Cross-border social security affiliations France Luxembourg

FINAL REPORT

Advice case title: Cross-border social security affiliations

Full official name of the advised entity: GECT Alzette Belval

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I Executive summary

Context:

About 150 000 French residents are considered frontier workers in Luxemburg, out of which about 10-15000 on the French territory of the crossborder EGTC Alzette-Belval. As healthcare services are or seem to be better developed, available or closer in Luxemburg than on the French side, many French residents are used to look for healthcare on the Luxembourguish side, especially frontier workers who are registered in the Luxembourguish CNS or pensioners who are or used to be.

Obstacle:

Healthcare mobility is threatened by administrative rules for two categories of patients: children of French residents where both parents work but in different countries on the one hand, mixed or poly pensionsiers on the other hand , i.e. patients who have worked in both countries and receive part of their pension from both countries. For these two categories, the French CNSS (caisse nationale de sécurité sociale) refuses the registration in the Luxembourguish CNS (Caisse nationale de Santé) and healthcare for them, when delivered on the territory of Luxemburg, is in most cases not or no more affordable due to differences in tariffs and reimbursement. About 123 court cases against the CNSS have been registered in France from 2019 to 2022 based on these questions.

Legal provisions:

2004 EU regulation no 883/2004 on coordination of social security in Europe
2009 EU regulation no 987/2009 on implementation modalities for the regulation 883/2004
2011 EU directive 2011/24 on crossborder healthcare
national texts on both sides developed or issued for their implementation

Outline of possible solutions:

1/ bilateral agreement(s) based on the full use of existing legal opportunities

The EU rules (mainly the regulation 883/2004 and the directive 2011/24) apply as a backstopping network and not as the main tool. A direct bilateral agreement would put an end to the encountered difficulties by creating exceptional rules for the concerned population

2/ better reimbursement by France based on the principles of equity and equality

The EU rules do not forbid France to consider frontier residents as patients having to be supported in a different way due to their specific situation. It is up to the Administration to accept it on the basis of existing rules or on the basis on new rules (circular, decree or law).

3/ better use of existing legal opportunities by the interested persons with the support of the EGTC

“Mixed” families, being refused the appropriate registration with the ad hoc parent, could complain in court based on the principle of equal treatment. “mixed” or “poly”pensioners could claim for another registration rule to be applied based on the article 16.2 of the regulation.

4/ crossborder healthcare mansion: a real step towards a patient centered organisation of healthcare in the crossborder region.

The creation of a crossborder healthcare mansion would answer a part of the present and the future shortcomes in healthcare offer in the region on both sides of the frontier. Locating it on the very border would allow to apply both national rules on demand and overcome a number of administrative and legal obstacles. It would be necessary to further investigate and elaborate on this solution.

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

a) overall picture: crossborder commuting flows in France, Luxemburg, patients and healthcare flows, institutional situation on borders

According to the MOT[1], 430 000 French residents cross French metropolitan terrestrial borders on a regular basis for the purpose of working activity and are considered as “frontier workers" . 110 000 , i.e. 25% of them, work in Luxembourg, this country thus being the second most attractive for French frontier workers after Switzerland (192 000 = approx 50 %).

In 2020, about 150 000 French residents were affiliated[2] in the Luxembourguish CNS (social security fund of Luxemburg), of which about 12 000 in the French canton of Villerupt[3]

According to the CNS, French residents affiliated in CNS usually address for healthcare in France (80% of cases).

We can then consider the following approximations as relevant for giving rough ideas of the figures:

Not far from 0,5 million French – 2% of the French employed population – **are considered frontier workers**, **of which** about 50% in Switzerland and **25% in Luxemburg**.

About 150 000 French residents are affiliated in the Luxemburg CNS (social security fund of Luxemburg), **of which about 10% in the EGCT Alzette-Belval**, representing 40% of the population on the French side.

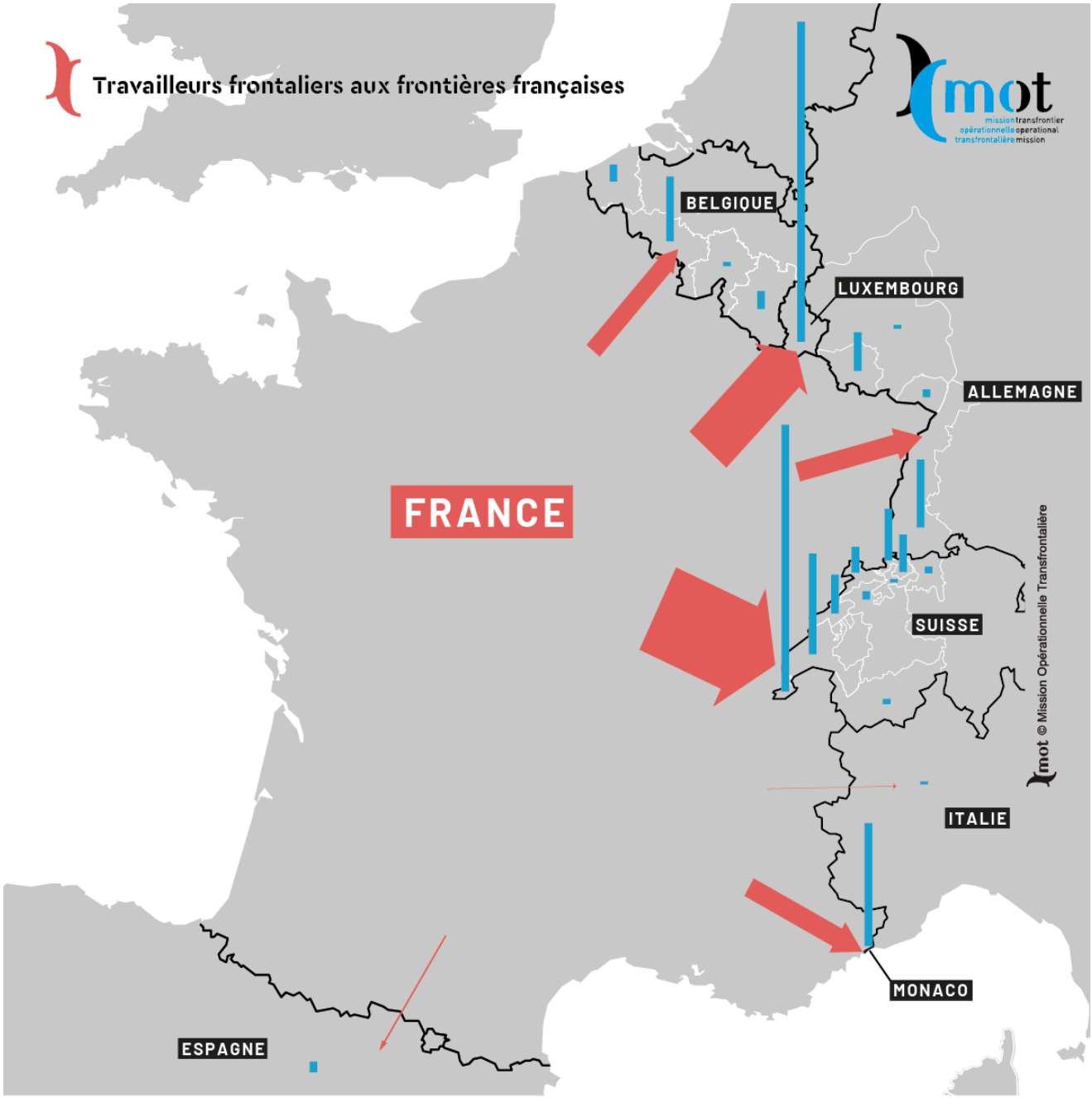
Thousands of crossborder commuters switch on a daily basis from their French living place to their working position in Luxemburg, creating traffic jams twice a day even on secondary roads.

1 association named “Mission opérationnelle transfrontalière”

2 The difference between 110 000 (figures from the MOT) and 150 000 (figures from the Luxembourguish IGSS) may rise from the difference of origin of the statistics – despite the fact that MOT relies as well on Luxembourguish statistics dated 2020 - , or the number of retirees receiving a pension from Luxemburg,

3 No statistics were found for the EGCT Alzette-Belval – further the EGCT -, but the given figures can be an interesting basis for the present situation: both the canton and the EGCT are neighbouring Luxemburg, both represent approximately 30 000 inhabitants, and two important municipalities of each of them are common: Villerupt about 10 000 inhabitants and Thil about 2000 inhabitants.

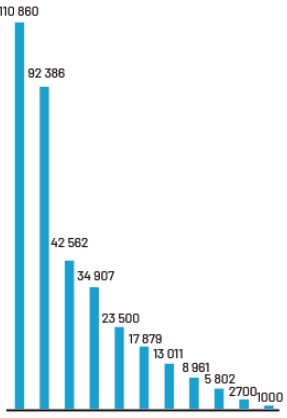
Travailleurs frontaliers aux frontières françaises



Nombre total de travailleurs frontaliers résidant en France par pays de destination

- 1 000
- 3 700
- 37 807
- 40 900
- 42 562
- 110 860
- 191 556

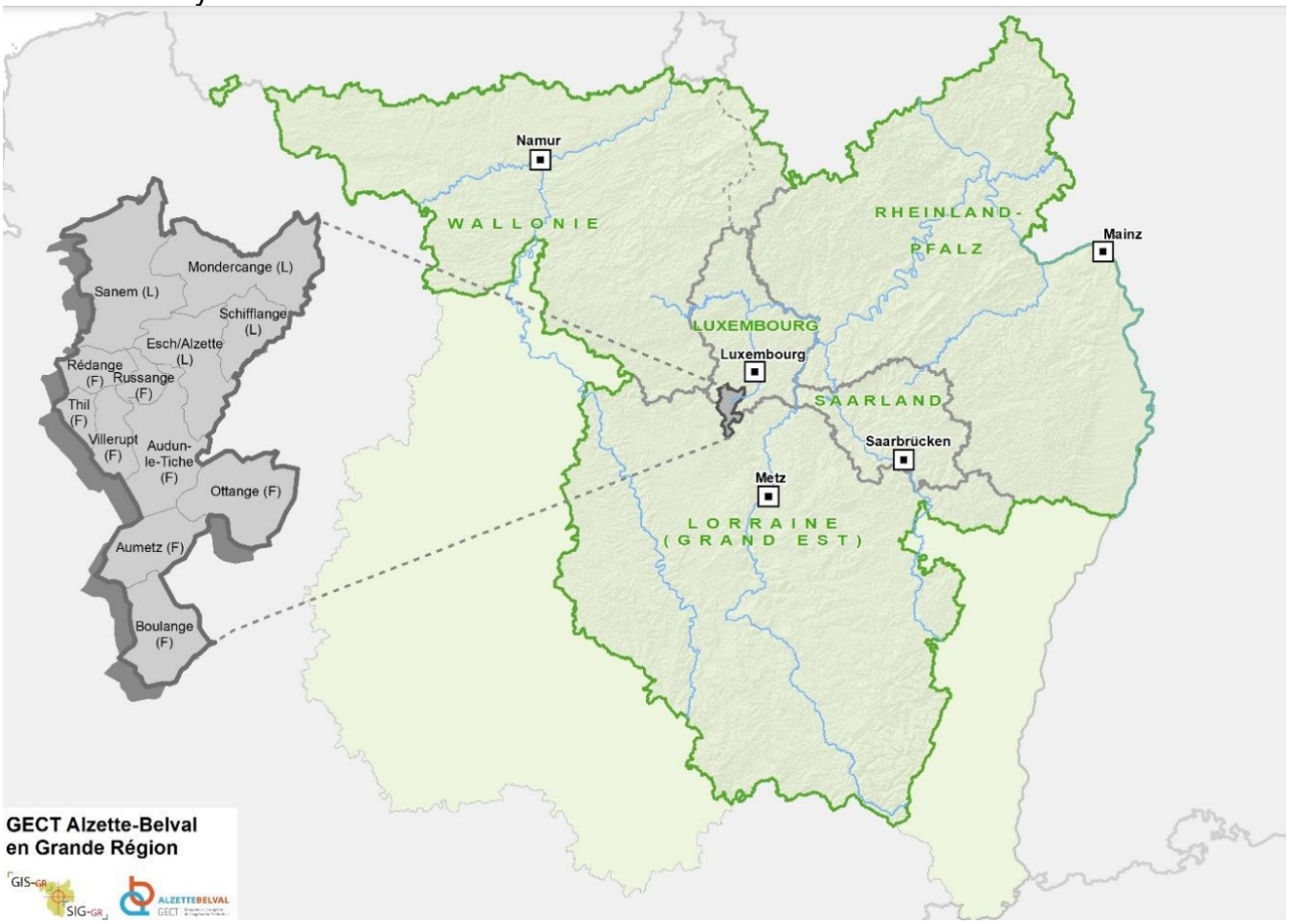
Nombre de travailleurs frontaliers résidant en France par territoire de destination dans le pays voisin



Sources :
INSEE (France), 2018
INAMI (Belgique), 2020
IGSS (Luxembourg), 2020
BA (Allemagne),2020
OFS (Suisse), 2021 (2ème T.)
IMSEE (Monaco), 2020

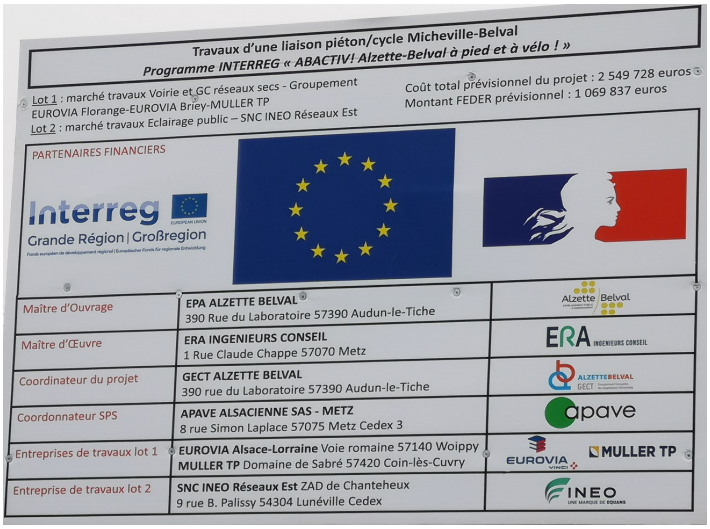
b) the specificity of Alzette-Belval EGTC (European grouping of territorial cooperation)

Included in the “Grande région” EGTC, at the crossroad of four European Nations and 5 regional States or territorial entities, Alzette-Belval is made of a dozen small municipalities encompassing about 100 000 inhabitants on both sides of the French-Luxembourguish border. Its key figure is 2/3: 2/3 of the constituing municipalities is on the French side (8 out of 12) . 2/3 of the population is on the Luxembourguish side. 2/3 of the French employed population is working on the Luxembourguish territory. 2/3 of the French generalist doctors are above 60 years and soon to leave for retirement. And 2/3 of wealth, public budgets and publics services including healthcare infrastructure are on the Luxembourguish side (the nearest accessible hospital is on the Luxembourguish side of the EGTC). It is a rare example, if not unique, of the use of EGTC as an institutional tool for creating a small scale, close to the inhabitant integrated intermunicipal cooperation similar to the French understanding of “community of communes”

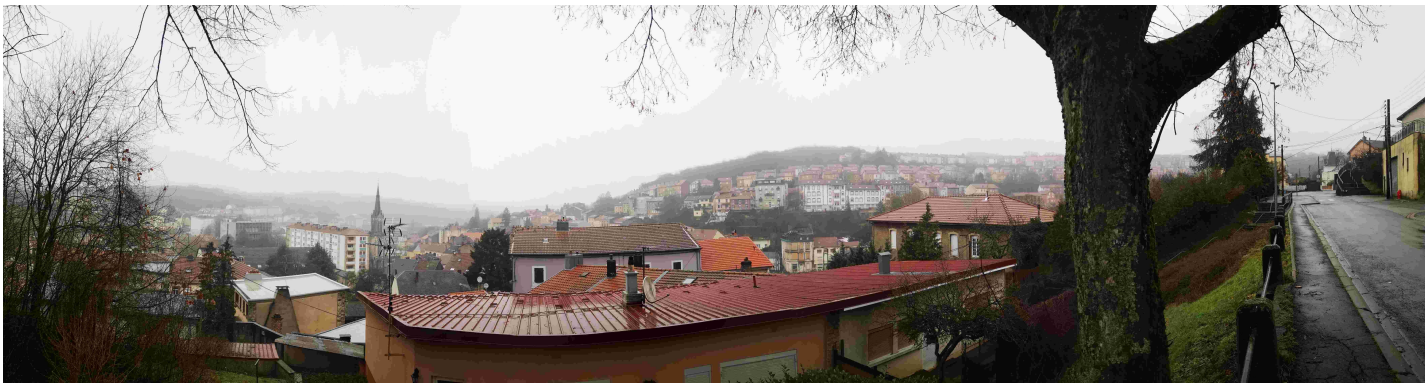


The historical development of the region was based on heavy industry, still visible and noticeable in the landscape, and now is much more oriented on financial and other tertiary services, mainly in Luxemburg, the French neighbouring territories playing much more the role of suburbs in traditional metropoles: most of the working force is employed in Luxemburg and resides in France.

Although wealth and modernity is clearly noticeable in the landscape on the Luxembourguish side (right), the traditional industry has been saved as a memory of the past (left).



Europe is active on its internal borders in general and in the EGTC in particular through the INTERREG program.



Overview of Villerupt, the main village on the French side. The past is present in the lanscape as well as signs of lesser wealth although many signs of new development are to be noticed in the roundabouts.

c) description of the adressed obstacle: affiliation of entitled persons for "mixed" families or pensioners residing in France

The adressed obstacle is described in the terms of reference (annex 1) . It concerns the affiliation of entitled persons for families residing in France, with one of whose parents is a cross-border worker affiliated to the Luxembourg National Health Fund (CNS), as well as pensioners residing in France who have worked part of their career in Luxembourg. They will be mentioned in the following text as "mixed" families or "mixed" pensioners: a "mixed" family or family 2 in the present case is a family with children living or residing in France where one parent works and is affiliated to the CNS in Luxemburg, and the other parent works in France and is affiliated to the French CPAM ("caisse primaire d'assurance maladie"). [see glossary]. A "mixed" pensioner or a "polypensioner" is a pensioner receiving pensions from two or several pension funds, one of which being situated outside his country of residence.

Health services for inhabitants of the EGTC Alzette-Belval

Needs for healthcare are roughly divided in two parts, the first level healthcare (most widespread or daily needs for which the answer is mainly provided by the "generalist doctors"), and the needs for specialised healthcare , either in a hospital or not. According to Joan ORCIER, head of the ARS Grand Est (regional health agency) in the department of Meurthe-et-Moselle (54), patients feel entitled to receive first level healthcare (i.e. a generalist) in a range of no more than a 15 minutes ride from home/place of residence. And as mentioned on Januray 30 at a meeting welcomed by the CHEM[4], out of 40 liberal practitioners on the territory of the EGTC, only 12 are under 60 years. Given the general growing lack of generalists on the French territory [about 9% of the French population over 17 was missing a generalist in 2017, and 11% or 6 million people over 17 in 2021[5]], and the risk of shortage as well on the luxembourguish side – where 50% of the liberal practitioners would be entitled to retirement in the next 5 years[6], it is already known that the present situation is not satisfactory in the area of first level healthcare and is not likely to improve in the next future. It is de facto already almost impossible to get new practitioners joining the border region today, in spite of more or less regulat methods for improving their revenue as compared to the usual rules (e.g. increasing the payments for overtime).

As far as specialised healthcare is concerned, inhabitants of the French part of the EGTC are neighbouring a general hospital in Esch-sur-Alzette (CHEM Emile Mayrisch – 5/10km max from any point of the EGTC), while the nearest French hospitals are much further: Mont-Saint-Martin 25 km, Thionville 35 km, Metz 55 km, Nancy 108 km). Some specific healthcare services are in addition likely to be delivered sooner, more regularly or with similar or better standards in the CHEM and make it attractive for French frontier residents

Given the geographical situation and other points to be considered, it is therefore natural and necessary to tackle the question of health services as a whole, encompassing at least both Luxemburg and French border territories if not larger including Belgium and Germany.

4 Luxembourguish hospital named "Centre hospitalier Emile Mayrisch" on the territory of the EGTC

5 More exactly 5 959 000 patients. Fact checking by 'La dépêche", 29/09/2022. figures given on 30th June 2021 by Marguerite Cazeneuve from the CNAM – caisse nationale d'assurance maladie).

6 Acc ording to Dr René METZ, director of the CHEM

cost discrepancies between Luxemburg and France.

As evidenced by the discussions within the CHEM and with other professionals from both France an Luxembourg, one of the hindering factors for crossborder mobility of patients is the significant difference between French and Luxembourguish tariffs in healthcare. The cost of a consulation with a generalist in Luxemburg is more than twice the one in France for example, as detailed in the following table:

French and Luxembourguish tariffs and reimbursement in healthcare[7]

		FRANCE METROPOLITAINE		LUXEMBOURG
		Secteur 1	Secteur 2	Tarification CNS sans dépassement honoraires[8]
Médecin généraliste	Tarif	25,00 €	La consultation peut être supérieure à 25€.	54.90€
	Remboursement	Régime général : 70% Remboursement : 16,50€ (forfait de 1€ déduit) Régime local Alsace Moselle : 90% Remboursement : 21,5€ (forfait de 1€ déduit)	Régime général : 70% de 25€ (même si le coût de la consultation est plus élevée). Si le praticienn'est pas adhérent à l'OPTAM (option pratique tarifaire maîtrisée), la base de remboursement est de 23€ Remboursement : 16,50€ (forfait de 1€ déduit) Régime local Alsace Moselle : 90% Remboursement : 21,5€ (forfait de 1€ déduit)	Remboursements à 88% sur base tarifaire de nomenclature CNS (sans convenances personnelles ou autres dépassements d'honoraires): 48.32
Médecin spécialiste				
Pédiatre <18 ans	Tarif	Entre 30 et 60€ selon le type de consultation (consultation chez un spécialiste ou consultation très complexe)		60.10€
	Rembourse ment	Régime général : 70% du tarif conventionnel : remboursement entre 21 et 42€ selon le type de consultation Régime spécial : 90%		Remboursements à 100% sur base tarifaire de nomenclature CNS (sans convenances personnelles ou autres dépassements d'honoraires) pour les enfants et jeunes < 18 ans : 60.10€
Dermatologue	Tarif	Entre 30 et 60€ selon le type de consultation (consultation chez un spécialiste ou consultation très complexe)		56.20€
	Rembourse ment	Régime général : 70% du tarif conventionnel : remboursement entre 21 et 42€ selon le type de consultation Régime spécial : 90%		Remboursements à 88% sur base tarifaire de nomenclature CNS (sans convenances personnelles ou autres dépassements d'honoraires) : 49.37€

7 source: meeting report by EGCT Alzette-Belval 30/01/2023

8-https://cns.public.lu/dam-assets/legislations/actes-generaux-techniques/medecins/mdecins-nomenclatureet-tarifs-01022023.pdf

Distribution of crossborder reimbursements between various situations and legislation

The right to receiving healthcare in any place regardless of national borders has been granted by the EC regulation 2004/883, further evidenced and enlarged by decisions of the CJCE (Court of justice of the European Community) and consequently completed by the European directive 2011/24. Nevertheless the reality of the right depends on the basis for reimbursement given the noticeable difference just described between tariffs on both sides of the frontier.

The regulations have a direct force in internal legislation of Member States and do not need any further implementing general decisions. Nevertheless, according to a French administrative tradition, an explanatory circular was issued in 2010[9] for the EC regulation 2004/883, and although it cannot contradict the regulation, it can interprete it or be used against the Administration in case it is useful for the patient/citizen. A similar situation applies in Luxembourg where the regulation was reflected in the article 20 of the socilal security code (CSS). On the contrary, the directives have to be transposed and the directive 2011/24 was transposed both in Luxembourg[10] and in France[11].

According to the present state of rules and their concrete implementation by the respective French and Luxembourguish Administrations, patients who have or wish to look for healthcare in the neighbouring country do not have to look or ask for a preliminary authorisation in case or emergency or casual stay in the country, and theoretically can even avoid to pay in advance before being refunded thanks to the european health insurance card (see glossary). Planned and unplanned healthcare can be refunded or directly paid for at the rate of the place of delivery if preliminary authorised in the framework of the regulation 883/2004. Unplanned healthcare will be refunded even though not preliminary authorised under the directive 2011/24, but at the maximum rate of the place of residence. And planned healthcare will be refunded at the same rate under the same directive under condition of preliminary authorisation.

The basic present practice of Luxembourguish and French health Administrations can be summarised in the following table: (moved on next page)

9 circulaire DSS DACI 2010 363 du 4 octobre 2010

10 loi du 1er juillet 2014

11 Décret n° 2013-1216 du 23 décembre 2013 relatif à lareconnaissance des prescriptions médicales établies dans un autre État membre de l'Union européenne ; loi n° 2014-201 du 24 février2014 portant diverses dispositions d'adaptation au droit de l'Union européenne dans le domaine de la santé ; décret n° 2014-1525 du 17décembre 2014 relatif à la reconnaissance des prescriptions de dispositifs médicaux établies dans un autre État membre de l'Unioneuropéenne

Various cases of reimbursment of health expense for crossborder patients at present				
Situation	reference	tariff	Reimbursement based on tariff of	observations
Casual situation abroad/ use of european health insurance card	Regulation 883/2004 Regulation 987/2009	place of delivery	place of delivery	No authorisation needed no advance of funds by the patient
Unplanned health care	Regulation 883/2004 Regulation 987/2009	place of delivery	place of delivery	Authorisation needed
Planned healthcare	Regulation 883/2004 Regulation 987/2009	place of delivery	place of delivery	Authorisation needed
Unplanned health care	Directive 2011/24	place of delivery	Place of residence but the residence healthcare fund is allowed to reimburse on the basis of place of delivery	No authorisation needed advance of funds
Planned healthcare	Directive 2011/24	place of delivery	Place of residence but the residence healthcare fund is allowed to reimburse on the basis of place of delivery	authorisation needed advance of funds
Other possible situations (examples from other regions)	Bilateral specific agreements MOSAR	Place of residence	Place of residence	
	Bilateral specific agreements Monaco	Place of residence	Place of residence	Hopital Grace de Monaco first general hospital for neighbouring French residents

Consequences of the gordian knot of crossed legislations and practice for „mixed“ families and pensioners

As a consequence of both the legislation in force and the way it is interpreted and implemented on both sides of the Luxembourguish/French border, obstacles remain in crossborder healthcare mobility, especially on the French side. For example, whereas almost all the preliminary addresses to the Luxembourguish healtcare Administration (S2 form) receive an approval[12], on the contrary an overwhelming majority of similar addresses in France are refused, based on the principle that any time it is theoretically possible to look for curing in France the authorisation should be refused[13]

Obstacles prevail as well much more in the working traditions or internal practice than due to european legislation in the case of frontier workers and pensioners.

In the case of the family 2 or „mixed“ family (see glossary), the common children might be

12„la plupart des demandes d’autorisations S2 formulées [par les residents Luxembourgeois] reçoivent une suite favorable“ (Cahier statistique 12 luxembourg soins transfrontaliers sept 2022)

13 As evidenced during a bilateral meeting held on january 30th,2023 in the CHEM (see attached documents in annexes). There was apparently a radical change in the authorisation delivery policy since March 2022, when the advising doctors („médecins conseils“,, employed doctors deciding on whether the authorisation is granted or not) were centralised in Vannes for the whole France instead of being located in the regions until 2022.

registered in the CNS (Lux) thanks to the parent working in/for Luxemburg. But as the children may receive benefits in kind based on the place of residence and the parent working in France, the French Administration (CNAM/CPAM), basing on the regulation 883/2004, considers it is not appropriate to register them in the CNS through the EESSI (see glossary).

A limited exception has been accepted, as a consequence of judiciary procedures, for the children of divorced or separate parents[14]

From a concrete point of view, **the spouse and children of a „mixed" family** unable to find a generalist on the French side of the border or looking for a specialist consultation in the nearby CHEM **will pay a dissuasive 55 euros fee** for consultation **and** will be **reimbursed 16,50 euros** by the CPAM **instead of** the other parent being refunded **48,32 euros** and despite a theoretical possibility of being refunded 48,32 euros if registered with the other parent according to the Luxembourguish rules.

A similar situation prevail for „mixed" or „poly" pensioners (see glossary) , i.e. people retired in France after having worked to a given extent both in Luxemburg and France, and receiving part of their pension in both countries. According to the direct application of the European legislation and its interpretation by the implementing Administrations, they cannot claim for affiliation in the CNS and have thus to pay as a usual French inhabitant in the conditions and the fees described above. It is reported nevertheless that they go on contributing to the CNS on the basis of the Luxembourguish part of their pension.

„Mixed" or „poly"crossborder pensioners have no longer direct access to Luxembourguish healthcare in the previous conditions and have to pay Luxembourguish tariffs with French reimbursement while going on contributing to the CNS (Lux).

Appreciation of the concerned population

It is necessary, in order to consider one or another solution, to estimate the concerned population and its budgetary or other consequence. Nevertheless it is not that easy in the present case.

According to statistics published in Luxembourg[15]: out of approximately 1 million people treated in Luxembourg, 6% would be uninsured (all countries combined) for a cost of 3% of total SS expenses. The uninsured therefore costs on average twice as less in Luxembourg as the insured. On the other hand he pays as much as the insured for healtcare services but is, at least in France, most often less reimbursed.

There would be around 150,000 insured Fr (residing in France) in Luxembourg, including 12,000 in the canton of Villerupt (around 30,000 inhabitants). It can be deduced from these figures that the order of ideas is similar on the French part of the Alzette-Belval EGTC (approximately 12,000 insured persons for approximately 30,000 inhabitants).

Some unanswered questions remain: How many are affected by the recent improvement measure taken for children of divorced parents? How many are affected by the refusal of affiliation to the most expensive system in the event of a "mixed" couple? How many "mixed"

14 Cf article dated 18 /10/2022 **Fin du problème pour les parents frontaliers français** https://paperjam.lu/article/fin-probleme-parents-frontalie

15 IGSS notebooks nb 12 and nb 14 - Sept 2022 – see references in annex 3

retirees are affected by the refusal of attachment to the most expensive system?

Unfortunately, the CPAM 57 (see glossary) indicates that no statistics are available on the French side about the extent of the potentially concerned population. Nevertheless, they received 127 pre-trial or trial suits[16] from 2019 to 2022, which is undoubtedly a sign of utter dissatifaction.

As a consequence, only an indirect rough estimate is possible, based on the general rate of employed population out of the whole population, on the average rate of families where both parents work, the usual pourcentage of these families having children, and the ratio population employed in Luxemburg/population employed. It would lead to the following figures, nevertheless still to be confirmed: about 2,000 people [+/- 1,000] (main insured) + co-insured for the French part of the EGTC alone.

Although difficult to estimate, the situation described in the case might concern about 2000 thousand French residents from the EGTC Alzette-Belval , directly insured as workers or pensioners, or members of their family.

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16 article dated 18 10 2022, by Ioanna Schimizziloanna Schimizzi, confirmed on March 13 2023 by the CPAM.

III Description of possible solution(s):

Dismantling "the Berlin wall of French healthcare system".

All the solutions have to and have been considered during both the discussions, interviews, and during the desk phase. Would it be necessary to change or amend EU regulations or directives? Would it be a good idea to seize the opportunity of the recent changes in the French Constitutional law and the existence of a right to experimentation?

A first general impression given by this case study is that , as mentioned in 2019 by the ambassador Philippe VOIRY when he was a diplomatic advisor to the regional prefect for the Grand-Est, *"at the borders, 80% of the local questions depend on the National, State Administrations and on bilateral or multilateral State agreements in spite of all the efforts demonstrated by the territorial bodies".* A decision, or better several decisions, should hence be taken at the central level either spontaneously of after the results of potential court cases as was solved the situation leading to the adoption of the EU directive 2011/24.

A second general impression is that all the necessary initiatives aimed at improving the life of frontier citizens is very often condemned to slow down and even stop in the tangle of obstacles, unclear or contradictory interests of administrative apparatuses, corporative reluctances and even political or economic competition. Dr SCHOKMEL, from the CHEM, mentions a number of obstacles put on the road to crossborder healtcare by the French administration as *"The Berlin wall of French healthcare system".* This expression maybe utters the actual situation, although it is obvious from the interviews that a number of actors do their best in order to override the obstacles. But it is not less obvious that some groups are sometime looking for their own interests (in most cases, maintaining activity in France, either in a hospital or as a portfolio of insured persons in social funds, with indirect consequences on budget, staffing or revenue). The indirect interests of Luxemburg should be mentioned as well, despite they are by far less pregnant than the Franco-French obstacles in the present case.

The following four work tracks can be initiated separately , alternatively, or better in our view, in parallel, in order to improve the concrete daily life of frontier inhabitants and the Luxembourghish small region, the one of the Grand Region, and even the one of all or almost all the frontier workers and residents in France, Benelux and Germany.

1/ bilateral agreement(s) based on the full use of existing legal opportunities

As suggested or evidenced by several reports, either of the European Union or from AEBR B-solutions program[17], and despite the lack of reliable statistics, crossborder healtcare is mainly based on local and/or bilateral agreements:

„Limited evidence suggests that *bilateral agreements between neighbouring health authorities or hospitals in border areas also influence patient flows as do the existence of parallel procedures under the national legislation for planned healthcare abroad*. Where figures are available for these parallel schemes, patient mobility is usually much larger than under the Regulations and the Directive. There is no EU-wide data available on the specific role of local bilaterals in facilitating cross-border patient flow."[18]

The EU rules (mainly the regulation 883/2004 and the directive 2011/24) apply as a backstopping network and not as the main tool: "in addition, a number of parallel procedures exist to address the healthcare needs of people living in European border regions. In some Member States, these

17 2021 B-solutions Report reimbursement of cross-border healthcare costs
18 Cross-Border Patient Mobility in Selected EU Regions - Final Report - December 2021

account for much more significant cross-border patient flows than the Directive or Regulations" [19]

The general rules established by the regulation 883/2004 and the directive 2011/24 are far from being compulsory as usually some Administrations (on both sides of the border) tend to believe or at least pretend to believe and explain. This point is clearly stated by the article 16 of the regulation 883/2004:

"TITLE II DETERMINATION OF THE LEGISLATION APPLICABLE […/...: articles 11 to 15] Article 16: […/...] Two or more Member States, the competent authorities of these Member States or the bodies designated by these authorities may by common agreement provide for exceptions to Articles 11 to 15 in the interest of certain persons or categories of persons.[…/...]"

Therefore **a direct bilateral agreement**, should both States or their entitled Administrations wish to, **would put an end to the encountered difficulties** by creating exceptionnal rules for the concerned population.

An exception is allowed as well for pensioners, according to the second part of the article 16, either through a bilateral agreement or not:

"A person who receives a pension or pensions under the legislation of one or more Member States and who resides in another Member State may at his request be exempted from application of the legislation of the latter State provided that he is not subject to that legislation on account of pursuing an activity as an employed or self-employed person."

2/ better reimbursement by France based on the principles of equity and equality

Should a bilateral agreement be too long or too difficult to reach, the French Administration is fully able as well to support a better refunding or financial support to frontier workers or residents.

The directive 2011/24 provides patients with a minimum level of refunding :

"(29) […/...] Patients should enjoy a guarantee of assumption of the costs of that healthcare *at least* at the level as would be provided for the same healthcare, had it been provided in the Member State of affiliation. […/...]",

but Member States are fully entitled to propose better conditions as stated in the article 7.4:

"art 7.4 […/...]
Where the full cost of cross-border healthcare exceeds the level of costs that would have been assumed had the healthcare been provided in its territory *the Member State of affiliation may nevertheless decide to reimburse the full cost.*
The Member State of affiliation may decide to reimburse other related costs, such as accommodation and travel costs, or extra costs which persons with disabilities might incur due to one or more disabilities when receiving cross-border healthcare, in accordance with national legislation and on the condition that there be sufficient documentation setting out these costs."

As a consequence, it is clear that **the EU rules do not forbid France to consider frontier residents as patients having to be supported in a different way due to their specific situation.**
It is up to the Administration to accept it on the basis of existing rules or on the basis on new rules (circular, decree or law).

19 CBPM Report 2021

The circular dated 2010[20] should then be adapted for two reasons at least :
1) because it does not include the existence of the directive 2011/24, and the question of coordination between the regulation and the directive
2) in order to change the present habits for affiliation, either for the children of "mixed" couples or for the "mixed" or "poly" pensioners

3/ better use of existing legal opportunities by the interested persons with the support of the EGTC

The third track for an improvement lies in the action of insured persons themselves, with or without the support of the EGTC. Despite the fact that French procedural law does not foresee group actions in this kind of procedure, **the EGTC** - or the French intermunicipal collectivity included in it - would be entitled and could nevertheless, based on the interest of its inhabitants, **recruit one or several lawyers in order to facilitate and support individual procedures** linked with the raised questions. Such a support to procedure would help the central Administration of social security to be aware of the need to settle the question by other means than simple contempt or silence. Alternatively or in addition, the association of Franco-Luxembourguish frontier workers could supply a similar service to its membres.

As far as the question of "mixed" families is concerned, although the French courts have already been seized, and the question of separated or divorced couples is solved[21], it would be appropriate to go on with other court cases, mainly based of the **principle of equal treatmen**t either directly or through a PCQ (preliminary constitutionnality question). As mentioned in the ToRs (terms of reference) and confirmed by the director of the CPAM 57 Mrs ABALAIN, France is the sole member State where families have a right to decide on which parent will be attached the children, as Stated in the Social Security code (articles L160-1, 160-2, 161-1-3, R161-8). The present regulation (883/2004), as interpreted by the French and Luxembourguish Administrations seems to discriminate the French parents of a "mixed" family (family 2 in the glossary) as compared with a "simple" French family (family 1 or 3 in the glossary). The latter have in fact a real choice based on the articles L161-1-3 and R161-8, but the "mixed" family is refused this right if not divorced or separated, thus creating a disruption of equality.

As far as the question of "mixed" or "poly"pensioners is concerned, the existing legislation provides a basis for a solution, provided the Administrations of both States accept to apply it:

a) question of contribution levied without counterpart: on the Luxembourguish side, these pensioners could claim first of all for reimbursement of the contributions levied on their pension when they are not registered in Luxembourg, based on the article 30 "contributions by pensioners", prg 1:

"1. The institution of a Member State which is responsible under the legislation it applies for making deductions in respect of contributions for sickness, maternity and equivalent paternity benefits, may request and recover such deductions, calculated in accordance with the legislation it applies, only to the extent that the cost of the benefits under Articles 23 to 26 is to be borne by an institution of the said Member State."

20 circulaire DSS DACI 2010 363 du 4 octobre 2010

21 According to the CPAM 57, several court cases have been solved by courts of appeal or the Court of Cassation (supreme court in France). Nevertheless only on published one relevant case seems to have been published so far : Court of Appeal Nancy, 18 février 2020, n° 19_00341

b) question of registration in Luxemburg instead of France: polypensioners can claim for being registered on the Luxembourguish side, based on the article 16.2 of the regulation 883/2004, which states as follows:

"A person who receives a pension or pensions under the legislation of one or more Member States and who resides in another Member State may at his request be exempted from application of the legislation of the latter State provided that he is not subject to that legislation on account of pursuing an activity as an employed or self-employed person."

4/ crossborder healthcare mansion: a real step towards a patient centered organisation of healthcare in the crossborder region.

The fourth and last proposed working track goes beyond the sole implementation of affiliation rules and social security rules and coordination in general. It is a more general, inclusive way to answer the actual question lying behind the claims for crossborder registration and reimbursements: the claim for **a patient centered organisation of healthcare at the borders, regardless of national and European laws and rules**.

One of the most original ways to solve the question would be the building and organisation of a crossborder healthcare mansion. The idea stems from the meeting organised by the EGTC Alzette-Belval on January 30th in Esch-sur-Alzette (see the references) reflecting the strong needs for a franco-luxembourguish organisation of healthcare. It might be partly inspired by the Franco-Spanish hospital in Puigcerda (created on the basis of an EGTC) and either lead by the existing EGTC (maybe with a change or addition in the status) or by a new, specialised EGTC.

The idea would not go as far as in Puigcerda, because health infrastructures of high standards and with the full range of necessary medical offer already exist in the region. But it might help answering the actual needs and demands for first level healthcare and specialised consultations in the border region. As evidenced during this meeting, needs for generalists are felt or will be felt both in Luxemburg and in France in the very next years[22]. Considering the relative overload and growing pressure on the emergency service, the CHEM already wonders whether it would be relevant to organise a firt level consultation in or under the supervision of the hospital.

Exploring the feasibility of a crossborder healthcare mansion would require a specific mission for one or several experts, but the main purpose would be to improve attractivity of the border zone by grouping on the same spot services available for patients of the two sides of the border regardless of their nationality, status or affiliation, for instance:

- several generalists or specialists (dental care for example)
- permanent or periodic presence of specialists or specialised consulations
- medications and medicinal products from both States
- other side services (nurses, physiotherapists, etc.)
- potentially specialities existing on one side of the border and not or less developed on the other one, (functional medicine for example)

- the infrastructure could or should be located on the border demarcation line itself, and distributed along a central corridor or line, the same persons having the possibility of delivering or purchasing goods (medications) or services (consultations) under the French or

22 It was already mentioned that only 12 doctors out of 40 are under 60 in the EGTC, and that 50% ot Luxembourguish generalists might pretend to retire in the next 5 years as well.

the Luxembourguish legislation or reimbursement rules and tariffs according to the room, side of the corridor, or side of the table where they physically are at the moment of purchasing or delivering.

- one of the main difficulties being to attract new doctors in the region, they would be employees of the EGTC and hence would have to answer requests from patients under the financial conditions of the Administration from which they depend: a patient registered in France would pay 25 euros for a consultation, a patient registered in Luxemburg 55 euros, but the doctor would not feel any difference as he would receive a salary from the EGTC.
- Attractivity of the places for doctors would be ensured by a new and free infrastructure and attractivity of salaries based on a mix of Luxembourguish and French services.

In this way, even though the question of affiliation for “mixed” families or pensioners would not be solved yet, the considered group of patients would have at least access to normal healthcare all along daily situations: generalist, specialits consultation, medicine...

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IV A full list of all legal provisions relevant to the case with the correct citation both in original language and in English : refer to annex 3

V Other relevant aspects to this case if relevant: none

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VI References and Appendix/Appendices

list of attached documents:
1 Terms of reference (description of the obstacle)
2 list of interviews
3 legal references
4 other documents and references
5 glossary

annex 2: interviews and meetings

(Fr = France or French – Lux = Luxemburg or Luxembourguish)

ABALAIN Catherine directrice CPAM 57 (Moselle) Fr
BAJEUX Anne frontalière Fr
CHARPENTIER Sophie région Grand Est Fr
CODELLO Daniel élu ville d'Esch Luxembourg
CORDAO Daniel CHEM Luxembourg
CRETIN Carole Dr chef du service stratégie internationale ARS Grand Est Fr
FEUERSTEIN Sophie région Grand Est Fr
FREYSSELINARD Eric préfet directeur IHEMI Fr
FUCHS Victoria frontalière Fr
GUILLOTIN Véronique sénateur Fr, région Grand Est Fr et Grande Région [Fr Lux De Be]
HEISDORF-VALENCE Sabrina ARS Grand Est Fr
JOUIN Patrick ARS Grand Est adjoint service stratégie internationale ARS Grand Est Fr
MACKAIN Frédéric conseiller aux questions frontalières minint Fr
METZ René Dr, directeur CHEM Luxembourg
ORCIER Joan ARS-GRAND-EST DT 54 Fr
PIGEON Carine directrice service RI IGSS minsanté Luxembourgeois
PIOT Lucas assistant parlementaire Fr
SHOCKMEL Romain Dr CHEM Luxembourg
TORKI Anissa CHEM Luxembourg
VINTI Laurent CHEM Luxembourg
VOGIN Guillaume CHEM Luxembourg
VOIRY Philippe ambassadeur délégué aux questions frontalières MEAE Fr
WAGNER Frédérique chef du service international CPAM 57 (Moselle) Fr
YERAL Marine GECT Alzette-Belval Fr/Lux

annex 3: (main) legal references

(nota: EU = European Union Fr = France or French – Lux = Luxemburg or Luxembourguish)

2004 EU regulation (CE) no 883/2004 coordination of social security in Europe
"Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (Text with relevance for the EEA and for Switzerland)"
publication reference:
Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (Text with relevance for the EEA and for Switzerland)
OJ L 166, 30.4.2004, p. 1–123 (ES, DA, DE, EL, EN, FR, IT, NL, PT, FI, SV)
Special edition in Czech: Chapter 05 Volume 005 P. 72 - 116
Special edition in Estonian: Chapter 05 Volume 005 P. 72 - 116
Special edition in Latvian: Chapter 05 Volume 005 P. 72 - 116
Special edition in Lithuanian: Chapter 05 Volume 005 P. 72 - 116
Special edition in Hungarian Chapter 05 Volume 005 P. 72 - 116
Special edition in Maltese: Chapter 05 Volume 005 P. 72 - 116
Special edition in Polish: Chapter 05 Volume 005 P. 72 - 116
Special edition in Slovak: Chapter 05 Volume 005 P. 72 - 116
Special edition in Slovene: Chapter 05 Volume 005 P. 72 - 116
Special edition in Bulgarian: Chapter 05 Volume 007 P. 82 - 126
Special edition in Romanian: Chapter 05 Volume 007 P. 82 - 126
Special edition in Croatian: Chapter 05 Volume 003 P. 160 - 204

In force: This act has been changed. Current consolidated version: 31/07/2019

ELI: http://data.europa.eu/eli/reg/2004/883/oj

2010 Fr circulaire DSS DACI 2010 363 du 4 octobre 2010
"CIRCULAIRE N° DSS/DACI/2010/363 du 4 octobre 2010 relative à l'entrée en application des nouveaux règlements (CE) n°883/2004 et 987/2009 de coordination des systèmes de sécurité sociale : dispositions maladie et maternité [circulaire R.883 n°4]"
publication reference:
CIRCULAIRE INTERMINISTERIELLE N°DSS/DACI/2012/207 du 24 mai 2012 relative à l'entrée en vigueur du règlement (CE) n°883/2004 du Parlement Européen et du Conseil du 29 avril 2004 portant sur la coordination des systèmes de sécurité sociale et de son règlement d'application n°987/2009 au regard de la Suisse.

- Domaine(s) : Santé, solidarité
- Date de signature : 24/05/2012
- Date de mise en ligne : 07/06/2012
- Ministère(s) déposant(s) : AFS - Affaires sociales et santé
- Autre(s) Ministère(s) concerné(s) : EFI - Economie et finances

2002 Fr CSS (code of social security) art L161-15-3 affiliation of children
„code de la sécurité sociale Article L161-15-3 Version en vigueur depuis le 05 mars 2002 "
publication reference:
Création Loi n°2002-305 du 4 mars 2002 - art. 12 () JORF 5 mars 2002
2009 EU règlement (CE) no 987/2009 modalités d'application du règlement (CE) no 883/2004
"Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (Text with relevance for the EEA and for Switzerland)"
publication reference:
OJ L 284, 30.10.2009, p. 1–42 (BG, ES, CS, DA, DE, ET, EL, EN, FR, GA, IT, LV, LT, HU, MT, NL, PL, PT, RO, SK, SL, FI, SV)
Special edition in Croatian: Chapter 05 Volume 002 P. 171 - 212

In force: This act has been changed. Current consolidated version: 01/01/2018

ELI: http://data.europa.eu/eli/reg/2009/987/oj

2011 EU directive 2011/24 on crossborder healthcare „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"
publication reference:
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
OJ L 88, 4.4.2011, p. 45–65 (BG, ES, CS, DA, DE, ET, EL, EN, FR, IT, LV, LT, HU, MT, NL, PL, PT, RO, SK, SL, FI, SV)
Special edition in Croatian: Chapter 15 Volume 014 P. 165 - 185

In force: This act has been changed. Current consolidated version: 01/01/2014

ELI: http://data.europa.eu/eli/dir/2011/24/oj

2014 Fr transposition of the directive 2011/24 (1 of 3): „loi n° 2014-201 du 24 février 2014 portant diverses dispositions d'adaptation au droit de l'Union européenne dans le domaine de la santé"
publication reference:

LOI n° 2014-201 du 24 février 2014 portant diverses dispositions d'adaptation au droit de l'Union européenne dans le domaine de la santé (1)

Dernière mise à jour des données de ce texte : 26 février 2014

NOR : AFSX1315898L

JORF n°0047 du 25 février 2014

2014 07 01 Lux transposition of the directive 2011/24

„loi du 1er juillet 2014 portant 1) transposition de la directive 2011/24/UE du Parlement européen et du Conseil du 9 mars 2011 relative à l'application des droits des patients en matière de soins de santé transfrontaliers; […/...].“

publication reference:

Date(s)

- Date de publication : 04/07/2014
- Date de prise d'effet : 01/08/2014
- Date de promulgation : 01/07/2014

Référence

Loi du 1er juillet 2014 portant 1) transposition de la directive 2011/24/UE du Parlement européen et du Conseil du 9 mars 2011 relative à l'application des droits des patients en matière de soins de santé transfrontaliers; 2) modification du Code de la sécurité sociale; 3) modification de la loi modifiée du 29 avril 1983 concernant l'exercice des professions de médecin, de médecin-dentiste et de médecin-vétérinaire; 4) modification de la loi modifiée du 31 juillet 1991 déterminant les conditions d'autorisation d'exercer la profession de pharmacien; 5) modification de la loi modifiée du 26 mars 1992 sur l'exercice et la revalorisation de certaines professions de santé; 6) modification de la loi modifiée du 11 avril 1983 portant réglementation de la mise sur le marché et de la publicité des médicaments; 7) modification de la loi modifiée du 16 janvier 1990 relative aux dispositifs médicaux. - Mémorial A n° 115 de 2014, p. 1738

2015 Fr CSS (code of social security) art R161-8 affiliation of children

code de la sécurité sociale article R161-8

publication reference:

Version en vigueur depuis le 01 janvier 2016

Codifié par *Décret n° 85-1353 du 17 décembre 1985*

Modifié par *Décret n°2015-1865 du 30 décembre 2015 - art. 3*

Décret n° 2015-1865 du 30 décembre 2015 relatif aux bénéficiaires et aux prestations de la protection universelle maladie et à la cotisation forfaitaire prévue à l'article L. 381-8 du code de la sécurité sociale

Dernière mise à jour des données de ce texte : 01 janvier 2016

NOR : AFSS1528689D

JORF n°0303 du 31 décembre 2015

2020 Fr Court case: Court of Appeal Nancy, 18 février 2020, n° 19_00341

«CA Nancy, ch. soc.-1re sect, 18 févr. 2020, n° 19/003413

publication reference: not published.

Fr Social Security code (articles L160-1, 160-2, 161-1-3, R161-8)

code de la sécurité sociale article L160-1

code de la sécurité sociale article L160-2

code de la sécurité sociale article L160-1-3

code de la sécurité sociale article R161-8

publication reference: code de la sécurité sociale LEGIFRANCE *Dernière mise à jour des données de ce code : 19 mars 2023*

Lux Social Security code (CSS) (art 20: application of regulation 883/2004)

code de la sécurité sociale SECU >Assurance maladie>livre I > **Chapitre II. Objet de l'assurance . *Article 20***

publication reference: *Loi du 12 août 2022 modifiant : 1° le Code de la sécurité sociale ; 2° la loi modifiée du 15 décembre 1993 déterminant le cadre du personnel des administrations, des services et des juridictions de la sécurité sociale ; 3° la loi modifiée du 28 juillet 2000 ayant pour objet la coordination des régimes légaux de pension. (Mémorial A-2022-472 du 28.08.2022 ; art. 9)*

annex 4: other references

(selection)

- 2023 01 30 : EGTC report on bilateral meeting Fr Lux in Esch sur Alzette – CHEM
- 2022 09 Cahier statistique 12 lux soins transfrontaliers sept 2022
- 2022 10 18 „ Fin du problème pour les parents frontaliers français“ https://paperjam.lu/article/fin-probleme-parents-frontalie
- 2021 Cross-Border Patient Mobility in Selected EU Regions - Final Report - December 2021 (in short: CBPM Report 2021)
- 2021 European Commission & Association of European Border Regions B-solutions: Solving Border Obstacles. A Compendium 2020-2021
- 2021 B-solutions Report reimbursement of cross-border healthcare costs
- 2020 General Secretariat of the Benelux Union (2016): Patients without Borders- Cross-border Patient Flows in the Benelux
- 2020 European Commission & Association of European Border Regions (2020): b-solutions: Solving Border Obstacles A Compendium of 43 Cases.
- 2017 European Commission (2017): COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT Boosting growth and cohesion in EU border regions
- .2008 French Senate: report from senator RIES on a project directive (2008)

On Crossborder question in France:

2010 06 17 report from the Mps Blanc-Keller on crossborder question

2015 07 15 report from prefect Bertrand CADIOT on crossborder question

2021 11 25 report from general administrator Frederic MACKAIN on crossborder question

annex 5: Glossary

CHEM: centre hospitalier Emile Mayrisch Luxembourguish hospital based in Esch-sur-Alzette on the territory of the EGTCAlzette-Belval

CNS: Luxembourg National Health Fund (caisse nationale de santé)

CPAM: French administration in charge of social security affiliation and reimbursement (caisse primire d'assurance maladie). The CPAM 57 (Moselle) is responsible for all the files and cases linked with Luxembourg regardless of the place of residence in France. It does not include preliminary authorisation S2 forms, which is centralised in Vannes from the medical point of, view since March 2022.

EESSI (electronic exhange of social security information): IT system that helps social security institutions across the EU exchange information related to different branches like applicable legislation, sickness, occupational diseases and accidents at work, pensions, unemployment and family benefits more rapidly and securely, as required by the EU rules on social security coordination.

European Social Security Pass: project aimed at improving the portability of social security rights across borders through the digital verification of citizens' social security coverage and entitlements by competent actors and institutions.

European Health Insurance Card: A free card , issued by the national health insurance provider, that gives access to medically necessary, state-provided healthcare during a temporary stay in any of the 27 EU countries, Iceland, Liechtenstein, Norway and Switzerland or the United Kingdom under the same conditions and at the same cost (free in some countries) as people insured in that country. The benefits covered include, for example, benefits provided in conjunction with chronic or existing illnesses as well as in conjunction with pregnancy and childbirth.

FAMILY 1 or "simple" family: a family with children living ore residing in France where only one parent works and is affiliated to the CNS in Luxemburg.

FAMILY 2 or "mixed" family: a family with children living ore residing in France where one parent works and is affiliated to the CNS in Luxemburg, and the other parent works in France and is affiliated to the French CPAM ("caisse primaire d'assurance maladie").

FAMILY 3 or "double" family: a family with children living or residing in France where both parents works and are affiliated either in France (family 3 Fr) or Luxemburg (family 3 Lux)

form S1: form to be filled by residents affiliated to a Social security fund different from the one of the place of residence in order to receive usual healtcare (planned or unplanned) in their country of residence

form S2: form to be filled by persons wishing to receive planned healtcare from another social security fund than the one of their affiliation

form S3705: form to be filled by parents who want to choose the social security account on which the common children will be affiliated to the French Social security

frontier worker: according to the regulation 2004/883 on social security coordination, a frontier worker means any person pursuing an activity as an employed or self-employed

person in a Member State and who resides in another Member State to which he returns as a

rule daily or at least once a week;

"mixed" pensioner or a **"polypensioner"** is a pensioner receiving pensions from two or several pension funds, one of which being situated outside his country of residence.