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## “Homo limes” – Cross-border people and cross-border citizenship: Sociolegal explorations

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### Abstract

MacCormick made an important contribution to Jurisprudence and Sociology of Law through his distinction between the norm-giver and the norm-user perspectives. Norm-givers and norm users, in his scheme, are in the same political community, while in distinct communities with distinct institutions users and givers share the same jurisdiction. But there are special cases of norm-users that are carrying out their ordinary lives in different communities. We can call them cross-border people. They live one part of their lives in one community and another part of their lives in another community, and both are bordering, and often share some features besides territorial continuity. As norm users they can belong to two different communities of norm users. As citizens, they can belong to two different *demos* at the same time. We shall be applying these considerations to the Basque border regions to ask whether cross-border relationships are generating a new type of cross-border citizenship.

### Key words

Cross-border; transfrontier; citizenship; European Union; lifeworld

### Resumen

MacCormick realizó una importante contribución a la jurisprudencia y la sociología del derecho mediante su distinción entre las perspectivas del emisor de normas y del usuario de normas. Según su esquema, los emisores y los usuarios de normas pertenecen a la misma comunidad política, mientras que, en comunidades distintas con instituciones distintas, usuarios y emisores comparten la misma jurisdicción. Sin embargo, existen casos especiales de usuarios de normas que llevan a cabo su vida cotidiana en comunidades diferentes. Podemos denominarlos “personas

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transfronterizas". Viven una parte de su vida en una comunidad y otra parte en otra comunidad, y ambas son fronteras, y a menudo comparten algunas características además de la continuidad territorial. Como usuarios de normas, pueden pertenecer a dos comunidades diferentes de usuarios de normas. Como ciudadanos, pueden pertenecer a dos *demoi* diferentes al mismo tiempo. Aplicaremos estas consideraciones a las regiones fronterizas vascas para preguntarnos si las relaciones transfronterizas están generando un nuevo tipo de ciudadanía transfronteriza.

### Palabras clave

Transfronterizo; transnacional; ciudadanía; Unión Europea; mundo de vida

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## 1. Introduction: Norm users and norm givers

As Neil MacCormick aptly observed, "human beings are through-and-through norm-users, capable of achieving a kind of voluntary order among themselves by common observance of common norms. They are also capable of understanding this and reflecting upon the way they do this" (MacCormick 2007, 286). We can apply this idea of *a kind of voluntary order* to natural languages, games, religions, social norms, customary law, etc. Communities of users follow norms and thus generate some type of order in their lifeworld. Yet, deliberate creation of norms and regulation of behaviour by a norm-giver also occurs. There are also norms authoritatively issued as rules by norm-givers to regulate the lifeworld. *Law* appears when these practices are institutionalised. Institutions of law thus combine both, law-givers' and law-users' perspectives rather than being exclusively the official prerogative of law-givers, as legal positivism holds. MacCormick gives epistemic and practical priority to users because "we can conceive of many contexts of norm-use without the presence of any norm-giving authority, but the converse is inconceivable — norm-givers without norm users" (MacCormick 2007, 287).

The interpretation of (legal) cultures always requires attention to detail (Geertz 2001) not only to regulation by law-givers, but to users' understanding of the norms, to their assumptions and normative expectations and their strategies of avoidance or adaptation, to the construction of normative meaning by norm-users going below, beyond, behind and alongside interpretations by institutions and official holders of power. This allows for some form of hermeneutic understanding of law, that takes account of the interaction of users and givers, sharing a cultural background about law. Normally, this understanding is displayed in a shared social space and in each community where users and givers belong, let us call it community *C*.

Three nuances are necessary to put the user/giver dichotomy in perspective. First, norm-givers are not above the law. They, themselves, are norm-users because, in order to make new law, they have to follow the Constitution and the (secondary) rules of change (Hart 1972), in accordance with the rule of law principle: they have to follow the law in order to engage in norm-giving. And, in democratic systems, the norm-givers are agents elected or appointed by the principals, the norm-users, the citizens they represent. In one important sense all citizens, including norm-givers, are norm users in democratic self-government, in a community or a *demos*. A final, third, nuanced note, on the user/giver dichotomy. In a certain sense, as citizens and as norm-users, we are all internal to the community and to the law of community *C*. No outlook is completely external, or internal.

The role of norm-users is enhanced in private law, where the autonomy of the parties prevails, but the empowering or enabling framework norms of private law may very well be complemented by more stringent personal commitments under social, moral and economic norms. The usual presupposition is that norm-users and norm-givers share and make up a community, and that this community *C* has a system of governance, a polity (a state). Most theories of law and the state, even theories of European integration are constructed on the understanding that norm-givers and norm-users are somehow operating, moving, acting, living in a fixed community *C*. But sometimes persons, citizens, agents can be norm-users of more than one community, polity or state, they can move, dwell and act in different communities. When this happens, the fixed community

premise, i.e. the understanding that norm-users and norm-givers are fixed in the same site, the same territory and the same demos need to be revisited.

## **2. Cross-border citizens in border regions: An approximation**

Neil MacCormick made an important contribution to Jurisprudence and to the Sociology of Law through his distinction between the norm-giver perspective and the norm-user perspective. Norm-givers and norm users, in his scheme, are located in the same political (legal) community *C*, a distinct community with distinct institutions: users and givers share the same jurisdiction. Norm-givers are normally operating in normative institutions like states, regional legislators or executives, local administrations. But there are special cases of norm-users that are carrying out their ordinary lifeworld in different communities. We can call them cross-border people. They live one part of their lives in one community *C* (territory and jurisdiction) and, simultaneously, another part of their lives in another community *D*, and both communities are bordering, and often share some (common) features besides territorial continuity. Territorial continuity, being part of the same geographical and social space is already a disturbing factor for borders or frontiers, since these tend to establish a legal and political dividing line between the spaces on either side of the border. Citizens displaying their lifeworld in that contiguous space are hard to classify. As norm users they can belong to two different communities of norm users, community *C* and community *D*, at the same time. As citizens, they can belong to two different demoi or people at the same time. Some of these norm-users are simply navigating the different normative or regulatory environments in which they are located.

Following Neil MacCormick's relevant distinction between norm-users and norm-givers, this paper explores two categories related to the existence of borders between states: cross-border persons or citizens and border regions or territories. As law can derive from the norm-users' consensus, especially in private legal relations, the location of each of the norm-users participating in such private legal relations in different jurisdictions, e.g. contracts, becomes an essential legal question. Private international law and norms of conflict have developed to address such issues. Cross-border citizens develop their everyday life in border regions and in this sense, they are inserted in different communities of fellow citizens (norm-users) and regulators (norm-givers), community *C* and community *D*. These border regions are part of different states and regulatory environments. The norm givers in these regions and states (depending on the distribution of competences and the separation of powers), each make the law of their distinct community *C*, *D*... But the norm-users also make the law, and cross-border norm-users make private law in complex contexts, perhaps constructing a new social space that turns on the axis of the border, enabled by framework laws (institution-types) of the states.

Beyond contractual relations, cross-border citizens have important links, interests, emotional and personal attachments on both sides of the border, family ties, professional relations, friends, colleagues, clients, providers, students or teachers, sports and cultural club memberships on both sides. They speak the languages spoken on both regions, which can be different dialects of the same language, as in Basque, and they speak the official languages of the States on either side of the border. They shop and use services on both sides. Cross-border citizens develop a special type of complex cross-border

identity, not limited to the nationality or citizenship of either State. Indeed, and this is the crust of our argument, cross-border identity becomes an intriguing new category of citizenship: cultural, socio-economic, political, legal. For cross-border citizens, the border is not where their national citizenship stops or where it is left in stand-by as they become aliens or foreigners; it is rather a virtual crossing point that complicates their lifeworld through bureaucratic requirements and administrative regulation.<sup>3</sup> Despite being a "legal oversight" (Bachoué Pedrouzo *et al.* 2025), cross-border citizens have learned to surf or navigate in the two different regulatory landscapes.

The question can then be framed: is there a new kind of mobile or floating community *X* added to fixed community *C* on one side of the border and to fixed community *D* on the other side of the border? This hypothesis disrupts all standard notions about the state, society and law. At most, theories can accept that there are certain *individuals* that can navigate both communities *C* and *D*, but there is no collective dimension, no collective identity separate from *C* or *D*. Some of the cross-border persons can hold double nationality, but there is no such thing as "cross-border nationality", no hybrid community develops along the border; at least not legally and politically. In the EU Schengen area, the border is no longer a physical frontier, although occasionally the presence of police and police controls is visible and disruptive of regular traffic. Some frontier passes (up to eight of the 13 crossings between *Hegoalde* — the Southern part of the Basque Country — and *Iparralde* — the Northern part of the Basque Country) were closed during COVID — known as Covidfencing (Medeiros *et al.* 2021) — or in the fight against terrorism and irregular migration and this has seriously disrupted the life of cross-border citizens. This is something we would like to nuance and somehow question.

Across the border, the physical landscape is the same, the territory and relation to the land is similar, the weather is the same, the type of construction of houses and homes is sometimes similar (*etxea, baserria*), but the official symbols and institutional landscapes change. The personal status of cross-border citizens is most of all determined by their nationality. Some of them may hold double, French and Spanish, nationality and therefore also double citizenship, since they can sometimes participate in both political communities and they may exercise their political rights on both States concerned, as a matter of fact. But many, most, cross-border citizens still have the nationality of only one of the States, and they still are cross-border citizens. Nationality for them is not the defining feature making them citizens of community *C* or community *D*. They exercise their residence and free movement rights in the other State by virtue of the single market

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<sup>3</sup> The Schengen Agreement was signed by Belgium, France, Germany, Luxembourg and the Netherlands in 1985, marking the basis of mutual trust and abolishing internal border controls between them. Schengen started to include more countries and in 1990 the Schengen Convention was created to provide legal and operational mechanisms for its necessary implementation. The Treaty of Amsterdam in 1997 further incorporated the Schengen rules into EU law. The Schengen Code has been since then updated, and today can be found in Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (codification). The Schengen Borders Code allows temporary reintroduction of all or specific parts of internal border controls as an exception, in the event of a "serious threat to public policy or internal security" (see article 25.1 of the Schengen Borders Code), with criteria and rules listed under Chapter II. Notifications of the temporary reintroduction of border controls can be found in [https://home-affairs.ec.europa.eu/policies/schengen/schengen-area/temporary-reintroduction-border-control\\_en](https://home-affairs.ec.europa.eu/policies/schengen/schengen-area/temporary-reintroduction-border-control_en).

of the EU and as citizens of the Union. EU law, in this sense becomes an *enabling legal system* that transcends Member-State divisions or borders.

This paper focuses on cross-border people at an internal European border, the Basque border.<sup>4</sup> This does not mean cross-border people do not exist in other border areas. As a matter of fact, border areas, border issues, border agreements and border communities exist all over the world. Brunet-Jailly (Brunet-Jailly 2022) makes a great account of this phenomenon explaining cross-border cooperation in Africa, Asia, Europe and America. Focusing on the Basque border will also allow to showcase an example of the European Union internal border where “cross-border cooperation in the EU is currently a world-wide example” (Brunet-Jailly 2022, 8), in a space, where governance is also redefined in a cross-border fashion (Bachoué Pedrouzo and Colavitti 2022).

### 2.1. *European citizenship vs European cross-border citizenship*

When discussing citizenship at the internal borders of the EU, we first need to discuss the core concept of EU citizenship (Bauböck 2019). This citizenship has evolved together with European integration, and so have institutions (Bengoetxea 2019), with borders being increasingly permeable. This “new” citizenship (Ivić 2016) encompasses a set of rights and freedoms<sup>5</sup> that need to be accounted for, when discussing the *homo limes/cross-border citizen*.

Citizenship has been and still is linked to the nationality of a State. In *Kaur*, (C-192/99, judgment of 20 Feb 2001) the Court of Justice relied on a “principle of customary international law” to uphold the principle that Member States remain competent to define their own rules on nationality (for instance, Article 11 of the Spanish Constitution, or articles 17-33 of the French Civil Code).

In Europe the Treaty of Maastricht introduced a special category, status, of citizenship, i.e. Citizenship of the Union. TFEU Article 20 says: “Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.” Thus “Eurocitizenship” is linked to, and conditional upon holding the nationality of a Member State; in other words, European citizenship derives directly from Member State nationality.

With the access to the European citizenship, European citizens benefit from rights and duties inside the EU legal system, and the Charter of Fundamental Rights confirmed this special personal status. Nowadays, this citizenship grants the following rights (Article 20 of the TFEU):

- the right to move and reside freely within the EU (art 21 TFEU) ;
- the right to vote and to stand as a candidate in elections for the European Parliament and municipal elections in the Member States in which one resides (art 22.1 TFEU) ;

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<sup>4</sup> See map on Appendix.

<sup>5</sup> Articles 2, 3, and from 9 to 12 of the Treaty on European Union (TEU), articles 18 to 25 of the Treaty on the Functioning of the European Union (TFEU) and articles 39 to 46 of the Charter of Fundamental Rights of the European Union.

- the right to be protected by the diplomatic and consular authorities of any Member State in a non-EU third country in which our Member State is not represented (art. 20.2. c, and art. 23 TFEU) ;
- the right to petition the European Parliament and to address the European Ombudsman (art. 24 TFEU) ;
- the right to write in one of the official languages of the EU to any of the institutions or bodies of the Union and to receive a reply in that language (art. 24.4 TFEU) ;
- the right of access to European Parliament, Council and Commission documents, subject to certain conditions (art. 15.3 TFEU) ;
- the right to participate in or start the European citizens' initiative (art. 11.4 TEU).

Today, the concept of EU citizenship is therefore considered to be well established, and any person holding the nationality of a Member State has automatic EU citizenship (art. 9 of the TEU and art. 20 of the TFEU).

Obtaining the European citizenship changed the nature of our internal borders: our citizen can move freely across the border to work, study, shop, attend cultural events... In the case of internal borders, this means, for instance, inhabitants of a border area, do not have to go through border patrol every single morning going to work, and once again on their way back.

Brexit has made it clear that Citizenship of the Union is also lost when the State of which one is a national ceases to be a Member State (judgement of 9 June 2022, case C-673/20 – *Préfet du Gers and Institut National de la Statistique and des Études Économiques*). Citizenship of the Union entails certain Fundamental Rights, Civic Rights, entitlements and obligations, which are lost when this status is lost.

But the status of European citizenship is enjoyed even in situations where the person or citizen has not moved, resided or worked in another Member State: if you have never left your French *terroir* you are still a citizen of the Union. There are also situations of double nationality (or citizenship) where a person may be a national of two states simultaneously. This can happen because of a combination of family links, birth or long-term residence in a different State which does not require the person to relinquish her original nationality. The person has links with both States but does not necessarily develop her life in one of the states of her nationality. In fact, the person may lose vital, personal links with one of the States, even with both. Whereas special care must be taken to prevent the withdrawal of nationality to a citizen who would otherwise be left stateless, the Council of Europe Convention on Nationality provides that nationality can be lost in the event of "no genuine link between that State and a national habitually residing abroad and, in the case of a minor, for children whose parents lose the nationality of that State". In *Tjebbes* (judgment of 12 March 2019, case C-221/17) the Court accepted the Dutch rule that withdrew nationality after 10 continued years with no link to the Netherlands (this could however be interrupted and nationality reinstated applying for an identity document and taking account of individual circumstances). Nevertheless, European citizenship does not necessary include the cross-border aspect of the citizenship of cross-border people.

## 2.2. *Transfrontier workers and cross-border commuters*

Cross-border workers gain a special and meaningful legal status when paired with the European citizenship (there can be cross-border workers in the EU that are not citizens of the Union, eg migrants resident in one Member State and working in another holding a special work permit). These workers — also known as “frontier workers” — are contemplated inside the EU legal corpus. In the 1970s, Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community defines cross-border workers in article 1.b):

‘frontier worker’ means any worker employed in the territory of a Member State and residing in the territory of another Member State to which he returns as a rule daily or at least once a week; however, a frontier worker who is posted elsewhere in the territory of the same or another Member State by the undertaking to which he is normally attached and is prevented on account of such posting from returning daily or at least once a week to the place where he resides shall nevertheless retain the status of frontier worker for a period not exceeding four months.

In 2004, 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) defined cross-border workers (or “frontier workers”) from our current perspective in time, as “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” (art. 1.f).

Cross-border workers are different from “posted workers”. As rightly explained by the *Annual report on intra-EU labour mobility* (Gasperini *et al.* 2025, 48),

a ‘posted worker’ is an employee who is sent by their employer to another EU Member State on a temporary basis to carry out work in some form. It can include both posted employees and posted self-employed persons.

We notice, since the beginning, a cross-border worker is a person using her right of freedom of movement. In this scenario, the workers reside in one member state and work in a different member state of the EU. According to the data (Gasperini *et al.* 2025, 46-48), this situation concerns approximately 1.8 million workers in the EU, and the number is increasing.<sup>6</sup> Yet, despite being recognized under EU law, these cross-border workers still face a number of difficulties (Svensson and Balogh 2018, 123). Furthermore, the European Court of Justice (C-27/23, *Hocinx*, of 16 May 2024) had to decide recently on a case showcasing that cross-border workers still face difficulties, even between integrated member States of the EU.

This case concerns a cross-border worker and the refusal by the *Caisse pour l’avenir des enfants* (Children’s Future Fund, Luxembourg) to grant family benefits to a minor who was placed in the worker’s home by a court order. The Court of Justice points out that “[...] the present case concerns only the question whether a Member State may apply different award conditions to a resident worker and a non-resident worker, as regards the grant of an allowance such as the family allowance at issue in the main proceedings” (para.24). Finally, the Court ruled in favour of the worker and reminded the

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<sup>6</sup> The data from 2023 shows an increase of 3% in comparison to 2022. See Gasperini *et al.* 2025.

Luxembourg authorities that "Article 45 TFEU and Article 7(2) of Regulation No 492/2011 preclude provisions enacted by a Member State under which, unlike resident workers, non-resident workers are not entitled to receive a social advantage, such as the family allowance at issue in the main proceedings, in respect of children placed in their household, of whom they have custody, who are officially resident with them and who actually live with them on a continuous basis." (para.39).

These two previous situations can be distinguished from the status of a person, who could be a national of one, of both, or of neither of the two neighbouring states, but who has permanent, regular and direct links with both states concerned. These are sometimes referred to in EU jargon as "trans-frontier", "frontier" or "cross-border" workers,<sup>7</sup> a special category of workers, somewhere in between stable stationary (national) workers and migrant workers who have exercised their EU rights of freedom of movement (workers or self-employed, rights of movement, establishment and residence; see TFEU Arts 4.2.a), 26, 27, 114 d, 115). As a category with a special status, trans-frontier workers live (residence) and work in different Member States simultaneously whereas migrant workers and stationary or national workers live and work in the same Member State.

As regards frontier workers, by and large, the data available come mainly from the processing of figures provided by social security institutions and population censuses. It is worth remembering that 37,5% of the EU population lives in a border area, and that the EU contains 38 internal borders.<sup>8</sup> The most optimistic estimates do not exceed 2 million in the EU-27, amounting to 1% of the total EU workforce (Eurostat, *People on the Move*, 2020). According to Euroregion Nouvelle Aquitaine-Euskadi-Navarre (NAEN) (project *Empleo*) data for 2017, 3.863 cross-border workers (coming from Gipuzkoa or from Navarre, Spain, lived in Lapurdi, France, and crossed the border to work in Gipuzkoa; – 390 from Gipuzkoa and 261 from Navarra to Lapurdi).<sup>9</sup> Cross-border or frontier workers are normally conceived as cross-border commuters: they work in one Member State (a border region of that MS) and live in a different MS (a border region of that MS) and return daily, or at least once a week.

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<sup>7</sup> Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, already in its article 1.b) defines what a "frontier worker" is under EU law: "'frontier worker' means any worker employed in the territory of a Member State and residing in the territory of another Member State to which he returns as a rule daily or at least once a week; however, a frontier worker who is posted elsewhere in the territory of the same or another Member State by the undertaking to which he is normally attached and is prevented on account of such posting from returning daily or at least once a week to the place where he resides shall nevertheless retain the status of frontier worker for a period not exceeding four months.

<sup>8</sup> [https://ec.europa.eu/regional\\_policy/policy/cooperation/european-territorial/cross-border\\_en](https://ec.europa.eu/regional_policy/policy/cooperation/european-territorial/cross-border_en)

<sup>9</sup> Cross-border employment flows are much more fragile in the Euroregion than at other EU borders, where the number of people moving from one country to another for work is much higher, for example: the Franco-Swiss border (more than 160,000 people), the Italian-Swiss border (more than 100,000), or the Franco-German border (more than 180,000). The main difficulties faced by cross-border workers in Nouvelle-Aquitaine-Basque Country-Navarre are taxation and transportation. One of the major obstacles to the flow of workers is language. The majority work in commerce, hospitality, and other tourism-related activities, while a minority work in professional services. The study was carried out by IKEI consultancy for the Euroregion. A different study was carried out with 2400 participants by Euroregion in 2020 during COVID pandemic and analysed all types of cross-border movement, not only workers (35% of those interviewed).

But the underlying assumption behind cross-border commuters is that they remain citizens of one of the two States concerned. We here rely on the concept of the lifeworld<sup>10</sup>, which we try to decouple from the bureaucratic, administrative state. The lifeworld denotes a social, political, historical, and cultural environment where human beings interpret, communicate, and socially engage in multiple communal spheres. The centre of gravity of the lifeworld, the communal environment, will normally be in one of the border regions concerned, but also, especially when the regional identity is not profound or salient, in one of the states concerned. Their link with the other state or region is contingent,<sup>11</sup> almost accidental: they happen to have found a job on the other side of the border, and this is convenient for them, provided the administrative and legal hurdles can be overcome. The reasons for moving between territories are mainly socioeconomic. Most move to shop, to go to a second home, or to visit friends and family, and finally, they do so to engage in leisure or sports activities. Ninety-one percent of workers surveyed consider cross-border cooperation essential or very important for improving their professional situation. In this sense, they can be considered norm-users. Just to put the numbers in perspective, more than 10,000 non-EU migrants cross the border every year. In 2022, 6,253 people were assisted in Irun's centres for migrants in transit run by the Red Cross, more than a thousand of whom were women; of these latter, fifty were traveling with minors in their care.

We must also add, the Spanish and French states have been active in their willingness to support the economic phenomenon at their shared border, and started regulating early on about this matter, as shown by the 1995 Tax Convention between the two countries to avoid double taxation of cross-border workers. These cross-border workers could have found a job in their own region, or in another region of the same state and they would then be regular commuters, as most EU workers. Or they could have become regular migrant workers, placing their residence in the Member State of employment and aiming to return to their State, or even posted workers (workers posted by the employer into another Member State to perform a specific task but with no residence involved; 12 and 13 of Regulation (EC) No 883/2004). According to the 2021 Annual Report on Intra-EU Labour Mobility, there were 10 million migrant workers in the EU in 2020, when COVID broke out, and 3 million inactive migrants. Mobility is mostly not a lifetime decision: more than half of the movers are 20-49 years old. Many of them return after having gained some years of professional experience abroad. Indeed, at the European Union level, public job placement or employment offices can sometimes

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<sup>10</sup> In the sense of the concept *Lebenswelt*, as introduced by Husserl and developed by Habermas. This lifeworld is *colonized* or penetrated by a weberian bureaucratic rationality (Habermas' *Theory of Communicative Action*). If we stretch Habermas' theory we could argue that a Basque-speaking lifeworld, a community of language, culture, customary norm users is being colonized by state regulation, by norm-givers on both sides of the border; but we do not hereby imply that there was a pristine, original state-of-nature like position that was colonized by France or Spain; although some understandings of Basque nationalism could be interpreted that way (tubalism, the myth of Aitor, the influence of Agusti Chao, see Aranzadi 2000).

<sup>11</sup> We do not hereby imply that they are contingent workers, a special category of temporary employee hired, on a non-permanent work contract, to perform certain tasks (eg freelancers, independent consultants).

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coordinate with their border peers to offer employment opportunities on the other side of the border (eg EURES).<sup>12</sup>

But for cross-border citizens the environment, the axis of their lifeworld fluctuates alongside the border and on either side of it. This liminal liaison is, so to say, existential, a part of their lifeworld. They challenge the general understanding that each person is part of a (national) lifeworld because cross-border citizens participate in one, social and family lifeworld including political citizenship, in another, social and family lifeworld plus professional lifeworld or even in more such lifeworlds if and when a special cultural and linguistic community is shared on both sides of the border and a virtual overlapping lifeworld develops.

We must add, despite the EU legal framework protecting EU citizens, and EU cross-border citizens (Palacin Mariscal 2025), the consecration of the protection of their fundamental rights still faces difficulties. As a matter of fact, although the European Charter of Fundamental Rights of the EU grants a comprehensive protection to EU citizen, when we consider the cross-border citizen factor, the EU legal framework still needs to address important challenges. European integration does not solve important cross-border issues. This is very telling in the areas of rights related to health, minors, the elderly, social security... One example<sup>13</sup> could be when an EU citizen who lives in State *A*, but receives healthcare in State *B*. This person has the right to a home-based palliative treatment, but their doctors from State *B* cannot practice in State *A*. This example already showcases the difficulties that still exist at these border communities, even within the EU.

### 2.3. *Non-European, involuntary migrants trapped at the border*

When reflecting on the "border people", the idea of a cross-border individual person comes to mind: someone who navigates and crosses the border to live their everyday life. Yet recent fluxes of immigrations and sad news raise the topic of the people who are sentenced to live from border to border, and who are ready to leave the territory as soon as they can. We are, indeed, talking about migrant people.

A sad reality in the Basque border area is the difficulties these people face because of the border. Their lack of EU citizenship deeply conditions their experience with the border (Barbero González 2017). The border city of Irun (Gipuzkoa, Euskadi-Spain) is a painful example of the migration pressure the Basque border is facing since 2018 (Begirune Foundation 2023). In fact, since 2018, around 5,000 immigrants arrived each year at the bordering area of Gipuzkoa trying to get to France. This number has increased, and the estimate (*ibid.*) for the year 2021 is around 8,000 people. Therefore, this particular border

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<sup>12</sup> Regulation (EU) 2016/589. There is a EURES counsellor or advisor for Gipuzkoa in the Basque public placement service *Lanbide*, and one for the *Servicio de Empleo de Navarra* (neither offer Basque as a contact language and the Navarra contact has no French; there are no advisors in the Iparralde Departement Pyrenées Atlantiques, but there are eight advisors in *Pole Emploi*, now called *France Travail*, in Bordeaux) but there are no EURES transfrontier associations supported by the ESF/FSE between Spain and France (Spain has three such associations with Portugal).

<sup>13</sup> This example is real, provided by a palliative treatment doctor to one of the authors during an interview in the project of creation of the Euro-Institut Pyrene (Proyecto ICT, POCTEFA 21-27). See the project: <https://www.poctefa.eu/proyectos/efa054-01-id-ict/>

can be characterized as “very active” in terms of control of irregular immigration (Barbero González 2017, 23).

This sudden increase of immigration led to intense police controls at the border (Barbero González 2017), with the French police force practising returns at the border, and the Spanish police force practising arrests. Data<sup>14</sup> showed (Jiménez 2023b; 2023a; 2023c) that the Irun Station of *Policía Nacional* (National Spanish Police Force) counted around three arrests of these migrants a day, almost a hundred a month. This migration crisis also brought terrible news of lives lost at the river Bidasoa — marking the border between France and Spain —, due to drowning, suicide or the presence of human trafficking criminal groups. Barbero and Donadio (2019, 144) explain how the shift at this Basque-border-area started in 2018, when 46 people arrived at the bus station of the city of Donostia / San Sebastián, via the coast of Andalucía in the south, with the intention of crossing the border towards France. Despite being stopped before arriving at the border, more immigrants kept arriving the following days, following the same pattern. This means, these people are forced to stop in the bordering areas, many of them concentrating in the border town of Irun, where they are also sent when intercepted by the police at the French side of the border (Barbero and Donadio 2019, 144).

These people are a different type of “border people”. For them, the border does not symbolize a lifeworld, a cultural and linguistic relationship, the freedom of choosing in which schooling system to study, or where to work. Indeed, the challenges are different depending on whether we consider the border as a positive or negative element. For these “border people”, sadly, the border is “a wall to be broken down in order to live better”<sup>15</sup> (Apalategui 2022, 337). For these people, the Basque border symbolises the wall separating those with or without EU citizenship. We, Europeans, might take the right to freedom of movement for granted but for these immigrant people, the border is what we have seen in previous generations: a dark place where criminals can profit from trafficking, separation from their families and communities and even death.<sup>16</sup>

#### *2.4. Border regions and neighbouring states*

Cross-border cooperation is one aspect<sup>17</sup> of European territorial cooperation, under the umbrella of Interreg.<sup>18</sup> The Union supports this cross-border cooperation under the Interreg A<sup>19</sup> component. The objective of this cooperation is, among other things, to address the common challenges jointly identified in border regions. It must be said that it took the Commission some time to formally support territorial cooperation. As Medeiros explains (Medeiros 2018, 40-41), the first financial support was agreed in 1989,

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<sup>14</sup> According to Jiménez (2023b). Sadly, a scandal was also uncovered by this newspaper: there was an incentive for arresting immigrant people by granting days off in exchange of arrests.

<sup>15</sup> Translated by the authors.

<sup>16</sup> Sadly, immigrants have passed away trying to cross the river Bidasoa, marking the border between the Northern (France) and Southern (Spain) Basque Country.

<sup>17</sup> [https://ec.europa.eu/regional\\_policy/policy/cooperation/european-territorial\\_en](https://ec.europa.eu/regional_policy/policy/cooperation/european-territorial_en)

<sup>18</sup> Interreg is a series of EU funding programmes that support cooperation. <https://interreg.eu/> This programme is divided into four strands: cross-border cooperation (Interreg A), transnational cooperation (Interreg B), interregional cooperation (Interreg C) and cooperation for outermost regions (Interreg D). This article being centred on the cross-border cooperation, we will be referring to the strand Interreg A.

<sup>19</sup> [https://ec.europa.eu/regional\\_policy/policy/cooperation/european-territorial/cross-border\\_en](https://ec.europa.eu/regional_policy/policy/cooperation/european-territorial/cross-border_en)

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and this was followed by the Interreg Community Initiative (1990-1993) to prepare the Union's border areas for the implementation of the Single Market, and to provide a financial boost to these areas. For the upcoming 2028-2034 Program, the European Commission proposes a funding of 10.2 billion euros.<sup>20</sup> For the case at hand, the Basque border is located within the Interreg POCTEFA<sup>21</sup> Program, a European cross-border cooperation program created to promote the sustainable development of the border territory between the countries of France, Spain, and Andorra.

Transfrontier workers live and work in "border regions", a special category of European region. Border regions represent 40% of the regions of the EU territory and one third of the EU population. Border regions have created a European Association<sup>22</sup> and are involved in soft lobbying (stakeholders, consultants) at the Council of Europe and at the EU, and Euro-Institutes have emerged to research, lobby and improve the situation in these border areas, united under the umbrella TEIN.<sup>23</sup> Border regions have a clear interest in cooperation given the territorial continuity and the likelihood that policies applied in one region will have an impact on their bordering neighbours.<sup>24</sup>

Cooperation between border regions is also a dimension of the Cohesion Policy of the EU. As the Commission Report on European Border Regions reminds us (COM(2021) 393 final), there are important EU tools for cooperation, most notably European Grouping of Territorial Cooperation (EGTC) which provide a stable legal framework for joint initiatives and investments. The 80 existing EGTCs cover a wide range of activities, including the management of public services. Other forms of cooperation supported by the EU budget, such as the European Universities Alliances under the Erasmus+ programme or the EDIH, can use the EGTC legal tool to sustain cross-border cooperation, thereby expanding impact beyond cohesion policy. The new BRIDGEforEU Regulation (2025/925) will also unlock the potential of these cross-border areas by offering a legal framework to resolve border obstacles, notably with Cross-Border Coordination Points or the Cross-Border Facilitation Tool.

Member States of which those regions are a part, and under whose sovereignty and legal order they operate, should also be interested in border regional cooperation by providing a joint, agreed legal framework in which to operate, for instance, by exploring possibilities of jointly performing border-proofing tests when developing new legislation or transposing European directives. The Territorial Impact Assessment tool used by the Commission via its Better Regulation Toolbox provides a useful basis for this. In bilateral contacts, Member States should also consider ways to facilitate cross-border interaction, notably by making it possible to derogate from some national rules

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<sup>20</sup> <https://interreg.eu/news-stories/what-the-european-commission-s-2028-2034-budget-proposal-means-for-interreg/> As mentioned above, the Interreg programme is divided into four strands. This 10.2 billion euros funding refers to all strands combined and there is currently no detailed information on the distribution between the four of them.

<sup>21</sup> <https://www.poctefa.eu/>

<sup>22</sup> <https://www.aebr.eu/>

<sup>23</sup> <https://transfrontier.eu/>

<sup>24</sup> On top of border regions, there is also a long history of cities that are cooperating in different fields as twin cities. They need not be located in bordering regions, but they can involve ties and relationships of friendship and mutual interest, but it is rare that citizens of those cities develop their personal, family or professional lives in the twin cities. These are not our concern either in this paper.

or by enhancing mutual recognition based on mutual knowledge, standards and trust. Regional groupings such as the Benelux Union or the Nordic Council of Ministers have a key role to play in providing a seamless framework for interaction. Bilateral agreements such as the Treaty of Aachen between France and Germany or the Estonian-Latvian Intergovernmental Commission have similar objectives.

### **3. Cross-border citizens and cross-border persons creating new communities**

Despite not being expressly recognized in the EU legal framework, cross-border European citizens do have a *de facto* presence in the EU project. Indeed, the European integration project is aware of the reality of borders and even includes them in its cohesion policies. As a matter of fact, the EU has been funding cross-border cooperation as part of its regional and territorial cohesion policy since 1990s. Although European territorial cooperation has been part of cohesion policy for more than 30 years, Regulation 2021/1059 on specific provisions relating to the “European territorial cooperation” was updated in 2021. This “horizontal integration” (Beck 2022) has, indirectly and latently, led to the emergence of two new social phenomena: cross-border citizens and cross-border communities.

In the network society (Castells 2004) in which we live, and within an integrated Union, notions of citizenship evolve. We live in new contexts where the idea of citizenship has transcended and evolved, from being solely linked to the State (Acosta Pumarejo 2024) to new forms. The concept of citizenship is expanding in some respects and furthermore, the emergence of new cross-border citizens might also lead or branch out towards the formation of cross-border communities (Levrat 2022). Citizenship can even be understood as a “social space,” (Neuvonen 2019) or, as Advocate General Poiares Maduro puts it (Opinion of Mr Advocate General, 2009, para. 23), as a “political space”. Something similar happens to the concept of European citizenship: it evolves along with our societies and needs redefinition (Thym 2019), such as, for example, adding a cross-border dimension for cross-border citizens.

Beyond such obvious matters, which are top-down approaches and directly involve administrations, our major concern in this paper is the existence of people who develop much of their personal and/or professional lives in the two bordering regions. We can call them cross-border persons. How many people could be considered cross-border persons? We simply do not know. How can we get to know? There are, in fact, no recent Europe-wide figures, compiled on the basis of a standardized, harmonized system. No accurate figures are held by the European Community, the OECD or the Council of Europe. At national level, no comparable periodic surveys are carried out in the various countries. Yet, despite no main study on cross-border people, we can find some data about cross-border workers flows as shown in Image 1 below. The sources and reference years for those figures which are available differ widely however: the published figures often vary between one country and another, and even within the same country, depending on the authorities which have compiled them (social security agencies, employment offices, tax offices, etc.).

IMAGE 1

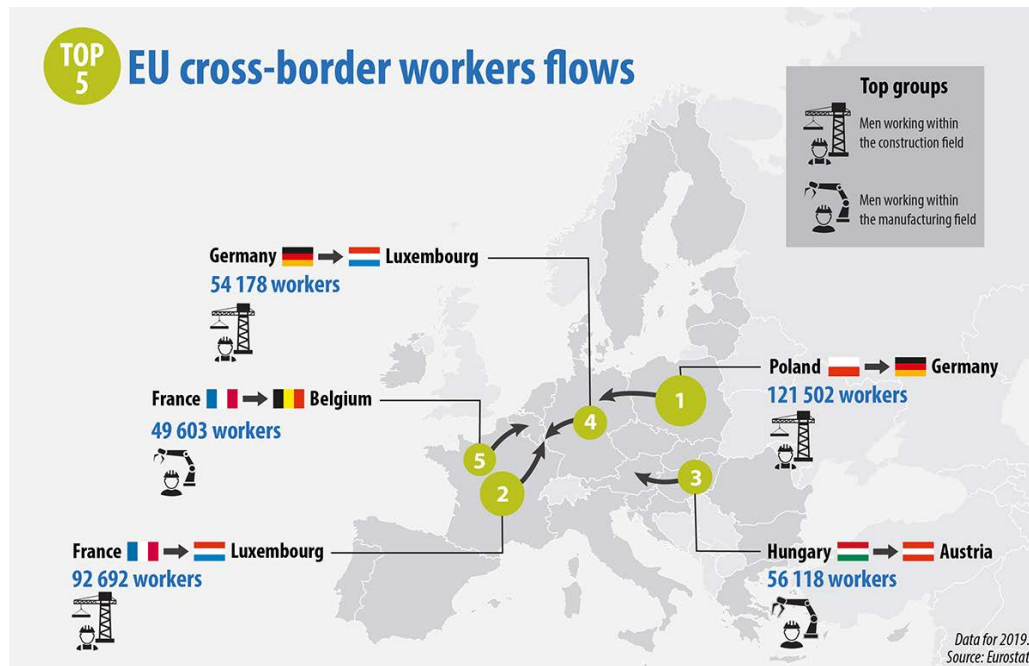


Image 1. Eurostat’s map of top five EU cross-border workers flows (data for 2019).

But our group of cross-border people goes well beyond those involved in formal employment relationships. The EU understanding behind cross-border commuters is normally that work is a less enduring link than the lifeworld, and thus links with the State of employment are less solid and enduring than links with the State of life and family. But this is a prejudice that needs serious examination and testing as regards cross-border workers. It presupposes that, except for employment and employment related benefits and taxes, these workers are commuters: they will ultimately identify with the social, economic, cultural and political life of one of the two states concerned, not with both equally. As we have been arguing, this is far from being the case with many cross-border citizens. They are linked to and intend to remain linked to both regions. What’s more, we argue, apart from being a patchwork of norms, there is an identity component to it.

We have established cross-border people are not mere commuters. This entity amounts to considerably more than commuting or working, it is a about identity: “We all seem, unless we remain within a watertight vision of state territories, to agree to go beyond in one way or another the limits and constraints imposed on us by the interstate border. Like skin, a border contains us, it gives us a contour, it tells us who we are and who we are not, where our self ends and that of others begins”<sup>25</sup> (Apalategui 2022, 336). Let us illustrate this point with some typical cases:

A woman in her nineties, who has always bought groceries in the other side of the border, and continues to do so: is she a mere commuter? She has been doing this her whole life. Yet, she has never worked on the other side of the border. Instead of being a commuter, isn’t she rather someone who has a lifeworld (*bassin de vie*) where she conducts her economic contribution to her community in a cross-border fashion?

<sup>25</sup> Translated by the authors.

Is the young man who every week visits his family on the other side of the border a mere commuter? He spends time with his family, enjoys the little traditions together. He doesn't necessarily commute to work there but has family ties and emotional attachment to the "other side" of the border.

The young group of friends who really enjoy following concerts, and therefore travel around both sides of the border during the year to follow their favourite band: are they mere commuters? What if the members of this group of friends live in different sides of the border? Are they not a group of cross-border people rather than commuters?

The cross-border married couple. Each one of them has a different nationality, they have family and friends on both sides of the border and have created cross-border children. Despite maybe crossing the border to work, are they mere commuters? Or do they have this feeling of belonging to the cross-border people category (i.e. cross-border identity)?

A person who, when they want to have an early dinner they go to France, and a late dinner, they go to Spain. Are they not a mere culturally aware cross-border customer, rather than a commuter?

The student who, due to the prize of rent in the area, wants to stay at their parents' house. In this case, the closest university in their country is further than the university across the border. Does this not accentuate the cross-border experience of this citizen, furthering its belonging to the cross-border community?

The person who really enjoys going to the beach. Yet, their town in Spain does not have a beach, and the nearest one is in France, and not Spain. In this case, are we not talking about a person that navigates within their lifeworld?

The children who follow part of their schooling in one side of the border, and the rest in the other side. They learn in different schooling systems, in different languages, learning about the two states and the regions in which they study. They will grow up being cross-border peoples. Do we reduce their identity to being mere commuters?

The examples go on and on. But they all show cross-border people are not merely commuters. All these examples showcase a lifeworld, they showcase the "human face" of cross-border cooperation (Bachoué Pedrouzo *et al.* 2025). Sometimes these interactions are for social life, family and friend ties, educational opportunities, and other times, they are just for convenience (as shown by the previous examples of the beach of university).

#### **4. Cross-border citizens as norm users and border regions as norm givers**

When discussing norm givers in the Basque border, there is an entity in the governance system that tries to help norm givers for this territory. Indeed, the Euroregion Nouvelle-Aquitaine, Euskadi-Navarre (NAEN)<sup>26</sup> aims at creating a common space for cooperation in different areas, in order to make the lives of the citizens in this territory — homo limes included — easier. This institution is now a European Grouping for Territorial

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<sup>26</sup> As mentioned earlier, the Euroregion NAEN is a major actor on the topic of cross-border cooperation but is far from being the only one. In fact, the Basque territories have been very active on this front, with a proliferation of agreements between institutions at different scales, ranging from proximity-based cooperation (the association Xareta, or the Bidasoa-Txingudi consortium for example), intermediate-level cooperation (agreements between the Departmental Council of the Atlantic Pyrenees and the Province of Gipuzkoa for instance), and interregional level with the Euroregion NAEN.

Cooperation (EGTC). Aside from the Euroregion NAEN, Border Regions (who are norm givers locally) try to collaborate between them to structure easier relations. These cross-border policies try to help the lives of their citizen and cross-border people: facilitating public transportation and cross-border public transports, helping cooperation for job-searching and the job market, collaboration on the topic of tourism, projects on the area of environment... All these actors were also essential during the COVID-19 pandemic, that showed, notably, how much the closure of the border disrupted the everyday lives of the "border people". Yet, despite regulating locally, and creating cross-border collaborations, the border person still needs to navigate different legal norms. Even when the "border people" do not see or feel the border, the legal system does.

Perhaps the idea of a "semi-autonomous social field" emerging in border or frontier regions is worth exploring. The concept was coined by Sally Falk Moore in 1973. Anthropologists typically study social fields that generate norms — customs, rules and symbols — internally but are "vulnerable to rules and decisions and other forces" like state law or other external influences from the wider world. Social fields articulate with one another, and in complex societies fields are interdependent and multilayered, with individuals belonging to various social fields that mediate their relations with the body politic. This idea of the semi-autonomous social field could be used to convey the communities of *homo limes*. Cross-border citizens would create their own social norms, and, with the help of institutions such as the Euroregion NAEN, they could even create their own legal cross-border rules, not fully independent from State legal norms but valid across both legal systems in either side of the border. Being closely linked to other elements of citizenship such as Spanish, French and European in our case, they are also subject simultaneously to the legal rules of those systems in a multilevel governance structure, making them vulnerable to those external forces but sorting them out as special communities, different from the communities or fields that are based in only one side of the border. These interactions and relations influence their everyday life in their lifeworlds, as we have seen previously. This exploration does not show yet a fully formed semi-autonomous social field at the border, created by the *homo limes* community, but might point out the slow and steady emergence of one. The applicability of Moore's model stops here, but it already explains a lot. Sally Falk Moore further considered semi-autonomous social fields could develop compliance methods, something we would hardly expect to see developing in cross-border semi-autonomous fields. At any rate, it would be interesting to see how — maybe in the future — this "border-semi-autonomous social field" develops and interacts with similar ones, at other border areas at the European level.

## 5. Conclusions

We have argued that there are special cases of norm-users that are carrying out their ordinary lives in different communities. We call them cross-border people — *homo limes*. They live one part of their lives in one community (territory and jurisdiction) and another part of their lives in another community, and both communities are bordering, and often share some (common) features besides territorial continuity. As norm users they can belong to two different communities of norm users. As citizens, they can belong to two different *demoi* at the same time. Some of these norm-users are simply navigating the different normative environments in which they are located. But do they form this

particular identity of cross border citizens as separate individuals or is there some added collective dimension to this identity? Do they form a new sort of social group, a sort of “homo limes” community of users that generate a “cross-border” type of order in their lifeworld? Do they contribute to create a new social space? Will they eventually develop a new form of collective cross-border governance alongside the governance of community C and community D? And what about the norm-givers? Are they exclusively members of one or the other communities in border jurisdictions? Or could we see the development of cross-border norm-givers in new forms of governance and new institutional frameworks? These are some research questions we don’t know how to answer yet.

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## Appendix

*Map of the location of the Basque Country, located at the Franco-Spanish border by Zorion* (User:Zorion) [online], CC BY-SA 4.0. Available at: <https://commons.wikimedia.org/w/index.php?curid=12399081>

It must be noted that this map does not showcase the enclave of Treviño.

