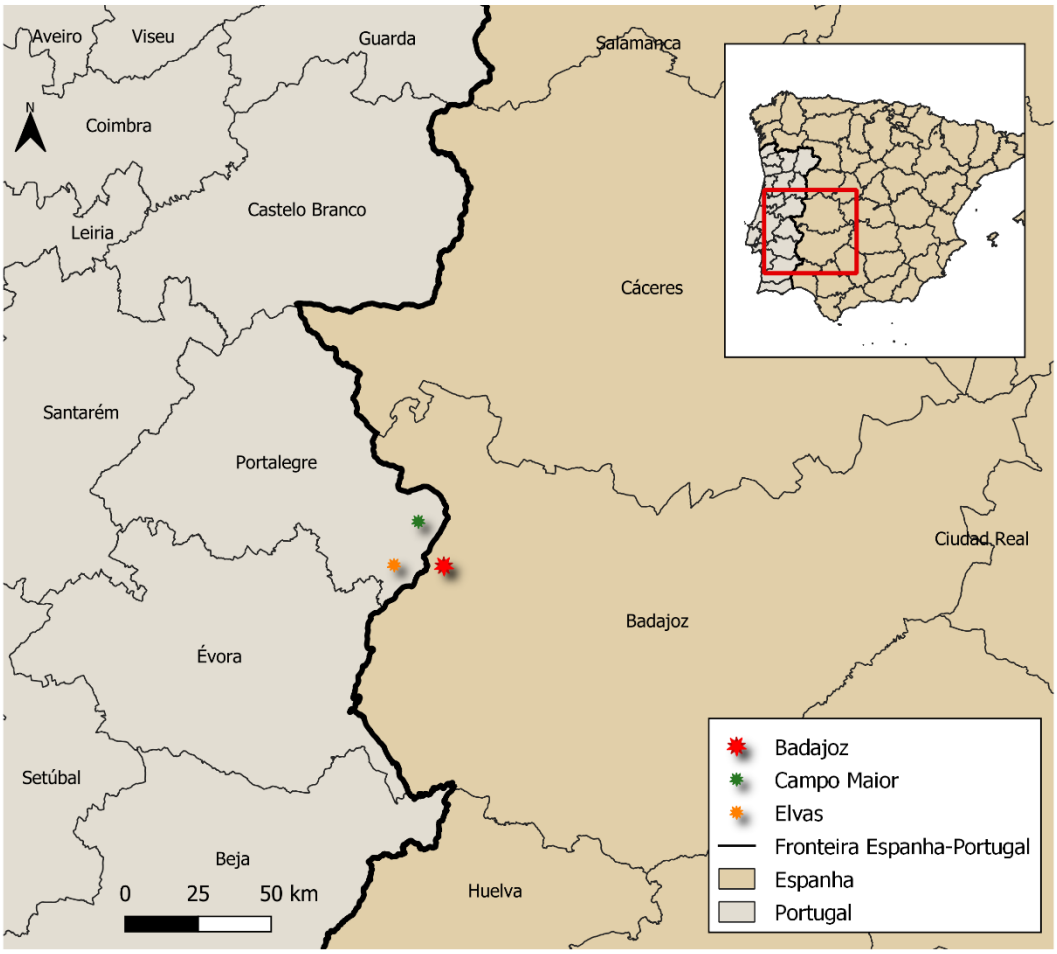

Figure 1- Eurobec area. Source: Pérez Pintor J.M and Garrinhas, J.P 'Eurocity Elvas, Badajoz and Campo Maior (EUROBEC), the socio-economic and territorial reality of a new cross-border governance structure in Portugal'

In 2018, the population of Badajoz amounted to 150,330 inhabitants, constituting the largest urban center and a major driver of demographic growth in the Eurocity. The population of Elvas was 20,706 and Campo Maior 7,907 inhabitants. The systematic departure of the population and the consequent drop in birth rates in Portuguese municipalities has contributed to a marked aging of the population. There is a strong imbalance in the urban structure of EUROBEC, with a strong macrocephaly of the city of Badajoz[2].

[1] Pérez Pintor, J.M and Garrinhas, J.P., 'Eurocity Elvas, Badajoz and Campo Maior (EUROBEC), the socio-economic and territorial reality of a new cross-border governance structure in Portugal'
[2] Pérez Pintor, J.M. and Garrinhas, J.P, 'Eurocity Elvas, Badajoz and Campo Maior (EUROBEC), the socio-economic and territorial reality of a new cross-border governance structure in Portugal'

In Badajoz, large hospital facilities exist, both public and private. In Portugal, Elvas Hospital Santa Luzia and Portalegre Hospital Dr. José Maria Grande do not provide certain specialized health services and citizens are often sent to Évora Hospital (over 80 km away) or to Lisbon (over 200 km away), also for emergencies. However, a high number of Portuguese citizens from Elvas and Campo Maior prefer to use the public and private health services in Badajoz, which is about 20 km away[3].

Despite the proximity, access of Portuguese patients to Badajoz public hospital is subject to some administrative requirements, as it will be described in the following chapters. This key issue of patients' mobility is one of the main concerns of EUROBEC and one of the objectives of this report. The current legislation foresees a number of administrative requirements that prevents patient mobility to be a full reality in the EUROBEC area. In practice, Badajoz Hospital treats every patient equally and deals with the administrative requirements as a second step. However, this punctual solution does not respond to the wish to create a real coordinated cross-border healthcare area where other types of specialized treatments can take place in the territory instead of

In addition to patients' mobility, EUROBEC is also after health professionals' mobility, and the coordination of health facilities.

Objective of the case study

The main objective of this case study is to analyse the legal and administrative framework with a view to restore the complementarity among the health units of Elvas-Portoalegre, Badajoz and Campo Maior. Currently, the Portuguese and Spanish (Extremadura) health systems work as separate systems. There are informal contacts among professionals in both countries, and emergencies are always covered in the Eurocity. However, a coordinated health service in EUROBEC implies a wider number of aspects in a field (health services) which is highly regulated. Agreeing on new legal provisions between both countries is the key to allow a coordinated health service in the Eurocity.

Complementarity among the health units in the 3 municipalities is a global concept that covers a number of sub-aspects. In particular, it regards the following issues:

- patient mobility in the sense of equal access of Portuguese citizens to Badajoz Hospital as compared to Spaniards
- actual coordination of facilities on both sides of the border, with a view on ensure efficiency in providing health services
- mobility of health professionals

The key issue of patient's mobility

The three municipalities of the EUROBEC area are particularly concerned by the equal access to Spanish health services by Portuguese citizens. As of 2022, Portuguese citizens can access the Spanish health services by using the rights and possibilities offered by Regulation 883/2004 or Directive 2014/24. And as a matter of fact, these rights are the same they could use in France, Italy or any other distant EU country. These legal provisions and their developments do not foresee the particular case of the EUROBEC cross-border area.

Particular regulatory action is needed to give the right to both Portuguese and Spanish citizens to use the health facilities in the two countries of EUROBEC in equal terms and without

[3] Garrinhas, J. Pérez Pintor, J.M., Rubio, I., 'Dinâmicas Territoriais e Funcionais na Eurobec'

additional administrative burden for them. This use would not only cover emergencies, but also other treatments and long-term treatments.

A specific patient mobility protocol[4] existed from 2006 until 2013 in this cross-border area. It allowed Portuguese citizens to get equal access to birth and obstetric support at Badajoz public Hospital. This led to a high number of children born in the Spanish territory, and allowed them to get both nationalities Spanish and Portuguese[5]. This protocol implied that Portuguese authorities received the invoices for all services delivered to Portuguese citizens.

Besides the specific protocol on obstetric support, informal patient mobility has always existed. Spanish doctors and health professionals at Badajoz Hospital have always treated all patients irrespective of their administrative status. Many patients from Elvas or Campo Maior choose to use Badajoz Hospital (20 km away) instead of driving about 60 km to Portoalegre Hospital or over 200 km to Lisbon. These patients are treated at Badajoz Hospital but there is a number of administrative requirements that Portuguese citizens need to comply with, as it will be further developed in the following sections.

In other cases, Portuguese patients choose to use private hospital facilities in Badajoz instead of driving to Portoalegre or Lisbon. In these cases, patients and their families try to avoid the long journeys to those hospitals, and also the costly stays in those towns while the treatment takes place.

Coordination of facilities

Health professionals of both sides of the border would like to be coordinated in the use of facilities on each side. This coordination would benefit health units on both sides of the border. It could save time and resources for Portuguese citizens that could use Badajoz Hospital instead of driving to Portalegre or Lisbon. And it could also help Badajoz Hospital deal with waiting lists by using the facilities of Santa Luzia Hospital.

Such coordination needs a stable framework and defined processes for contact among authorities and professionals in order to transfer patients or make use of health professionals across borders.

As of 2022, the official coordination between the two countries is not possible and has no direct legal provision. The health authorities in the two countries have no mandate or legal basis to be in coordination. Therefore, doctors on both sides of the borders have no official possibility to be in contact with their counterparts on the other side of the border in order to transfer patients to a specialized unit or facility in the other country, for example.

A key aspect to enable this coordination is the access to health data. Exchange of patients' data and the direct contact among professionals are the starting point to coordinate facilities and health professionals. In practice, the exchange of data could be made possible via the interoperability of information systems among all health units in the EUROBEC area.

Mobility of health professionals

Currently, there is no legal framework to allow free movement of health professionals across the border. The mobility of health professionals is a regulated field, and getting to the level of 'free movement' in the EUROBEC area would need additional regulatory action.

[4] Protocolo técnico de atención sanitaria a la mujer embarazada de la población procedente del área sanitaria de Elvas (Portugal), por los servicios sanitarios del Área de Salud de Badajoz (España) del Servicio Extremeño de Salud.
[5] Pérez Pintor, J.M. and Garrinhas, J.P., 'EUROBEC: a construção sustentável da Eurocidade Badajoz, Elvas e Campo Maior', VI Congreso Internacional de Sostenibilidad Ambiental y Territorial

The aim of the free movement of health professionals is to optimize the use of personal resources in the two countries.

Free professional mobility in EUROBEC would imply structured coordination of staff between the two countries. Such coordination could lead to use specialized professionals on any side of the border, instead of Elvas Hospital using professional help in distant towns such as Portoalegre, Lisbon, etc.

A stable cross-border framework could also promote regular exchange of good practice among health professionals on both sides of the border, as well as internships in any of the health units in the EUROBEC area.

Last but not least, the stable framework could also work to allow the recognition of professional qualifications in the cross-border area, as a pre-condition for the mobility of health professionals. In fact, it is the first aspect to take into consideration when a Spanish surgeon wishes to work in Portugal, for example.

There is a certain mobility of health professionals in the EUROBEC area. For example, there is a number of Spanish health professionals who work in Elvas because it is easier to get access to a stable job there. In addition, Elvas Hospital Santa Luzia and the health units in that municipality lack specialized staff, and therefore they host a high number of Spanish doctors and nurses[6]. All these health professionals need to fulfil all administrative requirements in order to be registered in the Portuguese system.

In addition, cooperation among health professionals on both sides of the border also happens through exchange of good practice. Spanish doctors appreciate the Portuguese experience on domiciliary hospitalization, and admit to learn from the Portuguese counterparts. The recent conference on this topic held in October 2022 in Elvas[7] proves the lively professional relationships on both sides of the border.

Legal framework

Bearing in mind the three main aspects to restore the complementarity among health units in EUROBEC, the legal provisions referred to each are listed below. Patients' mobility is the core of this case study and is the subject of several legal provisions.

a) Patients' mobility

The basic legal framework as regards patient mobility is composed of a number of EU, international and national provisions:

- Regulation (EC) No 883/2004 of the EP and the Council on the coordination of social security systems
- Directive 2011/24/EU of the European Parliament and of the Council on the application of patients' rights in cross-border healthcare
- The new Treaty on Friendship and Cooperation between Spain and Portugal
- Framework Agreement on cross-border healthcare between Spain and Portugal
- The Directive was transposed to Spanish Law by the *Real Decreto 81/2014, por el que se establecen normas para garantizar la asistencia sanitaria transfronteriza*

[6] Garrinhas, J. Pérez Pintor, J.M., Rubio, I., 'Dinâmicas Territoriais e Funcionais na Eurobec'
[7] More information on the congress can be found under https://www.admedic.pt/eventos/1-cong-iberico-hospitalizacao-domiciliaria.html

- The Directive was transposed to Portuguese Law by the *lei nº 52/2014 Estabelece normas de acesso a cuidados de saúde transfronteiriços e promove a cooperação em matéria de cuidados de saúde transfronteiriços*.

The two legal routes for EU citizens to access healthcare in another EU country are Regulation 883/2004 (and its Implementing Regulation 987/2009) and Directive 2011/24/EU[8].

Regulation (EC) No 883/2004 *of the EP and the Council on the coordination of social security systems*

Regulation 883/2004 deals with a wide range of issues related to the coordination of national social security systems, and in particular those aspects that refer to *employed* persons. Among other aspects, this Regulation enabled the creation of the European Health Insurance Card and allowed equal treatment on the same terms as other persons insured within the public health system of the Member State of stay.

The general principle under the Regulations is that patients have the right to access health services abroad as though they were insured under the social security system of that country. Citizens have the same rights to health care as people insured in the country where they are**,** using the European Health Insurance Card. When citizens want to access planned healthcare under the Regulations, they must request a prior authorisation, the so-called S2 form, which is issued by the competent authority of the EU country where the patient is insured[9].

Patients will pay for healthcare only if this is required for national patients of the Member State of stay. A reimbursement will then be claimed at the Member State of affiliation.

Directive 2011/24/EU *of the European Parliament and of the Council on the application of patients' rights in cross-border healthcare*

Directive 2011/24/EU on the application of patients' rights in cross-border healthcare, the first and only health directive to date, includes provisions for public health and for access to healthcare. This Directive incorporates European measures seeking to improve the operation of the internal market and the free movement of services, as set forth in the Treaty. It is a response to the EU's objective of achieving a high level of health protection[10].

The Directive complements the Regulations. It establishes rules for facilitating access to safe and high-quality cross-border healthcare in the EU and ensures patient mobility in accordance with the principles established by the Court of Justice of the EU. It is applicable to all persons having a Social Security Card, and not only workers, pensioners or their families.

When transposing the Directive, Spain and Portugal opted for a prior authorization system for planned healthcare. Unplanned healthcare does not require prior authorization[11].

Under the Directive, certain treatments are excluded (long-term care services, transplants and vaccination campaigns). But apart from that, an EU citizen could benefit from healthcare in another Member State. The patient will pay for all healthcare expenses upfront, and full or partial reimbursement of these expenses can be then be claimed[12]. The preamble of the

[8] European Commission, *Guiding principles for information provision on prior authorization systems across Member States*, 2022, page 11
[9] European Commission, *Guiding principles for information provision on prior authorization systems across Member States*, 2022, page 11
[10] European Commission, *European Cross-Border Cooperation on Health: Theory and Practice*, 2017, page 32
[11] European Commission, *Guiding principles for information provision on prior authorization systems across Member States*, 2022, page 11
[12] The European Commission document *Guiding principles for information provision on prior authorization systems across Member States,* page 21, provides an overview of the main differences between the two legal routes (the Regulations and the Directive)

Directive (recital 40) gives more detail on the background for the payment and reimbursement system:

Member States may make the assumption of costs by the national system of hospital care provided in another Member State subject to prior authorisation. The Court of Justice has judged that this requirement is both necessary and reasonable, since the number of hospitals, their geographical distribution, the way in which they are organised and the facilities with which they are equipped, and even the nature of the medical services which they are able to offer, are all matters for which planning, generally designed to satisfy various needs, must be possible. The Court of Justice has found that such planning seeks to ensure that there is sufficient and permanent access to a balanced range of high-quality hospital treatment in the Member State concerned.

The particular case of border territories in the Directive

Besides all the provisions applicable to the entire EU territory, the Directive foresees a number of aspects that are particularly applicable to border territories. The preamble (recital 50) depicts the situation in border areas:

Member States should facilitate cooperation between healthcare providers, purchasers and regulators of different Member States at national, regional or local level in order to ensure safe, high-quality and efficient cross-border healthcare. This could be of particular importance in border regions, where cross-border provision of services may be the most efficient way of organising health services for the local population, but where achieving such cross-border provision on a sustained basis requires cooperation between the health systems of different Member States. Such cooperation may concern joint planning, mutual recognition or adaptation of procedures or standards, interoperability of respective national information and communication technology (hereinafter 'ICT') systems, practical mechanisms to ensure continuity of care or practical facilitating of cross-border provision of healthcare by health professionals on a temporary or occasional basis. Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (10) stipulates that free provision of services of a temporary or occasional nature, including services provided by health professionals, in another Member State is not, subject to specific provisions of Union law, to be restricted for any reason relating to professional qualifications. This Directive should be without prejudice to Directive 2005/36/E

In particular, article 10.3 of the Directive promotes cross-border agreements to cooperate on cross-border healthcare:

> *The Commission shall encourage Member States, particularly neighbouring countries, to conclude agreements among themselves. The Commission shall also encourage the Member States to cooperate in cross-border healthcare provision in border regions.*

In addition, the Directive foresees the need to pay particular attention to information and communication technologies (ICT) and to the mobility of health professionals.

Article 10.2 of the Directive envisages that *Member States shall facilitate cooperation in cross-border healthcare provision at regional and local level as well as through ICT and other forms of cross-border cooperation.*

And article 10.4 states: *Member States of treatment shall ensure that information on the right to practise of health professionals listed in national or local registers established on their territory is, upon request, made available to the authorities of other Member States, for the purpose of cross-border healthcare, in accordance with Chapters II and III and with national measures implementing Union provisions on the protection of personal data, in particular*

Directives 95/46/EC and 2002/58/EC, and the principle of presumption of innocence. The exchange of information shall take place via the Internal Market Information system established pursuant to Commission Decision 2008/49/EC of 12 December 2007 concerning the implementation of the Internal Market Information System (IMI) as regards the protection of personal data.

The ***Treaty of Friendship and Cooperation between Spain and Portugal****.*

The Governments of Spain and Portugal meet yearly to agree on a number of cross-border issues. In October 2021, they agreed on a new Treaty of Friendship and Cooperation, which is in process of ratification as of November 2022.

Article 13 of the Treaty foresees that the two *States commit themselves to cooperate on public health (research and innovation), health promotion, mutual assistance, risk assessment and healthcare access.*

The Parties will reinforce cross-border cooperation to ensure a better access to healthcare and to facilitate access to transport and healthcare emergency services on border areas.

In November 2022, a new agreement[13] was signed on emergency services only.

The ***Framework Agreement on Cross-Border healthcare between Spain and Portugal***

This agreement was signed in 2009 and remains applicable as of November 2022. The preamble of the Agreement recognizes *the tradition of population mobility between Spain and Portugal, as well as the implementation of different cross-border cooperation projects between both countries in order to improve access to healthcare and guarantee its continuity for the populations of the border area.*

Objectives of the Agreement are:

> *a) to ensure better access to quality healthcare for populations in the border area as defined in article 2,*
> *b) to guarantee the continuity of healthcare for those populations,*
> *c) to optimize the organization of the supply of health care, facilitating the use or distribution of human and material resources,*
> *d) to promote the complementarity of knowledge and practices, especially in the field of clinical and organizational quality, and patient safety, innovation and new health technologies.*

Article 2 of the Agreement refers to the potential beneficiaries of cross-border healthcare:

> *any person benefitting from healthcare in accordance with the applicable legislation, who resides or is temporarily in the border areas*.

The Spanish and Portuguese transposition of the Directive

In Spain, the *Real Decreto 81/2014* transposed the Directive and contains provisions to facilitate the access to safe and quality cross-border healthcare.

As regards the contents that are relevant for the Eurobec case study, it is important to underline that the Spanish legal framework guarantees the cross-border healthcare rights of EU citizens. They cover:

[13] https://www.wort.lu/pt/portugal/numero-112-transfronteirico-para-portugal-e-espanha-arranca-em-2023-63650bbdde135b9236308527

- the healthcare service (except for the excluded treatments),
- the respect to the non-discrimination principle, as compared to Spanish patients,
- the access to information on cross-border healthcare,
- the right to obtain a copy of the relevant clinical report,
- the right to privacy and personal data protection,
- the reimbursement process for treatments in other Member States.

The legal framework applicable in Spain and Extremadura also foresees the admission and invoicing process for EU citizens not affiliated in Spain[14].

In the case of patients affiliated in Portugal, there are a number of forms that need to be filled in, depending on the particular situation. For example, if a Portuguese patient (not a cross-border worker) wishes to be treated in Spain, the patient needs to provide a prior authorization document ~~S2~~. That document ensures the application of non-discrimination principle as compared to Spanish citizens, but also foresees the need to advance a percentage of the treatment cost.

The legal framework foresees that the Portuguese patient needs to apply for the health service, and that the patient will receive a response.

In Portugal, the *Lei 52/2014* transposed the Directive and covers all aspects as regards the access to cross-border health. A dedicated website[15] offers an overview of the Regulations and Directive provisions and pays particular attention to the reimbursement process.

Therefore, the legal framework foresees that a Portuguese citizen needs to go through a number of administrative requirements in order to be treated in Spain. All these administrative requirements represent an obstacle to a coordinated health service in EUROBEC.

The example of the old Protocol (no longer in force)

The EUROBEC area benefitted from a specific Protocol on cross-border health support to pregnant women. The Protocol was in force between 2003 and 2016. Even though it is not applicable any longer, it provides a clear example of how cross-border health care cooperation may be established[16]. It focused on specific treatments, and covered all the needed aspects, including the prices and the invoicing procedures.

Objectives of the Protocol were:

- to cover ambulatory support, external consultations and emergencies
- to cover healthcare with hospital admission.

Target groups were women from the Elvas health area (municipalities of Elvas and Campo Maior). Healthcare (obstetric) services werecarried out in the same facilities with the same personnel and with the same guarantees as for Spanish patients.

The patient mobility between Badajoz and Elvas health areas was included in the Protocol. Obstetric support had a clear procedure. And besides, the Protocol established an invoicing

[14] https://saludextremadura.ses.es/web/asegurado-en-otro-estado-de-la-ue#tres
[15] https://diretiva.min-saude.pt/home-page-2/
[16] Deatils on this Protocol can be found under https://docplayer.es/24351964-Experiencia-de-las-comunidades-autonomas-en-la-asistencia-sanitaria-transfronteriza-protocolo-tecnico-de-atencion-sanitaria-a-la-mujer-embarazada-de.html and https://www.sanidad.gob.es/fr/pnc/pdf/ExperienciaASTExtremadura.pdf

process. Each obstetric treatment was priced and an annex to the Protocol included the price list.
The Protocol also envisaged a Monitoring Commission, which could deal with the discrepancies that could arise in the implementation of the Protocol.

idmaterial	Descripción Material	Precio
51000000	Consulta obstétrica	75,00
51000001	Consulta obstétrica con ecografia fetal	104,00
51000002	Consulta obstétrica c/ ecocardiogr.fetal	132,00
51000003	Consulta obstétrica c/ monitoriz. fetal	138,00
51000004	Urgencia obstétrica sin ingreso	138,00
51000088	370-CESAREA, CON COMPLICACION	3.361,00
51000089	371-CESAREA, SIN COMPLICACION	2.660,00
51000090	372-PARTO CON COMPLICACIONES	2.289,00
51000091	373-PARTO SIN COMPLICACIONES	1.748,00
51000092	374-PARTO CON ESTERILIZACION Y/O DILATACION & LEGRADO	2.404,00
51000093	375-PARTO CON PROCEDIMIENTO QUIRURGICO EXCEPTO D & L Y/O ESTERILIZACION	1.926,00
51000094	376-DIAGNOSTICOS POST-PARTO & POST-ABORTO SIN PROCEDIMIENTO QUIRURGICO	1.712,00
51000095	377-DIAGNOSTICOS POST-PARTO & POST-ABORTO CON PROCEDIMIENTO QUIRURGICO	3.333,00
51000096	378-EMBARAZO ECTOPICO	3.270,00
51000097	379-AMENAZA DE ABORTO	2.120,00
51000098	380-ABORTO SIN DILAT & LEGR.	1.005,00
51000099	381-ABORTO CON DILATACION & LEGRADO, ASPIRACION O HISTEROTOMIA	1.570,00
51000100	382-FALSO TRABAJO DE PARTO	780,00
51000101	383-OTROS DIAGNOSTICOS ANTEPARTO CON COMPLICACIONES MEDICAS	1.709,00
51000102	384-OTROS DIAGNOSTICOS ANTEPARTO SIN COMPLICACIONES MEDICAS	1.260,00
51000170	650-CESAREA DE ALTO RIESGO CON CC	4.788,00
51000171	651-CESAREA DE ALTO RIESGO SIN CC	3.345,00
51000172	652-PARTO VAGINAL DE ALTO RIESGO CON ESTERILIZACION Y/O D+L	2.934,00

Figure 2 Price list of the obstetric services included as annex of the Protocol

In the opinion of the Extremadura Health Service[17], a number of conclusions could be drawn out of the Protocol implementation:

- better access to quality healthcare was promoted for the populations of the border area,
- the continuity of healthcare for these populations was guaranteed,
- the organization of healthcare offer was optimized, facilitating the use or distribution of human and material resources,
- the complementarity of knowledge and practices was provided, especially in the field of clinical and organizational quality, and patient safety, innovation and new health technologies,
- the promotion of network systems in healthcare, as well as the implementation of coordination between the competent institutions in Spain and Portugal

However, the Protocol came to an end as a result of those years' crisis, following the global financial crisis of 2008 . The organization co-responsible for the Protocol on the Portuguese side stopped paying the invoices, as reflected in the following table.

[17] Servicio Extremeño de Salud, 'Experiencia de las Comunidades Autónomas en la Asistencia Sanitaria Transfronteriza. Protocolo técnico de atención sanitaria a la mujer embarazada de la población procedente del Área Sanitaria de Elvas (Portugal) por los servicios sanitarios del Área de Badajoz del Servicio Extremeño de Salud'

Figure 3 Financial execution of the protocol. Source: Servicio Extremeño de Salud

DATOS DE EJECUCIÓN DEL PROTOCOLO

Situacion Global de la atividad con Portugal a fecha de cierre del 2013

AÑO	FACTURACIÓN	COBROS	SALDO ANUAL	Nº FACTURAS
2006	913.346,36	909.936,88	3.409,48	638
2007	1.059.935,66	1.058.021,11	1.914,55	954
2008	773.649,64	773.649,64	0,00	794
2009	517.584,67	517.584,67	0,00	565
2010	894.154,79	894.154,79	0,00	885
2011	955.456,73	953.943,15	1.513,58	973
2012	253.964,34	225.110,34	28.854,00	119
2013	101.186,15	30.587,31	70.598,84	65
Total	5.469.278,34	5.362.987,89	106.290,45	4.993

Situacion Convenio según año de cancelacion de deuda

AÑO	FACTURACIÓN	COBROS	SALDO	Nº FACTURAS
2006	368.919,77	80.357,73	288.562,04	503
2007	778.832,60	889.212,76	178.181,88	862
2008	533.795,22	496.540,30	215.436,80	730
2009	324.861,09	0,00	540.297,89	519
2010	723.261,39	0,00	1.263.559,28	835
2011	834.966,00	1.748,00	2.096.777,28	923
2012	145.064,00	2.204.566,67	37.274,61	118
2013	87.494,00	19.782,00	104.986,61	59
Total	3.797.194,07	3.692.207,46	104.986,61	4.549

b) Coordination of facilities

As mentioned in the previous sections, the official coordination of facilities between the two countries is not possible and has no direct legal provision. Further regulatory action specific to the EUROBEC area is needed to reach that coordination.

The coordination of facilities on both sides of the border involves dealing with access to data and health data. In this context, the applicable legal framework refers to the following provisions:

- Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (also known as General Data Protection Regulation, *GDPR*)
- Ley Orgánica 3/2018 de protección de datos personales y garantía de los derechos digitales
- Lei 58/2019 da Proteção de Dados Pessoais
- Ley 41/2002, básica reguladora de la autonomía del paciente y de derechos y obligaciones en materia de información y documentación clínica
- Lei 15/2014 Direitos e deveres do utente dos serviços da saúde

In addition, Directive 2011/24/EU mentions the particular aspects related to access to data. Recital 50 of the Preamble refers to cooperation on mutual recognition or adaptation of procedures or standards and interoperability of respective national information and communication technology.

All of the above legal provisions will be needed as a basis for the further regulatory action needed to get to the coordination of facilities in EUROBEC.

c) Mobility of health professionals

As mentioned in previous sections, there is no legal framework to allow free movement of health professionals across the border. The mobility of health professionals is a regulated field, and getting to the level of ‘free movement’ in the EUROBEC area would need additional regulatory action.

The mobility of health professionals is determined by two main aspects: the recognition of professional qualifications and the obligation for doctors to belong to the territorial college of physicians. Similar procedures exist on both sides of the border.

On the basis of the above, the applicable legal provisions are the following:

- Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications
- Directive 2013/55/EU of the European Parliament and the Council amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation')
- Real Decreto 581/2017 por el que se incorpora al ordenamiento jurídico español la Directiva 2013/55/UE del Parlamento Europeo y del Consejo, de 20 de noviembre de 2013, por la que se modifica la Directiva 2005/36/CE relativa al reconocimiento de cualificaciones profesionales y el Reglamento (UE) n.º 1024/2012 relativo a la cooperación administrativa a través del Sistema de Información del Mercado Interior (Reglamento IMI)
- Decreto-Lei 66/2018 Aprova o regime jurídico de reconhecimento de graus académicos e diplomas de ensino superior atribuídos por instituições de ensino superior estrangeiras
- Ley 2/1974 sobre Colegios Profesionales
- Regulamento de Inscrição na Ordem dos Médicos

Directive 2011/24/EU (recital 50) makes a particular point on the need to cooperate on practical mechanisms to ensure continuity of care or practical facilitating of cross-border provision of healthcare by health professionals on a temporary or occasional basis. That recital refers in particular to the recognition of professional qualifications.

All of the above legal provisions will be needed as a basis for the further regulatory action needed to get to the free movement of health professionals in EUROBEC.

Some conclusions on the legal framework

The above legal framework sets a solid basis to find a solution for EUROBEC's need to restore complementarity in healthcare services. As of November 2022, the legal framework does not provide the wished solution, but puts in place all the previous and necessary steps. This framework needs to be further developed to reach the complementarity in EUROBEC's health services.

Probably, the key to reach the complementarity is to sign a Protocol or a number of Protocols with a similar structure as the old Protocol for cross-border health support to pregnant women.

Regulation 883/2004 allows for the basic access to healthcare to EU workers, whereas Directive 2011/24/EU and the transpositions develop a number of rights for citizens and possibilities for cooperation in this cross-border context (cross-border healthcare, interoperability of ICT systems for data exchange, mobility of health professionals, recognition of qualifications). The text of the Directive admits that particular solutions for cross-border territories need to be detailed in bilateral agreements.

At the same time, the bilateral Treaty between Spain and Portugal acknowledges the need to cooperate on healthcare access. And the Framework Agreement states that better access to cross-border health must be promoted. However, the Framework Agreement needs to be

further specified in particular Protocols or Agreements in order to go through all aspects needed to make cross-border healthcare a reality.

Other cross-border examples on access to healthcare seem to go in the same direction. In particular, the case of the French and Belgian border seems to share a number of features with EUROBEC's.

The Franco-Belgian border has reached a high level of cooperation on a large territorial area, and it is the result of over 20 years of cooperation work[18]. One of the most inspirational aspects of the case is the process to reach the current ZOASTs. The first inter-hospital agreements on certain diseases and treatments were followed by the interoperability of health card readers. Then a number of high-level meetings and agreements between the health authorities at all levels took place until the cross-border health districts were set up. All these steps were taken over 20 years, and seem to have started from some basic needs of the cross-border areas, and developed into high-level agreements and cooperation.

In the EUROBEC case, the high-level and framework agreements are already in place. Therefore, only the particular agreements or protocols are missing in order to reach the objective.

Another key inspirational aspect of the French-Belgian case is the fact that most of the steps taken were included in Interreg cross-border projects and financed by the Interreg France-Wallonie-Flandres programme.

As a result of all the above considerations, it is suggested to work on the preparation of particular Protocols and take the advantage of the current open calls of the Interreg POCTEP programme.

III. Description of possible solution(s)

As mentioned, the proposed solution to restore the complementarity among the health units in Elvas-Portalege, Badajoz and Campo Maior is to sign a Protocol to cover the number of aspects that are considered key by the EUROBEC stakeholders. That Protocol would represent the stable framework needed for cross-border healthcare cooperation.

One Protocol or several of them?

Probably, EUROBEC will need to decide if it is more useful to sign one Protocol only or several Protocols. One Protocol will for sure be more efficient, as it can cover all necessary items and have them agreed and then implemented at the same time and in full coordination. However, there is a risk that some items in the protocol face more resistance than others by the authorities in charge. Therefore, signing several Protocols may allow some aspects to be implemented as a first step, and leave other aspects for a second phase.

As mentioned by the EUROBEC stakeholders, restoring the complementarity among health units in the area involves a number of topics that will need to be covered by one or several Protocols. The topics are:

- **Patient mobility** in the sense of equal access of Portuguese citizens to Badajoz Hospital as compared to Spaniards.

[18] European Commission, *European Cross-Border Cooperation on Health: Theory and Practice*, 2017, page 71

Equal access will need to be further detailed in the Protocol. The negotiations of the Protocol will also need to decide whether patient mobility will be applied to all citizens, to only a group of them or to certain diseases. It will also need to define the modalities of the equal access, and how the patients will put their right in practice.

When agreeing on patient mobility, authorities in Spain and Portugal will make use of article 10.3 of the Directive and take a step forward to ensure patients' rights. One of the main aspects will be to abolish the **prior authorization and the payment/reimbursement system** included in the Directive. Therefore, the Protocol will need to establish which authority will pay for the health services provided to its citizens, and which **invoicing procedure** will be in place.

Following the experience of the old Protocol on obstetric support, invoicing may be an issue at the negotiations. It may cause delays in reaching an agreement or even block the process. Therefore, the possibility to isolate the different topics and sign different Protocols may be a way to proceed.

Another aspect that is closely related to equal access is the use of **health cards**. The Protocol will need to decide if both Spanish and Portuguese health cards may be used in the EUROBEC area, or a new one needs to be created. In any case, the electronic technologies behind this type of cards will need to be considered, and EUROBEC may eventually reflect about specific steps to have these technologies in place[19].

Bearing in mind that the Framework Agreement between Spain and Portugal mentions access to health as one of the cooperation areas, and that the emergency services have already been agreed upon, it could be the case that **other cross-border bodies are working on the same type of cooperation**. Therefore, EUROBEC may consider checking with other similar bodies along the Spanish-Portuguese border to verify if these other territories are reflecting on the same issues, and even preparing an Interreg cross-border project. Synergies with all these actions could be established, and eventually progress towards a Protocol could be more effective if all areas work in coordination.

- **Coordination of facilities** on both sides of the border, with a view on ensure efficiency in providing health services.

The Protocol may also define the modalities for the coordination of facilities of all health units in the EUROBEC area. Such coordination will need a cross-border body to monitor the implementation of the Protocol and to take the appropriate decisions if needed. It will also need to involve the **interoperability of the information systems of health units** on both sides of the border. Interoperability will allow health authorities and professionals be in touch and agree or coordinate the use of facilities on each side of the border if needed for their treatments.

In this context, **access to health data** is key for coordination. It could be the case that one doctor on one side of the border needs to send the patient to the specialist doctor on the other side of the border, and that may also imply the use of those facilities. This is a usual case in a national context, it needs now to be exported to cross-border use.

Other cases in the EU[20] are showing that **a cross-border protocol for data exchange** seems crucial to avoid blockings. Therefore, EUROBEC may consider this protocol or may check if other bodies along the Spanish-Portuguese border are working in this direction, following the

[19] Please see the example of the Franco-Belgian Cooperation and the 'Transcards' project, European Commission, *European Cross-Border Cooperation on* Health: Theory and Practice, page 74

[20] Please see the case of Foundation euPrevent: https://www.b-solutionsproject.com/health-including-emergency-services?pgid=kpxtvzy9-dee68f35-28c1-4769-8652-795104ae120b. A similar solution was suggested for European Collectivity of Alsace: https://www.b-solutionsproject.com/_files/ugd/8f68c1_d4b7ca6eb8c4448598e62e0b66f8c08e.pdf, page 38

eHealth provisions in the Directive. Establishing synergies with other bodies may lead to more effective outcomes.

- **Mobility of health professionals and recognition of qualifications**

The Protocol may define the conditions mobility of health professionals in the EUROBEC area.

Directive 2011/24/EU (article 10.4) foresees the obligation of Member States to make available information on the right to practice of health professionals listed in their national or local registers, with full respect of the personal data protection legislation. This provision represents a first step, but it is not enough to ensure full mobility of health professionals on both sides of the border. A more agile recognition of qualifications is needed in the EUROBEC area.

So far, Portuguese and Spanish authorities require doctors from the other side of the border to apply at their regional registries[21]. This type of process takes time and blocks mobility in the EUROBEC area. Therefore, the negotiations towards a future protocol will need to involve the official colleges of physicians and nurses on both sides of the border to ease the requirements for full health professionals' mobility in EUROBEC. The **mutual recognition of the doctors and nurses listed in the relevant regional registries (colleges)** could be a way to ensure this type of mobility.

Besides this core aspect of the recognition, the protocol may also cover a structured coordination of staff, exchange of good practice among health professionals and the possibility to have cross-border internships for healthcare students.

The way towards a possible POCTEP project

The Interreg cross-border POCTEP Programme 2021-2027[22] was approved in the summer of 2022 and will launch the first call for proposals in December 2022. The perspective of a new programme that includes some of the EUROBEC's objectives has a number of advantages. If the application is successful, an Interreg POCTEP project could:

- Cover some of the expenses of the process
- Help engage all involved authorities further, as they need to sign a commitment letter and a cofinancing statement (the programme will cofinance 75% of the eligible expenditure)
- Give visibility to the process, which could help engage additional stakeholders to reach an agreement

The Programme offers two possibilities to reach the objective of signing a Protocol (or several of them):

a) The Interreg Specific Objective-ISO1 action b)

POCTEP Programme foresees a specific objective (Interreg Specific Objective-ISO1 action b) aiming at the promotion of legal and administrative cooperation, in particular in view of solving legal obstacles. Euroregions and Eurocities are among the target groups.

Under this specific objective, the first typology of actions deals with actions to solve legal and administrative obstacles in fields such as health and social services.

[21] Please see https://www.cgcom.es/internacional/ejercer-en-el-extranjero/consultar-normas#portugal and https://www.cgcom.es/internacional/tramite/trabaja-de-medico-en-espana
[22] https://www.poctep.eu/es/node/17237

Therefore, EUROBEC could seize the opportunity to set up a project proposal with the objective of signing a Protocol to solve the cross-border obstacle.

In this case, EUROBEC could foresee to follow all needed steps to reach the Protocol: meetings will all competent authorities on both sides of the border, the preparation of documents before and after the meetings in order to manage a negotiation process and the involvement of other stakeholders (for example, the civil society, the colleges of physicians).

b) Specific Objective 4.5

Alternatively, EUROBEC could also consider the possibility of using specific objective (SO) 4.5 to tackle the cross-border issue. Specific objective 4.5 aims at ensuring equal access to health services. In the particular case of POCTEP, the development of common cross-border public services on health is foreseen. In addition, the desegregation and deinstitutionalization principles are important to the programme, and a priority will be given to the reinforcement of primary health attention and the transition to non-hospital services. Cooperation among stakeholders on both sides of the border could lead to the development of new ways of sharing resources, methodologies, experiences and infrastructure.

The programme provides some examples of typologies of actions that could be covered under the programme. Actions to share existing health resources, or actions to promote cross-border services following new models (new proximity models, new models to support elderly persons or certain diseases) are also considered. Finally, cooperation on process management (like certification or accreditation) is another typology of action.

As regards EUROBEC's needs, specific objective 4.5 could be considered if a future project envisages to implement cooperation on a particular topic, for example, sharing of hospital facilities or new models to treat certain diseases in cooperation on both sides of the border. Such type of cooperation relies mainly on the health authorities and bodies of the cross-border area, and could serve as basis or example for a future Protocol.

Therefore, EUROBEC and its stakeholders need to reflect on the more relevant way to proceed: either they try to sign a Protocol as a first step using ISO1; or they try to establish solid cooperation on particular priority aspects (via SO 4.5), and proceed to sign a Protocol later in time.

IV. List of legal provisions

The legal references used in this case study are the following:

- Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems[23]
- 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[24]
- *Tratado de Amistad y Cooperación entre el Reino de España y la República Portuguesa* (Treaty on Friendship and Cooperation between Spain and Portugal)[25]
- 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)[26]
- Directive 2011/24/EU was transposed into Spanish Law by the *Real Decreto 81/2014, de 7 de febrero, por el que se establecen normas para garantizar la asistencia sanitaria transfronteriza*[27] (Royal Decree 81/2014 of 7 February on the rules to guarantee cross-border healthcare)
- Directive 2011/24/EU was transposed into Portuguese Law by the *Lei nº 52/2014 de 25 de agosto Estabelece normas de acesso a cuidados de saúde transfronteiriços e promove a cooperação em matéria de cuidados de saúde transfronteiriços*[28] *(*Act 52/2014 of 25 August on the rules for cross-border healthcare access and for the promotion of cross-border healthcare*)*
- Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (also known as General Data Protection Regulation, *GDPR*)[29]
- *Ley Orgánica 3/2018, de 5 de diciembre, de protección de datos personales y garantía de los derechos digitales*[30] (Spain. Act 3/2018 of 5 December on the protection of personal data and on the guarantee of digital rights)
- *Lei 58/2019, de 8 de agosto, da Proteção de Dados Pessoais*[31] (Portugal. Act 58/2019 of 8 August on the protection of personal data)
- *Ley 41/2002, de 14 de noviembre, básica reguladora de la autonomía del paciente y de derechos y obligaciones en materia de información y documentación clínica*[32] (Spain. Act 41/2002 of 14 November on the basic regulation of patients' autonomy and on rights and obligations on information and clinical reports)
- *Lei 15/2014, de 21 de março, de Direitos e deveres do utente dos serviços da saúde*[33] (Portugal. Act 15/2014 of 21 March on the Rights and obligations of public healthcare users)

[23] (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02004R0883-20140101)
[24] (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0024)
[25] New Treaty signed in October 2021 and under ratification process as of November 2022 https://www.lamoncloa.gob.es/presidente/actividades/Documents/2021/281021-TratadoAmistadCooperacionEspanaPortugal.pdf
[26] https://www.boe.es/diario_boe/txt.php?id=BOE-A-2010-5880
[27] (https://www.boe.es/boe/dias/2014/02/08/pdfs/BOE-A-2014-1331.pdf)
[28] (https://diretiva.min-saude.pt/wp-content/uploads/sites/2/2014/08/Lei-n-%C2%BA-52_2014_Transposi%C3%A7%C3%A3o-Diretiva-2011_24_UE1.pdf)
[29] https://eur-lex.europa.eu/eli/reg/2016/679/oj
[30] https://www.boe.es/buscar/doc.php?id=BOE-A-2018-16673
[31] https://dre.pt/dre/detalhe/lei/58-2019-123815982
[32] https://www.boe.es/buscar/act.php?id=BOE-A-2002-22188
[33] https://dre.pt/dre/detalhe/lei/15-2014-571943

- Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications[34]
- Directive 2013/55/EU of the European Parliament and the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation')[35]
- *Real Decreto 581/2017, de 9 de junio, por el que se incorpora al ordenamiento jurídico español la Directiva 2013/55/UE del Parlamento Europeo y del Consejo, de 20 de noviembre de 2013, por la que se modifica la Directiva 2005/36/CE relativa al reconocimiento de cualificaciones profesionales y el Reglamento (UE) n.º 1024/2012 relativo a la cooperación administrativa a través del Sistema de Información del Mercado Interior (Reglamento IMI*)[36] (Spain. Royal Decree 581/2017 of 9 June for the transposition into Spanish Law of Directive 2013/55/EU of the European Parliament and the Council amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation')
- *Decreto-Lei 66/2018 de 16 de agosto, Aprova o regime jurídico de reconhecimento de graus académicos e diplomas de ensino superior atribuídos por instituições de ensino superior estrangeiras*[37] (Portugal. Decree 66/2018 of 16 August on the legal procedure to recognise academic degrees and diplomas issued by foreign institutions)
- *Ley 2/1974 de 13 de febrero sobre Colegios Profesionales*[38] (Spain. Act 2/1974 of 13 February on Professional Colleges)
- *Regulamento de Inscrição na Ordem dos Médicos*[39] (Portugal. Regulation on the College of Physicians registration)

[34] https://eur-lex.europa.eu/legal-content/ES/ALL/?uri=CELEX%3A32005L0036

[35] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32013L0055&from=ES

[36] https://www.boe.es/buscar/act.php?id=BOE-A-2017-6586

[37] https://dre.pt/dre/detalhe/decreto-lei/66-2018-116068880

[38] https://www.boe.es/buscar/act.php?id=BOE-A-1974-289

[39] https://omcentro.com//ficheiros/docs/regulamento_de_inscric_a_o_na_ordem_dos_me_dicos.pdf

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