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FINAL REPORT BY THE EXPERT

Advice case: Horse-riding fee

Advised entity: Maas-Swalm-Nette cross-border nature park

Experts contracted for the advice case:

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

I. Executive summary

The Nature Park Maas-Swalm-Nette is located on the Dutch-German border and is attractive for recreational horseback-riding. The German district “Kreis Viersen”, the “Routebureau Noord- en Midden-Limburg”, Limburg Marketing and the “Grenzpark Maas-Swalm-Nette” have launched a project to create a common bridleway network. These stakeholders are working to identify and remove all obstacles to cross-border horseback riding. They found that one of the obstacles to cross-border horseback riding is the legal requirement in North-Rhine Westphalia, Germany (NRW), that the horse needs a licence plate with a valid sticker that must be renewed annually when riding in the open countryside.²

The legal basis for the aforementioned obligation of a licence plate and sticker lies in Article 62 of the NRW Nature Conservation Act (“Landesnaturschutzgesetz NRW”). The fee that has to be paid for obtaining the licence plate and the sticker is also known as the “Reitabgabe” (riding fee). In Germany, each federal state regulates the collection of a riding fee differently. In some states, it is completely waived, in NRW the riding fee is levied exclusively by the district authorities.

The fee for the licence plate and sticker needs to be paid when the licence plate is issued or the sticker is renewed. According to article 17 of the Implementation Act of the NRW Nature Conservation Act, the fee amounts to 25 euros per licence plate and year, or 75 euros for riding stables.

The applicant is of the opinion that the obligation to obtain a fee-based licence plate and sticker prevents Dutch riders from riding their horses in Germany. The relevant legal question is whether article 62 is unlawfully restrictive under the European free-movement provisions.

We found that article 62 of the NRW Nature Conservation Act doesn’t violate the free movement or the internal market, because there is no unequal treatment or discrimination. It must be observed that everyone who wants to ride their horse in the open countryside in NRW needs to pay the fee. The treatment of German horse riders is not more favourable than that of riders of other Member States than Germany.

In this report we discuss three possible solutions to the obstacle. First, the most far-reaching, is to completely remove the obstacle by changing the legislation. The second solution is to maintain the current situation, but focusing on raising awareness by providing maximum information and also simplify procedures for foreign riders. The third solution focusses on the possibilities of borrowing a licence plate and facilitating this solution in the best possible way.

Although this first solution is possible, proposing a legislative amendment to the federal state government in NRW is not the path we would advise at this point due to the small chances of success and the time-consuming and lengthy procedures.

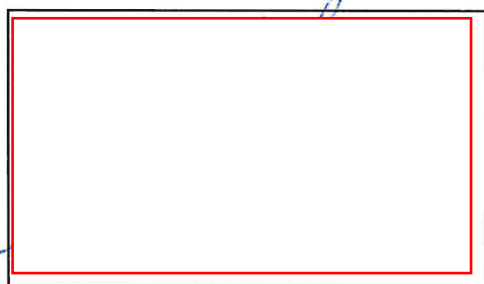
² Another obstacle is that a horse must be accompanied by a health certificate. This obstacle is addressed by us separately in our Expert report “*Animal health law exemptions between Netherlands and Germany*” dated 5th of April 2024.

The second solution is not about finding a solution that removes the obligation at all, but it is about how to deal with the legislation in order to prevent the horse riders from breaking the law while visiting the Grenzpark. Two topics are important: (1) the provision of information and (2) easy and quick procedures.

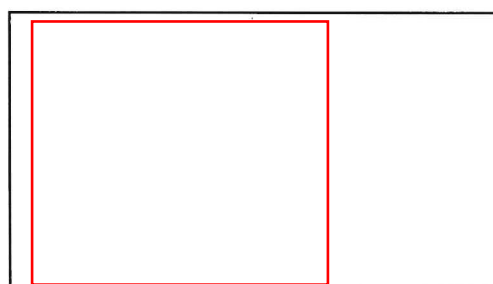
In the first place, it is important that people are made aware of the obligation to obtain a licence plate with a valid sticker before visiting the Grenzpark. This can be done with signs and information boards within the Grenzpark, so people become aware of their obligations before crossing the border. Besides that, information about the obligations should be available (in Dutch language) on the website of the Grenzpark and in visitor centers. We also recommend that horse riders will be informed through articles in newspapers or magazines.

Secondly, the stakeholders should discuss possibilities of process-optimization with the German authorities where the licence plate and sticker are issued in order to make the process of issuing the licence plate and sticker as easy and quick as possible.

Preferably in combination with the second solution, the third solution is about not only raising awareness about existing rules but also offering a way to deal with those rules, therefore in fact removing the obstacle. For this third solution we recommend making use of the possibilities that the law in NRW already provides. Based on the existing law, it is possible to borrow someone else's licence plate and sticker. This means that horse riders do not necessarily need to issue a licence plate with a sticker themselves before visiting the Grenzpark. The Grenzpark should explore the possibilities of offering horse riders that they can borrow a licence from someone else. This would for example be possible through a cooperation with the German "Kreise" or with a horse stable in or near the Grenzpark that purchases multiple licence plates with stickers that can be borrowed by visitors of the Grenzpark.



Anton H.M. Bouwmeister



Lotte D. Braakhuis

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

Description of the obstacle

The Maas-Swalm-Nette park is located on the border of the Dutch Province Limburg and the German state North Rhine-Westphalia (“**NRW**”) between the cities/villages of Susteren, Leudal, Venlo and Mönchengladbach. The park includes the German Naturpark Schwalm-Nette and the Dutch municipalities of Beesel, Leudal, Echt-Susteren, Maasgouw, Roerdalen, Roermond and Venlo. The German Naturpark Schwalm-Nette is located in three German districts: Kreis Kleve, Kreis Viersen and Kreis Heinsberg.

The Nature Park Maas-Swalm-Nette is attractive for recreational horseback-riding. The German district “Kreis Viersen”, the “Routebureau Noord- en Midden-Limburg”, Limburg Marketing and the “Grenspark Maas-Swalm-Nette” have launched a project to create a common bridleway network. These stakeholders are working to identify and remove all obstacles to cross-border horseback riding. They found that one of the obstacles to cross-border horseback riding is the legal requirement in NRW that the horse needs a licence plate with a valid sticker that must be renewed annually.

Indication of the legal/administrative provisions causing the obstacle

The legal basis for the aforementioned obligation lies in the NRW Nature Conservation Act (“Landesnaturenschutzgesetz NRW”).

According to Article 62 of the NRW Nature Conservation Act, riding in the open countryside and in the forest is only permitted if a valid licence plate is displayed on both sides of the horse.

§ 62 NRW Nature Conservation Act Labelling of horses, riding fee

- (1) Anyone riding in the open countryside or in the forest must carry a clearly visible, valid licence plate affixed to both sides of the horse.
- (2) Licence plates in accordance with paragraph 1 may only be issued against payment of a fee. The levy shall be earmarked for the creation and maintenance of bridleways and for compensation payments under Section 59(4); it shall be paid to the higher nature conservation authorities.
- (3) The Ministry responsible for nature conservation shall be authorised to regulate details of the labelling pursuant to subsection (1) and to determine the amount of the levy pursuant to subsection (2) by statutory order. The amount of the levy shall be calculated on the basis of the anticipated expenditure for the creation and maintenance of the bridleways and the anticipated compensation payments. Different regulations may be made for riding centres.

The licence plate consists of a yellow base plate measuring 8 x 8 cm and a sticker to be renewed annually in accordance with article 15 (1) of the Implementation Act of the NRW Nature Conservation Act. The plate contains the letters of the licence plate and a number to distinguish the administrative district. The sticker has to be issued annually in a different colour (2019: orange, 2020: blue, 2021: yellow, 22: brown, 2023: pink). The sticker contains the imprint “Reiterplakette” and the current year.

Costs

The fee for the licence plate and sticker (“Reitabgabe”) needs to be paid when the licence plate is issued or the sticker is renewed. According to article 17 of the Implementation Act of the NRW Nature Conservation Act, the fee amounts to 25 euros per licence plate and year, or 75 euros for riding stables.

§ 17 Implementation Act of the NRW Nature Conservation Act

Amount of the levy

The levy in accordance with § 62 paragraph 2 of the State Nature Conservation Act is 25 euros, for riding centres 75 euros, per licence plate and calendar year. Riding stables within the meaning of this provision are facilities with the purpose of keeping and hiring our horses for riding in the open countryside and in the forest.

Due to administrative fees and expenses, an initial application (riding licence plate + annual sticker) costs around 40 euros. The exact amount depends on the district where the licence plate is issued.

Application

The districts in Germany (“Kreise”) are responsible for issuing the licence plates as they are lower nature conservation authorities. The districts forward the revenue to the district government (“Bezirksregierung”) as the district government is the higher nature conservation authority.

Foreigners need to apply for the licence plate in one of the “Kreise” (districts) in NRW. It makes no difference which Kreis in NRW issues the licence plate and the sticker for foreigners, as the licence plate is valid throughout NRW.

The application process in all three aforementioned Kreise (Kreis Viersen, Kreis Kleve and Kreis Heinsberg) where the Maas-Swalm-Nette park is located, is completely digital. The payment for the licence plate and sticker is also made digitally. The licence plate and sticker are then sent by post. Enquiries with the district of Viersen revealed that this process usually takes around 2-3 days. This means that a person cannot spontaneously cross the border on a horseback. It has to be planned, at least 2-3 days in advance.

Aim of licence plate and fee

According to Article 62 (3) of the NRW Nature Conservation Act, the fee is earmarked for the creation and maintenance of bridleways. This also includes expenditure for the installation, maintenance and removal of traffic signs as well as compensation for damage to land caused by horse riding (Article 59 of the NRW Conservation Act). The collected fees are made available by the district government to the lower nature conservation authorities or other municipalities by means of a special order, reimbursement of expenses or grant notification. If new bridleways are created, grants can also be given directly to associations.

The licence plate also has another function: if necessary, the number can be used to identify the owner of the horse. The owner of the horse is (according to article 15 (2) of the Implementation Act of the NRW Nature Conservation Act) obligated to record who has ridden his horse and must present those records to the competent authorities on request.

Validity of Article 62 NRW Nature Conservation Act

The applicant argues that the necessity to pay a fee prevents Dutch riders from riding their horses in Germany. The question is whether article 62 is unlawfully restrictive under the European free-movement provisions.

The first paragraph of article 18 TFEU (“Treaty of the Functioning of the European Union”) provides that, within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on the grounds of nationality is prohibited. The principle of non-discrimination on the grounds of nationality has been given effect, in particular, in the area of the free movement of goods, in article 34 TFEU, read together with article 36 TFEU, in the area of free movement of workers, in article 45 TFEU and, in the area of freedom to provide services, in articles 56 to 62 TFEU. The Court of Justice interprets the prohibition more broadly than a mere non-discrimination prohibition based on nationality, so that any direct or indirect obstacle (even without an explicit link to nationality) is prohibited.

A fee for riders only constitutes a violation of free movement or the internal market if such a system involves (indirect) discrimination or (indirectly) hinders free movement or the international market that cannot be justified by a “compelling” reason.

It must be observed that everyone who wants to ride their horse on public roads in NRW needs to pay the fee, regardless of their Member State of origin. The treatment of German horse riders is not more favourable than that of riders which are from other Member States than Germany. Since there is no difference in treatment, there is no unequal treatment or discrimination.³ In fact, if Dutch riders would be exempted from the obligation to pay the fee, they would be unlawfully favoured over German and other riders, which would in fact constitute unequal treatment.⁴

We therefore conclude that article 62 of the NRW Nature Conservation Act does not violate the free movement or the internal market.

III. Description of possible solution(s)

Below, we will discuss three possible solutions: first, the most far-reaching, but also least feasible, which is to completely remove the obstacle by changing the legislation. Secondly, maintaining the current situation, but focusing on providing maximum information and also easy and quick procedures for foreign riders. Thirdly, the solution

³ See the established case law of the European Court of Justice, for example the judgment in C-519/17 (Austria vs. Germany).

⁴ For the sake of completeness, it should be noted that European law does not prevent Member States from treating nationals less favourably than nationals of all other Member States (see for example the judgment by the European Court of Justice in C-35 and 36/82 (Morson)). Therefore, it would only constitute unequal treatment if, of all European nationals, only Dutch riders would be favoured over German riders.

in which the possibilities of borrowing a licence plate are facilitated in the best possible way.

Solution 1: Changing NRW Nature Conservation Act

In order to remove the obligation to have a licence plate and a sticker altogether, the legislation in NRW would have to be changed. However, this is not the path we would recommend. After all, the legislation does not conflict with other (higher) legislation so the negotiating position for the Grenzpark would not be very promising. Besides that, if the legislation would be changed, this is a time-consuming and lengthy procedure that would not provide a short-term solution.

Solution 2: Optimising current situation: awareness of the obligation, provide ample information and simplify procedures

In Germany many, though not all, federal states regulate the collection of a riding fee. NRW is one of the federal states in which state legislation constitutes the obligation to pay a riding fee and obtain a licence plate and sticker. The riding fee is levied exclusively by the district authorities in NRW. On German websites there is ample information about the riding fee. Because German horse riders are familiar with the possibility of a riding fee in case they are riding in the countryside and they can inform themselves on this topic on the internet, the chances that German riders will either be aware of the obligation to pay a fee or inform themselves before riding in the Grenzpark are high.

This might be different for Dutch horse riders. Riding fees for the use of bridleways are not common in the Netherlands. However, there are places in the Netherlands, where paying a fee is mandatory if one wants to ride their horse there. Since 2022, riders need a riding vignette on (for example) the horse trails of the "Utrechtse Heuvelrug". By paying for the vignette, riders contribute to the routes and the protection of nature around them.

From this example it becomes clear that letting horse riders pay for using the bridleways so that they can be renewed and protected is something that also happens in the Netherlands. Therefore, Dutch riders could know that the obligation to pay a fee can exist, as it exists in some places in the Netherlands as well. Even so, the necessity of needing a licence plate will often be unknown to Dutch horse riders.

Provide information

This being the case, the first important aspect of this second solution is to inform horse riders about their obligations and explain exactly how they can meet them. The Grenzpark should see it as her responsibility to prevent Dutch horse riders from breaking the law. There should be information boards and signs in the Grenzpark, near the border, for example with the text "*Attention horse riders! German licence plate required*". While this is not a solution to the problem that the horse riders need a licence plate and a sticker in the first place, it is still important to prevent people from unknowingly breaking the law.

In that context, Dutch riders should also be informed about whether there is a possibility of using a bridleway that is only on the Dutch side of the border so that they do not need to cross the border and enter Germany. This bridleway should then be marked, possibly with the text "*Dutch bridleway – safe without German licence plate*". Information about the obligation to obtain a licence plate and sticker should also be available on the website of the Grenzpark in the Dutch language, marked: "*Important information for Dutch horse riders*".

Apart from this, flyers with information about the obligations for horse riders (in both German and Dutch language) should be available in the various visitor centers ("Besucherzentren") in the Grenzpark.

Finally, to increase awareness of the rules in force, we recommend that the state of NRW and/or the Grenzpark informs horse riders through articles in local newspapers or (Dutch) magazines for horse riders.

Easy and quick procedures

Besides this, the process of issuing the licence plate and sticker should be as easy and quick as possible. In that context, we would advise the applicant and other stakeholders to consult with the Kreise to find out what possibilities for optimization are available.

Would it, for example, be possible to issue the application with a QR-code from within the park itself? Is there a possibility to agree on certain days when an employee of a specific Kreis is present in the park and can assist with issuing the licence plate and sticker on-site? Is it possible to create the possibility of a temporary e-ticket as an alternative of the common licence plate and sticker? Those are questions that the stakeholders can discuss with the Kreise in order to make the procedures as easy and quick as possible.

Solution 3: Facilitate borrowing the licence plate (through cooperation with horse-stable in the border region or through cooperation with Kreise)

In order to completely avoid riders having to apply for the licence plate and sticker, a solution could be to offer the possibility to foreign riders to "borrow" someone else's licence plate. After all, the licence plate and sticker are not linked to any particular horse. They are assigned to the keeper/owner of the horse. Therefore, borrowing someone else's licence plate is legally possible.

To ensure that borrowing someone else's licence plate would indeed be allowed, we contacted the Kreis Viersen. An employee of the Kreis Viersen explained to us that if a person owns several horses, the person does not need several licence plates and stickers, unless the person wants to ride all horses on public roads at the same time. It is possible to use one licence plate and one sticker for different horses and, according to the employee, for owners of a licence plate it is allowed to lend it to someone else. This means, within the current legislation, it is allowed to borrow someone's licence plate.

However, there is an important aspect to take into account. The employee of the Kreis Viersen pointed out that if the licence plate with sticker is borrowed to someone, the keeper/owner of the licence plate is and will remain still responsible. If something happens (for example if the horse damages an object) the owner/keeper can be identified by the licence plate and will be held responsible. The person to whom the licence plate is registered will therefore need to remember who used the licence plate and during which period, and will need to make agreements about the liability with the horse rider(s) to whom he lent his licence plate.

Cooperation with horse-stable in border region

If there are horse-stables (“Reiterhöfe”) in the border region, maybe even within the Grenzpark, the Grenzpark could open up the possibility of “renting” a horse with a licence plate and sticker for one or more days. In addition to this, the Grenzpark could also offer that only a licence plate with a sticker is borrowed, so that the visitors can ride their own horses. Of course, the horse-stable and the riders should make agreements about the liability, in case anything happens while the licence plate (and maybe also a horse) is borrowed.

Cooperation with Kreise

Within our research, we noticed that some Kreise, for example Kreis Warendorf, already offer that a licence plate can be borrowed. According to the website of the Kreis Warendorf, people who are on a holiday can pay 5 euros per horse per week in order to borrow a licence plate.⁵ Inquiries with the Kreis Warendorf revealed that there is a “tourism working group” (“touristische Arbeitsgemeinschaft”) within the Kreis, that issues 5 licence plates every year that can be borrowed. According to the employee, the option of borrowing the licence plate is used frequently.

That being so, besides the cooperation with horse stables, we see possibilities for cooperation between the Kreise (maybe even Kreis Viersen, Kreis Kleve and Kreis Heinsberg) and the Grenzpark. Within this cooperation, the Grenzpark could offer visitors that they can borrow a licence plate from one of the Kreise (or a specific working group within the Kreis) for a day or for a few days. To make the procedure of borrowing the licence plate quick and easy, maybe the Kreis could even set up a certain spot in the Grenzpark, where licence plates with stickers can be borrowed..

⁵ <https://serviceportal.kreis-warendorf.de/detail/-/vr-bis-detail/dienstleistung/401/show>

IV. A full list of all legal provisions relevant to the case with the correct citation⁶ both in original language and in English

- NRW Nature Conservation Act (dates from 15th August 1994 (GV. NRW (Official Journal of NRW), p. 710)).

In German: Gesetz zum Schutz der Natur in Nordrhein-Westfalen (stammt vom 15. August 1994 (GV. NRW, S. 710)).

(also called: Landesnaturschutzgesetz – LNatSchG NRW)

Here used: version of the 16th of March 2024, Düsseldorf.

- Implementation Act of the NRW Nature Conservation Act (dates from 22nd of October 1868, GV. NW. 1986 (Official Journal of NRW) p. 683)).

Verordnung zur Durchführung des Landesnaturschutzgesetzes (stammt vom 22. Oktober 1986 (GV. NW. 1986 S. 683)).

(also called: DVO – LNatSchG)

Here used: version of the 19th of February 2022, Düsseldorf.

- Treaty on the Functioning of the European Union (“TFEU”) 13th of December 2007, Lisbon.

⁶ Please quote the place and date of publication of the legal texts. For reference, see the [b-solutions: Solving Border Obstacles. A Compendium 2020-2021, p 160 – 175](#)