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## TEMPLATE: FINAL REPORT BY THE EXPERT

**Advice case title:**

**“Inter-communal cooperation Twence municipalities and Münster”.**

**Full official name of the advised entity:**

**Gemeente Enschede (Municipality of Enschede)**

**Name of the expert contracted for the advice case:**

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### **Abbreviations**

AWM	Abfallwirtschaftsbetriebe Münster
B.V.	Besloten Vennootschap
NRW	Land North Rhine-Westphalia
LAP 3	Landelijk afvalbeheerplan 3
LKrWG	Landeskreislaufwirtschaftsgesetz
EU	European Union
EC	European Community

## 1. Executive summary

For many years, the German town Münster (in the following Stadt Münster) and the Dutch town Enschede (and 14 other Dutch municipalities) in the German-Dutch border region established a structural cooperation in the field of cross-border waste management. This goes far beyond incidental shipping of waste to facilities across the border, but is based on an official public-law agreement under the Dutch-German Anholt Treaty of December 2018. Its objective is to “ensure good capacity utilisation of the facilities on both sides of the border and thus efficient recycling and waste recovery.”<sup>1</sup> So, the structural cross-border cooperation is very much in the spirit of the EU Waste Directive 2008/98/EC. In article 16 it says that Member States shall take appropriate measures, “*in cooperation with other Member States where this is necessary or advisable, to establish an integrated and adequate network of waste disposal installations and of installations for the recovery of mixed municipal waste collected from private households*”. Accordingly, the German and Dutch municipal partners aim at establishing an integrated cross-border network of waste disposal installations. As a next step, the Stadt Münster has the intention to become a shareholder of the Dutch municipal company Twence B.V. to further strengthen the economic integration. However, one essential requirement for the integrated cross-border waste disposal is certainty and reliability that waste from Münster can be transported across the border to the near-by facility of the municipality owned Twence B.V..

The core of this border obstacle is that currently, there is no certainty and reliability with respect to waste transports from Münster across the border. The uncertainty is jeopardizing the further development of cross-border waste cooperation and the establishment of an even stronger cross-border network.

The reason for the uncertainty: The Dutch government is currently of the opinion that residual waste from the Münster has to be seen as any waste from abroad that is transported to and treated in the Netherlands. Hence, it also falls under the Dutch rule of the so-called “import plafond afval” (import cap on waste), meaning that the import of waste is limited to a defined amount. The import cap is part of the Dutch legislation laid down in the current National Waste management plan 3 (Landelijk afvalbeheerplan 3). If the cap is reached, the Dutch government can refuse the notification of waste import in accordance with article 16 of the EU Waste Directive 2008/98/EC. This is not only seen by the municipal partners as a problem for the economic sustainability of their cooperation, but also as a legal problem for the German partner, the Stadt Münster.

The „Circular economy law“ of the Land North Rhine-Westphalia (Landeskreislaufwirtschaftsgesetz LKrWG) stipulates that municipal waste management plans have to show evidence of a guarantee that the waste treatment is secured for a minimum period of 10 years. With the possibility of a potential interruption of the waste treatment due to the consequences of an import cap on the Dutch side, the Stadt Münster is concerned that in the future, it cannot fulfil its legal obligation of a 10 year guarantee. In addition, the uncertainty is also an obstacle for Münster to become a shareholder in the Dutch Twence B.V. and further strengthen the cross-border integration of waste management capacities.

A first conclusion with respect to the border obstacle is that the combination of two legal requirements from Dutch and German legislation represent an obstacle to the establishment of an integrated cross-border waste disposal cooperation: on the Dutch side, this refers to the potential rejection of the notification of waste from Münster as a consequence of the “import cap”. As a consequence, there is uncertainty for Münster about the reliability of the cross-border cooperation and arrangements. More important, this creates a legal problem with respect to the provision of NRW legislation to guarantee a stable waste disposal arrangement for a period of 10 years.

Even if today a permanent stop of waste transports from Münster to the facility in Hengelo is not likely, already the possibility seems to be not in line with the spirit and the idea of reliable and sustainable municipal cross-border cooperation. Especially if, as in this case, the cooperation is explicitly laid down in a Dutch-German public-law agreement. In this respect, the provision of the Land NRW that stipulates a 10 year guarantee for waste disposal arrangements, is not regarded as an obstacle to cross-border cooperation. It is obvious, that municipalities on the German side have to present evidence that their waste disposal is based on solid and long-term contractual arrangements no matter whether their waste treatment arrangements are part of an integrated cross-border network. That this obligation also refers to cross-border arrangements does not present a special obstacle. However, the current understanding of the Dutch government does not fully reflect the difference between transnational import

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<sup>1</sup> See official description of the homepage of the AWM (Abfallwirtschaftsbetriebe Münster), <https://awm.stadt-muenster.de/gemeinsam-nachhaltig/netzwerk-kooperationen/twence>.

of waste (often long distances), and the regional cross-border transport of waste with short distances across the border. The second is the result of a structural and sustainable cooperation of municipal partners, even laid down in a specific public-law arrangement. In this case, the cross-border transport is fully in line with the aims of European and National objectives, such as the proximity principle and the establishment of integrated and adequate cross-border networks of waste disposal installations and of installations for the recovery.

### **A possible solution to the border obstacle**

The analysis of the border obstacles shows that there is a window of opportunity to solve it, if there is the necessary political will to support cross-border initiatives as in the described case. At the moment, the Dutch government revises the National Waste Management Plan 3 that will become the new “Circular Materials Plan”. According to the Ministry of Infrastructure and Water Management, the new plan will enter into force in 2025.<sup>2</sup> In the spirit of the circular economy and the proximity principle, the Dutch government could explicitly formulate the objective of establishing sustainable cross-border networks in border regions in the field of waste treatment. In the first place, this could strengthen the political understanding, that the cross-border transport of waste as part of a structural cooperation of municipalities in a border region is very different from the international shipment of waste. In order to provide the necessary reliability of cross-border arrangements, the volume of waste that is transported to Dutch treatment facilities as part of a structural regional cross-border cooperation of municipalities should be excluded from the calculation for the Dutch “import cap”. And consequently, notifications for cross-border waste transport as part of a structural municipal cooperation agreement should be not rejected on the basis of such an import cap.<sup>3</sup>

In order to have a clear definition, what could be defined as a ‘structural municipal cooperation agreement’ the Dutch government could stipulate that the cross-border cooperation is officially based on a public-law agreement under the Anholt Treaty as in the case of the cooperation of Münster and the Dutch municipalities. This would also stimulate similar cross-border agreements between municipalities in the near future.<sup>4</sup> By providing a different treatment of waste in the context of cross-border agreements, the Dutch Government would be acting in line with the spirit of Article 2(2) of the Anholt Treaty.

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<sup>2</sup> See: [https://circulairmaterialenplan.nl/#PagCls\\_2661772](https://circulairmaterialenplan.nl/#PagCls_2661772).

<sup>3</sup> This was also regarded as the most practical solution to the problem described in a previous legal advice produced for the partner municipalities, namely explicitly exempting the relevant form of cooperation in a border area from the import ceiling instrument. In addition, it was also discussed whether the special geographical border region could be exempted. However, this seems to be not practical, since it could limit further cross-border cooperation initiatives that do not fall under the geographical definition. See: Werkgroep Münster, Situatieanalyse samenwerking Münster-Twence, 22 mei 2023, not published internal document.

<sup>4</sup> The Stadt Münster is not the only German partner of Twence B.V.. There is also a more recent contract between Twence and the Stadt and Landkreis Osnabrück that started at the beginning of 2023.

## **2. Description of the obstacle with indication of the legal/administrative provisions causing the obstacle**

### **The background**

The cross-border obstacle refers in the first place to the situation of the AWM (Abfallwirtschaftsbetriebe Münster<sup>5</sup>), the Waste Management public-law company of the Stadt Münster and its Dutch partner Twence B.V, a public-law company of 15 Dutch municipalities. Münster and the Dutch municipalities cooperate across the border in the field of waste disposal and waste treatment. In a broader perspective, it refers to the future legal framework of cross-border cooperation of municipalities at the Dutch-German border in the waste sector and future activities under the framework of a circular economy. The crucial question is whether obstacles due to national rules that are in the first place designed for transnational waste import, do harm the short distance cooperation of municipalities across the border that are very much in line with the vicinity principle of EU legislation, the objective of cross-border cohesion and other European and national economic and environmental objectives.

The Stadt Münster in Germany (Land North Rhine-Westphalia) and Dutch municipalities on the Dutch side (Provinces Overijssel and Gelderland) are cooperating across the border to use in a mutual way their waste treatment facilities. The municipality of Enschede and 14 other Dutch municipalities are shareholders of the public waste treatment company Twence B.V.. On the other side of the border, the German Stadt Münster operates with its company AWM own waste treatment facilities. As part of the partnership between the German and Dutch municipalities, sorting waste from AWM residual waste treatment plant from Münster is incinerated in a facility of Twence in Hengelo (NL) and, conversely, biowaste from the Dutch municipalities is turned into biogas and compost in the facility of the Stadt Münster.<sup>6</sup> The distance between the facilities is around 75 kilometres.

The problem is that the Stadt Münster has to be certain that the transport and treatment across the border is reliable and sustainable for a longer period of time. This is not only motivated by economic necessities, but in addition it is a legal provision of the waste legislation of the Land North Rhine-Westphalia. In the ‘Circular economy law’ of the Land North Rhine-Westphalia (Landeskreislaufwirtschaftsgesetz LKrWG), article 6 describes the requirements for municipal Waste Management Plans (Abfallwirtschaftspläne). Under article 6.4, the law stipulates that municipal waste management plans have to show evidence of a guarantee that the waste treatment is secured for a minimum period of 10 years.<sup>7</sup> The last waste management plan of the Stadt Münster was adopted in 2023. On page 50 of the document, the requirement of certainty of waste treatment (Entsorgungssicherheit) is underlined by referring to the cooperation with the incineration plant of Twence B.V., the company of the Dutch municipal partners. The cooperation is described as “permanent” (unbefristet) and the treatment capacities for the Stadt Münster are described as “secured”.<sup>8</sup>

However, there is a concern of the German partners due to Dutch rules with respect to the import of waste. This refers to a provision of the Dutch National Waste management plan 3 (Landelijk afvalbeheerplan 3). In Chapter B, article 10.5, the plan describes the reason for introducing the instrument “import cap” (importplafond): *“At the moment Dutch combustible waste is displaced from Dutch incinerators as a result of the transfer of foreign combustible waste to the Netherlands and therefore more Dutch combustible waste has to be landfilled, there is an undesirable consequence.”*<sup>9</sup> Hence, the Dutch government defines an import cap (the maximum of imported

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<sup>5</sup> The AWM is an “Eigenbetrieb” (own company of the Stadt Münster) based on the statutes (Satzung) laid down in the „Betriebssatzung der Stadt Münster für die Abfallwirtschaftsbetriebe Münster, 70.03“. The municipal council decides on the policy of the AWM, the mayor of Münster (Oberbürgermeister/in) has to right to give direct instruction to the AWM management. See: <https://awm.stadt-muenster.de>.

<sup>6</sup> See description on the homepage of the Stadt Münster/AWM, <https://awm.stadt-muenster.de>.

<sup>7</sup> See: Kreislaufwirtschaftsgesetz für das Land Nordrhein-Westfalen (Landeskreislaufwirtschaftsgesetz - LKrWG), 21 June 1988, revised on 21 June 2023. [https://www.lexsoft.de/cgi-bin/lexsoft/justizportal\\_nrw.cgi?t=171706812354106571&sessionID=8018210111309124903&chosenIndex=Dumy\\_nv\\_68&templateID=document&source=context&source=context&highlighting=off&xid=167077.11](https://www.lexsoft.de/cgi-bin/lexsoft/justizportal_nrw.cgi?t=171706812354106571&sessionID=8018210111309124903&chosenIndex=Dumy_nv_68&templateID=document&source=context&source=context&highlighting=off&xid=167077.11).

<sup>8</sup> See: Stadt Münster, Nachhaltiges Abfallwirtschaftskonzept der Stadt Münster, 2023. <https://awm.stadt-muenster.de/ueber-uns/abfallwirtschaftskonzept>.

<sup>9</sup> Own translation of the original Dutch text.

waste) and accordingly can refuse the notification of foreign waste and its incineration in Dutch waste incineration plants. The national waste management plan defines the specific situation, when this import stop is applicable. In 2020, the competent Ministry of Infrastructure and Water Management described in a letter to an information request the functioning of the “import plafond” as follows: the import cap “will only be an issue when cumulatively 1) more than 263 kilotonnes of foreign waste per 6 months is imported for the purpose of incineration, and 2) Dutch combustible waste is landfilled. Without landfilling of combustible waste, there is no displacement within the meaning of the LAP.”<sup>10</sup> Meaning that the Ministry is describing the hurdles as very high for the actual introduction of an import stop.

### **Legal background of the import cap**

The import cap refers to EU legislation, namely to the possibility provided in Art 16(1) of Directive 2008/98/EC on waste (consolidated version of 2024). In article 16(1) it says that “*Member States may, in order to protect their network, limit incoming shipments of waste destined to incinerators that are classified as recovery, where it has been established that such shipments would result in national waste having to be disposed of or waste having to be treated in a way that is not consistent with their waste management plans.*”<sup>11</sup>

In the Dutch case, this means that a displacement of Dutch combustible waste from an incinerator to a landfill could be grounds for restricting imports. This possibility was introduced by a ministerial decision in 2007 in a previous waste plan. The national waste plan is not a law adopted by the Dutch Parliament, but it is the government that can adopt the plan as a decision (besluit) based on artikel 10.3 of the Dutch Environmental Law (Wet milieubeheer).<sup>12</sup>

As shown above, the Dutch Ministry of Infrastructure and Water Management is of the opinion that the probability of the rejection of waste transport from Münster to the Twence facility is rather low. Nevertheless, the German and Dutch municipal partners are concerned. This goes back to developments around the application of a national Dutch import cap for foreign waste under the Waste Framework Directive announced by then-State Secretary for Infrastructure & Water Management on 9 August 2019. At the time, Stientje van Veldhoven decided to impose a temporary import ceiling on the incineration of foreign waste. The import ceiling meant that no new contracts could be concluded to burn foreign waste in the Netherlands. With this, the central government wanted to contribute to a solution to the waste problem caused by the closure of incineration capacities of the city of Amsterdam.<sup>13</sup> From the perspective of the cross-border municipal partners, this was seen as a threat to the extension of the required notification for waste shipments from Germany to the Netherlands after 2019.<sup>14</sup> Finally, the import cap did not distort the transports from Münster since notifications after 2019 were granted, however the announcement of a possible cap and the uncertainty was not beneficial for the discussions on both sides of the border. At the time, the partners discussed the question whether the municipality of Münster could become an official shareholder of Twence B.V.. According to the partner municipalities, because of the developments after 2019 that hampered cross-border waste shipments (inter alia consequences of the corona crisis), the further deepening of cooperation was delayed and the municipal partners were searching for clarification with respect to the obstacles of a sustainable cooperation. Between 2019 and 2021, there were written exchanges and personal contacts between the Dutch municipalities and the competent Ministry on the question of derogations with respect to the import cap. According to sources from Twence B.V. and the municipality of Enschede, there were at the time signals from the ministry to discuss grounds for exceptions. However after 2021, no more developments were communicated from the side of the ministry concerning the matter. Nevertheless today, the Stadt Münster still formulates the intention to join Twence B.V. as an official shareholder. According to sources from the AWM, the

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<sup>10</sup> Letter from the Ministry of Infrastructure and Water Management (Infrastructuur en Waterstaat) of 26 June 2020, related to a Wob-request (law on public management) with respect to the import ban (inzake importplafond) (no specific document number). <https://open.overheid.nl/documenten/ronl-3b70ac6f-8772-42a0-b88e-48f1a31e492f/pdf>.

<sup>11</sup> See: Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02008L0098-20240218>.

<sup>12</sup> It says in Article 10.3: “Our Minister shall adopt a waste management plan at least once every six years.” (own translation. The “Wet Milieubeheer (Environmental Management Act) regulates a large number of different aspects and is therefore considered a framework law. The Act lays down the legal instruments available to protect the environment and the principles governing them. The latest consolidated version from 30. 03. 2024 can be found here: <https://wetten.overheid.nl/BWBR0003245/2024-03-30>.

<sup>13</sup> See press release Dutch government/Rijksoverheid, August 20219, <https://www.rijksoverheid.nl/actueel/nieuws/2019/08/07/importplafond-voor-buitenlands-afval>.

<sup>14</sup> This is mentioned in an internal document of the partners from the German and Dutch municipalities: Situatianalyse. Samenwerking Münster-Twence, May 2023, not published.

process could be finalized during the year 2024. Still, one important requirement for becoming a shareholder was that there is more clarity about the import cap. The crucial question remains: is it relevant in the framework of structural and sustainable cooperation in border region.



## **Revision of the National Waste Management Plan: opportunity to safeguard structural cross-border networks**

As already mentioned, the import cap has its legal basis in the National Waste Management Plan 3. At the moment there is a revision going on and the National Waste Management Plan will become a new “Circular Materials Plan” by 31 December 2024. This can be seen as a window of opportunity to convince the ministry to strengthen cross-border cooperation as part of the revision. The municipal partners see the necessity to restart the dialogue with the ministry and use the opportunities for the input to ensure the existing cooperation and support the idea that Münster could become a shareholder of Twence B.V.. The main argument of the municipal partners is that the establishment of a structural and sustainable cross-border network in the field of waste treatment, is very much in line with national and EU objectives, in particular it fulfills the requirement of the vicinity principle. In this sense, structural cross-border cooperation also corresponds to the EU Waste Directive 2008/98/EC. In article 16, it says that Member States shall take appropriate measures, “in cooperation with other Member States where this is necessary or advisable, to establish an integrated and adequate network of waste disposal installations and of installations for the recovery of mixed municipal waste collected from private households”.<sup>15</sup> Hence, cross-border transport of waste in the framework of this type of structural cooperation should be treated differently in comparison to transnational import of waste without a clear sustainable cooperation structure and public-law background. In particular, it is the public-law framework that distinguishes the transport of waste as part of the cooperation of municipalities from other cross-border transports.

### **The Cooperation with the German Stadt Münster on the basis of the Anholt Treaty**

The basis for today’s municipal cross-border cooperation is a public-law agreement between the Stadt Münster and the Dutch municipalities in the Twente region. This cross-border cooperation agreement<sup>16</sup> is based on the Dutch-German Anholt Treaty.<sup>17</sup> The aim of this agreement is according to the preamble to ensure cost-effective, high-quality (also with regard to environmental objectives), comprehensive and cross-border disposal, to guarantee long-term disposal security and fee stability in the areas of the participating public waste management organisations, and “in particular to ensure the energy recovery of the pre-sorted municipal waste generated and transferred from private households both in the area of the City of Münster and in the areas of the Dutch cooperation partners”.<sup>18</sup>

According to the description of the German Waste Company (AWM) of the Stadt Münster another purpose is to “ensures good capacity utilisation of the facilities on both sides of the border and thus efficient recycling and waste recovery”.<sup>19</sup> The AWM also emphasises the environmental positive effects as the utilisation of waste as a source for generating energy, thus conserving fossil resources and making an important contribution to climate protection. In addition, it is mentioned that the cooperation would also strengthen the cohesion across the border. It is a mutual arrangement, since material is also transported from the Netherlands to Germany. Some of the biowaste from the Netherlands is processed into biogas and compost in Münster’s recycling plants. In this respect, the intention of the Stadt Münster to become a shareholder of Twence B.V. is an additional proof that the cooperation is very much in line with the spirit of the EU Waste Directive Article 16, namely the idea to establish an integrated and adequate cross-border network. This also means that legal certainty is a key element of the cooperation. As shown above, the Dutch import cap does create uncertainty with respect to the long term sustainability of cross-border waste transports.

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<sup>15</sup> See: Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02008L0098-20240218>.

<sup>16</sup> In Dutch “publiekrechtelijke overeenkomst” and in German “öffentlich-rechtliche Vereinbarung”.

<sup>17</sup> See the Dutch version: Overeenkomst tussen het Koninkrijk der Nederlanden, de Bondsrepubliek Duitsland, het Land Nedersaksen en het Land Noordrijn-Westfalen inzake grensoverschrijdende samenwerking tussen territoriale gemeenschappen of autoriteiten, Isselburg - Anholt, 23 May 1991.

<https://wetten.overheid.nl/BWBV0002367/1993-01-01>.

<sup>18</sup> Ibid, preamble under letter (e).

<sup>19</sup> See official description the homepage of the AWM (Abfallwirtschaftsbetriebe Münster), <https://awm.stadt-muenster.de/gemeinsam-nachhaltig/netzwerk-kooperationen/twence>.



### **3. Description of possible solution(s)**

In the border region around Münster and Enschede, there is a long lasting tradition of cross-border cooperation. The EUREGIO (Gronau) was already established at the end of the 1950ies, later with a joint seat in the German Stadt Gronau. It is regarded as the oldest cross-border entity at the Dutch-German border.<sup>20</sup> Against this background, it is no surprise that municipalities intensively cooperate across the border. The EUREGIO is governed by the EUREGIO Council with members from both sides of the border. On Friday, 16 June 2023, the EUREGIO Council met in Hengelo Town Hall and discussed the present situation of the cooperation of Münster and the Dutch municipalities. In the protocol, it says that the EUREGIO Council emphasises that municipal cooperation in the sense of the Anholt Treaty must be possible without border obstacles.

*“With this in mind, the EUREGIO supports the efforts of the member municipalities to ensure borderless cooperation without barriers in this area too and to guarantee sustainable cross-border recycling, innovation promotion and waste disposal security. Public-law cooperation between the Twence municipalities and German municipalities should be possible on the basis of the Anholt Treaty, and the legal framework conditions must be created on both sides of the border.”<sup>21</sup>*

In this respect, the Euregio Council described the core element of the solution. The obstacle is not in the first place a legal obstacle. The current legal uncertainty is a consequence of the fact that the competent Dutch ministry is still of the opinion, that there is no fundamental difference between transnational import of waste and its treatment in Dutch incinerators and the transport and treatment of waste across the border in the framework of a structural and sustainable municipal waste disposal network. In this respect, the “import cap” as an instrument to safeguard the treatment of national waste does not take into account that waste from Münster comes from a municipality in the neighbourhood. This understanding is conflicting with the proximity principle, meaning that waste from another Dutch location could be transported hundreds of kilometres to Hengelo but not from Münster (just 75 kilometres away). While acknowledging the special position of waste from Münster, the government could refer to article 16.1 of the Waste Directive 2008/98/EC where it explicitly says that Member States shall take appropriate measures, “in cooperation with other Member States where this is necessary or advisable, to establish an integrated and adequate network of waste disposal installations and of installations for the recovery of mixed municipal waste collected from private households”. The partners of the Dutch municipality and the Stadt Münster demonstrate why the structural cross-border cooperation is “necessary and advisable”.

The analysis of the border obstacles shows that there is a window of opportunity to solve it, if there is the necessary political will to support cross-border initiatives as in the Münster-Twence case. At the moment the Dutch government revises the National Waste Management Plan 3 that will become a new “Circular Materials Plan”. According to the Ministry of Infrastructure and Water Management, the new plan will entry into force in 2025/2026. In the spirit of the circular economy and the proximity principle, the Dutch government could explicitly formulate the objective of establishing sustainable cross-border networks in border regions in the field of waste disposal and waste treatment. As already outlined, the specificities of the import ban can be adopted on the basis of a ministerial decision (besluit) and does not need a revision of the underlying law (Wet milieubeheer). In the first place, this could strengthen the political understanding, that the cross-border transport of waste as part of a structural cooperation of municipalities in a border region is very different from transnational shipment of waste. In order to provide the necessary reliability of cross-border arrangements, the volume of waste that is transported to Dutch treatment facilities as part of a structural regional cross-border cooperation of municipalities should be excluded from the calculation for the Dutch “import cap”. And consequently, notifications for cross-border waste transport as part of a structural municipal cooperation agreement should be not rejected on the basis of a potential import cap.

This solution seems to be more appropriate than to ask the competent authority in North Rhine-Westphalia (the Bezirksregierung Münster) to deviate from the stipulation that municipalities have to show proof of a 10 year guarantee of their waste treatment arrangements (in waste management plans). It is obvious, that municipalities on the German side have to present evidence that their waste disposal is based on solid and long-term contractual arrangements no matter whether their waste treatment arrangements are part of an integrated cross-border network.

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<sup>20</sup> See: Birte Wassenberg, et al, Critical dictionary Critical Dictionary on Borders, Cross-Border Cooperation and European Integration, 2020.

<sup>21</sup> See press statement of the Euregio Rat, 16 June 2023, <https://www.euregio.eu/de/aktuell/der-euregio-rat-hat-in-hengelo-getagt/>. Original text in Dutch, own translation.

In this case, exemptions from the 10 year guarantee would need a change of NRW legislation, namely the Kreislaufwirtschaftsgesetz (Circular economy law) of the Land North-Rhine Westfalen.

Other possible solutions are also not entirely convincing. Under Article 31 of the new Regulation (EU) 2024/1157 on shipments of waste (repealing regulation (EC) No 1013/2006), there is room for bilateral agreements:

*“In exceptional cases and where the specific geographical or demographical situation warrants such a step, Member States may conclude bilateral agreements making the notification procedure for shipments of specific flows of waste less stringent in respect of cross-border shipments to the nearest suitable facility located in the border area between the two Member States concerned.”*

Such a bilateral agreement has been for instance concluded between Germany and Austria in the case of the Kleinwalsertal under the old Regulation EC 1013/2006. This bilateral agreement simplifies the notification procedure for certain transboundary waste shipments subject to notification in the border regions of Austria and Germany.<sup>22</sup> However, even if a bilateral agreement between Germany and the Netherlands would describe simplifications of notifications in the case of Münster-Twence, it is very likely that the derogation from a possible import cap had to be laid down in the new Circular Materials Plan. And, according to an assessment of the responsible official from Münster (AWM), the notification procedure as such is not regarded as a problem on the German side, the import cap is.

### **Derogation from the import cap: A cross-border network based on a public-law agreement as an essential condition**

It has been argued that a derogation from the import cap for this type of cross-border structural networks seem to be the most suitable solution to the border obstacle. In order to have a clear definition of a ‘structural municipal cooperation network’ the Dutch government could stipulate that the cross-border cooperation is officially based on a public-law agreement under the Anholt Treaty. Hence, the most convincing argument for a derogation from the import cap in the case of Münster and the Dutch partners is the character of the cross-border cooperation. Meaning that the transport of waste across the border is not only based on contractual obligations, but on a public-law agreement aiming at stable and sustainable cooperation for a longer period of time. This should be in particular considered as a convincing argument by national and Länder ministries, since the governments explicitly supported this type of agreements when they concluded the Anholt Treaty.<sup>23</sup>

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<sup>22</sup> See: Grenzgebietsabkommen Österreich – Deutschland, described on the homepage of the Austrian Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology, [https://www.bmk.gv.at/themen/klima\\_umwelt/abfall/aws/abfallverbringung/grenzgebietsabk.html](https://www.bmk.gv.at/themen/klima_umwelt/abfall/aws/abfallverbringung/grenzgebietsabk.html).

<sup>23</sup> See: Agreement between the Kingdom of the Netherlands, the Federal Republic of Germany, and the States of Lower Saxony and North Rhine-Westphalia concerning transboundary cooperation between territorial communities or authorities, entry into force 1993. English official title: <https://verdragenbank.overheid.nl/en/Treaty/Details/004673.html>. Own translation of article 2.

#### **4. A full list of all legal provisions relevant to the case with the correct citation<sup>24</sup> both in original language and in English**

Anholt Treaty, 1991, Agreement between the Kingdom of the Netherlands, the Federal Republic of Germany, and the States of Lower Saxony and North Rhine-Westphalia concerning transboundary cooperation between territorial communities or authorities, entry into force 1993. English official title: <https://verdragenbank.overheid.nl/en/Treaty/Details/004673.html>.

Dutch title: Overeenkomst tussen het Koninkrijk der Nederlanden, de Bondsrepubliek Duitsland, het [...] tussen territoriale gemeenschappen of autoriteiten, Isselburg - Anholt, 23-05-1991.

Deutscher Titel: Anholter Abkommen, Abkommens zwischen dem Land Nordrhein-Westfalen, dem Land Niedersachsen, der Bundesrepublik Deutschland und dem Königreich der Niederlande über grenzüberschreitende Zusammenarbeit zwischen Gebietskörperschaften und anderen öffentlichen Stellen vom 23. Mai 1991 (in Kraft getreten zum 01. Januar 1993)

European Union, Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, OJ L 312, 22.11.2008, p. 3-30 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02008L0098-20240218>.

European Union, Regulation (EU) 2024/1157 of the European Parliament and of the Council of 11 April 2024 on shipments of waste, amending Regulations (EU) No 1257/2013 and (EU) 2020/1056 and repealing Regulation (EC) No 1013/2006, OJ L, 2024/1157, 30.4.2024 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024R1157>.

Ministerie van Infrastructuur en Waterstaat, Landelijk afvalbeheerplan 3.Slimmer omgaan met grondstoffen, versie tweede wijziging (National Waste Plan, updated version of 1 januari 2024, Chapter “B10 Andere nuttige toepassing” (other important application) , <https://lap3.nl/beleidskader/deel-b-afvalbeheer/b10-nuttige/>. Ministry of Infrastructure and Water Management, National Waste Management Plan, Chapter B10.

Land Nordrhein-Westfalen, Kreislaufwirtschaftsgesetz für das Land Nordrhein-Westfalen (Landeskreislaufwirtschaftsgesetz - LKrWG) vom 21. Juni 1988, GV. NW. 1988 S. 250, zuletzt geändert durch Artikel 2 des Gesetzes vom 21. Juni 2023 (GV. NRW. S. 443), in Kraft getreten am 13. Juli 2023. Circular Economy Law for the Land North Rhine-Westphalia of 21 June 1988, Law Gazette of North Rhine-Westphalia 1988, p. 250, as amended by Article 2 of the Law of 21 June 2023 (Law Gazette of North Rhine-Westphalia p. 433), entered into force 13 July 2023. . [https://recht.nrw.de/lmi/owa/br\\_text\\_anzeigen?v\\_id=10000000000000000534#FN1](https://recht.nrw.de/lmi/owa/br_text_anzeigen?v_id=10000000000000000534#FN1) .

Abkommen zwischen der Regierung der Republik Österreich und der Regierung der Bundesrepublik Deutschland über die grenzüberschreitende Verbringung von Abfällen nach Artikel 30 der Verordnung (EG) Nr. 1013/2006 des Europäischen Parlaments und des Rates vom 14. Juni 2006 über die Verbringung von Abfällen, BGBl. III Nr. 72/2009, in Kraft getreten am 1. Juli 2009.

Agreement between the Government of the Republic of Austria and the Government of the Federal Republic of Germany on transboundary movements of waste pursuant to Article 30 of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste, Federal Law Gazette III Nr. 72/2009, entered into force 1 July 2009.

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20006379> .

Stadt Münster, Betriebssatzung der Stadt Münster für die Abfallwirtschaftsbetriebe Münster, 70.03 (Statute of the Münster Waste Management Company. See: <https://awm.stadt-muenster.de>.

Stadt Münster, Nachhaltiges Abfallwirtschaftskonzept der Stadt Münster, 2023. (Sustainable Waste Management Plan, <https://awm.stadt-muenster.de/ueber-uns/abfallwirtschaftskonzept>)

5. **Other relevant aspects to this case if relevant**
6. **References and Appendix/Appendices if any**