Main Office	AGEG c/o EUREGIO	Enscheder Str. 362	48599 Gronau (Germany)
Project Office	AEBR c/o BISDN	Körnerstraße 7	10785 Berlin (Germany)
AEBR Antenna in the EU	Office of Extremadura in Brussels	Av. De Cortenbergh 87-89	1000 Brussels (Belgium)
AEBR Info Centre in the Balkans	Institute for International and CBC	Terazije 14/14	11000 Belgrade (Serbia)
AEBR Info Centre in Ukraine	Univ. Simon Kuznets (KhNUE)	pr. Lenina, 9a	61001 Charkiw (Ukraine)

FINAL REPORT BY THE EXPERT

Advice case title: Funding of youth psychiatric care across Dutch-German border

Full official name of the advised entity: Karakter (child and adolescent psychiatry)

Name of the expert contracted for the advice case:

Anton H.M. Bouwmeister and Marlene M. Plaß
(De Kempenaer Advocaten NV, Arnhem, the Netherlands)

Date: 19. January 2024

Table of content:

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

I. Executive summary

In the German-Dutch border region quite a lot Dutch families are living and residing at the German side of the border. Those families speak Dutch and their children usually go to school in the Netherlands. If the children of those Dutch families need psychiatric youth care, for example for disorders like ADHD, autism or anxiety, their parents seek this help in the Netherlands, because they are looking for specialists who speak Dutch. In Germany there would be a language barrier.

One of the Dutch psychiatric youth care organisations that offers the needed help is Karakter child and adolescent psychiatry ("**Karakter**"), based in Nijmegen. Karakter sees itself confronted with the problem that Dutch children with a residential address in Germany who seek psychiatric help in the Netherlands are not or only partially reimbursed by the Dutch and German authorities that are (financially) responsible for youth psychiatric care and treatment in the Netherlands.

Depending on where the parents of the children work, in the Netherlands or in Germany, the children are either socially insured in the Netherlands or in Germany (article 11 of Regulation 883/2004). For the purposes of this report, we made a distinction between the situation in which the child is insured in the Netherlands and the situation in which the child is insured in Germany.

In the first situation (the child is insured in the Netherlands) it is not possible for the child to be reimbursed for psychological treatment in the Netherlands. Since January 1st 2015, psychological healthcare for young people is regulated in the Dutch Youth Act ("Jeugdwet"). Since then, municipalities in the Netherlands are (financially) responsible for youth psychiatric care instead of the health insurance companies. The Dutch Youth Act is only applicable if a child is registered in the Dutch Basic Registration of Persons (BRP). This means that the child has to be a Dutch resident. A child that lives in Germany is not a Dutch resident, so reimbursement through the Dutch municipalities is impossible. In Germany, psychological treatment is included in the benefits catalogue of the German statutory health insurance schemes. However, in this first situation the child is not insured in Germany, so reimbursement through a German health insurance is not possible either. Even if the child would seek psychological treatment in Germany, it cannot not receive reimbursement under the Regulation 883/2004/EU nor under the Directive 2011/24/EU.

For this first situation, there seems to be a gap in the legislation, since 2015, caused by the fact that youth care in the Netherlands is no longer financed through the general health insurance system but through the "Jeugdwet", financed by the municipalities of residence.

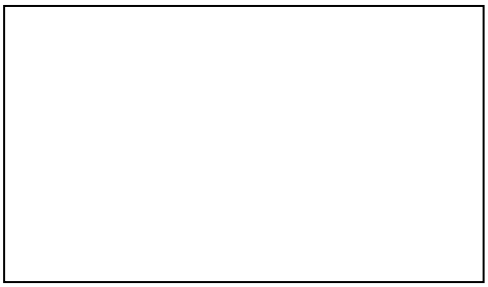
That is why we believe that the solution must be sought within Dutch politics. We would like to advise organizations in the border regions, such as the Euregio, to enter into discussions with the municipalities on this issue. The organizations involved should request to make an exception on the "residence principle" at least for children who are socially insured in the Netherlands. After all, these children cannot receive compensation from an authority in another country either, meaning they cannot get

the care and treatment they need at all.

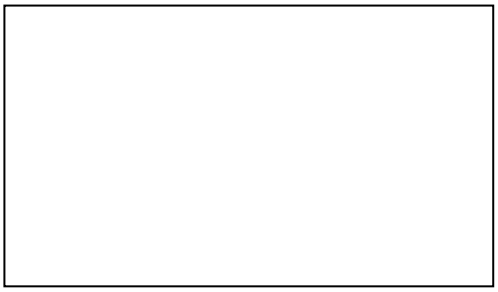
In the second situation (the child is insured in Germany) reimbursement through Regulation 883/2004/EU is not possible either, because the statutory health insurance scheme in the Netherlands does not include psychiatric youth care treatment (which is required according to article 20). In this situation there is an alternative: reimbursement through Directive 2011/24/EU. However, this alternative has its own difficulties. Upon enquiry with Karakter, we found that receiving reimbursement for the costs comes with a big administrative burden and other obstacles. Some treatments are not among the benefits to which the child is entitled in Germany, which results in no reimbursement at all for that treatment (article 7 (1) Directive). If the treatment is among the benefits, the reimbursement is limited, because only part of the costs are reimbursed (article 7 (4) of Directive 2011/24/EU).

A practical solution to this second problem would be that the child would receive the treatment in Germany. Karakter could open an office at the German side of the border. Reimbursement through Directive 2011/24/EU would then no longer be needed because then it would be a purely internal matter. For this solution Karakter would need to make arrangements with the German health insurance to make sure that the treatments offered by Karakter are among the benefits that are reimbursed. They would also need to make sure that the level of the costs that are reimbursed will rise. We realize that this would be a large-scale project for Karakter, but we feel like this is something that should at least be considered.

If opening an office in Germany is not an option for Karakter, a solution should be sought within Directive 2011/24/EU. After all, the possibility of reimbursement is there, just not transparent and the reimbursement is limited. To simplify the path to the reimbursement, a cooperation agreement could be helpful. Based on article 10 of the Directive , the competent German institution (the “Krankenkasse”) should conclude agreements with the foreign service providers (the Dutch youth psychiatric care organisations like “Karakter”). This cooperation would simplify both the processing of the reimbursement as well as the communication and information of the institutions involved. The agreements may not result in a higher reimbursement if people seek treatment abroad (in line with article 7 (1) of the Directive) but they would create transparency and clarity regarding the extent and amount of reimbursement.



A.H.M. Bouwmeister



M.M. Plaß

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

In the German-Dutch border region quite a lot Dutch families are living and residing at the German side of the border. Those families speak Dutch and usually their children go to school in the Netherlands.

Sometimes the parents of those families work in the Netherlands, which means that they are socially insured in the Netherlands. If the parents work in Germany, they are socially insured in Germany (Article 11 (3) (a) of Regulation 883/2004 (the work country principle)). Children are usually co-insured with their parents until the age of 18.

If the children of those Dutch families who live in Germany need psychiatric help, for example for disorders like ADHD, autism or anxiety, their parents seek this help in the Netherlands. After all, the children need a specialist who speaks their own help language, Dutch. One of the Dutch youth psychiatric care organisations who offers the help needed is Karakter child and adolescent psychiatry, based in Nijmegen ("**Karakter**"). Karakter found that Dutch children with a residential address in Germany who seek psychiatric help in the Netherlands are not or only partially reimbursed for the treatment in the Netherlands by the Dutch and German authorities that are (financially) responsible for youth psychiatric care. To identify the specific cause and thus the obstacle in this case, it is necessary to distinguish between the different situations in which the families involved find themselves.

Situation 1: children living in Germany and socially insured in the Netherlands

If one parent or both parents work in the Netherlands, the Dutch social security system applies in accordance with art. 11 of Regulation 883/2004/EU. According to Dutch regulations, people who work in the Netherlands are liable for taxes in the Netherlands and insured in the Wet langdurige zorg (Wlz - Dutch long-term care insurance). This triggers an insurance obligation in the Dutch health insurance system. As a consequence, a child which is insured through his parent/parents in the Dutch system is generally entitled to make use of medical services from the catalogue of the Dutch general insurance. Since January 1st 2015, psychological/psychiatric healthcare for young people is regulated in the Dutch Youth Act ("Jeugdwet"). Since then, in the Netherlands (Dutch) municipalities are (financially) responsible for youth psychiatric care instead of the health insurance companies.

As a result, only a small part of youth mental health care is covered by health insurances, for example the treatment of mild psychological complaints by the general practitioner or medication against mental disorders for young people who are not in an institution (in other words: medication that can be picked up with a prescription at the pharmacy). The youth psychiatric care that Karakter provides – and which is the subject of this report - is highly specialized psychiatric care which is not covered by Dutch health insurances. This means that Karakter usually sends invoices to the responsible Dutch municipality.

The following will set out the reasoning behind the inability of the Dutch and German authorities to provide compensation for youth psychiatric care, as provided for by Karakter, in the situation at hand, namely Dutch children living in Germany and with insurance in the Netherlands.

A. The Dutch municipalities

The Dutch Youth Act ("Jeugdwet") is based on the "residence principle". Since 2022, this principle implies that the child's registration in the Basic Registration of Persons (BRP) immediately before the request is decisive. This means that the responsibility for youth healthcare lies with the municipality where the child has its residential address according to the BRP. The responsible municipality will then arrange support and pay the invoices.

If a child is not registered within the Dutch Basic Registration of Persons (BRP) or the child is registered as a non-resident, no Dutch municipality is legally required to provide the necessary psychiatric healthcare. It is remarkably noted that this problem was already addressed in the explanatory memorandum to the legislative amendment regarding the residence principle from January 2022. It namely included a brief consideration about foreign children. It says that children who live and reside abroad at the time of the request for help do not fall within the scope of the Youth Act.[2] A solution (such as an amendment to the Dutch Youth Act) however was not proposed. If a patient lives and resides in Germany, Karakter cannot send the invoice to a Dutch municipality, because the child does not have its residential address in the Netherlands and therefore does not fall within the scope of the Dutch Youth Act.

B. The German insurance companies

Since the child is socially insured in the Netherlands, the German insurance companies are not reimbursing the costs for its psychiatric healthcare.

C. Conclusion

In this first situation, it is not possible for the child to be reimbursed for specialised psychological treatment in the Netherlands. In 2020, the Institute for Transnational and Euregional cross border cooperation and Mobility also found that Dutch children who are socially insured in the Netherlands but have their residential address in Germany have no possibility of getting reimbursed for youth psychiatric healthcare in the Netherlands. The same was also stated in the B-Solutions Final Report of Sonja Adamsky about the "Improvement of cross-border communication and care for cross-border children and young people".[3]

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[2] Wijziging van de Jeugdwet in verband met de verduidelijking van het woonplaatsbeginsel (Wet wijziging woonplaatsbeginsel), 35219, Vergaderjaar 2018–2019, Memorie van toelichting.

[3] Final Report by the Expert, Improvement of cross-border communication and care for cross-border children and young people, S. Adamsky, (https://ec.europa.eu/futurium/en/system/files/ged/adamsky_winterswijk_municipality.pdf).

Situation 2: children living in Germany and socially insured in Germany
If one parent or both parents work in Germany, the German social security system applies in accordance with art. 11 of Regulation 883/2004/EU. According to § 27 I 1 Sozialgesetzbuch (SGB V -the German Social Code), youth psychological treatment is included in the benefits catalogue of the German statutory health insurance schemes. The child could therefore receive treatment in Germany at the expense of the German health insurance. This however is undesirable, because of the language barrier. Help and care in the Netherlands is wanted.

Whether and to what extent a child living in Germany is entitled to youth psychiatric healthcare in the Netherlands depends on the applicable European regulations.

Regulation 883/2004/EU
Under Regulation 883/2004/EU, receiving planned medical treatment in another member state is possible. However, prior authorization is necessary (through a so called “S2 form”). If permission is granted, the costs of treatment shall be reimbursed in accordance with the conditions and reimbursement rates of the country where the treatment takes place. An additional condition is that the treatment must also be eligible for reimbursement in the country of affiliation. The costs are usually paid directly by the insurance institution to the institution of the country where the treatment takes place, meaning no advance payment of the person who receives care is needed. However, it may occur that a person has to pay certain patient fees.

Article 20 of Regulation 883/2004/EU states:

> *Article 20*
>
> ***Travel with the purpose of receiving benefits in kind - Authorisation to receive appropriate treatment outside the Member State of residence***
>
> *1. Unless otherwise provided for by this Regulation, an insured person travelling to another Member State with the purpose of receiving benefits in kind during the stay shall seek authorisation from the competent institution.*
>
> *2. An insured person who is authorised by the competent institution to go to another Member State with the purpose of receiving the treatment appropriate to his condition shall receive the benefits in kind provided, on behalf of the competent institution, by the institution of the place of stay, in accordance with the provisions of the legislation it applies, as though he were insured under the said legislation. The authorisation shall be accorded where the treatment in question is among the benefits provided for by the legislation in the Member State where the person concerned resides and where he cannot be given such treatment within a time-limit which is medically justifiable, taking into account his current state of health and the probable course of his illness.*

Based on this article, for a Dutch child who lives in Germany, it is possible, after prior authorisation of the German competent authority (the German health insurance), to receive healthcare abroad *“in accordance with the provisions of the legislation it applies, as though he were insured under the said legislation*”.

In this case, however, an obstacle is that the statutory health insurance scheme in the Netherlands does not include youth psychiatric treatment. Even if the child would be insured in the Netherlands, it would not be reimbursed by the Dutch health insurance company (because for this kind of care, as we described, the municipalities are responsible). Therefore, on the basis of this article, there is no possibility of reimbursement under Regulation 883/2004/EU.

The fact that reimbursement in this case is not possible under this Regulation is known by the Dutch government.[4] This problem has also been addressed by the Institute for Transnational and Euregional cross border cooperation and Mobility in their "Grenseffectenrapportage" in 2020.[5] Nevertheless, no solution has been offered.

Directive 2011/24/EU

Besides the aforementioned Regulation, there is another EU legislative instrument about receiving healthcare in another EU country.[6] That is Directive 2011/24/EU on the application of patients' rights in cross-border healthcare.

Reimbursement based on this Directive only takes place if the healthcare in question is among the benefits to which the insured person is entitled in the Member State of affiliation (article 7 (1) Directive). Besides that, the reimbursement is limited to the costs, which the Member State of affiliation would have had, had the healthcare been provided in its own territory (article 7 (4) of Directive 2011/24/EU). The reimbursement of costs of cross-border healthcare is in principle not subject to prior authorization, except in some cases set out in article 8 of the Directive (not relevant for this report). Unlike is the case under Regulation 883/2004/ EU, under the Directive a person must pay the medical expenses and can apply for reimbursement up to the amount the treatment would have cost in the member state of affiliation.

All member states need to have a transparent mechanism for the calculation of costs of cross-border healthcare that are to be reimbursed to the insured person by the member state of affiliation. This mechanism needs to be based on objective, non-discriminatory criteria known in advance and applied at the relevant (local, regional or national) administrative level (art. 7 (6) Directive). This is where the practice is lacking. In our B-Solutions Report of the 26th of February 2021, we found that the Netherlands and Germany should be more transparent about the calculation of possible reimbursed cross-border healthcare costs.[7]

A. The German insurance companies

Based on the above, a child that is insured in Germany can receive psychological healthcare in the Netherlands and receive reimbursement through Directive 2011/24/EU, because according to § 27 I 1 SGB V (the German Social Code) psychological treatment is included in the benefits catalogue of the German statutory health insurance schemes. However, upon enquiry with Karakter, we found that receiving reimbursement for the costs comes with a big administrative burden and other obstacles. Many treatments that Karakter provides are not among the benefits to which the person is entitled in Germany, which results in no reimbursement at all

[4] Aanhangsel van de Handelingen, 7th July 2015, Tweede Kamer der Staten-Generaal (https://zoek.officielebekendmakingen.nl/ah-tk-20142015-2759.html).
[5] Maastricht University (Institute for Transnational and Euregional cross border cooperation and Mobility), Grenseffectenrapportage 2020 (https://euregio-mr.info/euregio-mr-wAssets/docs/Studien/grenzueberschreitende-studien/2020/UM-200067-Rapport-ITEM-Nederlands-online-v2.pdf).
[6] https://europa.eu/youreurope/citizens/health/planned-healthcare/right-to-treatment/index_nl.htm
[7] Final Report by the Expert, Transparent solutions in the border region for efficient treatment and reimbursement of medical expenses for Dutch and German patients, A.H.M. Bouwmeister and M.M. Plaß, 26th February 2021.

for those treatments (article 7 (1) Directive). If the treatment is among the benefits, the reimbursement is limited, because only a small part of the total costs are reimbursed (article 7 (4) of Directive 2011/24/EU).

B. The Dutch municipalities

As outlined before, the children involved do not fall within the scope of the Dutch Youth Act. That is why the Dutch municipalities will not cover the costs of the treatment.

C. Conclusion

Based on the above, the reimbursement of youth specialised psychological healthcare costs is possible through Directive 2011/24/EU if the child lives in Germany and has German health insurance. However, the reimbursement is limited and comes with a big administrative burden. Reimbursement through Regulation 883/2004/EU is impossible.

Graphic display of the aforementioned situations:

	Compensation by Dutch authorities	Compensation by German authorities
Situation 1: children living in Germany and socially insured in the Netherlands	No registration within the Dutch Basic Registration of Persons (BRP) → no compensation	No insurance in Germany → no compensation
Situation 2: children living in Germany and socially insured in Germany	No registration within the Dutch Basic Registration of Persons (BRP) → no compensation	Regulation 883/2004/EU Art. 20: no reimbursement if the child would be insured in the Netherlands → no compensation Directive 2011/24/EU Compensation possible, but limited to benefits the person is entitled to in Member State of affiliation and limited to the costs, which the Member State of affiliation would have had, had the healthcare been provided in its own territory (art. 7)

III. Description of possible solution(s)

Possible solutions in situation 1: Children living in Germany and socially insured <u>in the Netherlands</u>

If the child is insured in the Netherlands, reimbursement of the treatment is not possible. The most obvious solution to this problem would be that the child would receive the treatment in Germany. However, besides the problem of the language barrier, a claim under Article 20 of Regulation 883/2004/EU to receive the treatment in Germany is ruled out because authorization under that article is not to be expected as this is not included in the benefits catalogue of the Dutch health insurance. On the basis of the Dutch Youth Act this treatment belongs to the responsibility of the (Dutch) municipalities. The Dutch Youth Act is not subject to European coordination law. A claim under Directive 2011/24/EU is no so solution either, as psychological treatment is not included in the benefits catalogue of the Dutch health insurance. This means that in this specific situation there is no possibility of receiving reimbursement for treatment in Germany, nor in the Netherlands.

In this situation, there seems to be a gap in the legislation caused by the fact that youth psychiatric care in the Netherlands is not covered by the general health insurance system. Therefore, we believe that a solution should be sought within the Netherlands, more specific within the Dutch healthcare system. After all, the children involved are socially insured in the Netherlands and would receive reimbursement if and when specialized psychological healthcare would (still) be covered by the regular healthcare system.

To achieve such a solution activities must be initiated in the Dutch political sphere. We would like to advise organizations in the border regions, such as the Euregio, to enter into discussions with the Dutch municipalities on this issue. The organisations should request to make an exception on the “residence principle”, at least for children who are socially insured in the Netherlands. After all, these children cannot receive compensation from an authority in another country either.

We are of course willing to assist those organisations, such as the Euregio, in this process, if they wish to receive a more detailed legal opinion and proposal on this. This would go be beyond the scope of this Report.

Possible solutions in situation 2: Children living in Germany and socially insured <u>in Germany</u>

If the child is insured in Germany, reimbursement of the costs is possible through Directive 2011/24/EU. However, receiving reimbursement comes with a big administrative burden and other obstacles. Some treatments are not among the benefits to which the person is entitled in Germany, which results in no reimbursement at all for that treatment. If the reimbursement is within the benefits catalogue, the reimbursement is limited.

Practical solution

A practical solution would be that the child would receive the treatment in Germany. This is possible without the problem of the language barrier, if Karakter opens an office at the German side of the border with Dutch speaking employees. The reimbursement through the aforementioned Directive would then no longer be needed, as it would then be a purely internal (German) matter. For this case, Karakter would need to make arrangements with the German health insurance to make sure that the treatments are among the benefits in the German health insurance. They would also need to make sure that the level of the costs that are reimbursed will rise. Of course, we do realise, that the (financial) feasibility of this solution obviously depends on the expected number of clients.

We also realise that this would be a large-scale project for Karakter, but we feel like this is something that should at least be considered.

Possibilities within Directive 2011/24/EU

If opening an office in Germany is not an option for Karakter, a solution should be sought within the Directive. After all, the possibility of reimbursement is there, it is just not transparent and the reimbursement is limited. To simplify the path to the reimbursement, a cooperation agreement could be helpful. Cross-border cooperation agreements are explicitly mentioned in the Directive. Article 10 (3) states: "*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*."

That is why the German competent institution (the "Krankenkasse") should conclude agreements with the foreign service providers (the Dutch youth psychiatric organisations like "Karakter") for the direct regulation of benefits. This cooperation would simplify both the processing of the reimbursement as well as the communication and information to and from the institutions involved. Even if it would turn out that only a small part of the treatment that Karakter provides can be reimbursed, an agreement about this would at least provide clarity for the children and parents involved.

Pursuant to the key rules of the European single market, the Directive 2011/24/EU states that all patients shall be treated equitably on the basis of their healthcare needs rather than on the basis of their Member State affiliation (recital 21 Directive 2011/24/EU). The mentioned agreements can therefore not result in a higher reimbursement if people seek treatment abroad (in line with article 7 (1) of the Directive) but they should create transparency and clarity regarding the extent and amount of reimbursement.

Possible solution in political sphere

It is of course also possible so think of solutions to this second problem within the political sphere. However, making an exception on the "residence principle" would not help in this case, because the reimbursement through Regulation 883/2004/ EU would still be impossible as the statutory health insurance scheme in the Netherlands would still not include psychological treatment. The only solution here would be to put

youth psychiatric care entirely back under the purview of health insurers instead of with the municipalities. This would be a big project though, because the law would have to be changed and within that legislative change, the whole financial structure behind youth care in the Netherlands would also have to be changed and reconsidered. Besides that, it is to be expected that the Dutch government would say that changing the law is not necessary, because reimbursement for children in this second situation is possible under Directive 2011/24/EU. That being the case, we would like to advice to pursue the first two solutions rather than this third solution.

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[8] both in original language and in English

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

REGULATION (EC) No 883/2004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 29 April 2004 on the coordination of social security systems

Dutch Youth Act ("Jeugdwet"), entering into force on the 15th of March 2014, The Hague.

German Social Code V ("Sozialgesetzbuch V"), entering into force on the 1st of January 1989, Berlin.

V. References

Maastricht University (Institute for Transnational and Euregional cross border cooperation and Mobility), Grenseffectenrapportage 2020 (https://euregio-mr.info/euregio-mr-wAssets/docs/Studien/grenzueberschreitende-studien/2020/UM-200067-Rapport-ITEM-Nederlands-online-v2.pdf).

Final Report by the Expert, Transparent solutions in the border region for efficient treatment and reimbursement of medical expenses for Dutch and German patients, A.H.M. Bouwmeister and M.M. Plaß, 26th February 2021.

Final Report by the Expert, Improvement of cross-border communication and care for cross-border children and young people, S. Adamsky, (https://ec.europa.eu/futurium/en/system/files/ged/adamsky_winterswijk_municipality.pdf).

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