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TEMPLATE: FINAL REPORT BY THE EXPERT

Advice case title: Improving Dialogue about Border Obstacles

Full official name of the advised entity: Region Sønderjylland-Schleswig, Regionskontor & Infocenter

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Table of content:

- I. Introduction and approach
- II. The petitioner and his activities
- III. Submission of the petitioner to the EU Commission
- IV. Communication channels and approaches to solving border obstacles
- V. The petitioner's concerns in the light of the options presented
- VI. Conclusions and recommendations for action
- VII. References and legal provisions

I. Introduction and approach

The primary focus of this opinion is not to clarify and resolve a border obstacle, administrative action in conformity with European law, or a specific legal issue relating to border obstacles, even though these are naturally at the centre of the petitioner's activities.

These are rather the starting point for the question of effective ways and modalities to enter into a dialogue with the competent European authorities and to make this process structurally more effective and transparent. The aim is to show the various possibilities and communication channels, especially at the European level, that are available to an institution such as the "Regionskontor & Infocenter" to raise or enforce its concerns about cross-border obstacles in a timely and targeted manner. It should also be considered whether institutions such as the petitioner could also take on a more structural role in these processes in order to take the concerns of cross-border commuters into account and thus improve the dialogue between stakeholders and responsible persons in the border regions in particular, where these institutions have concentrated bilateral competence and knowledge.

To this end, an exemplary correspondence between the petitioner and the EU Commission is first presented, which necessarily clarifies the complexity of the border obstacles raised and makes them practically comprehensible. Building on this, this approach is contrasted with the other channels and instruments of the EU Commission that are relevant here. Subsequently, the issues of correspondence will be contrasted with these instruments and examined for their effectiveness. In the light of these findings, concrete recommendations for action are then finally developed to make the dialogue on border obstacles and the interlocking between the acting institutions even more effective.

II. The petitioner and his activities

The present expert opinion was commissioned by "Region Sønderjylland-Schleswig, Regionskontor & Infocenter". The petitioner is a so-called Euroregion¹ established in 1997 in the German-Danish border area, which on the Danish side comprises the four large municipalities (Kommune) Tønder Kommune, Aabenraa Kommune, Haderslev Kommune and Sønderborg Kommune as well as the region Syddanmark and on the German side the district of Schleswig-Flensburg, the district of Nordfriesland and the city of Flensburg. The Region Office and Infocentre, which functions as the joint secretariat and information centre for the Sønderjylland-Schleswig Region, is located in Padburg, Denmark, directly on the border with Flensburg, Germany. The Infocentre has dealt analytically and successfully with the dismantling of mobility barriers within the framework of the INTERREG 4 A Syddanmark-Schleswig-K.E.R.N. project "Pontifex Bridge Builder - Brobygger (2010-2014)² " and has therefore been successfully established as an advisory institution for private individuals and companies on cross-border issues.

According to the Regionskontor's own description, "counselling and information for employees - regardless of whether they are migrants or cross-border commuters -, employers or institutions [...] are offered by the Regionskontor & Infocenter³ ". Regulation (EC) No. 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems and Regulation (EC) No. 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No. 883/2004 on the coordination of social security systems play a central role here. However, within the scope of the consultation, a holistic approach is also pursued, which is not limited to a thematic section, but is comprehensively oriented across the various aspects in cross-border situations. For example, the information and counselling services deal with questions of pension payments, questions of social security, questions of family benefits, but also the tax consequences of cross-border work or the consequences of moving to a neighbouring country.

According to the objective of the "Regionskontor & Infocenters", in addition to this comprehensive advisory service, "the improvement of freedom of movement through the analysis of barriers and the creation of solutions in problematic situations is one of the main areas of activity of the region⁴ ". This is because the wide-ranging topics of the advisory services are based on the institution's competent expertise in the relevant legal regulations at the municipal, regional, national, and European level, which are complemented by knowledge of the institutional structure and responsibilities in both countries. At the same time, this bilateral knowledge and competence are constantly strengthened and kept up to date through the day-to-day advisory work. This expertise results from approximately 3,000 consultations per year⁵ .

Against this background, problem cases that cannot be clearly answered or conclusively solved within the framework of a counselling service are analysed and considered from a decidedly cross-border and bilateral perspective. The focus is then on whether the problem of the concrete individual case does not represent a barrier that could be suitable to restrict the person concerned in his or her freedom of movement as guaranteed under European law. The

¹ On the definition of "Euroregion" cf. Chilla, "Innerstaatliche Vernetzung von Grenzregionen", p. 8ff.

² Cf. https://www.region.dk/region/de/presse/aktuelles-view.php?we_objectID=11

³ https://www.region.de/region/de/arbeitsfelder/Arbeitsmarkt/Arbeitsmarkt_grenzenlos.php

⁴ Ibid.

⁵ Cf. "Infocentre 15 years"; p. 3

competent regional and national authorities on both sides of the border are closely involved as far as possible. If no solution can be found, it must be clarified by higher-level institutions.

In several deadlocked cases where, despite all efforts to remedy the situation, there are still doubts about the conformity of the regulations in question with European law, the petitioner has chosen the path of directly contacting the EU Commission itself with the specific cross-border concern.

III. Submission of the petitioner to the EU Commission

For the sake of clarity, the analysis is based on selected and exemplary correspondence, which in itself already shows the complex issues that the petitioner Regionskontor & Infocenter deals with in the context of its advisory activities and also elaborates the further questions of this expert opinion.

This correspondence relates to a total of three individual issues, as well as replies from the EU Commission, which will be presented briefly and concisely below:

1. letter dated 22.08.2018: Danish state pension "Folkepension"; Ares(2018)5155698

In his first letter, the petitioner addresses the European Commission with a request for clarification of the effects of changes in Danish pension legislation (allegedly) to the detriment of cross-border workers.

By resolution of the Danish Parliament, the applicable Danish Pension Act has been amended, as of 01 July 2018, for all citizens who reach their individual retirement age as of 01 July 2025.

According to the previous rules, an eligible person had to have lived in Denmark for 40 years between the age of 15 and the personal pensionable age, which is now between 65 and 68, in order to receive a full pension. Under the new legislation, it is now stipulated that at least 90% of the time between the age of 15 and the retirement age had to have been lived or worked in Denmark in order to be entitled to a full pension as of 1 July 2025. In the case of cross-border workers, a year of work in Denmark is treated as equivalent to residence in Denmark. So in essence the aforementioned 40 year period can amount to less than 90% under the new rules.

The petitioner sees this new legal regulation and the resulting calculation method, which also applies retroactively to all calculations of pension entitlements under Danish law as of the effective date, as putting all cross-border commuters who retire as of this date at a disadvantage. This is because the new calculation method makes it more difficult for cross-border commuters to obtain the full pension entitlement compared to nationals. Furthermore, the retroactive application disturbs the legitimate expectations of those affected who had already lived and worked in Denmark before the law was enacted in 2018 and whose pension entitlements resulting from the period until the enactment of the law are now calculated less favourably for them and are therefore disadvantageous.

2. letter of 26.9.2018: ATP- Arbejdsmarkedets tillægspension; Ares(2018)5301270

In his second letter, the petitioner asks the Commission to clarify the legal quality of the so-called Arbejdsmarkedets tillægspension (ATP) under Danish law and the resulting rate of health insurance contributions when receiving this form of pension.

In the case in question, contributions to the pensioners' health insurance scheme are levied on a former cross-border commuter resident in Germany. Contributions are levied on both her German and Danish pension entitlements as well as her entitlements to the Danish ATP and entitlements to a Danish occupational pension. The German and Danish pensions are calculated at half the contribution rate, but the Danish ATP and occupational pension are calculated at the full contribution rate.

However, the petitioner sees evidence that it is a social pension within the meaning of Regulation (EC) No. 883/04, which is also to be calculated at only half the contribution rate. According to Danish law, the ATP is a compulsory insurance for all employees and all recipients of social security benefits. Both the Danish and the German pension liaison offices confirm this legal view. Moreover, the ATP was registered as such a social pension in the Danish declaration pursuant to Article 9 of Regulation (EC) No 883/2004. The view of the tax authorities of both countries regarding the taxation of this benefit also confirmed this.

He therefore turns to the competent body in Germany, the German Liaison Office for Health Insurance (DVKA), with a request for clarification and classification of this pension benefit. With reference to the so-called Master Directory of the Electronic Exchange of Social Security Information (EESSI) system⁶, the DVKA treats the ATP pension like an occupational pension, which is accordingly calculated with the full contribution rate.

In light of the above arguments, the petitioner then turns to the EU Commission for final clarification of this issue.

3. letter of 20.22019: Crediting of periods of sickness benefit for German unemployment benefit; Ares(2019)2496542

With this letter, the petitioner wishes to file a "complaint against the Federal Republic of Germany" in accordance with the title of the letter and thus goes beyond the mere question of interpretation (cf. letter 1) and application (cf. letter 2) with his request.

In his letter, the petitioner points out that periods of sickness benefit from Denmark are not recognised for the granting of unemployment benefit under German law for cross-border commuters from Germany who have been dismissed. After termination of the employment relationship in Denmark, the persons concerned would initially continue to receive Danish sickness benefit as long as they fulfilled the legal requirements. If these preconditions are no longer met and sickness benefit can no longer be drawn. If these conditions are no longer met, unemployment benefit must be applied for from the competent institution, in this case the German labour administration. In practice, however, this application is often problematic and fraught with difficulties, as the competent Danish authority STAR does not consider these periods of sickness benefit receipt as periods of employment and therefore does not certify them on the PDU1 form.

In support of his argument, the petitioner refers to proceedings before the national social courts in Germany (Landesozialgericht Schleswig-Holstein; L 3 AL 8/14), in which the practice of the competent employment agency was not objected to in the last instance. However, this is not in line with the decision of the ECJ in the case "Warmerdam-Steggerda"⁷.

Response letter from the EU Commission dated 25.6.2019

After ten months, by letter dated 25.6.2019, the EU Commission replied to the various complaints and concerns raised in the three previous letters, referring to them under the respective Ares file numbers mentioned above.

⁶ <https://ec.europa.eu/social/social-security-directory/pai/select-country/language/en>

⁷ ECJ Judgment of 12.5.1989 - C 388/87 [ECLI:EU:C:1989:196], Warmerdam-Steggerda

The petitioner's letters were submitted via the Border Focal Point of the EU Commission. The DG Employment, Social Affairs and Inclusion in the person of the Director of the Directorate for Labour Mobility, which was requested by the petitioner in each of the letters, then replied.

The European Commission comments individually on the potential legal and administrative obstacles for cross-border workers raised by the petitioner as follows.

- **Ares(2018)5155698**

About the facts presented here, the Commission first points out that the social security case is "merely" a coordination and not a harmonisation of the respective laws of the Member States. Furthermore, the European Commission decidedly does not share the petitioner's view. The regulation applies "to all persons with pension entitlement, irrespective of nationality. Cross-border workers who retire after 1 July 2025 [are] thus subject to the same regulation as Danish workers".

Accordingly, since in the system of coordination of social security schemes Member States are free to determine the conditions for entitlements themselves, the Commission sees no evidence that this legislation fails to comply with the principles of non-discrimination and equal treatment".

- **Ares(2018)5301270**

In the matter of the second letter, the EU Commission does not share the petitioner's view that "the ATP [is] a social pension and therefore the contribution rate for health insurance should be reduced". Rather, "the ATP falls under the first pillar of the pension system together with the old-age pension".

In doing so, the EU Commission also explicitly refers to the correspondence submitted by the petitioner, which it has apparently examined, and in this context concludes that although "the ATP does have certain social characteristics, it is a contribution-based system that falls under Regulation [EC] No 883/04".

- **Ares(2019)2496542**

Regarding these facts, the European Commission explicitly emphasises that "according to Regulation (EC) No. 883/04 and the case law of the Court of Justice of the European Union, the recognition of these periods is guaranteed". In its statement of reasons, the European Commission also refers explicitly to the judgment of the European Court of Justice "Warmerdam-Steggerda⁸" cited by the petitioner in his letter. With reference to the underlying facts, the EU Commission then concludes that the periods in question would have to be taken into account during the receipt of Danish sickness benefit in Germany, since the receipt of German sickness benefit, which, as explained by the petitioner in his letter, is "practically equivalent to Danish sickness benefit, counts as an insurance period".

Furthermore, the EU Commission agrees with the petitioner that, in its view, "the Danish authorities should issue the PD U1 form and certify the relevant periods in order to enable the competent German authorities to verify these periods".

⁸ Ibid.

No further comment is made on the fact that, according to the subject of his letter, the petitioner has sought a "complaint against the Federal Republic of Germany". The choice of words and the objective of the term "complaint" are not taken up further or dealt with in terms of content.

However, at the end of the letter, the EU Commission refers to the possibilities offered by the free Solvit network to solve out-of-court cases in case of administrative problems between two Member States resulting from the incorrect application of European law.

Reply of the Region Office & Infocentre; 24.8.2020

One year later, the petitioner replies to the EU Commission's letter of reply, again via the Border Focal Point, with further comments and alleged proposals for solutions.

- **Ares(2018)5155698**

The petitioner again lists a number of arguments to prove that not taking into account periods of residence from the home country from the age of 15 that are not simultaneously used to draw a pension in the country of residence would treat Danish citizens and cross-border commuters differently and thus discriminate against them.

- **Ares(2018)5301270**

With regard to this case constellation, the petitioner indicates that he does not find the answer comprehensible. He reiterates his original argumentation and refers, on the one hand, to the handling of ATP periods by the German Pension Insurance, which uses these periods as a basis for the calculation of entitlement. On the other hand, he emphasised once again that the ATP pension was not a social pension, but a system financed by contributions, which is why the application of half the contribution rate was still appropriate.

- **Ares(2019)2496542**

First, the petitioner confirms that the legal opinions in this case are the same. Nevertheless, there was still the problem that the periods in question in Denmark were not shown on the PD U1 document by the competent authority STAR, whereas such an entry was considered an indispensable requirement in Germany.

Against this background, the petitioner therefore asks whether the EU Commission could not "draw up a recommendation - specifically addressed to the German side - stating when Danish periods of sickness benefit [should] be included in the calculation of unemployment benefit I for former cross-border commuters".

Commission's reply letter of 13.10.2020

In a period of less than two months, the EU Commission responds to the further arguments and proposals put forward by the petitioner through the same body as in the first reply letter of 25.6.2019.

- **Ares(2018)5155698**

The European Commission once again presents the petitioner's further arguments in relation to the regulations of the Danish pension system from 1 July 2025 in a structured manner. However, the conclusion of the petitioner is still decidedly not shared. Rather, the EU Commission refers in detail to the provisions of Art. 52 of Regulation (EC) 883/04 with the

result that the amount of the pension [in this case] is therefore to be determined exclusively based on residence/periods of employment in Denmark in accordance with the Danish Pension Act.

The petitioner's remarks regarding potential discrimination are touched upon in the EU Commission's argumentation, but not explicitly discussed.

In this context, the petitioner is referred to the webpage "YourEurope⁹" of the EU Commission with "further information on the steps under Article 52 of Regulation (EC) No 883/04".

- **Ares(2018)5301270**

About the petitioner's argument, the EU Commission succinctly states that the answer in the letter of 23.7.2019 remains valid. "Therefore, the ATP cannot be considered as a social pension with reduced contribution rates".

- **Ares(2019)2496542**

The European Commission points out that it "has already taken a detailed position on this matter and asked the Danish authorities to issue a portable U1 document and to indicate the relevant periods so that these periods can be checked by the competent German institution". Finally, the EU Commission refers the petitioner to the national level by "suggesting that you consider this solution which is available to you at national level".

⁹https://europa.eu/youreurope/citizens/work/retire-abroad/state-pensions-abroad/index_de.htm

IV. Communication channels and approaches to solving border obstacles

The correspondence described here over a period of two years shows first of all the complexity and multi-layered nature of cross-border issues with which advisory institutions are confronted by citizens and businesses. It is also clear that the chosen communication channel is time-consuming. After all, almost two years have passed between the first written submission and the final response.

At the same time, it is obvious that the petitioner has only partially succeeded with the concerns he has raised with the EU Commission. It is true that all his questions were answered overall in a legally sound manner. However, with his arguments, the petitioner was ultimately unable to achieve his goals, in particular specific concerns such as the drafting of an instruction to the German authorities directly by the EU Commission itself in the Ares(2019)2496542 case, and was unable to resolve the specific individual cases in his favour.

Therefore, the following section will examine whether this communication process itself was flawed or whether other, more effective options would have been available to the petitioner. These potential options at the European level will be identified and analysed in the following, taking into account the petitioner's concerns.

The Border Focal Point, which was contacted directly by the petitioner, is a good place to start thinking about this.

1. Border Focal Point

The Border Focal Point, launched in 2017, has its genesis in the "Communication from the Commission to the Council and the European Parliament – Boosting growth and cohesion in EU border regions¹⁰", the initiative of which was launched by DG REGIO. This development was ultimately triggered by the fact that the 40 internal borders of the European Union contribute significantly to Europe's socio-economic prosperity but are ultimately in a weaker economic position compared to the national average. Therefore, the potential of border regions in Europe should be more strongly utilised. According to the objective of the "Communication – Boosting Growth and Cohesion in EU Border Regions", the "Commission [...] has an important role to play here. It can act directly in its areas of competence when proposing legislation or funding mechanisms. Equally importantly, it can also help Member States and regions to better understand the challenges and develop operational arrangements, in particular by promoting information exchange and sharing successful practices¹¹". To this end, ten concrete areas of action and measures have been identified in this Communication¹², the implementation and processing of which will be focused on and facilitated by the Border Focal Point.

Within the EU Commission, the Border Focal Point was logically assigned to DG REGIO, more precisely DG REGIO D.2¹³.

Since the establishment of the Border Focal Point, challenges such as the climate crisis and in particular the COVID 19 pandemic have revealed an additional need for cross-border and deeper cooperation. With the follow-up report "Border regions in the EU: living labs of

¹⁰ COM(2017) 534 final

¹¹ Ibid, P.18

¹² Ibid. P 7 et sqq.

¹³ Compare organigrams DG REGIO: https://ec.europa.eu/regional_policy/sources/dgs/organigramme_en.pdf

European integration¹⁴ ", the progress of the measures proposed in 2017 was therefore first analytically reviewed in order to check and improve their effectiveness on the one hand and to adapt them to new realities on the other¹⁵ . However, no new, additional measures are proposed in this report.

In concrete terms, this method for strengthening growth and cohesion in the border regions focuses not only on establishing the Border Focal Point but also on other complementary approaches, which will be outlined below.

First of all, conferences are organised, such as ""Vibrant Cross-Border Labour Markets" of 19.1.2023, the aim of which was "to put the topic on the political agenda at all decision-making levels and to raise awareness of the potential, but also of the remaining obstacles in cross-border labour markets¹⁶ ". Events of this kind serve not only to provide information, but also in particular to network stakeholders and actors from cross-border subject areas and, also in the eyes of the petitioner, offer considerable added value for practitioners and responsible persons and their networks.

In addition to these singular events, the Border Focal Point Network was also launched as an online platform¹⁷ . This platform is primarily aimed at stakeholders and practitioners from border regions, networks experts, serves as an information tool on events and developments and as a place for discussion. The aim is to strengthen the network in and between border regions in Europe. In addition, a series of online events called "Beyond Borders: Breakfast Debates¹⁸ " is also offered. These events are designed to highlight opportunities and best practices for removing obstacles to cross-border cooperation. Each event focuses on a different topic (e.g. health care, transport, cross-border commuting among other subjects).

In addition to these approaches, which focus primarily on networking, information and best practices, b-solutions¹⁹ is a core element of the approach. This initiative was launched by DG Regio in cooperation with the Association of European Border Regions (AEBR). The AEBR launches regular calls with the request to submit concrete cases regarding potential border obstacles, which are then analysed by practitioners or legal experts in order to find tailor-made solutions for the respective case via an expert opinion - as in the case of this expert opinion.

The Border Focal Point as a contact point?

Ultimately, it was these very concrete measures and steps on the part of DG REGIO and the Border Focal Point, which the petitioner was able to accompany not least in the context of his political commitment in the AEBR, that prompted him to deliberately choose the Border Focal Point as the addressee for his concern. Nevertheless, he was also aware that in terms of content, the DG Employment, Social Affairs and Inclusion would be the specific contact person, which is why he also asked for the content to be forwarded. But his presence at various virtual and real levels of the European cross-border networks and the self-image of the Border Focal Point invited him to seek direct contact in these complex cases. On the one hand, in order to ensure that the most suitable contact person within the EU Commission is found in order to

¹⁴ COM(2021) 393 final

¹⁵ Ibid, P. 18 et sqq.

¹⁶ Compare https://ec.europa.eu/regional_policy/whats-new/newsroom/18-01-2023-don-t-miss-the-conference-on-vibrant-cross-border-labour-markets_en

¹⁷ <https://futurium.ec.europa.eu/en/border-focal-point-network>

¹⁸ Compare <https://futurium.ec.europa.eu/de/border-focal-point-network/news/beyond-borders-breakfast-debate-series-returns-discuss-cross-border-citizens-daily-lives>

¹⁹ <https://www.b-solutionsproject.com/>

find an effective solution to the border obstacles at hand. On the other hand, the Border Focal Point was also contacted in light of its central position in the context of cross-border cooperation within the EU Commission in order to give the perceived border obstacles the appropriate, not least political, weight.

The responsible DG REGIO staff member interviewed for this case who is responsible for the Border Focal Point explained: "If you pose a question to the commission, the commission will be able to provide the general answer on the meaning of the policies, the political will and the objectives of the Commission in setting new policies. But it must stay at the political level".

However, the Border Focal Point was in principle not designed as a direct contact point. Referring to the correspondence at hand, the interviewee, explained, "We have not created a procedure for receiving cases directly, beyond that of b-solutions. It was a direct initiative from that region. They took the initiative to start sending us cases. Which was a smart thing to do but not an invited one". In the end, the Border Focal Point was "only" a mediator in this case and did not directly process or respond.

2. SOLVIT

The so-called SOLVIT network was set up in 2001²⁰ and concrete principles were laid down for its use²¹ to help citizens and businesses in the European Union if they are confronted with problems suggesting possible misapplication of Internal Market rules by the public administrations of another Member State. In doing so, it relied on an existing network of coordination centres, each established in a Member State in 1997 under the "Single Market Action Plan"²², to deal with such cases. The principles for the functioning of the SOLVIT network were specified by a Commission Communication²³ in 2013.

The SOLVIT Action Plan, which aims to make SOLVIT more relevant for the handling of complaints concerning EU law, demonstrates the Commission's commitment to further strengthening such mechanisms. The Commission intends to expand the SOLVIT network. This was then done in 2017 by adopting the "Action Plan to strengthen SOLVIT: unlocking the benefits of the Single Market for citizens and businesses". In the eyes of the EU Commission, the "SOLVIT Action Plan, which aims to make SOLVIT more relevant for the handling of complaints concerning EU law, [demonstrates] the Commission's commitment to further strengthening such mechanisms²⁴".

In addition, in November 2021, a cooperation agreement²⁵ was concluded between the European Labor Authority (ELA) and SOLVIT to enable better coordination between them in case referrals, information exchange and follow-up of cases and information.

SOLVIT centres have therefore been established in each Member State (the UK accordingly left the SOLVIT network on 31.12.2020) and are in most cases affiliated to national ministries, in Germany for example to the Ministry of Economics and Climate Protection.

Citizens and businesses can access the SOLVIT network digitally via the EU Commission's online application form²⁶ (alternatively, a form is available that can be sent by post or e-mail)

²⁰ COM(2001)702 final

²¹ COM(2001) 3901

²² <https://op.europa.eu/en/publication-detail/-/publication/b4f03647-e8d4-489b-b086-d51b9fdc925b>

²³ 2013/461/EU

²⁴ 2017/C 18/02

²⁵ https://www.ela.europa.eu/sites/default/files/2022-03/ELA-SOLVIT-agreement_signed.pdf

²⁶ <https://ec.europa.eu/eu-rights/enquiry-complaint-form/home?languageCode=en>

and is free of charge and available in all EU languages. SOLVIT does not deal with cases in which legal proceedings are already pending, if the addressee of the complaint is not a public authority but private individuals or companies in another Member State, or if the complaint is directed against EU institutions or bodies themselves.

The SOLVIT centre then first checks whether EU law has been incorrectly applied in the case in question. If this is the case, the SOLVIT centre of the state concerned is first contacted with a request for clarification. The two SOLVIT centres involved will then try (but this is not guaranteed) to resolve the case within ten weeks in cooperation with the authorities concerned. It should be noted that SOLVIT is ultimately an informal procedure whose proposed solutions have no legal binding force or can be challenged. On the other hand, the right of the person concerned to take formal legal action remains unaffected. However, it is important here to keep in mind the relevant national deadlines so as not to run the risk that relying solely on SOLVIT unintentionally renders legal remedies impossible. Here, better, and clearer wording and a reference to the national deadlines on the part of SOLVIT could prevent potential problems.

From the petitioner's point of view, however, it should be emphasised here that SOLVIT was not designed as a contact for institutions, but for individual cases.

3. Complaint Procedure

In addition to the SOLVIT network, which focuses on individual cases of potential border obstacles, the EU offers another complaint tool - the Complaint Procedure²⁷. This is a way for affected persons to contact the European Commission if they have identified a measure (law, regulation, or administrative act) of a Member State of the European Union that they consider to be in breach of EU law. The focus here is therefore on a breach of EU law and not on a misinterpretation or misapplication of EU law by authorities in an EU Member State.

The EU Commission will acknowledge receipt of the complaint within 15 days. Within the following 12 months, the EU Commission will formally examine the complaint. In complex cases, the examination may take longer, in which case the complainant will be informed. Depending on the outcome of the examination, the EU Commission may conclude to initiate infringement proceedings against the Member State in question. However, the initiation of such proceedings is not obligatory in any case. If it comes to the opposite conclusion, it will also inform the complainant accordingly. If the examination shows that another way of resolution through other out-of-court services would be more effective and in the interest of the complainant, it will propose to transfer the case there. This procedure is therefore only suitable to a limited extent when it comes to resolving individual complaints. The focus is rather on ensuring in general that member states act in accordance with EU law. "That [system] I think is underused," says the interviewee responsible for the Border Focal Point, referring to the practice.

4. B-Solutions

However, the core of the Border Focal Point initiative is probably the B-Solutions project. This initiative has its origins in the Communication "Boosting growth and Cohesion in EU Border Regions²⁸". The aim is to remove legal and administrative obstacles at the EU's internal

²⁷ https://ec.europa.eu/assets/sg/report-a-breach/complaints_en/

²⁸ COM(2017 534 final

borders. Methodologically, this is achieved through well-founded expert opinions on concrete cross-border obstacles by recognised experts, practitioners and stakeholders. "If we see it from a macro perspective, from a pan-European perspective, the entire initiative at European level gives us a good overview over what type of obstacles exist, what type of possible solutions exist and this allows us to influence policy", the interviewee describes the implementation of this method in practice.

The importance of the B-Solutions initiative is also highlighted in the evaluation of the 2107 Border Focal Point Action Plan in the report "Border Regions: Living labs of European Integration²⁹" from 2021 and continued by launching the B-Solutions 2.0 initiative. In doing so, the report specifically mentions the following focal points: Institutional cooperation, cross-border markets and education, cross-border public services and the implementation of the European Green Deal.

This initiative is managed by the Association of European Cross-Border Workers (AEBR) on behalf of DG REGIO. This not only provides a factual and targeted link to stakeholders from border regions. The initiative provides a fitting opportunity for DG REGIO and AEBR to gather information on border obstacles with a bottom-up approach. As the cases usually result from everyday practice and are submitted and dealt with by practitioners, obstacles that arise in practice during the realisation of cross-border activities and projects can be identified more effectively. The results of the analyses are published by the AEBR in a timely and transparent manner³⁰, in order to draw greater attention to existing problems and, in particular, approaches to solutions and to communicate best-practice examples.

5. Your Europe

As the EU Commission proposed the tool "Your Europe" in the letter Ares(2018)5155698, this will also be briefly touched upon. This is primarily an online tool³¹, which first of all offers extensive and practical information on various areas of living and working in Europe for self-study for citizens and companies. In addition, a search mask is also offered, through which, based on a few details, the supposedly suitable service or contact person at European or national level is suggested.

If you do not find what you are looking for on the information page, the service "Your Europe Advice³²" is also available. This advisory service is offered on behalf of the EU Commission and in cooperation by the experts of the European Citizen Action Service (ECAS). In the context of this report, the close cooperation of this service with SOLVIT should be emphasised. If the Your Europe Advice Service comes to the conclusion that further and more in-depth help is needed to solve the problem, the case is forwarded directly to SOLVIT, and the person concerned is informed. As a result, the different channels come together in the SOLVIT network.

²⁹ COM(2021) 393 final; P. 9

³⁰ <https://www.b-solutionsproject.com/library>

³¹ https://europa.eu/youreurope/index_en.htm

³² <https://europa.eu/youreurope/advice/>

V. The petitioner's concerns in the light of the options presented

A closer look reveals that there are more channels at the European level for raising one's concerns about potential border obstacles than might appear at first glance. At the same time, it has also become clear that it is sometimes very difficult, even for practitioners and experts, to identify the most appropriate and effective communication channel from the outset. Especially when the facts of the case themselves and their potential statute of border obstacles are unclear and controversial. Therefore, based on the three specific cases brought forward by the petitioner, it will now be examined in the light of the previous elaboration and presentation whether more effective channels would not have been relevant in the individual facts.

- **Ares(2018)5155698**

In this case constellation, the EU Commission explicitly does not share the petitioner's opinion that the new Danish Pension Act as of 1.7.2025 favours Danish residents.

In both letters in reply to this case constellation, the EU Commission sets out its legal opinion and interpretation of the facts in detail based on the provisions of Regulation (EC) No. 883/2004 and explains why this legislation is in conformity with Regulation (EC) No. 883/2004. To further substantiate the argument, the second reply letter refers to the information portal "Your Europe" for further explanations. The explanations on the information portal are basically quite suitable for clarifying and deepening the content. While these presentations provide a comprehensive overview, especially for laypersons, from the point of view of experts, such as the petitioner, this information is only of limited use. The petitioner questions the fundamental compatibility of the Danish pension law with European law when he refers to the alleged discriminatory effect of the legislation, which in his view affects not only the individual case, but cross-border workers between Germany and Denmark in their entirety, and Denmark therefore violates its obligations under the EU Treaty or derived EU law.

According to the above, his concern would therefore have to be understood as a complaint against the violation of EU law and not only the incorrect interpretation of legal provisions. Accordingly, of the instruments presented, the "complaint procedure" would have been the most adequate to achieve this goal. It is precisely the purpose of this procedure that "affected persons can turn to the European Commission with regard to any measure (law, regulation or administrative provision), omission or administrative practice of a country of the European Union which, in their opinion, violates EU law³³". From the petitioner's point of view, this would also have made sense from a temporal point of view. After all, in this procedure, the EU Commission basically promises to analyse and respond to the facts of the case within one year. This corresponds to the time lapse between the petitioner's first letter and the (first) response by the EU Commission. Moreover, in the event that the EU Commission, in the course of its analysis, shared the petitioner's view and decided to initiate infringement proceedings against Denmark, the petitioner's interest in questioning this legislation itself and making it (in his eyes) compliant with European law would have been best served.

Even if the EU Commission has now taken a clear position on the content of this matter, this path would theoretically still be open to the petitioner. The result of an examination within the framework of this procedure would probably be for the petitioner, regardless of the concrete

³³ https://commission.europa.eu/about-european-commission/contact/problems-and-complaints/complaints-about-breaches-eu-law-member-states/how-make-complaint-eu-level_en

result, an answer on an even more fundamental level compared to the answer received from DG Employment, Social Affairs and Inclusion.

For political argumentation, a specific B-Solutions expert opinion on this topic would also have been appropriate³⁴, even if this would not have created an immediate solution in the specific individual case.

- **Ares(2018)5301270**

In this case, the petitioner did not succeed with his complaint about the (allegedly) incorrect application of European law by the competent authorities with regard to the Danish ATP pension. The EU Commission's assessment is that "the ATP pension falls under the first pillar and thus under Regulation (EC) No 883/2004 on the coordination of social security systems. Therefore, the ATP cannot be considered as a social pension with reduced contribution rates". It is also striking that, in contrast to the other two constellations, the EU Commission does not provide any further information, but merely presents or repeats its legal opinion.

Detached from this, however, SOLVIT would be the most conceivable point of contact because of the above. However, against the background of the stringent argumentation of the EU Commission, it can be assumed that no other result would be achieved in this way. In terms of the objective, the only way to clarify this case in principle would be through the ordinary courts.

In addition, a focused B-Solutions expert opinion would at least have enabled the petitioner to initiate a broader expert discussion on the legal quality of the ATP pension. Finally, a number of further statements by the competent bodies, national case law, as well as official documents of the European Union were submitted by the petitioner as annexes, the details of which were not explicitly included in the argumentation of the EU Commission. Insofar as the Commission's answers are not convincing, this would still be theoretically conceivable.

- **Ares(2019)2496542**

In the final case, the European Commission agreed with the petitioner's argumentation and interpretation of the law to the effect that "it is also of the opinion that, in accordance with Regulation (EC) No. 883/2004 and the case law of the Court of Justice of the European Union, the recognition of these periods [is] guaranteed". Therefore, the periods in question should also be recorded on the PD U1.

In the consequence that follows from this view, however, the result again diverges considerably. The EU Commission's answer is ultimately to be interpreted as meaning that, in accordance with the complex relationship between national and European law, this is ultimately the responsibility of the Member State concerned, since it is a matter of administrative differences of opinion between the respective national institutions. For this reason alone, it can be seen that, from this perspective, no recommendation or similar instrument comes into question with which the EU Commission could directly influence the national institutions with external effect. Nevertheless, the petitioner has at least indirectly achieved the partial objective of drawing the attention of the EU Commission to this case, which can be seen in particular from the fact that explicit reference is made to the efforts made within the scope of possibilities last year.

³⁴ Author's note: In fact, the petitioner has in the meantime applied for another B-Solutions expert opinion on exactly this issue, independently of the present expert opinion, which was also granted in mid-October 2023.

Therefore, the title of the petitioner's first letter in this matter, "Complaint against the Federal Republic of Germany", is systematically incorrect. If one were to actually interpret the petitioner's letter as meaning that he would like to make a statement in the sense of the Complaint Procedure outlined above and would like to take this route, a reference or referral would have been necessary, irrespective of the concrete prospects of success. However, there is no indication of this in the correspondence.

However, the repeated reference to SOLVIT in both cases on the part of the EU Commission was in principle relevant in this case. If one considers this matter as an administrative dispute between national authorities, SOLVIT would have been in a position to attempt to reach an understanding between the designated competent authorities. Here, too, the petitioner could have submitted his extensive annexes, which already contain a serious argumentation in his favour. Moreover, the EU Commission seems to share the petitioner's view in principle, which again strengthens the petitioner's argumentation. Also, a timely result of any kind could have been expected after - theoretically - ten weeks. The petitioner would then have had further options for action in the event of a decision that did not correspond to his will.

VI. Conclusions and recommendations for action

By focusing on the three case constellations analysed in detail, this expert opinion was only able to show a small aspect of the extensive measures taken to improve European law and the functioning of the European internal market in recent decades.

Nevertheless, the genesis of the Border Focal Point, as detailed here, shows that the EU Commission has focused on the elementary role of border regions in the European integration process and sees itself as the driving force responsible for promoting this dialogue to the best of its ability in order to improve cross-border cooperation beyond financial support instruments. Finally, as the so-called guardian of the Treaties, it is obliged, under the control of the Court of Justice of the European Union, to monitor the measures taken by the Member States to implement EU law and to ensure that their legislation and procedures comply with it³⁵. The elementary role of complaints and similar instruments is also explicitly emphasised. "Citizens, businesses and civil society contribute significantly to the Commission's monitoring by reporting shortcomings in the application of EU law by Member States. The Commission recognises the important role of complaints in detecting breaches of EU law.³⁶" This is reflected in the wide range of tools described here, which not only provide easily accessible information on European law, but also offer a finely tuned set of advisory and redress tools.

In doing so, the EU Commission has, as explained, chosen a strategically skilful approach. Through the described evolution and expansion and deepening of the formal consultation and appeal possibilities, the enforcement of European law in close symbiosis with the member states will be expanded and more closely interlinked in the future. The gradual expansion of the SOLVIT network is a strong indication of this. In addition, the EU Commission is also gaining a steadily better and more well-founded insight into the actual border obstacles in border regions, which by their nature are often identified in very specific cross-border situations. It is not for nothing that the European Union deliberately refers to border regions as "Living labs of European integration"³⁷. Through this "macro-approach", the EU Commission obtains directly from practice and timely knowledge about potential border obstacles from the most diverse subject areas and perspectives. This information is invaluable for policy assessment and analysis of legislation.

Nevertheless, it was also shown that, despite all efforts, there is still room for improvement from a practical point of view.

First of all, it has become clear that it is often difficult for laypersons in particular to understand which path is ultimately relevant in their specific case and that consequences in the relationship between national and European law are difficult to penetrate.

It would be very helpful if the EU Commission would revise its website in this context so that the various instruments and their interactions are presented in the overall context. It would also be helpful if indications of more suitable and effective ways, if they are obvious, were made known to those affected as a kind of "ad hoc" communication, at least as a potential alternative. In the case at hand, Ares(2019)2496542, for example, it would have been of added value for the petitioner if he had received a reference to SOLVIT at an early stage in order to seek a prompt solution via this channel in the sense of a concrete solution to the problem.

Even if the petitioner's extensive expertise is beyond question according to what has been presented so far, it is clear that even for experts it is not always clear which is the most effective

³⁵ Art. 17 Para. 1 TEU.

³⁶ 2017/C 18/02

³⁷COM(2021) 393 final

way to solve the problem. This is further complicated by the fact that it is precisely typical of perceived borderline obstacles that they often have no precedents whatsoever and therefore the determination of what type of infringement is involved is often very difficult to assess. In the context of B-Solutions, this could of course be seriously analysed by expert examinations. This is often the very essence of such an expert opinion. In cases where the focus is on a concrete and immediate solution to acute obstacles, especially SOLVIT cases, there is a particular danger of overlooking national deadlines that would have to be met in the case of possible legal remedies. Clear indications of the potentially relevant national deadlines would be of great help in this regard, in order to protect those affected from disadvantages due to ignorance. Ideally, a revision of the SOLVIT system would be desirable so that this process has an inhibiting effect on national deadlines. This would also bring about further dovetailing of the various legal levels in Europe and should give the objective of the measures presented a clear boost.

It is also obvious that the EU Commission attaches special importance to border regions in this process. This is not only reflected in its capacity as a living lab but also in particular in the fact that the EU Commission methodically aims in the process described here to make targeted use of the competence and commitment of the actors in border regions in order to be able to identify and eliminate border obstacles more effectively.

However, this bottom-up approach can still be expanded. Especially against the background of the proven expertise of established counselling and information centres in border regions, which has been demonstrated for years, it would make sense not only to ask them for input, but also to leverage this expertise in a targeted manner and integrate it into the existing structures. Approaches for this can be the already outlined cooperation between the SOLVIT network and the European Labor Authority³⁸ to enable better coordination in case referrals, information exchange and follow-up. Accordingly, the mediation process under the ELA should only concern disputes between Member States, while cases where individuals face difficulties in exercising their Union rights should be dealt with by the SOLVIT network, to which the Authority should then refer such cases. SOLVIT, in turn, should refer cases where the problem cannot be resolved due to differences between national administrations to ELA for consideration. This not only promotes the exchange of competences between the national and the European level, but also clearly shows the interdependencies between these two levels. These interlocking serves, at least indirectly, to standardise the application of the law.

Like this construction, it would also be conceivable in the sense of subsidiarity and according to the bottom-up approach that the respective national contact points also make use of the cross-border competence of the established service institutions. This could often bridge not only the literal but also the substantive distance between the capitals and border regions in questions of border obstacles and their relevance. For the national authorities, this would also mean effective access to the expertise of the border regions. This cannot, of course, be a strictly analogous procedure to the method described above due to the lack of competences.

First of all, it should be noted that in practice, advisory and information institutions are not necessarily neutral observers, but are sometimes legitimately also representatives of the interests of border regions. Therefore, a formal conflict of interest would have to be excluded from the outset. Rather, it should be a matter of enabling such institutions to make their local "border competence" available to the SOLVIT network in concrete cases in a supportive manner, if necessary. In order to guarantee the quality and seriousness of these potential partners, however, some form of control would be necessary, which could take place, for example, through an accreditation procedure at the EU Commission. Criteria could be, for

³⁸ https://www.ela.europa.eu/sites/default/files/2022-03/ELA-SOLVIT-agreement_signed.pdf

example, membership in the EURES network, recognition by national bodies, proven qualifications, and counselling competences. At the same time, it must also be pointed out that it is often counselling institutions such as the petitioner's that draw the attention of those affected to SOLVIT in the first place and, in case of doubt, also support them with the formalities of the procedure. However, since SOLVIT, as described above, was only designed for individual cases and not as a contact for institutions such as the petitioner's, a possibility should be created here for this to be possible hand in hand in the future, i.e., for counselling institutions to have a form of representative authority in such cases or to be involved here via the envisaged accreditation procedure.

Similarly, the border regions can contribute directly to the Commission itself through their forms of cooperation, such as the "Grenznetz³⁹" association, to insights into border obstacles and channel the dialogue between the border regions and responsible persons without detours.

However, the potential added value is obvious here. The desired closer integration of border regions into European processes would be promoted in a targeted and appropriate manner. At the same time, the EU Commission would indirectly promote a network of local and regional border experts that could set a quality standard through accreditation, which would add another practically oriented tool with specific competence in the individual border regions to the European Union's toolbox for combating border obstacles, considering regional specificities and needs. This would extend the link between the European and the national level by adding the dimension of border regions. At least regarding Germany, the concept of "border scouts (Grenzscouts⁴⁰)", which was anchored in the coalition agreement of the Federal Republic of Germany⁴¹, could serve as a starting point for the necessary political discussion at regional and national level in the form of border regional offices⁴² such as the established counselling and information centres.

For in the border regions of the European Union, European integration is not just abstract subject for discussion, but everyday life.

³⁹ <https://euregio-mr.info/en/ueber-uns/europaeische-netzwerke/grenznetz.php>

⁴⁰ Cf. Cyrus, "Inventory and potential analysis of border scouts in cross-border cooperation"; P. 3

⁴¹ Coalition Agreement 2021 - 2025, P. 136

⁴² Ibid, P. 11f.

VII. References and legal provisions

Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems

Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems

Action plan for the single market (1997); European Commission Communication of 4 June 1997 to the European Council

Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions - Effective Problem Solving in the Internal Market ("SOLVIT"); European Commission COM(2001)0702 final, 27.11.2001

Commission Recommendation on principles for using "SOLVIT" - the Internal Market Problem Solving Network (Text with EEA relevance) of 7 December 2001 C(2001) 3901

Commission Recommendation of 17 September 2013 on the principles governing SOLVIT Text with EEA relevance; European Commission, 2013/461/EU

Communication from the Commission - EU law: Better results through better application; EU Commission 2017/C 18/02, 21.1.2017

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Action plan on the Reinforcement of SOLVIT: Bringing the benefits of the Single Market to citizens and businesses; European Commission COM(2017) 255 final, 2.5.2017

Communication from the Commission to the Council and the European Parliament - Strengthening growth and cohesion in EU border regions; European Commission COM(2017) 534 final, 20.9.2017

Report from the Commission to the European Parliament, the Council, the European Economic And Social Committee and the Committee Of The Regions - EU Border Regions: Living labs of European integration 14.7.2021, European Commission COM(2021) 393 final ,14.7.2021

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