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FINAL REPORT BY THE EXPERT

Advice case title: Road to health: European solution for cross-border rescue driving

Full official name of the advised entity: EGTC European Region Tyrol-South Tyrol-Trentino

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I. Executive summary

It is common knowledge that there are different non-harmonised standards in Europe, especially in traffic law, from country to country. This leads to difficulties that need to be resolved, particularly in border areas, especially for the inhabitants of areas that lie on the border of two different legal territories. It should be noted, for example, that South Tyrol, an autonomous province of Italy, lies on the border with Austria. In the autonomous province of Bolzano, the majority of the population is German native speakers and the nearest German-speaking university hospital is located in Innsbruck. It is therefore politically desirable that South Tyrolean patients can also be brought across the border to Innsbruck for treatment, either out of medical necessity, as this type of treatment is not offered in the province of Bolzano, or out of linguistic necessity, as the patient can communicate with the treating doctor in his or her native language in this

way. Be that as it may, the patient must be brought to Austria by the ambulance service.

This can be the first serious problem of a non-harmonised regulation, especially if the vehicle exceeds the weight limit of 3.5t and is driven by a volunteer employee. This is possible in Italy, but not in Austria.

Some Member State require only the B license (exemption possibility for civil defense vehicles in the Directive), other Member States require an (in-house) training in addition to the B license, and other Member States require a license of category C.

In order to avoid cross-border problems when civil defense and medical transport vehicles are operated in different countries, a rule should be incorporated into the new driving license directive, which is to replace and supersede Directive 2006/126/EC that solves this problem, but is specific enough not to be interpreted as a general rule for other areas. Care must be taken to ensure that the derogations are not only notified to the Commission, but that they are also recognised in all other Member States through notification. The mechanism of notification and simultaneous direct validity on the territory of another Member State contributes to achieving the objective of facilitating the free movement of persons through harmonised standards. This makes it possible to achieve one of the objectives of the Directive, namely "to ensure the seamless recognition of the authorization to drive a vehicle issued by a driving license issued by another Member State

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

In border regions, it is a common practice that ambulance services are directed to a hospital across the border, if it is the closest one.

A problem for an Austrian ambulance driver could be the age. Therefore, in Austria and Germany we have different regulations from Italy. For example, with the upper age limit for driving passenger transport vehicles. In Italy, the restrictive standard applies here with a maximum age of 68. In Austria, driving licences for categories C/C1 and D/D1 are issued for a limited period of two years from the age of 60, regardless of age, with a medical certificate and after successfully passing a practical driving test. This means that even someone over the age of 70 can still drive an ambulance.

For an Italian volunteer who leads an ambulance to Austria, the following circumstance could be fatal. As there are no common European requirements specific for the driving licence for ambulances, the transposition of Directive 2006/126/EC and its application to ambulances heavier than 3.5t differs across borders. Due to modern equipment ambulances often surpass that threshold nowadays, with the situation likely to get more critical in the future.

Some Member State require only the B licence (exemption possibility for civil defence vehicles in the Directive), other Member States require an (in-house) training in addition to the B licence, and other Member States require a licence of category C.

In case of cross-border transport services, the driver operates under legal uncertainty and could face liability issues in case of an accident, if he/she

does not have the adequate licence required by the neighbouring Member State.

One specific example could be the Italian regulation in the area for volunteers in civil defence and rescue services. It shows that this is not just a theoretically possible problem in cross-border civil defence and ambulance transport.

Chapter II of Legislative Decree No. 286 of 21/11/2005 (published in the Official Gazette No. 6 of 9/1/06) implemented Directive No. 2003/59/EC of the European Parliament and of the Council of 15/7/2003 on the initial qualification and periodic training of drivers of certain road vehicles used for the carriage of goods or passengers, all in implementation of the delegation of authority under Article 1 of Law No. 62 of 18/4/05.

These provisions sanction the obligation of initial qualification and periodic training of drivers of the aforementioned vehicles, which must be proven by possession of the DRIVER'S QUALIFICATION CARD (CQC) - in addition, of course, to the prescribed driving licence.

This driver qualification card is compulsory for all drivers who professionally transport people or goods (Art. 14 of Legislative Decree No. 286 of 21/11/05) on vehicles for which a 'C' - 'C-E' - 'D' - 'D-E' category licence is required.

Now, the question especially for all volunteers who have to drive vehicles that fall into the categories identified by the above-mentioned licences was whether they had to obtain a Driver Qualification Card. This would have caused immense expenses, both for the associations and for the volunteers themselves. The restraints involved in possessing said qualification card could also have discouraged many volunteers from performing their service.

The circular of the Ministry of Infrastructure and Transport Div. 77898/8.3 of 10/8/2007 clarified that pursuant to Article 16 of Legislative Decree no. 286 of 21/11/06, drivers are exempt from the obligation to hold a driver qualification card if they:

"b) of vehicles for use ... omissis ... of the civil protection ... omissis ... or placed at their disposal

"(d) of vehicles used in emergency services or intended for rescue missions

"(f) of vehicles used for the carriage of passengers or goods for private, non-commercial purposes".

With this we can state that a civil protection volunteer who drives a vehicle owned by the civil protection or hired for the purposes and purposes of civil protection activities for which a licence higher than 'B' is required does NOT have to hold the driver qualification card, but only the licence relating to the category of vehicle he has to drive.

But what happens if this so qualified driver crosses the border. Is he then still authorised to drive this vehicle?

Not if the current legal situation is interpreted strictly. The ambulance would have to stop at the border and could only continue its journey with an authorised driver. Or, given the urgency of the transport, the driver ignores the Austrian regulation and, once the emergency no longer exists, has to park the ambulance in Austria and have an authorised driver take

it back to Italy.

III. Description of possible solution(s):

The only way to find a solution to cross-border problem is to include a recital in the new version of the Directive 2006/126/EC followed by an annex or an amendment to the article 6, 2, 2 in the new text of the Directive 2006/126/EC.

Since Article 7(4) of the current Directive 2006/126/EC (Article 10, 5 of the proposal) authorises the individual states to apply requirements for the issue of driving licences that deviate from the Directive 2006/126/EC, it would make sense to oblige the member states in the recitals to permit the driving of vehicles with a driving licence issued on the basis of deviating requirements.

This possibility of derogation and the further possibility now to be introduced by Article 6, 2, 2 (Member States may exempt from the application of this Directive types of motor vehicles used by or under the control of the armed forces and civil protection. They shall inform the Commission thereof.) offer the opportunity to go one step further and to insert either an extended Article 6.2.2 or even an Article 6.2.3 and in any case to include rescue organisations in the text.

The text of the addition Article 6.2.2 or the new Article 6.2.3. of the new Directive should read: *"Member States may introduce different rules for the driving of types of motor vehicles used by or under the control of the armed forces, civil protection or rescue organisations which are recognised by the other Member States."*

As previously stated, the whole exemption should be limited to the civil-defence, civil-protection, rescue and any other danger prevention service vehicle provided by non-profit organisations or associations only.

In the end there should be introduced a recital to the directive that this exemption concerns vehicles registered in the Member State and driven by a person holding a driving licence from that Member State.

The recital could be placed under number 18 (b): ***"In view of the increasingly frequent occurrence of natural and environmental disasters and the need for rapid, cross-border assistance in the area of civil defence and civil protection, as well as rescue services, also with regard to the promotion and support of voluntary work, it appears necessary to that the regulations made by the individual member states for driving civil-defence, civil-protection and any other danger prevention service vehicle provided by non-profit organisations or associations that are approved in that member state are recognised by the other member states and tolerated on their territory."***

A third paragraph should be added to Article 2 to read:

6.3: *The derogations introduced by the Member States for the driving of types of motor vehicles used by or under the control of the armed*

forces, civil protection or rescue organisations and notified to the Commission shall be recognised by the other Member States.

- IV. A full list of all legal provisions relevant to the case with the correct citation¹ both in original language and in English:
- Capo II del Decreto Legislativo 21/11/2005 n° 286 (pubblicato sulla G.U. n° 6 del 9/1/06) ha recepito la direttiva n° 2003/59/CE del Parlamento Europeo e del Consiglio del 15/7/2003 sulla qualificazione iniziale e formazione periodica dei conducenti di taluni veicoli stradali adibiti al trasporto merci o passeggeri, il tutto in attuazione della delega di cui all'art. 1 della Legge 18/4/05 n° 62.
Chapter II of Legislative Decree No. 286 of 21/11/2005 (published in the Official Gazette No. 6 of 9/1/06) transposed Directive No. 2003/59/EC of the European Parliament and of the Council of 15/7/2003 on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers, all in implementation of the delegation of authority under Article 1 of Law No. 62 of 18/4/05.
 - Circolare del Ministero delle Infrastrutture e dei Trasporti Div. 77898/8.3 del 10/8/2007 con riferimento all'art. 16 del D.L.vo 21/11/06 n° 286.
circular of the Ministry of Infrastructure and Transport Div. 77898/8.3 of 10/8/2007 with reference to Article 16 of Legislative Decree 21/11/06 no. 286.
 - Article 7.4 of the Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences (Recast)
- V. **Other relevant aspects to this case if relevant**
- VI. **References and Appendix/Appendices if any**

¹ Please quote the place and date of publication of the legal texts. For reference, see the [b-solutions: Solving Border Obstacles. A Compendium 2020-2021, p 160 – 175](#)